

VOLUME FOUR OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Larry R. Patterson, Circuit Court Judge

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S.C. Supreme Court

JOHN RICHARD WOOD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

JOSEPH L. SAVITZ, III
Senior Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589

ATTORNEY FOR PETITIONER

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HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELEND
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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PLAINTIFF'S EXHIBIT 10 (LETTER)	3606
PLAINTIFF'S EXHIBIT 11 (MEMO)	3607
PLAINTIFF'S EXHIBIT 12 (ORDER)	3608
PLAINTIFF'S EXHIBIT 13 (ORDER)	3610
PLAINTIFF'S EXHIBIT 14 (SCHOOL RECORDS).....	3613
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ORDER OF DISMISSAL WITH PREJUDICE	3633
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1 (WITNESS EXITS COURTROOM AT 3:37 P.M.)

2 THE COURT: NEXT WITNESS, PLEASE.

3 MS. STROM: THE STATE CALLS ROBERT APPELL.

4 ROBERT L. APPELL, HAVING BEEN
5 DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MS. STROM:

7 Q OFFICER APPELL, IF YOU WOULD, PLEASE STATE YOUR FULL
8 NAME FOR THE RECORD.

9 A ROBERT L. APPELL, A-P-P-E-L-L.

10 Q I NEED FOR YOU TO KEEP YOUR VOICE UP LIKE THAT SO ALL
11 THE JURORS CAN HEAR YOU.

12 BY WHOM ARE YOU EMPLOYED?

13 A ANDERSON COUNTY SHERIFF'S OFFICE.

14 Q AND HOW LONG HAVE YOU BEEN WITH THE ANDERSON COUNTY
15 SHERIFF'S OFFICE?

16 A IT WILL BE FIVE YEARS IN MAY.

17 Q YOU WERE -- WHAT WERE YOUR DUTIES WITH THE ANDERSON
18 COUNTY SHERIFF'S OFFICE ON DECEMBER THE 6TH OF 2000?

19 A I WAS A SERGEANT SUPERVISOR ASSIGNED TO THIRD SHIFT.

20 Q DID YOU HAVE AN OCCASION TO BE INVOLVED IN THE PURSUIT
21 OF A JEEP GRAND CHEROKEE ON THAT DAY?

22 A YES, I DID.

23 Q BEFORE WE GET INTO WHAT EXACTLY YOU OBSERVED (PAUSE) I'M
24 GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
25 NUMBER 49. AND I ASK YOU DO YOU RECOGNIZE THAT?

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 A I DO.

2 Q IS THAT AN ACCURATE REPRESENTATION OF THE AREA INVOLVED
3 IN THIS PURSUIT OF THE JEEP CHEROKEE AND SUBSEQUENTLY THE
4 BLUE RIDE ELECTRIC CO-OP TRUCK?

5 A IT IS.

6 MS. STROM: YOUR HONOR, AT THIS TIME, WE WOULD OFFER
7 STATE'S EXHIBIT NUMBER 49 INTO EVIDENCE.

8 MR. RICHEY: WITHOUT OBJECTION.

9 (STATE'S EXHIBIT NUMBER 49, MAP, MOVED INTO EVIDENCE)

10 Q I'M GOING TO ASK THAT YOU STEP DOWN VERY BRIEFLY TO
11 ORIENT THIS JURY AS TO THE LOCATIONS ON THIS MAP.

12 A (COMPLIES)

13 Q YOU TESTIFIED EARLIER THAT YOU WERE INVOLVED IN THE
14 PURSUIT OF A GRAND JEEP CHEROKEE. FIRST OF ALL, HOW DID YOU
15 BECOME INVOLVED IN THAT?

16 A I WAS AT TRAINING THAT DAY. AND AFTER I LEFT TRAINING,
17 WE RECEIVED A BROADCAST ON THE RADIO THAT A TROOPER HAD BEEN
18 SHOT IN GREENVILLE COUNTY, AND I WENT TO A LOCATION THAT I
19 WILL SHOW YOU ON THIS MAP.

20 Q I NEED YOU TO KEEP YOUR VOICE UP SO ALL THE JURORS CAN
21 HEAR YOU.

22 A I WENT TO A LOCATION THINKING THAT THE SUSPECT VEHICLE
23 MIGHT GO TO A CERTAIN LOCATION IN THIS AREA, AND I WENT THERE
24 WITH ANOTHER DEPUTY TO WATCH THAT AREA.

25 Q YOU HAD RECEIVED INFORMATION OVER THE RADIO REGARDING

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 THE INCIDENT IN GREENVILLE?

2 A YES, MA'AM.

3 Q WERE YOU GIVEN AN ANDERSON COUNTY ADDRESS THAT MAY BE
4 CONNECTED WITH THIS SITUATION?

5 A YES. I DON'T RECALL THE EXACT ADDRESS, BUT I KNOW IT
6 WAS IN THE FAIRPLAY AREA.

7 Q IN THE FAIRPLAY AREA?

8 A YES.

9 Q ALL RIGHT. AND AS PART OF YOUR DUTIES DID YOU SET UP AT
10 A PARTICULAR AREA?

11 A I DID.

12 Q AND WHERE WAS THAT?

13 A IT WAS AT THE INTERSECTION OF 24 AND -- ACTUALLY IT'S
14 24, 243 AND INTERSTATE 85. THERE'S A TOWNVILLE CAFE RIGHT
15 THERE. IN THAT PARKING LOT, KIND OF LIKE ALONGSIDE THE
16 BUILDING.

17 Q AND THE MAJOR ROAD THERE IS INTERSTATE 85?

18 A YEAH, THIS IS 85 AND THIS IS 24 (INDICATING).

19 Q AND 24 TURNS INTO WHAT? WHAT HIGHWAY DOES IT INTERSECT?

20 A IT INTERSECTS 187 AT SEVERAL LOCATIONS, 187 NORTH AND
21 THEN 187 SOUTH (INDICATING).

22 Q THANK YOU. PLEASE RETAKE THE STAND.

23 A (COMPLIES)

24 Q I'M GOING TO SET THIS MAP UP RIGHT HERE, AND IF YOU NEED
25 TO REFER TO IT, PLEASE FEEL FREE TO DO SO.

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 A OKAY.

2 Q YOU WERE SET UP AT THE INTERSECTION OF HIGHWAY 24 AND
3 85?

4 A YES, MA'AM.

5 Q WAS THERE ANYBODY THERE WITH YOU?

6 A DEPUTY -- AT THE TIME, DEPUTY MIKE JONES.

7 Q AND DID SUBSEQUENTLY MIKE JONES GO TO ANOTHER LOCATION
8 RIGHT THERE IN THAT AREA?

9 A HE WENT TO THE BOUNTYLAND EXXON RIGHT ON THE OTHER SIDE
10 OF THE INTERSTATE.

11 Q AND APPROXIMATELY WHAT TIME DID YOU SET UP THERE AT 24
12 AND 85?

13 A APPROXIMATELY 12:30, MAYBE QUARTER TILL, 12:45,
14 SOMEWHERE IN THAT AREA.

15 Q AND DID YOU HAVE AN OCCASION TO SEE A JEEP CHEROKEE COME
16 THROUGH THAT AREA?

17 A I DID.

18 Q DO YOU RECALL WHAT TIME OR THE APPROXIMATE TIME THAT
19 WAS?

20 A SOMEWHERE IN THE NEIGHBORHOOD OF BETWEEN 2:00, 2:15, IN
21 THAT AREA, I BELIEVE.

22 Q AND DID THIS -- DO YOU RECALL THE COLOR OF THIS JEEP
23 CHEROKEE?

24 A IT WAS BLUE WITH WOOD GRAIN ON THE SIDES.

25 Q WHEN YOU -- WHEN YOU RECEIVED THE INFORMATION EARLIER

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 ABOUT THE INCIDENT THAT HAD OCCURRED IN GREENVILLE, WERE YOU
2 ALSO GIVEN A TAG NUMBER?

3 A YES.

4 Q OF A VEHICLE THAT COULD POSSIBLY BE CONNECTED?

5 A YES, MA'AM.

6 Q WHEN YOU SAW THE BLUE JEEP CHEROKEE IN THAT AREA, WHAT
7 DIRECTION WAS IT TRAVELING?

8 A IT WAS COMING ON HIGHWAY 24 TOWARD -- FROM TOWNVILLE
9 GOING TOWARD ANDERSON, TOWARD THE DOUBLE BRIDGES, AS WE REFER
10 TO THEM.

11 Q SO COMING FROM THE TOP OF THE MAP GOING DOWN TOWARDS THE
12 RIGHT-HAND SIDE, IF I'M LOOKING AT THE MAP?

13 A CORRECT.

14 Q ALL RIGHT. WHAT DID YOU DO WHEN YOU SAW THAT VEHICLE?

15 A I EXITED THE PARKING LOT OF THE TOWNVILLE CAFE AND
16 ACTIVATED MY EMERGENCY EQUIPMENT AND GOT BEHIND THE JEEP.

17 Q IN LAYMAN'S TERMS, WHAT DO YOU MEAN WHEN YOU ACTIVATED
18 YOUR EMERGENCY EQUIPMENT?

19 A I PUT ON MY BLUE LIGHTS AND MY SIREN AND GOT BEHIND THE
20 VEHICLE.

21 Q AND WHEN YOU PUT ON YOUR BLUE LIGHTS AND SIREN AND GOT
22 BEHIND THE VEHICLE, WHAT DID THAT VEHICLE DO?

23 A IT KEPT GOING IN THE DIRECTION THAT WE'RE REFERRING TO,
24 AND IT CONTINUED TO EVADE, OR SPED UP, IF YOU WILL, FROM ME.

25 Q DID YOU RELAY ANY INFORMATION TO YOUR DISPATCH OR TO

1 ANYONE ELSE REGARDING YOUR PURSUIT?

2 A I DID. I GOT ON THE RADIO WITH DISPATCH. AT THIS POINT
3 DEPUTY JONES HAD SEEN ME COMING AND HE GOT IN BEHIND ME. SO
4 HE WAS SECOND CAR IN THE PURSUIT.

5 Q YOU WERE THE FIRST CAR IN THE PURSUIT AND THEN DEPUTY
6 JONES GOT BEHIND YOU?

7 A CORRECT.

8 Q WERE YOU ABLE TO CONFIRM THE TAG NUMBER ON THE JEEP
9 CHEROKEE?

10 A I WAS.

11 Q DID YOU CALL THAT INTO YOUR DISPATCH AS WELL?

12 A I DID. I ORIGINALLY HAD SOME TROUBLE GETTING THE TAG,
13 GETTING CLOSE TO THE VEHICLE, BUT IT FINALLY WAS CONFIRMED.

14 Q PLEASE TELL THIS JURY WHAT HAPPENED FROM THE TIME YOU
15 GOT BEHIND THE JEEP CHEROKEE AT 24 AND 85.

16 A LIKE I SAID, I EXITED THE TOWNVILLE CAFE. I PUT MY
17 LIGHTS AND SIREN ON IN AN ATTEMPT TO MAKE A TRAFFIC STOP ON
18 THE VEHICLE. THE VEHICLE KEPT SPEEDING AWAY FROM MY VEHICLE.
19 AT ONE POINT WHEN WE TURNED -- THE ROAD KIND OF CURVES. AS
20 YOU GET INTO THE FIRST BRIDGE THAT COMES OVER THE SENECA
21 RIVER, I NOTICED THE PASSENGER IN THE VEHICLE REACH UNDER HIS
22 SEAT OR MAKE SOME FURTIVE MOVEMENTS WITHIN THE VEHICLE, AND
23 THE BACK WINDOW CAME DOWN ON THE JEEP AUTOMATICALLY.

24 Q THAT WOULD BE CONSIDERED THE TAILGATE WINDOW?

25 A THE TAILGATE WINDOW, CORRECT. IT CAME DOWN AND THE

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 PASSENGER TURNED HIS BODY AND BEGAN FIRING AT US. FIRING AT
2 ME.

3 Q COULD YOU DETERMINE IF THE PASSENGER WERE MALE OR
4 FEMALE?

5 A WHEN THE VEHICLE WENT BY ME AT 24 AND 85 I OBSERVED A
6 MALE IN THE PASSENGER SEAT.

7 Q AND COULD YOU TELL IF THE DRIVER WERE A MALE OR A
8 FEMALE?

9 A THAT I COULDN'T TELL.

10 Q PICKING UP FROM WHERE THE BACK WINDOW OF THE JEEP
11 CHEROKEE COMES DOWN, WHAT OCCURS?

12 A THE PASSENGER POINTED AN UNKNOWN TYPE WEAPON AT ME AND
13 BEGAN FIRING.

14 Q AND WHAT, IF ANYTHING, DID YOU DO?

15 A WHAT DID I DO?

16 Q YES.

17 A I STARTED TAKING SOME EVASIVE ACTION. IT'S A TWO-LANE
18 ROAD COMING INTO THE BRIDGE, SO THERE WASN'T MUCH WHEEL ROOM,
19 IF YOU WILL. THERE WASN'T MUCH ROOM FOR ERROR. WHEN WE GOT
20 TO THE POINT OF THE FIRST BRIDGE, THE SENECA RIVER BRIDGE, I
21 FELT THAT I WAS GETTING TOO CLOSE. I NOTIFIED MY DISPATCH
22 THAT THERE WERE SHOTS BEING FIRED. I ASKED DEPUTY JONES TO
23 TAKE OVER THE PURSUIT AS FAR AS RADIO TRAFFIC. I STOPPED ON
24 THE BRIDGE JUST AT ABOUT, I GUESS, A QUARTER OF A MILE INTO
25 THE BRIDGE. I STOPPED BECAUSE THERE WAS A TRUCK PULLING SOME

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 KIND OF A TRACTOR IN FRONT OF THE SUSPECT VEHICLE AND THE
2 DRIVER KEPT TRYING TO GET OUT INTO TRAFFIC TO PASS THAT
3 VEHICLE, THEREBY SLOWING US DOWN. SO I STOPPED---

4 Q SO YOU STOPPED BECAUSE YOU WERE GETTING TOO CLOSE?

5 A CORRECT.

6 Q DID Y'ALL TRAVEL ON DOWN 24, HIGHWAY 24?

7 A WE DID.

8 Q AND I BELIEVE YOU SAID THAT IN FRONT OF THE JEEP
9 CHEROKEE WAS A BULLDOZER OR A TRACTOR OR SOMETHING BEING
10 PULLED?

11 A CORRECT.

12 Q DID THAT AFFECT THE ABILITY AT WHICH -- THE SPEED AT
13 WHICH YOU COULD DRIVE?

14 A YES, IT DID.

15 Q DO YOU RECALL HOW FAST YOU WERE GOING AT THAT TIME?

16 A AT THAT PARTICULAR POINT WHEN WE HIT THE FIRST BRIDGE,
17 50 MAYBE 60, IN THAT AREA.

18 Q WHEN YOU CAME TO THE INTERSECTION OF 24 AND NORTH 187 --
19 AND WOULD YOU POINT THAT OUT ON THE MAP TO THE JURY, PLEASE?

20 A (LEAVES WITNESS STAND) RIGHT HERE (INDICATING).

21 Q YOU MAY RETAKE THE STAND.

22 A (COMPLIES)

23 Q WHEN YOU GOT TO THAT AREA DID YOU REMAIN THE LEAD CAR IN
24 THE PURSUIT?

25 A JUST AT THAT INTERSECTION -- ALSO ON THE BRIDGE, WHEN I

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 STOPPED, DEPUTY JONES RAN INTO THE BACK OF MY PATROL VEHICLE
2 FURTHER SLOWING ME UP. WE REENGAGED THE PURSUIT, AND AT 24
3 AND 187 DEPUTY GRANT CAME OUT FROM 187 NORTH AND TOOK CONTROL
4 AS THE LEAD CAR IN THE PURSUIT.

5 Q SO AT THE INTERSECTION OF 24 AND 187 DEPUTY GRANT
6 BECOMES THE LEAD CAR IN THE PURSUIT?

7 A YES, MA'AM.

8 Q AND THEN YOU'RE BEHIND HIM?

9 A YES, MA'AM..

10 Q I BELIEVE YOU TESTIFIED EARLIER OFFICER JONES WAS BEHIND
11 YOU?

12 A CORRECT.

13 Q TELL ME WHAT HAPPENS FROM THAT INTERSECTION OF 187.

14 A AT THAT INTERSECTION DEPUTY GRANT WAS BEHIND THE SUSPECT
15 VEHICLE, AND THEY WERE COMING ACROSS WHAT WE REFER TO AS THE
16 DOUBLE BRIDGES. IT'S THE SET OF BRIDGES THAT CROSS OVER THE
17 LAKE. WHEN WE CLEARED THE DOUBLE BRIDGES, I NOTICED THAT
18 DEPUTY GRANT'S VEHICLE HAD RUN OFF THE ROADWAY AND HIS BACK
19 GLASS HAD BEEN SHOT OUT. SO I STOPPED WITH HIM AT THE
20 INTERSECTION OF 24 AND COSMA (PHONETIC) DRIVE AND GOT OUT TO
21 RENDER AID TO HIM.

22 Q YOU SAID YOU SAW DEPUTY GRANT'S CAR GO OFF THE ROADWAY?

23 A I SAW HIS HEAD KIND OF BUMPING AROUND, AND IT LOOKED
24 LIKE HE HAD LOST CONTROL OF HIS VEHICLE, AND HIS BACK WINDOW
25 HAD BEEN SHOT OUT. SO I STOPPED TO RENDER AID TO HIM.

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 Q WHEN YOU STOPPED TO RENDER AID TO DEPUTY GRANT DID YOU
2 NOTICE ANY INJURIES ABOUT HIM?

3 A YES, I DID.

4 Q AND WHAT WERE THEY?

5 A HE HAD A SMALL HOLE BETWEEN HIS EYES IN THE UPPER -- THE
6 BRIDGE OF HIS NOSE, AND HE WAS BLEEDING FROM THAT AREA.

7 Q AND THE DAMAGE TO HIS CAR WAS WHAT?

8 A AFTER GETTING HIM INTO THE AMBULANCE AND WHATNOT, I WENT
9 BACK AND INSPECTED HIS CAR. THERE WAS A HOLE IN THE
10 PASSENGER SIDE OF THE FRONT WINDSHIELD, AND MOST OF HIS GLASS
11 WAS BROKEN OUT IN THE REAR GLASS OF HIS PATROL CAR.

12 Q DEPUTY GRANT SURVIVED THOSE INJURIES, CORRECT?

13 A HE DID.

14 Q ONCE YOU PULLED OVER TO ASSIST DEPUTY GRANT, DID YOU
15 CONTINUE IN THE PURSUIT AFTER THAT OR DID YOU REMAIN WITH
16 DEPUTY GRANT?

17 A I REMAINED WITH DEPUTY GRANT.

18 Q ONCE DEPUTY GRANT WAS OFF TO THE SIDE OF THE ROAD AND
19 YOU PULLED OFF TO ASSIST HIM, THAT WOULD HAVE MADE OFFICER
20 JONES THE LEAD CAR IN THE PURSUIT; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 MS. STROM: COURT'S INDULGENCE, YOUR HONOR. (OFF
23 RECORD WITH CO-COUNSEL) THANK YOU, PLEASE ANSWER ANY
24 QUESTIONS THE DEFENSE MAY HAVE.

25 MR. RICHEY: THANK YOU, YOUR HONOR.

ROBERT L. APPELL -- DIRECT BY MS. STROM

1 THE COURT: YES, SIR.

2 CROSS EXAMINATION BY MR. RICHEY:

3 Q HOW ARE YOU DOING, OFFICER?

4 A OKAY. HOW ARE YOU?

5 Q GOOD. I'M RODNEY RICHEY. I'M JUST GOING TO ASK YOU A
6 FEW QUESTIONS ABOUT THE CHASE HERE. OKAY. PRIOR TO YOU
7 SETTING UP -- YOU SET UP RIGHT OF THE BRIDGE OF 85, IS THAT
8 WHERE YOU SET UP?

9 A NO. WE'D BE ON THE TOWNVILLE SIDE OF 24. THERE IS A
10 CAFE THERE, THE TOWNVILLE CAFE. SO IT WAS IN THEIR PARKING
11 LOT.

12 Q AND AT THE TIME THAT YOU SET UP YOU HAD NO INFORMATION
13 THAT THIS CAR HAD SHOT AT ANY CIVILIANS OR ANYTHING PRIOR TO
14 YOU -- PRIOR TO GETTING TO YOU?

15 A THAT THE VEHICLE WAS INVOLVED IN THE SLAYING OF AN
16 OFFICER.

17 Q RIGHT.

18 A THAT WOULD BE THE INFORMATION I HAD.

19 Q RIGHT. YOU GOT THE INFORMATION ABOUT THE TROOPER,
20 RIGHT?

21 A YES.

22 Q BUT YOU DIDN'T SUBSEQUENTLY GET ANY INFORMATION ABOUT
23 ANY CIVILIAN CARS BEING SHOT AT, DID YOU?

24 A NOT TO MY KNOWLEDGE, NO.

25 Q OKAY. AND WHEN YOU WERE SET UP AT THAT PARTICULAR PLACE

ROBERT L. APPELL -- CROSS BY MR. RICHEY

1 AND THE JEEP WAGONEER CAME BY YOU, AT THAT POINT THE GUN WAS
2 IN WHAT COULD BE CALLED A SECURE LOCATION UNDERNEATH THE
3 SEAT?

4 A I DON'T KNOW WHERE THE GUN WAS SECURED BUT. . .

5 Q IT WAS UNDERNEATH THE SEAT?

6 MS. STROM: OBJECTION, YOUR HONOR. HE SAID HE DIDN'T
7 KNOW WHERE THE GUN WAS.

8 MR. RICHEY: I'LL REPHRASE IT.

9 Q DID YOU SEE THE PERSON ON PASSENGER SIDE GO UNDERNEATH
10 THE SEAT AND GET A GUN?

11 A I SAW THE PASSENGER MAKE SEVERAL FURTIVE -- SEVERAL
12 MOVEMENTS WITHIN THE VEHICLE. ONE OF THOSE WAS GOING UNDER
13 THE SEAT.

14 Q AND AS A RESULT OF GOING UNDER THE SEAT DID YOU
15 DETERMINE THAT HE GOT THE GUN AND START FIRING AT YOU?

16 A I ASSUME THAT THAT'S WHAT HE WAS GOING UNDER THE SEAT
17 FOR BECAUSE THE NEXT MOVEMENT WAS THE BACK WINDOW COMING DOWN
18 AND SHOTS.

19 Q YES, SIR. AND PRIOR TO -- PRIOR TO THAT, HE ONLY
20 INITIATED SHOTS AFTER YOU GOT BEHIND HIM?

21 A THE SHOTS CAME AFTER I GOT BEHIND HIM, CORRECT.

22 Q SO WHILE YOU WERE SITTING THERE AT THE INTERSECTION,
23 IT'S NOT RIGHT THAT THE CAR CAME UP TO YOU AT THE
24 INTERSECTION AND STARTED FIRING IMMEDIATELY AT YOU?

25 A NO. THAT WASN'T THE CASE.

ROBERT L. APPELL -- CROSS BY MR. RICHEY

1 Q OKAY. AND YOU AND DEPUTY JONES WERE LIKE THE TWO CARS
2 THAT WERE KIND OF WORKING TOGETHER?

3 A WELL, WE HAD AGREED TO GO OUT THERE AND SET UP AND
4 WANTED TO REMAIN TOGETHER FOR SAFETY REASONS.

5 Q AND YOU DON'T -- YOU DON'T BELIEVE THAT AT THE TIME THAT
6 YOU WERE SITTING THERE THAT THE PERSON IN THE CAR HAD ANY
7 IDEA OR INTENTIONS OF TRYING TO AMBUSH YOU? YOU DON'T HAVE
8 -- THAT PERSON DIDN'T DO THAT, THE PERSON WASN'T WAITING FOR
9 YOU THERE, THE PERSON THAT SHOT THE CAR?

10 A I WAS THERE FIRST AT THE INTERSECTION.

11 Q AND YOU SAID YOU HAD INFORMATION THAT THE CAR WAS GOING
12 TO AN ADDRESS IN TOWNVILLE? IS THAT---

13 A I BELIEVE IT WAS A FAIRPLAY LOCATION, IF I'M NOT---

14 Q FAIRPLAY?

15 A ---MISTAKEN.

16 Q AND THAT ADDRESS WAS THE HOME OF ONE OF THE PEOPLE
17 INVOLVED?

18 A CORRECT.

19 Q AND YOU SAID THAT DEPUTY GRANT HAD SOME INJURIES?

20 A YES, SIR.

21 Q AND THAT YOU STOPPED ON THE ROAD TO ASSIST HIM WITH
22 THOSE INJURIES?

23 A YES, SIR.

24 Q AND AT A POINT HE WAS SOMEWHAT IN A VULNERABLE POSITION,
25 DEPUTY GRANT?

ROBERT L. APPELL -- CROSS BY MR. RICHEY

1 A YES, HE WAS.

2 Q OKAY. AND IN THAT VULNERABLE POSITION THE JEEP WAGONEER
3 CONTINUED TO GO ON?

4 A IT DID.

5 Q OKAY. AND THOSE INJURIES THAT HE SUBSEQUENTLY HAD WERE
6 NOT LIFE THREATENING?

7 A AT THAT TIME I DIDN'T KNOW IF THEY WERE LIFE THREATENING
8 OR NOT. THEY TURNED -- SUBSEQUENTLY TURNED OUT NOT TO BE.

9 Q OKAY. AND DID YOU OBSERVE THE CAR DOING ANY OTHER TYPE
10 OF CONDUCT, RUNNING ANY CARS OFF THE ROAD, DOING ANY OF THAT
11 STUFF?

12 A WHEN THE CAR WAS GOING ON 24 OVER THE BRIDGES THE DRIVER
13 TRIED TO, YOU KNOW, OVERTAKE SOME VEHICLES THAT WERE IN FRONT
14 OF HER.

15 Q OKAY. SO SHE WAS -- YOU SAY OVERTAKE. YOU MEAN SHE WAS
16 TURNING THE CAR AT THE VEHICLES?

17 A I'M NOT SURE WHAT HER INTENTIONS WERE. I THINK IT WAS
18 PROBABLY MORE OF AN ATTEMPT TO TRY AND GET AWAY FROM ME.

19 Q AND DO YOU BELIEVE THE WHOLE TIME THAT YOU WERE INVOLVED
20 IN THE CHASE -- SUBSEQUENTLY YOU STOPPED? YOU STOPPED?

21 A CORRECT.

22 Q DO YOU BELIEVE THE WHOLE TIME THAT YOU WERE INVOLVED IN
23 THIS CHASE THAT THE PEOPLE WERE TRYING TO GET AWAY FROM YOU?

24 A I THINK IT WAS BOTH. I THINK THEY WERE TRYING TO KILL
25 ME AND GET AWAY FROM ME AT THE SAME TIME.

ROBERT L. APPELL -- CROSS BY MR. RICHEY

1 Q SO YOU -- THEY WERE DOING, IN YOUR OPINION, WHAT WAS
2 NECESSARY TO GET AWAY?

3 A NO MATTER WHAT IT TOOK.

4 Q AND DURING THIS WHOLE PROCESS -- AND I KNOW YOU -- AND
5 I'LL SAY THIS, AND I KNOW THAT YOU WERE DOING WHAT YOU WERE
6 SUPPOSED TO BE DOING AND WENT TO THE LOCATION. BUT DURING
7 THIS WHOLE PROCESS PRIOR TO YOU GETTING THERE, YOU DON'T
8 BELIEVE THAT THE JEEP WAGONEER THAT WAS COMING, I'M ASSUMING,
9 FROM GREENVILLE, YOU DON'T HAVE -- YOU DON'T BELIEVE THAT
10 THAT CAR WAS COMING DIRECTLY FOR YOU? YOU JUST SET UP WHERE
11 YOU THOUGHT THE CAR WOULD BE COMING FROM?

12 A DEPUTY JONES AND I HAD DISCUSSED IT AND WE FIGURED THAT
13 THAT MIGHT BE A LIKELY ESCAPE ROUTE TO THE LOCATION IN
14 FAIRPLAY.

15 Q OKAY.

16 MR. RICHEY: ONE MOMENT, PLEASE, YOUR HONOR.

17 THE COURT: YES, SIR.

18 MR. RICHEY: THANK YOU. (OFF RECORD WITH CO-COUNSEL)

19 Q JUST A COUPLE QUESTIONS HERE. YOU SAID DEPUTY GRANT WAS
20 DRIVING HIS CAR WITH NO PASSENGERS?

21 A DEPUTY GRANT?

22 Q YES, SIR.

23 A TO THE BEST OF MY KNOWLEDGE, HE HAD NO PASSENGERS.

24 Q AND THE WINDSHIELD PASSENGER'S -- THE PASSENGER SIDE
25 WINDSHIELD WAS BROKEN IN THIS CAR?

ROBERT L. APPELL -- CROSS BY MR. RICHEY

1 A THERE WAS A HOLE IN THE PASSENGER FRONT WINDSHIELD AND
2 THE BACK GLASS WAS COMPLETELY SHATTERED OUT.

3 Q OKAY. AND APPARENTLY HE WAS HIT BY SOMETHING AFTER THE
4 WINDSHIELD WAS BROKEN OUT?

5 A PART OF A BULLET.

6 Q AND YOU TERMED -- THIS LOCATION YOU SAID WAS AN ESCAPE
7 ROUTE?

8 A (NO RESPONSE)

9 Q WHAT YOU BELIEVED IT TO BE WAS AN ESCAPE ROUTE?

10 A I'M NOT REAL FAMILIAR WITH THE FAIRPLAY AREA, BUT I KNOW
11 THE ROAD THAT I WAS ON, 24 AND 243, WILL GO INTO THE FAIRPLAY
12 AREA. CORRECT.

13 MR. RICHEY: THANK YOU, SIR.

14 THE COURT: ANY REDIRECT?

15 MS. STROM: NO, SIR, YOUR HONOR.

16 THE COURT: THANK YOU DEPUTY APPELL. WE APPRECIATE IT,
17 SIR.

18 MS. STROM: WE'D ASK THAT HE BE EXCUSED.

19 THE COURT: ANY OBJECTION TO THE WITNESS BEING EXCUSED?

20 MR. MAULDIN: NO, YOUR HONOR.

21 THE COURT: THANK YOU.

22 (WITNESS EXCUSED AT 4:00 P.M.)

23 MS. STROM: THE STATE CALLS MIKE JONES.

24 MIKE JONES, HAVING BEEN DULY
25 SWORN, TESTIFIED AS FOLLOWS:

MIKE JONES -- DIRECT BY MS. STROM

1 DIRECT EXAMINATION BY MS. STROM:

2 Q PLEASE STATE YOUR FULL NAME FOR THE RECORD.

3 A MICHAEL JONES.

4 Q MR. JONES, IF YOU WOULD, PLEASE KEEP YOUR VOICE UP SO
5 ALL THESE JURORS MAY HEAR YOU.

6 BACK ON DECEMBER THE 6TH OF 2000 BY WHOM WERE YOU
7 EMPLOYED?

8 A ANDERSON COUNTY SHERIFF'S OFFICE.

9 Q AND ARE YOU PRESENTLY EMPLOYED WITH THE ANDERSON COUNTY
10 SHERIFF'S OFFICE?

11 A NO, MA'AM. I RETIRED IN AUGUST OF LAST YEAR.

12 Q BACK ON DECEMBER 6TH OF 2000 IN WHAT CAPACITY WERE YOU
13 SO EMPLOYED WITH THE ANDERSON COUNTY SHERIFF'S OFFICE?

14 A MASTER DEPUTY SHERIFF.

15 Q DID YOU HAVE AN OCCASION -- LET ME BACK UP. ON THAT
16 DATE, DECEMBER 6TH, 2000, DID YOU RECEIVE INFORMATION
17 REGARDING A TROOPER BEING SHOT IN GREENVILLE COUNTY?

18 A YES, MA'AM.

19 Q AS A RESULT OF THAT INFORMATION WHAT, IF ANYTHING, DID
20 YOU DO?

21 A I PROCEEDED DOWN HIGHWAY 24 TO THE INTERSECTION OF 24
22 AND I-85 AND MET WITH SERGEANT APPELL.

23 Q WHO PREVIOUSLY TESTIFIED?

24 A THAT'S CORRECT.

25 Q AND WHERE -- IS THAT WHERE YOU SET UP?

MIKE JONES -- DIRECT BY MS. STROM

1 A YES, MA'AM. AT A PLACE CALLED TOWNVILLE STATION.

2 Q AND PLEASE TELL THIS JURY WHY YOU WERE SET UP THERE.

3 A WE HAD SAT THERE APPROXIMATELY FIVE TO TEN MINUTES, AND
4 I TOLD SERGEANT APPELL THAT I HAD TO GO IN THE EXXON STATION,
5 WHICH IS DIRECTLY ACROSS THE INTERSTATE, AND I WENT OVER
6 THERE FOR A FEW MINUTES AND THEN RETURNED BACK TO SERGEANT
7 APPELL.

8 Q AND AFTER YOU HAD RETURNED TO SERGEANT APPELL, DID YOU
9 HAVE AN OCCASION AT SOME POINT TO SEE A BLUE JEEP CHEROKEE?

10 A YES, MA'AM.

11 Q PLEASE TELL THIS JURY WHERE THAT CHEROKEE WAS AND WHAT
12 DIRECTION IT WAS TRAVELING.

13 A YES, MA'AM. I PULLED OUT ONTO HIGHWAY 24 TO GO BACK
14 OVER I-85. AS I WAS COMING OVER THE BRIDGE OVER THE TOP OF
15 I-85, I SAW SERGEANT APPELL TURN AROUND AT THE TOWNVILLE
16 STATION WITH HIS BLUE LIGHTS ON. I KNEW THAT THERE WAS NO
17 WAY HE WAS GOING TO BE STOPPING ANYBODY FOR A TRAFFIC
18 VIOLATION BECAUSE OF WHAT WE WERE DOING. AND WHEN I SAW HIM
19 PULL OUT, I LOOKED TO MY LEFT AND SAW A BLUE JEEP WITH WOOD
20 GRAIN SIDING GO BY ME, AND THERE WAS A FEMALE DRIVING AND A
21 MALE PASSENGER.

22 Q ONCE YOU SAW THAT WHAT, IF ANYTHING, DID YOU DO?

23 A I WENT TO THE END OF THE BRIDGE BECAUSE I COULDN'T MAKE
24 A U-TURN RIGHT THERE, AND AT THE END OF THE BRIDGE I MADE A
25 U-TURN AND HEADED BACK DOWN HIGHWAY 24 TOWARDS ANDERSON.

MIKE JONES -- DIRECT BY MS. STROM

1 Q PLEASE TELL THIS JURY WHAT OCCURRED WHILE YOU WERE
2 TRAVELING DOWN 24.

3 A WE HAD GONE PAST THE RACING STATION, WHICH IS A LITTLE
4 STORE LOCATED AFTER THE EXXON GOING TOWARDS ANDERSON. AT
5 THAT POINT SERGEANT APPELL CONFIRMED THE LICENSE PLATE ON THE
6 RADIO AND WE FOLLOWED THE VEHICLE DOWN HIGHWAY 24 TOWARDS
7 WHAT THEY CALL THE SENECA RIVER BRIDGE. AND IT WAS JUST AS
8 WE WERE COMING ON THE SENECA RIVER BRIDGE I OBSERVED THE BACK
9 WINDOW COME DOWN ON THE JEEP.

10 Q AND WHEN YOU OBSERVED THE BACK WINDOW OF THE JEEP
11 CHEROKEE COME DOWN, WHAT HAPPENED?

12 A AT THAT POINT THE MALE PASSENGER BENT OVER, AND HE
13 TURNED AROUND AND HE FIRED SEVERAL ROUNDS AT SERGEANT APPELL
14 AND MYSELF.

15 Q WHAT DID YOU DO AS A RESULT OF THAT?

16 A WE WERE SLOWING DOWN. I SHOULD POINT OUT THAT THIS
17 ENTIRE TIME THERE WAS A TRACTOR TRAILER IN FRONT OF US
18 CARRYING A LARGE PIECE OF HEAVY EQUIPMENT.

19 Q WAS IT IN FRONT OF YOU? WAS IT IN FRONT OF---

20 A IT WAS IN FRONT OF THE JEEP.

21 Q IN FRONT OF THE JEEP?

22 A YES, MA'AM. SO THERE WAS THE HEAVY PIECE OF EQUIPMENT,
23 THE JEEP, SERGEANT APPELL AND THEN MYSELF. AND THROUGH THE
24 WHOLE ORDEAL THE HEAVY PIECE OF EQUIPMENT WAS STILL IN FRONT
25 OF US, AND HE KEPT ON SLOWING DOWN. AS HE WOULD SLOW DOWN,

MIKE JONES -- DIRECT BY MS. STROM

1 THE JEEP WOULD SLOW DOWN AND THEN WE WOULD SLOW DOWN.

2 Q WHERE -- WHERE WERE YOU WHEN THE MALE PASSENGER BEGAN
3 FIRING AT YOU?

4 A WE WERE JUST ON THE SENECA RIVER BRIDGE.

5 Q AND THAT WOULD HAVE BEEN STILL WITH THE TRACTOR OR
6 BULLDOZER, WHATEVER, BEING PULLED AHEAD OF YOU?

7 A THAT'S CORRECT. THERE'S A GRADE ON THE OTHER SIDE OF
8 THE BRIDGE, AND THE PIECE OF HEAVY EQUIPMENT STARTED SLOWING
9 DOWN, WHICH CAUSED THE JEEP TO SLOW DOWN WHICH CAUSED
10 EVERYBODY TO SLOW DOWN. WE WERE TRAVELING NO MORE THAN 30
11 MILES AN HOUR. SERGEANT APPELL WAS GETTING EXTREMELY CLOSE
12 TO THE JEEP AND HE SLAMMED ON HIS BRAKES. I DIDN'T HAVE TIME
13 TO AND I REAR ENDED SERGEANT APPELL, AND THEN IT WAS -- I
14 MEAN, HIT HIM HARD.

15 Q DID Y'ALL REGAIN PURSUIT AT THAT TIME?

16 A MA'AM?

17 Q DID YOU REGAIN THE PURSUIT AT THAT TIME?

18 A YES, MA'AM.

19 Q DID YOU LOSE SIGHT OF THE VEHICLE?

20 A NO, MA'AM.

21 Q WHEN YOU GOT TO 24 AND 187 NORTH, WHICH HAS PREVIOUSLY
22 BEEN POINTED OUT ON THIS MAP, WHO ELSE JOINED IN THE PURSUIT
23 AT THAT TIME?

24 A I BELIEVE IT WAS DEPUTY GRANT. I KNOW THERE WAS A
25 COUPLE OTHER PATROL CARS.

MIKE JONES -- DIRECT BY MS. STROM

1 Q COULD YOU TELL HOW MANY PEOPLE WERE IN THE JEEP?

2 A YES, MA'AM. TWO.

3 Q TWO. THE MALE PASSENGER AND THE FEMALE DRIVER?

4 A YES. THERE WAS A WHITE FEMALE DRIVING AND A WHITE MALE
5 PASSENGER.

6 Q AT ANY POINT DID YOU BECOME THE LEAD PURSUIT CAR?

7 A YES, MA'AM.

8 Q WHEN WAS THAT?

9 A WE CROSSED THE DOUBLE BRIDGES AND HEADED UP A GRADE.
10 WELL, THERE'S A LOT OF BUSINESSES IN THAT AREA, STRICKLAND
11 MARINE. THERE'S A CUSTOM WOOD AND STEEL, BROWN'S ABC. AND
12 IT WAS AT BROWN'S ABC THAT WE ALL GOT GATHERED UP AGAIN.
13 THERE'S ANOTHER -- AGAIN, THERE'S A GRADE THERE. AND THE
14 TRACTOR TRAILER CARRYING THE HEAVY PIECE OF EQUIPMENT HAD
15 SLOWED DOWN TO HARDLY NOTHING. THE JEEP WAS TRYING TO PASS
16 IT BUT COULDN'T BECAUSE OF ONCOMING TRAFFIC. AND OUR SPEED
17 AT THAT POINT WAS PROBABLY 20 TO 25 MILES PER HOUR.
18 SOMEWHERE'S (SIC) IN THE VICINITY OF BROWN'S ABC I REMEMBER A
19 PATROL CAR GOING OUT TO THE RIGHT OF ME. I FOUND OUT LATER
20 THIS WAS DEPUTY GRANT. AS I LOOKED OVER TO MY RIGHT, I SAW
21 HIS BACK WINDOW DISAPPEAR, JUST SHATTER. AND WHEN I DROVE
22 PAST THE DEPUTY, I LOOKED OVER TO MY RIGHT AND I COULD SEE
23 HIM SLUMPED IN HIS WHEEL -- IN HIS SEAT BELT.

24 Q DID SERGEANT APPELL PULL OFF AT THAT TIME TO RENDER
25 ASSISTANCE?

MIKE JONES -- DIRECT BY MS. STROM

1 A YES, MA'AM. I SAID SOMETHING ON THE RADIO TO THE EFFECT
2 THAT BOBBY, HOW'S THAT DEPUTY? OR BOB, CHECK ON THAT DEPUTY,
3 OR SOMETHING LIKE THAT. AND BOB PULLED OVER, AND THEN I WAS
4 THE MAIN VEHICLE BEHIND THE JEEP.

5 Q AND ONCE YOU WERE THE MAIN VEHICLE OR THE LEAD PURSUIT
6 VEHICLE, TELL THIS JURY WHAT HAPPENED. WHERE DID Y'ALL
7 CONTINUE? WHERE DID YOU GO?

8 A YES, MA'AM. WE CONTINUED DOWN 24 TOWARDS ANDERSON --
9 STILL THE HEAVY PIECE OF EQUIPMENT, TRACTOR TRAILER CARRYING
10 IT, HEADED DOWN THE ROAD, JEEP BEHIND IT, AND I'M BEHIND THE
11 JEEP. AT THE INTERSECTION OF 187 SOUTH AND HIGHWAY 24 THE
12 PIECE OF HEAVY EQUIPMENT PROCEEDED TOWARDS ANDERSON. THE
13 JEEP TURNED ONTO HIGHWAY 187 SOUTH, AND I WAS BEHIND THE
14 JEEP.

15 Q ARE YOU FAMILIAR WITH THE MAP THAT'S SHOWN IN STATE'S
16 EXHIBIT 49?

17 A YES, MA'AM. (LEAVES WITNESS STAND) LET'S SEE.
18 (REVIEWING EXHIBIT) IF WE'RE HEADED DOWN THIS WAY HERE, IT'S
19 THIS AREA RIGHT IN HERE -- THERE'S 187 CUTS OFF.
20 APPROXIMATELY RIGHT HERE IS A FOUR-WAY STOP, AND THIS HEADS
21 DOWN 187 TOWARDS HIGHWAY 29, AND THIS WOULD HEAD INTO
22 ANDERSON. AND THIS IS WHERE THE TRACTOR TRAILER CONTINUED ON
23 AND WE TURNED HERE AND WENT THAT WAY.

24 Q AND THE JEEP TURNED FIRST?

25 A THAT'S CORRECT, AND I WAS BEHIND THE JEEP. AFTER WE GOT

MIKE JONES -- DIRECT BY MS. STROM

1 PAST THE FOUR-WAY STOP, WHICH WAS LOCATED ABOUT HERE
2 (INDICATING), AGAIN, THE PASSENGER, THE WHITE MALE PASSENGER
3 TURNED IN THE SEAT AND FIRED AT ME. AND I DON'T KNOW HOW
4 MANY ROUNDS HE FIRED AT ME AT THAT POINT, BUT HE HIT THE
5 WINDSHIELD OF MY PATROL VEHICLE AND ALSO HIT THE HOOD.

6 Q WHAT ELSE HAPPENED?

7 A WE HAD GONE DOWN THE ROAD AT THAT POINT MAYBE ANOTHER
8 THREE-QUARTERS OF A MILE TO A MILE AND THE -- I OBSERVED THE
9 FRONT TIRE ON THE JEEP WAS ON FIRE, AND IT WOULD FLAME UP,
10 THEN IT WOULD GO OUT, FLAME UP AND GO OUT. IN THE MEANTIME
11 THE JEEP WAS GOING OUT IN THE OPPOSITE LANE OF TRAVEL IN WHAT
12 WAS CLEARLY AN ATTEMPT TO STOP ANOTHER VEHICLE. THE JEEP
13 RAN, I THINK IT WAS, ONE OR TWO VEHICLES OFF THE ROAD. IT
14 STRUCK A VAN. THE VAN WENT DOWN IN THE DITCH. THE JEEP
15 CONTINUED ON. AND THEN AT SOME POINT DOWN THROUGH THERE THE
16 JEEP PULLED DIAGONALLY IN FRONT OF A BLUE RIDGE ELECTRIC
17 PICKUP TRUCK.

18 Q AND WHAT HAPPENED WHEN THE JEEP PULLED IN FRONT OF THE
19 BLUE RIDGE ELECTRICAL TRUCK?

20 A THE TRUCK STOPPED AND THE WHITE MALE PASSENGER GOT OUT
21 OF THE JEEP, RAN DOWN THE ROAD TO THE DRIVER'S DOOR OF THE
22 BLUE RIDGE TRUCK. AND WHEN HE REACHED OUT -- I DON'T KNOW IF
23 THE DOOR WAS LOCKED OR WHAT -- WHEN HE GRABBED THE DOOR
24 HANDLE IT LOOKED LIKE HE HAD SLIPPED ON THE DOOR HANDLE. THE
25 DOOR DIDN'T OPEN, IN OTHER WORDS.

MIKE JONES -- DIRECT BY MS. STROM

1 AT THAT POINT, I WAS PARKED IN THE ROAD. SERGEANT
2 HAMBY, I BELIEVE, WAS ON THE LEFT-HAND SIDE OF ME. THERE
3 WERE SOME MORE OFFICERS PARKED ON THE RIGHT. I DON'T KNOW
4 WHO THEY WERE. AND AT THAT POINT THE WHITE MALE TURNED, WENT
5 INTO WHAT THEY CALL A WEAVER STANCE POSITION AND FIRED
6 PROBABLY EIGHT OR NINE ROUNDS AT US.

7 Q OKAY. YOU SAID THE WHITE MALE PASSENGER GOT OUT OF THE
8 JEEP CHEROKEE?

9 A THAT'S CORRECT.

10 Q GO OVER TO THE BLUE RIDGE UTILITY TRUCK?

11 A THAT'S RIGHT. DRIVER'S DOOR OF THE BLUE RIDGE TRUCK.

12 Q DID THE PERSON FIRE AT THAT TIME?

13 A YES, MA'AM. HE STOOD BY THE DOOR OF THE BLUE RIDGE
14 TRUCK, HE TURNED AND WENT INTO A WEAVER STANCE, WHICH---

15 Q WHAT DOES THAT MEAN?

16 A WEAVER STANCE IS WHERE AN INDIVIDUAL PLACES ONE FOOT IN
17 FRONT OF THE OTHER AND BODY BLADE THEMSELVES AND FIRE LIKE
18 THIS (DEMONSTRATING), AND THAT'S WHAT HE DID. AND HE FIRED,
19 LIKE I SAID, EIGHT OR NINE ROUNDS. I DON'T KNOW HOW MANY
20 THERE WERE.

21 Q WHEN HE FIRED THOSE ROUNDS WHAT, IF ANYTHING, DID YOU
22 DO?

23 A WELL, WE WERE ALL DOWN BEHIND OUR VEHICLES. I MEAN, I
24 COULD JUST PEER HIM OVER THE TOP OF THE DASHBOARD. I COULD
25 SEE HIM OBVIOUSLY OUT THERE FIRING. ONCE HE GOT THROUGH

MIKE JONES -- DIRECT BY MS. STROM

1 FIRING HE AGAIN REACHED OVER TO THE DRIVER'S DOOR, AND THIS
2 TIME THE DOOR CAME OPEN. THE INDIVIDUAL THAT WAS BEHIND THE
3 WHEEL OF THE PICKUP TRUCK GOT OUT, WALKED AROUND THE FRONT OF
4 THE TRUCK AND WALKED TO THE BERM OF THE ROAD.

5 Q DID ANYBODY GET INTO THE BLUE RIDGE TRUCK?

6 A YES, MA'AM. THE WHITE MALE PASSENGER THAT HAD BEEN IN
7 THE JEEP GOT INTO THE DRIVER'S SIDE OF THE BLUE RIDGE TRUCK.

8 Q WHAT, IF ANYTHING ELSE, OCCURRED AT THAT TIME?

9 A IT WAS ONLY A COUPLE SECONDS LATER THAT THE WHITE FEMALE
10 DRIVER OF THE JEEP GOT OUT OF THE JEEP AND RAN DOWN THE BERM
11 OF THE ROAD, AND SHE HAD SOMETHING IN HER HANDS. I SEE HER
12 LIKE THIS (DEMONSTRATING). I DON'T HAVE ANY IDEA WHAT SHE
13 WAS CARRYING. AND SHE GOT INTO THE PASSENGER SIDE OF THE
14 BLUE RIDGE TRUCK.

15 Q WHAT HAPPENS THEN?

16 A THE TRUCK MADE A U-TURN -- AND AT THIS POINT THE TRUCK
17 IS HEADED TOWARDS 24 WHEN THE TRUCK STOPPED. THE TRUCK MADE
18 A U-TURN AND HEADED BACK DOWN 187 TOWARDS HIGHWAY 29 IN THE
19 ORIGINAL DIRECTION THAT WE WERE ALL JUST TRAVELING.

20 Q AND HOW FAST WOULD YOU SAY Y'ALL WERE TRAVELING AT THAT
21 TIME?

22 A ONCE WE GOT UP TO SPEED WE WERE REACHING SPEEDS OF 100
23 TO 105 MILES AN HOUR. AND I DO KNOW WHEN WE WENT PAST
24 ROBERTS CHURCH ROAD THAT WE WERE IN EXCESS OF 100 BECAUSE I
25 LOOKED DOWN BRIEFLY TO SEE WHAT THE SPEED WAS.

MIKE JONES -- DIRECT BY MS. STROM

1 Q CONTINUE TO TELL THIS JURY WHAT HAPPENED AS Y'ALL WERE
2 TRAVELLING DOWN THAT ROAD. YOU'RE STILL THE LEAD CAR?

3 A NO, MA'AM. NO. WHEN WE -- AFTER THE BLUE RIDGE TRUCK
4 MADE THE U-TURN AND HEADED BACK DOWN HIGHWAY 187, SERGEANT
5 HAMBY, WHICH WAS PARKED ON THE LEFT OF ME, HE WAS FIRST OUT
6 OF THE GATE, IF YOU WILL. SO THEN THERE WAS THE BLUE RIDGE
7 TRUCK, SERGEANT HAMBY, MYSELF, AND THEN WHOEVER ELSE WAS
8 BEHIND.

9 Q SEVERAL OTHER OFFICERS?

10 A YES, MA'AM.

11 Q AND WHERE DID YOU GO?

12 A WE WENT DOWN HIGHWAY 187 TO A LITTLE ROAD TO THE RIGHT
13 CALLED KARI LANE. AND FROM THE INTERSECTION OF 187 AND KARI
14 LANE IS THE INTERSECTION OF 29 AND 187, AND IT WAS OBVIOUS
15 THAT THERE WAS A HUGE ROADBLOCK SET UP AT THE END OF 187 AND
16 29.

17 Q CAN YOU POINT THAT OUT ON THIS MAP, PLEASE, WHERE 29 AND
18 187 INTERSECT AND WHERE KARI LANE IS?

19 A (LEAVES WITNESS STAND) OKAY. LET'S SEE HERE. THIS IS
20 HIGHWAY 29 AND THIS IS 187, AND THIS IS KARI LANE. THE
21 ROADBLOCK WAS SET UP HERE, AND YOU CAN OBSERVE THIS AREA
22 AROUND THIS INTERSECTION OF KARI LANE AND 187.

23 THE BLUE RIDGE TRUCK TURNED ONTO KARI LANE. IT WENT
24 MAYBE 30 OR 40 YARDS AT MOST. AND OUT HERE IS A HUGE FIELD.
25 IT'S A PLOWED FIELD. IN FACT, THE FARMER WAS PLOWING THE

MIKE JONES -- DIRECT BY MS. STROM

1 FIELD AT THE TIME. AND THE BLUE RIDGE TRUCK TURNED OFF OF
2 KARI LANE AND OUT THROUGH THE PLOWED FIELD AND HEADED IN THIS
3 DIRECTION RIGHT DOWN HERE.

4 Q YOU MAY RETAKE THE STAND.

5 A (COMPLIES)

6 Q WHEN THE BLUE RIDGE UTILITY TRUCK TURNED ONTO KARI LANE,
7 WHAT DID YOU DO?

8 A I PROCEEDED DOWN KARI LANE BEHIND HIM. SERGEANT HAMBY
9 WAS IN FRONT OF ME. SERGEANT HAMBY, FOR WHATEVER REASON,
10 STOPPED IN THE ROAD, AND I WENT OUT AROUND HIM. AND THEN AT
11 THAT POINT THE TRUCK PULLED INTO THE FIELD, AND I PULLED INTO
12 THE FIELD DIRECTLY BEHIND THE TRUCK, AND WE WENT OUT THROUGH
13 THE PLOWED FIELD.

14 IT WAS, I DON'T KNOW, MAYBE A QUARTER OF A MILE, AND IT
15 WAS THROWING UP DUST AND DIRT, AND WE WERE GETTING BOUNCED
16 ALL OVER THE PLACE. AND AT THE END OF THE FIELD, THERE WAS A
17 TELEPHONE POLE AND THEN A MACADAM ROAD. THE BLUE RIDGE TRUCK
18 PASSED THE TELEPHONE POLE, AND RIGHT THERE THERE IS A RISE IN
19 THE MACADAM. AS HE WENT OVER THE RISE I BRIEFLY LOST SIGHT
20 OF HIM FOR TWO OR THREE SECONDS.

21 AT THAT POINT I HEARD A TRANSMISSION FROM A HELICOPTER
22 SAYING HE WAS HEADED DOWN A DEAD END ROAD. TO AVOID COMING
23 UP OVER THE RISE AND RUNNING STRAIGHT INTO HIM, I SLOWED
24 DOWN. WHEN I CAME UP OVER THE RISE, ABOUT A HUNDRED YARDS IN
25 FRONT OF ME THE TRUCK WAS MAKING A THREE-POINT TURN AND

MIKE JONES -- DIRECT BY MS. STROM

1 HEADED BACK MY DIRECTION. I PULLED TO THE SIDE OF THE ROAD,
2 AND I GOT OUT, STOOD IN THE MIDDLE OF THE ROAD WITH A
3 SHOTGUN, AND AS THE VEHICLE WAS APPROACHING ME I FIRED SEVEN
4 ROUNDS INTO THE FRONT OF THE TRUCK.

5 Q WAS THERE ANYONE ELSE AROUND YOU AT THAT TIME? WERE
6 THERE OTHER OFFICERS THERE?

7 A NOT TO MY KNOWLEDGE THEN. I FOUND OUT LATER, YES,
8 MA'AM, THERE WAS. BUT AT THAT POINT I HAD NO IDEA THAT
9 ANYONE WAS THERE BESIDES MYSELF AND THE BLUE RIDGE TRUCK.

10 Q WHEN YOU FIRED AT THE BLUE RIDGE TRUCK DID THE TRUCK
11 STOP OR DID IT CONTINUE?

12 A IT CONTINUED.

13 Q AND WHERE DID IT GO?

14 A AS THE TRUCK WAS APPROACHING ME AND I FIRED MY LAST
15 ROUND -- AND OBVIOUSLY I WASN'T GOING TO DISABLE THE
16 OCCUPANTS OF THE TRUCK -- I DOVE BACK, LITERALLY DOVE, INTO
17 THE FRONT SEAT OF THE PATROL CAR AND SHUT THE DOOR. AND I
18 LAID ACROSS THE SEAT AND I WAS THEN TRYING TO MAKE AN ATTEMPT
19 TO GET OUT OF THE PASSENGER SIDE. AND AS I HEARD THE TRUCK
20 GO BY, I HEARD MULTIPLE SHOTS, SEVEN OR EIGHT SHOTS I BELIEVE
21 IT WAS.

22 Q COULD YOU DETERMINE IF THOSE SHOTS WERE COMING FROM THAT
23 TRUCK?

24 A NO. IT SOUNDED LIKE THEY WERE COMING FROM BEHIND ME,
25 SOMEWHERE FROM BEHIND ME. I WASN'T SURE WHERE THEY WERE

MIKE JONES -- DIRECT BY MS. STROM

1 COMING FROM TO BE VERY HONEST WITH YOU.

2 Q AND YOU SAID YOU FOUND OUT LATER THAT THERE WERE OTHER
3 OFFICERS THERE AT THE SCENE?

4 A I FOUND OUT LATER THAT SERGEANT HAMBY HAD BEEN PARKED
5 RIGHT BEHIND ME AND, AS THE TRUCK WENT BY MY CAR, THAT HE HAD
6 FIRED THOSE ROUNDS AT THE PICKUP TRUCK.

7 MS. STROM: COURT'S INDULGENCE, YOUR HONOR?

8 THE COURT: YES, MA'AM.

9 MS. STROM: (OFF RECORD WITH CO-COUNSEL) THANK YOU.
10 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

11 WITNESS: YES, MA'AM.

12 MR. RICHEY: ONE MOMENT, JUDGE.

13 THE COURT: TAKE YOUR TIME, SIR.

14 MR. RICHEY: THANK YOU, YOUR HONOR.

15 CROSS EXAMINATION BY MR. RICHEY:

16 Q HOW ARE YOU DOING, SIR?

17 A GOOD, SIR.

18 Q GOOD. I HAVE A FEW QUESTIONS FOR YOU.

19 A YES, SIR.

20 Q I WANT TO ASK YOU TO KIND OF GO BACK AND HOPEFULLY WE
21 CAN KIND OF GET ON THE SAME PAGE HERE. YOU GOT THE CALL AS
22 OFFICER APPELL DID, DIDN'T YOU? THAT THE CAR COULD BE COMING
23 FROM GREENVILLE?

24 A NO, SIR. THAT WASN'T THE INFORMATION I RECEIVED.

25 Q OKAY. YOU GOT INFORMATION THAT A TROOPER HAD BEEN SHOT

MIKE JONES -- CROSS BY MR. RICHEY

1 IN GREENVILLE?

2 A THAT'S CORRECT.

3 Q AND THAT THE SUSPECT COULD BE COMING TOWARDS ANDERSON?

4 A THAT'S CORRECT.

5 Q AND PURSUANT TO THAT INFORMATION YOU SET UP -- YOU AND
6 OFFICER APPELL SET UP IN A ROUTE THAT YOU ALL BELIEVED THAT
7 HE COULD POSSIBLY COME?

8 A THAT'S CORRECT.

9 Q THAT WAS YOUR BASIS FOR BEING THERE?

10 A THAT'S CORRECT.

11 Q OKAY. AND PRIOR TO -- AND WHEN YOU SET UP AT THAT TIME
12 YOU DID NOT HAVE ANY INFORMATION THAT ANY CIVILIAN OR NON LAW
13 ENFORCEMENT OFFICERS HAD BEEN SHOT AT AFTER THE TROOPER HAD
14 BEEN SHOT IN GREENVILLE?

15 A THAT'S CORRECT.

16 Q OKAY. AND SO THIS JEEP WAS OUT THERE FLOATING AROUND
17 SOMEWHERE ESSENTIALLY?

18 A YES, SIR.

19 Q OKAY. AND WHEN YOU ALL SAT THERE AND YOU SAW THE JEEP
20 COME BY -- OKAY. THE JEEP INITIALLY CAME BY, AND THERE WAS
21 NO SHOTS FIRED WHEN IT INITIALLY CAME BY?

22 A THAT'S CORRECT.

23 Q OKAY. AND THEN WHEN IT INITIALLY CAME BY YOU ALL YOU
24 SAW THE DRIVER GO UNDERNEATH THE SEAT OR SOMEWHERE AND GET
25 THIS GUN AND START SHOOTING AT YOU?

MIKE JONES -- CROSS BY MR. RICHEY

1 A NO, IT WAS THE PASSENGER.

2 Q PASSENGER EXCUSE ME. PASSENGER. START SHOOTING AT YOU?

3 A YES, SIR.

4 Q OKAY. AND AT THIS TIME I THINK YOU SAID THERE WAS SOME
5 BIG, I THINK, DUMP TRUCK OR SOMETHING IN FRONT OF YOU?

6 A IT WAS A TRACTOR TRAILER CARRYING WHAT THEY CALL A
7 LOWBOY, AND THEY'LL PUT ON BULLDOZERS, BACKHOES. I THINK
8 THEY HAD A BULLDOZER ON THE BACK.

9 Q AND SO THIS IS SORT OF LIKE THIS IS A SLOWER PART OF THE
10 CHASE?

11 A YES, SIR. HE WAS IN FRONT OF US THE ENTIRE TIME UNTIL
12 WE TURNED DOWN 187 SOUTH.

13 Q RIGHT. BUT THEN THIS TIME IT WASN'T A HUNDRED MILE PER
14 HOUR CHASE AT THIS PARTICULAR TIME?

15 A NO, SIR.

16 Q IT WAS A KIND OF A SLOW MOVING TRUCK?

17 A YES, SIR.

18 Q AND DO YOU BELIEVE THAT THE PERSON ON THE PASSENGER SIDE
19 WAS TRYING TO GET AWAY FROM YOU? DO YOU BELIEVE THAT?

20 A OH, YES, SIR.

21 Q OKAY. AND DO YOU BELIEVE THAT EVERY TIME YOU GOT
22 CLOSER, EVERY TIME YOU GOT CLOSER HE WOULD GET MORE
23 AGGRESSIVE WITH YOU IN THE SHOOTING AND THAT TYPE OF STUFF?

24 A EVERY TIME WE GOT CLOSER HE WAS TRYING TO KILL US.

25 Q RIGHT. HE GOT MORE AGGRESSIVE?

MIKE JONES -- CROSS BY MR. RICHEY

1 A THAT'S CORRECT, SIR.

2 Q AND WHEN THE BLUE RIDGE TRUCK CAME, THIS BLUE RIDGE
3 TRUCK WAS COMING ONE WAY AND HE GOT OUT AND FLAGGED THE TRUCK
4 DOWN?

5 A NO, SIR. HE DIDN'T FLAG THE TRUCK DOWN.

6 Q HE GOT OUT WITH A GUN, WAVED IT, DID ALL THIS AGGRESSIVE
7 STUFF TO STOP THE TRUCK?

8 A WELL, THE VEHICLE ACTUALLY PULLED IN FRONT OF THE BLUE
9 RIDGE TRUCK FORCING THE DRIVER EITHER TO STRIKE THE JEEP OR
10 TO -- HE HAD TO STOP.

11 Q AND THE PERSON THAT WAS IN THE TRUCK WAS NOT A LAW
12 ENFORCEMENT OFFICER, WAS IT?

13 A NOT TO MY KNOWLEDGE, NO, SIR.

14 Q AND HE WAS NEVER FIRED UPON, WAS HE?

15 A NO, SIR.

16 Q HE WAS NEVER INJURED IN ANY WAY?

17 A NOT THAT I KNOW OF.

18 Q HE WAS ESSENTIALLY -- AFTER THE CAR WAS TAKEN FROM HIM
19 HE WAS ESSENTIALLY LET GO? I MEAN, HE DIDN'T TURN AROUND AND
20 GIVE HIM THREE SHOTS---

21 A LAST I SAW HIM HE WAS STANDING ON THE SIDE OF THE ROAD
22 AND HE LOOKED TO BE IN SHOCK.

23 Q AND WHEN THE GUY GOT OUT OF THE PASSENGER SIDE AT THE
24 BLUE RIDGE TRUCK AND YOU SAY HE GOT INTO WEAVER STANCE?

25 A NO, SIR.

MIKE JONES -- CROSS BY MR. RICHEY

1 Q WEBBER STANCE?

2 A NOBODY GOT OUT OF THE PASSENGER SIDE OF THE BLUE RIDGE
3 TRUCK.

4 Q OKAY. WHEN HE GOT OUT OF THE PASSENGER SIDE OF THE JEEP
5 WAGONEER, RIGHT?

6 A YES, SIR.

7 Q AND WHEN HE GOT OUT OF THE PASSENGER SIDE HE TOOK THAT
8 WEAVER STANCE?

9 A NO, SIR. HE DIDN'T DO THAT UNTIL HE GOT UP TO THE
10 DRIVER'S DOOR OF THE BLUE RIDGE TRUCK AND HE ATTEMPTED TO
11 OPEN THE DOOR AND THE DOOR DIDN'T -- FOR WHATEVER REASON, HE
12 COULDN'T GET THE DOOR OPEN.

13 Q ALL RIGHT.

14 A THAT'S WHEN HE TURNED AND WENT INTO THE WEAVER STANCE.

15 Q I'M NOT TRYING TO CONFUSE YOU, OKAY? BUT THANK YOU FOR
16 CLARIFYING FOR ME. I'M NOT TRYING TO CONFUSE YOU.

17 WHEN HE GOT IN THAT STANCE, THAT WAS -- THAT WAS ONE OF
18 THE BEST SHOTS YOU HAD AT HIM?

19 A NO, SIR, QUITE THE CONTRARY. THE BEST SHOT WE HAD AT
20 HIM? IS THAT WHAT YOU'RE SAYING?

21 Q WHEN HE GOT OUT AND HE WAS IN THAT STANCE---

22 A YES, SIR.

23 Q ---HE TURNED AROUND AND EXPOSED HIMSELF TO YOU BUT HE
24 WAS SHOOTING?

25 A YES, SIR.

MIKE JONES -- CROSS BY MR. RICHEY

1 Q OKAY. HE WAS SHOOTING AGGRESSIVELY?

2 A UH-HUH (AFFIRMATIVE).

3 Q RIGHT?

4 A YES, SIR.

5 Q AND WHEN HE WAS SHOOTING AGGRESSIVELY HE WAS REALLY
6 VULNERABLE TO YOU ALL?

7 A HE WAS VULNERABLE, BUT A VERY POOR TIME FOR US TO RETURN
8 FIRE.

9 Q OKAY. DO YOU KNOW WHETHER ANY CIVILIANS WERE SHOT AT?
10 DO YOU KNOW WHETHER ANY CIVILIANS WERE SHOT AT OR IF IT WAS
11 MOSTLY LAW ENFORCEMENT?

12 A YEAH. I KNOW THAT CIVILIANS VEHICLES WERE HIT, BUT I
13 DON'T THINK ANY CIVILIANS WERE HIT PHYSICALLY.

14 Q RIGHT. AND WHEN HE WENT INTO THIS FIELD, YOU KNEW THAT
15 HE WAS GOING TO A DEAD END AND BASICALLY HE WAS OUT OF
16 OPTIONS?

17 A DIDN'T KNOW THAT, NO, SIR.

18 Q YOU GOT A CALL SAYING THAT HE WAS GOING TO A DEAD END
19 ROAD?

20 A YES, SIR.

21 Q AND AT THAT POINT YOU KNEW THE END IS COMING?

22 A I WAS HOPING IT WAS.

23 Q AND YOU SAID THAT THAT ROAD WAS CALLED KARI LANE?

24 A YES, SIR. K-A-R-I.

25 Q AND WHEN YOU GOT -- HOW -- I MEAN, THIS WAS A REALLY BIG

MIKE JONES -- CROSS BY MR. RICHEY

1 DEAL? YOU HAD THE HELICOPTER. YOU HAD ALL THESE CARS.

2 A YES, SIR.

3 Q AND IT WAS GUNFIRE EVERYWHERE?

4 A YES, SIR.

5 Q OKAY. AND SHOTS WAS COMING OVER YOUR HEAD ABOUT
6 EVERYWHERE?

7 A I DON'T KNOW ABOUT OVER MY HEAD. BUT, YES, SIR, THERE
8 WAS A LOT OF GUNFIRE.

9 Q DID YOU SEE THE DRIVER OR THE PASSENGER IN THE JEEP
10 WAGONEER, THE DRIVER OF THE BLUE RIDGE TRUCK, DID YOU SEE
11 THEM DO ANY KIND OF -- OTHER THAN WHAT YOU SAW, TO ANY
12 CIVILIANS?

13 A YOU MEAN TO ACTUALLY TAKE AIM AT A CIVILIAN?

14 Q YES, SIR.

15 A NO, SIR.

16 MR. RICHEY: ONE MOMENT, PLEASE. (OFF RECORD WITH CO-
17 COUNSEL)

18 Q THE DRIVER -- THE ORIGINAL DRIVER OF THE BLUE RIDGE
19 TRUCK, WAS HE PHYSICALLY HURT ANY OTHER THAN THE SHOCK AND
20 JUST BEING OVERWHELMED WITH THE WHOLE THING?

21 A NOT TO MY KNOWLEDGE, SIR.

22 Q AND WAS HE JUST STANDING OUT THERE? YOU SAID HE WAS
23 JUST LEFT STANDING ON THE SIDE OF THE ROAD.

24 A LAST I SAW HIM HE WAS STANDING ALONG THE BERM OF THE
25 ROAD.

MIKE JONES -- CROSS BY MR. RICHEY

1 Q AND HE WAS AT A VERY VULNERABLE POSITION, TO SAY THE
2 LEAST?

3 A WELL, IN WHAT RESPECT?

4 Q IN THAT HE COULD HAVE BEEN EASILY SHOT.

5 A IF WE HAD FIRED, HE COULD HAVE BEEN EASILY SHOT. AND IF
6 HE HAD FIRED, WHO KNOWS WHAT WOULD HAVE HAPPENED.

7 Q BUT HE WAS OKAY?

8 A YES, SIR. THANK GOD.

9 Q AND DEPUTY GRANT RECEIVED SOME INJURIES IN THIS AS WELL?

10 A YES, SIR.

11 Q OKAY. AND THESE INJURIES FORTUNATELY WERE NOT LIFE
12 THREATENING?

13 A YES, SIR.

14 MR. RICHEY: THANK YOU.

15 WITNESS: YOU'RE WELCOME, SIR.

16 MS. STROM: THANK YOU. I HAVE NO FURTHER QUESTIONS.
17 YOUR HONOR, WE WOULD ASK THAT THIS WITNESS BE EXCUSED.

18 MR. RICHEY: WITHOUT OBJECTION.

19 THE COURT: WITHOUT OBJECTION.

20 WITNESS: THANK YOU, YOUR HONOR.

21 THE COURT: MR. JONES, THANK YOU, SIR.

22 (WITNESS EXCUSED AT 4:26 P.M.)

23 MS. STROM: THE STATE CALLS VIC WOOTEN.

24 VIC WOOTEN, HAVING BEEN DULY
25 SWORN, TESTIFIED AS FOLLOWS:

VIC WOOTEN -- DIRECT BY MS. STROM

1 DIRECT EXAMINATION BY MS. STROM:

2 Q OFFICER WOOTEN, PLEASE STATE YOUR FULL NAME FOR THE
3 RECORD.

4 A VIC GLENN WOOTEN.

5 Q I NEED YOU TO SPEAK UP A LITTLE BIT SO ALL THESE JURORS
6 CAN HEAR YOU. IF YOU NEED TO GET CLOSER TO THAT MICROPHONE,
7 PLEASE FEEL FREE.

8 A YES, MA'AM.

9 Q YOU ARE EMPLOYED WITH THE ANDERSON COUNTY SHERIFF'S
10 OFFICE?

11 A YES, MA'AM.

12 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THEM?

13 A SINCE JANUARY OF 1989.

14 Q ON DECEMBER THE 6TH OF 2000, WHAT WERE YOUR DUTIES WITH
15 THE ANDERSON COUNTY SHERIFF'S OFFICE?

16 A I WAS THE CHIEF DEPUTY, RANK OF MAJOR.

17 Q ON THAT DAY DID YOU RECEIVE INFORMATION REGARDING A
18 TROOPER BEING SHOT IN GREENVILLE?

19 A YES, MA'AM, WE DID.

20 Q AND AS PART OF THAT INFORMATION WERE YOU GIVEN A
21 DESCRIPTION OF A VEHICLE BEING A JEEP CHEROKEE?

22 A YES, MA'AM, A BLUE JEEP CHEROKEE WITH WOOD GRAIN SIDES.

23 Q WERE YOU ALSO GIVEN A TAG NUMBER?

24 A YES, MA'AM.

25 Q DID YOU HAVE AN OCCASION ON THAT DATE TO BECOME INVOLVED

VIC WOOTEN -- DIRECT BY MS. STROM

1 IN THE PURSUIT OF THAT VEHICLE?

2 A I DID.

3 Q COULD YOU PLEASE TELL THIS JURY HOW IT WAS THAT YOU
4 BECAME INVOLVED IN THE PURSUIT AND WHAT OCCURRED?

5 A WHEN WE FIRST GOT INFORMATION THAT THE VEHICLE MAY BE
6 REGISTERED TO SOMEONE IN ANDERSON COUNTY, WE STARTED PULLING
7 INFORMATION. THE SHERIFF AND I WERE IN OUR OFFICE, AND WE
8 STARTED PULLING INFORMATION ABOUT THE PARTICULAR RESIDENCE
9 THAT WE HAD THAT THE VEHICLE CAME BACK REGISTERED TO. WE
10 WERE TRYING TO FIND OUT WHO LIVED AT THE RESIDENCE, ANY NAMES
11 WE COULD GET FROM IT. WE PULLED TAX FILES, THE TAG
12 INFORMATION, WENT INTO OUR RECORDS SYSTEM, GOT ANY KIND OF
13 INFORMATION WE COULD ON THE PEOPLE THAT MAY BE AT THAT
14 RESIDENCE.

15 Q DID YOU GET THE -- WHEN YOU RECEIVED THE TAG NUMBER DID
16 YOU -- WERE YOU ABLE TO TRACE THAT TAG NUMBER BACK TO AN OLD
17 DOBBINS BRIDGE ROAD ADDRESS?

18 A YES, MA'AM, WE DID.

19 Q AS A RESULT OF THAT DID MEMBERS OF THE ANDERSON COUNTY
20 SHERIFF'S OFFICE BEGIN SETTING UP IN DIFFERENT LOCATIONS
21 THROUGHOUT THE COUNTY?

22 A YES, MA'AM. WE HAD THEM STATIONED THROUGHOUT THE COUNTY
23 ALONG THE ROUTE, INTERSTATE 85 AND SOME OF THE BACK ROADS
24 LEADING FROM GREENVILLE COUNTY INTO ANDERSON COUNTY. WE HAD
25 A STAGING POINT AT THE FIRE STATION NEAR THE RESIDENCE ON OLD

VIC WOOTEN -- DIRECT BY MS. STROM

1 DOBBINS BRIDGE ROAD. I WAS IN MY OFFICE AND THE SHERIFF WAS
2 IN HIS OFFICE. AND AT ONE POINT, IT MUST HAVE BEEN AROUND
3 TWO O'CLOCK, WE HEARD ONE OF OUR OFFICERS ON THE RADIO SAY
4 THAT HE HAD SPOTTED THE VEHICLE. AND AT SOME POINT SHORTLY
5 THEREAFTER WE HEARD COMMUNICATION OVER THE RADIO THAT SHOTS
6 HAD BEEN FIRED.

7 Q YOU WERE MONITORING OVER THE RADIO?

8 A YES, MA'AM, IN MY OFFICE.

9 Q BASICALLY, THE RADIO TRAFFIC AMONG ALL THE DEPUTIES
10 INVOLVED?

11 A YES, MA'AM. ONCE WE HEARD THE COMMUNICATION ABOUT THE
12 SHOTS FIRED, THE SHERIFF AND I BOTH WENT OUT OF OUR OFFICE
13 INTO THE RADIO ROOM, WHICH IS A COMMON PROCEDURE FOR HE AND
14 I. AT THAT TIME WE WOULD -- ONE OF US WOULD GO IN THE RADIO
15 ROOM AND NORMALLY ONE OF US WOULD GO OUT IN THE FIELD. AND
16 THE SHERIFF SAT DOWN IN THE RADIO ROOM AND I GOT INTO MY CAR
17 AND HEADED TOWARD THE AREA.

18 Q AT WHAT LOCATION DID YOU BECOME INVOLVED IN THE PURSUIT
19 OF THE VEHICLE?

20 A I LEFT MY OFFICE AND HEADED OUT WHITEHALL ROAD, WHICH
21 INTERSECTS WITH HIGHWAY 24. WHEN I HEARD THEM -- THE FIRST
22 TIME THEY WERE ON HIGHWAY 187 TOWARD HIGHWAY 24, SO I HEADED
23 OUT WHITEHALL TOWARD 24. DURING MY TRIP OUT THERE I HEARD
24 SEVERAL DIFFERENT OFFICERS OVER THE RADIO THAT SHOTS HAD BEEN
25 FIRED. SHOTS WERE FIRED.

VIC WOOTEN -- DIRECT BY MS. STROM

1 AT ONE POINT I HEARD -- AND AT THE TIME I HAD NO IDEA
2 WHO IT WAS -- ONE OF OUR OFFICERS SAY, "I'VE BEEN HIT." I
3 DIDN'T HAVE ANY IDEA WHO IT WAS.

4 I CONTINUED ON OUT WHITEHALL ROAD. I HEARD THEM TURN
5 OFF OF HIGHWAY 24 ONTO 187 SOUTH. WHITEHALL COMES INTO
6 HIGHWAY 24 AT A JUNCTION WITH 187. AND WHEN THEY TURNED OFF
7 OF 24 ONTO 187, I CONTINUED OUT WHITEHALL AND TURNED ONTO
8 187.

9 SHORTLY AFTER I GOT ONTO HIGHWAY 187 I HEARD ONE OF THE
10 OFFICERS SAY THAT THEY HAD WRECKED. AND ONE OF THE
11 OFFICERS -- THERE WAS -- THEY HAD GOTTEN A WHITE PICKUP
12 TRUCK, HAD STOPPED IT.

13 Q WHEN YOU SAID YOU HEARD AN OFFICER STATE THEY HAD
14 WRECKED, HAD THE OFFICER WRECKED OR HAD THE SUSPECT VEHICLE
15 WRECKED?

16 A THE SUSPECT VEHICLE HAD WRECKED.

17 Q AND WHAT HAPPENED AT THAT TIME?

18 A I HEARD ANOTHER OFFICER SAY THAT THEY HAD -- THEY WERE
19 GETTING INTO A WHITE PICKUP TRUCK, THAT THEY HAD STOPPED A
20 WHITE PICKUP TRUCK.

21 THE ENTIRE CONVERSATION THAT I HAD HEARD OVER THE RADIO
22 PRIOR TO THIS, THE INFORMATION THAT I UNDERSTOOD, THERE WAS A
23 FEMALE DRIVING THE CHEROKEE. WHEN THEY -- WHEN I HEARD OVER
24 THE RADIO WHEN THEY TOOK THE PICKUP TRUCK, THE WHITE FEMALE
25 GOT INTO THE PASSENGER SIDE OF THE WHITE PICKUP TRUCK, AND

VIC WOOTEN -- DIRECT BY MS. STROM

1 THE MALE, WHO HAD BEEN A PASSENGER IN THE CHEROKEE AND WAS
2 DOING THE SHOOTING, WAS THEN DRIVING THE FORD PICKUP.

3 AS THE PICKUP PULLED AWAY FROM THAT SCENE IS WHEN I
4 FIRST SAW THE TRUCK, AND WE PROCEEDED SOUTH ON 187 AT A HIGH
5 RATE OF SPEED. I WAS PROBABLY THE THIRD OR FOURTH CAR BACK
6 BEHIND THE PICKUP TRUCK. WE WERE RUNNING A HUNDRED MILES AN
7 HOUR OR IN EXCESS OF A HUNDRED MILES AN HOUR ON 187 HEADED
8 TOWARD HIGHWAY 29, AND IN MY MIND I'M THINKING HE'S GOING TO
9 TRY TO GET TO GEORGIA. I HEARD ONE OF THE CARS COMING FROM
10 HIGHWAY 29 SAY THAT HE WAS GOING TO TRY TO SET UP SPIKE
11 STICKS.

12 Q IS THAT SOME TYPE OF ROAD BARRICADE OR. . .

13 A IT IS. IT'S A PORTABLE SPIKE SYSTEM THAT THE MAJORITY
14 OF OFFICERS HAVE IN THE TRUNK OF THEIR CAR TO DEFLATE THE
15 TIRES ON A VEHICLE. AND WHEN WE GOT TOWARD -- ALMOST TO 29,
16 I COULD SEE THE CAR SITTING AT 29 AND 187 AND APPARENTLY HE
17 WAS GOING TO---

18 Q YOU SAY YOU SAW A CAR AT 29 AND 187. WAS THAT A POLICE
19 CAR?

20 A ONE OF OUR PATROL CARS WAS AT THE INTERSECTION OF 29 AND
21 187, AND I ASSUMED THAT HE WAS GOING TO SET OUT THE SPIKE
22 STICKS AT THAT INTERSECTION. BUT PRIOR TO GETTING TO THE
23 INTERSECTION, I SAW THE WHITE PICKUP TRUCK TURN RIGHT. I
24 BELIEVE IT WAS ONTO KARI LANE. AND AT THAT INTERSECTION OF
25 187 AND KARI LANE THERE WAS A FIELD, AN OPEN FIELD. IT WAS A

VIC WOOTEN -- DIRECT BY MS. STROM

1 FRESH PLOWED FIELD, AND THERE AS A GENTLEMAN ON A TRACTOR AND
2 HE WAS STILL PLOWING. HE TURNED RIGHT. ONE OR TWO OF THE
3 CARS IN FRONT OF ME CONTINUED ON TOWARD 29, AND THERE WAS ONE
4 OR TWO CARS -- I'M NOT SURE -- I BELIEVE IT WAS TWO CARS WENT
5 INTO THE FIELD BEHIND THE PICKUP TRUCK.

6 SO I TURNED RIGHT AND CONTINUED ON KARI LANE. I THINK
7 -- I'M NOT FAMILIAR WITH THE ROAD. I THOUGHT IT MIGHT COME
8 BACK OUT ONTO 29. AND THE PLAN I WAS TRYING TO GO THROUGH IN
9 MY HEAD I FIGURED IF I COULD GET TO 29, I MIGHT COULD CUT HIM
10 OFF. I FIGURED HE WAS GOING THROUGH THE FIELD TO HIGHWAY 29
11 STILL PROBABLY GOING TO GEORGIA. SO I TURNED ONTO KARI LANE
12 AND WENT DOWN TO THE END OF IT AND IT'S A DEAD END. SO I --
13 I TURNED AROUND IN THE DRIVEWAY, CAME BACK UP.

14 THERE'S ANOTHER ROAD OFF OF KARI LANE THAT RUNS PARALLEL
15 TO THE FIELD. SO I SAID, I'LL TRY THIS ONE. MAYBE IT WILL
16 GO TO 29. I TURNED ONTO IT, AND JUST ABOUT THE TIME I TURNED
17 ONTO THIS OTHER STREET, I SAW THE PICKUP TRUCK COMING BACK
18 OUT OF THE FIELD TOWARD KARI LANE. WHEN I SAW THE TRUCK, I
19 STOPPED MY CAR JUST PARALLEL TO THE FIELD ON THIS SIDE OFF OF
20 KARI LANE. I'M NOT SURE OF THE NAME OF THAT ROAD.

21 I STOPPED MY CAR AND I HAD MY -- I WAS IN AN UNMARKED
22 PATROL CAR. MY BLUE LIGHTS WERE GOING. IN FACT, I DON'T
23 THINK I EVER TURNED MY SIREN OFF. AND I'M SITTING THERE AND
24 I SEE THE PICKUP TRUCK COMING OUT OF THE FIELD, AND AT THAT
25 POINT I DON'T SEE ANY OF OUR PATROL CARS. SO I STOPPED.

VIC WOOTEN -- DIRECT BY MS. STROM

1 THERE'S A WHITE MALE DRIVING THE PICKUP TRUCK AND A
2 WHITE FEMALE AS A PASSENGER. THE WHITE MALE HAS A GUN IN HIS
3 RIGHT HAND. HE POINTS THE GUN OUT THE WINDOW TOWARD ME AND
4 FIRES. IT KIND OF CAUGHT ME OFF GUARD. I DON'T -- I DON'T
5 KNOW WHY BUT I DIDN'T EVEN THINK ABOUT, "WELL, THIS GUY'S
6 GOING TO SHOOT AT ME." I NEVER CONSIDERED IT UNTIL IT
7 HAPPENED. AND THEN I DREW MY WEAPON AND FIRED FROM MY CAR.
8 I FIRED AT THE PICKUP TRUCK. I DON'T KNOW HOW MANY TIMES,
9 BUT I FIRED SEVERAL SHOTS AT THE TRUCK.

10 THE TRUCK CONTINUED TO COME OUT OUT ONTO KARI LANE, AND
11 HE TURNED LEFT BEHIND ME GOING TOWARD THE DEAD END. SO I
12 BACK OUT AND GET BEHIND HIM DOWN KARI LANE. HE PULLS INTO
13 THE SAME DRIVEWAY THAT I HAD JUST TURNED AROUND IN AT THE
14 DEAD END. SO WHEN I SEE HIM TURN INTO THE DRIVEWAY, I PULL
15 MY PATROL CAR ABOUT HALFWAY ACROSS THE ROAD AT AN ANGLE AND
16 BLOCK PROBABLY THREE-FOURTHS OF THE ROAD.

17 HE BACKS OUT. ABOUT THE TIME I GET OUT OF MY CAR, HE IS
18 BACKING OUT COMING BACK UP KARI LANE, AND I HEAR SHOTS AGAIN
19 COMING FROM THE PICKUP TRUCK. I'M IN FRONT OF MY CAR AND I
20 FIRE AGAIN. I FIRED SEVERAL MORE SHOTS, GOT BEHIND MY CAR
21 AND FIRED SEVERAL MORE SHOTS. THE TRUCK COMES UP TO MY CAR
22 AND JUST STOPS.

23 WHEN HE STARTS OUT HE STARTS OUT AT A FAIRLY HIGH RATE
24 OF SPEED, AND THEN HE JUST KIND OF COASTS TO A STOP WHEN HE
25 GETS TO MY CAR. I CAN SEE THE WHITE MALE'S GOT BLOOD COMING

VIC WOOTEN -- DIRECT BY MS. STROM

1 FROM HIS FACE. I SEE SEVERAL BULLET HOLES IN THE WINDSHIELD,
2 AND I CAN SEE THE WHITE FEMALE ON THE PASSENGER SIDE AS FAR
3 OVER AS SHE CAN GET IN THE CORNER OF THE CAB OF THE PICKUP
4 TRUCK. THE TRUCK IS STOPPED AND I RAISE UP.

5 ABOUT THE TIME THE TRUCK STOPS, I SEE ANOTHER PATROL
6 CAR, A MARKED UNIT, PULL DOWN KARI LANE AND BLOCKS THE OTHER
7 SIDE OF THE ROADWAY, AND OFFICER EDDIE HAMBY WAS DRIVING IT.
8 AND I MOTIONED FOR HIM TO COME DOWN TO WHERE MY CAR WAS AT.
9 I HAD THE PICKUP TRUCK COVERED, SO I MOTIONED FOR OFFICER
10 HAMBY TO COME TO MY CAR, AND HE COMES AROUND TO MY SIDE OF
11 THE VEHICLE.

12 WE'RE BOTH COVERING THE TRUCK, AND I'M YELLING FOR THE
13 PASSENGER AND THE DRIVER TO RAISE THEIR HANDS. THE FIRST
14 TIME I ASKED THEM TO DO IT, THE FEMALE PUT HER HANDS UP
15 TOWARD THE TOP OF THE PICKUP TRUCK. THE DRIVER OF THE TRUCK,
16 THE WHITE MALE, IS KIND OF LEANED OVER TO HIS RIGHT, BUT HE
17 WON'T RAISE HIS HANDS, AND I KEPT YELLING FOR HIM TO RAISE
18 HIS HANDS, RAISE HIS HANDS AND HE WON'T DO IT. I TELL THE
19 WHITE FEMALE TO GET OUT OF THE TRUCK, KEEP HER HANDS RAISED,
20 GET OUT OF THE TRUCK. I ORDERED HER AROUND TO THE BACK OF
21 THE TRUCK. I ORDERED HER TO LAY DOWN IN THE ROAD AND SPREAD
22 HER HANDS OUT, AND SHE DOES EXACTLY WHAT I TELL HER TO DO.

23 THEN I GO BACK AND TELL THE DRIVER OF THE TRUCK,
24 "DRIVER, GET YOUR HANDS UP." HE WON'T -- HE WILL NOT PUT HIS
25 HANDS UP. I CAN SEE HIM MOTIONING. I BELIEVE IT WAS RIGHT

VIC WOOTEN -- DIRECT BY MS. STROM

1 ARM HE WAS -- IT WAS AS IF HE WAS TRYING TO RAISE IT, BUT HE
2 NEVER BROUGHT IT UP. IT NEVER CAME UP. I TELL HIM THIS
3 NUMEROUS TIMES.

4 AT SOME POINT THERE'S TWO OR THREE MEMBERS OF OUR
5 CONTAINMENT TEAM FROM THE SHERIFF'S OFFICE, THEY PULL UP.
6 THEY'VE GOT ON THEIR -- ALL THEIR GEAR, THEIR VESTS AND THEIR
7 HELMETS, AND THEY'VE GOT ASSAULT RIFLES. WHEN THEY GET
8 THERE, THEY GO TO THE FRONT OF MY CAR, COMMAND HIM TO PUT HIS
9 HANDS UP AND BOTH HIS HANDS GO UP.

10 Q DID THEY GET HIM OUT OF THE TRUCK AT THAT TIME?

11 A THEY GOT HIM OUT OF THE PICKUP TRUCK AT THAT TIME.

12 Q AND THE PERSON THEY GOT OUT OF THE DRIVER'S SIDE OF THE
13 UTILITY TRUCK, DO YOU SEE HIM IN THE COURTROOM TODAY?

14 A YES, MA'AM, I DO.

15 Q COULD YOU PLEASE POINT HIM OUT TO ME?

16 A SITTING AT THIS TABLE RIGHT HERE (INDICATING DEFENDANT).

17 Q DO YOU RECALL WHAT HE WAS WEARING AT THE TIME?

18 A NO, MA'AM, I DON'T.

19 Q OKAY. I WANT TO JUST GO BACK VERY BRIEFLY TO WHERE YOU
20 SAID THAT YOU WERE NOT ON KARI LANE BUT ON THE OTHER SIDE
21 STREET, THE STREET THAT'S OFF KARI LANE, AND THE UTILITY
22 TRUCK CAME BESIDE YOU AND BEGAN FIRING AT YOU?

23 A YES, MA'AM.

24 Q OR THE DRIVER WAS FIRING AT YOU FROM THAT TRUCK. DO YOU
25 KNOW HOW MANY TIMES HE FIRED AT THAT TIME?

VIC WOOTEN -- DIRECT BY MS. STROM

1 A I DON'T KNOW. I -- I WAS SO SCARED, I DON'T KNOW.

2 Q AND BACK WHEN THE UTILITY TRUCK TURNED AROUND IN THE
3 SAME DRIVEWAY, I BELIEVE YOU SAID AT FIRST HE CAME OUT AT A
4 VERY HIGH RATE OF SPEED OR WAS ATTEMPTING TO?

5 A YES, MA'AM. HE STARTED OFF RATHER -- RATHER FAST. THEN
6 HE JUST KIND OF LIKE COASTED TO A STOP.

7 Q AND WAS THE DRIVER FIRING AT YOU AT THAT TIME?

8 A YES, MA'AM.

9 MS. STROM: COURT'S INDULGENCE, YOUR HONOR. (OFF
10 RECORD WITH CO-COUNSEL) THANK YOU. PLEASE ANSWER ANY
11 QUESTIONS THE DEFENSE MAY HAVE.

12 CROSS EXAMINATION BY MR. BANNISTER:

13 Q MAJOR WOOTEN, MY NAME IS JIM BANNISTER, AND I HAVE A
14 COUPLE OF QUESTIONS FOR YOU. DID I UNDERSTAND THAT INITIALLY
15 WHEN YOU HEARD OVER THE RADIO ABOUT PERHAPS THE JEEP BEING
16 ACQUIRED IN ANDERSON -- OR BEING RADIOED IN WERE YOU IN THE
17 RADIO ROOM AT THAT TIME? DID I HEAR THAT RIGHT?

18 A I WAS IN MY OFFICE. WHEN I FIRST HEARD THAT
19 TRANSMISSION, I WAS IN MY OFFICE.

20 Q ALL RIGHT. AND THAT IS -- YOUR OFFICE IS LOCATED WHERE?

21 A AT THE LAW ENFORCEMENT CENTER ON CAMSON ROAD.

22 Q ALL RIGHT. WOULD YOU NORMALLY HAVE, IN SITUATIONS OF
23 THIS SORT, BEEN OPERATING THE RADIO?

24 A NO. ORDINARILY, IF THE SHERIFF AND I WERE BOTH IN THE
25 BUILDING TOGETHER, ONE OF USE WOULD GO TO THE RADIO -- TO THE

VIC WOOTEN -- CROSS BY MR. BANNISTER

1 RADIO ROOM TO WHERE WE'D HAVE GOOD COMMUNICATIONS, HAVE
2 ACCESS, TO A PHONE AND ALL THE CHANNELS ON THE RADIO AND BE
3 ABLE -- IF WE WANTED SOMETHING DONE, WE WERE ABLE TO GET IT
4 DONE FROM THE RADIO ROOM.

5 Q ALL RIGHT. AND AT SOME POINT YOU SAID, "FORGET THIS.
6 I'M GETTING OUT THERE TO HELP THESE GUYS OUT"?

7 A YES, SIR. THE SHERIFF SAT DOWN AT THE RADIO CONSOLE.
8 AND WHEN HE SAT DOWN, I WENT OUT.

9 Q ALL RIGHT. AT THIS POINT TELL THE JURY HOW MANY YEARS
10 OF LAW ENFORCEMENT -- HOW MANY YEARS YOU'VE BEEN WITH
11 ANDERSON COUNTY ON DECEMBER 6TH, 2000.

12 A I RETIRED DECEMBER THE 31ST WITH A LITTLE OVER 27 YEARS.

13 Q ALL RIGHT. AND YOU ARE CURRENTLY STILL WITH ANDERSON
14 COUNTY BUT IN A DIFFERENT CAPACITY?

15 A YES, SIR. I CAME BACK TO WORK AFTER THE FIRST OF THE
16 YEAR.

17 Q ALL RIGHT. SO AT THE TIME THAT YOU HEAR WHAT'S GOING ON
18 WITH THIS JEEP AND THE SHOTS FIRED AND OFFICERS FOLLOWING
19 THIS GUY, YOU HAVE ABOUT TWO AND A HALF WEEKS TO GO BEFORE
20 YOU RETIRE?

21 A YES, SIR.

22 Q ALL RIGHT. AND YOU HEADED OUT -- WERE YOU IN A MARKED
23 CAR OR AN UNMARKED CAR?

24 A UNMARKED.

25 Q AND THE FIRST TIME THAT -- WELL, AS YOU'RE MONITORING

VIC WOOTEN -- CROSS BY MR. BANNISTER

1 WHAT'S GOING ON OVER THE RADIO -- CAN YOU SEE THAT EXHIBIT
2 THAT'S OFF TO YOUR LEFT?

3 A YES, SIR.

4 Q ALL RIGHT. CAN YOU SEE WHERE 243 AND 187 COME TOGETHER?

5 A YES, SIR.

6 Q IS THAT JUST BEFORE THE DOUBLE BRIDGES ROAD OR THE
7 DOUBLE BRIDGES THAT WE'VE HEARD DESCRIBED?

8 A NO, SIR. THE DOUBLE BRIDGES ARE A GOOD PIECE ON DOWN
9 24.

10 Q OKAY. DO YOU RECALL HEARING AN OFF DUTY OFFICER WAS AT
11 THAT INTERSECTION AND TRIED TO DISABLE THE VEHICLE AS THEY
12 WENT PAST HIM? DO YOU REMEMBER ANY OF THAT?

13 A YES, SIR.

14 Q ALL RIGHT. AND THAT SCENE, WERE THERE ANY SHOTS FIRED
15 BACK AT THAT PARTICULAR OFFICER?

16 A NEAR THE INTERSECTION OF 243?

17 Q AND 187.

18 A NO, SIR, NOT THAT I KNOW OF.

19 Q ALL RIGHT. SO AT LEAST AT ONE POINT THERE WAS A -- THIS
20 OFF DUTY OFFICER FIRED SOME SHOTS AT A JEEP WAGONEER, BUT
21 THERE WAS NO RETURN FIRE FROM THE JEEP WAGONEER AT THAT
22 PARTICULAR OFFICER, THE BEST YOU KNOW?

23 A THE BEST THAT I KNOW OF. HE WAS AT THE INTERSECTION
24 WITH 187 AND 24, AND I BELIEVE ONE OF OUR OFFICERS HAD A
25 SHOTGUN TRYING TO SHOOT THE TIRES.

VIC WOOTEN -- CROSS BY MR. BANNISTER

1 Q THAT'S RIGHT. OKAY. WHEN YOU WENT DOWN TO THE DEAD
2 END, KARI LANE -- AND AS I UNDERSTOOD, THE CHASE WAS KIND OF
3 GOING OFF TO YOUR RIGHT A LITTLE BIT AND YOU WERE LOOKING FOR
4 MAYBE A WAY TO CUT THE UTILITY TRUCK OFF?

5 A I CUT TO THE RIGHT, YES, SIR. IT ACTUALLY WAS IN FRONT
6 OF ME, AND I WENT TO THE RIGHT THINKING I COULD GO BACK TO
7 29.

8 Q ALL RIGHT. AT THE END OF KARI LANE, IS THAT NEXT TO THE
9 LAKE, LAKE HARTWELL?

10 A YES, SIR.

11 Q ALL RIGHT. SO THERE IS A -- IF YOU DROVE OVER THE END
12 OF THE ROAD AND, I GUESS, THROUGH SOME WOODS, YOU WOULD END
13 UP IN THE WATER; IS THAT RIGHT?

14 A YES, SIR.

15 Q ALL RIGHT. AND ON EITHER SIDE OF THIS DEAD END IS THERE
16 EITHER WOODS OR HOUSES OR THE WATER OF LAKE HARTWELL?

17 A YES, SIR. IT'S A WOODED AREA WITH A COUPLE OF HOUSES.

18 Q ALL RIGHT. SO WHEN YOU PULLED DOWN THERE IS IT SAFE TO
19 SAY THAT REALLY THERE IS ONLY ONE WAY BACK OUT AND THAT'S
20 BACK UP KARI LANE?

21 A YES, SIR.

22 Q YOU EITHER HAVE TO GET WET OR CHOP THROUGH WOODS TO GET
23 IN ANY OTHER DIRECTION?

24 A IN A VEHICLE, THAT'S THE ONLY WAY OUT.

25 Q AND THAT -- YOU CAME BACK OUT, SO YOU KNEW THAT KARI

VIC WOOTEN -- CROSS BY MR. BANNISTER.

1 LANE WAS A DEAD END AT THIS POINT. YOU CAME BACK OUT AND YOU
2 SAW THE UTILITY TRUCK IN THE FIELD COMING AT YOU? OR IT
3 TURNED TOWARD YOU AT SOME POINT?

4 A IT CAME -- WE WERE PARALLEL WHEN I WAS SITTING OFF THE
5 SIDE ROAD OFF OF KARI, AND THEN IT CAME OUT AND IT CAME
6 BEHIND ME.

7 Q THEN YOU HAD STOPPED YOUR CAR AND YOU SAW THE UTILITY
8 TRUCK COMING TOWARDS YOU, AND THEN YOU HEARD THE SHOTS FIRED,
9 WERE THE SHOTS BEING FIRED THROUGH THE FRONT LEFT PASSENGER
10 -- I MEAN, THROUGH THE FRONT LEFT WINDOW OR WERE THEY
11 ACTUALLY BEING SHOT THROUGH THE WINDSHIELD OF THE UTILITY
12 TRUCK OR DO YOU REMEMBER?

13 A OUT THE PASSENGER SIDE WINDOW. SIDE WINDOW.

14 Q AS A RESULT OF THE FACT THAT YOU WERE BEING FIRED UPON,
15 WERE YOU PREVENTED FROM MAKING ANY EFFORTS TO USE YOUR CAR TO
16 DISABLE THE UTILITY TRUCK AND USE YOUR CAR TO CUT OFF THE
17 ESCAPE OUT OF THE FIELD?

18 A WHEN I FIRST SAW IT?

19 Q WHEN YOU FIRST SAW IT, YEAH. WHEN THE SHOTS WERE COMING
20 AT YOU AND YOU TOOK A DEFENSIVE POSTURE AND RETURNED FIRE,
21 RIGHT?

22 A YES, SIR.

23 Q ALL RIGHT. SO THAT WAS WHAT YOU HAD TO DO. YOU
24 COULDN'T USE -- YOU COULDN'T DRIVE YOUR CAR AT THAT POINT OR
25 HEAD TOWARDS HIM OR ANYTHING OF THAT NATURE?

VIC WOOTEN -- CROSS BY MR. BANNISTER

1 A NO, SIR. HE WAS IN THE FIELD AND I WAS ON THE PAVEMENT.
2 WE WERE PROBABLY 50 YARDS APART -- 40 OR 50 YARDS.

3 Q WHEN YOU SAW HIM GO DOWN KARI LANE YOU KNEW THAT THERE
4 WASN'T ANY WAY HE COULD COME BACK OUT OF THERE EXCEPT TO TURN
5 AROUND AND COME BACK UP THAT STREET; WOULD THAT BE A CORRECT
6 STATEMENT?

7 A YES, SIR.

8 Q ALL RIGHT. AND HOW WIDE A STREET ARE WE TALKING ABOUT?
9 THIS ISN'T LIKE A -- OBVIOUSLY IT'S NOT A FREEWAY. BUT IS IT
10 MORE LIKE A RESIDENTIAL ROAD?

11 A NARROW COUNTRY ROAD.

12 Q AND WERE THE WOODS UP TO THE SHOULDERS ON EITHER SIDE?

13 A YES.

14 Q AND DID IT HAVE A DOUBLE YELLOW LINE DOWN THE MIDDLE?

15 A NO, SIR. I DON'T RECALL A PAINTED LINE AT ALL.

16 Q SO YOU PULLED YOUR CAR ACROSS THE ROAD AS BEST YOU COULD
17 TO BLOCK ANY ESCAPE, CORRECT?

18 A YES, SIR.

19 Q AND THEN YOU TOOK A POSITION BEHIND THE CAR WITH YOUR
20 WEAPON?

21 A YES, SIR.

22 Q ALL RIGHT. WHAT KIND OF GUN DID YOU HAVE AT THAT POINT?

23 A GLOCK .40 CALIBER.

24 Q ALL RIGHT. WHAT'S THE DIFFERENCE BETWEEN A GLOCK .40
25 CALIBER AND A GLOCK 9 MM?

VIC WOOTEN -- CROSS BY MR. BANNISTER

1 A A .40 CALIBER IS A LARGER BULLET.

2 Q ALL RIGHT. AND DID YOU -- WAS THERE GUNFIRE FROM THE
3 UTILITY VEHICLE AT YOU?

4 A YES, SIR.

5 Q ALL RIGHT. WERE THE SHOTS BEING -- YOU SAID THE GUN WAS
6 -- WAS THE GUN STILL IN THE RIGHT HAND OR DO YOU KNOW?

7 A I DON'T KNOW.

8 Q OKAY. IN OTHER WORDS, THERE WASN'T AN ARM STICKING OUT
9 THE SIDE OF THE TRUCK PULLING A -- SHOOTING A GUN LIKE THAT,
10 WAS THERE?

11 A TO TELL YOU THE TRUTH, I DON'T KNOW. I WAS SO SCARED, I
12 DON'T KNOW.

13 Q YOU WERE AIMING AT THE DRIVER'S SIDE OF THE TRUCK,
14 CORRECT?

15 A YES, SIR.

16 Q AND YOU -- COULD YOU SEE THE SILHOUETTE OF THE PERSON
17 DRIVING THE TRUCK INSIDE THE TRUCK?

18 A YES, SIR.

19 Q ALL RIGHT. AND YOU WERE AIMING TO -- YOU WERE SHOOTING
20 TO KILL?

21 A SHOOTING TO STOP HIM FROM SHOOTING AT ME.

22 Q RIGHT.

23 A I JUST WANTED HIM TO QUIT SHOOTING.

24 Q RIGHT. AND ULTIMATELY DID ONE OF YOUR BULLETS GO
25 THROUGH THE WINDSHIELD AND HIT DEFENDANT IN THE -- JUST BELOW

VIC WOOTEN -- CROSS BY MR. BANNISTER

1 BETWEEN THE EYES?

2 A I THINK SO.

3 Q ALL RIGHT. NOW, I UNDERSTAND YOU GOT HIM PULLED OUT OF
4 THE CAR AND YOU HAD EVERYBODY HAD -- HAD KAREN MCCALL BACK ON
5 THE GROUND, AND HE'S FINALLY OUT ON THE PAVEMENT SOMEWHERE,
6 CORRECT?

7 A YES, SIR.

8 Q ALL RIGHT. AT THAT POINT COULD YOU SEE WHAT HIS FACE
9 LOOKED LIKE?

10 A YES, SIR.

11 Q AND COULD YOU DESCRIBE IT?

12 A I THOUGHT HE WAS GOING TO DIE.

13 Q AND THAT WAS BASED ON THE AMOUNT OF BLOOD?

14 A YES, SIR.

15 Q AND THE -- I GUESS THE HOLE IN HIS---

16 A I COULDN'T SEE THAT. ALL I COULD SEE WAS A LOT OF
17 BLOOD, AND THE BLOOD HAD POOLED UP IN THE ROADWAY WHERE HE
18 HAD -- ONE OF THE OFFICERS THERE WAS ALSO A PARAMEDIC, AND HE
19 WENT TO HIM. I THOUGHT HE WAS GOING TO BLEED OUT IN THE
20 ROADWAY. I THOUGHT I HAD KILLED HIM.

21 Q ALL RIGHT. DID YOU MONITOR HIS -- OBVIOUSLY YOU GOT HIM
22 TO THE HOSPITAL AT SOME POINT? SOMEBODY TOOK HIM?

23 A E.M.S. I CALLED -- AS SOON AS HE WAS OUT OF THE TRUCK,
24 I WENT BACK TO MY CAR AND CALLED FOR E.M.S. TO COME TO WHERE
25 WE WERE AT.

VIC WOOTEN -- CROSS BY MR. BANNISTER

1 Q ALL RIGHT. AND E.M.S. TOOK HIM TO THE HOSPITAL?

2 A YES, SIR.

3 Q ALL RIGHT. DID YOU SUBSEQUENTLY FIND OUT THAT HE HAD IN
4 FACT SURVIVED?

5 A YES, SIR.

6 Q AND WERE YOU RELIEVED THAT YOU HAD NOT KILLED HIM?

7 A YES, SIR.

8 MR. BANNISTER: NO FURTHER QUESTIONS.

9 MS. STROM: VERY BRIEFLY.

10 REDIRECT EXAMINATION BY MS. STROM:

11 Q OFFICER WOOTEN, I WANT TO GO OVER ONE THING THAT YOU
12 SAID IN RESPONSE TO MR. BANNISTER'S QUESTIONS, AND I MAY HAVE
13 GOTTEN IT WRONG, SO BEAR WITH ME.

14 AT ONE POINT DID YOU SAY THAT THERE WERE SHOTS BEING
15 FIRED OUT OF THE PASSENGER SIDE OF THE UTILITY TRUCK?

16 A IF I DID, I DIDN'T MEAN TO.

17 Q WHERE WERE THE SHOTS COMING FROM OUT OF THE UTILITY
18 TRUCK?

19 A THE DRIVER'S SIDE WINDOW.

20 MS. STROM: (OFF RECORD WITH CO-COUNSEL) THANK YOU. I
21 HAVE NO FURTHER QUESTIONS.

22 MR. BANNISTER: NO FURTHER QUESTIONS.

23 MS. STROM: YOUR HONOR, WE'D ASK THAT HE BE EXCUSED.

24 MR. MAULDIN: ONE MOMENT, YOUR HONOR, WITH REGARD TO
25 EXCUSING THE WITNESS.

1 (DEFENSE COUNSEL OFF RECORD).

2 MR. BANNISTER: HE'S EXCUSED, JUDGE. THANK YOU.

3 THE COURT: THANK YOU.

4 (WITNESS EXCUSED AT 4:54 P.M.)

5 THE COURT: LADIES AND GENTLEMEN, WE'RE GOING TO TAKE A
6 SHORT BREAK. IF YOU WOULD, PLEASE RETURN TO THE JURY ROOM.
7 DO NOT DISCUSS THE CASE. WE'LL GET YOU BACK OUT IN ABOUT 15
8 MINUTES. THANK YOU.

9 (JURY EXITS COURTROOM AT 4:55 P.M.)

10 THE COURT: THE JURY HAS BEEN EXCUSED. I AM, AT THIS
11 TIME, GOING TO ADDRESS THE ISSUE OF THE ADMISSIBILITY OF THE
12 TESTIMONY OF DEPUTY BLACKBURN.

13 HAVING CAREFULLY REVIEWED ALL THE MATERIAL WHICH I WILL
14 SUCCINCTLY STATE ON THE RECORD, I FIND THE TESTIMONY OF
15 DEPUTY BLACKBURN AS TO THE PURPORTED STATEMENT OF MR. WOOD TO
16 BE ADMISSIBLE.

17 NUMBER ONE, WITHOUT CONTEST THERE HAS BEEN NO
18 INTERROGATION. THE PROFFERED STATEMENT WAS VOLUNTARY AND AN
19 UNSOLICITED STATEMENT. THE STATEMENT ITSELF WAS APPROPRIATE
20 TO THE SETTING, SPECIFICALLY THE DEFENDANT WAS IN THE ROOM
21 WHEN THE DEPUTY WAS WATCHING A LOCAL NEWS CHANNEL, REFERENCE
22 WAS MADE TO KAREN MCCALL AND HER INVOLVEMENT, HIS PROMPT
23 STATEMENT WAS DIRECTLY RESPONSIVE. MY CONCERN WAS WITH THE
24 MEDICAL SITUATION, THE PROXIMITY OF THAT STATEMENT TO A
25 SURGICAL PROCEDURE, IF ONE HAD BEEN DONE, THE INVASIVE NATURE

MATTERS AND MOTIONS

1 OF ANY SURGICAL PROCEDURE, THE USE OF DRUGS AND SO ON.

2 IN REVIEWING THE TOTALITY OF THE CIRCUMSTANCES, I WANTED
3 TO PROPERLY UNDERSTAND AND EVALUATE ALL CIRCUMSTANCES THAT I
4 BELIEVE ARE NECESSARY TO EVALUATE THE VOLUNTARINESS OF THE
5 PURPORTED STATEMENT. AND HAVING CAREFULLY REVIEWED THE
6 OFFICIAL MEDICAL RECORDS, WHICH HAVE BEEN PROVIDED, WHICH
7 WOULD HAVE BEEN ORDERED IN ANY EVENT IN LIGHT OF THE
8 SOLICITOR'S POSITION AND LACK OF ACCESS TO THOSE RECORDS, I
9 WILL ADMIT THE EVIDENCE REGARDING THIS STATEMENT. THE
10 RECORDS PROVIDE AMPLE INDICIA OF RELIABILITY AS TO THE
11 DEFENDANT'S ABILITY TO MAKE A FREE AND VOLUNTARY STATEMENT.

12 I'M GOING TO TAKE JUST A COUPLE OF MINUTES AND REVIEW
13 SOME OF THE DOCUMENTS. AND THERE IS NO DOCUMENT IN THIS
14 RECORD OF THE THREE- TO FOUR-DAY STAY AT THE -- THREE-DAY
15 STAY AT THE GREENVILLE HOSPITAL THAT CONTRADICTS THE SAMPLES
16 I AM USING. I HAVE MARKED THOSE PAGES AND I AM GOING TO ASK
17 THE CLERK TO MAKE A COPY OF THOSE PAGES, WHICH I WILL
18 INTRODUCE AS A COURT'S EXHIBIT UNDER SEAL. IF THE DEFENDANT
19 WISHES TO EXCEPT TO THE RULING OR PURSUE THIS ISSUE AS TO THE
20 WEIGHT OR VOLUNTARINESS OF THE STATEMENT WITH THE JURY, I
21 WILL MAKE THE COURT'S EXHIBIT UNSEALED AND AVAILABLE TO THE
22 STATE.

23 AND AGAIN, THESE ARE SIMPLY EXAMPLES AND ILLUSTRATE HIS
24 CONDITION. IT APPEARS THAT THE DEFENDANT INDICATED HE WAS IN
25 SOME PAIN. THAT PAIN WAS LIMITED TO THE NECK AND FACE AREA.

MATTERS AND MOTIONS

1 I REVIEWED THE SURGICAL PROCEDURE NOTE OF THE SURGEON
2 OPHTHALMOLOGIST WHO, A DR. KAISER, K-A-I-S-E-R. AND PRE-
3 SURGERY, ON DECEMBER THE 8TH, THE DEFENDANT WAS FULLY
4 INFORMED OF THE RISK AND BENEFITS OF THE PROCEDURE. THE
5 DOCTOR NOTED THAT THE DEFENDANT WAS ALERT, ORIENTED PRIOR TO
6 THE SURGERY. SURGERY OCCURRED MID-AFTERNOON OF DECEMBER THE
7 8TH. THE DEFENDANT SIGNED A CONSENT AUTHORIZING THE
8 PROCEDURE. MULTIPLE NOTES AS TO THE DEFENDANT BEING ALERT
9 AND ORIENTED, AS TO HIS MILD NECK PAIN AND STIFFNESS.
10 SURGERY CONCLUDED AT 3:49 ON DECEMBER THE 8TH. HE WAS TAKEN
11 TO THE RECOVERY ROOM WHERE THE NOTE INDICATES THAT HE WAS
12 SHORTLY THEREAFTER RESPONSIVE AND ALERT TO TIME, PLACE AND
13 PERSON. THERE IS A NOTE AN HOUR AFTER THAT AS TO A FOLLOW
14 UP, AGAIN ALERT AS TO PERSON AND PLACE. THERE ARE MANY
15 NOTES, IN FACT EVERY NOTE REFLECTS THAT FINDING. THE
16 PROCEDURE ITSELF WAS NOT SUCH AN INVASIVE PROCEDURE THAT HE
17 WOULD HAVE BEEN IN RECOVERY FOR A SUBSTANTIAL PERIOD OR UNDER
18 EXTREME MEDICATION.

19 ON DECEMBER THE 9TH IT WAS PLANNED THAT HE WOULD BE
20 DISCHARGED. HE WAS INFORMED ABOUT NO STOOPING, LIFTING OF
21 HEAVY WEIGHTS, STRAINING, THINGS OF THAT NATURE. NO PAIN
22 MEDICATION WAS NEEDED ACCORDING TO A DISCHARGE SUMMARY. BUT
23 IN AN ABUNDANCE OF CAUTION THEY DID PRESCRIBE LORTAB UPON HIS
24 DISCHARGE ON DECEMBER THE 10TH.

25 THE RECORDS WILL REVEAL THAT HE WAS SCHEDULED TO BE

MATTERS AND MOTIONS

1 RELEASED ON DECEMBER THE 9TH PRIOR TO THE TIME OF THE
2 PURPORTED STATEMENT. ONE OF THE PROBLEMS WAS THE
3 AVAILABILITY OF THE DOCTOR TO FINALIZE THE DISCHARGE, AND
4 ALSO THE DEFENDANT'S DISPLEASURE WITH THE ASPEN COLLAR. HE
5 KEPT REMOVING THE ASPEN COLLAR AND WAS TOLD REPEATEDLY TO
6 WEAR IT AND THE CONSEQUENCES OF NOT WEARING THE COLLAR. THAT
7 LED THE DOCTOR TO KEEP HIM OVERNIGHT. IN FACT, THESE
8 DISCUSSIONS OCCURRED BOTH BEFORE AND AFTER OFFICER BLACKBURN
9 ARRIVED ON THE SHIFT AND EVEN AFTER THE STATEMENT MADE IN
10 RESPONSE TO THE ELEVEN O'CLOCK NEWS.

11 THERE ARE DETAILED NOTES AS TO A VISIT FROM THE NURSE
12 SHORTLY BEFORE MIDNIGHT ON DECEMBER THE 9TH, MULTIPLE NOTES
13 THROUGHOUT THE EARLY MORNING HOURS OF DECEMBER THE 10TH.
14 AGAIN, A REPETITIVE FINDING IN NURSE NOTES AND PHYSICIAN'S
15 NOTES, THERE'S NO DISTRESS, MODERATE PAIN FACE AND NECK, BUT
16 ALWAYS ORIENTED TO TIME, PERSON AND PLACE.

17 THERE IS A LIST OF POTENTIAL MEDICATIONS THAT WERE
18 AVAILABLE, SOME OF WHICH WERE ON A PRN BASIS, AND THOSE --
19 MANY OF WHICH WERE NOT EVEN USED AT ALL. THE MOST COMMON
20 MEDICATION WAS MEDICINE FOR THE EYE AREA BY THE EYE DOCTOR AS
21 WELL AS ERYTHROMYCIN AND ANTIBIOTICS FOR ANY INFECTION.

22 THERE ARE STANDARD FORMS DONE BOTH ON DECEMBER THE 9TH
23 AND 10TH. THEY ADDRESS A PATIENT'S NEUROEMOTIONAL STATE,
24 CARDIOVASCULAR STATE, RESPIRATORY STATE, ET CETERA. OF
25 SIGNIFICANCE IS THE NEUROEMOTIONAL FINDINGS THAT THE AFFECT

MATTERS AND MOTIONS

1 WAS APPROPRIATE AND CALM. HIS ORIENTATION WAS PROPER AS TO
2 PERSON, PLACE AND TIME. HIS SPEECH WAS CLEAR AND
3 APPROPRIATE. HIS RESPONSE TO STIMULUS WAS SPONTANEOUS AND
4 APPROPRIATE TO SOUND. HE WAS COOPERATIVE WITH THOSE AND
5 RESPONSIVE TO NURSES. THE ONLY DIFFICULTY WAS HE DIDN'T LIKE
6 WEARING THE COLLAR.

7 AT FOUR O'CLOCK ON DECEMBER THE 9TH AS THEY WERE
8 PREPARING TO RELEASE THE GENTLEMAN, HE WAS ALERT AND
9 ORIENTED. THEY WERE PREPARING THE DISCHARGE SUMMARY AS TO
10 HIS DIET, THINGS OF THAT NATURE, NO STRAINING OR LIFTING. IN
11 FACT, AT 10:30 THAT EVENING BEFORE THE NEWS, THE DOCTOR MET
12 WITH THE DEFENDANT, APPROVING THE DISCHARGE TO THE POLICE
13 OFFICERS AT THAT TIME AND THE NEED TO CONTINUE WITH CERTAIN
14 EYE MEDICINE. ANOTHER DOCTOR CALLED 20 MINUTES LATER TO
15 CANCEL THE DISCHARGE TILL THE NEXT DAY UNTIL HE COULD SEE HIM
16 AS A RESULT OF REPORTS THAT THE PATIENT WAS NOT WEARING HIS
17 COLLAR. IT APPEARS THE PRIMARY FACTOR FOR THE DELAY IN
18 DISCHARGE WAS THE FAILURE TO WEAR THE COLLAR AS PRESCRIBED.

19 AGAIN, THE STANDARD FORMS AS TO THE EVENTS OF DECEMBER
20 THE 10TH ARE SIMILAR AS TO HIS AFFECT, ORIENTATION AND
21 RESPONSE TO STIMULUS, ALWAYS PROPERLY ORIENTED.

22 I HAVE MARKED SOME OF THESE PAGES BUT NOT ALL. I'M
23 GOING TO ASK THAT THOSE MARKED BE COPIED AND WE'LL PROCEED IN
24 THE MANNER WHICH I HAVE INDICATED. ONCE THOSE ARE COPIED,
25 THE ORIGINALS WILL BE RETURNED TO THE -- THE OFFICIAL RECORDS

MATTERS AND MOTIONS

1 WILL BE RETURNED TO DEFENSE COUNSEL.

2 THAT'S MY RULING. WE WILL TAKE A FIVE-MINUTE BREAK AND
3 THEN BE BACK ON SCHEDULE WITH THE JURY.

4 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

5 (A RECESS WAS TAKEN FROM 5:07 TO 5:16 P.M.)

6 (COPY OF RECORDS MARKED AS COURT'S EXHIBIT NUMBER 19 AND
7 PLACED UNDER SEAL)

8 THE COURT: BRING THE JURY.

9 (JURY REENTERS COURTROOM AT 5:16 P.M.)

10 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, WE'RE
11 READY TO PROCEED. NEXT WITNESS, SIR -- MA'AM.

12 MS. STROM: THAT'S QUITE ALL RIGHT. THE STATE CALLS
13 KENNETH BROCK.

14 KENNETH BROCK, HAVING BEEN DULY
15 SWORN, TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION BY MS. STROM:

17 Q OFFICER, IF YOU WOULD, PLEASE STATE YOUR FULL NAME FOR
18 THE RECORD.

19 A IT'S KENNETH FRANKLIN BROCK.

20 Q I NEED FOR YOU TO KEEP YOUR VOICE UP SO ALL THE JURORS
21 CAN HEAR YOU.

22 A OKAY.

23 Q BY WHOM ARE YOU EMPLOYED?

24 A ANDERSON COUNTY SHERIFF'S OFFICE.

25 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH THE

KENNETH BROCK -- DIRECT BY MS. STROM

1 GREENVILLE -- WITH THE ANDERSON COUNTY SHERIFF'S OFFICE?

2 A I'M A CORPORAL IN UNIFORM PATROL DIVISION.

3 Q BACK ON DECEMBER THE 6TH OF 2000, YOU WERE SO EMPLOYED
4 WITH ANDERSON COUNTY SHERIFF'S OFFICE?

5 A YES, MA'AM.

6 Q WERE YOU ALSO A MEMBER OF WHAT HAS BEEN REFERRED TO AS
7 THE CONTAINMENT TEAM?

8 A YES, MA'AM.

9 Q COULD YOU PLEASE TELL THIS JURY WHAT IS THAT?

10 A IT'S A SWAT TEAM. THEY JUST CALL IT A DIFFERENT MORE
11 POLITICALLY CORRECT NAME.

12 Q AND AS A MEMBER OF THIS TEAM DID YOU HAVE AN OCCASION TO
13 GO TO THE AREA OF KARI LANE IN ANDERSON COUNTY?

14 A YES, MA'AM, I DID.

15 Q AND WAS THAT FOR THE PURPOSE OF TAKING INTO CUSTODY
16 CERTAIN SUSPECTS?

17 A YES, MA'AM.

18 Q WERE YOU ACTUALLY PART OF THE PURSUIT OF THE JEEP GRAND
19 CHEROKEE AND THEN SUBSEQUENTLY THE UTILITY TRUCK?

20 A NO, MA'AM.

21 Q THERE WERE OTHER OFFICERS THAT WERE INVOLVED IN THAT
22 PURSUIT, AND THEN YOU WERE CALLED TO KARI LANE AS A RESULT OF
23 THAT PURSUIT?

24 A THAT'S CORRECT.

25 Q WHEN YOU GET TO THE AREA OF KARI LANE, PLEASE TELL THIS

KENNETH BROCK -- DIRECT BY MS. STROM

1 JURY WHAT YOU OBSERVED.

2 A WE INITIALLY TURNED ONTO KARI LANE AND THE HELICOPTER
3 UNIT ADVISED US THAT THE VEHICLE THAT WAS BEING CHASED WAS AT
4 THE DEAD END AND WAS COMING BACK OUT KARI LANE. WE STOPPED
5 IN A CURVE ON KARI LANE AND TOOK UP A POSITION TO ENGAGE THE
6 SUSPECT WHEN HE CAME BACK UP THE ROAD.

7 THE AIR UNIT THEN REPORTED THAT OTHER PATROL CARS HAD
8 CROSSED THE FIELD AND STOPPED IN FRONT OF THE TRUCK SO THEY
9 COULDN'T COME UP THE ROAD TOWARD US. SO WE GOT BACK IN THE
10 VAN AND WENT DOWN TO WHERE THEY HAD THE TRUCK STOPPED.

11 ONCE WE GOT THERE WE Poured OUT OF THE VAN AND MOVED UP
12 TO A POSITION OF COVER APPROXIMATELY 15 TO 20 FEET FROM THE
13 DRIVER'S SIDE DOOR OF THE ELECTRIC TRUCK, THE PICKUP TRUCK.
14 ONCE WE WERE THERE, WE OBSERVED A WHITE MALE HAD BLOOD ON HIS
15 FACE AND WAS SITTING IN THE DRIVER'S SEAT. THERE WAS A
16 FEMALE OUT BEHIND THE TRUCK PRONE ON THE GROUND.

17 Q LYING DOWN ON THE GROUND?

18 A YES, MA'AM.

19 Q WHAT, IF ANYTHING, DID YOU DO TO GET THE WHITE MALE OUT
20 OF THE DRIVER'S SEAT?

21 A WE TOLD THE GENTLEMAN IN THE TRUCK TO RAISE HIS HANDS SO
22 WE COULD SEE THEM AND KNOW THAT IT WAS SAFE TO APPROACH. HE
23 DID NOT. I SENT TWO OF MY GUYS BACK TO THE VAN TO GET OUT
24 BODY BUNKER SHIELDS SO WE COULD APPROACH WITH SOME TYPE OF
25 COVER.

KENNETH BROCK -- DIRECT BY MS. STROM

1 IN THE MEANTIME, WHILE THEY WERE GETTING THOSE OUT OF
2 THE VAN, I DIRECTED ANOTHER OFFICER TO TURN THE SIREN OFF OF
3 A PATROL CAR THAT WE WERE TAKING COVER BEHIND. ONCE HE DID
4 THAT, WE TOLD THE SUSPECT TO GET HIS HANDS UP AGAIN AND HE
5 PUT BOTH OF HIS HANDS UP. MYSELF AND DEPUTY ELLISON AND
6 DEPUTY BRYANT APPROACHED THE SUSPECT VEHICLE. I OPENED THE
7 DRIVER'S SIDE DOOR AND OFFICER BRYANT PULLED THE SUSPECT OUT
8 ONTO THE GROUND.

9 Q DO YOU RECALL WHAT THE SUSPECT WAS WEARING WHEN YOU
10 PULLED HIM OUT OF THE VEHICLE?

11 A BLACK JEANS AND A TAN JACKET, LIKE A LIGHTWEIGHT JACKET.

12 MS. STROM: COURT'S INDULGENCE, YOUR HONOR. (OFF
13 RECORD WITH CO-COUNSEL)

14 THE COURT: YES, MA'AM.

15 Q OFFICER BROCK, AFTER YOU GET THAT PERSON OUT OF THE
16 DRIVER'S SIDE OF THE VEHICLE, I BELIEVE YOU TESTIFIED EARLIER
17 THAT HE HAD AN INJURY TO HIS FACE AND YOU SAW BLOOD ON HIS
18 FACE?

19 A YES, MA'AM.

20 Q DID ANYONE BEGIN RENDERING AID TO HIM AT THAT TIME ONCE
21 HE WAS BROUGHT OUT OF THE VEHICLE?

22 A RODNEY GILMER, WHO IS A RESERVE POLICE OFFICER WITH THE
23 ANDERSON CITY POLICE DEPARTMENT, IS ALSO A PARAMEDIC, AND HE
24 APPROACHED ME AND ASKED FOR PERMISSION TO TREAT THE SUSPECT,
25 AND I GAVE HIM PERMISSION TO TREAT THE SUSPECT.

KENNETH BROCK -- DIRECT BY MS. STROM

1 Q AND DID YOU REMAIN THERE UNTIL OFFICERS WITH YOUR
2 FORENSIC DIVISION GOT THERE, SPECIFICALLY OFFICER CREMER?

3 A YES, MA'AM.

4 MS. STROM: THANK YOU. I HAVE NO FURTHER QUESTIONS.
5 PLEASE ANSWER ANY QUESTIONS DEFENSE MAY HAVE.

6 MR. RICHEY: NO QUESTIONS.

7 THE COURT: DEPUTY BROCK, THANK YOU, SIR.

8 MS. STROM: YOUR HONOR, WE'D ASK THAT HE BE EXCUSED.

9 MR. RICHEY: NO OBJECTION.

10 (WITNESS EXCUSED AT 5:24 P.M.)

11 MS. STROM: WE CALL LIEUTENANT GEORGE CREMER.

12 GEORGE S. CREMER, III, HAVING
13 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION BY MS. STROM:

15 Q PLEASE STATE YOUR FULL NAME FOR THE RECORD.

16 A GEORGE S. CREMER, III. THE LAST NAME IS SPELLED C-R-E-
17 M-E-R.

18 Q AND BY WHOM ARE YOU EMPLOYED?

19 A I'M WITH THE ANDERSON COUNTY SHERIFF'S OFFICE.

20 Q HOW LONG HAVE YOU BEEN SO EMPLOYED?

21 A I'VE BEEN WITH THE ANDERSON COUNTY SHERIFF'S OFFICE
22 APPROXIMATELY 13 YEARS.

23 Q IN WHAT CAPACITY ARE YOU EMPLOYED WITH THE ANDERSON
24 COUNTY SHERIFF'S OFFICE?

25 A CURRENTLY, I'M A LIEUTENANT IN CHARGE OF THE CRIME SCENE

GEORGE S. CREMER, III -- DIRECT BY MS. STROM

1 FORENSIC DIVISION.

2 Q IF YOU WOULD, TELL THIS JURY WHAT -- IN LAYMAN'S TERMS,
3 WHAT ARE YOUR DUTIES? WHAT DO YOU DO THERE?

4 A WE'RE RESPOND TO CRIME SCENES. WE DO PHOTOGRAPHY. WE
5 DO THE FINGERPRINT WORK. WE DO SKETCHES OF WHAT TOOK PLACE,
6 TRY TO GATHER EVIDENCE. WE WORK WITH THE DETECTIVES AND THE
7 ROAD OFFICERS TO ASSIST THEM IN INVESTIGATING CRIMES.

8 Q ON DECEMBER THE 6TH OF 2000, DID YOU HAVE AN OCCASION TO
9 GO TO THE AREA OF 187 SOUTH ON YOUR WAY TO KARI LANE?

10 A YES, I DID.

11 Q PLEASE TELL THIS JURY WHAT YOU OBSERVED IN THAT AREA.

12 A (NO RESPONSE)

13 Q LET ME BACK UP.

14 A OKAY.

15 Q FIRST OF ALL, WERE YOU DIRECTLY INVOLVED IN THE PURSUIT
16 OF A JEEP GRAND CHEROKEE AND THEN SUBSEQUENTLY TO A BLUE
17 RIDGE UTILITY TRUCK? WERE YOU INVOLVED IN THAT PURSUIT OF
18 THOSE TWO VEHICLES?

19 A I WAS AWARE THAT THE PURSUIT WAS TAKING PLACE. I WAS ON
20 THE INTERSTATE, AND I WAS DRIVING TO ASSIST OR TO GET
21 INVOLVED. IT ENDED RIGHT PRIOR TO MY ARRIVAL.

22 Q YOU SAID YOU WERE AWARE OF THE PURSUIT. I TAKE IT THAT
23 YOU HEARD WHEN THE OCCUPANTS GOT OUT OF THE JEEP CHEROKEE AND
24 INTO A BLUE RIDGE UTILITY TRUCK?

25 A YES, I DID.

GEORGE S. CREMER, III -- DIRECT BY MS. STROM

1 Q ALL RIGHT. AND ARE YOU AWARE OF WHERE THE OCCURRED, ON
2 WHAT---

3 A IT TOOK PLACE ON HIGHWAY 187 SOUTH IN ANDERSON COUNTY.

4 Q DID YOU ULTIMATELY GO TO KARI LANE?

5 A YES, I DID. WHILE I WAS AT THE LOCATION WHERE THE
6 CHEROKEE WAS AT, E.M.S. ARRIVED AT THE SCENE. E.M.S. WAS NOT
7 SURE OF WHERE TO GO. I ALSO WAS A LITTLE CONFUSED ABOUT SOME
8 OF THE DIRECTIONS FROM THE RADIO CALLS THAT WERE GOING OUT.
9 I CALLED MY CAPTAIN. HE GAVE ME SPECIFIC INSTRUCTIONS OF
10 EXACTLY WHERE THEY WERE LOCATED. I WENT TO THAT LOCATION AND
11 E.M.S. FOLLOWED ME TO THAT LOCATION.

12 Q SO YOU MET E.M.S. BASICALLY AT THE -- WHERE THE JEEP
13 CHEROKEE WAS LEFT IN THE ROADWAY AND PROCEEDED ONTO KARI LANE
14 WITH E.M.S. FOLLOWING YOU?

15 A YES, THAT'S CORRECT.

16 Q WHEN YOU GOT TO KARI LANE, IF YOU WOULD, PLEASE TELL
17 THIS JURY WHAT YOU OBSERVED AND WHAT YOU DID.

18 A WHEN I ARRIVED AT KARI LANE, THERE WERE MULTIPLE PATROL
19 CARS THERE AND MULTIPLE OFFICERS FROM MULTIPLE JURISDICTIONS.
20 I IMMEDIATELY GOT OUT OF MY VEHICLE, AND AS A HABIT I GRABBED
21 MY CAMERA IN HOPES TO GET EVIDENCE AS IT WAS TAKING PLACE.

22 I RESPONDED OUT TO THE LOCATION WHERE THE TRUCK WAS AT
23 AND WHERE ALL OF THE OFFICERS WERE AROUND. THE SUSPECT WAS
24 LYING ON THE GROUND WITH AN ANDERSON CITY OFFICER, WHO IS
25 ALSO A PARAMEDIC, APPLYING DIRECT PRESSURE TO HIS FACE. IT

GEORGE S. CREMER, III -- DIRECT BY MS. STROM

1 WAS BLEEDING. TO THE FRONT OF THE TRUCK -- EXCUSE ME -- TO
2 THE REAR OF THE TRUCK WAS A FEMALE LYING ON THE GROUND, ALSO
3 HANDCUFFED, AND HER CLOTHES HAD SOME BLOOD ON THEM. I
4 PHOTOGRAPHED ALL OF THAT WHILE E.M.S. WAS COMING IN WITH
5 THEIR EQUIPMENT.

6 Q DO YOU RECALL WHAT THE MALE SUSPECT WAS WEARING AT THE
7 TIME?

8 A YEAH. DARK JEANS AND A TAN JACKET. AND IF I RECALL; I
9 BELIEVE IT WAS CAMOUFLAGE-TYPE SHIRT.

10 Q I'M GOING TO SHOW YOU --

11 MS. STROM: LET ME SHOW THESE TO DEFENSE COUNSEL.

12 (PAUSE)

13 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 57A FOR
14 PURPOSES OF IDENTIFICATION ONLY)

15 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 57B FOR
16 PURPOSES OF IDENTIFICATION ONLY).

17 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 57C FOR
18 PURPOSES OF IDENTIFICATION ONLY)

19 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 57D FOR
20 PURPOSES OF IDENTIFICATION ONLY)

21 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
22 EXHIBITS 57A, B, C AND D FOR IDENTIFICATION AT THIS TIME, AND
23 I ASK YOU, DO YOU RECOGNIZE THOSE PHOTOGRAPHS?

24 A (REVIEWS PHOTOGRAPHS) YES, I RECOGNIZE ALL OF THESE
25 PHOTOGRAPHS.

GEORGE S. CREMER, III -- DIRECT BY MS. STROM

1 Q DO THOSE PHOTOGRAPHS ACCURATELY REFLECT THE SCENE AS YOU
2 OBSERVED IT WHEN YOU ARRIVED?

3 A YES. YES, THEY DO.

4 MS. STROM: YOUR HONOR, AT THIS TIME, WE WOULD OFFER
5 STATE'S EXHIBITS INTO EVIDENCE. IT IS 57A, B, C AND D.

6 MR. RICHEY: WITHOUT OBJECTION.

7 THE COURT: WITHOUT OBJECTION.

8 (STATE'S EXHIBIT NUMBERS 57A, 57B, 57C AND 57D,
9 PHOTOGRAPHS, MOVED INTO EVIDENCE)

10 MS. STROM: COURT'S INDULGENCE.

11 Q FIRST I'LL SHOW YOU WHAT'S BEEN MARKED AS STATE'S
12 EXHIBIT 57D.

13 A STATE'S EXHIBIT 57D IS A PHOTOGRAPH OF THE FRONT OF THE
14 BLUE RIDGE UTILITY TRUCK FROM THE SCENE.

15 Q AND STATE'S EXHIBIT 57C?

16 A EXHIBIT 57C IS THE REAR OF THAT SAME TRUCK. AND TO THE
17 LEFT BOTTOM OF THAT IS A PHOTOGRAPH OF THE ANDERSON CITY
18 OFFICER AND THE SUSPECT LYING ON THE GROUND.

19 Q DID YOU HAVE AN OCCASION TO LOOK AT THE INTERIOR OF THE
20 UTILITY TRUCK?

21 A YES, I DID.

22 Q WHAT DID YOU SEE THERE?

23 A AMONGST GLASS AND BLOOD, THERE WAS A PISTOL ON THE
24 DRIVER FLOORBOARD.

25 Q ON THE DRIVER'S SIDE FLOORBOARD?

1 A YES, MA'AM.

2 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 57B.

3 A EXHIBIT 57B SHOWS THAT PISTOL THAT I JUST DESCRIBED ON
4 THE DRIVER'S SIDE FLOORBOARD OF THAT SAME TRUCK.

5 Q AND I SHOW YOU 57A. IS THAT JUST A CLOSER SHOT OF THAT
6 SAME PISTOL?

7 A YES, IT IS.

8 Q THAT IS HOW YOU SAW THAT PISTOL WHEN YOU ARRIVED THERE
9 AT KARI LANE?

10 A YES, MA'AM.

11 Q DID YOU RECOVER THAT PISTOL?

12 A NO, MA'AM.

13 Q YOU DID NOT COLLECT IT?

14 A NO, MA'AM. AS IS STANDARD PROCEDURE, WHEN WE'RE WORKING
15 AN OFFICER RELATED SHOOTING, STATE LAW ENFORCEMENT DIVISION
16 IS CALLED. ONE OF OUR PEOPLE WILL STAND BY. WE'LL TAKE SOME
17 PICTURES AND BASICALLY JUST STAY WITH THE SCENE FOR INTEGRITY
18 UNTIL S.L.E.D. COMES IN AS AN OUTSIDE AGENCY TO WORK THE
19 SHOOTING.

20 Q AND DID YOU MAINTAIN THE INTEGRITY OF THAT SCENE UNTIL
21 THE S.L.E.D. AGENT -- I BELIEVE IT WAS BRETT BAKER?

22 A BRETT BAKER, YES, MA'AM.

23 Q -- ARRIVED?

24 A HE ARRIVED ON THE SCENE LATER ON IN THE EVENING. THE
25 SCENE WAS TURNED OVER TO HIM.

GEORGE S. CREMER, III -- DIRECT BY MS. STROM

1 Q DO YOU RECALL THAT THE VEHICLE -- THE UTILITY TRUCK WAS
2 TOWED BY MR. BRAD MCGUIRE?

3 A YES.

4 Q DID YOU REMAIN THERE AND KEEP INTEGRITY OF THE SCENE
5 UNTIL THE VEHICLE WAS TOWED?

6 A YES, I DID.

7 Q THE CLOTHES THAT WERE ON THE DEFENDANT AS WE SAW IN THE
8 PHOTOGRAPH, WHAT HAPPENED WITH THOSE CLOTHES -- WITH THAT
9 CLOTHING?

10 A E.M.S. AS A STANDARD PROCEDURE WHEN WORKING A SCENE LIKE
11 THAT, THEY CUT THE CLOTHES OFF THE VICTIM TO LOOK FOR
12 INJURIES BEFORE THEY TREAT THE VICTIM. THOSE CLOTHES WERE
13 CUT OFF OF HIM AND LEFT AT THE SCENE. SUBSEQUENTLY, THE
14 FEMALE VICTIM THAT WAS THERE, HER JACKET, I RECALL, WAS CUT
15 OFF AND LEFT AT THE SCENE ALSO.

16 Q AND DID YOU MAINTAIN CONTROL OF THAT SCENE AND THEREFORE
17 CUSTODY OF THOSE CLOTHES UNTIL BRETT BAKER WITH S.L.E.D.
18 ARRIVED?

19 A YES, MA'AM, I DID.

20 Q AND DID HE THEN COLLECT THOSE ITEMS?

21 A YES, HE DID.

22 Q (OFF RECORD WITH CO-COUNSEL) OFFICER -- LIEUTENANT
23 CREMER, I JUST WANT TO MAKE SURE I'M CLEAR. NORMALLY IN
24 CRIME SITUATIONS YOU WOULD ACTUALLY PROCESS THE CRIME SCENE?

25 A ABSOLUTELY.

GEORGE S. CREMER, III -- DIRECT BY MS. STROM

1 Q BUT BECAUSE THIS WAS A SITUATION WHERE OFFICERS RETURNED
2 FIRE ANOTHER AGENCY WAS CALLED IN?

3 A THAT'S CORRECT. THAT IS STANDARD PROCEDURE WITH
4 ANDERSON COUNTY SHERIFF'S OFFICE.

5 Q THAT IS Y'ALL'S OPERATING PROCEDURE IF AN OFFICER
6 RETURNS FIRE, THEN YOU CALL S.L.E.D.?

7 A IF ONE OF OUR OFFICERS IS INVOLVED WITH THE SHOOTING BY
8 SHOOTING, THEN WE ALWAYS ASK S.L.E.D. TO COME IN AS AN
9 OUTSIDE AGENCY TO INVESTIGATE.

10 Q SO WHEN YOU CALLED IT AN OFFICER-INVOLVED SHOOTING YOU
11 WEREN'T REFERRING BACK TO WHAT HAD HAPPENED IN GREENVILLE?

12 A NO, MA'AM.

13 MS. STROM: OKAY. THAT'S ALL THE QUESTIONS I HAVE.
14 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

15 MR. RICHEY: YOUR HONOR, WE HAVE NO QUESTIONS, BUT WE'D
16 LIKE TO KEEP HIM UNDER SUBPOENA AT THIS TIME IF WE HAVE TO
17 RECALL HIM.

18 THE COURT: ALL RIGHT. THANK YOU, SIR.

19 (WITNESS STEPS DOWN AT 5:35 P.M.)

20 MS. STROM: I WAS ABOUT TO SAY, YOUR HONOR, WE HAVE HIS
21 NUMBERS, ALL OF HIS NUMBERS IF WE NEED HIM.

22 THE COURT: THANK YOU. NEXT WITNESS.

23 MS. STROM: THE STATE CALLS TOMMY CLAMP.

24 JOHN THOMAS CLAMP, JR., HAVING
25 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

TOMMY CLAMP -- DIRECT BY MS. STROM

1 DIRECT EXAMINATION BY MS. STROM:

2 Q OFFICER CLAMP, I'M GOING TO ASK THAT YOU KEEP YOUR VOICE
3 UP AND -- SO ALL THESE JURORS CAN HEAR YOU. BY WHOM ARE YOU
4 EMPLOYED?

5 A ANDERSON COUNTY SHERIFF'S OFFICE.

6 Q IN WHAT CAPACITY ARE YOU EMPLOYED WITH GREENVILLE -- THE
7 ANDERSON COUNTY SHERIFF'S OFFICE?

8 A I WORK IN THE CRIME SCENE DIVISION AS A CRIME SCENE
9 TECHNICIAN.

10 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE ANDERSON COUNTY
11 SHERIFF'S OFFICE?

12 A I STARTED DECEMBER THE 25TH OF '91.

13 Q HOW LONG HAVE YOU BEEN WITH THE CRIME SCENE -- AS A
14 CRIME SCENE TECHNICIAN?

15 A APPROXIMATELY SIX AND A HALF YEARS. I STARTED IN JULY
16 OF 1995.

17 Q HAVE YOU HAD PARTICULAR TRAINING WITH REGARDS TO
18 OBTAINING SAMPLES OF GUNSHOT RESIDUE OR WHAT IS COMMONLY
19 KNOWN AS A GUNSHOT RESIDUE KIT?

20 A YES, MA'AM. IN THOSE SIX AND A HALF YEARS I'VE DONE AT
21 LEAST A HUNDRED GUNSHOT RESIDUE KITS.

22 Q DID YOU HAVE AN OCCASION ON DECEMBER THE 6TH OF 2000 TO
23 GO TO THE AREA OF KARI LANE IN ANDERSON COUNTY?

24 A YES, MA'AM, I DID.

25 Q AND FOR WHAT PURPOSE DID YOU GO?

TOMMY CLAMP -- DIRECT BY MS. STROM..

1 A WE WERE THERE TO HELP TO PRESERVE THE SCENE.

2 Q YOU SAID WE. WERE YOU THERE ALONG WITH LIEUTENANT
3 CREMER?

4 A YES, MA'AM. HE AND I WERE IN THE SAME PATROL UNIT.

5 Q AFTER OFFICERS HAD GOTTEN THE DEFENDANT OUT OF THE
6 UTILITY VEHICLE, I BELIEVE THERE HAS BEEN TESTIMONY THAT AID
7 WAS RENDERED TO HIM AND E.M.S. ARRIVED; IS THAT CORRECT?

8 A YES, MA'AM. E.M.S. AND -- LIEUTENANT CREMER AND I AND
9 E.M.S. ARRIVED ALMOST SIMULTANEOUSLY. THEY WERE BEHIND US.
10 WE WERE -- FOR LACK OF A BETTER TERM, WE LED THEM TO THE
11 FINAL SCENE.

12 Q YOU LED THEM INTO KARI LANE?

13 A YES, MA'AM.

14 Q AND THE AREA WHERE THE UTILITY TRUCK WAS?

15 A YES, MA'AM.

16 Q DID YOU HAVE AN OCCASION TO RIDE IN THE AMBULANCE WITH
17 THE DEFENDANT TO THE HOSPITAL?

18 A YES, MA'AM, I DID.

19 Q AND WHILE YOU WERE RIDING IN THE AMBULANCE WITH THE
20 DEFENDANT TO THE HOSPITAL WHAT, IF ANY, TESTS DID YOU PERFORM
21 ON THAT DEFENDANT?

22 A I DID A GUNSHOT RESIDUE KIT ON HIS HANDS.

23 Q TELL US A LITTLE BIT ABOUT WHAT IS A GUNSHOT RESIDUE
24 KIT. WHAT DO YOU DO?

25 A THE WAY THAT WE TRAIN IN THE PARTICULAR KIT THAT WE USE

TOMMY CLAMP -- DIRECT BY MS. STROM

1 AT OUR SHERIFF'S OFFICE, IT COMES PREPACKAGED IN A SEALED
2 ENVELOPE. FOR LACK OF THE BETTER TERM, IT'S A TWO-PART TEST.
3 THERE'S A VIAL, STERILE VIAL. YOU TAKE THE TOP OFF. I TRY
4 TO EXPLAIN IT AS IT'S A STICKY PAD SWAB AND EACH HAND IS DONE
5 -- YOU DO TWO VIALS ON EACH HAND. A STICKY PAD ON THIS PART
6 (INDICATING), RESEAL IT, SEPARATE STICKY PAD TO THE BACKSIDE
7 AND THE SAME WAY WITH THE OTHER HAND.

8 THE SECOND PART OF THE TEST IS THE -- PUT A COUPLE OF
9 DROPS OF THE CHEMICAL THAT'S PROVIDED IN THE PACKET, SWAB,
10 AGAIN, EACH PART OF EACH HAND SEPARATELY, AND THEN CLOSE
11 THOSE AND BACK INTO THE STERILE CONTAINER.

12 Q WHEN YOU WERE FIRST DESCRIBING SOMETHING OF A STICKY
13 PAD, IS THAT SOMETIMES REFERRED TO AS A PARTICLE LIFT?

14 A YES, MA'AM.

15 Q SO YOU DO A PARTICLE LIFT ON THE PALM AND THE BACK OF
16 THE LEFT HAND AND THE PALM AND BACK OF THE RIGHT HAND?

17 A THAT'S CORRECT.

18 Q THEN YOU -- I BELIEVE YOU SAID YOU TAKE SWABBINGS OFF
19 THE PALM AND BACK OF THE LEFT AND THE PALM AND THE BACK OF
20 THE RIGHT?

21 A THAT'S CORRECT. I BELIEVE THEY CALL THAT THE ATOMIC
22 ABSORPTION PORTION OF IT.

23 Q AND DID YOU SO FOLLOW THAT PROCEDURE IN OBTAINING THE
24 SAMPLES FROM THE DEFENDANT IN THIS CASE?

25 A YES, MA'AM, I DID.

TOMMY CLAMP -- DIRECT BY MS. STROM

1 Q AND THE DEFENDANT SEATED THERE AT COUNSEL TABLE, IS THAT
2 THE DEFENDANT FROM WHOM YOU TOOK THESE SAMPLES?

3 A YES, MA'AM.

4 (MS. STROM AND MR. MAULDIN OFF RECORD)

5 MR. MAULDIN: NO OBJECTION TO THIS, YOUR HONOR.

6 MS. STROM: STATE'S EXHIBIT NUMBER 43 INTO EVIDENCE.

7 THE COURT: WITHOUT OBJECTION.

8 (STATE'S EXHIBIT NUMBER 43, GUNSHOT RESIDUE AND ATOMIC
9 ABSORPTION KITS, MOVED INTO EVIDENCE)

10 Q OFFICER, I ASK THAT YOU LOOK AT STATE'S EXHIBIT NUMBER
11 43, WHICH IS NOW IN EVIDENCE.

12 A (COMPLIES) YES, MA'AM.

13 Q THAT IS THE SAMPLE YOU TOOK FROM THIS DEFENDANT?

14 A THAT'S CORRECT. IT IS.

15 Q AND THAT WOULD HAVE BEEN DONE ON DECEMBER THE 6TH OF
16 2000?

17 A YES, MA'AM.

18 Q DID YOU LATER THAT SAME DAY TRANSFER THAT ITEM, STATE'S
19 EXHIBIT NUMBER 43, TO BRETT BAKER OF S.L.E.D.?

20 A YES, MA'AM, I DID.

21 Q DID IT REMAIN IN YOUR CUSTODY AND CONTROL AT ALL TIMES
22 UNTIL YOU SO DELIVERED THAT ITEM TO AGENT BRETT BAKER?

23 A YES, MA'AM.

24 MS. STROM: THANK YOU. I HAVE NO FURTHER QUESTIONS.
25 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

TOMMY CLAMP -- DIRECT BY MS. STROM

1 MR. RICHEY: NO QUESTIONS, YOUR HONOR.

2 THE COURT: ALL RIGHT. INVESTIGATOR CLAMP, THANK YOU,
3 SIR.

4 MS. STROM: WE'D ASK THAT HE BE EXCUSED.

5 THE COURT: ANY OBJECTION?

6 MR. RICHEY: WITHOUT OBJECTION.

7 (WITNESS EXCUSED AT 5:41 P.M.)

8 THE COURT: NEXT WITNESS.

9 MS. STROM: THE STATE CALLS STEVE REEVES.

10 STEVEN J. REEVES, HAVING BEEN
11 DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION BY MS. STROM:

13 Q PLEASE STATE YOUR FULL NAME.

14 A STEVEN J. REEVES.

15 Q I NEED FOR YOU TO KEEP YOUR VOICE UP LIKE THAT SO
16 EVERYONE CAN HEAR YOU.

17 BY WHOM ARE YOU EMPLOYED?

18 A THE ANDERSON COUNTY SHERIFF'S OFFICE.

19 Q AND HOW LONG HAVE YOU BEEN WITH THE ANDERSON COUNTY
20 SHERIFF'S OFFICE?

21 A IT WILL BE SEVEN YEARS THIS SUMMER.

22 Q I WANT TO DIRECT YOUR ATTENTION TO DECEMBER THE 6TH OF
23 2000. DO YOU RECALL THAT DAY?

24 A YES, MA'AM.

25 Q DID YOU HAVE AN OCCASION TO BE INVOLVED IN THE ACTUAL

STEVEN J. REEVES -- DIRECT BY MS. STROM

1 PURSUIT -- WELL, LET ME ASK YOU THIS. WERE YOU AWARE OF THE
2 PURSUIT OF THE JEEP CHEROKEE ON THAT DAY AND THEN ULTIMATELY
3 THE BLUE RIDGE UTILITY TRUCK?

4 A YES, MA'AM, I WAS.

5 Q WERE YOU ACTUALLY INVOLVED IN THE PURSUIT OR DID YOU
6 COME UPON IT LATER?

7 A I CAME UPON IT LATER.

8 Q WHEN YOU CAME UPON THE AREA OF HIGHWAY 187 SOUTH DID YOU
9 OBSERVE THE BLUE JEEP GRAND CHEROKEE THERE IN THAT AREA?

10 A YES, MA'AM, I DID.

11 Q AND WHERE WAS THAT?

12 A I CAN'T REMEMBER THE EXACT BLOCK, BUT IT WAS 187 SOUTH
13 HEADING IN THE NORTH DIRECTION IN THE WRONG LANE OF TRAFFIC.

14 Q DID YOU STOP AT THAT LOCATION?

15 A YES, I DID.

16 Q DID YOU CONDUCT ANY PROCESSING OF THAT LOCATION OR DID
17 YOU SIMPLY SECURE IT UNTIL S.L.E.D. AGENTS COULD ARRIVE?

18 A SECURED IT.

19 Q AND DID YOU REMAIN WITH THE JEEP CHEROKEE UNTIL S.L.E.D.
20 AGENT, I BELIEVE IT WAS, JEFF PARROTT OF S.L.E.D. ARRIVED?

21 A YES, MA'AM.

22 Q DID YOU MAINTAIN THE CUSTODY AND CONTROL OF THE JEEP
23 CHEROKEE UNTIL SUCH TIME?

24 A YES, MA'AM.

25 Q AFTER AGENT PARROTT ARRIVED THERE ON THE SCENE DID --

STEVEN J. REEVES -- DIRECT BY MS. STROM

1 WAS IT LATER Y'ALL ARRANGED FOR TOWING OF THAT VEHICLE TO
2 ANOTHER LOCATION?

3 A YES, MA'AM, WE DID.

4 Q AND DID YOU MAINTAIN THE CUSTODY OF THAT JEEP VEHICLE
5 UNTIL IT WAS SO TOWED?

6 A YES, MA'AM, WE DID.

7 Q DID YOU FOLLOW THE JEEP AS IT WAS BEING TOWED?

8 A YES, MA'AM, WE DID.

9 Q AND THAT WAS TOWED TO THE ANDERSON COUNTY IMPOUND LOT?

10 A YES, MA'AM.

11 Q DID YOU REMAIN THERE UNTIL ALL PROCESSING WAS COMPLETE?

12 A YES, WE DID.

13 MS. STROM: THANK YOU. PLEASE ANSWER ANY QUESTIONS THE
14 DEFENSE MAY HAVE.

15 MR. RICHEY: NO QUESTIONS.

16 THE COURT: ALL RIGHT. INVESTIGATOR REEVES, THANK YOU,
17 SIR. APPRECIATE IT.

18 (WITNESS STEPS DOWN AT 5:45 P.M.)

19 MS. STROM: THE STATE CALLS BRAD MCGUIRE.

20 NEAL BRADLEY MCGUIRE, HAVING
21 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MS. STROM:

23 Q MR. MCGUIRE, PLEASE STATE YOUR FULL NAME.

24 A NEAL BRADLEY MCGUIRE.

25 Q AND BY WHOM ARE YOU EMPLOYED?

NEAL BRAD MCGUIRE -- DIRECT BY MS. STROM

1 A ANDERSON COUNTY SHERIFF'S OFFICE.

2 Q HOW LONG HAVE YOU BEEN WITH THE ANDERSON COUNTY
3 SHERIFF'S OFFICE?

4 A APPROXIMATELY NINE YEARS.

5 Q I WANT TO DIRECT YOUR ATTENTION TO DECEMBER 6TH OF 2000.
6 DO YOU RECALL THAT DAY?

7 A YES, MA'AM.

8 Q DID YOU HAVE AN OCCASION TO ARRANGE AND ACTUALLY TOW A
9 CERTAIN VEHICLE FROM 187 SOUTH AND KARI LANE?

10 A YES, MA'AM, I DID.

11 Q I WANT TO FIRST GO TO THE AREA OF KARI LANE. LIEUTENANT
12 CREMER HAS ALREADY TESTIFIED THAT HE WAS THERE AT THE SCENE.
13 DO YOU RECALL SEEING LIEUTENANT CREMER THERE WHEN YOU
14 ARRIVED?

15 A YES, MA'AM.

16 Q AND DID YOU CONDUCT THE ARRANGEMENTS FOR TOWING OF THE
17 VEHICLE, THE BLUE RIDGE UTILITY TRUCK?

18 A YES, MA'AM, I DID.

19 Q WHAT EFFORTS DID YOU TAKE TO SECURE THAT? SECURE THE
20 UTILITY TRUCK?

21 A I ALSO OWN AN AUTOMOTIVE AND TOWING BUSINESS IN
22 ANDERSON, AND I CALLED A TOWING COMPANY WHICH I OWN TO COME
23 OUT THERE. AND I WAS -- I STAYED WITH THE VEHICLE DURING THE
24 WHOLE PROCESS, ONCE THE INVESTIGATION WAS CLEARED THERE, TO
25 CARRY IT TO THE IMPOUND YARD AT THE ANDERSON COUNTY IMPOUND

NEAL BRAD MCGUIRE -- DIRECT BY MS. STROM

1 YARD. I STAYED BEHIND THE VEHICLE THE WHOLE TIME, THEN I
2 SECURED IT IN THE IMPOUND OFFICE AT THAT TIME. I CALLED MARK
3 ORR TO STAY WITH THAT VEHICLE AND LET NO ONE AROUND IT. AT
4 THAT TIME I WENT BACK WITH THE DRIVER OF THE TOW TRUCK, WHICH
5 I OWNED, IN THE VEHICLE TO 187 TO TOW THE SECOND VEHICLE.

6 Q AND THE SECOND VEHICLE WAS THE BLUE JEEP CHEROKEE?

7 A YES, MA'AM.

8 Q YOU TOWED THAT VEHICLE BACK TO THE SAME IMPOUND LOT?

9 A YES, MA'AM.

10 Q AND WHEN YOU ARRIVED BACK AT THE IMPOUND LOT WAS THIS
11 MARK ORR STILL THERE?

12 A YES, MA'AM.

13 MS. STROM: COURT'S INDULGENCE. (OFF RECORD WITH CO-
14 COUNSEL) THOSE ARE THE QUESTIONS I HAVE. PLEASE ANSWER ANY
15 QUESTIONS THE DEFENSE MAY HAVE.

16 MR. RICHEY: NO QUESTIONS.

17 THE COURT: ALL RIGHT. INVESTIGATOR MCGUIRE, THANK
18 YOU, SIR.

19 (WITNESS STEPS DOWN AT 5:47 P.M.)

20 MS. STROM: THE STATE CALLS MARK ORR.

21 JOHN MARK ORR, HAVING BEEN DULY
22 SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MS. STROM:

24 Q MR. ORR, IF YOU WOULD, PLEASE STATE YOUR FULL NAME AGAIN
25 FOR THE RECORD.

JOHN MARK ORR -- DIRECT BY MS. STROM

1 A JOHN MARK ORR.

2 Q AND BY WHOM ARE YOU EMPLOYED?

3 A I WORK PART-TIME FOR THE ANDERSON COUNTY SHERIFF'S
4 DEPARTMENT.

5 Q I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER 6TH OF
6 2000.. DID YOU RECEIVE A CALL TO RESPOND TO THE IMPOUND LOT
7 REGARDING SOME VEHICLES THAT WERE BEING TOWED?

8 A YES, MA'AM, I DID.

9 Q AND DID YOU SO GO TO THE IMPOUND LOT?

10 A I WENT TO THE IMPOUND LOT.

11 Q WERE YOU PRESENT WHEN A BLUE RIDGE UTILITY TRUCK WAS
12 TOWED BY BRAD MCGUIRE TO THAT IMPOUND LOT?

13 A I WAS.

14 Q AND DID YOU REMAIN -- I TAKE IT THEY UNLOADED IT THERE
15 AT THE IMPOUND LOT?

16 A THEY DID.

17 Q DID YOU REMAIN WITH THAT VEHICLE UNTIL SUCH TIME AS THEY
18 RETURNED WITH AN ADDITIONAL VEHICLE, THAT BEING A BLUE JEEP
19 CHEROKEE?

20 A YES, MA'AM.

21 Q WHEN THE UTILITY TRUCK WAS IN YOUR POSSESSION DID YOU
22 ADD ANYTHING TO IT OR TAKE ANYTHING AWAY FROM IT?

23 A NO, MA'AM.

24 Q DID YOU ALLOW ANYONE TO DISTURB IT IN ANY WAY?

25 A NO, MA'AM.

JOHN MARK ORR -- DIRECT BY MS. STROM

1 Q THEY RETURNED -- MR. MCGUIRE RETURNED WITH THE BLUE JEEP
2 CHEROKEE; IS THAT CORRECT?

3 A MA'AM, I BELIEVE IT WAS A WAGONEER.

4 Q I'M SORRY. A WAGONEER?

5 A YES, MA'AM.

6 Q AND WHEN HE RETURNED WITH THAT VEHICLE OFFICER STEVE
7 REEVES RETURNED AT THAT TIME AS WELL?

8 A HE CAME BACK, YES, MA'AM.

9 Q DID YOU STAY FOR THE ENTIRE PROCESSING OR DID YOU LEAVE
10 THAT TO THE OTHERS?

11 A NO, MA'AM, I DID NOT. I HELPED STAY AND SET UP SOME
12 LIGHTS FOR THE OTHER AGENTS TO COME, AND I LEFT IT WITH MR.
13 REEVES.

14 Q AT ANY TIME WHEN THE VEHICLES WERE IN YOUR CUSTODY DID
15 YOU ALLOW ANYONE TO DISTURB THEM IN ANY WAY?

16 A NO, MA'AM.

17 MS. STROM: THANK YOU. PLEASE ANSWER ANY QUESTIONS THE
18 DEFENSE MAY HAVE.

19 MR. RICHEY: NO QUESTIONS OF THIS WITNESS.

20 THE COURT: ALL RIGHT. MR. ORR, THANK YOU, SIR. WE
21 APPRECIATE IT.

22 MS. STROM: WE'D ASK THAT HE BE EXCUSED.

23 MR. RICHEY: WITHOUT OBJECTION.

24 (WITNESS EXCUSED AT 5:50 P.M.)

25 THE COURT: NEXT WITNESS.

JOHN MARK ORR -- DIRECT BY MS. STROM

1 MS. STROM: THE STATE CALLS C.P. BLACKBURN.

2 MR. MAULDIN: WHILE THIS WITNESS IS APPROACHING, COULD
3 I ASK FOR A SIDEBAR, YOUR HONOR?

4 THE COURT: CERTAINLY. YES, SIR.

5 (BENCH CONFERENCE OFF RECORD FROM 5:50 TO 5:52 P.M.)

6 THE COURT: DAWN, WILL YOU TURN AROUND AND COME UP
7 HERE, PLEASE. BRING YOUR MASK.

8 (THE FOLLOWING TAKES PLACE AT THE BENCH OUTSIDE OF
9 EARSHOT OF THE JURY AND THE COURTROOM)

10 THE COURT: THE DEFENDANT CONTINUES TO OBJECT TO THE
11 ADMISSIBILITY OF THE OFFICER'S STATEMENT AS TO THE PURPORTED
12 STATEMENT MADE BY DEFENDANT IN THE HOSPITAL. THE DEFENSE
13 COUNSEL WANTED THAT OBJECTION NOTED ON THE RECORD AT THIS
14 TIME AND IT WILL CONTINUE THROUGHOUT THIS OFFICER'S
15 TESTIMONY.

16 (DISCUSSION AT BENCH ENDS)

17 C.P. BLACKBURN, HAVING BEEN
18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. STROM:

20 Q OFFICER, PLEASE STATE YOUR FULL NAME FOR THE RECORD:

21 A CHARLES PURCELL BLACKBURN.

22 Q BY WHOM ARE YOU EMPLOYED?

23 A WITH THE GREENVILLE COUNTY SHERIFF'S OFFICE.

24 Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE GREENVILLE
25 COUNTY SHERIFF'S OFFICE?

C.P. BLACKBURN -- DIRECT BY MS. STROM

1 A SINCE MAY OF 1999.

2 Q I'D LIKE TO DIRECT YOUR ATTENTION BACK TO DECEMBER 9TH
3 OF 2000. WHAT WERE YOUR DUTIES WITH REGARDS TO THE
4 GREENVILLE COUNTY SHERIFF'S DEPARTMENT AT THAT TIME?

5 A ON DECEMBER 9TH OF 2000, I RESPONDED TO GREENVILLE
6 MEMORIAL HOSPITAL, ROOM 214. MY DUTY WAS TO GUARD THE
7 DEFENDANT WHO WAS IN ROOM 214.

8 Q AND THIS DEFENDANT WAS IN ROOM 214?

9 A YES, MA'AM.

10 Q WHAT TIME DID YOU ARRIVE?

11 A SHORTLY AFTER 7:00 P.M.

12 Q AND HOW LONG WERE YOU SCHEDULED TO BE THERE?

13 A SIX HOURS.

14 Q WOULD YOU PLEASE DESCRIBE FOR THIS JURY WHAT OCCURRED
15 DURING THAT TIME FRAME? WHERE WERE YOU? WHERE WAS THE
16 DEFENDANT?

17 A I WAS SEATED IN THE DOORWAY WHERE I COULD LOOK DOWN BOTH
18 TO MY LEFT AND RIGHT DOWN THE HALLWAY. IF I WAS LOOKING IN
19 THE ROOM, THE DEFENDANT'S BED WAS IN FRONT OF ME. IF YOU GO
20 TOWARDS HIS LEFT, HE WAS LOOKING AT ME. TOWARDS HIS RIGHT
21 WAS THE WINDOW. IN THE FAR CORNER WAS A TELEVISION SET.

22 Q AT ANY TIME WHILE YOU WERE THERE DID THE DEFENDANT MAKE
23 A STATEMENT IN YOUR PRESENCE?

24 A YES, MA'AM, HE DID.

25 Q PLEASE TELL US ABOUT THAT. WHAT HAPPENED?

C.P. BLACKBURN -- DIRECT BY MS. STROM

1 **A** SHORTLY AFTER ELEVEN O'CLOCK I HAD THE NEWS ON THE T.V.
2 I WAS TURNING BACK AND FORTH BETWEEN CHANNEL 4 AND CHANNEL 7.
3 ONE OF THE REPORTERS ON ONE STATION MADE A COMMENT THAT THE
4 AUTHORITIES WERE LOOKING TO CHARGING THE DEFENDANT'S FIANCEE,
5 I BELIEVE IT WAS, MCCALL, WITH ACCESSORY, SOME TYPE OF AN
6 ACCESSORY CHARGE. AND AS SOON AS THE REPORTER SAID THAT, THE
7 DEFENDANT TURNED HIS HEAD TO THE LEFT, LOOKED AT ME AND SAID,
8 "SHE WASN'T EVEN THERE WHEN IT HAPPENED." HE TURNED HIS HEAD
9 BACK TO THE RIGHT AND, WHAT I THOUGHT, HE WENT BACK TO SLEEP.

10 **Q** PRIOR TO HIM MAKING THAT STATEMENT DID YOU ASK HIM ANY
11 QUESTIONS OR HAVE ANY CONVERSATION WITH HIM?

12 **A** NO, MA'AM.

13 **Q** DID YOU HAVE ANY CONVERSATIONS WITH HIM AFTER THAT?

14 **A** HE MADE ONE MORE STATEMENT TO ME AT APPROXIMATELY 20
15 MINUTES AFTER THAT STATEMENT.

16 **Q** WAS IT ANY WAY RELATED TO WHAT HAD HAPPENED WITH TROOPER
17 NICHOLSON?

18 **A** YES.

19 **MS. STROM:** COURT'S INDULGENCE, YOUR HONOR. YOUR
20 HONOR, IF WE MAY TAKE A SIDEBAR VERY QUICKLY.

21 **THE COURT:** LADIES AND GENTLEMEN, I'M GOING TO ASK
22 YOU -- THESE THINGS HAPPEN. I'M GOING TO ASK YOU IF YOU
23 WOULD, PLEASE RETIRE TO THE JURY ROOM. I'LL GET YOU BACK OUT
24 HERE AS QUICKLY AS I CAN. THANK YOU.

25 (JURY EXITS COURTROOM AT 5:55 P.M.)

MATTERS AND MOTIONS

1 **THE COURT:** THE JURY HAS BEEN EXCUSED. PLEASE PROCEED.

2 **MS. STROM:** YES, SIR, YOUR HONOR. JUST SO THE COURT
3 WAS AWARE, I WANTED TO DO THIS FOR THE PROTECTION OF THE
4 RECORD BECAUSE I WAS NOT AWARE OF WHAT THE RESPONSE WOULD BE.

5 **PROFFER BY MS. STROM:**

6 **Q** HE MADE ANOTHER STATEMENT TO YOU?

7 **A** YES, MA'AM.

8 **Q** WHAT DID HE SAY?

9 **A** APPROXIMATELY 20 MINUTES AFTER THE FIRST STATEMENT HE
10 TURNED TO ME AGAIN AND HE ASKED ME, HE SAID -- HE SAYS, "HAVE
11 YOU EVER BEEN SHOT?" I SAID, "NO." HE REPLIED WITH, IT'S
12 THE COOLEST FEELING IN THE WORLD." THAT WAS THE END OF THE
13 CONVERSATION, HE SAID, "IT'S LIKE BEING TURNED OFF LIKE A
14 LIGHT."

15 **Q** SO HE ASKED YOU HAD YOU EVER BEEN SHOT?

16 **A** YES, MA'AM.

17 **Q** HE DID NOT REFER BACK TO ANYTHING THAT HAD HAPPENED WITH
18 TROOPER NICHOLSON?

19 **A** NO. I'M SORRY.

20 **MS. STROM:** COURT'S INDULGENCE JUST ONE MOMENT. (OFF
21 RECORD WITH CO-COUNSEL) THAT'S ALL I HAVE OF THIS WITNESS,
22 YOUR HONOR.

23 **THE COURT:** IF YOU WANT TO QUESTION ABOUT THE SECOND
24 STATEMENT, GO AHEAD. THEN WE'LL ADDRESS THE ADMISSIBILITY OF
25 IT.

MATTERS AND MOTIONS

1 **MR. MAULDIN:** I'M GOING TO ASK IF THE STATE INTENDS TO
2 SEEK THE SECOND STATEMENT FIRST.

3 **MS. STROM:** YES, SIR, SIR, WE WOULD SEEK TO INTRODUCE
4 IT.

5 **MR. MAULDIN:** I DON'T THINK -- IF I UNDERSTOOD, YOUR
6 HONOR, I DON'T THINK I NEED TO ASK THE OFFICER QUESTIONS. I
7 SIMPLY NEED TO PUT OUR POSITION ON THE RECORD REGARDING THE
8 ADMISSIBILITY IF THE STATEMENT HE JUST TESTIFIED TO IS IN
9 FACT AN ISSUE. IF THAT'S WHAT THE DEFENDANT IS ALLEGED TO
10 HAVE SAID, I WANT TO PUT ON THE RECORD WHAT OUR POSITION
11 WOULD BE.

12 **THE COURT:** ALL RIGHT, SIR.

13 **MR. MAULDIN:** I DON'T THINK IT RELATES TO THIS
14 OFFICER'S -- I DON'T NEED TO QUESTION HIM ABOUT IT.

15 **THE COURT:** YOU CAN PUT YOUR POSITION ON THE RECORD
16 THEN, IF YOU'D LIKE,

17 **MR. MAULDIN:** THE QUESTION WOULD BE THE RELEVANCY AS TO
18 THE CHARGE AGAINST THE DEFENDANT IN THIS TRIAL. THAT'S WHAT
19 THE COURT IS -- HAVE YOU EVER BEEN SHOT? IT'S THE COOLEST --
20 THE DEFENDANT CLEARLY WAS SHOT IN THE ANDERSON COUNTY CHASE.
21 HE WAS BEING TREATED AT THE HOSPITAL. THE---

22 **THE COURT:** AND YOUR POSITION IS THAT THAT STATEMENT IS
23 NOT RELEVANT TO THE ISSUES IN THE FIRST PHASE?

24 **MR. MAULDIN:** AS TO THE GUILT OR INNOCENCE ON THE
25 CHARGES AT TRIAL.

MATTERS AND MOTIONS

1 THE COURT: AND YOU WANT TO BE VERY CAREFUL TO LIMIT
2 THIS RECORD TO ONLY ISSUES TO THE FIRST PHASE? IS THAT WHAT
3 WE'RE -- IS THAT---

4 MR. MAULDIN: NO. I THINK OBVIOUSLY WE'VE SPENT THE
5 WHOLE DAY LISTENING TO THE ANDERSON COUNTY INFORMATION.

6 THE COURT: RIGHT.

7 MR. MAULDIN: BUT IF THERE'S ONE THING THE JURY -- I
8 MEAN, I'M ASSUMING THE COURT IS GOING TO INSTRUCT THE JURY
9 THAT THE ONLY CHARGES FOR WHICH THE DEFENDANT IS ON TRIAL ARE
10 THE GREENVILLE COUNTY CHARGES.

11 THE COURT: RIGHT.

12 MR. MAULDIN: ALL RIGHT. SO TO MAKE SURE THE COURT AND
13 I ARE UNDERSTANDING EACH OTHER, THEY DON'T QUESTION THAT THE
14 EVIDENTIARY MATTERS RELATED TO THE CHASE AND THE SUBSEQUENT
15 SHOOTINGS AND EVERYTHING---

16 THE COURT: YEAH. THE REASON I MENTION THAT IS, THERE
17 WAS A QUESTION ASKED OF DEPUTY WOOTEN AS TO HIS STATE OF MIND
18 AS TO WHETHER HE WAS GLAD THE DEFENDANT LIVED, WHICH HAS
19 ABSOLUTELY NO BEARING IN THIS PHASE. NO OBJECTION WAS MADE
20 AND I ABOUT CAME OUT OF MY SEAT. AND I DON'T LIKE TO OBJECT
21 ON MY OWN.

22 SO YOUR CONCERN IS WE LIMIT THIS CASE TO THIS PHASE, AND
23 IT GOES BOTH WAYS.

24 MR. MAULDIN: WELL, AND---

25 THE COURT: AND DON'T ARGUE THAT POINT WITH ME.

MATTERS AND MOTIONS

1 **MR. MAULDIN:** ARE YOU TALKING ABOUT---

2 **THE COURT:** I'M NOT GOING TO REVISIT THAT THING. YOU
3 KNOW WHAT HAPPENED. I KNOW WHAT HAPPENED. THERE WAS NO
4 OBJECTION AND IT CAME IN.

5 **MR. MAULDIN:** REGARDING VIC WOOTEN'S STATE OF MIND.

6 **THE COURT:** REGARDING GILDING A LILY ON HE FELT BAD
7 ABOUT IT BECAUSE OF THE KIND OF PERSON HE IS AND HIS STATE OF
8 MIND THAT HE WAS RELIEVED -- AND I KNOW EXACTLY HOW THAT'S
9 GOING TO COME UP IN THIS STAGE IN AN ARGUMENT, AND IT HAS NO
10 BEARING IN THIS PHASE. I'M NOT GOING TO DISCUSS IT FURTHER.
11 PERIOD.

12 THE QUESTION IS THE ADMISSIBILITY OF THIS SECOND
13 STATEMENT ABOUT HOW GOOD IT FEELS TO BE SHOT. ALL RIGHT.
14 WHAT'S THE RELEVANCE, SOLICITOR?

15 **MS. STROM:** YOUR HONOR, I BELIEVE IT GOES TO SHOW THE
16 STATE OF MIND OF THE DEFENDANT AND IT ALSO GOES TO -- IT PUTS
17 HIM IN ANDERSON -- IF THERE IS EVER ANY QUESTION, IT PUTS HIM
18 IN ANDERSON BEING SHOT, ADMITS TO BEING SHOT, AND I BELIEVE
19 IT GOES TO SHOW HIS STATE OF MIND, YOUR HONOR.

20 **MR. MAULDIN:** REGARDING THE IDENTITY CONNECTION, YOUR
21 HONOR, I THINK THAT WE REALLY ARE OVER THE IDENTITY QUESTION.

22 **THE COURT:** HERE'S HOW I'M GOING TO RULE ON THAT. I'M
23 READY TO RULE. I'M NOT GOING TO PERMIT IT AT THIS TIME. I'M
24 NOT SURE WHERE WE'RE GOING IN TERMS OF A DEFENSE, AND IT MAY
25 VERY WELL IN REPLY TO HAVE DEPUTY BLACKBURN RETURN AND

MATTERS AND MOTIONS

1 ADDRESS THIS ISSUE. I DON'T KNOW. BUT BASED ON WHAT'S
2 BEFORE ME I FIND IT NOT RELEVANT AT THIS TIME. I SUSTAIN THE
3 OBJECTION.

4 MR. MAULDIN: YOUR HONOR, AND FURTHERMORE WITH REGARD
5 TO THE JURY, BECAUSE I WAS CERTAINLY TAKEN BY SURPRISE BY
6 THAT COMMENT. I THINK MAYBE EVEN THE SOLICITOR MAY HAVE
7 BEEN, BUT I DON'T KNOW.

8 THE COURT: RIGHT.

9 MR. MAULDIN: BUT I KNOW THAT WITH REGARD TO STATEMENTS
10 OF THE DEFENDANT, ISSUES, I THINK THAT THE COURT SHOULD --
11 SINCE HE SAID YES, STATEMENTS WERE MADE, AND THEN THE
12 SUSPENSION OF THE PROCEEDINGS, THE JURY NEEDS TO BE TOLD THAT
13 THE STATE -- THAT STATEMENTS HAVE BEEN DETERMINED TO BE
14 IRRELEVANT AT -- YOU KNOW, WITH REGARD TO THE PRESENT POSTURE
15 OF THIS CASE. I MEAN, OTHERWISE, THE JURY IS GOING TO WONDER
16 WHAT -- WHY WE DIDN'T SAY WHAT STATEMENTS DID HE MAKE.

17 THE COURT: WELL---

18 MR. MAULDIN: THAT WAS THE WHOLE POINT OF MY OBJECTION.

19 THE COURT: I UNDERSTAND. I DECLINE TO DO THAT FOR THE
20 FOLLOWING REASONS. IT HAPPENS IN EVERY TRIAL ON MULTIPLE
21 OCCASIONS WHEN OBJECTIONS ARE MADE. I ACQUIESCED IN YOUR
22 REQUEST AT THE OUTSET THAT THEY ARE TO DRAW NO INFERENCE FROM
23 ANY OBJECTION, THE RULING THEREON, AND THEY HAVE BEEN
24 REPEATEDLY FROM THE GENERAL QUALIFICATION TO THE INDIVIDUAL
25 QUALIFICATION TOLD THAT THEY MUST MAKE THEIR DECISION BASED

MATTERS AND MOTIONS

1 ON EVIDENCE IN THE RECORD, AND I DECLINE TO CHANGE THAT
2 APPROACH BECAUSE COUNSEL IS CONCERNED ABOUT SOME INFERENCE
3 THAT WOULD BE DRAWN. THE RECORD WILL REFLECT YOUR EXCEPTION
4 TO MY RULING.

5 ANYTHING FURTHER?

6 MS. STROM: YOUR HONOR, I WAS GOING TO PUT ON THE
7 RECORD THAT I BELIEVE THAT THE OFFICER MISUNDERSTOOD MY
8 QUESTION. AT THE VERY END OF MY QUESTION I PUT, AS IT
9 RELATED BACK TO TROOPER NICHOLSON'S SITUATION -- WHAT
10 HAPPENED TO TROOPER NICHOLSON. OBVIOUSLY, THE STATEMENT THAT
11 HE MADE WAS NOT IN REFERENCE TO TROOPER NICHOLSON.

12 THE COURT: ALL RIGHT. SO YOU COULD ASK THAT QUESTION
13 AND HE COULD SAY NO.

14 MS. STROM: AND HE COULD SAY NO. AND I JUST THOUGHT
15 THAT MIGHT BE AN EASY WAY TO CLEAR IT UP.

16 THE COURT: AND THAT WOULD ALLEVIATE YOUR CONCERN.

17 MR. MAULDIN: YES, SIR.

18 SOLICITOR ARIAIL: CAN I PUT ONE THING ON THE RECORD
19 ALSO? I WANTED TO COME OUT OF MY SEAT TOO, BECAUSE THAT WAS
20 THE MOST IMPROPER QUESTION THAT'S BEEN ASKED IN THIS WHOLE
21 TRIAL BECAUSE HE SUGGESTED TO HIM RELIEF. HE ASKED DEPUTY
22 WOOTEN, "WERE YOU RELIEVED?" AND THE STATE HAD ABSOLUTELY NO
23 WAY TO OBJECT TO THAT, BECAUSE IF WE DID -- WE WERE DURNED IF
24 WE DID AND DURNED IF WE DIDN'T. AND BECAUSE WE WERE PUT IN
25 THAT POSITION WE -- I ELECTED TO SIT STILL AND NOT JUMP UP

MATTERS AND MOTIONS

1 AND TRY TO ACT TO THE JURY LIKE DEPUTY WOOTEN WAS HIDING
2 SOMETHING. BUT I DO THINK -- BEFORE THIS TRIAL CONCLUDES AND
3 WE ARGUE TO THE JURY I WANT TO REVISIT THAT IN TERMS OF
4 LIMITING ANY KIND OF STATEMENTS OR ARGUMENTS BASED ON THAT
5 BECAUSE I THINK IT SHOULD BE STRICKEN FROM THE RECORD. BUT I
6 DON'T -- DIDN'T WANT TO GET INTO THAT WITH THE JURY. AND WE
7 WERE RUNNING AROUND AND SPEEDING UP, SO I DIDN'T WANT TO DO
8 IT AT THAT TIME.

9 THE COURT: BRING THE JURY.

10 (JURY REENTERS COURTROOM AT 6:06 P.M.)

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
12 READY TO PROCEED. IF YOU WOULD, RESUME WITH YOUR DIRECT
13 EXAMINATION.

14 MS. STROM: THANK YOU, YOUR HONOR.

15 DIRECT EXAMINATION OF C.P. BLACKBURN CONTINUES BY MS. STROM:

16 Q OFFICER BLACKBURN, I WANT TO MAKE SURE YOU'RE CLEAR WITH
17 WHAT I'M QUESTIONING, OKAY? DID THE DEFENDANT MAKE ANY OTHER
18 STATEMENT AS THE STATEMENT WOULD RELATE BACK TO WHAT HAPPENED
19 WITH TROOPER NICHOLSON?

20 A NO, HE DID NOT.

21 MS. STROM: THANK YOU. PLEASE ANSWER ANY QUESTIONS THE
22 DEFENSE MAY HAVE.

23 CROSS EXAMINATION BY MR. MAULDIN:

24 Q OFFICER BLACKBURN, IF I'M UNDERSTANDING CORRECTLY, THE
25 TELEVISION WAS ON?

C.P. BLACKBURN -- DIRECT CONTINUES BY MS. STROM

CROSS BY MR. MAULDIN

1 A CORRECT.

2 Q AND A REPORT REGARDING THE INCIDENT WITH OFFICER
3 NICHOLSON WAS BEING REPORTED?

4 A RIGHT.

5 Q AND THE REPORT REFERENCED TO THE PERSON WHO HAD BEEN
6 ACCUSED, JOHN WOOD, AND A FIANCEE OR GIRLFRIEND?

7 A THAT'S RIGHT.

8 Q ALL RIGHT. AND THEN HE, JOHN WOOD, MADE THE STATEMENT
9 -- WAS HE ACTUALLY SAYING IT TO YOU OR WAS HE JUST SAYING IT?

10 A WELL, HE TURNED HIS HEAD AND LOOKED AT ME DEAD IN THE
11 EYE---

12 Q ALL RIGHT.

13 A ---AND MADE THE STATEMENT TO ME. SO...

14 Q SO YOU RECEIVED IT AS A STATEMENT TO YOU?

15 A THAT'S CORRECT.

16 Q AND HIS STATEMENT WAS, IF I WROTE IT DOWN CORRECTLY,
17 "SHE WASN'T EVEN THERE WHEN IT HAPPENED."

18 A THAT'S RIGHT.

19 Q IS THAT RIGHT?

20 A UH-HUH (AFFIRMATIVE).

21 MR. MAULDIN: ALL RIGHT. NOTHING FURTHER.

22 MS. STROM: NOTHING FURTHER FROM THIS WITNESS, YOUR
23 HONOR.

24 THE COURT: ALL RIGHT. DEPUTY BLACKBURN, THANK YOU,
25 SIR.

C.P. BLACKBURN -- DIRECT CONTINUES BY MS. STROM

CROSS BY MR. MAULDIN

1 NEXT WITNESS, PLEASE.

2 (WITNESS STEPS DOWN AT 6:08 P.M.)

3 SOLICITOR ARIAIL: WE CALL JEFF PARROTT.

4 JEFF PARROTT, HAVING BEEN DULY

5 SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

7 Q STATE YOUR NAME FOR THE RECORD, PLEASE, SIR.

8 A MY NAME IS JEFF PARROTT.

9 Q AND, MR. PARROTT, IF YOU WOULD, KEEP YOUR VOICE UP JUST
10 LIKE THAT SO THESE LAST TWO JURORS AND I CAN HEAR YOU.

11 BY WHOM ARE YOU EMPLOYED?

12 A I'M EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT
13 DIVISION, COMMONLY KNOWN AS S.L.E.D.

14 Q AND IS -- HOW LONG HAVE YOU BEEN EMPLOYED WITH S.L.E.D.?

15 A I'VE BEEN EMPLOYED WITH S.L.E.D. JUST OVER TWO YEARS
16 NOW.

17 Q AND IN WHAT CAPACITY ARE YOU EMPLOYED WITH S.L.E.D.?

18 A I'M ASSIGNED TO THE CRIME SCENE LATENT PRINT UNIT.

19 Q NOW, IN REGARD TO -- I WANT TO TAKE YOU BACK TO DECEMBER
20 THE 6TH OF THE YEAR 2000 AND ASK IF YOU HAD OCCASION TO
21 RESPOND TO ANDERSON COUNTY. AND IT'S BEEN PREVIOUSLY
22 TESTIFIED TO BY DEPUTIES OF THE ANDERSON COUNTY SHERIFF'S
23 OFFICE THAT S.L.E.D. WAS CALLED IN RELATION TO AN OFFICER-
24 INVOLVED SHOOTING WHERE A DEPUTY HAD FIRED HIS WEAPON. IS
25 THAT WHAT YOU WERE CALLED TO RESPOND TO?

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR. THAT'S CORRECT.

2 Q AND IN THAT SITUATION WHAT ARE YOUR DUTIES AND
3 RESPONSIBILITIES?

4 A TYPICALLY WE RESPOND AS AN ASSISTING AGENCY TO THE LOCAL
5 LAW ENFORCEMENT AGENCIES, WHETHER IT BE IT CITY, COUNTY. IT
6 CAN EVEN BE FEDERAL. AS, AGAIN, AN ASSISTING AGENCY, WE GO
7 AGAIN TO PROCESS A CRIME SCENE. WHEN AN OFFICER IS INVOLVED
8 IN A SHOOTING, WE WILL GO THERE AS KIND OF AN INDEPENDENT
9 SOURCE TO INVESTIGATE.

10 Q WHAT TIME DID YOU ARRIVE?

11 A WE ARRIVED IN ANDERSON COUNTY AT 4:50. THAT'S P.M.

12 Q DID YOU NEED ASSISTANCE IN GOING TO THE VARIOUS SCENES
13 THAT YOU WERE TO PROCESS? DID YOU KNOW HOW TO GET THERE?

14 A WE RECEIVED DIRECTIONS. AND ONCE WE ARRIVED AT THE
15 INITIAL LOCATION, WE WERE TAKEN THROUGH THE ACTUAL CRIME
16 SCENES.

17 Q IN PARTICULAR IN REGARD TO THE JEEP CRIME SCENE ON
18 HIGHWAY 187, DID YOU GO THERE?

19 A YES, SIR, I DID.

20 Q AND WHEN YOU SAY "WE," WHO ELSE WAS WITH YOU?

21 A MYSELF AND AGENT BAKER, BRETT BAKER. HE WAS ACTUALLY
22 THE PRIMARY AGENT ON THIS PARTICULAR CASE. I WAS GOING TO
23 ASSIST HIM.

24 Q DID Y'ALL ARRIVE THERE TOGETHER?

25 A WE ROAD SEPARATELY.

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

1 Q IN TWO CARS?

2 A YES, SIR.

3 Q AND IN REGARD TO THE CRIME SCENE ON 187, I WANT TO ASK
4 YOU IF YOU HAD OCCASION TO RESPOND TO THE AREA IN WHICH THE
5 JEEP GRAND WAGONEER WAS DISABLED IN THE ROADWAY?

6 A YES, SIR, I DID.

7 Q I WANT TO SHOW YOU THESE PHOTOGRAPHS. FIRST, LET ME ASK
8 YOU FOR THE JURY'S EDIFICATION, DID YOU -- WHEN YOU ARRIVED
9 DID YOU TAKE ANY PHOTOGRAPHS?

10 A YES, SIR, I DID.

11 Q LET ME SHOW YOU THESE PHOTOGRAPHS, WHICH HAVE BEEN
12 MARKED STATE'S EXHIBITS 54A THROUGH 54H AND ASK IF YOU TOOK
13 THOSE PHOTOGRAPHS AND IF THOSE ARE AN ACCURATE REPRESENTATION
14 OF THE SCENE AS IT EXISTED AT THE TIME YOU ARRIVED?

15 A (REVIEWS PHOTOGRAPHS) YES, SIR, THEY ARE.

16 Q THANK YOU.

17 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD OFFER THESE.

18 MR. MAULDIN: NO OBJECTION.

19 THE COURT: ALL RIGHT, SIR.

20 SOLICITOR ARIAIL: THANK YOU.

21 (STATE'S EXHIBITS 54A THROUGH 54H, PHOTOGRAPHS, MOVED
22 INTO EVIDENCE)

23 Q MR. PARROTT, I JUST WANT TO DO A SAMPLING OF THESE AND
24 SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 54A AND ASK IF
25 THAT'S THE PHOTOGRAPH OF THE JEEP AS YOU SAW IT THAT NIGHT?

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

- 1 A YES, SIR.
- 2 Q AND IT WAS IN THAT CONDITION WITH THE RIGHT FRONT TIRE
- 3 HAVING NO---
- 4 A YES, SIR. THAT'S CORRECT.
- 5 Q EXCUSE ME. THE RIGHT FRONT RIM HAVING NO TIRE?
- 6 A THAT'S CORRECT.
- 7 Q OKAY. WHILE YOU WERE ON THAT SCENE DID YOU COLLECT ANY
- 8 PROJECTILE CASINGS?
- 9 A YES, SIR, I DID COLLECT FIVE CARTRIDGE CASINGS.
- 10 Q AND LET ME SHOW YOU THIS PHOTOGRAPH. I'M GOING TO GIVE
- 11 YOU A LITTLE LASER POINTER AND, IF YOU WOULD, SHOW US ON
- 12 THERE, ON THAT PHOTOGRAPH, WHICH IS 54C, THE APPROXIMATE
- 13 LOCATION OF THE CASINGS THAT YOU COLLECTED.
- 14 A OKAY. ONE OF THE CASINGS WAS HERE.
- 15 Q BEHIND THE BACK---
- 16 A IT WAS RIGHT BEHIND THE TIRE. YES, SIR.
- 17 Q ALL RIGHT.
- 18 A AND THEN I HAD FOUR CASINGS UP HERE IN THE ROADWAY RIGHT
- 19 ON -- RIGHT NEAR THE CENTERLINE, APPROXIMATELY 110 TO 115
- 20 FEET IN FRONT OF THAT VEHICLE.
- 21 Q YOU HAD FOUR CASINGS UP THERE AND ONE BY THE TIRE?
- 22 A YES, SIR.
- 23 Q ALL RIGHT. LET ME SHOW YOU WHAT IS 54H. I'M GOING TO
- 24 TRY TO DO SOMETHING A LITTLE DIFFERENT. I ASK YOU, IF YOU
- 25 WOULD -- THAT'S PROBABLY NOT GOING TO WORK. LET'S GO THROUGH

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

1 THESE INDIVIDUALLY. IF YOU WOULD, WHAT ARE WE LOOKING AT
2 THERE?

3 A THAT'S A CARTRIDGE CASING WHICH WAS LOCATED IN THE
4 ROADWAY. THAT PARTICULAR CARTRIDGE CASING WAS LOCATED
5 APPROXIMATELY AROUND 111 FEET IN FRONT OF THE JEEP.

6 Q AND IN EACH ONE OF THESE -- AS YOU LABEL THEM, I ASSUME
7 YOU HAD A LABELING SYSTEM?

8 A YES, SIR. I ACTUALLY COLLECT EACH OF THOSE AND THEY ARE
9 COLLECTED IN A TIN, AND AS I COLLECT THOSE I MARK ON THE TIN
10 FROM WHICH MARKER I HAVE COLLECTED THEM FROM.

11 Q AND THIS MARKER HERE, THE "H," DESIGNATES YOUR
12 COLLECTION SYSTEM?

13 A YES, SIR.

14 Q AND YOU DID ONE FOR EACH OF "K," "J," "I" AND "F" ALSO?

15 A YES, SIR.

16 Q AND THOSE WERE THE FIVE CASINGS THAT YOU FOUND BEHIND --
17 ONE BEHIND THE TIRE AND FOUR ON THE ROADWAY?

18 A THAT'S CORRECT.

19 Q ALL RIGHT. RATHER THAN GOING THROUGH EACH ONE OF THOSE,
20 THEY ARE ALL SIMILAR IN APPEARANCE---

21 A YES, SIR.

22 Q ---ON THE ROADWAY?

23 I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
24 EXHIBITS 35, 36, 37, 33, AND 34 AND ASK YOU IF THOSE ARE
25 THOSE FIVE CASINGS THAT YOU REFERRED TO EARLIER IN THE

1 PHOTOGRAPHS?

2 A (REVIEWS EXHIBITS) YES, SIR, THOSE ARE THE CASINGS I
3 COLLECTED.

4 Q ONCE YOU COLLECTED THOSE, WHAT DID YOU DO WITH THEM?

5 A I THEN TRANSFERRED THOSE TO THE PRIMARY AGENT, AGENT
6 BAKER.

7 Q AGENT BAKER. ALL RIGHT.

8 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD LIKE TO OFFER
9 THESE AT THIS TIME FOR IDENTIFICATION.

10 THE COURT: ALL RIGHT, SIR.

11 MR. MAULDIN: FOR IDENTIFICATION, NO OBJECTION, YOUR
12 HONOR.

13 Q NOW, AFTER HAVING PROCESSED THAT SCENE DID YOU -- WAS
14 THE JEEP THEN TRANSFERRED?

15 A YES, SIR. IT WAS TOWED.

16 Q AND DID YOU GO TO THE LOCATION WHERE IT WAS TOWED AT THE
17 ANDERSON COUNTY IMPOUND LOT?

18 A YES, SIR, I DID.

19 Q AND WHAT WAS THE PURPOSE IN GOING THERE?

20 A I WAS TO FURTHER COLLECT ITEMS THAT WERE WITHIN THE
21 VEHICLE.

22 Q AND I ASK YOU, WHEN YOU GOT THERE DID YOU ALSO TAKE
23 PHOTOGRAPHS?

24 A YES, SIR, I DID.

25 Q AND I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBITS

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

1 54L THROUGH 54V AND ASK YOU IF YOU TOOK THOSE PHOTOGRAPHS AND
2 ARE THEY AN ACCURATE REPRESENTATION OF THE INTERIOR OF THE
3 JEEP AS YOU FOUND IT ON THAT DAY?

4 A (REVIEWS EXHIBITS) YES, SIR, THEY ARE.

5 SOLICITOR ARIAIL: YOUR HONOR, WE'D LIKE TO OFFER THESE
6 IN EVIDENCE AT THIS TIME.

7 THE COURT: DO YOU WANT THE LIGHTS ON SO YOU CAN LOOK
8 AT THEM?

9 MR. MAULDIN: NO. I CAN SEE THEM, YOUR HONOR. BUT
10 THERE ARE A NUMBER OF THEM, SO IF YOU WOULD, GIVE ME JUST A
11 MOMENT.

12 THE COURT: YES, SIR. CERTAINLY. TAKE YOUR TIME.

13 (PAUSE)

14 MR. MAULDIN: NO OBJECTION, YOUR HONOR.

15 THE COURT: ALL RIGHT, SIR.

16 (STATE'S EXHIBITS 54L THROUGH 54V, PHOTOGRAPHS, MOVED
17 INTO EVIDENCE)

18 Q ALL RIGHT. MR. PARROTT, I'M NOT GOING TO GO THROUGH
19 EACH ONE OF THESE, BUT SO THE JURY, WHEN THEY HAVE AN
20 OPPORTUNITY TO LOOK AT THESE, WILL UNDERSTAND THE METHOD
21 USED, I'M GOING TO SHOW A COUPLE OF THESE TO YOU, ONE IN
22 PARTICULAR THAT'S A LITTLE BIT DIFFICULT. BUT LET'S TAKE,
23 FOR EXAMPLE, STATE'S EXHIBIT 54L. AND WHILE WE HAVE THAT UP
24 THERE, WHAT WAS THE GENERAL CONDITION OF THE INTERIOR OF THE
25 JEEP?

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

1 A IT WAS QUITE CLUTTERED. IT HAD A LOT OF OBJECTS, BAGS,
2 BOXES, CANS OF OIL. IT HAD QUITE AN ASSORTMENT OF OBJECTS
3 WITHIN THE VEHICLE ITSELF.

4 Q OKAY. AND THE METHOD IN WHICH YOU USED TO PHOTOGRAPH
5 EACH CASING, DESCRIBE THAT TO THE JURY.

6 A YES, SIR. AS I SEARCHED THROUGH THE VEHICLE AND COME
7 UPON CERTAIN ITEMS OF EVIDENCE, I TYPICALLY STOP AT THAT
8 INSTANT AND PHOTOGRAPH THAT ITEM AS I SEE IT AT THAT TIME.
9 AND THEN AFTER -- ONCE I PHOTOGRAPH IT, THEN I COLLECT IT.
10 THAT'S THE MANNER I USED THROUGHOUT THIS WHOLE COLLECTION
11 PROCESS.

12 Q AND WHERE IS THE LOCATION OF THE OBJECT IN THE
13 PHOTOGRAPH THAT YOU ARE PHOTOGRAPHING?

14 A IN MOST EVERY PHOTOGRAPH THAT YOU'LL SEE, THE ITEM THAT
15 I'M CONCENTRATING ON IS IN THE CENTER OF EVERY PHOTOGRAPH.
16 THERE WAS ONE THAT I NOTICED THAT HAD -- WAS SLIGHTLY OFF TO
17 THE RIGHT ON PHOTOGRAPH. IT'S JUST BECAUSE -- BECAUSE OF THE
18 ITEMS WITHIN THE VEHICLE, I COULD ONLY GET MY FLASH IN A
19 CERTAIN AMOUNT WITHOUT EVERYTHING ABSORBING THE LIGHT. AND
20 SO ONE IS CANTED JUST A LITTLE BIT.

21 Q AND THEN SHOW US -- POINT TO THE ONE HERE, THE CASING,
22 USING THAT LITTLE LASER POINTER.

23 A THAT'S THE CASING RIGHT THERE.

24 Q OKAY. AND THEN TO GIVE YOU A LITTLE TOUGHER ASSIGNMENT,
25 WE'LL LOOK AT 54N. SHOW US WHERE ON THAT ONE IT IS.

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

1 A RIGHT THERE.

2 Q ALL RIGHT.

3 A LIKE I SAID, AS I PULLED THINGS FROM THE VEHICLE, IT WAS
4 -- IN ORDER TO PHOTOGRAPH IT WHERE IT IS AND NOT DISTURB
5 ANYTHING ELSE, IT'S KIND OF DIFFICULT TO CATCH ALL OF THE
6 ITEM THAT YOU'RE TRYING TO PHOTOGRAPH.

7 Q OKAY. AND WHAT IS THE TOTAL NUMBER OF CASINGS THAT YOU
8 PROCESSED FROM INSIDE THE VEHICLE?

9 A I COLLECTED 15 CARTRIDGE CASINGS FROM WITHIN THE
10 VEHICLE.

11 Q ALL RIGHT. AND I WANT TO SHOW YOU WHAT'S BEEN PREMARKED
12 AS STATE'S EXHIBIT 32 AND ASK YOU IF THESE ARE THE 15
13 CARTRIDGES YOU SO COLLECTED.

14 A (REVIEWS EXHIBITS)

15 Q IF YOU NEED TO YOU CAN OPEN THEM.

16 A (CONTINUES TO REVIEW EXHIBITS) YES, SIR, THEY ARE.

17 Q THOSE ARE THE 15?

18 A YES, SIR.

19 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD OFFER THESE FOR
20 IDENTIFICATION AT THIS POINT.

21 Q NOW, AFTER YOU COLLECTED THOSE WHAT DID YOU DO WITH
22 THEM?

23 A I THEN TRANSFERRED THOSE CARTRIDGE CASINGS IN THE
24 COLLECTION TINS TO AGENT BAKER.

25 Q DO YOU REMEMBER THE MARKING ON THESE CASINGS?

JEFF PARROTT -- DIRECT BY SOLICITOR ARIAIL

1 A THE HEAD STAMP?

2 Q YES.

3 A I BELIEVE IT TO BE RP 9 MM LUGER.

4 Q I'LL TELL YOU WHAT, IF YOU DON'T MIND, JUST TAKE ONE OUT
5 OF STATE'S EXHIBIT 32 AND LOOK AT THAT.

6 A (COMPLIES) RP 9 MM LUGER.

7 Q THANK YOU.

8 A YES, SIR.

9 SOLICITOR ARIAIL: THANK YOU, MR. PARROTT. ANSWER ANY
10 QUESTIONS THAT DEFENSE COUNSEL MAY HAVE.

11 CROSS EXAMINATION BY MR. BANNISTER:

12 Q DID YOU SEARCH THAT AREA THOROUGHLY?

13 A WHICH AREA, SIR?

14 Q INSIDE THE JEEP

15 A INSIDE THE JEEP, YES, SIR.

16 Q AND AROUND THE AREA WHERE THE JEEP ENDED UP LOCATED
17 AFTER---

18 A IN THE ROADWAY, YES, SIR.

19 MR. BANNISTER: NO FURTHER QUESTIONS.

20 THE COURT: ANYTHING FURTHER?

21 SOLICITOR ARIAIL: NOTHING FURTHER.

22 THE COURT: AGENT PARROTT, THANK YOU, SIR.

23 WITNESS: THANK YOU.

24 (WITNESS STEPS DOWN AT 6:30 P.M.)

25 SOLICITOR ARIAIL: WE CALL AGENT BRETT BAKER.

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 BRETT BAKER, HAVING BEEN DULY
2 SWORN, TESTIFIED AS FOLLOWS:

3 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

4 Q MR. BAKER, IF YOU WOULD, PLEASE STATE YOUR NAME FOR THE
5 RECORD.

6 A IT'S DONALD BRETT BAKER.

7 Q THAT'S GREAT. IF YOU WILL KEEP YOUR VOICE UP JUST LIKE
8 THAT, THESE LAST TWO JURORS AND I CAN HEAR YOU, EVERYTHING
9 WILL BE JUST FINE.

10 BY WHOM ARE YOU EMPLOYED?

11 A I'M EMPLOYED BY THE SOUTH CAROLINA LAW ENFORCEMENT
12 DIVISION, COMMONLY KNOWN BY THE ACRONYM S.L.E.D.

13 Q AND HOW LONG HAVE YOU BEEN WITH S.L.E.D.?

14 A APPROXIMATELY TEN YEARS.

15 Q IN WHAT CAPACITY ARE YOU EMPLOYED WITH S.L.E.D.?

16 A I WORK IN WHAT IS REFERRED TO AS THE LATENT PRINT CRIME
17 SCENE DEPARTMENT. THAT IS THE DEPARTMENT WHICH WILL ASSIST
18 STATE, LOCAL AND FEDERAL LAW ENFORCEMENT AGENCIES WITH CRIME
19 SCENE PROCESSING AND/OR CRIME SCENE RECONSTRUCTIONS.

20 Q AND WHEN YOU TALK ABOUT LATENT FINGERPRINTS, THAT DEALS
21 WITH YOU ALSO ARE ABLE TO PROCESS AND EXAMINE LATENT
22 FINGERPRINTS?

23 A YES, SIR. IN ADDITION TO WORKING SCENES, I ALSO CONDUCT
24 EXAMINATIONS ON ITEMS OF EVIDENCE FOR FINGERPRINTS AS WELL AS
25 OTHER TYPES OF EVIDENCE, IMPRESSION EVIDENCE.

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 Q SO YOU ACTUALLY HAVE SORT OF DOUBLE DUTY, YOU GO TO A
2 CRIME SCENE, YOU PROCESS IT, BUT ALSO CAN WORK IN THE LAB AND
3 DO FINGERPRINT COMPARISON?

4 A YES, SIR, THAT'S CORRECT.

5 Q NOW I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE
6 6TH OF THE YEAR 2000. AND IT'S ALREADY BEEN TESTIFIED TO
7 THAT YOU AND AGENT PARROTT RESPONDED TO ANDERSON COUNTY FOR
8 THE PURPOSES OF INVESTIGATING AN OFFICER INVOLVED SHOOTING IN
9 THAT OFFICERS OF THE ANDERSON COUNTY SHERIFF'S OFFICE HAD
10 DISCHARGED THEIR WEAPONS, AND THE STANDARD PROCEDURE WAS THAT
11 THEY WOULD CALL IN S.L.E.D. TO HELP INVESTIGATE THAT?

12 A THAT IS CORRECT.

13 Q APPROXIMATELY WHAT TIME DID YOU ARRIVE?

14 A I RECEIVED A CALL AT 2:50 P.M. AND I ARRIVED AT 4:50
15 P.M. THE SAME DAY, DECEMBER 6TH.

16 Q OKAY. SO THE JURY WILL UNDERSTAND, WHEN YOU RECEIVED
17 THE CALL YOU WERE IN?

18 A I WAS IN COLUMBIA ON BROAD RIVER ROAD AT THE
19 HEADQUARTERS IN THE STATE FORENSIC LABORATORY.

20 Q AND YOU RESPONDED TO ANDERSON ALONG WITH AGENT PARROTT?

21 A THAT IS CORRECT.

22 Q BUT YOU WERE THE CHIEF AGENT ON THE CASE?

23 A THAT'S CORRECT.

24 Q DID YOU HAVE OCCASION TO GO WITH AGENT PARROTT TO THE
25 SCENE OF THE JEEP?

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 A THAT IS CORRECT. YES, SIR, I DID.

2 Q AND THEN AFTER THAT SCENE DID YOU HAVE OCCASION TO GO TO
3 THE SCENE ON KARI LANE OF THE UTILITY TRUCK, THE BLUE
4 RIDGE---

5 A ELECTRIC TRUCK. YES, SIR, I DID.

6 Q ALL RIGHT. I WANT TO SHOW YOU WHAT HAS ALREADY BEEN
7 MARKED AS STATE'S EXHIBITS 57A, B, C, AND D, AND ASK YOU IF
8 YOU WOULD REVIEW THOSE AND, PARTICULARLY A AND B, AND
9 DETERMINE IF THAT IS AN ACCURATE REPRESENTATION OF THE
10 UTILITY TRUCK AND THE INTERIOR OF THE UTILITY TRUCK AS YOU
11 OBSERVED IT ON KARI LANE?

12 A (REVIEWS EXHIBITS) YES, SIR. THESE ARE ACCURATE
13 REPRESENTATIONS OF THE VEHICLE AS I ARRIVED ON THE SCENE.
14 AND IT IS PARTICULARLY ITEMS A AND B WERE REFLECTIVE OF THE
15 GLOCK 9 MM PISTOL THAT WAS FOUND IN THE DRIVER'S SIDE
16 FLOORBOARD OF THE UTILITY VEHICLE.

17 Q THANK YOU. SO YOU TOOK -- YOU NOTED THAT OBJECT?

18 A THAT IS CORRECT.

19 Q NOW, AFTER YOU WENT TO THE KARI LANE SITE, DID YOU
20 PROCESS THAT VEHICLE FOR EVIDENCE AT THAT LOCATION OR WAS IT
21 MOVED?

22 A AGAIN, WE ARRIVED APPROXIMATELY 4:50. IT WAS LATE IN
23 THE EVENING. DARK WAS FALLING UPON US. I HAD OTHER EVIDENCE
24 TO COLLECT. I HAD THE VEHICLE MOVED TO A SECURE LOCATION SO
25 I COULD FINISH PROCESSING UNDER CONTROLLED CONDITIONS,

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 MEANING LIGHT. SO I DID MOVE IT TO ANOTHER LOCATION FOR THE
2 PURPOSE OF THE COLLECTION OF EVIDENCE.

3 Q AND IN THE PROCESS OF -- AND I ASSUME THAT THAT, AS
4 PREVIOUSLY TESTIFIED, WAS IN ANDERSON IMPOUND LOT?

5 A YES, SIR. SOMEWHERE LOCATED ON THE BYPASS IN ANDERSON.

6 Q AND IT WAS INSIDE A BUILDING?

7 A THAT'S CORRECT.

8 Q IN THE PROCESSING OF THAT VEHICLE DID YOU COLLECT
9 CERTAIN PIECES OF EVIDENCE?

10 A YES, SIR. THERE WAS FOUR THINGS -- FIVE THINGS,
11 PRIMARILY, WE COLLECTED OUT OF THAT.

12 (SOLICITOR ARIAIL AND MR. MAULDIN OFF RECORD)

13 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
14 NUMBER 38 AND ASK YOU IF YOU COLLECTED THOSE FROM THE UTILITY
15 TRUCK AND IF SO IDENTIFY TO US WHAT THEY ARE.

16 A YES, SIR. THESE ARE THREE OF THE FIVE OBJECTS I
17 COLLECTED FROM THE UTILITY VEHICLE. MORE SPECIFICALLY, THEY
18 ARE REMINGTON PETERS 9 MM CARTRIDGE CASINGS, MEANING THAT
19 THEY ARE FIRED CASINGS. THERE WERE FIVE IN THE ASHTRAY, I
20 BELIEVE, AND THE OTHER TWO WERE ON THE PASSENGER SIDE
21 FLOORBOARD OR ONE WAS ON THE PASSENGER SIDE SEAT AND ONE WAS
22 ON THE FLOORBOARD OF THE PASSENGER SIDE.

23 Q AND WHEN YOU SAY -- YOU GAVE A NAME OF REMINGTON PETERS.
24 IS THAT -- IS IT HEAD STAMPED AS RP 9 MM LUGER?

25 A THAT'S CORRECT. IT WAS HEAD STAMPED RP 9MM LUGER,

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 MEANING IT'S REMINGTON PETERS BRAND. 9 MM IS THE TYPE
2 CALIBER GUN THAT SHOOTS IT. AND LUGER IS ALSO A DESIGNATION.

3 Q ALL RIGHT. LET ME SHOW YOU WHAT'S BEEN MARKED STATE'S
4 EXHIBIT NUMBER 39 AND ASK YOU IF YOU ALSO COLLECTED THAT FROM
5 THE UTILITY TRUCK?

6 A YES, SIR. THIS IS -- IT WAS AN EMPTY 9 MM MAGAZINE
7 FOUND ON THE PASSENGER SIDE FLOORBOARD.

8 Q OKAY. AND THEN STATE'S EXHIBIT 46, DID YOU COLLECT
9 THAT?

10 A YES, SIR, I DID. THIS IS THE WEAPON DEPICTED IN THE
11 PHOTOGRAPH, A GLOCK MODEL. I THINK IT'S MODEL 17 9 MM
12 PISTOL. ALSO CONTAINED IN THE PISTOL WAS A MAGAZINE THAT
13 HOLDS CARTRIDGES TO BE FIRED. THERE WERE SIX CARTRIDGES IN
14 THE MAGAZINE AND A SEVENTH CARTRIDGE STILL IN THE CHAMBER,
15 MEANING IT'S ONE READY TO BE FIRED.

16 Q ONE WAS IN THE CHAMBER, SIX WERE IN THE---

17 A MAGAZINE CONTAINED IN THE GUN.

18 Q AND---

19 A AND THESE WERE FOUND, AGAIN, ON THE DRIVER'S SIDE
20 FLOORBOARD WHEN I ARRIVED.

21 Q AND THIS EXHIBIT WAS ALTOGETHER IN ONE PIECE WHEN YOU
22 FOUND IT IN THE TRUCK?

23 A THAT'S CORRECT.

24 Q OKAY.

25 SOLICITOR ARIAIL: YOUR HONOR, AT THIS TIME WE WOULD

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 MOVE INTO EVIDENCE STATE'S EXHIBIT NUMBER 39. WELL --

2 Q LET ME ASK YOU A COUPLE QUESTIONS BEFORE I DO THAT.

3 PRIOR -- FOLLOWING YOUR COLLECTION OF THIS EVIDENCE,
4 WHAT DID YOU DO WITH IT?

5 A FOLLOWING THE COLLECTION OF IT?

6 Q UH-HUH (AFFIRMATIVE).

7 A AGAIN, I WOULD HAVE CARRIED THIS EVIDENCE BACK WITH ME.
8 MY PRIMARY RESPONSIBILITY AS THE LEAD AGENT IS TO COLLECT
9 PHYSICAL EVIDENCE THAT MAY BE ASSOCIATED WITH THE CRIME,
10 SECURE THAT EVIDENCE UNTIL SUCH TIME AS IT CAN BE DISTRIBUTED
11 FOR PROCESSING AT THE STATE FORENSIC LABORATORY, MEANING I
12 WOULD HAVE TAKEN THIS EVIDENCE. IT WOULD HAVE STAYED IN MY
13 CUSTODY AND CONTROL UNTIL I GOT IT BACK TO THE LABORATORY,
14 FILLED OUT THE DOCUMENTATION, THAT IS, PAPERWORK, SO TO
15 SPEAK, TO ENTER IT INTO THE SYSTEM.

16 ONCE IT WAS ENTERED INTO THE SYSTEM, ANYTHING THAT
17 NEEDED TO BE TESTED FOR FINGERPRINTS WOULD HAVE STAYED WITH
18 ME. EVERYTHING ELSE WOULD HAVE BEEN DISTRIBUTED.

19 AND WHEN I GOT FINISHED WITH ANYTHING THAT MAY HAVE HAD
20 OTHER VALUE IN THE LAB, SAY THE GUN, IF IT NEEDED TO GO FROM
21 ME, I WOULD HAVE TRANSFERRED IT INTO FIREARMS OR TO THE
22 FIREARMS STORAGE BIN.

23 Q AND IN REGARD TO STATE'S EXHIBITS 38 AND 39 AND 40 DID
24 YOU RETAIN CUSTODY AND CONTROL OF THESE ITEMS FROM THE TIME
25 THAT YOU LEFT THE ANDERSON SCENE -- OR ACTUALLY FROM THE TIME

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 YOU COLLECTED THEM FROM THE UTILITY TRUCK UNTIL YOU RETURNED
2 TO YOUR SECURE EVIDENCE LOCKER AT S.L.E.D. HEADQUARTERS?

3 A YES, SIR, I DID.

4 Q AND WERE THEY THEN PLACED INTO YOUR SECURE LOCKER TO BE
5 LOGGED INTO THE S.L.E.D. EVIDENCE AREA FROM THAT LOCKER?

6 A THAT'S CORRECT.

7 Q AND IN PARTICULAR WHAT DID YOU DO WITH ITEMS 38 AND 40,
8 TO WHOM DID YOU DELIVER THOSE ITEMS?

9 A THESE ITEMS WERE DELIVERED TO VELLO PAAVEL, WHO IS A
10 FIREARMS EXAMINER AT S.L.E.D. SO THEY WERE TRANSFERRED FROM
11 MY CUSTODY TO HIS CUSTODY.

12 Q AND HOW ABOUT ITEM -- STATE'S EXHIBIT 39?

13 A YES, SIR, THAT ALSO.

14 Q OKAY.

15 SOLICITOR ARIAIL: WE WILL NOT MOVE THOSE INTO EVIDENCE
16 AT THIS TIME.

17 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
18 32 AND STATE'S EXHIBITS 33, 34, 35, 36 AND 37 AND ASK YOU IF
19 YOU RECEIVED THOSE ITEMS FROM AGENT JEFF PARROTT?

20 A YES, SIR, I DID.

21 Q AND LIKEWISE, ONCE -- UPON RECEIPT DID YOU RETURN THOSE
22 TO S.L.E.D. HEADQUARTERS TO YOUR SECURE EVIDENCE LOCKER?

23 A THAT'S CORRECT. I CARRIED THEM AND SECURED THEM.

24 Q AND THEN ONCE THEY WERE SECURED DID YOU THEREAFTER
25 DELIVER THEM ALSO TO AGENT VELLO PAAVEL?

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 A YES, SIR. THAT'S CORRECT.

2 Q ALL RIGHT. WHEN YOU ARRIVED ON THE SCENE OF THE UTILITY
3 TRUCK DID YOU HAVE OCCASION TO COLLECT ANY ITEMS OF CLOTHING?

4 A YES, SIR. THERE WAS SOME CLOTHING THAT WAS LAYING TO
5 THE SIDE OF THE TRUCK, WHAT HAD APPEARED TO HAVE BEEN CUT OFF
6 OF SOMEONE INVOLVED IN THE INCIDENT. SO I DID COLLECT SOME
7 CLOTHING.

8 Q LET ME ASK YOU, IF YOU WOULD, TO LOOK AT STATE'S EXHIBIT
9 NUMBER 41 AND DETERMINE IF -- WELL, LET ME ASK YOU THIS.
10 WHAT DID YOU DO WITH THE CLOTHING ONCE YOU COLLECTED IT?

11 A THE CLOTHING, ONCE IT WAS COLLECTED, I TURNED IT OVER TO
12 GREENVILLE COUNTY OFFICER, I BELIEVE IT WAS, BRYAN.

13 Q FOR HIS PROCESSING?

14 A FOR HIS PROCESSING, THAT'S CORRECT.

15 Q LET ME ASK YOU, IF YOU WOULD, TO OPEN THAT AND LOOK IN
16 THERE AND DETERMINE IF THAT IS THE SAME CLOTHING?

17 A (COMPLIES) YES, SIR, IT IS. AGAIN, I'M NOT GOING TO
18 PULL IT OUT BECAUSE IT HAS DRIED BLOOD ON IT.

19 Q THANK YOU.

20 SOLICITOR ARIAIL: STATE'S EXHIBIT 41 FOR
21 IDENTIFICATION.

22 Q I ASK YOU IF YOU ALSO COLLECTED THE -- AND TURNED OVER
23 TO AGENT BRYAN THE PAIR OF JEANS THAT ARE CONTAINED IN THAT
24 BAG?

25 A DO YOU WANT ME TO GO AHEAD AND OPEN IT?

BRETT BAKER -- DIRECT BY SOLICITOR ARIAIL

1 Q YES.

2 A (COMPLIES) YES, SIR.

3 SOLICITOR ARIAIL: STATE'S EXHIBIT 42 FOR
4 IDENTIFICATION.

5 THANK YOU, MR. BAKER. ANSWER ANY QUESTIONS THAT DEFENSE
6 COUNSEL MAY HAVE.

7 MR. MAULDIN: NO QUESTIONS.

8 THE COURT: AGENT BAKER, THANK YOU, SIR.

9 WITNESS: THANK YOU.

10 (WITNESS STEPS DOWN AT 6:45 P.M.)

11 THE COURT: NEXT WITNESS.

12 MS. STROM: THE STATE CALLS C.B. BRYAN.

13 SOLICITOR ARIAIL: MAY MR. BAKER BE EXCUSED TO RETURN?

14 MR. MAULDIN: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION.

16 (AGENT BAKER EXCUSED AT 6:45 P.M.)

17 CHRISTOPHER B. BRYAN, HAVING
18 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. STROM:

20 Q OFFICER, PLEASE STATE YOUR FULL NAME FOR THE RECORD.

21 A CHRISTOPHER B. BRYAN. IT'S SPELLED B-R-Y-A-N.

22 Q AND BY WHOM ARE YOU EMPLOYED?

23 A GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY, FORENSIC
24 DIVISION CRIME SCENE SECTION.

25 Q AND HOW LONG HAVE YOU BEEN SO EMPLOYED THERE?

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 A TWO YEARS AND ABOUT TEN MONTHS.

2 Q DID YOU HAVE AN OCCASION -- LET ME ASK YOU THIS. WHAT
3 ARE YOUR DUTIES WITH THE FORENSIC DEPARTMENT?

4 A WE RESPOND TO A CRIME SCENE AS REQUESTED BY LAW
5 ENFORCEMENT AGENCIES WITHIN THE BOUNDARIES OF GREENVILLE
6 COUNTY, WHETHER IT BE STATE, LOCAL OR MUNICIPALITIES OR
7 COUNTY AGENCIES. WE RESPOND TO PHOTOGRAPH, COLLECT EVIDENCE,
8 PROCESS EVIDENCE FOUND AT CRIME SCENES.

9 Q I WANT TO DIRECT YOUR ATTENTION TO DECEMBER 6TH OF 2000
10 AND ASK IF YOU HAD AN OCCASION TO GO TO THE ANDERSON COUNTY
11 IMPOUND LOT OVER IN ANDERSON, SOUTH CAROLINA?

12 A ACTUALLY, IT WAS IN THE EARLY MORNING HOURS OF DECEMBER
13 7TH IS WHEN I WENT THERE.

14 Q WHEN YOU SAY THE "EARLY MORNING HOURS," APPROXIMATELY
15 WHAT TIME?

16 A I ARRIVED IN ANDERSON AT 1:53 A.M.

17 Q JUST AFTER MIDNIGHT, SHORTLY AFTER MIDNIGHT OF THE 6TH?

18 A THAT'S CORRECT.

19 Q ALL RIGHT. AND WHEN YOU ARRIVED THERE WERE YOU PART OF
20 PROCESSING ALONG WITH AGENTS PARROTT AND AGENT -- AGENTS
21 PARROTT AND BAKER OF S.L.E.D. IN THE PROCESSING OF A JEEP
22 CHEROKEE?

23 A THAT IS CORRECT.

24 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED FOR
25 IDENTIFICATION AS STATE'S EXHIBITS 44A, 44E, 44F, 44G AND 44D

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 AND I ASK YOU TO LOOK AT THOSE. DO YOU RECOGNIZE THEM?

2 A (COMPLIES) YES, I RECOGNIZE THESE PHOTOGRAPHS.

3 Q ARE THESE PHOTOGRAPHS YOU TOOK OR WERE TAKEN IN YOUR
4 PRESENCE?

5 A THESE ARE PHOTOGRAPHS THAT I TOOK.

6 Q AND ARE THEY ACCURATE REPRESENTATION OF THE JEEP
7 CHEROKEE -- I MEAN, THE JEEP VEHICLE AND ITS CONTENTS?

8 A THAT'S CORRECT.

9 MS. STROM: YOUR HONOR, WE WOULD OFFER THESE INTO
10 EVIDENCE AT THIS TIME.

11 MR. MAULDIN: NO OBJECTION.

12 THE COURT: WITHOUT OBJECTION.

13 (STATE'S EXHIBITS 44A, 44D, 44E, 44F AND 44G,
14 PHOTOGRAPHS OF JEEP WAGONEER, MOVED INTO EVIDENCE)

15 MS. STROM: YOUR HONOR, I WILL ATTEMPT THIS WITHOUT OUR
16 TECHNICAL PERSON. (PAUSE) WELL, I'LL DO IT THE OLD-
17 FASHIONED WAY, JUDGE. MY APOLOGIES, YOUR HONOR.

18 THE COURT: THAT'S ALL RIGHT. DON'T WORRY ABOUT IT.

19 MS. STROM: I'M JUST NOT TECHNOLOGICALLY ADVANCED.

20 Q I SHOW YOU WHAT IS IN EVIDENCE AS STATE'S EXHIBIT NUMBER
21 44A. AND IF YOU WOULD, ORIENT THE JURY AS TO WHAT WE ARE
22 SEEING.

23 A THIS IS A PHOTOGRAPH THAT I TOOK OF A JEEP CHEROKEE, A
24 JEEP GRAND CHEROKEE WAGONEER OF SOME DESIGNATION. WE ARE
25 INSIDE THE ANDERSON COUNTY IMPOUND LOT. I BELIEVE IT'S RIGHT

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 INSIDE THE FIRST BAY CLOSEST TO THE ENTRANCE DOOR, AS BEST I
2 CAN RECOLLECT. THE VEHICLE IN FRONT IS ANOTHER VEHICLE THAT
3 WAS INVOLVED IN THIS THAT I DID NOT DO ANYTHING WITH. THAT'S
4 THE FRONT DRIVER'S SIDE DOOR, AND THAT'S THE FRONT DRIVER'S
5 SIDE QUARTERPANEL OF THE VEHICLE.

6 Q AND THERE ARE OTHER PHOTOGRAPHS, SUCH AS 44F AND 44G,
7 THAT ARE JUST DIFFERENT ANGLES OF THAT SAME VEHICLE?

8 A CORRECT.

9 Q AND SPECIFICALLY AS TO STATE'S 44E, DOES THIS PHOTOGRAPH
10 SHOW THE TAG?

11 A YES, IT DOES.

12 Q AND CAN YOU READ THAT TAG FROM WHERE YOU ARE?

13 A IT APPEARS TO BE 881LMB.

14 Q DID YOU ALSO TAKE THE PHOTOGRAPH -- I BELIEVE YOU
15 TESTIFIED YOU TOOK ALL OF THESE PHOTOGRAPHS -- STATE'S
16 EXHIBIT 44D, WHICH IS A PHOTOGRAPH OF THE INTERIOR OF THAT
17 JEEP; IS THAT CORRECT?

18 A THAT'S CORRECT. THAT'S THE PASSENGER SIDE FRONT SEAT
19 FLOORBOARD.

20 Q FRONT SEAT FLOORBOARD, PASSENGER SIDE?

21 A CORRECT.

22 Q AND WHAT DOES THAT PHOTOGRAPH DEPICT?

23 A IT DEPICTS A BLACK MOTORCYCLE HELMET, SOME WHAT APPEARS
24 TO BE VARIOUS CLOTHING. THERE IS A CARTRIDGE BOX, A PURPLE
25 MESH BAG, A PEPSI SODA BOTTLE IN THERE.

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 Q DID YOU HAVE AN OCCASION TO COLLECT THE MOTORCYCLE
2 HELMET THAT IS SEEN THERE IN THE PHOTOGRAPH?

3 A YES, I DID COLLECT THAT ITEM

4 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
5 EXHIBIT NUMBER 47 AND ASK YOU TO FIRST OPEN THE BAG AND LOOK
6 INTO IT AND TELL ME IF THAT'S THE HELMET THAT YOU RECOVERED
7 FROM THE JEEP.

8 A (COMPLIES) THAT IS CORRECT. THIS IS SOME HELMET THAT
9 YOU SEE IN THE PICTURE.

10 Q AND YOU COLLECTED THAT HELMET?

11 A YES, I COLLECTED IT FROM THE JEEP.

12 Q AND DID IT REMAIN IN YOUR CUSTODY AND CONTROL UNTIL SUCH
13 TIME THAT YOU PLACED IT INTO THE PROPERTY AND EVIDENCE ROOM
14 AT THE LAW ENFORCEMENT CENTER?

15 A THAT IS CORRECT.

16 MS. STROM: YOUR HONOR, AT THIS TIME WE WOULD OFFER
17 THIS INTO EVIDENCE.

18 MR. MAULDIN: NO OBJECTION.

19 A TAKE IT OUT?

20 Q YES, TAKE IT, PLEASE.

21 (STATE'S EXHIBIT NUMBER 47, HELMET, MOVED INTO EVIDENCE)

22 Q OKAY. AND YOU COLLECTED THIS FROM THE PASSENGER SIDE
23 FLOORBOARD OF THE JEEP?

24 A YES, PASSENGER SIDE, FRONT SEAT FLOORBOARD. CORRECT.

25 Q I SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT 46.

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 AGAIN, I ASK YOU THAT LOOK INTO THAT AND SEE IF THAT IS AN
2 ITEM THAT YOU COLLECTED ALSO FROM THE PASSENGER FLOORBOARD.

3 A (COMPLIES) YES, IT IS.

4 MS. STROM: JUST A MOMENT. LET ME SHOW IT TO DEFENSE
5 COUNSEL.

6 MR. MAULDIN: (REVIEWS EXHIBIT)

7 Q AGAIN, THIS IS AN ITEM YOU COLLECTED FROM THE FLOORBOARD
8 PASSENGER SIDE OF THE JEEP?

9 A THAT IS CORRECT.

10 Q AND WHAT IS IT?

11 A THIS IS THE EMPTY CARTRIDGE BOX, THE REMINGTON 9 MM
12 LUGER 115 GRAIN AMMUNITION BOX.

13 MS. STROM: YOUR HONOR, AT THIS TIME WE WOULD OFFER IT
14 INTO EVIDENCE.

15 MR. MAULDIN: NO OBJECTION.

16 Q IF YOU WOULD, HAND THE BAG TO THE COURT REPORTER SO THAT
17 SHE MAY PROPERLY MARK IT.

18 A (COMPLIES)

19 (STATE'S EXHIBIT NUMBER 46, EMPTY AMMUNITION BOX, MOVED
20 INTO EVIDENCE)

21 THE COURT: WHAT NUMBER IS THIS, MS. KOFFSKEY

22 COURT REPORTER: FORTY-SIX.

23 THE COURT: FORTY-SIX.

24 MS. STROM: THAT'S EXHIBIT NUMBER 46.

25 Q THAT IS WHAT WAS DEPICTED IN THE PHOTOGRAPH, CORRECT?

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 A THAT IS CORRECT.

2 Q I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS STATE'S
3 EXHIBIT NUMBER 41 FOR IDENTIFICATION. AT THIS TIME, I ASK
4 YOU JUST TO LOOK INTO THE BAG. AND DO YOU RECOGNIZE THAT
5 ITEM?

6 A (COMPLIES) YES, I DO.

7 Q IS THAT AN ITEM THAT YOU RECEIVED FROM AGENT BRETT BAKER
8 OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION?

9 A YES, IT IS.

10 Q AND DID YOU MAINTAIN CUSTODY AND CONTROL OF THAT ITEM
11 UNTIL YOU TRANSPORTED IT TO THE PROPERTY AND EVIDENCE ROOM AT
12 THE LAW ENFORCEMENT CENTER?

13 A YES, I DID.

14 MS. STROM: YOUR HONOR, AT THIS TIME WE WOULD OFFER
15 STATE'S EXHIBIT NUMBER 41 INTO EVIDENCE.

16 MR. MAULDIN: NO OBJECTION.

17 (STATE'S EXHIBIT NUMBER 41, TAN JACKET, MOVED INTO
18 EVIDENCE)

19 Q IF YOU WOULD, WHAT IS STATE'S EXHIBIT NUMBER 41?

20 A A TAN IN COLOR NORTHWEST TERRITORY JACKET STAINED WITH
21 WHAT APPEARS TO BE BLOOD.

22 Q THANK YOU. YOU MAY PUT THAT DOWN.

23 I NOW SHOW YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBIT
24 NUMBER 42 AND ASK YOU TO LOOK INTO THAT BAG. IS THAT AN ITEM
25 OF CLOTHING THAT YOU RECEIVED FROM S.L.E.D. AGENT BRETT BAKER

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 AS WELL?

2 A YES, IT IS?

3 Q DID YOU KEEP IT IN YOUR CUSTODY AND CONTROL AT ALL TIMES
4 UNTIL YOU PLACED IT INTO THE PROPERTY AND EVIDENCE ROOM AT
5 THE LAW ENFORCEMENT CENTER?

6 A YES, I DID.

7 MS. STROM: YOUR HONOR, AT THIS TIME WE WOULD OFFER
8 STATE'S EXHIBIT NUMBER 42 INTO EVIDENCE.

9 MR. MAULDIN: NO OBJECTION.

10 (STATE'S EXHIBIT NUMBER 42, BLACK JEANS, MOVED INTO
11 EVIDENCE)

12 A (REMOVES EXHIBIT FROM BAG) A PAIR OF BLACK IN COLOR
13 CHEROKEE JEANS.

14 Q APPEAR TO HAVE BEEN CUT OFF?

15 A APPEAR TO HAVE BEEN REMOVED FROM THE WEARER AND STAINED
16 WITH WHAT APPEARS TO BE BLOOD.

17 Q THANK YOU. PLEASE PUT IT BACK IN THE BAG, IF YOU WOULD.

18 A (COMPLIES)

19 Q OFFICER, WHEN YOU RECEIVED STATE'S EXHIBIT NUMBER 42 DID
20 YOU HAVE AN OCCASION TO LOOK AT THE CONTENTS OF THE POCKETS
21 ON THOSE PAIRS OF JEANS?

22 A YES. AS I WAS PREPARING THE ITEMS OF EVIDENCE FOR
23 PACKAGING, I SEARCHED THE POCKETS FOR ANY CONTENTS THAT MAY
24 BE, SO THAT IF THERE WERE ANY OTHER EVIDENCE NECESSARY TO BE
25 COLLECTED, I COULD PACKAGE THAT SEPARATELY FROM THAT MAIN

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 ITEM.

2 Q AND I SHOW YOU WHAT HAS BEEN PREVIOUSLY MARKED AS
3 STATE'S EXHIBIT NUMBER 42A AND I ASK THAT YOU LOOK INTO THAT
4 AND SEE IF YOU RECOGNIZE IT.

5 A (COMPLIES) YES, I DO.

6 MS. STROM: YOUR HONOR, AT THIS TIME WE WOULD OFFER
7 STATE'S EXHIBIT NUMBER 42A INTO EVIDENCE.

8 MR. MAULDIN: NO OBJECTION.

9 (STATE'S EXHIBIT NUMBER 42A, 8 LIVE CARTRIDGE ROUNDS)
10 MOVED INTO EVIDENCE)

11 Q IF YOU WOULD -- OFFICER BRYAN, IF YOU WOULD, TELL THE
12 JURY WHAT IS CONTAINED IN STATE'S EXHIBIT NUMBER 42A.

13 A THIS IS 8 CARTRIDGES HEAD STAMPED RP 9 MM LUGER REMOVED
14 FROM THE RIGHT -- FROM THE FRONT LEFT POCKET OF ITEM CB5,
15 WHICH WAS THE BLACK TROUSERS THAT WERE -- THE CHEROKEE PANTS,
16 THE PERSONAL BELONGINGS OF THE DEFENDANT.

17 Q AND YOU GAVE A NUMBER OF CB5. THAT WOULD HAVE BEEN YOUR
18 NUMBER THAT YOU PLACED ON THE PIECE OF EVIDENCE AS YOU
19 COLLECTED IT?

20 A CORRECT. THAT'S MY DESIGNATION IDENTIFYING THAT PIECE
21 OF EVIDENCE AS AN ITEM THAT I COLLECTED AND THE NUMBER WHICH
22 IT WAS IDENTIFIED AS.

23 Q THOSE CARTRIDGES THAT YOU HAVE THERE IN STATE'S EXHIBIT
24 42A, THOSE ARE LIVE ROUNDS; IS THAT CORRECT?

25 A THAT'S CORRECT.

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 Q AND THEY CAME OUT OF THE BLACK PANTS THAT YOU SHOWED
2 EARLIER?

3 A THAT IS CORRECT.

4 MS. STROM: (OFF RECORD WITH CO-COUNSEL) THANK YOU.
5 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

6 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

7 THE COURT: TAKE YOUR TIME, SIR.

8 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) NO
9 QUESTIONS.

10 THE COURT: OFFICER BRYAN, THANK YOU, SIR.

11 MS. STROM: YOUR HONOR, WE'D ASK THAT HE BE EXCUSED.

12 MR. MAULDIN: NO OBJECTION.

13 THE COURT: THANK YOU. YOU MAY STEP DOWN.

14 (WITNESS EXCUSED AT 7:05 P.M.)

15 HOW MANY MORE WITNESSES DOES THE STATE HAVE?

16 SOLICITOR ARIAIL: THREE.

17 THE COURT: WHAT IS THE ANTICIPATED LENGTH?

18 SOLICITOR ARIAIL: WELL, WE HAVE TWO MORE TONIGHT AND
19 WE ANTICIPATE THOSE WILL PROBABLY BE THE LAST TWO.

20 THE COURT: LENGTHWISE---

21 SOLICITOR ARIAIL: WE HAVE ONE MORE, BUT I WOULD LIKE
22 TO IF WE COULD FINISH THESE TWO BECAUSE THEY ARE BOTH FROM
23 COLUMBIA.

24 THE COURT: OUT OF TOWN. ALL RIGHT.

25 WE'RE GOING TO TAKE A FIVE-MINUTE BREAK BECAUSE WE

CHRISTOPHER B. BRYAN -- DIRECT BY MS. STROM

1 DIDN'T TAKE A BREAK THE LAST TIME Y'ALL DID. DON'T DISCUSS
2 THE CASE. AND JUST UNDERSTAND WE HAVE TWO MORE WITNESSES
3 THIS EVENING. IF YOU WILL, JUST BEAR WITH US, WE'LL DO THAT
4 AND THEN BE THROUGH FOR THE EVENING. THANK YOU.

5 (JURY EXITS COURTROOM AT 7:06 P.M.)

6 THE COURT: THE JURY HAS BEEN EXCUSED. WE'RE IN
7 RECESS. FIVE MINUTES.

8 (A RECESS WAS TAKEN FROM 7:06 TO 7:15 P.M.)

9 THE COURT: BRING THE JURY.

10 (JURY REENTERS COURTROOM AT 7:15 P.M.)

11 THE COURT: NEXT WITNESS, PLEASE.

12 MS. STROM: THE STATE RECALLS ILA SIMMONS.

13 ILA SIMMONS, HAVING BEEN
14 PREVIOUSLY BEEN SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MS. STROM:

16 Q AGENT SIMMONS, YOU PREVIOUSLY TESTIFIED AND WERE
17 QUALIFIED AS AN EXPERT IN THE AREA OF GUNSHOT -- EXCUSE ME,
18 TRACE EVIDENCE ANALYSIS, SPECIFICALLY INTO THE AREA OF
19 GUNSHOT RESIDUE AND ATOMIC ABSORPTION. I'D LIKE TO SHOW YOU
20 WHAT'S BEEN MARKED AS STATE'S EXHIBIT NUMBER 43. I BELIEVE
21 IT IS ALREADY IN EVIDENCE. IS THAT A PIECE OF EVIDENCE YOU
22 RECEIVED?

23 A (REVIEWS EXHIBIT) YES, IT IS. MY INITIALS AND LAB
24 NUMBER AND OTHER PERTINENT INFORMATION ARE ON THIS KIT.

25 Q STATE'S EXHIBIT NUMBER 43 HAS PREVIOUSLY BEEN TESTIFIED

ILA SIMMONS -- DIRECT CONTINUES BY MS. STROM

1 AS THE GUNSHOT RESIDUE KIT TAKEN FROM THE DEFENDANT, JOHN
2 RICHARD WOOD. DID YOU CONDUCT ANY TESTING ON THAT ITEM?

3 A YES, I DID.

4 Q AND WERE THOSE TESTS CONDUCTED IN THE SAME MANNER IN
5 WHICH YOU TESTIFIED PREVIOUSLY?

6 A YES, THEY WERE.

7 Q AND DO YOU HAVE THE RESULTS OF THOSE TESTS?

8 A I DO.

9 Q WHAT IS YOUR OPINION AS TO THE RESULTS OF THE GUNSHOT
10 RESIDUE IN REGARDS TO THE DEFENDANT, JOHN RICHARD WOOD?

11 A I FOUND ROUND LEAD PARTICLES ON BOTH PALMS AND ON THE
12 BACK OF THE RIGHT HAND.

13 Q OKAY. I NEED YOU TO SPEAK UP.

14 A I'M SORRY.

15 Q THAT'S OKAY. SPEAK INTO THE MICROPHONE, IF YOU COULD.

16 A OKAY. LET ME GET CLOSER. I FOUND ROUND LEAD PARTICLES
17 ON BOTH PALMS AND ON THE BACK OF THE RIGHT HAND.

18 Q BOTH PALMS AND THE BACK OF THE RIGHT HAND?

19 A YES, MA'AM.

20 Q IN ACCORDANCE WITH THE TESTIMONY YOU GAVE EARLIER, WERE
21 YOU ABLE TO DETERMINE THE MOST PROBABLE WAY THAT THE GUNSHOT
22 RESIDUE GOT ONTO THE DEFENDANT'S HANDS?

23 A THERE ARE TWO PROBABLE WAYS THAT THIS MATERIAL COULD
24 HAVE GOTTEN ON THE HANDS. THE FIRST WAY IS THE PERSON COULD
25 HAVE BEEN IN THE VICINITY OF A WEAPON WHEN IT WAS FIRED OR

ILA SIMMONS -- DIRECT CONTINUES BY MS. STROM

1 THEY COULD HAVE FIRED A WEAPON.

2 Q SO THE RESULTS ARE CONSISTENT WITH BEING IN THE VICINITY
3 OF A WEAPON FIRED OR ARE ALSO CONSISTENT WITH FIRING A
4 WEAPON?

5 A CORRECT.

6 MS. STROM: COURT'S INDULGENCE, YOUR HONOR. (OFF
7 RECORD WITH CO-COUNSEL) THANK YOU. PLEASE ANSWER ANY
8 QUESTIONS THE DEFENSE MAY HAVE.

9 MR. MAULDIN: NO QUESTIONS.

10 THE COURT: AGENT SIMMONS, THANK YOU, MA'AM.

11 WITNESS: THANK YOU.

12 MS. STROM: YOUR HONOR, WE ASK THAT SHE BE EXCUSED.

13 MR. MAULDIN: NO OBJECTION.

14 THE COURT: WITHOUT OBJECTION.

15 (WITNESS EXCUSED AT 7:20 P.M.)

16 THE COURT: NEXT WITNESS.

17 SOLICITOR ARIAIL: VELLO PAAVEL.

18 VELLO PAAVEL, HAVING BEEN DULY
19 SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

21 Q STATE YOUR NAME, PLEASE, SIR.

22 A AGAIN, MY NAME IS VELLO PAAVEL.

23 Q GREAT. IF YOU WOULD, JUST KEEP YOUR VOICE UP SO THESE
24 LAST TWO JURORS AND I CAN HEAR JUST LIKE YOU WERE JUST
25 TALKING.

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 BY WHOM ARE YOU EMPLOYED?

2 A I WORK FOR THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION,
3 WHICH IS COMMONLY KNOWN AS S.L.E.D.

4 Q AND WHAT CAPACITY DO YOU WORK FOR S.L.E.D.?

5 A I WORK IN THE FORENSIC SERVICES LABORATORY, IN
6 PARTICULAR THE FIREARMS DEPARTMENT WHERE I AM A FIREARM AND
7 TOOLMARK EXAMINER.

8 Q AND AS A FIREARM AND -- HOW LONG HAVE YOU BEEN EMPLOYED
9 WITH S.L.E.D.?

10 A ALMOST 15 YEARS.

11 Q AND ALL OF THOSE AS A FIREARM AND TOOLMARKING EXAMINER?

12 A I WORKED IN THE FIREARMS DEPARTMENT ALL THE 15 YEARS
13 THAT I HAVE BEEN THERE. DURING MY INITIAL EMPLOYMENT IN THE
14 FIREARMS DEPARTMENT, I ALSO WAS RESPONSIBLE FOR LATENT PRINT
15 WORK AND CRIME SCENE WORK. BUT SINCE 1989 THE LATENT PRINT
16 AND CRIME SCENE SECTION SEPARATED FROM THE FIREARMS
17 DEPARTMENT AND I'VE WORKED STRICTLY IN THE FIREARMS
18 DEPARTMENT SINCE THEN.

19 Q AND WHAT IS YOUR EDUCATION AND TRAINING TO QUALIFY YOU
20 FOR SUCH A POSITION?

21 A I ATTENDED THE UNIVERSITY OF SOUTH CAROLINA WHERE I HAVE
22 A BACHELOR OF SCIENCE DEGREE, AND I MAJORED IN CHEMISTRY.
23 ONE OF THE REQUIREMENTS FOR WORKING IN THE FORENSIC SERVICES
24 LABORATORY IS TO HAVE SOME TYPE OF FOUR-YEAR DEGREE,
25 PREFERABLY IN A SCIENCE. I HAVE ALSO ATTENDED THE CRIMINAL

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 JUSTICE ACADEMY. I AM A CERTIFIED OFFICER. HOWEVER, IN THE
2 AREA OF FIREARMS IDENTIFICATION AND TOOLMARK IDENTIFICATION
3 MOST OF MY TRAINING CAME FROM A TRAINING PROGRAM THAT WAS
4 ADMINISTERED BY S.L.E.D. WHAT I HAD TO DO WAS WORK UNDER THE
5 SUPERVISION OF COURT QUALIFIED EXAMINERS IN THE LABORATORY.
6 I WAS TRAINED IN THIS AREA. I WAS TESTED ON THE INFORMATION
7 THAT I WAS LEARNING. AND AFTER SUCCESSFULLY COMPLETING THAT
8 TRAINING I WAS ALLOWED TO WORK CASES ON MY OWN. ALSO DURING
9 THAT TIME I HAD THE OPPORTUNITY TO ATTEND A SCHOOL AT THE FBI
10 ON SPECIALIZED TECHNIQUES IN FIREARMS IDENTIFICATION. ALSO,
11 PRIOR TO MY LAW ENFORCEMENT CAREER I WORKED IN A GUN SHOP,
12 MANAGED A GUN SHOP WHERE I REPAIRED FIREARMS AND SOLD
13 FIREARMS AND WAS RESPONSIBLE FOR MANAGING THAT GUN SHOP.
14 AGAIN, SINCE I COMPLETED MY TRAINING AS REQUIRED BY THE
15 LABORATORY, I HAVE BEEN ALLOWED TO WORK CASES ON MY OWN AND
16 TO TESTIFY IN COURT AS AN EXPERT IN THE AREA OF FIREARMS AND
17 TOOLMARK IDENTIFICATION.

18 Q LET ME -- WHAT IS THE NUMBER OF FIREARM IDENTIFICATION
19 TEST OR EXAMINATIONS YOU HAVE CONDUCTED IN YOUR CAREER?

20 A AGAIN, I'VE BEEN THERE ALMOST 15 YEARS. I WORK
21 APPROXIMATELY 150 TO 200 CASES PER YEAR. EACH CASE HAS
22 NUMEROUS, NUMEROUS EXAMINATIONS OR COMPARISONS. I SUSPECT
23 I'VE WORKED AT LEAST TENS OF THOUSANDS IF NOT HUNDREDS OF
24 THOUSANDS OF INDIVIDUAL MICROSCOPIC COMPARISONS.

25 Q AND HAVE YOU QUALIFIED AS AN EXPERT WITNESS IN THE AREA

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 OF FIREARM IDENTIFICATION IN THIS COURT OR COURTS OF OTHER
2 STATES?

3 A YES, SIR. I HAVE TESTIFIED AS AN EXPERT IN FIREARMS
4 IDENTIFICATION APPROXIMATELY 235 TIMES IN SOUTH CAROLINA
5 GENERAL SESSIONS COURT AND IN FEDERAL COURTS IN SOUTH
6 CAROLINA.

7 Q HOW MANY FIREARMS EXAMINERS ARE THERE AT S.L.E.D.?

8 A THERE ARE FIVE FULL-TIME EXAMINERS AND TWO THAT ARE IN
9 TRAINING.

10 Q AND DO EACH OF YOU REVIEW EACH OTHER'S CONCLUSIONS AS
11 PART OF THE WORK -- PART OF YOUR NORMAL WORK?

12 A YES, SIR. ONE OF THE REQUIREMENTS IN THE LABORATORY
13 BECAUSE OF OUR ACCREDITATION PROCEDURE IS THAT AN EXAMINER'S
14 RESULTS HAVE TO BE REVIEWED BY ANOTHER COURT QUALIFIED
15 EXAMINER IN THAT FIELD.

16 Q ARE YOU -- ARE THERE CERTAIN STANDARDS YOU MUST OBSERVE
17 AS A PART OF YOUR WORK?

18 A YES, SIR. AGAIN, AS A PART OF OUR TRAINING PROGRAM AND
19 QUALITY CONTROL PROGRAM AND AS A PART OF ACCREDITATION,
20 AGAIN, COURT REVIEW HAS TO BE DONE. WE HAVE TO HAVE REVIEW
21 OF OUR RESULTS. WE HAVE REVIEW OF OUR CASE WORK THAT WE DO.
22 I HAVE TO TAKE PROFICIENCY TESTS THAT I KNOW ARE PROFICIENCY
23 TESTS. I MAY ACTUALLY GET PROFICIENCY TESTS THAT I KNOW IS A
24 PROFICIENCY TEST, UNKNOWN OR BLIND PROFICIENCIES. THOSE ARE
25 THE MAIN REQUIREMENTS THAT WE HAVE.

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 Q AND IS THE S.L.E.D. FIREARMS DEPARTMENT LAB SUBJECT TO
2 CERTAIN OUTSIDE ACCREDITATION STANDARDS? NOT INSIDE BUT
3 OUTSIDE?

4 A YES, SIR. THE FORENSIC SERVICES LABORATORY, OF WHICH
5 THE FIREARMS DEPARTMENT IS A PART, IS ACCREDITED BY THE
6 AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS, KNOWN AS
7 A.S.C.L.A.D., WHICH IS A GROUP OF INDIVIDUALS THAT SET
8 STANDARDS FOR LABORATORIES AND CERTIFIES THE LABORATORIES AND
9 INSPECTS THE LABORATORIES TO MAKE SURE THAT THE LABORATORY IS
10 FOLLOWING THE PROCEDURES AND PROTOCOLS AND GUIDELINES THAT
11 ARE SET FORTH BY THE CERTIFYING BODY.

12 Q AND IS THE FIREARMS IDENTIFICATION TESTING AND
13 EXAMINATION CONDUCTED AT S.L.E.D., IS IT IN ACCORDANCE WITH
14 STANDARDS THAT ARE WIDELY CONDUCTED FORMS OF TESTING?

15 A YES, SIR. THE TESTS THAT WE NORMALLY DO IN THE FIREARMS
16 LABORATORY ARE TESTS THAT ARE DONE IN OTHER FIREARMS
17 LABORATORIES ACROSS THE COUNTRY AND ACROSS THE WORLD.

18 Q AND HOW LONG HAS THIS PARTICULAR FIREARMS IDENTIFICATION
19 BEEN IN EXISTENCE?

20 A THE ACTUAL MICROSCOPIC COMPARISON OF BULLETS AND
21 CARTRIDGE CASINGS AND HAVING A -- FROM THE FORENSIC ASPECT
22 AND HAVING TESTIMONY HAS BEEN AROUND APPROXIMATELY 80 THE 85
23 YEARS. IN THE EARLY 1920s AND LATE TEENS THE FIREARMS
24 IDENTIFICATION REALLY TOOK OFF WHEN THE EXPERTS STARTED TO
25 LOOK AT BULLETS AND CARTRIDGE CASINGS WITH A COMPARISON

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 MICROSCOPE AND DOING STUDY AND DETERMINED THAT BULLET AND
2 CARTRIDGE CASINGS CAN BE IDENTIFIED TO PARTICULAR GUNS.

3 Q HAS THE RELIABILITY OF THIS TYPE OF TESTING BEEN
4 REVIEWED BY PERSONS WITHIN YOUR FIELD?

5 A YES, SIR. TESTS HAVE BEEN DONE BY INDIVIDUALS AND
6 EXAMINERS IN THIS FIELD WHERE THEY HAVE CONCLUDED THAT THE
7 TEST IS RELIABLE.

8 Q AND HAS THIS FORM OF TESTING ALSO BEEN REVIEWED WITHIN
9 PROFESSIONAL JOURNALS?

10 A YES, SIR, IT HAS.

11 Q HAVE YOU WRITTEN OR PUBLISHED ANY ARTICLES REGARDING
12 YOUR WORK?

13 A NO, SIR, I HAVE NOT.

14 Q HAVE YOU BEEN SPECIFICALLY TRAINED, INCLUDING EXPERIENCE
15 IN PERFORMING AND INTERPRETING THE RESULTS OF THESE FIREARM
16 TESTS?

17 A YES, SIR, I HAVE.

18 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD SUBMIT MR.
19 PAAVEL AS AN EXPERT IN THE FIELD OF FIREARMS IDENTIFICATION
20 TESTING AND EXAMINATION ANALYSIS.

21 MR. MAULDIN: WE STIPULATE THE GENTLEMAN IS QUALIFIED
22 AS AN EXPERT, YOUR HONOR.

23 THE COURT: VERY GOOD. THANK YOU. SAME INSTRUCTION I
24 HAVE GIVEN YOU THROUGHOUT ON THE TESTIMONY OF AN EXPERT
25 WITNESS.

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 PROCEED, PLEASE.

2 Q IF YOU WOULD, EXPLAIN TO THE JURY THE VARIOUS STEPS
3 INVOLVED IN A FIREARMS IDENTIFICATION COMPARISON AND
4 EXAMINATION.

5 A YES, SIR. BRIEFLY, THE EVIDENCE HAS TO BE SUBMITTED TO
6 THE LABORATORY. WHETHER IT'S DONE BY AN OUTSIDE AGENCY OR
7 WHETHER IT'S COLLECTED BY A S.L.E.D. AGENT, IT HAS TO BE
8 BROUGHT INTO THE LABORATORY. ONCE IT GETS INTO THE
9 LABORATORY, A CASE NUMBER IS ASSIGNED TO THE EVIDENCE SO THAT
10 WE HAVE A WAY OF TRACKING THE EVIDENCE. THEN THE EVIDENCE IS
11 ROUTED TO THE VARIOUS SECTIONS IN THE FORENSIC SERVICES
12 LABORATORY AND WE GET -- I SAY WE -- I WILL GET THE FIREARMS
13 EVIDENCE ON A PARTICULAR CASE.

14 NOW, DEPENDING ON WHAT THE AGENCY OR SUBMITTING OFFICER
15 REQUESTS, THAT DETERMINES WHAT I WILL DO. IN THE CASE OF A
16 GUN THAT'S BEEN SUBMITTED AND, SAY, FIRED BULLETS AND FIRED
17 CARTRIDGE CASINGS, I WILL DOCUMENT THE EVIDENCE THAT I HAVE,
18 MEANING I WILL WRITE DOWN WHAT TYPE OF GUN IT IS, MAKE,
19 MODEL, BRAND, SERIAL NUMBER, SO FORTH. I'LL DOCUMENT WHAT
20 TYPE OF BULLETS OR CARTRIDGE CASINGS I HAVE. I WILL EXAMINE
21 THE FIREARM AND DETERMINE WHETHER OR NOT IT IS WORKING
22 PROPERLY.

23 AND THEN IF I HAVE TO DO A MICROSCOPIC COMPARISON, I
24 WILL ACTUALLY TEST FIRE THE FIREARM INTO A RECOVERY TANK AND
25 I WILL RECOVER THE BULLETS AND RECOVER THE CARTRIDGE CASINGS,

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 AND THEN BY USING A COMPARISON MICROSCOPE I WILL COMPARE THE
2 EVIDENCE ITEMS WITH THE TEST ITEMS THAT I FIRED OR HAD FIRED
3 FROM THAT PARTICULAR GUN TO DETERMINE WHETHER OR NOT THEY
4 WERE FIRED BY THAT GUN.

5 Q AND WHEN YOU HAVE A KNOWN SOURCE OF AMMUNITION WILL YOU
6 ALSO TEST FIRE THE GUN WITH THE SAME AMMUNITION AS THAT YOU
7 ARE COMPARING IT TO?

8 A IF I HAVE TO. SOMETIMES I DON'T HAVE TO. IF I HAVE THE
9 SAME TYPE OF AMMUNITION OR HAVE AMMUNITION OF THE SAME TYPE,
10 SOMETIMES I MAY HAVE TO ACTUALLY TEST FIRE AMMUNITION THAT
11 WAS SUBMITTED WITH THE EVIDENCE GUN.

12 Q AND YOU ACTUALLY FIRE THE WEAPON INTO A TANK AND IT IS A
13 TANK OF WATER?

14 A YES, SIR. IN S.L.E.D. WE HAVE WHAT IS KNOWN AS A
15 VERTICAL RECOVERY TANK. AND IF YOU CAN JUST IMAGINE A LARGE
16 STEEL TUBE, A STAINLESS STEEL TUBE, ABOUT THREE FEET IN
17 DIAMETER. IT'S ABOUT 14 FEET TALL. IN FACT, IT'S -- THE
18 OPENING IS ON THE SECOND FLOOR AND THE BOTTOM IS DOWN ON THE
19 FIRST FLOOR. WE HAVE A BIG LID ON IT. WE OPEN UP THE LID
20 AND WE SHOOT INTO THE TANK, AND THE TANK IS FULL OF WATER.
21 AND THE WATER WILL SLOW DOWN THE BULLET AND NOT MARK THE
22 BULLET, WHICH IS IMPORTANT TO ME BECAUSE I LOOK AT THE
23 MICROSCOPIC MARKINGS THAT ARE LEFT ON THE BULLET AS A RESULT
24 OF THAT BULLET TRAVELING THROUGH THE GUN BARREL, BECAUSE WHEN
25 THE BULLET TRAVELS THROUGH THAT GUN BARREL THE OUTSIDE OF THE

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 BULLET IS BEING SCRATCHED OR MARKED BY THE INSIDE OF THAT GUN
2 BARREL. AND SO I LOOK AT THOSE MICROSCOPIC MARKS AND COMPARE
3 THEM TO THE MARKS THAT ARE ON THE TEST BULLETS THAT I FIRED.

4 BUT AGAIN, GETTING BACK TO THAT TANK, JUST A BIG STEEL
5 CYLINDER. WE SHOOT THE BULLETS INTO THE TANK. THE WATER
6 SLOWS DOWN THE BULLETS AND THEY FALL DOWN TO THE BOTTOM OF
7 THIS 14-FOOT TANK.

8 NOW, YOU'RE PROBABLY THINKING, HOW DO WE GET THEM OUT?
9 THE BOTTOM OF THE TANK IS CONICAL. IT'S LIKE AN ICE CREAM
10 CONE. AND AT THE VERY BOTTOM OF THAT TANK IS A LITTLE WHOLE
11 ABOUT THIS BIG (INDICATING) AND A STEEL CUP SITS INSIDE OF
12 IT, AND THAT STEEL CUP HAS A CHAIN THAT COMES UP TO THE TOP
13 OF IT WHERE THE LID IS. SO ONCE WE SHOOT, THE BULLETS FALL
14 INTO THE WATER -- OR ARE FIRED INTO THE WATER, THEY FALL
15 THROUGH THE WATER INTO THE CUP, AND WE JUST PULL THEM UP WITH
16 A CHAIN AND POUR THEM IN YOUR HAND.

17 Q NOW, WERE THESE STEPS USED IN THIS PARTICULAR CASE TO
18 COMPARE THE ITEMS THAT WERE SUBMITTED TO YOU FOR EXAMINATION?

19 A YES, SIR.

20 Q ALL RIGHT. I'M GOING TO HAND YOU -- (PAUSE) I'M GOING
21 TO HAND YOU STATE'S EXHIBITS 4 THROUGH 10, 20, 11 THROUGH 19,
22 22A AND 22B, 24, 25, 40 AND 39 AND ASK IF YOU RECEIVED THOSE
23 IN THIS CASE FOR PURPOSES OF TESTING?

24 A BEAR WITH ME A FEW MINUTES.

25 Q SURE.

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 A LET ME RUN THROUGH THESE. (REVIEWS EXHIBITS) SIR, I DO
2 RECOGNIZE THESE ITEMS.

3 Q ALL RIGHT. AND DID YOU RECEIVE THOSE FOR TESTING?

4 A YES, SIR, I DID.

5 Q AND SO THE JURY WILL UNDERSTAND WHAT YOU ARE DOING AS
6 YOU WERE EYEBALLING THESE THINGS VERY CLOSE UP, EXPLAIN TO
7 THE JURY HOW YOU MARK EACH ONE OF THESE ITEMS, EVEN THE SMALL
8 CASINGS.

9 A YES, SIR. DEPENDING ON THE SIZE OF THE ITEM WHAT I HAVE
10 TO DO IS MARK IT IN A MANNER THAT I CAN RECOGNIZE THAT ITEM
11 LATER ON. A CARTRIDGE CASING WILL LOOK LIKE A CARTRIDGE
12 CASING. IT WOULD BE VERY DIFFICULT FOR ME TO LOOK AT A PIECE
13 OF EVIDENCE I SAW SOME TIME AGO UNLESS I PLACE SOME SORT OF
14 MARKINGS ON IT. IN THIS PARTICULAR INSTANCE ON THE CARTRIDGE
15 CASINGS AND THE LARGER FRAGMENTS THAT I LOOKED AT IN THE FILE
16 I ACTUALLY PUT THE CASE NUMBER, WHICH THE LABORATORY CASE
17 NUMBER THAT I TALKED ABOUT EARLIER HOW TO TRACK THE CASE,
18 EACH ONE OF THESE ITEMS WILL HAVE AN ITEM NUMBER THAT'S ALSO
19 ASSIGNED WHEN THE CASE NUMBER IS ASSIGNED, AND I HAVE MY
20 INITIALS ON IT. THEY ARE VERY SMALL. I HAVE TO USE AN
21 ENGRAVER AND MAGNIFICATION TO ACTUALLY PUT THEM ON THERE
22 BECAUSE I HAVE TO PUT THEM IN AN AREA OF THE PIECE OF
23 EVIDENCE WHERE I DON'T DAMAGE ANY MARKINGS THAT I MAY NEED
24 FOR IDENTIFICATION PURPOSES LATER ON WHEN I DO THE COMPARISON
25 WITH THE MICROSCOPE. THAT'S WHY IT TAKES A FEW MINUTES TO

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 LOOK AT IT AND CONFIRM THAT I'M LOOKING AT THE SAME EVIDENCE.

2 Q SO THE ENGRAVING IS ACTUALLY DONE BY A TOOL UNDER
3 MAGNIFICATION?

4 A YES, SIR, NORMALLY.

5 Q ALL RIGHT. NOW, BEFORE WE GO TO THE SPECIFICS OF THE
6 EXHIBITS, LET ME ASK YOU SOME GENERAL QUESTIONS ABOUT THE
7 AMMUNITION AND THE GUN IN THIS CASE. FIRST, IN REGARD TO THE
8 GUN, WHAT TYPE OF GUN IS IT -- OR FIREARM?

9 A AS A MATTER OF TYPE, THIS IS A HANDGUN AS OPPOSED TO
10 BEING A LONG GUN, A RIFLE OR A SHOTGUN. IT IS A HANDGUN. IN
11 PARTICULAR, IT'S A SEMIAUTOMATIC PISTOL. IT'S MADE BY A
12 COMPANY CALLED GLOCK. IT IS A MODEL 17 GLOCK PISTOL. IT IS
13 A 9 MILLIMETER LUGER CALIBER, AND IT HAS A SERIAL NUMBER OF
14 DPK610US.

15 Q AND IT'S A 9 MILLIMETER?

16 A YES, SIR. IT IS A 9 MILLIMETER LUGER CALIBER PISTOL,
17 YES, SIR.

18 Q THE GLOCK MANUFACTURED WEAPONS POSSESS CERTAIN UNIQUE
19 CHARACTERISTICS THAT ARE NECESSARILY PRESENT IN OTHER
20 HANDGUNS OF THAT TYPE?

21 A YES, SIR. THERE ARE TWO MAIN DISTINCT FEATURES OF IT.
22 IT USES THE SO-CALLED POLYMER OR PLASTIC FRAME, WHICH A LOT
23 OF GUNS DON'T USE. AND IT ALSO HAS INSIDE THE BARREL A TYPE
24 OF RIFLING WHICH IS NOT COMMONLY USED BY ALL FIREARMS
25 MANUFACTURERS, WHICH IS KNOWN AS POLYGONAL RIFLING, WHICH IS

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 A MUCH SMOOTHER TYPE OF RIFLING THAN SO-CALLED CONVENTIONAL
2 RIFLING.

3 NOW, BRIEFLY, RIFLING IS PUT INTO THE BARREL OF MOST
4 PISTOLS AND RIFLES BY THE MANUFACTURER IN ORDER TO CAUSE THE
5 BULLET TO SPIN. RIFLING IS A SERIES OF HELICAL GROOVES THAT
6 ARE EITHER CUT OR FORMED ON THE INSIDE OF THE BARREL BY THE
7 MANUFACTURER, AND BETWEEN THESE GROOVES IT LEAVES RAISED
8 AREAS CALLED LANDS. WHEN A BULLET IS FIRED THROUGH THE
9 BARREL, THE PRESSURE OF THE GAS THAT IS FORMED WHEN THE
10 GUNPOWDER IS BURNED PUSHES THE BULLET THROUGH THE BARREL AND
11 INTO THAT RIFLING, AND THE RAISED LANDS THAT ARE INSIDE THE
12 BARREL WILL LITERALLY GRAB OR GRIP, AND THEY ENGRAVE THE
13 OUTSIDE OF THE BULLET BECAUSE IT'S BEING FORCED. THAT METAL
14 IS BEING FORCED THROUGH THE BARREL AND THE RIFLING GRABS THAT
15 BULLET.

16 THE RIFLING IN THIS PARTICULAR GUN TWISTS TO THE RIGHT.
17 IT'S CLOCKWISE. SOME GUNS IT WILL GO TO THE LEFT OR
18 COUNTERCLOCKWISE. THAT CAUSES THE BULLET TO SPIN, AND THAT'S
19 THE MAIN REASON THAT RIFLING IS PUT INSIDE THE BARREL IS TO
20 CAUSE THAT BULLET TO SPIN.

21 I KNOW EVERYBODY HAS EITHER THROWN A FOOTBALL OR SEEN A
22 FOOTBALL THROWN. AND WHEN YOU'VE GOT A GOOD TIGHT SPIN AND
23 SPIRAL ON THAT BALL IT GENERALLY TRAVELS FAIRLY ACCURATELY.
24 THAT'S WHAT THE SPIN OR THE RIFLING DOES INSIDE THE BARREL.
25 IT CAUSES THE BULLET TO SPIN ON ITS LONG AXIS WHICH MAKES IT

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 TRAVEL MORE ACCURATELY.

2 NOW, THE BENEFIT TO ME IN WHAT I DO -- THE RIFLING,
3 AGAIN, ENGRAVES OF SCRATCHES THE OUTSIDE OF THAT BULLET AS IT
4 GOES THROUGH THE BARREL -- THE RIFLING WILL LEAVE UNIQUE
5 IDENTIFIABLE MARKINGS ON THE OUTSIDE OF THAT BULLET THAT I
6 CAN LATER EXAMINE AND TRY TO DETERMINE WHETHER OR NOT THAT
7 BULLET WAS FIRED BY THAT GUN. IN CONVENTIONAL RIFLING WHERE
8 THE LANDS AND THE GROOVES INTERSECT THERE IS A SHARP ANGLE.
9 THERE'S A VERY, VERY SHARP ANGLE. AND WHEN THE BULLET PASSES
10 ACROSS THIS, THE BULLET GETS ENGRAVED CONSIDERABLY -- IT IS
11 SCRATCHED -- MORE SO THAN IN POLYGONAL. POLYGONAL RIFLING
12 WHERE THE LANDS AND GROOVES MEET EACH OTHER, IT DOESN'T HAVE
13 SHARP ANGLES. THEY ARE ROUND. THEY ARE LIKE LITTLE
14 HEMISPHERES. IT'S VERY SMOOTH ON THE INSIDE OF THAT BARREL.
15 SO WHAT HAPPEN IS THE POLYGONAL RIFLING NORMALLY DOES NOT
16 ENGRAVE THE BULLET QUITE AS WELL AS CONVENTIONAL RIFLING.

17 BUT AGAIN, THE TWO MAIN DIFFERENCES IN THE GLOCK ARE THE
18 POLYGONAL RIFLING AND THIS POLYMER TYPE FRAME.

19 Q AND IN COMPARISON OF BULLETS FIRED FROM GLOCK
20 MANUFACTURED WEAPONS IS THERE A GREATER DEGREE OF DIFFICULTY
21 IN MAKING A BALLISTICS COMPARISON BECAUSE OF THE POLYGONAL
22 RIFLING?

23 A YES, SIR, THAT'S TRUE. GENERALLY SPEAKING, ANY TYPE OF
24 POLYGONAL RIFLING IS MORE DIFFICULT TO COMPARE AND DETERMINE
25 WHETHER OR NOT A BULLET WAS FIRED BY A POLYGONALLY RIFLED

1 BARREL.

2 Q WHAT'S THE DIFFERENCE, HOWEVER, BETWEEN THE GLOCK 9
3 MILLIMETER AND THE GLOCK .40 CALIBER IN TERMS OF RIFLING?

4 A I HAVE FOUND -- AND OTHER EXAMINERS IN THE LABORATORIES
5 HAVE FOUND -- THAT THE 9 MILLIMETER GLOCK POLYGONAL RIFLING
6 TENDS TO MARK BULLETS BETTER THAN THE .40 CALIBER GLOCKS DO.
7 WE HAVE VERY LITTLE SUCCESS IN DETERMINING WHETHER OR NOT A
8 BULLET WAS FIRED BY A PARTICULAR .40 CALIBER GLOCK.

9 Q FORTY CALIBER IS THE STANDARD POLICE ISSUE WEAPON FOR A
10 NUMBER OF POLICE DEPARTMENTS?

11 A IT IS NOW, YES, SIR.

12 Q ALL RIGHT. NOW, IS THIS PARTICULAR WEAPON, DID YOU SAY,
13 A 9 MILLIMETER?

14 A YES, SIR, IT IS 9 MILLIMETER.

15 Q OKAY. AND AS TO THE AMMUNITION, WAS THERE ANYTHING
16 PARTICULARLY INTERESTING ABOUT THE AMMUNITION THAT YOU HAVE
17 EXAMINED IN THIS PARTICULAR CASE?

18 A YES, SIR. THE AMMUNITION THAT I RECEIVED WITH THE
19 FIREARM WAS A LITTLE BIT UNUSUAL. IT'S AN UNCOMMON TYPE OF
20 AMMUNITION.

21 NORMALLY -- AND LET'S GET SOME TERMS SQUARED AWAY. WHEN
22 I TALK ABOUT A BULLET, I'M TALKING ABOUT THE PROJECTILE THAT
23 ACTUALLY TRAVELS THROUGH THE BARREL AND STRIKES A TARGET. A
24 LOT OF TIMES PEOPLE WILL CALL THE WHOLE PIECE OF AMMUNITION
25 OR A CARTRIDGE A BULLET, WHICH IS NOT TECHNICALLY ACCURATE.

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 A BULLET IS THE PART THAT GOES TOWARD A TARGET.

2 THE BULLETS THAT WERE LOADED IN SOME OF THESE CARTRIDGES
3 THAT -- OR IN THESE CARTRIDGES THAT I RECEIVED WERE UNUSUAL
4 IN THE SENSE THAT THEY HAD A THREE-PIECE TYPE OF BULLET.
5 NORMALLY BULLETS ARE JACKETED BULLETS OR UNJACKETED BULLETS.
6 NOW, AN UNJACKETED BULLET IS USUALLY MADE OUT OF LEAD AND
7 IT'S JUST ONE BIG BLOB OR PIECE OF LEAD. A JACKETED BULLET
8 USUALLY HAS A LEAD-TYPE CORE AND AN EXTERNAL COVERING THAT
9 COVERS THE BULLET, WHICH IS CALLED A JACKET. IN THIS
10 PARTICULAR CASE THE AMMUNITION THAT I RECEIVED WITH THIS
11 PARTICULAR FIREARM HAD A THREE-PIECE BULLET. IT HAD A LEAD-
12 TYPE CORE. IT HAD A JACKET, AND IT ALSO HAD A METAL DISK IN
13 THE BASE OF THE BULLET WHICH ENCLOSURES OR CLOSED UP THE LEAD
14 CORE ENTIRELY.

15 Q AND WHAT'S THAT DISK -- WHAT'S THE PURPOSE OF THAT DISK?

16 A IN THIS PARTICULAR TYPE OF AMMUNITION IT WAS
17 MANUFACTURED FOR THE PURPOSE OF SHOOTING IN INDOOR RANGES
18 WHERE YOU HAVE A PROBLEM OF LEAD BUILDUP. PEOPLE WHO SHOOT
19 ON AN INDOOR RANGE, WHEN THE BULLET STRIKES THAT TARGET AT
20 THE END OF THE RANGE AND THE BULLET GOES TO PIECES SOMETIMES,
21 THE LEAD WILL GET INTO THE ATMOSPHERE AND GET INTO THE AIR
22 AND PEOPLE ARE GOING TO INHALE THAT LEAD. THIS PARTICULAR
23 MANUFACTURER THOUGHT THAT THIS WOULD BE A WAY TO KEEP THAT
24 LEAD BETTER INSIDE THE BULLET BY ENCLOSING IT WITH A JACKET
25 THAT YOU NORMALLY WOULD HAVE IN A JACKETED BULLET AND TO ADD

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 THAT METAL DISK ONTO THE BASE OF IT TO ENCLOSE ALL OF THE
2 LEAD.

3 Q AND FOR PURPOSES OF ILLUSTRATING THAT DID I ASK YOU TO
4 PREPARE A DRAWING OF THAT FOR THIS PARTICULAR PROCEEDING?

5 A YES, SIR.

6 Q I'M GOING TO SHOW YOU STATE'S EXHIBIT 50 AND ASK YOU IF
7 THAT'S THE DRAWING YOU PREPARED?

8 A YES, SIR, IT IS.

9 SOLICITOR ARIAIL: ALL RIGHT. YOUR HONOR, WE'D LIKE TO
10 OFFER THIS AT THIS TIME.

11 MR. MAULDIN: NO OBJECTION.

12 (STATE'S EXHIBIT NUMBER 50, 3-PIECE BULLET DIAGRAM MOVED
13 INTO EVIDENCE)

14 Q ALL RIGHT. LOOKING AT STATE'S EXHIBIT 50, IF YOU WOULD,
15 EXPLAIN -- SHOW US THE DISK PART. AND THERE IS A POINTER --
16 THERE SHOULD BE A POINTER UP THERE ON YOUR TABLE. THERE'S A
17 LITTLE LASER BUTTON RIGHT THERE.

18 A I SEE. ALL RIGHT. THE DISK OR THE BASE ENCLOSURE IS
19 HERE. IT'S MARKED DISK. THIS PORTION THAT YOU SEE OVER HERE
20 -- I'M SORRY -- IS THE JACKET. IT'S AN OUTER COVERING FOR
21 THE CORE. THE CORE IS THE INSIDE OF THE BULLET. IN THIS
22 PARTICULAR INSTANCE THE CORE IS MADE OUT OF SOME TYPE OF LEAD
23 ALLOY. THIS JACKET IS SOME TYPE OF COPPER ALLOY. AND THEN
24 THE DISK IS ALSO SOME TYPE OF COPPER ALLOY. AND, AGAIN, THE
25 PURPOSE OF IT IS TO TRY TO KEEP THAT LEAD INSIDE THAT BULLET

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 SO THERE IS LESS CHANCE OF THE LEAD BECOMING AIRBORNE WHEN
2 SHOOTING AT INDOOR RANGES.

3 Q ALL RIGHT. LET ME -- LET ME SEE IF I CAN -- REFERRING
4 TO STATE'S EXHIBIT 24 FOR IDENTIFICATION THAT YOU SAID YOU
5 RECEIVED, LET'S SEE IF THIS WILL SHOW UP AND TRY TO MAGNIFY
6 IT. ALL RIGHT. DO YOU RECOGNIZE THOSE THREE PIECES?

7 A YES, SIR.

8 Q FROM THAT ANGLE?

9 A YES, SIR.

10 Q ALL RIGHT. SHOW US THEN THE THREE COMPONENTS THAT
11 YOU'RE TALKING ABOUT, THE CORE, THE JACKET AND THE DISK.

12 A YES, SIR. THE JACKET IS THIS PORTION HERE. THE JACKET
13 IS THE COPPER-COLORED PIECE, AND IT'S DEFORMED IN THIS
14 PARTICULAR INSTANCE. IT DOESN'T LOOK LIKE A BULLET AS YOU
15 NORMALLY WOULD THINK BECAUSE IT IS FLATTENED AND DEFORMED.
16 THE LEAD CORE IS HERE, AND THEN THE METAL DISK THAT COVERS UP
17 THE BASE IS HERE. AND, AGAIN, IT IS DEFORMED. IT'S TRIED TO
18 ROLL UP ON ITS EDGES AND IT'S NO LONGER LOOKING LIKE A COIN
19 OR SOMETHING LIKE THAT. IT IS ROLLED UP. BUT, AGAIN, THE
20 DISK, THE JACKET AND THE CORE.

21 Q OKAY.

22 MR. MAULDIN: WHAT NUMBER WAS THAT, IF YOU DON'T MIND?

23 SOLICITOR ARIAIL: STATE'S EXHIBIT NUMBER 24, WHICH DR.
24 WARD IDENTIFIED AS BEING REMOVED FROM THE VICTIM'S CHEST.

25 Q BACK TO THE SPECIFIC COMPARISON IN THIS CASE, IF YOU

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 WOULD, EXHIBIT NUMBER 40 BEING THE PISTOL OR THE GUN, I
2 BELIEVE IT ALSO CONTAINS, AT THE TIME YOU RECEIVED IT, SOME
3 UNFIRED ROUNDS?

4 A YES, SIR, IT DID.

5 Q HOW MANY DID IT HAVE WITH IT?

6 A THERE WERE SEVEN UNFIRED 9 MILLIMETER LUGER CALIBER
7 CARTRIDGES WITH THE FIREARM WHEN I RECEIVED IT.

8 Q AND FOR THE JURY'S INFORMATION, YOU DO PREPARE WRITTEN
9 REPORTS ON ALL OF YOUR TESTING?

10 A YES, SIR, WE DO.

11 Q OKAY. AND YOU ARE REFERRING TO THAT DOCUMENT?

12 A THAT'S CORRECT, SIR.

13 Q FEEL FREE TO CONTINUE TO DO SO.

14 TELL US ABOUT THE TEST FIRING OF TWO OF THOSE PARTICULAR
15 SEVEN ROUNDS.

16 A WHAT I DID, SIR, AND WHAT I NORMALLY DO, ESPECIALLY IF I
17 HAVE SOME UNUSUAL LOOKING AMMUNITION, I MAY TEST FIRE
18 AMMUNITION IN A SUSPECT FIREARM FOR TEST PURPOSES AND TO LOOK
19 AT THE COMPONENTS OR I MAY ADDITIONALLY TAKE A CARTRIDGE
20 APART TO LOOK AT THOSE COMPONENTS TO SEE WHAT THE BULLET AND
21 THE INSIDE OF THE CARTRIDGE CASE MAY LOOK LIKE, AND I DID SO
22 IN THIS CASE.

23 Q DID YOU ALSO DISASSEMBLE ANY OF THOSE?

24 A YES, SIR, I DID.

25 Q AND WHAT WAS THE PURPOSE OF DISASSEMBLY?

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 A AGAIN, I DISASSEMBLED ONE TO LOOK AT THE COMPONENTS, IN
2 PARTICULAR THE BULLET, TO SEE WHAT THAT BULLET LOOKED LIKE
3 BEFORE IT WAS FIRED. AND I ALSO TWO IN THE FIREARM FOR TEST
4 PURPOSES TO SEE WHAT THE BULLET WOULD LOOK LIKE AFTER IT WAS
5 FIRED. IN PARTICULAR, I WANTED TO SEE WHAT THAT METAL DISK
6 WOULD DO WHEN I FIRED THE GUN AND WHAT IT LOOKED LIKE BEFORE
7 AND AFTER I FIRED IT.

8 Q AND SO NOW THERE ARE ONLY FOUR UNFIRED CARTRIDGES WITH
9 EXHIBIT 40 AND THE DISASSEMBLED AND TWO FIRED?

10 A THAT'S CORRECT. THERE WERE SEVEN UNFIRED CARTRIDGES. I
11 FIRED TWO OF THEM OUT OF THIS PARTICULAR PISTOL. I TOOK ONE
12 ADDITIONAL ONE APART TO LOOK AT THE COMPONENTS, WHICH LEAVE
13 FOUR OF THEM UNFIRED.

14 Q DID YOU MAKE ANY OTHER EXAMINATION OF EXHIBIT NUMBER 40
15 OTHER THAN TEST FIRING AND WHAT YOU HAVE ALREADY TESTIFIED TO
16 AS TO THE SERIAL NUMBER AND MAKE AND THAT SORT OF THING?

17 A WHAT I DO IN THE NORMAL EXAMINATION -- AND I DID SO IN
18 THIS PARTICULAR INSTANCE -- AGAIN, IS DOCUMENT WHAT TYPE OF
19 FIREARM IT WAS, ITS CONDITION, SERIAL NUMBER, MAKE, MODEL. I
20 CHECKED THE TRIGGER PULL WEIGHT TO MAKE SURE WHETHER THAT'S
21 NOT TOO LIGHT OR TOO HEAVY. I ALSO LOOK FOR ANY SORT OF
22 OBVIOUS SAFETY OR MECHANICAL DEFECTS AND REPORT THOSE IF
23 THERE ARE ANY.

24 Q WERE THERE ANY OF THOSE SUCH THINGS IN THIS CASE?

25 A NO, SIR. THIS PISTOL WAS WORKING PROPERLY.

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 Q WHEN YOU TEST VARIOUS ITEMS -- AND I ASSUME HERE THAT
2 STATE'S EXHIBIT 40 IS THE STANDARD TO WHICH EVERYTHING ELSE
3 IS GOING TO BE COMPARED?

4 A THAT'S CORRECT. TESTS THAT I ACTUALLY FIRED FROM THIS
5 PARTICULAR PISTOL WERE USED FOR COMPARISON PURPOSES WITH THE
6 OTHER FIRED COMPONENTS.

7 Q AND LOOKING AT THE OTHER ITEMS THAT WERE SUBMITTED TO
8 YOU FOR COMPARISON WHAT ARE THE POSSIBLE CATEGORIES INTO
9 WHICH THOSE ITEMS CAN FALL?

10 A IF YOU'RE REFERRING TO -- AS TO WHAT TYPE ITEM THEY ARE
11 OR CONCLUSIONS?

12 Q NO, WHAT KIND OF CONCLUSION YOU COULD REACH IN REGARD TO
13 THEM.

14 A GENERALLY, IN FIREARMS IDENTIFICATION, WHEN I LOOK AT A
15 FIRED COMPONENT VERSUS A TEST COMPONENT AND TRY TO MAKE A
16 DETERMINATION I CAN DETERMINE THE FOLLOWING, WHETHER IT WAS
17 FIRED BY THAT PARTICULAR GUN OR POSITIVE, WHETHER IT WAS NOT
18 FIRED BY THAT GUN OR NEGATIVE. I ALSO HAVE AN INCONCLUSIVE
19 RESULT WHICH MEANS I CANNOT TELL, AND THAT MAY BE BECAUSE OF
20 DAMAGE TO THE BULLET. IT MAY BE CAUSED BY INCONSISTENT
21 TESTS. IT MAY BE OTHER FACTORS THERE. BUT USUALLY DAMAGE TO
22 THE PROJECTILE AND INCONSISTENT TESTS CAN CREATE THE
23 INCONCLUSIVE RESULT. AND THEN I HAVE ONE MORE WHICH IS
24 UNSUITABLE FOR IDENTIFICATION, WHICH MEANS THAT PARTICULAR
25 AMMUNITION COMPONENT IS SO BADLY DAMAGED THAT THERE ARE NO

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 MARKINGS ON THAT COMPONENT THAT CAN BE USED FOR
2 IDENTIFICATION PURPOSES.

3 Q ALL RIGHT. AND IN THIS PARTICULAR CASE AFTER YOU TESTED
4 YOUR STANDARD, EXHIBIT NUMBER 40, DID YOU CONCLUDE THAT THERE
5 WERE ANY NEGATIVE EXHIBITS SUBMITTED TO YOU?

6 A NO, SIR. I DID NOT HAVE ANY NEGATIVE.

7 Q DID YOU HAVE ANY UNSUITABLE?

8 A YES, SIR. THERE WERE SEVERAL THAT WERE UNSUITABLE.

9 Q ALL RIGHT. LET ME HAND YOU STATE'S EXHIBITS 16, 18 AND
10 19 -- (PAUSE) -- 16, 18 AND 19 AND ASK YOU IF THOSE WERE
11 DETERMINED BY YOU TO BE UNSUITABLE?

12 A YES, SIR. THESE THREE ITEMS WERE UNSUITABLE FOR
13 IDENTIFICATION WITH ANY PARTICULAR FIREARM. WHAT THAT MEANS
14 IS THAT THERE WERE NO MARKINGS ON THESE ITEMS -- IN
15 PARTICULAR THESE ARE BULLET FRAGMENTS. THERE WERE NO
16 MARKINGS ON HERE THAT I COULD USE TO DO A MICROSCOPIC
17 COMPARISON WITH A TEST AND DETERMINE WHETHER OR NOT IT WAS
18 FIRED BY THAT PARTICULAR GUN.

19 Q LET ME SHOW YOU STATE'S EXHIBIT NUMBER 19 AND ASK IF YOU
20 WOULD LOOK AT IT AND TELL ME IF YOU FOUND ANY UNUSUAL
21 CHARACTERISTIC ABOUT THAT. FIRST TELL US WHAT IT IS AND DID
22 YOU FIND ANYTHING UNUSUAL ABOUT IT.

23 A 16 IS A ---

24 Q EXCUSE ME, 19.

25 A OH, EXCUSE ME, MY 16. STATE'S EXHIBIT NUMBER 19 IS A

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 BULLET CORE. IT'S A LEAD ALLOY CORE. AND, AGAIN, THAT'S THE
2 INSIDE OF THAT BULLET THAT WE WERE TALKING ABOUT EARLIER. AS
3 A MATTER UNUSUAL, THERE WAS SOME WHITE POWDER TYPE MATERIAL
4 ON THIS PARTICULAR CORE WHICH TO ME WAS CONSISTENT WITH
5 POWDERED GLASS.

6 Q ALL RIGHT. AND CAN YOU -- IS THAT READILY OBSERVABLE TO
7 THE NAKED EYE?

8 A YES, SIR. YOU CAN SEE THE WHITE MATERIAL ON THE BULLET.

9 Q LET ME SEE IF WE CAN SHOW THAT RIGHT HERE. (PAUSE) IS
10 THAT WHAT YOU'RE TALKING ABOUT THERE?

11 A YES, SIR. IN PARTICULAR, I THINK IT SHOWS UP BEST HERE,
12 AT THESE AREAS HERE (INDICATING). THIS WHITE MATERIAL HERE
13 IS A WHITE GRANULAR MATERIAL, AND BASED ON MY EXPERIENCE IN
14 SEEING A LOT OF PROJECTILES THAT HAVE BEEN SHOT THROUGH
15 GLASS, IT APPEARS TO BE POWDERED GLASS.

16 Q NOW I WANT YOU TOO LOOK AT -- LET'S GO WITH ITEMS 11, --
17 I'LL HAND THESE TO YOU -- 11, 14, 12, 15, 17, 22A, 24 AND 25.

18 A YES, SIR.

19 Q ALL RIGHT. LET ME ASK YOU ON THOSE, IN REGARD TO THOSE,
20 IF THOSE FELL INTO THE INCONCLUSIVE CATEGORY?

21 A YES, SIR. FOR THE MOST PART THEY DID. THERE WERE TWO
22 OF THEM IN HERE THAT HAD MULTIPLE FRAGMENTS IN THEM. AND IN
23 THESE IN PARTICULAR, STATE'S 17 AND STATE'S 24, THERE WERE
24 FRAGMENTS IN HERE THAT WERE ALSO UNSUITABLE. BUT EACH ONE OF
25 THESE EXHIBITS DOES HAVE AT LEAST ONE ITEM IN IT THAT THE

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 RESULT WAS INCONCLUSIVE WITH THIS PARTICULAR PISTOL. AND
2 WHAT THAT MEANS IS I COULD NOT TELL WHETHER OR NOT THEY WERE
3 FIRED BY THIS PARTICULAR PISTOL OR ANOTHER SIMILAR PISTOL
4 WITH SIMILAR TYPE OF RIFLING, AND THAT'S MAINLY DUE TO DAMAGE
5 AND PARTIALLY DUE TO THE TYPE OF RIFLING THAT'S IN THE
6 FIREARM.

7 Q INCONCLUSIVE DOESN'T MEAN IT'S NOT FIRED. IT MEANS THAT
8 YOU DON'T HAVE ENOUGH TO COMPARE?

9 A IT MEANS THAT I CAN'T TELL WHETHER -- AND SOMETIMES IT
10 IS BECAUSE THERE'S NOT ENOUGH TO COMPARE. OR A LOT OF TIMES
11 INCONCLUSIVE MEANS THE MARKINGS THAT ARE PRESENT ON THE ITEM
12 THAT I AM COMPARING JUST SIMPLY AREN'T GOOD ENOUGH QUALITY
13 FOR ME TO COMPARE. AND ALL THAT MEANS IS, AGAIN, THESE COULD
14 HAVE BEEN FIRED BY THIS PISTOL OR IT COULD BE ANOTHER PISTOL.

15 Q NOW, WERE YOU ABLE TO FORM AN OPINION AS TO CERTAIN OF
16 THE EXHIBITS THAT WERE SUBMITTED TO YOU AS BEING POSITIVE FOR
17 HAVING BEEN FIRED BY THIS GUN?

18 A YES, SIR, I DID.

19 Q ALL RIGHT. LET'S MOVE SOME OF THESE OUT OF THE WAY.
20 (PAUSE) LET ME SHOW YOU IN PARTICULAR ITEMS 4 THROUGH 10,
21 WHICH HAVE BEEN PREVIOUSLY IDENTIFIED AS THE CASINGS
22 RECOVERED FROM THE SCENE AT TROOPER NICHOLSON'S VEHICLE,
23 STATE'S EXHIBIT NUMBER 20, WHICH WAS ALSO TESTIFIED TO BY
24 OFFICER SHAW AS BEING A CASING FOUND UNDER THE LEFT FRONT
25 TIRE OF TROOPER NICHOLSON'S VEHICLE, ITEM 13 BEING TESTIFIED

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 TO BY OFFICER SHAW AS A JACKET FROM THE WINDSHIELD AND THE --
2 BETWEEN THE WINDSHIELD AND THE DASH OF TROOPER NICHOLSON'S
3 CAR, AND 22B BEING IDENTIFIED AS THE BULLET REMOVED BY
4 OFFICER SHAW FROM THE KEVLAR VEST OF TROOPER NICHOLSON.

5 A YES, SIR, I DID FORM AN OPINION ABOUT THESE.

6 Q ALL RIGHT. AND WHAT IS -- WHAT WAS THE OPINION THAT YOU
7 FORMED?

8 A I CONCLUDED AFTER DOING MY EXAMINATION THAT THESE EIGHT
9 FIRED CARTRIDGE CASINGS AND THESE TWO PROJECTILES WERE INDEED
10 FIRED BY THIS PARTICULAR GLOCK 9 MILLIMETER PISTOL.

11 Q NOW, WE HAVE SOME ADDITIONAL ITEMS. LET ME ASK YOU
12 ABOUT STATE'S EXHIBIT NUMBER 39 AND ASK IF YOU COMPARED THAT
13 TO THE GLOCK WEAPON, STATE'S EXHIBIT 40?

14 A YES, SIR. WHAT I DID WITH THIS PARTICULAR ITEM, WHICH
15 IS A PISTOL MAGAZINE, WAS JUST DETERMINE WHETHER OR NOT IT
16 WOULD FIT PROPERLY IN THIS PARTICULAR PISTOL. AND I
17 DETERMINED THAT IT DID FIT IN THE PISTOL. IT IS A GLOCK
18 MAGAZINE. IT IS A GLOCK 9 MILLIMETER MAGAZINE.

19 Q AND WHAT HAS BEEN MARKED AS STATE'S EXHIBITS -- STATE'S
20 EXHIBIT NUMBER 32 CONTAINED 15 COLLECTED CARTRIDGE CASINGS
21 FROM THE JEEP GRAND CHEROKEE VEHICLE. DID YOU HAVE OCCASION
22 TO TEST THOSE?

23 A YES, SIR. I DID LOOK AT 15 CARTRIDGE CASINGS THAT WERE
24 INDICATED AS BEING FROM THE JEEP VEHICLE.

25 Q AND WERE YOU ABLE TO REACH A CONCLUSION AS TO WHETHER OR

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 NOT THEY HAD BEEN FIRED BY THE STATE'S EXHIBIT 40 GLOCK 9
2 MILLIMETER WEAPON?

3 A YES, SIR, I DID CONCLUDE ALSO THAT THESE 15 CARTRIDGE
4 CASINGS WERE FIRED BY THIS PARTICULAR GLOCK PISTOL.

5 Q ALL RIGHT. LET ME SHOW YOU STATE'S EXHIBIT NUMBER 38
6 CONTAINING THREE FIRED CARTRIDGE CASINGS RECOVERED BY AGENT
7 BRETT BAKER FROM THE INTERIOR OF THE BLUE RIDGE UTILITY
8 VEHICLE, AND ASK YOU IF YOU HAD OCCASION TO TEST THOSE?

9 A YES, SIR.

10 Q AND DID -- WERE YOU ABLE AFTER TESTING TO REACH A
11 CONCLUSION AS TO WHETHER OR NOT THOSE THREE FIRED CARTRIDGE
12 CASINGS WERE FIRED BY THE 9 MILLIMETER GLOCK WEAPON?

13 A YES, SIR, I DID. AND THE CONCLUSION WAS THE SAME. THE
14 THREE CARTRIDGE CASINGS IN STATE'S EXHIBIT NUMBER 38 WERE
15 ALSO FIRED BY THIS GLOCK PISTOL.

16 Q AND LASTLY, STATE'S EXHIBITS 33, 34, 35, 36 AND 37,
17 PREVIOUSLY IDENTIFIED BY S.L.E.D. AGENT JEFF PARROTT AS BEING
18 RECOVERED IN THE ROADWAY OF HIGHWAY 187 AT THE SCENE OF THE
19 JEEP GRAND WAGONEER, DID YOU HAVE OCCASION TO TEST THOSE?

20 A (REVIEWS EXHIBITS) YES, SIR, I EXAMINED THESE ALSO.

21 Q AND WERE YOU ABLE TO REACH A CONCLUSION IN REGARD TO
22 WHETHER OR NOT THEY WERE FIRED BY THE GLOCK .40 CALIBER --
23 EXCUSE ME, THE GLOCK 9 MILLIMETER WEAPON WHICH IS STATE'S
24 EXHIBIT NUMBER 40?

25 A YES, SIR. THESE CARTRIDGE CASINGS ALSO WERE FIRED BY

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 THIS PARTICULAR 9 MILLIMETER GLOCK PISTOL.

2 Q ALL RIGHT. NOW, 16, 18 AND 19 REMAINING, I DON'T
3 BELIEVE WE HAVE TALKED ABOUT. WERE YOU ABLE TO COMPARE THOSE
4 ITEMS?

5 A YES, SIR, I BELIEVE WE ALREADY TALKED ABOUT THESE.
6 THESE WERE UNSUITABLE.

7 Q THEY WERE UNSUITABLE?

8 A YES, SIR.

9 Q ALL RIGHT. I'M SORRY. OKAY. (PAUSE) NOW LET ME -- IS
10 THIS READY TO PUT BACK IN?

11 A YOU WANT ME TO CLOSE THAT SO IT DOESN'T SNAP ON
12 ANYBODY'S FINGERS?

13 Q (OFF RECORD WITH CO-COUNSEL) JUST FOR PURPOSES OF
14 CLARIFICATION OF THE RECORD, STATE'S EXHIBIT NUMBER 40 THAT I
15 KEPT REFERRING TO AS YOUR STANDARD, IS THAT THE SAME WEAPON
16 IDENTIFIED BY AGENT BAKER AS BEING COLLECTED FROM THE FRONT
17 PASSENGER FLOORBOARD OF THE BLUE RIDGE UTILITY TRUCK?

18 A THAT'S CORRECT, SIR.

19 SOLICITOR ARIAIL: YOUR HONOR, AT THIS TIME WE WOULD
20 MOVE ALL OF THESE ITEMS TO WHICH AGENT PAAVEL HAS TESTIFIED
21 INTO EVIDENCE.

22 MR. MAULDIN: NO OBJECTION.

23 THE COURT: WITHOUT OBJECTION.

24 (STATE'S EXHIBITS NUMBERS 4 THROUGH 10, 7 SPENT SHELL
25 CASINGS, MOVED INTO EVIDENCE)

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 (STATE'S EXHIBIT NUMBER 11, LEAD PROJECTILE, MOVED INTO
2 EVIDENCE)

3 (STATE'S EXHIBIT NUMBER 12, COPPER JACKET FRAGMENT,
4 MOVED INTO EVIDENCE)

5 (STATE'S EXHIBIT NUMBER 13, COPPER JACKET, MOVED INTO
6 EVIDENCE)

7 (STATE'S EXHIBIT NUMBER 14, COPPER JACKET, MOVED INTO
8 EVIDENCE)

9 (STATE'S EXHIBIT NUMBER 15, COPPER JACKET FRAGMENT,
10 MOVED INTO EVIDENCE)

11 (STATE'S EXHIBIT NUMBER 16, LEAD PROJECTILE, MOVED INTO
12 EVIDENCE)

13 (STATE'S EXHIBIT NUMBER 17, LEAD PROJECTILE, MOVED INTO
14 EVIDENCE)

15 (STATE'S EXHIBIT NUMBER 18, COPPER JACKET FRAGMENT,
16 MOVED INTO EVIDENCE)

17 (STATE'S EXHIBIT NUMBER 19, PROJECTILE, MOVED INTO
18 EVIDENCE)

19 (STATE'S EXHIBIT NUMBER 20, SHELL CASING, MOVED INTO
20 EVIDENCE)

21 (STATE'S EXHIBITS NUMBER 22A AND 22B PROJECTILES REMOVED
22 FROM KEVLAR VEST, MOVED INTO EVIDENCE)

23 (STATE'S EXHIBITS NUMBER 24 AND 25, BULLETS REMOVED FROM
24 VICTIM AT AUTOPSY, MOVED INTO EVIDENCE)

25 (STATE'S EXHIBIT NUMBER 32, FIFTEEN 9 MILLIMETER LUGER

VELLO PAAVEL -- DIRECT BY SOLICITOR ARIAIL

1 CARTRIDGE CASINGS FROM JEEP WAGONEER, MOVED INTO EVIDENCE)

2 (STATE'S EXHIBITS NUMBER 33 THROUGH 37, FIVE 9

3 MILLIMETER LUGER CARTRIDGE CASINGS REMOVED FROM HIGHWAY 187

4 SCENE, MOVED INTO EVIDENCE)

5 (STATE'S EXHIBIT NUMBER 38, THREE 9 MILLIMETER LUGER

6 CARTRIDGE CASINGS REMOVED FROM BLUE RIDGE UTILITY TRUCK,

7 MOVED INTO EVIDENCE)

8 (STATE'S EXHIBIT NUMBER 39, EMPTY 9 MILLIMETER MAGAZINE

9 FROM BLUE RIDGE UTILITY TRUCK, MOVED INTO EVIDENCE)

10 (STATE'S EXHIBIT NUMBER 40, GLOCK 9 MILLIMETER LUGER

11 HANDGUN WITH MAGAZINE AND SEVEN UNFIRED CARTRIDGES, MOVED

12 INTO EVIDENCE)

13 SOLICITOR ARIAIL: THANK YOU, MR. PAAVEL. IF YOU
14 WOULD, ANSWER ANY QUESTIONS THAT DEFENSE COUNSEL MAY HAVE.

15 WITNESS: YES, SIR.

16 CROSS EXAMINATION BY MR. MAULDIN:

17 Q REALIZING THE TIME OF DAY, MR. PAAVEL, I'M ONLY GOING TO
18 HAVE A FEW VERY SPECIFIC QUESTIONS FOR YOU.

19 A YES, SIR.

20 Q I WANT TO TALK TO YOU A MINUTE ABOUT THE VERTICAL
21 RECOVERY TANK. THIS IS A TWO-STORY TANK AND IT'S GOT JUST
22 REGULAR WATER IN IT, RIGHT?

23 A IT HAS WATER. IT HAS A LITTLE BIT OF CLOROX IN IT TO
24 KEEP THE ALGAE AND MOLD FROM GROWING IN IT. BUT IT'S JUST
25 REGULAR WATER, YES, SIR.

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 Q SO IT DOESN'T HAVE LIKE JELLO OR SOMETHING LIKE THAT
2 THAT -- YOU KNOW, YOU SEE THESE THINGS ON T.V. WHERE THEY ARE
3 TESTING STUFF?

4 A YES, SIR. NO, SIR, IT'S NOT BALLISTIC GELATIN. IT'S
5 WATER.

6 Q PLAIN WATER?

7 A YES, SIR.

8 Q ALL RIGHT. AND WHEN YOU -- AND WHEN THE TESTER IS GOING
9 TO FIRE A WEAPON INTO THAT HE LITERALLY JUST -- DO YOU STAND
10 UP TO DO THAT OR DO THEY KIND OF SUSPEND YOU OUT OVER THE
11 WATER OR WHAT?

12 A NO, SIR. AGAIN, THE TANK, THE MOUTH OF THE TANK IS
13 ABOUT THREE FEET IN DIAMETER, AND YOU CAN WALK RIGHT UP TO
14 THE EDGE OF THE TANK AND LEAN YOUR HAND OVER AND FIRE DOWN
15 INTO THE TANK.

16 Q OKAY. SO IT'S -- TO THAT EXTENT, IT'S MANUAL? IN OTHER
17 WORDS, THE PERSON, THE TESTER, IS ACTUALLY HOLDING THE GUN
18 OVER THE WATER AND SHOOTING STRAIGHT DOWN INTO THE WATER?

19 A YES, SIR.

20 Q ALL RIGHT. AND IS THAT WHAT YOU DID?

21 A YES, SIR.

22 Q ALL RIGHT. NOW, THE -- EXHIBIT NUMBER 40, A 9
23 MILLIMETER LUGER, GLOCK MANUFACTURED WEAPON?

24 A A 9 MILLIMETER LUGER CALIBER PISTOL MANUFACTURED BY
25 GLOCK. DON'T BE CONFUSED BY THAT NAME LUGER, BECAUSE LUGER

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 IS ALSO A MAKE OF PISTOL. THIS IS A 9 MILLIMETER LUGER
2 CALIBER. THAT IS THE CORRECT CALIBER DESIGNATION FOR THIS
3 PARTICULAR CARTRIDGE. IT WILL FIRE IN ANY TYPE OF FIREARM
4 THAT'S CHAMBERED FOR A 9 MILLIMETER LUGER CALIBER CARTRIDGES,
5 WHETHER OR NOT THAT GUN WAS MADE BY GLOCK, SMITH AND WESSON
6 OR WHOEVER.

7 Q ALL RIGHT. SO WHAT WE NEED TO KEEP IN MIND IS THIS IS A
8 GLOCK MANUFACTURED WEAPON?

9 A CORRECT.

10 Q IT IS A SEMI-AUTOMATIC MODEL AS OPPOSED TO A REVOLVER
11 MODEL. AND I KNOW I'M JUST SPEAKING REALLY DUMB, BUT THAT'S
12 REALLY THE SIMPLEST YOU CAN PUT IT, RIGHT?

13 A YES, SIR. IT'S A SEMI-AUTOMATIC TYPE OF PISTOL VERSUS
14 BEING A REVOLVER. THE MODEL -- IN THIS PARTICULAR INSTANCE,
15 IT HAS A MODEL NAME CALLED A MODEL 17. AND THAT'S JUST
16 SIMPLY A DESIGNATOR USED BY GLOCK MANUFACTURER FOR THIS
17 PARTICULAR TYPE OF PISTOL. BUT, AGAIN, IT IS A SEMI-
18 AUTOMATIC TYPE OF PISTOL.

19 Q AND THE DESIGNATION 9 MILLIMETER LUGER CALIBER IS AS
20 OPPOSED TO, FOR EXAMPLE, .40 CALIBER---

21 A OR A .40 SMITH AND WESSON.

22 Q ---WHICH IS WHAT LAW ENFORCEMENT FOLKS USE NOWADAYS?

23 A CORRECT. AND IT GETS EVEN MORE CONFUSING---

24 Q NO, DON'T GET IT MORE CONFUSING. (LAUGHTER IN
25 COURTROOM) I'M TRYING TO GET IT MORE SIMPLE.

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 SO -- BUT, YOUR POINT IS IT'S A SEMI-AUTOMATIC AS
2 OPPOSED TO A REVOLVER. AND THAT MEANS THAT WHEN A PERSON
3 SHOOTS ONE OF THESE THINGS, IT THROWS THE LITTLE COPPER --
4 OR, NO, BRASS, THE LITTLE BRASS CASING OUT THE SIDE HOLE,
5 RIGHT?

6 A YES, SIR. THIS IS THE DIFFERENCE IN THE SEMI-AUTOMATIC
7 PISTOL AND A REVOLVER. IN A REVOLVER YOU HAVE A CYLINDER
8 INTO WHICH YOU PLACE CARTRIDGES. AFTER YOU SHOOT A REVOLVER,
9 THE CARTRIDGE CASINGS STAY INSIDE THE CYLINDER UNTIL YOU TAKE
10 THEM OUT. WITH A SEMI-AUTOMATIC PISTOL, LIKE THIS GLOCK,
11 EACH TIME YOU PULL THE TRIGGER AND THE GUN FIRES THE BULLET
12 OR PROJECTILE GOES OUT THE BARREL TOWARD THE TARGET. THE
13 FIRED CARTRIDGE CASING, OR LITTLE CONTAINER THAT HELD THE
14 BULLET AND HELD THE GUNPOWDER, GETS THROWN OR EJECTED
15 GENERALLY OUT THE SIDE OF THE GUN.

16 Q ALL RIGHT. AND JUST TO DEMONSTRATE THE DIFFERENCE --
17 AND WE DON'T EVEN NEED TO GET THEM OUT OF THE BOX -- IF YOU
18 WILL JUST KIND OF LOOK AROUND HERE, THE LITTLE SILVER GUN ON
19 THE BOTTOM IS A REVOLVER, RIGHT?

20 A YES, SIR, IT IS.

21 Q AND THE BLACK GUN IS A SEMI-AUTOMATIC?

22 A CORRECT.

23 Q ALL RIGHT. ALL RIGHT. THAT'S GOOD.

24 NOW, WHEN A SEMI-AUTOMATIC EJECTS THE BRASS CASING THEY
25 DON'T NECESSARILY EJECT THOSE CASINGS UNIFORMLY, IS THAT FAIR

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 TO SAY?

2 A THAT'S CORRECT, SIR.

3 Q ALL RIGHT. SO IT WOULD DEPEND UPON THE SURFACE UPON
4 WHICH IT WAS LANDING, AND THE SAME GUN MAY EJECT THEM IN
5 SOMEWHAT OF A DIFFERENT PATTERN, ALL GOING IN THE SAME
6 DIRECTION BUT NOT NECESSARILY GOING EXACTLY THE SAME
7 DISTANCE?

8 A THAT'S CORRECT, SIR.

9 Q ALL RIGHT. THAT VERTICAL RECOVERY TANK REMINDS ME OF
10 ANOTHER QUESTION. WHEN YOU SHOOT DOWN INTO WATER THE
11 BULLET -- THAT'S WHAT YOU CALL IT, RIGHT?

12 A YES, SIR.

13 Q -- IS GOING TO TRAVEL RELATIVELY STRAIGHT. IT MAY
14 WIGGLE A LITTLE BIT IF IT GETS KIND OF WOBBLY?

15 A GENERALLY, WHAT HAPPENS WITH BULLETS -- DEPENDING ON THE
16 SHAPE OF THE BULLET, BULLETS DON'T TRAVEL REAL STRAIGHT IN
17 WATER. THEY WILL TEND TO VEER OFF TO ONE SIDE BECAUSE THEY
18 BECOME UNSTABLE. BECAUSE OF THE SPIN OF THE BULLET, REMEMBER
19 HOW WE TALKED ABOUT HOW THE BULLET IS SPINNING, WHEN THAT
20 BULLET HITS THE WATER AND THE WATER STARTS SLOWING IT DOWN,
21 THE BULLET BECOMES A LITTLE MORE UNSTABLE THAN WHAT IT WAS IN
22 THE AIR AND THE BULLET MAY VEER OFF A LITTLE BIT TO THE SIDE.

23 Q ALL RIGHT. WELL, THE QUESTION -- THE FOLLOW-UP TO THAT
24 THOUGHT IS BULLETS ONCE THEY LEAVE THE END OF A BARREL OF A
25 GUN THEY HAVE -- AND I'LL GIVE YOU EXAMPLES OF RESISTANCE.

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 AIR, THERE IS SOME RESISTANCE, OTHERWISE A BULLET WOULD
2 TRAVEL FOREVER, RIGHT?

3 A CORRECT. UNTIL GRAVITY GOT IT, YES, SIR.

4 Q YEAH. I MEAN, EVENTUALLY AIR WILL SLOW DOWN A BULLET.
5 WATER WOULD BE MUCH MORE RESISTANCE THAN AIR, OBVIOUSLY?

6 A YES, SIR.

7 Q AND THEN IF YOU USE JELLO OR SOME KIND OF THICKENED
8 SUBSTANCE, THAT WOULD BE MORE THAN JELLO?

9 A MORE THAN WATER, YES, SIR.

10 Q RIGHT. IN OTHER WORDS, THE THICKER SOMETHING -- THE
11 THICKER THE RESISTANCE ELEMENT, THE MORE EFFECT IT'S GOING TO
12 HAVE ON THE BULLET?

13 A AS A MATTER OF SLOWING IT DOWN, YES, SIR.

14 Q RIGHT. AND THE SAME WOULD APPLY TO CHANGING DIRECTION
15 OF A BULLET. IN OTHER WORDS, ONCE A BULLET LEAVES THE END OF
16 A GUN IF IT HITS HARD SUBSTANCES OR OBJECTS, IT'S GOING TO --
17 IT CAN DEFINITELY CHANGE DIRECTION?

18 A YES, SIR. IF IT DOESN'T STOP, IT MAY GLANCE OFF OF
19 SOMETHING. YES, SIR. THAT IS POSSIBLE.

20 Q ALL RIGHT. ALL RIGHT. NOW, LAST QUESTION, AND YOU --
21 DIDN'T YOU TELL ME THAT YOU WERE THE ONE THAT ACTUALLY FIRED
22 INTO THE WATER?

23 A YES, SIR. I FIRED THIS PARTICULAR PISTOL IN THE WATER.

24 Q CAN YOU RECALL HOW MANY TIMES YOU WOULD HAVE FIRED THIS
25 PISTOL? JUST TAKE YOUR TIME.

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 A BEAR WITH ME. I'LL TELL YOU HOW MANY TIMES I DID FIRE
2 IT.

3 Q AND, YOU KNOW, IF IT'S A HUNDRED, I JUST---

4 A NO, SIR. TYPICALLY, I WOULD NOT FIRE IT THAT MANY
5 TIMES. NO, SIR. (PAUSE) I FIRED IT A TOTAL OF SEVEN TIMES,
6 FIVE WITH AMMUNITION THAT I HAD IN MY LABORATORY. AND AS I
7 STATED EARLIER, I FIRED TWO OF THE CARTRIDGES THAT WERE
8 SUBMITTED WITH IT. BUT I FIRED SEVEN TIMES.

9 Q ALL RIGHT. AND YOU HAVE IN YOUR EXPERIENCE HAD, I
10 THINK YOU SAID, TENS OF THOUSANDS OF EXAMINATIONS, AND TWO
11 HUNDRED AND SOME ODD NUMBERS OF TIMES YOU HAVE ACTUALLY ENDED
12 UP TESTIFYING, AND THESE ARE FOR THE MOST PARTS FIREARMS
13 RELATED INFORMATION?

14 A YES, SIR, THEY WOULD BE FIREARMS CASES.

15 Q ALL RIGHT. SO YOU HAVE FIRED, I WOULD IMAGINE, INTO
16 THAT VERTICAL RECOVERY TANK A LOT OF BULLETS?

17 A YES, SIR, I HAVE.

18 Q AND YOU FIRED A LOT OF 9 MILLIMETER LUGER CALIBER GLOCK
19 PISTOLS?

20 A YES, SIR, I HAVE.

21 Q AND WHEN YOU FIRE A GLOCK PISTOL YOU KNOW WHAT THE
22 MEANING OF RECOIL IS, DON'T YOU?

23 A YES, SIR.

24 Q MY BROTHER GAVE ME A SHOTGUN AND SAID FIRE IT, AND I
25 THOUGHT MY SHOULDER WAS GOING TO COME OFF. THAT'S BECAUSE IT

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 WENT LIKE THIS (DEMONSTRATING), RIGHT?

2 A YES, SIR. THAT'S THE ACTION OF THE FIREARM AS A RESULT
3 OF THE FIRING OF THAT BULLET. WHEN A GUN IS FIRED AND THE
4 BULLET IS GOING TOWARD THE TARGET, THERE IS AN OPPOSITE
5 REACTION CAUSED BY THE MOMENTUM WHICH CAUSES THE FIREARM TO
6 MOVE BACK. AND DEPENDING ON HOW YOU HOLD A FIREARM, IT MAY
7 CAUSE IT TO COME UP SOME.

8 Q DO YOU RECALL -- AND IF YOU DO NOT HAVE RECOLLECTION OF
9 THIS PARTICULAR FIREARM WE CERTAINLY WOULD UNDERSTAND THAT.
10 BUT DO YOU RECALL THIS FIREARM HAVING ANY NOTICEABLE
11 DIFFERENCE REGARDING THE RECOIL OF A NORMAL 9 MILLIMETER
12 LUGER CALIBER GLOCK WEAPON?

13 A I DIDN'T RECALL ANY. IF I WOULD HAVE NOTICED SOMETHING
14 UNUSUAL, I PROBABLY WOULD HAVE NOTED IT. I DIDN'T -- I DON'T
15 RECALL ANYTHING UNUSUAL.

16 Q AND THEREIN IS THE POINT. IF YOU HAD NOTICED SOMETHING
17 UNUSUAL YOU PROBABLY WOULD HAVE NOTED IT?

18 A IF IT WAS SOMETHING THAT WAS UNUSUAL ENOUGH THAT I
19 THOUGHT IT REQUIRED PUTTING A NOTATION IN MY NOTES ABOUT THE
20 GUN, WHETHER IT MALFUNCTIONED OR IT WAS UNUSUAL RECOIL, I
21 WOULD HAVE PROBABLY NOTED THAT. I DON'T RECALL HAVING
22 ANYTHING ABOUT THAT. LET ME BE SURE. (REVIEWS NOTES) NO,
23 SIR. I DON'T HAVE ANY NOTATION ABOUT THAT.

24 Q ALL RIGHT. THEN WITH REGARD TO THE NORMAL RECOIL OF
25 THIS TYPE OF WEAPON, YOU KNOW, I WAS GOING TO GET YOU TO SAY

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 ONE TO FIVE OR SIGNIFICANT OR WHATEVER, BUT I DON'T KNOW HOW
2 TO ASK THE QUESTION.

3 CAN YOU DESCRIBE TO THIS JURY SO THEY WILL HAVE A SENSE
4 OF UNDERSTANDING WHAT THE NORMAL RECOIL REACTION OF A 9
5 MILLIMETER LUGER CALIBER GLOCK HANDGUN IS?

6 A THAT'S FAIRLY DIFFICULT TO TRY TO EXPLAIN BECAUSE IT IS
7 SO DEPENDENT UPON THE SHOOTER. IT ALSO DEPENDS ON HOW YOU'RE
8 TRYING TO SHOOT IT. YOU KNOW, HOLDING THE GUN OVER A TANK
9 YOU'RE GOING TO HAVE A DIFFERENT TYPE OF RECOIL THAN YOU
10 WOULD HOLDING IT LIKE THIS AND TRYING TO SHOOT IT IN THIS
11 FASHION. I DON'T KNOW THAT I CAN QUANTITATIVELY TELL YOU HOW
12 MUCH SOMETHING RECOILS, OTHER THAN THE FACT THAT I DON'T FIND
13 IT FOR ME TO BE ANY SORT OF UNUSUAL OR HEAVY RECOIL.

14 Q OKAY. IN COMPARING HANDGUNS, A REVOLVER -- YOU HAVE
15 TESTED THOUSANDS. CAN YOU GIVE US A COMPARATIVE STATEMENT
16 REGARDING THE RECOIL OF A 9 MILLIMETER LUGER CALIBER GLOCK
17 SEMI-AUTOMATIC HANDGUN?

18 A I THINK IT WOULD PROBABLY BE CLOSEST TO A .38 SPECIAL
19 SERVICE TYPE REVOLVER WITH SERVICE TYPE AMMUNITION. THAT'S
20 ABOUT THE TYPE OF RECOIL THAT YOU HAVE IN THE 9 MILLIMETER
21 GLOCK.

22 Q AND IS THAT A RATHER SUBSTANTIAL RECOIL FOR A HANDGUN
23 OR---

24 A NO, SIR. THAT'S -- AGAIN, I CAN'T QUANTIFY IT BECAUSE
25 THERE IS NO WAY TO ACTUALLY QUANTIFY IT WITHOUT YOU SHOOTING

VELLO PAAVEL -- CROSS BY MR. MAULDIN

1 IT AND SEEING HOW IT IS FOR A PARTICULAR PERSON.

2 Q I'LL ASK ONE FINAL QUESTION REGARDING THAT. IF HANDGUNS
3 HAD RECOIL OF ONE TO TEN, ONE BEING NO RECOIL, NONE, JUST
4 NONE, AND TEN BEING REAL, REAL, REAL BAD RECOIL, THEN CAN YOU
5 PLACE A 9 MILLIMETER LUGER CALIBER GLOCK MANUFACTURED SEMI-
6 AUTOMATIC WEAPON ON THAT ONE TO TEN SCALE?

7 A I'D HAVE TO PUT IT SOMEWHERE IN THE MIDDLE. ABOUT
8 AVERAGE.

9 MR. MAULDIN: OKAY. ALL RIGHT. ONE MOMENT. (OFF
10 RECORD WITH CO-COUNSEL) THAT'S ALL, YOUR HONOR. THANK YOU.

11 THE COURT: ANY REDIRECT?

12 SOLICITOR ARIAIL: NONE, YOUR HONOR.

13 THE COURT: AGENT PAAVEL, THANK YOU, SIR. WE
14 APPRECIATE IT.

15 WITNESS: YES, SIR.

16 (WITNESS STEPS DOWN AT 8:25 P.M.)

17 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE ARE
18 GOING TO BREAK FOR THE EVENING. THANK YOU SO MUCH FOR YOUR
19 PATIENCE. AGAIN, DO NOT DISCUSS THE CASE. SEE YOU BACK HERE
20 AT 9:00 IN THE MORNING. AS YOU SORT OF GET YOUR SEA LEGS
21 UNDER YOU ON JURY DUTY, IF YOU SEE THINGS HOW WE CAN
22 ACCOMMODATE YOU BETTER, ANY CONCERN YOU WANT TO BRING TO OUR
23 ATTENTION, PLEASE DON'T HESITATE TO DO SO. AND WE THANK YOU
24 SO MUCH FOR YOUR CONSCIENTIOUS ATTENTION.

25 (JURY DISMISSED FOR THE DAY AT 8:24 P.M.)

1 **THE COURT:** THE JURY HAS BEEN EXCUSED. HOW MANY MORE
2 WITNESSES DOES THE STATE HAVE POTENTIALLY?

3 **SOLICITOR ARIAIL:** WE DO NOT ANTICIPATE ANY MORE BUT
4 POSSIBLY ONE, AND WE'RE GOING TO MAKE THAT DECISION TONIGHT.
5 WE'LL TELL THE COURT FIRST THING. IF WE HAVE AN ADDITIONAL
6 WITNESS, WE'LL HAVE HIM HERE FIRST THING IN THE MORNING.

7 **THE COURT:** ALL RIGHT.

8 **MR. MAULDIN:** YOUR HONOR, THEY MIGHT WANT TO MAKE SURE
9 THEY GET THOSE EXHIBITS PROPERLY----

10 **THE COURT:** MS. MORRIS AND MS. KOFFSKEY AND I WILL STAY
11 BEHIND AND MAKE SURE IT'S MARKED AND RECORDED AND COLLECT IT
12 FOR THE EVENING.

13 THANK YOU. I'LL SEE Y'ALL AT NINE O'CLOCK.

14 **(COURT RECESSED FOR THE DAY AT 8:25 P.M.)**

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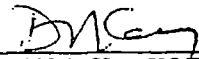
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 10TH DAY OF FEBRUARY, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MARCH 20, 2003



DAWN V. KOFFSKEY
COURT REPORTER

STATE OF SOUTH CAROLINA)

IN THE COURT OF

COUNTY OF GREENVILLE)

GENERAL SESSIONS

THE STATE)

OF SOUTH CAROLINA,)

VOLUME VII

-vs-)

01-GS-23-3106

TRANSCRIPT OF RECORD

TRIAL - GUILT PHASE

JOHN RICHARD WOOD,)

DAY 4 AND 5 (2/11-12/02)

DEFENDANT.)

FEBRUARY 4-16, 2002
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN W. KITTREDGE

A P P E A R A N C E S:

ROBERT M. ARIAIL, Esquire
Solicitor of the 13th Circuit
BETTY C. STROM, Esquire
Deputy Solicitor
MINDY HERVEY, Esquire
Assistant Solicitor

JOHN I. MAULDIN, Esquire
Public Defender
JAMES BANNISTER, Esquire
Co-counsel for the Defendant
RODNEY RICHEY, Esquire
Co-counsel for the Defendant

DAWN V. KOFFSKEY
Court Reporter

1661A

MATTERS AND MOTIONS

1 (THE TRIAL RESUMED AT 9:09 A.M. ON 2/11/02)

2 THE COURT: GOOD MORNING. DOES THE STATE HAVE ANY
3 FURTHER EVIDENCE?

4 SOLICITOR ARIAIL: NO, YOUR HONOR. WE WOULD CLOSE AT
5 THIS TIME.

6 THE COURT: ALL RIGHT. BE GLAD TO HEAR ANY MOTIONS.

7 MR. MAULDIN: YOUR HONOR, THE DEFENSE WOULD MOVE FOR
8 THE RECORD FOR AN ACQUITTAL OR A DIRECTED VERDICT ON THE
9 MURDER CHARGE. THAT'S THE MOTION WE MAKE AT THIS TIME, YOUR
10 HONOR.

11 THE COURT: MOTION IS DENIED.

12 AT THIS TIME I AM GOING TO SPEAK TO MR. WOOD UNDER OATH
13 AND ADVISE HIM OF HIS RIGHT TO TESTIFY OR NOT TESTIFY. I
14 WILL THEN ALLOW AN ADDITIONAL BREAK IF THAT NEEDS TO BE
15 DISCUSSED FURTHER, AND I WILL POSE ANY ADDITIONAL QUESTIONS
16 COUNSEL WOULD LIKE FOR ME TO POSE TO HIM.

17 MR. MAULDIN: YES, SIR. WE---

18 THE COURT: YES, SIR?

19 MR. MAULDIN: I THINK THAT WOULD BE THE FIRST ORDER OF
20 BUSINESS IS REFERENCE TO THE DEFENDANT'S RIGHT TO TESTIFY AT
21 THIS POINT, YOUR HONOR.

22 SOLICITOR ARIAIL: YOUR HONOR, I HATE TO INTERRUPT, BUT
23 COULD I JUST BRING ONE THING TO THE COURT'S ATTENTION?

24 THE COURT: YES.

25 SOLICITOR ARIAIL: WE HAVE IN THE COURTROOM A POTENTIAL

MATTERS AND MOTIONS

1 WITNESS, DR. PRICE. AND SINCE WE ARE DEALING WITH
2 SEQUESTRATION, HIS PRESENCE IS HERE IN ANTICIPATION OF SOME
3 PSYCHOLOGICAL OR PSYCHIATRIC TESTIMONY THAT HE CAN BE
4 AVAILABLE TO LISTEN TO. SO HE IS PRESENT. BUT BEFORE -- WE
5 ALSO WOULD HAVE A MOTION REGARDING THAT TYPE OF EVIDENCE
6 BEFORE WE GO ANY FURTHER.

7 THE COURT: I'LL DEAL WITH IT.

8 SOLICITOR ARIAIL: OKAY.

9 MR. MAULDIN: I CAN CLARIFY, I BELIEVE, JUDGE, PRETTY
10 CLEARLY. NO PSYCHOLOGICAL OR PSYCHIATRIC TESTIMONY --
11 PURSUANT TO OUR FAILURE TO RESPOND TO RULE 5 NOTICE, WE DO
12 NOT INTEND TO PRESENT ANY EXPERT TESTIMONY AT THIS PHASE. SO
13 I THINK THAT RESOLVES THAT WITH REGARD TO THE PRESENCE OF DR.
14 PRICE.

15 THE COURT: IN LIGHT OF THAT, I WOULD REQUIRE THE
16 SEQUESTRATION OF DR. PRICE AS WELL AS DEFENDANT'S EXPERTS.

17 SOLICITOR ARIAIL: MY POSITION -- OR THE STATE'S
18 POSITION IN REGARD TO THAT WOULD BE THAT DR. PRICE WOULD NOT
19 BE LIMITED JUST TO CRITIQUING EXPERT TESTIMONY. IF THERE IS
20 GOING TO BE -- WHICH IS ANOTHER ISSUE THAT WE NEED TO
21 ADDRESS. IF THERE IS GOING TO BE ANY OTHER EVIDENCE ALONG
22 THE LINES OF WHAT WE HEARD YESTERDAY IN CROSS EXAMINATION,
23 THEN I WOULD URGE THE COURT BECAUSE OF OUR INABILITY TO
24 EXAMINE THE DEFENDANT ON THIS AND OUR CONTINUING MOTION TO
25 SEE DR. NARAYAN'S -- THE REST OF HIS FILE AND CONTINUING

MATTERS AND MOTIONS

1 MOTION FOR US TO HAVE AN INDEPENDENT EXAMINATION, THAT DR.
2 PRICE BE ALLOWED TO STAY AND LISTEN TO ANY EVIDENCE,
3 REGARDLESS OF WHETHER IT IS EXPERT OR OTHERWISE ON THIS
4 SUBJECT.

5 THE COURT: VERY GOOD, SIR. THE RECORD WILL NOTE YOUR
6 EXCEPTION TO MY RULING. IF DR. PRICE IS PRESENT, HE WILL
7 NEED TO EXIT THE COURTROOM.

8 ALL RIGHT. MR. WOOD, IF YOU WOULD BE KIND ENOUGH TO
9 STAND, PLEASE, SIR.

10 JOHN RICHARD WOOD, HAVING BEEN
11 DULY SWORN, TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT:

13 Q YOU ARE JOHN RICHARD WOOD?

14 A YES, SIR.

15 Q HOW OLD ARE YOU, SIR?

16 A THIRTY-FOUR.

17 Q I WANT YOU TO UNDERSTAND MR. WOOD THAT YOU HAVE THE
18 RIGHT IN THIS CASE AS THE ACCUSED TO TESTIFY OR NOT TESTIFY.
19 DO YOU UNDERSTAND THAT?

20 A YES.

21 Q UNDER THE FIFTH AMENDMENT TO THE UNITED STATES
22 CONSTITUTION AS WELL AS A PROVISION IN OUR SOUTH CAROLINA
23 STATE CONSTITUTION IT PROVIDES IN PART THAT NO PERSON SHALL
24 BE COMPELLED OR FORCED TO TESTIFY AGAINST HIMSELF IN A
25 CRIMINAL CASE. DO YOU UNDERSTAND THIS?

JOHN RICHARD WOOD -- EXAMINATION BY THE COURT

1 A YES.

2 Q THIS IS A PERSONAL PRIVILEGE, SIR, WHICH MEANS UNDER NO
3 CIRCUMSTANCES CAN YOU BE FORCED TO TESTIFY IN THIS CASE. AND
4 WHEN I USE THE TERM PERSONAL PRIVILEGE, WHAT I MEAN BY THAT
5 IS, IS IT YOUR DECISION. YOU MAY CERTAINLY SEEK THE ADVICE
6 OF YOUR FINE COUNSEL, PERHAPS OTHERS IN WHOM YOU HAVE TRUST.
7 BUT ULTIMATELY THE DECISION OF WHETHER OR NOT TO TESTIFY IS
8 YOURS. DO YOU FULLY UNDERSTAND THAT?

9 A YES,

10 Q MR. WOOD, TO THIS POINT DO YOU FEEL OR BELIEVE THAT
11 ANYONE HAS TRIED TO FORCE YOU TO MAKE A DECISION REGARDING
12 TESTIMONY AGAINST YOUR WILL?

13 A NO.

14 Q MR. WOOD, SHOULD YOU EXERCISE YOUR RIGHT TO REMAIN
15 SILENT WHICH THE CONSTITUTION PROVIDES TO YOU I WOULD
16 INSTRUCT THE JURY THAT YOUR EXERCISE OF YOUR RIGHT TO REMAIN
17 SILENT CANNOT IN ANY WAY BE HELD AGAINST YOU BY THE JURY. IN
18 FACT, I WOULD TELL THE JURY THAT THEY COULDN'T EVEN DISCUSS
19 YOUR DECISION NOT TO TESTIFY IN THE JURY ROOM OR AT ANY POINT
20 DURING DELIBERATIONS OR OTHERWISE. DO YOU UNDERSTAND THAT?

21 A YES.

22 Q NOW, MR. WOOD, SHOULD YOU DECIDE ON YOUR OWN TO GIVE UP
23 THAT RIGHT TO REMAIN SILENT AND BECOME A WITNESS IN THIS CASE
24 YOU WOULD BE SUBJECT TO THE SAME RULES AND EXAMINATION AS ANY
25 OTHER WITNESS WOULD BE. DO YOU UNDERSTAND THAT?

JOHN RICHARD WOOD -- EXAMINATION BY THE COURT

1 A YES.

2 Q NOW, PART OF THAT IS THE USE OF AN INDIVIDUAL'S PRIOR
3 RECORD. AND WE'RE GOING TO FIND OUT RIGHT NOW WHAT THE STATE
4 WOULD INTEND TO USE IN TERMS OF YOUR RECORD. NOW LET ME TELL
5 YOU WHY WE PERMIT UNDER THE RULES THE USE OF ONE'S CRIMINAL
6 RECORD AGAINST A TESTIFYING WITNESS. IT IS ADMISSIBLE FOR A
7 LIMITED PURPOSE, AND THAT IS TO ASSIST THE JURY IN ITS
8 ASSESSMENT OF THE WITNESS' BELIEVABILITY AS A WITNESS. SO IF
9 AN INDIVIDUAL'S PRIOR RECORD COMES OUT IN FRONT OF THE JURY,
10 IT IS NOT EVIDENCE THAT THE INDIVIDUAL COMMITTED THE CRIME
11 FOR WHICH HE IS INDICTED AT THE TIME. IT'S SIMPLY LIMITED TO
12 THE JURY'S CONSIDERATION AS TO THE WEIGHT OR THE
13 BELIEVABILITY OF THAT WITNESS' TESTIMONY. DO YOU UNDERSTAND
14 THAT CONCEPT?

15 A YES.

16 Q AND WHEN YOU MAKE YOUR DECISION TO TESTIFY OR NOT TO
17 TESTIFY, I WANT YOU TO BE FULLY INFORMED OF WHAT THE STATE
18 WOULD BE PERMITTED TO USE.

19 THE COURT: SO AT THIS TIME I WOULD LIKE TO SETTLE THE
20 RECORD AND I'D LIKE TO KNOW IF THE STATE INTENDS TO USE ANY
21 CONVICTION UNDER RULE 609 OR OTHERWISE FOR PURPOSES OF
22 IMPEACHMENT. AND TAKE YOUR TIME AS YOU ASSESS THAT RECORD.

23 (PAUSE) MR. WOOD, YOU ARE WELCOME TO BE SEATED WHILE
24 THEY'RE CHECKING THAT OUT. WE'LL BE BACK WITH YOU IN JUST A
25 FEW MOMENTS, SIR.

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** (PAUSE) YOUR HONOR, WE WOULD FOR
2 THE PURPOSE OF THE RECORD SET FORTH THE FOLLOWING RECORD TO
3 BE USED BY THE STATE IN DEFENDANT'S CROSS EXAMINATION.
4 CHARGE NUMBER ONE, IN UNITED STATES DISTRICT COURT OR FEDERAL
5 COURT, A CONVICTION FOR CONSPIRACY TO USE FRAUDULENT
6 IDENTIFICATION IN CONNECTION WITH MAKING AND UTTERING
7 COUNTERFEIT SECURITIES. IT'S LISTED AS A CLASS D FELONY WITH
8 A POTENTIAL SENTENCE OF FIVE YEARS AND A \$250,000 FINE.

9 **THE COURT:** WHAT IS THE DATE OF THAT, PLEASE, SIR?

10 **SOLICITOR ARIAIL:** THE DATE WOULD HAVE BEEN SOMETIME IN
11 -- EXCUSE ME, OCTOBER 30TH OF 1997 WAS THE GUILTY PLEA DATE.
12 THAT IS NOT THE SENTENCING DATE BUT THAT WAS THE GUILTY PLEA
13 DATE.

14 IN JANUARY OF 1987, SECOND OFFENSE SHOPLIFTING; APRIL OF
15 1990, GRAND THEFT IN CIRCUIT COURT IN FLORIDA. THE FIRST
16 ONE, THE SHOPLIFTING, WAS GENERAL SESSIONS COURT FOR
17 GREENVILLE, SOUTH CAROLINA.

18 **THE COURT:** AND WHAT WAS THE DATE OF THAT?

19 **SOLICITOR ARIAIL:** JANUARY 7, '87. THE SECOND GRAND
20 THEFT WAS APRIL 4 OF 1990. GRAND THEFT AUTO, FEBRUARY 27,
21 1991.

22 **THE COURT:** I'M SORRY. THE DATE AGAIN, PLEASE, SIR?

23 **SOLICITOR ARIAIL:** FEBRUARY 27, 1991, GRAND THEFT AUTO,
24 CIRCUIT COURT, FORT MYERS, FLORIDA. SEPTEMBER 15, 1992,
25 OBTAINING A CONTROLLED SUBSTANCE BY FRAUD AND A POSSESSION OF

MATTERS AND MOTIONS

1 MARIJUANA OVER 20 GRAMS. THAT WAS IN CIRCUIT COURT IN
2 FLORIDA. SEPTEMBER THE 16TH, 1992, OBTAINING A CONTROLLED
3 SUBSTANCE BY FRAUD IN CIRCUIT COURT IN FLORIDA. NOVEMBER THE
4 9TH, 1992, BURGLARY OF A STRUCTURE AND GRAND THEFT.

5 THE COURT: AND THAT WAS NOVEMBER OF '92?

6 SOLICITOR ARIAIL: YES, SIR. NOVEMBER 9, 1992.

7 THE COURT: ALL RIGHT.

8 SOLICITOR ARIAIL: AND ALL OF THOSE WERE CONVICTIONS.

9 THE COURT: ALL RIGHT. COULD YOU HELP ME OUT A LITTLE
10 BIT ON THE CHARGE -- AND I DON'T WANT TO ASSUME ANYTHING, THE
11 GRAND THEFT AUTO CARRIES MORE THAN A YEAR?

12 SOLICITOR ARIAIL: THE ONLY THING I CAN TELL YOU IS HE
13 RECEIVED -- HE WAS CONVICTED AND HE RECEIVED A FIVE-YEAR
14 PROBATIONARY SENTENCE.

15 THE COURT: WHAT WAS THE SENTENCE ON THE OBTAINING
16 DRUGS, PRESCRIPTION MEDICATION, CONTROLLED SUBSTANCE BY
17 FRAUD?

18 SOLICITOR ARIAIL: THIRTY MONTHS IN STATE PRISON.

19 THE COURT: ACTIVE SENTENCE?

20 SOLICITOR ARIAIL: YES, SIR.

21 THE COURT: OKAY.

22 SOLICITOR ARIAIL: ACTIVE SENTENCE IN THE STATE OF
23 FLORIDA MUST BE RIGHT MILD. IT WAS IMPOSED IN MARCH AND HE
24 GOT THIRTY MONTHS AND HE WAS OUT IN JUNE. SO I GUESS IT WAS
25 ACTUALLY THREE MONTHS.

MATTERS AND MOTIONS

1 THE COURT: ANYTHING FURTHER?

2 SOLICITOR ARIAIL: SAME WITH THE CONTROLLED SUBSTANCE
3 BY FRAUD.

4 THE COURT: YES, SIR.

5 SOLICITOR ARIAIL: THERE'S ACTUALLY TWO OF THOSE ON, IT
6 LOOKS LIKE, TWO SEPARATE DATES ONE DAY APART. AND BURGLARY
7 OF A STRUCTURE WAS THIRTY MONTHS IN STATE PRISON.

8 THE COURT: ALL RIGHT. LET ME GO BACK. THE FIRST ONE
9 YOU MENTIONED WAS OCTOBER OF '97. THEN THE NEXT TWO, ONE WAS
10 '87.

11 SOLICITOR ARIAIL: JANUARY THE 7TH OF 1987,
12 SHOPLIFTING.

13 THE COURT: ALL RIGHT. AND ON WHAT BASIS DO YOU WANT
14 ME TO CONSIDER THAT AS ADMISSIBLE IN LIGHT OF THE TEN YEAR
15 PERIOD?

16 SOLICITOR ARIAIL: HE HASN'T BEEN OUT OF PRISON FOR
17 TEN STRAIGHT YEARS.

18 THE COURT: OKAY.

19 SOLICITOR ARIAIL: IN OTHER WORDS, CONTINUITY. I
20 HAVEN'T COMPUTED THE DATES BUT THE CONTINUITY OF THAT.
21 ALSO---

22 MR. MAULDIN: YOUR HONOR, WHILE THE SOLICITOR IS
23 LOOKING FOR THAT, I INTERPRET THE TEN YEAR OUT OF JAIL
24 SCENARIO AS AT LEAST TEN YEARS FROM THAT PARTICULAR OFFENSE
25 WOULD BE YOUR CRITERIA, NOT JUST ANY TEN YEAR -- SO...

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** (PAUSE) YOUR HONOR, WE WOULD ALSO
2 SUBMIT UNDER RULE 609 THAT BASED ON THE FACT THAT THERE NO
3 PERIOD OF TIME BETWEEN '87 THROUGH '97 WHEN HE RECEIVED THE
4 FEDERAL SENTENCE THAT THERE IS ANY SIGNIFICANT BREAK OTHER
5 THAN SOMEWHERE IN '93 TO '97 THERE WAS -- IT LOOKED LIKE HE
6 WAS OUT AND ON PROBATION. HE WAS STILL ON PROBATION DURING
7 THAT PERIOD OF TIME. SO WE WOULD SUBMIT THAT IN THE INTEREST
8 OF JUSTICE UNDER RULE 609 THE PROBATIVE VALUE OF THIS
9 CONVICTION SUPPORTED BY THE FACTS AND CIRCUMSTANCES OUTWEIGH
10 ANY PREJUDICIAL EFFECT.

11 **THE COURT:** AND IF YOU HAVE THE RECORDS, WOULD YOU BE
12 KIND ENOUGH TO SHARE WITH ME THIS APRIL OF 1990, I THINK IT
13 WAS, GRAND THEFT?

14 **SOLICITOR ARIAIL:** GRAND THEFT, CIRCUIT COURT IN FORT
15 MYERS, FLORIDA. I'M SORRY, WHAT DID YOU WANT?

16 **THE COURT:** I JUST WANT TO KNOW WHAT THE PENALTY WAS,
17 WHEN HE WAS RELEASED.

18 **SOLICITOR ARIAIL:** THE PENALTY WAS HE RECEIVED FIVE
19 YEARS OF PROBATION. AND IN 19 -- EXCUSE ME. IN MAY OF '91
20 -- LET ME GO BACK.

21 **THE COURT:** OKAY.

22 **SOLICITOR ARIAIL:** THE DATE I GAVE YOU IS DATE OF
23 ARREST. DATE OF CONVICTION WAS MAY 28 OF '91. HE WAS FOUND
24 GUILTY. HE RECEIVED FIVE YEARS PROBATION AND A FINE.
25 DECEMBER 4TH OF '91 THE PROBATION HE RECEIVED WAS REVOKED AND

MATTERS AND MOTIONS

1 HE WAS SENTENCED TO 143 DAYS ACTIVE SENTENCE AND GIVEN CREDIT
2 FOR TIME SERVED.

3 THE COURT: DOES IT SAY ANYTHING ABOUT THE STATUS OF
4 PROBATION AFTER HE SERVED HIS 143 DAYS?

5
6 SOLICITOR ARIAIL: NO, IT DOES NOT. IT IS TIED INTO
7 THE GRAND -- THE NEXT CONVICTION, FEBRUARY 27TH OF '91, THAT
8 ARREST IS TIED INTO THE SAME PROBATION.

9 THE COURT: ALL RIGHT. SO HE GOT PROBATION AGAIN IN
10 FEBRUARY OF '91 FOR ANOTHER GRAND THEFT?

11 SOLICITOR ARIAIL: WELL, ACTUALLY THE DISPOSITION IS IN
12 MAY OF '91. FEBRUARY IS THE ARREST. MAY IS THE DISPOSITION.
13 SO HE'S HAD -- HE GOT THE TWO GRAND THEFTS DISPOSED OF IN
14 MAY. THEN IN DECEMBER HE GOT THEM BOTH REVOKED. SO DECEMBER
15 THE 4TH '91, THE PROBATION WAS REVOKED.

16 WITHIN THE YEAR, SEPTEMBER 15 OF '92, HE IS REARRESTED
17 FOR OBTAINING CONTROLLED SUBSTANCE, POSSESSION OF MARIJUANA.
18 THAT'S IN SEPTEMBER OF '92, WHICH WAS DISPOSED OF IN MARCH OF
19 '93 AND HE RECEIVED A 30-MONTH STATE PRISON SENTENCE, AND
20 APPARENTLY WENT TO PRISON BECAUSE THE NOTE IS HE WAS RELEASED
21 FROM PRISON. AND ALL THREE OF THOSE LATTER ONES, THE
22 SEPTEMBER 15, THE SEPTEMBER 16 OF '92 AND THE NOVEMBER 9, '92
23 WERE ALL DISPOSED OF ON MARCH THE 12TH OF 1993.

24 MR. MAULDIN: COULD I ASK WHAT THE SENTENCE WAS, YOUR
25 HONOR, IN MARCH OF '93 ON THOSE?

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** THIRTY MONTHS STATE PRISON.

2 **MR. MAULDIN:** THIRTY MONTHS?

3 **SOLICITOR ARIAIL:** UH-HUH (AFFIRMATIVE). HE WAS
4 RELEASED FROM CUSTODY THREE MONTHS LATER. THERE ARE THREE
5 OTHER POTENTIAL CHARGES THAT WERE REFERENCED IN THIS LATER
6 REPORT WE HAVE, BUT I HAVE NO DATE OF CONVICTION.

7 **THE COURT:** ALL RIGHT, SIR. MR. MAULDIN TELL ME --
8 AND, MR. WOOD, BE PAYING CLOSE ATTENTION TO THIS, SIR -- TELL
9 ME WHICH OF THESE YOU OBJECT TO, SIR.

10 **MR. MAULDIN:** YOUR HONOR, WE'LL TAKE THEM IN THE ORDER
11 IN WHICH THEY CAME UP. WE WOULD CONCEDE THE APPROPRIATENESS
12 OF THE USE OF THE FRAUDULENT I.D. SENTENCE THAT HE RECEIVED
13 ON OCTOBER THE 30TH OF '97 IN FEDERAL COURT.

14 WE OBJECT TO THE SHOPLIFTING SECOND OF 1987. WE -- IF I
15 AM UNDERSTANDING CORRECTLY, HE WAS ARRESTED IN APRIL OF '90
16 ON A GRAND THEFT. HE WAS ARRESTED IN FEBRUARY OF '91 ON AN
17 AUTOMOBILE THEFT. THEN HE WENT TO COURT ON BOTH OF THOSE
18 CHARGES IN MAY OF '91 AND GOT 140 SOME ODD DAYS.

19 **THE COURT:** HE GOT FIVE YEARS PROBATION.

20 **MR. MAULDIN:** NO. HE GOT PROBATION.

21 **THE COURT:** FIVE YEARS.

22 **MR. MAULDIN:** AND THAT WAS SUBSEQUENTLY REVOKED AND HE
23 GOT 140 SOME ODD DAYS TIME SERVED. IS THAT YOUR
24 UNDERSTANDING, JUDGE, OF THOSE TWO?

25 **THE COURT:** I DON'T KNOW IF IT WAS TIME SERVED

MATTERS AND MOTIONS

1 RETROACTIVE OR WHETHER IT WAS A PROSPECTIVE 143 DAYS. I'M
2 NOT CLEAR ON THAT. BUT OTHER THAN THAT, YES, THAT'S MY
3 UNDERSTANDING.

4 MR. MAULDIN: ALL RIGHT. WE THEN UNDER THOSE
5 CIRCUMSTANCES IN LIGHT OF THE PASSAGE OF TIME OF IN EXCESS OF
6 TEN YEARS, WE SUBMIT THAT THOSE TWO LIKEWISE WOULD BE
7 OBJECTED TO AND INAPPROPRIATE.

8 AND WE BELIEVE THAT OF THE REMAINING THREE -- TO MAKE
9 SURE THE COURT IS UNDERSTANDING, I OBJECT TO THE SHOPLIFTING.
10 I OBJECT TO THE GRAND THEFT AND GRAND THEFT AUTO THAT WERE
11 APRIL OF '90 AND FEBRUARY OF '91.

12 THE COURT: TO WHICH HE PLED OR WAS CONVICTED ON MAY
13 28TH, '91.

14 MR. MAULDIN: RIGHT. RIGHT. MAY 28TH, '91.

15 THE COURT: YOU OBJECT?

16 MR. MAULDIN: RIGHT.

17 THE COURT: ALL RIGHT. NEXT ONE, PLEASE,

18 MR. MAULDIN: RIGHT. SO I OBJECT TO THOSE TWO.

19 WITH REGARD TO THE FINAL THREE THAT WERE GROUPED INTO A
20 PACKAGE BY SENTENCE IN MARCH OF '93, THAT IS TWO CONTROLLED
21 SUBSTANCE CHARGES, A POSSESSION OF MARIJUANA AND THE BURGLARY
22 AND THEFT, WE OBJECT TO THE DRUG CHARGES BUT CONCEDE -- WELL,
23 IT'S BEEN -- IT'S BEEN NINE PLUS YEARS SINCE THE BURGLARY
24 THEFT CASE. I'VE GOT NOVEMBER 9TH OF 1992 AS THE OPERATIVE
25 DATE ON THAT ONE. THAT ONE, I THINK, IS BORDERLINE, BUT ON

MATTERS AND MOTIONS

1 THE OTHER HAND, SINCE HE RECEIVED HIS SENTENCE IN MARCH OF
2 '93, IT APPEARS FROM WHAT THE SOLICITOR SAID THAT IT WAS A
3 30-MONTH SENTENCE, I THINK I WOULD BE HARD PRESSED TO PUSH
4 THAT TOO FAR. SO I DO OBJECT TO THE DRUG CHARGES. I OBJECT
5 TO THE TWO -- THE '90 AND THE '91 THEFT CHARGES AND
6 SHOPLIFTING.

7 THE COURT: RIGHT. ANYTHING FURTHER ON THAT ISSUE?

8 SOLICITOR ARIAIL: DID I MAKE IT CLEAR THAT THE DRUG
9 CHARGES HE IS TALKING ABOUT WERE OBTAINING A CONTROLLED
10 SUBSTANCE BY FRAUD? THESE ARE NOT JUST DRUG CHARGES.

11 THE COURT: RIGHT.

12 MR. MAULDIN: IT JUST SAID CONTROLLED SUBSTANCES.

13 SOLICITOR ARIAIL: OBTAINING CONTROLLED SUBSTANCES BY
14 FRAUD.

15 THE COURT: VERY GOOD.

16 ALL RIGHT. HERE IS MY RULING ON THE ADMISSIBILITY
17 SHOULD MR. WOOD TESTIFY IN THIS PHASE. I WILL PERMIT ALL OF
18 THE CONVICTIONS EXCEPT THE FOLLOWING: THE 1987 SHOPLIFTING
19 CONVICTION AND THE TWO CONVICTIONS THAT RESULTED FROM TWO
20 CHARGES AND THE PLEA OR THE CONVICTION WAS ON MAY THE 28TH OF
21 1991. THOSE THREE ARE EXCLUDED. THE OTHERS ARE ADMISSIBLE.

22 AND I'M GOING TO MENTION THIS TO YOU, AND I WANT MR.
23 WOOD TO PAY PARTICULARLY CLOSE ATTENTION TO WHAT I TELL
24 DEFENSE COUNSEL. THAT RULING IS NOT A LICENSE TO CLAIM
25 THAT -- ONCE THOSE FOUR CONVICTIONS COME OUT -- SOME SELF-

MATTERS AND MOTIONS

1 SERVING STATEMENT THAT THAT'S THE EXTENT OF MY RECORD.

2 THAT'S MY RULING ABSENT DEFENDANT OPENING THE DOOR.

3 NOW, MR. WOOD, IF YOU WOULD STAND BACK UP, PLEASE.

4 EXAMINATION OF DEFENDANT CONTINUES BY THE COURT:

5 Q SHOULD YOU TESTIFY, SIR, THE STATE, ACCORDING TO MY
6 RULING, WOULD BE PERMITTED TO BRING OUT THE THREE OFFENSES
7 FOR WHICH YOU WERE CONVICTED IN MARCH OF '93 AS WELL AS THE
8 OFFENSE FOR WHICH YOU WERE CONVICTED ON OCTOBER 30TH OF 1997
9 IN FEDERAL COURT FOR PURPOSES OF IMPEACHMENT OR CREDIBILITY
10 OF YOU AS A WITNESS. DO YOU UNDERSTAND THAT?

11 A YES, SIR.

12 Q HAVE YOU UNDERSTOOD THE QUESTIONS I HAVE ASKED YOU, SIR?

13 A YES, SIR.

14 Q AND HAVE YOU ANSWERED THEM TRUTHFULLY?

15 A YES.

16 Q I WOULD LIKE FOR YOU TO INDICATE TO YOUR COUNSEL IF YOU
17 HAVE ANY CONCERNS ABOUT THE LEGAL ISSUE INVOLVED OR YOUR
18 RIGHTS IN THIS REGARD THAT YOU WOULD LIKE TO POSE TO ME. I
19 WOULD LIKE YOU TO CONFER WITH COUNSEL IF YOU HAVE ANY SUCH
20 QUESTION OR CONCERN AND DO IT AT THIS TIME AND I'LL BE GLAD
21 TO RESPOND TO IT. I'D LIKE YOU FIRST TO RUN IT THROUGH
22 COUNSEL BEFORE YOU STATE IT TO ME.

23 MR. MAULDIN: YOUR HONOR, MY REQUEST IS THAT I BE
24 ALLOWED WITH THE CLIENT TO EXIT THE COURTROOM INTO THIS ROOM
25 RIGHT HERE.

1 **THE COURT:** WE'RE GOING TO TAKE A BREAK WHEN WE'RE
2 THROUGH WITH THIS PROCESS. BUT YOU WANT TO DO THIS AS PART
3 OF THIS PROCESS?

4 **MR. MAULDIN:** I WANT TO -- I WANT TO MEET WITH MY
5 CLIENT BEFORE HE ACTUALLY ANSWERS THE OPERATIVE QUESTION AND
6 THAT IS WHETHER HE TESTIFIES OR NOT. SO WHATEVER TIME THAT
7 IS, YOUR HONOR, I---

8 **THE COURT:** OKAY. I DO NOT REQUIRE THAT NOW.

9 **MR. MAULDIN:** ALL RIGHT.

10 **THE COURT:** I JUST WANT TO MAKE SURE HE UNDERSTANDS
11 BECAUSE NO DEFENDANT HAS TO LOCK HIMSELF OR HERSELF IN AT
12 THIS POINT.

13 **MR. MAULDIN:** YES, SIR.

14 **THE COURT:** SO THERE IS NO DECISION THAT HAS TO BE MADE
15 NOW. I JUST WANT TO MAKE SURE AS WE MOVE INTO THE DEFENSE
16 CASE THAT THE RECORD REFLECTS THAT MR. WOOD HAS BEEN INFORMED
17 THAT HE HAS A RIGHT TO TESTIFY IF HE WANTS TO, HE HAS A RIGHT
18 NOT TO TESTIFY, BUT THE DECISION IS HIS, AND THE CONSEQUENCES
19 OF TESTIFYING IN TERMS OF THE USE OF A PRIOR RECORD.

20 **MR. MAULDIN:** YES, SIR.

21 **THE COURT:** NOW, DO YOU HAVE ANY QUESTIONS OR OTHER
22 LEGAL ISSUES YOU WANT ME TO POSE TO HIM AT THIS TIME?

23 **MR. MAULDIN:** CAN I INQUIRE OF THE COURT AS TO YOUR
24 INTENTION WITH REGARD TO THE JURY -- LET ME JUST ASK IT THIS
25 WAY. IF THE STATE---

1 **THE COURT:** I'M GOING TO HAVE THE STATE REST IN FRONT
2 OF THE JURY. I'M GOING TO SAY, MOTIONS NOTED FOR THE RECORD
3 AT THIS TIME.

4 **MR. MAULDIN:** ALL RIGHT. SO ONCE THEY COME IN, THEY'RE
5 GOING TO REST AND WE'RE GOING TO CALL OUR FIRST WITNESS?

6 **THE COURT:** THAT'S CORRECT, SIR.

7 **MR. MAULDIN:** ALL RIGHT. THEN I WANT TO MAKE SURE --
8 AND I'D BE GLAD TO APPROACH ON THE SIDEBAR WITH REGARD TO THE
9 -- WHAT WE CONSIDER TO BE THE EXTENT OF THE WITNESSES. BUT
10 I'D ALSO LIKE TO MEET WITH MY CLIENT TO MAKE SURE IF HE HAS
11 ANY QUESTION ABOUT WHAT WE HAVE JUST BEEN THROUGH.

12 **THE COURT:** RIGHT. WELL, WE'RE GOING TO TAKE A BREAK
13 BEFORE THE JURY COMES IN BECAUSE WE ARE 30 MINUTES OUT NOW
14 FROM THE JURY'S TIME SCHEDULE. I TRY TO KEEP US ON THE SAME
15 CLOCK. SO WHEN I GET THROUGH WITH THIS, WE'RE GOING TO TAKE
16 A FIVE-MINUTE BREAK BEFORE I BRING THE JURY IN.

17 **MR. MAULDIN:** ALL RIGHT, SIR. ALL RIGHT, SIR.

18 **THE COURT:** DOES THAT ADDRESS YOUR -- GIVE YOU THE TIME
19 TO MEET WITH HIM?

20 **MR. MAULDIN:** YES, SIR.

21 **SOLICITOR ARIAIL:** YOUR HONOR, I HAVE ONE MORE MATTER.

22 **THE COURT:** YES, SIR.

23 **MR. MAULDIN:** PERHAPS IF I COULD MEET THE COURT ON
24 SIDEBAR FOR JUST A MOMENT JUST TO MAKE SURE YOU KNOW OUR
25 MECHANICS FOR SCHEDULING?

JOHN RICHARD WOOD -- EXAMINATION CONTINUES BY THE COURT

1 THE COURT: YES, SIR. THANK YOU.

2 (BENCH CONFERENCE OFF RECORD FROM 9:36 TO 9:37 A.M.)

3 THE COURT: ALL RIGHT. MR. WOOD, IF YOU WOULD JUST
4 STAND FOR A BRIEF MOMENT, PLEASE, SIR.

5 EXAMINATION CONTINUES BY THE COURT:

6 Q YOU UNDERSTAND YOU HAVE THE RIGHT TO TESTIFY?

7 A YES, SIR.

8 Q YOU UNDERSTAND YOU HAVE THE RIGHT NOT TO TESTIFY, AND
9 YOU UNDERSTAND THAT IF YOU DO NOT TESTIFY I WILL INSTRUCT THE
10 JURY THAT THE EXERCISE OF YOUR CONSTITUTIONAL RIGHT CANNOT BE
11 HELD AGAINST YOU?

12 A YES, SIR.

13 Q AND WE'VE BEEN OVER THAT IN SOME DETAIL. AND YOU
14 FURTHER UNDERSTAND THE EXTENT TO WHICH THE STATE OR IN SOME
15 FASHION YOUR PRIOR RECORD WOULD COME OUT IF YOU TESTIFY FOR
16 THE LIMITED PURPOSE OF THE JURY'S ASSESSMENT OF YOUR
17 BELIEVABILITY AS A WITNESS? YOU UNDERSTAND THAT?

18 A YES.

19 THE COURT: THANK YOU, SIR. YOU MAY BE SEATED.
20 SOLICITOR, YOU HAVE AN ISSUE THAT WE NEED TO ADDRESS,
21 SIR?

22 SOLICITOR ARIAIL: YOUR HONOR, BASED ON WHAT WAS RAISED
23 YESTERDAY THROUGH CROSS EXAMINATION IN REGARD TO THE ALLEGED
24 AND PURPORTED FEAR OF POLICE OFFICERS BEING SOMEHOW INVOLVED,
25 I WANT TO POINT THE COURT TO THE CASE OF GILL v. STATE, WHICH

MATTERS AND MOTIONS

1 WAS RECENTLY DECIDED BY OUR SOUTH CAROLINA SUPREME COURT IN
2 AUGUST OF LAST YEAR, IN WHICH THE DEFENDANT IN THAT CASE
3 ATTEMPTED TO RAISE EVEN MORE DIRECTLY THAN IN THIS CASE THE
4 ISSUE OF DIMINISHED CAPACITY REGARDING INTENT AND MALICE.
5 AND OUR SUPREME COURT CLEARLY STATED THAT NO SUCH DEFENSE
6 EXISTED IN THIS STATE AND THAT EVIDENCE RELATED TO IT WAS NOT
7 APPROPRIATE.

8 WE WOULD URGE THE COURT AT THIS POINT IN THE SAME VEIN
9 THAT MR. MAULDIN HAS URGED IN NUMEROUS OTHER INSTANCES THAT
10 IT SURE WOULD BE A CALAMITY AT THIS POINT TO PUT BEFORE THIS
11 JURY OTHERWISE IRRELEVANT, INADMISSIBLE EVIDENCE AND
12 THEREFORE CREATE AN ISSUE OF POTENTIAL MISTRIAL FOR DIRECTING
13 THE JURY IN A MANNER IN WHICH THEY ARE NOT ENTITLED TO THINK.
14 SO WE WOULD URGE THE COURT BEFORE ANY WITNESSES ARE PUT UP
15 FOR THE DEFENSE TO MAKE A PROFFER IN GENERAL TERMS AS WE WERE
16 REQUIRED TO STATE AS REGARDING THE ANDERSON EVIDENCE AND
17 SECONDLY AS WE AGREED AND THE COURT HAS INDICATED AS WILL
18 APPLY IN THE EVENT WE GET TO VICTIM IMPACT, SO THAT WE JUST
19 MAKE SURE WE'RE NOT GOING TO DIMINISHED CAPACITY.

20 LIKEWISE, WE WOULD POINT THE COURT'S ATTENTION TO STATE
21 V. IVY IN WHICH THE ISSUE OF MANSLAUGHTER -- OR VOLUNTARY
22 MANSLAUGHTER ON THE BASIS OF SOME EXERCISE OF A LEGAL RIGHT
23 PARTICULARLY IN REGARD TO A LAW ENFORCEMENT OFFICER. THE
24 COURT HELD THE EXERCISE OF LEGAL RIGHT NO MATTER HOW
25 OFFENSIVE TO ANOTHER IS NEVER IN LAW DEEMED A PROVOCATION

MATTERS AND MOTIONS

1 SUFFICIENT TO JUSTIFY MITIGATING AN ACT OF VIOLENCE. AND
2 WHAT WE WOULD URGE THE COURT TO DO AT THIS POINT IS CONSIDER
3 THOSE TO MAKE SURE THAT ANY EVIDENCE -- ANY EVIDENCE
4 PROFFERED DID NOT LEAD US TO A SITUATION WHERE EVIDENCE WAS
5 PRESENTED BUT THERE COULD BE NO RELIEF FOR IT. THANK YOU.

6 THE COURT: WOULD YOU MIND -- I'M FAMILIAR WITH STATE
7 v. IVY. BUT IF YOU WOULD, HAND UP THOSE COPIES OF THOSE
8 CASES.

9 SOLICITOR ARIAIL: I CAN. I'LL HAND YOU MINE.

10 THE COURT: I'LL HAND THEM BACK TO YOU. I JUST WANT TO
11 LOOK AT THEM.

12 SOLICITOR ARIAIL: I HAVE TWO THINGS WRITTEN. LET ME
13 SHOW THESE TO MR. MAULDIN. ONLY FOR MY POINT OF REFERENCE.
14 I HAVE NO NOTES.

15 THE COURT: I'LL GIVE THESE CASES BACK TO YOU.

16 SOLICITOR ARIAIL: THAT'S ALL RIGHT. WE CAN GET
17 ANOTHER ONE.

18 DID YOU WANT STATE v. IVY?

19 THE COURT: I'D LIKE TO LOOK AT IT AGAIN.

20 SOLICITOR ARIAIL: SURE.

21 THE COURT: BUT I AM FAMILIAR WITH THAT.

22 MR. MAULDIN: YOUR HONOR, I HAVE LOOKED AT IT.
23 CERTAINLY THE COURT IS ENCOURAGED TO TAKE THE DECISIONS AS A
24 WHOLE AND NOT JUST NECESSARILY ITEMS EMPHASIZED BY THE
25 SOLICITOR'S UNDERLINE, AND I'M CONFIDENT OF THAT.

MATTERS AND MOTIONS

1 THE COURT: SURE.

2 MR. MAULDIN: I'LL RESPOND TO THE POSITION.

3 THE COURT: YEAH, IF YOU WANT TO, GO AHEAD.

4 MR. MAULDIN: YOUR HONOR, WITH REGARD TO THE GILL v.
5 STATE, I'M NOT A REAL CASE LAW LAWYER SO I CAN'T TELL YOU
6 I'VE READ THAT HERE IN THE LAST LITTLE BIT. BUT THE
7 SOLICITOR DID SAY IT WAS MORE DIRECT THAN HERE. SO I'M GOING
8 TO GO OUT ON A LIMB HERE AND SUSPECT THAT PERHAPS DEFENDANT
9 GILL MAY HAVE OFFERED SOME SORT OF EVIDENCE ON THE ISSUE OF
10 DIMINISHED CAPACITY. I'M JUST GUESSING THAT THAT MIGHT HAVE
11 BEEN THE ISSUE.

12 WELL, THAT'S NOT WHAT WE HAVE HERE. WE'RE NOT ASKING
13 THAT THIS COURT FOR EXAMPLE INSTRUCT THE JURY ON SOME CONCEPT
14 OF DIMINISHED CAPACITY OR LACK OF THAT TYPE OF INFORMATION
15 BECAUSE WE DO KNOW THAT THAT IS NOT THE LAW IN OUR STATE.
16 WE'RE NOT ASKING FOR THAT.

17 WHAT WE'RE SUBMITTING -- WHAT WE'VE HAD IS LAY WITNESSES
18 AND IN PARTICULAR THE CODEFENDANT WHO WAS PRESENT WITH THE
19 DEFENDANT AT THE TIME OF THE ALLEGED OFFENSE AND DESCRIBE HIS
20 Demeanor DURING HER LAY TESTIMONY. SHE'S NOT TESTIFYING TO
21 DIMINISHED CAPACITY OR ANY OTHER LEGAL CONCEPT. THE JURY HAS
22 THE RIGHT TO TAKE THAT INTO CONSIDERATION IN MEASURING THIS
23 ISSUE -- HAS THE STATE PROVEN EACH AND EVERY ELEMENT OF THEIR
24 OFFENSE BEYOND A REASONABLE DOUBT? NOT FOR THE PURPOSE OF
25 DETERMINING THE VALUE OF A PRESENTATION BY THE DEFENSE, I.E.

MATTERS AND MOTIONS

1 INSANITY, GUILTY BUT MENTALLY ILL.

2 IN OTHER WORDS, THERE ARE TWO -- WE'VE KIND OF GOTTEN
3 OFF BASE, AT LEAST I FEEL LIKE WE HAVE. YOU HAVE A LAY
4 PRESENTATION OF DEMEANOR OF THE DEFENDANT. IF THE STATE HAS
5 PROVEN TO THIS JURY'S SATISFACTION BEYOND A REASONABLE DOUBT
6 MALICE, THEN HE WINS. BUT IF HE DOESN'T, THEN HE DOESN'T
7 WIN. THAT'S JUST SIMPLY AS CLEAR AS I CAN -- AS IT CAN BE
8 PUT. IT'S NOT WHAT -- THEY WILL NEVER HAVE INSTRUCTIONS FROM
9 YOU OR COMMENTS FROM THE DEFENSE OF ANY LEGAL CONCEPT OF
10 DIMINISHED CAPACITY. THAT IS NOT BEING PRESENTED TO THIS
11 COURT FOR CONSIDERATION.

12 THE COURT: LET'S TAKE A BREAK. LET ME READ THESE
13 CASES AND WE'LL PROBABLY GET BACK ON THE RECORD ABOUT 10:00.

14 MR. MAULDIN: THANK YOU, YOUR HONOR. I'LL MEET WITH MY
15 CLIENT.

16 THE COURT: YES, SIR. VERY GOOD, SIR.

17 (A RECESS WAS TAKEN FROM 9:45 TO 10:10 A.M.)

18 THE COURT: THERE'S ONE ADDITIONAL MATTER I WANT TO
19 ADDRESS WITH MR. WOOD. MR. WOOD, IF YOU WOULD PLEASE STAND
20 AGAIN.

21 DEFENDANT: (COMPLIES)

22 EXAMINATION CONTINUES BY THE COURT:

23 Q I WANT TO ADVISE YOU THAT UNDER OUR LAW IN A CASE OF
24 THIS NATURE YOU HAVE THE RIGHT TO MAKE A FINAL ARGUMENT, THE
25 LAST ARGUMENT, OR STATEMENT TO THE JURY AND I WANT YOU TO

MATTERS AND MOTIONS

1 UNDERSTAND THAT YOU HAVE THAT RIGHT. YOU ARE NOT REQUIRED
2 TO, BUT IT'S A RIGHT THAT YOU HAVE THAT YOU MAY CHOOSE TO
3 EXERCISE OR YOU MAY DECLINE TO EXERCISE. DO YOU UNDERSTAND
4 THAT?

5 A YES.

6 Q AND I MAY BRING THIS UP AGAIN WITH YOU. BUT IF YOU HAVE
7 A DECISION TO EXERCISE THAT RIGHT, I WANT YOU OR THROUGH YOUR
8 ATTORNEY TO ADVISE ME OF THAT AT THE APPROPRIATE TIME. ALL
9 RIGHT, SIR?

10 A OKAY.

11 THE COURT: THANK YOU. BRING THE JURY.

12 (JURY ENTERS COURTROOM AT 10:13 A.M.)

13 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN, GOOD
14 MORNING. I APOLOGIZE FOR THE DELAY. WE HAD CERTAIN LEGAL
15 ISSUES THAT WE HAVE HAD TO ADDRESS AND THE LAW REQUIRES ME TO
16 ADDRESS THEM OUTSIDE YOUR PRESENCE:

17 ANYTHING FURTHER FROM THE STATE?

18 SOLICITOR ARIAIL: NO, YOUR HONOR. THE STATE RESTS.

19 THE COURT: LADIES AND GENTLEMEN, THAT CONCLUDES ALL
20 THE EVIDENCE FROM THE STATE. THE RECORD WILL REFLECT MOTIONS
21 WERE MADE. AT THIS JUNCTURE AS PREVIOUSLY NOTED, THE RULINGS
22 STAND.

23 MR. MAULDIN, ARE YOU READY TO PROCEED, SIR?

24 MR. MAULDIN: YES, SIR.

25 THE COURT: YOU MAY PROCEED.

MATTERS AND MOTIONS

1 MR. MAULDIN: YOUR HONOR, WE WOULD RECALL STATE'S
2 WITNESS PAUL SILVAGGIO, PLEASE, SIR. COME AROUND, PLEASE,
3 SIR.

4 PAUL A. SILVAGGIO, HAVING BEEN
5 PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION BY MR. MAULDIN:

7 Q MR. SILVAGGIO, YOU WERE PREVIOUSLY CALLED DURING THE
8 STATE'S CASE AND IDENTIFIED AS THE CHIEF INVESTIGATING
9 OFFICER OVERALL IN THIS CASE; IS THAT CORRECT?

10 A THAT IS CORRECT, SIR.

11 Q ALL RIGHT. ON FEBRUARY 1ST OF THIS YEAR DID YOU HAVE
12 THE OCCASION TO ACCOMPANY AN INVESTIGATOR WHO I HAD REQUESTED
13 TO GO TO TAKE PHOTOGRAPHS OF THE RED HONDA?

14 A FEBRUARY 1ST OF 2002, YES.

15 Q YES, SIR. ALL RIGHT. I WANT TO ASK YOU TO TAKE A LOOK
16 AT THESE THREE PHOTOGRAPHS TO IDENTIFY THAT THAT IS THE SAME
17 HONDA THAT THE PICTURES WERE TAKEN OF ON FEBRUARY THE 1ST IN
18 YOUR PRESENCE AND THAT'S AN ACCURATE REPRESENTATION OF THAT
19 HONDA ON THAT DAY, AND THAT THAT HONDA IS THE SAME HONDA
20 REPRESENTED IN THE EXHIBITS AND IN THIS CASE?

21 A THE PHOTOGRAPH, NAMELY THE FULL SCALE PHOTOGRAPH, IF YOU
22 WILL, IS AN ACCURATE REPRESENTATION OF THE SCOOTER ON
23 FEBRUARY THE 1ST, 2002. THE OTHER TWO PHOTOGRAPHS ARE VERY
24 LIMITED IN THEIR DESCRIPTIVE MEASURES, BUT I WOULD SAY BASED
25 ON WHAT I SEE THAT THOSE WOULD BE A DEPICTION OF LIKELY TOO

PAUL A. SILVAGGIO - DIRECT BY MR. MAULDIN

1 THAT SCOOTER.

2 Q ALL RIGHT. AND THEY WERE -- THOSE PICTURES WERE TAKEN
3 IN YOUR PRESENCE BY AN INVESTIGATOR THERE TO PHOTOGRAPH THE
4 SCOOTER?

5 A THAT IS CORRECT.

6 MR. MAULDIN: YOUR HONOR, WE WOULD OFFER THESE THREE
7 PHOTOGRAPHS.

8 MR. MAULDIN: (REVIEWS PHOTOGRAPHS)

9 THE COURT: ANY OBJECTION, SIR?

10 SOLICITOR ARIAIL: NO OBJECTION.

11 THE COURT: WITHOUT OBJECTION. WHAT ARE THESE NUMBERS,
12 MR. MAULDIN?

13 MR. MAULDIN: YOUR HONOR, WE HAVEN'T HAD THEM NUMBERED
14 YET. SO I'M GOING TO HAND THEM TO THE COURT REPORTER.

15 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 7 AND
16 MOVED INTO EVIDENCE)

17 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 8 AND
18 MOVED INTO EVIDENCE)

19 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 9 AND
20 MOVED INTO EVIDENCE)

21 MR. MAULDIN: THOSE ARE EXHIBITS 7, 8 AND 9 FOR THE
22 DEFENDANT, YOUR HONOR.

23 THE COURT: THANK YOU.

24 Q NOW, OFFICER SILVAGGIO, I'M GOING TO ASK YOU TO LOOK AT
25 STATE'S EXHIBIT 3E FOR A MOMENT, PLEASE, SIR.

PAUL A. SILVAGGIO - DIRECT BY MR. MAULDIN

1 A (COMPLIES)

2 Q DO YOU RECOGNIZE -- IT'S ALREADY IN EVIDENCE BUT DO YOU
3 RECOGNIZE IT?

4 A YES, I DO, SIR.

5 Q AND YOU ARE FAMILIAR WITH WHAT IS DEPICTED IN THAT
6 PHOTOGRAPH?

7 A YES, I AM, SIR.

8 Q ALL RIGHT. BASICALLY THAT'S A PHOTOGRAPH OF FROM THE
9 REAR OF OFFICER NICHOLSON'S AUTOMOBILE LOOKING TOWARD THE
10 REAR OF THE CAR; IS THAT RIGHT?

11 A THAT IS CORRECT, SIR.

12 Q ALL RIGHT. AND I WANT TO ASK YOU IF THE -- AND I'M
13 GOING TO PUT THIS ON THE SCREEN JUST A MOMENT, BUT I WANT TO
14 ASK YOU IF YOU SEE THE -- SOME ORANGE PAINT MARKINGS ON THE
15 GROUND IN THAT PICTURE?

16 A YES, I DO, SIR.

17 Q AND IN THE INVESTIGATION OF A CASE OF THIS NATURE THAT
18 ORANGE WOULD BE FOR THE -- SO THAT AFTER THE AUTOMOBILE AND
19 OTHER PIECES OF PHYSICAL EVIDENCE ARE REMOVED THE ORANGE
20 PAINT WOULD STILL BE THERE FOR PURPOSES OF MEASUREMENTS AND
21 FURTHER INVESTIGATION?

22 A THAT IS CORRECT, SIR.

23 Q ALL RIGHT. AND -- LET'S SEE HERE. TO GIVE THE JURY AN
24 EXAMPLE -- AND THEY'LL HAVE THE ACTUAL PICTURE. BUT FOR
25 EXAMPLE, OFFICER SILVAGGIO, THIS LINE WITH THE ARROW POINTED

PAUL A. SILVAGGIO - DIRECT BY MR. MAULDIN

1 IN THAT DIRECTION WOULD INDICATE AFTER THE VEHICLE HAD BEEN
2 REMOVED THAT THIS WAS THE REAR -- IN LINE WITH THE REAR OF
3 THE VEHICLE AND THE VEHICLE WAS HEADED -- POINTED IN THE
4 DIRECTION OF THE ARROW?

5 A THAT IS CORRECT, SIR.

6 Q AND ONCE THE JURY HAS THIS PHOTOGRAPH IN THEIR HANDS,
7 THEY'LL BE ABLE TO SEE THERE IS ORANGE PAINT AROUND THE REAR
8 WHEEL, AND THAT'S FOR THE PURPOSE OF BEING ABLE TO PICK OUT
9 EXACTLY WHERE THE WHEELS WERE, ALL FOUR WHEELS OF THE
10 VEHICLE?

11 A THAT IS CORRECT, SIR.

12 Q AND THEN THEY WILL BE ABLE TO SEE VARIOUS PLACES WHERE
13 ORANGE PAINT HAS BEEN PUT OUT HERE ON THE STREET. EACH ONE
14 OF THOSE PLACES WOULD BE FOR THE PURPOSE OF THE FOLLOW-UP
15 INVESTIGATION AND THE LOCATION OF CERTAIN TYPES OF EVIDENCE;
16 IS THAT RIGHT?

17 A THAT IS CORRECT.

18 Q NOW YOU CAN TURN THE LIGHT BACK UP, PLEASE, MA'AM.

19 NOW, THIS IS NOT REAL VISIBLE ON THAT THING BUT I WANT
20 YOU TO LOOK AT THAT PHOTOGRAPH, OFFICER SILVAGGIO. I WANT
21 YOU TO LOOK WHERE THE DOUBLE YELLOW LINE IS IN THE PICTURE.
22 DO YOU SEE THE LOCATION OF THE DOUBLE YELLOW LINE AND WHERE
23 IT ENDS?

24 A YES, I DO, SIR.

25 Q DO YOU SEE AN ORANGE PAINT LINE RIGHT THERE AT THE END

PAUL A. SILVAGGIO - DIRECT BY MR. MAULDIN

1 OF THE DOUBLE YELLOW LINE? DO YOU SEE THAT?

2 A I DO, SIR.

3 Q ALL RIGHT. AND THEN THERE ARE A SERIES OF ORANGE ROUND
4 DOTS PROCEEDING -- AND I'LL POINT TO IT TO MAKE SURE YOU'RE
5 FOLLOWING ME -- WHERE THIS LINE IS -- AND THEN WE'LL PUT IT
6 UP ON THE SCREEN TO MAKE SURE THE JURY SEES IT. THERE'S AN
7 ORANGE LINE THERE AT THE DOUBLE YELLOW LINE AND THEN A SERIES
8 OF ORANGE DOTS PROCEEDING. DO YOU SEE WHAT I'M TALKING
9 ABOUT?

10 A YES, I DO, SIR.

11 Q ALL RIGHT. AND THAT WAS PART OF THE INVESTIGATION OF
12 WHAT WAS BELIEVED TO BE A SKID MARK; IS THAT CORRECT?

13 A THAT IS CORRECT, SIR.

14 Q ALL RIGHT. ONCE AGAIN, THIS WOULD BE MORE VISIBLE WHEN
15 IT'S IN THEIR HAND. BUT, OFFICER SILVAGGIO, WHAT WE HAVE
16 IDENTIFIED IS THIS DOUBLE YELLOW LINE, AND THEN THERE IS AN
17 ORANGE STRIP RIGHT HERE; IS THAT RIGHT?

18 A THAT IS CORRECT.

19 Q ALL RIGHT. AND THEN THERE ARE A SERIES OF ORANGE DOTS
20 GOING DOWN THIS DIRECTION; IS THAT RIGHT?

21 A YES, SIR.

22 Q AND THAT WAS THE FOLLOW-UP TO THE INVESTIGATION OF WHAT
23 YOU BELIEVED TO BE A SKID MARK?

24 A THAT IS PART OF THE INVESTIGATION BY CORPORAL GREENWAY
25 OF THE GREENVILLE CITY POLICE DEPARTMENT AS HE WAS REQUESTED

PAUL A. SILVAGGIO - DIRECT BY MR. MAULDIN

1 TO RECONSTRUCT OR TRIANGULATE EVIDENCE AT THE CRIME SCENE FOR
2 WHICH I WAS LEAD INVESTIGATOR ON. THOSE MARKINGS WERE PLACED
3 BY HIS TEAM OF RECONSTRUCTION PERSONNEL. AND THAT WHOLE AREA
4 RIGHT THERE WAS DIRECTED BY ME FOR PURPOSES OF TRIANGULATION
5 OF EVIDENCE.

6 Q AND THE REASON THAT THAT BLACK MARK ON THE PAVEMENT WAS
7 MARKED WITH THOSE ORANGE DOTS IS IN THE INVESTIGATION OF A
8 SKID MARK; IS THAT RIGHT?

9 A AT THE PRELIMINARY STAGES, IN ANSWERING YOUR QUESTION
10 ACCURATELY WITHOUT JUST A YES OR A NO, IN ACCURATELY
11 ANSWERING THAT QUESTION, AS I CONDUCTED A SURVEY, A CURSORY
12 SEARCH OF THAT CRIME SCENE, I LOOKED TO SEE WHAT WAS OUT OF
13 PLACE. ONE THING IN QUESTION, BEING THAT MARK IN THE ROAD,
14 WAS INCONSISTENT WITH MY EXPERIENCE OF ROADWAYS IN THAT THAT
15 APPEARED TO ME TO BE IN THE PRELIMINARY STATE TO BE A SKID
16 MARK, CONSISTENT WITH ONE, SO THEREFORE WE PLACED THE
17 EVIDENCE ON -- EMPHASIS ON THAT PARTICULAR MARK.

18 Q AND THE FACT IS THAT YOUR REPORT INDICATED, DID IT NOT,
19 THAT THERE WAS NOTED A SINGLE SKID MARK WHICH LED IN THE
20 DIRECTION OF THE DRIVER'S DOOR OF THE PATROL VEHICLE, THAT
21 WHICH IS SUSPECTED TO BE FROM THE NOTED SCOOTER?

22 A THAT'S CORRECT, SIR.

23 Q THAT'S WHAT YOU PUT IN YOUR REPORT?

24 A THAT'S CORRECT, SIR.

25 Q ALL RIGHT. NOW I'M GOING TO ASK YOU ONE FINAL QUESTION

PAUL A. SILVAGGIO - DIRECT BY MR. MAULDIN

1 JUST SO THE JURY -- FOR THE SAKE OF CLARITY, THIS IS STATE'S
2 EXHIBIT 3E. I WANT YOU TO LOOK AT THIS PICTURE, WHICH IS
3 ESSENTIALLY THE SAME PICTURE BUT THERE'S A LITTLE BIT HIGHER
4 QUALITY IN TERMS OF CLARITY. DO YOU SEE THE DIFFERENCE IN
5 THOSE TWO PICTURES?

6 A (REVIEWS PHOTOGRAPHS) THEY ARE THE SAME PHOTOGRAPH.

7 Q RIGHT. THAT'S THE SAME PHOTOGRAPH IN YOUR OPINION,
8 RIGHT?

9 A THAT'S CORRECT.

10 SOLICITOR ARIAIL: OKAY. NO FURTHER QUESTIONS, OFFICER
11 SILVAGGIO.

12 YOUR HONOR, WE WOULD OFFER THIS PHOTOGRAPH,
13 DEFENDANT'S -- IT HASN'T BEEN MARKED YET. I PASS UP TO THE
14 COURT 3E STATE'S EXHIBIT AND THE PROPOSED EXHIBIT AS SIMPLY A
15 MATTER OF ENHANCING -- OR AS CLEAR AS WE COULD GET IT.

16 THE COURT: ANY OBJECTION?

17 SOLICITOR ARIAIL: I HAVEN'T SEEN IT.

18 THE COURT: ALL RIGHT, SIR.

19 SOLICITOR ARIAIL: I'M SORRY. I MEAN, I HAVE SEEN THEM
20 BUT I DON'T KNOW WHICH ONE HE'S TALKING ABOUT. (REVIEWS
21 PHOTOGRAPHS) SURE. NO PROBLEM.

22 MR. MAULDIN: NO OBJECTION.

23 THE COURT: WITHOUT OBJECTION.

24 MR. MAULDIN: WE OFFER THIS, YOUR HONOR.

25 THE COURT: VERY GOOD. AND WHAT NUMBER IS THAT, MS.

PAUL A. SILVAGGIO - DIRECT BY MR. MAULDIN

1 KOFFSKEY?

2 COURT REPORTER: TEN.

3 THE COURT: TEN?

4 COURT REPORTER: YES, SIR.

5 (PHOTOGRAPH MARKED AS DEFENDANT'S EXHIBIT NUMBER 10 AND
6 MOVED INTO EVIDENCE)

7 THE COURT: THANK YOU.

8 MR. MAULDIN: YOUR HONOR, WE HAVE NO FURTHER QUESTIONS
9 OF OFFICER SILVAGGIO.

10 CROSS EXAMINATION BY SOLICITOR ARIAIL:

11 Q DETECTIVE SILVAGGIO, WHEN YOU MADE -- WHEN YOU MAKE A --
12 DO AN INVESTIGATION YOU LAY OUT EVERYTHING?

13 A YES, SIR.

14 Q YOU DON'T PICK AND CHOOSE AS TO WHAT YOU'RE GOING TO PUT
15 DOWN?

16 A THAT IS CORRECT, SIR.

17 Q AND DURING SOME OF THE INVESTIGATION SOME OF THE THINGS
18 THAT SEEMED IMPORTANT IN THE BEGINNING TURN OUT TO NOT BE
19 IMPORTANT IN THE END AND CONTRARY---

20 A THAT IS CORRECT.

21 Q ---THINGS THAT AREN'T IMPORTANT PROVE IMPORTANT?

22 A YES, SIR.

23 Q WERE YOU ABLE TO DETERMINE -- OR DID YOU DETERMINE THAT
24 THE MARK ON THE PAVEMENT WAS EITHER A SKID MARK OR AN
25 ACCELERATION MARK?

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 A I WAS UNABLE TO MAKE THAT DETERMINATION.

2 Q YOU'RE NOT COMPETENT TO MAKE THAT DETERMINATION?

3 A NO, I'M NOT.

4 Q AND FOR SOMEBODY TO MAKE THAT DETERMINATION -- THERE ARE
5 PEOPLE, I ASSUME, THAT COULD MAKE IT?

6 A SURE, THERE ARE---

7 Q IF THE MARK IS SUFFICIENT?

8 A YES, SIR.

9 Q ALL RIGHT. DID THE ISSUE OF WHETHER OR NOT THE MARK WAS
10 A SKID MARK OR AN ACCELERATION MARK TURN OUT TO BE IMPORTANT
11 IN YOUR INVESTIGATION TO PUSH YOU TO GO FORWARD WITH THAT?

12 A NO, IT DID NOT, SIR.

13 Q AND LET'S TALK A LITTLE BIT ABOUT THAT FOR A MINUTE.
14 MR. MAULDIN HAS SHOWN YOU SOME PHOTOGRAPHS OF THE SCOOTER BUT
15 THESE PHOTOGRAPHS, WHICH ARE MARKED DEFENDANT'S EXHIBITS 7, 8
16 AND 9, ARE AN ALTERED STATE OF THE SCOOTER?

17 A THAT IS CORRECT.

18 Q IN FACT, WHEN THESE PICTURES WERE TAKEN TEN DAYS AGO,
19 THE SCOOTER HAD ACTUALLY BEEN AT THE STORAGE LOT FOR HOW
20 LONG?

21 A ALMOST IN EXCESS OF A YEAR AND EXPOSED TO THE ELEMENTS.

22 Q ALL RIGHT. SO IT'S BEEN SITTING OUTSIDE FOR A YEAR AND
23 PART OF IT IS GONE?

24 A YES, SIR.

25 Q STATE'S EXHIBIT NUMBER 7, WHICH I DON'T BELIEVE MR.

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 MAULDIN SHOWED THE JURY, JUST SO THEY'LL UNDERSTAND IT, LET
2 ME SHOW YOU. WHAT ON 7 IS GONE ON THE SCOOTER?

3 A THE SEAT HAS BEEN REMOVED. THE RIGHT FRONT FENDER, IF
4 YOU WILL, FENDER WELL HAS BEEN REMOVED. AND THE LOCKING
5 MECHANISM HAS BEEN REMOVED OFF OF THE BACK OF THE SCOOTER
6 ALONG WITH THE CONTAINER WITHIN THE BACK COMPARTMENT HAS BEEN
7 REMOVED FROM THAT SCOOTER.

8 Q ALL RIGHT. LET ME SHOW YOU A PHOTOGRAPH OF THE SCOOTER
9 IN ITS UNALTERED CONDITION, WHICH WILL BE STATE'S EXHIBIT
10 26H. AND WE'LL JUST USE THAT LASER POINTER, WHICH YOU DON'T
11 HAVE, WHICH I WILL GIVE YOU---

12 A THANK YOU.

13 Q ---TO SHOW THE PARTS THAT ARE REMOVED.

14 A THE SEAT WAS REMOVED. THE LOCKING MECHANISM ON THE BACK
15 OF THE SCOOTER WAS REMOVED. THE INNER LINING OF THIS BACK
16 COMPARTMENT WAS REMOVED ALONG WITH THE -- THERE'S A GUARD
17 RIGHT HERE. IT'S HARD TO DEPICT IN THIS PHOTOGRAPH. IT'S
18 POSITIONED RIGHT HERE. THAT ALSO HAS BEEN REMOVED. THIS
19 AREA RIGHT IN HERE WHERE THE HANDLEBAR IS, THE RIGHT GRIP AND
20 RIGHT BRAKE HANDLE, IF YOU WILL. IN THIS PHOTOGRAPH THERE IS
21 NOT DUCT TAPE ON IT. IN ORDER TO TRANSPORT THAT SCOOTER FROM
22 THE FORENSIC DIVISION TO THE VEHICLE SERVICE CENTER HERE IN
23 GREENVILLE WE HAD TO PUT GRAY DUCT TAPE ON THAT, WHICH IS
24 DEPICTED IN THE PHOTOGRAPH PRESENTED TO ME BY MR. MAULDIN.

25 Q ALL RIGHT. AND WHAT I WANT TO TALK ABOUT IS A COUPLE OF

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 THOSE ALTERATIONS BECAUSE MR. MAULDIN ALSO HANDED YOU A
2 PHOTOGRAPH WHICH DEPICTS AS DEFENDANT'S EXHIBIT 9 AN AREA OF
3 THE SCOOTER, AND I'M NOT FAMILIAR WITH THAT PARTICULAR AREA,
4 ARE YOU?

5 A THIS PARTICULAR AREA AS DEPICTED IN THIS PHOTOGRAPH IS
6 LOCATED ON THE DRIVER -- WELL, EXCUSE ME, ON THE LEFT SIDE OF
7 THE SCOOTER. IN THE PHOTOGRAPH HERE WE'RE NOTING THE RIGHT
8 SIDE OF THE SCOOTER. THE INFORMATION IN DEFENDANT'S EXHIBIT
9 9 IS A DEPICTION OF THE BOTTOM LEFT AREA OF THE SCOOTER.

10 Q OKAY. NOW, THE LEFT FRONT GUARD OF THE SCOOTER --
11 EXCUSE ME. THE RIGHT FRONT GUARD OF THE SCOOTER, THE BLACK
12 PART ON THE FRONT YOU WERE TALKING ABOUT, WAS REMOVED?

13 A YES, SIR.

14 Q WHO WAS IT REMOVED -- UNDER WHOM'S DIRECTION WAS IT
15 REMOVED?

16 A MY DIRECTION. AND I ACTUALLY REMOVED IT FROM THE
17 SCOOTER.

18 Q AND WHAT WERE YOU REMOVING IT FOR?

19 A I NOTICED -- WHEN I DID A CURSORY SEARCH OF THE SCOOTER,
20 I NOTICED THAT THERE WAS SOME BLEMISH, IF YOU WILL, ON THAT
21 PARTICULAR MOLDING. I REMOVED IT FROM THE SCOOTER SO THAT
22 DURING TRANSPORT FROM ANY OTHER FACILITY FROM THE FORENSIC
23 DIVISION TO THE SERVICE CENTER THAT THERE WOULDN'T BE ANY
24 OTHER ALTER ON THERE, IF YOU WILL, OR DECEPTION OF WHAT WAS
25 ON THAT FENDER. SO I REMOVED IT AND PLACED IT INTO PROPERTY

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 AND EVIDENCE.

2 Q WHAT WAS YOUR PURPOSE IN DOING THAT? WHAT WERE YOU
3 INVESTIGATING AS A PART OF THIS CRIME WHEN YOU REMOVED AND
4 ALTERED THAT SCOOTER?

5 MR. MAULDIN: YOUR HONOR, THE OBJECTION WOULD NEED TO
6 BE MADE TO THE EXTENT THAT THIS EXAMINATION IS BEYOND ANY
7 CONCEIVABLE SCOPE AS TO THE DIRECT. THE IDENTIFICATION
8 PHOTOS AS THE SAME SCOOTER HAVE BEEN OFFERED AND CROSS
9 EXAMINED ABOUT WITH REGARD TO ALTERATIONS. THE QUESTIONS
10 REGARDING THE SKID MARK HAVE BEEN QUESTIONED AND CROSS
11 EXAMINED WITH REGARD TO USE. BUT BEYOND THE SCOPE OF DIRECT
12 WITH REGARD TO FURTHER INVESTIGATION ON SOMETHING THAT WAS
13 TAKEN OFF OF THE SCOOTER JUST SIMPLY IS IMPROPER, AND WE DO
14 ENTER THAT OBJECTION.

15 THE COURT: ALL RIGHT. CROSS EXAMINATION IS NOT
16 LIMITED TO THE SCOPE OF DIRECT. THE LIMITATION IS THAT OF
17 RELEVANCE. THE OBJECTION AS TO THE SCOPE IS RESPECTFULLY
18 OVERRULED. PROCEED, PLEASE.

19 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

20 Q WHAT WAS YOUR PURPOSE IN REMOVING THE GUARD? WHAT WERE
21 YOU INVESTIGATING?

22 A THE GUARD HAD A BLEMISH ON IT AS THOUGH IT WAS ANOTHER
23 -- THE GUARD IS BLACK IN COLOR.

24 Q UH-HUH (AFFIRMATIVE).

25 A ON THAT GUARD, ON THE TRIMMING OF THE GUARD IT HAD A

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 LIGHT COLORED SURFACE TO IT AND IT WAS ROUGH IN TEXTURE. I
2 WANTED TO LOOK AND SEE IF THE LOCATION OF THAT BLEMISH ON THE
3 FENDER WELL, IF YOU WILL, WAS CONSISTENT WITH ANY DAMAGE THAT
4 I COULD NOTE ON TROOPER NICHOLSON'S PATROL VEHICLE.

5 Q LOOKING TO SEE IF THE TWO MAY HAVE COLLIDED?

6 A THAT'S CORRECT.

7 Q ALL RIGHT. AND WHAT WAS YOUR CONCLUSION?

8 A THE TWO VEHICLES DID NOT COLLIDE WITH ONE ANOTHER.

9 Q AND THE BLEMISH ON THE SCOOTER WAS NOT RELATED TO ANY
10 DAMAGE ON THE CAR OF THE TROOPER?

11 A THAT IS CORRECT.

12 Q ALL RIGHT. AND AT THAT POINT DID IT BECOME IRRELEVANT
13 WHETHER THIS WAS A SKID MARK AT THAT TIME?

14 A YES, IT DID, SIR.

15 Q OKAY. NOW, AS TO THE REMOVAL OF THE BACK OF THE
16 VEHICLE, THE LOCKING COMPARTMENT, WHY DID YOU DO THAT? WHAT
17 WAS THE EXTENT YOU WERE GOING TO THERE?

18 A IN REGARDS TO THE LOCKING MECHANISM AND ALSO THE COVER
19 INSIDE, IF YOU WILL?

20 Q UH-HUH (AFFIRMATIVE).

21 A THE LOCKING MECHANISM, DURING THE COURSE OF OUR
22 INVESTIGATION WE RECOVERED A PIECE OR EVIDENCE THAT -- OR WE
23 RECOVERED AN ITEM -- EXCUSE ME. WE RECOVERED AN ITEM THAT
24 NEEDED SOME -- I NEEDED TO HAVE A KNOWN OBJECT TO COMPARE IT
25 TO.

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 Q THAT'S ALL RIGHT. YOU CAN BE SPECIFIC. YOU RECOVERED A
2 KEY FROM THE JEANS OF THE DEFENDANT?

3 A THANK YOU. I RECOVERED A HONDA KEY FROM THE JEANS OF
4 DEFENDANT JOHN RICHARD WOOD DURING THE COURSE OF CHAIN OF
5 CUSTODY. I NEEDED TO SEE IF THAT KEY IN FACT FIT THE LOCKING
6 MECHANISMS ON THIS PARTICULAR SCOOTER OR IF IT BELONGED TO
7 ANOTHER VEHICLE. DURING THE MIDST OF MY EXAMINATION I FOUND
8 THAT THAT KEY AND THE HONDA KEY DID NOT MATCH NOR FIT INTO
9 THE LOCKING MECHANISMS NOR THE IGNITION OF THIS HONDA SCOOTER
10 YET DID FIT INTO ANOTHER VEHICLE FOR WHICH I HAVE UNDER
11 IMPOUNDMENT. I FURTHER WENT INTO---

12 MR. MAULDIN: YOUR HONOR -- EXCUSE ME. EXCUSE ME. I
13 HAVE TO THEN NOW RENEW THE OBJECTION, YOUR HONOR.

14 THE COURT: ON WHAT GROUND?

15 MR. MAULDIN: SAME GROUNDS AS THE PRIOR OBJECTION. ONE
16 MOMENT. AND I GUESS THE POINT THEN WOULD BECOME WHETHER --
17 AT SOME POINT IT'S BECOME IRRELEVANT.

18 THE COURT: THANK YOU. WHAT'S THE RELEVANCE OF THAT?

19 SOLICITOR ARIAIL: TO SHOW THE EXTENT TO WHICH THE
20 INVESTIGATION PROCEEDED TO MAKE SURE THAT NOW THAT HE'S
21 RAISED THE ISSUE -- HE'S RAISED THE ISSUE IN FRONT OF THIS
22 JURY THAT FOR SOME REASON THE POLICE DIDN'T PROCEED TO
23 INVESTIGATE THE SKID MARKS. I WANT TO SHOW THE EXTENT TO
24 WHICH -- THE JURY HAS NO IDEA THE EXTENT TO WHICH THESE
25 OFFICERS GO AND INVESTIGATE THIS CASE, AND I'M JUST GIVING

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 THEM A LITTLE TASTE OF IT RIGHT HERE.

2 MR. MAULDIN: AND I OBJECT TO THAT.

3 THE COURT: OVERRULED.

4 Q GO AHEAD.

5 A I FURTHER, IN OPENING UP THE REAR COMPARTMENT OF THE
6 SCOOTER, BACK IN HERE, IF YOU WILL, THERE IS A COVER, A TRUNK
7 LINING, IF YOU WILL, IN THAT COMPARTMENT TO THE REAR OF THE
8 SCOOTER. I REMOVED THAT COVER, THAT LINING, FOR POTENTIAL
9 LATER EXAMINATION AT THE SOUTH CAROLINA LAW ENFORCEMENT
10 DIVISION FOR WHICH I DID NOT PURSUE. THE EXAMINATION THAT I
11 WAS INCLINED TO SEND THAT COVER TO THE LAB FOR WAS FOR AN
12 ATOMIC ABSORPTION OR, IF YOU WILL, A GUNSHOT RESIDUE KIT AND
13 EXAMINATION TO SEE IF ANY FIREARMS AND/OR AMMUNITIONS AND/OR
14 RELATED FIREARM COMMODITY, IF YOU WILL, HAD EVER BEEN PLACED
15 IN THAT COMPARTMENT. BASED ON THE RESULTS OF -- EXCUSE ME---

16 MR. MAULDIN: YOUR HONOR, WE CERTAINLY -- WE RENEW THE
17 OBJECTIONS ON ALL THE SAME GROUNDS AND IN ADDITION WITH
18 REGARD TO ANY---

19 THE COURT: TEST RESULTS.

20 MR. MAULDIN: PARDON?

21 THE COURT: ABOUT TEST RESULTS.

22 MR. MAULDIN: YES, SIR.

23 THE COURT: SUSTAINED.

24 SOLICITOR ARIAIL: WE'RE NOT GOING TO TEST RESULTS.
25 THAT'S ALL RIGHT.

PAUL A. SILVAGGIO -- CROSS BY SOLICITOR ARIAIL

1 Q YOU DIDN'T DO ANY TEST ON THAT?

2 A I DIDN'T SEND IT FOR ANALYSIS, NO, SIR.

3 Q BASED ON YOUR INVESTIGATION YOU CONCLUDED NOT TO SEND
4 IT?

5 A THAT IS CORRECT.

6 SOLICITOR ARIAIL: THANK YOU. THAT'S AS FAR AS I WILL
7 GO. THANK YOU. ANSWER ANY QUESTIONS MR. MAULDIN WE HAVE ON
8 REDIRECT.

9 MR. MAULDIN: NOTHING FURTHER.

10 THE COURT: INVESTIGATOR SILVAGGIO, THANK YOU, SIR.

11 (WITNESS STEPS DOWN AT 10:36 A.M.)

12 MR. BANNISTER: THE DEFENSE WOULD CALL GRADY MILLER.

13 THE COURT: DO YOU HAVE SOMEONE THAT CAN---

14 MR. BANNISTER: MR. RICHEY HAS GONE TO GET HIM.

15 THE COURT: OKAY. THANK YOU.

16 J. GRADY MILLER, JR., HAVING
17 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MR. BANNISTER:

19 Q GRADY, IF YOU WILL, PLEASE STATE YOUR NAME FOR THE
20 RECORD.

21 A IT'S JOHN GRADY MILLER, JR.

22 Q NOW, GRADY, IS TODAY YOUR DAY OFF?

23 A YES.

24 Q ALL RIGHT. YOU ARE HERE UNDER SUBPOENA?

25 A YES.

J. GRADY MILLER, JR. -- DIRECT BY MR. BANNISTER

1 Q GRADY, IF YOU WOULD, PLEASE TELL THE JURY WHAT YOU DO
2 FOR A LIVING.

3 A I'M A MOTORCYCLE DEALER. I HAVE BEEN FOR 29 YEARS.

4 Q ALL RIGHT. WHERE IS YOUR BUSINESS LOCATED?

5 A IT'S ON WADE HAMPTON BOULEVARD.

6 Q ALL RIGHT. AND WHAT KIND OF MOTORCYCLES DO YOU SELL?

7 A I SELL HONDA, YAMAHA, KAWASAKI, TRIUMPH, VICTORY, YOU
8 NAME IT.

9 Q AND HOW LONG HAVE YOU BEEN IN THAT BUSINESS?

10 A TWENTY-NINE YEARS.

11 Q WOULD IT BE SAFE TO SAY THAT YOU ARE FAMILIAR WITH
12 PRODUCTS IN TERMS OF MOTORCYCLES THAT HONDA PUTS OUT?

13 A YES, VERY MUCH SO.

14 Q ALL RIGHT. LET ME SHOW YOU WHAT HAS BEEN MARKED AS
15 STATE'S EXHIBIT 26H, AND I'M GOING TO PUT IT UP ON THE
16 SCREEN, I THINK. ALL RIGHT. DO YOU RECOGNIZE WHAT THAT IS?

17 A YEAH. THAT'S A HONDA HELIX.

18 Q ALL RIGHT. YOU CAN CUT THE LIGHTS BACK ON.

19 ARE YOU FAMILIAR WITH THE HONDA HELIX?

20 A YES, SIR, VERY MUCH.

21 Q HAVE YOU SOLD HONDA HELIXES?

22 A YES, I HAVE.

23 Q HOW LONG HAVE YOU SOLD HONDA HELIXES?

24 A SINCE THEY CAME OUT. I FORGOT WHAT YEAR. '86 OR
25 SOMETHING LIKE THAT.

J. GRADY MILLER, JR. -- DIRECT BY MR. BANNISTER

1 Q ALL RIGHT. HOW FAST WILL A HONDA HELIX GO IF YOU OPEN
2 IT UP?

3 A I WOULD SAY IT'D GO 70 MILES AN HOUR.

4 Q ALL RIGHT. YOU KNOW THAT OF YOUR OWN PERSONAL
5 KNOWLEDGE?

6 A YES.

7 Q ALL RIGHT. LET ME SHOW YOU WHAT HAS BEEN MARKED AS
8 DEFENDANT'S EXHIBIT NUMBER 9, AND I'M GOING TO TELL YOU THAT
9 THIS IS A PHOTOGRAPH OF A PLATE OFF OF A HONDA HELIX. I WANT
10 YOU TO LOOK ON THERE AND SEE IF YOU CAN FIND WHERE IT SAYS
11 WHAT SIZE ENGINE IS ON A HONDA HELIX. I'M GOING TO HELP YOU
12 A LITTLE BIT. RIGHT THERE.

13 A YEAH. 240 CUBIC CENTIMETERS. 44. 244.

14 Q ALL RIGHT. AND DOES THAT -- IS THAT WHAT YOU BELIEVE A
15 HONDA HELIX -- WOULD THAT BE THE PROPER SIZE OF THE ENGINE
16 FOR A HONDA HELIX?

17 A YES, THAT WOULD BE.

18 Q ALL RIGHT. JUST SO EVERYBODY CAN SEE WHAT I'M TALKING
19 ABOUT. AND WHAT YOU SAW WAS RIGHT IN HERE, 244?

20 A YES.

21 Q ALL RIGHT. YOU CAN CUT THE LIGHTS BACK ON.

22 GRADY, AS A DEALER IN HONDA HELIXES DO YOU GET ASKED
23 WHETHER OR NOT THOSE MOTORCYCLES ARE LEGAL ON THE FREEWAY?

24 A YES, I DO.

25 Q ALL RIGHT. DO YOU KNOW OF YOUR OWN PERSONAL KNOWLEDGE

J. GRADY MILLER, JR. -- DIRECT BY MR. BANNISTER

1 WHETHER THEY ARE OR NOT?

2 A ABSOLUTELY THEY ARE.

3 Q ALL RIGHT. SO IF I TOLD YOU THAT THE STATE'S -- THAT
4 OUR STATUTES SAY THAT THE DEFINITION OF MOPED IS A CYCLE WITH
5 A MOTOR OF NOT MORE THAN 50 CUBIC CENTIMETERS, HAS THIS HONDA
6 HELIX GOT A MOTOR THAT'S BIGGER THAN THAT DEFINITION?

7 A YEAH, IT HAS 244 CCs.

8 Q ALL RIGHT. AND IF I---

9 A FIVE TIMES AS BIG.

10 Q AND IF I TOLD YOU THAT THE STATE'S STATUTES SAY THAT TO
11 BE LEGAL ON THE FREEWAY A MOTORCYCLE HAS TO HAVE MORE THAN 5
12 HORSEPOWER, DO YOU KNOW OF YOUR OWN PERSONAL KNOWLEDGE
13 WHETHER A HONDA HELIX HAS MORE THAN 5 HORSEPOWER?

14 A YES, SIR, IT DOES.

15 MR. BANNISTER: ALL RIGHT. THANK YOU. I DON'T HAVE
16 ANY FURTHER QUESTIONS.

17 CROSS EXAMINATION BY SOLICITOR ARIAIL:

18 Q MR. MILLER, HOW ARE YOU TODAY?

19 A ALL RIGHT. HOW ARE YOU?

20 Q GOOD. YOU SAY YOU WERE SUBPOENAED?

21 A YES, I WAS.

22 Q DO YOU HAVE YOUR SUBPOENA WITH YOU?

23 A NO, I DON'T.

24 Q DO YOU KNOW THAT -- WHEN DID YOU RECEIVE YOUR SUBPOENA?

25 A IT WAS SOMETIME LAST WEEK.

J. GRADY MILLER, JR. -- CROSS BY SOLICITOR ARIAIL

- 1 Q SOMETIME LAST WEEK. PRIOR TO RECEIVING A SUBPOENA
2 SOMETIME LAST WEEK HAD YOU HAD ANY INVOLVEMENT IN THIS CASE?
3 A I TALKED TO THE -- TO JIM.
4 Q TO MR. BANNISTER?
5 A YES.
6 Q AND WHEN DID YOU TALK TO HIM?
7 A SEVERAL TIMES. I DON'T KNOW---
8 Q BEFORE THE SUBPOENA?
9 A YES, UH-HUH (AFFIRMATIVE).
10 Q HOW LONG BEFORE THE SUBPOENA?
11 A IT'D BE HARD TO SAY. I DON'T REMEMBER EXACTLY.
12 Q WOULD IT BE OVER A MONTH?
13 A SEEM LIKE MAYBE A MONTH EARLIER.
14 Q A MONTH EARLIER. SO ALL OF THIS HAS OCCURRED IN THE
15 LAST COUPLE OF MONTHS?
16 A YEAH.
17 Q ALL RIGHT. GOING TO THE SECOND ISSUE, IS THERE -- WOULD
18 IT BE UNUSUAL OR WOULD YOU FIND IT UNUSUAL THAT THE AVERAGE
19 LAYMAN OR THE AVERAGE PERSON WOULD NOT KNOW -- WELL, LET ME
20 GO BACK. YOU'RE IN THE BUSINESS. YOU'VE BEEN IN BUSINESS 29
21 YEARS. YOU KNOW THE DIFFERENCE BETWEEN ALL THESE
22 MOTORCYCLES, MOTOR SCOOTERS. BUT WITH IT -- WOULD YOU FIND
23 IT UNUSUAL THAT THE AVERAGE LAYPERSON WOULD NOT NECESSARILY
24 BY APPEARANCE KNOW THE DIFFERENCE BETWEEN A SCOOTER, A MOPED,
25 A SCOOTER AND A MOTORCYCLE OF A HONDA MAKE?

J. GRADY MILLER, JR. -- CROSS BY SOLICITOR ARIAIL

1 A THAT'S POSSIBLE. A MOPED HAS A TAG THAT SAYS MOPED.

2 Q RIGHT. BUT THE GENERAL LAYPERSON WHO IS NOT SKILLED IN
3 244 CCs THAT APPEAR ON A LABEL ON THE SIDE OF THE VEHICLE AND
4 CAN'T READ IT MAY NOT PERCEIVE IT AS SUCH, CORRECT?

5 A THAT'S POSSIBLE.

6 Q THEY MIGHT PERCEIVE -- I KNOW I'M ASKING YOU HARD
7 QUESTIONS BECAUSE YOU CAN'T -- YOU DON'T UNDERSTAND BECAUSE
8 YOU CAN SPOT THEM JUST LIKE THAT WHEN YOU'RE RIDING DOWN THE
9 ROAD. YOU KNOW EXACTLY WHAT SIZE ENGINE THEY'VE GOT. BUT
10 FOR THE LAYPERSON I'M TALKING ABOUT, SEEING A MOTOR SCOOTER
11 OR WHATEVER GOING DOWN THE ROAD WE CAN ALL AGREE A HONDA DOES
12 NOT LOOK LIKE A HARLEY DAVIDSON MOTORCYCLE?

13 A WELL, THEY MAKE SOME THAT LOOK LIKE THEM.

14 Q BUT NOT THIS ONE?

15 A NOT THAT ONE.

16 Q NOT THIS ONE. THIS ONE DOESN'T LOOK ONE. AND THIS ONE
17 DOESN'T LOOK LIKE ONE OF THOSE THINGS, I ASSUME YOU SELL,
18 THAT EVERYBODY'S LEANING FORWARD AND LOOK LIKE THEY'RE A
19 BULLET GOING TO CRASH INTO SOMETHING?

20 A YEAH.

21 Q RIGHT?

22 A RIGHT.

23 Q LIKE THE ONES THAT REALLY MAKE THAT LOUD NOISE AND ALL
24 THAT. SO WHAT I'M GETTING AT, THIS IS A SMALL MOTORCYCLE?

25 A IT'S NOT SMALL. IT'S A VERY LARGE SCOOTER.

J. GRADY MILLER, JR. -- CROSS BY SOLICITOR ARIAIL

1 Q IT'S A LARGE SCOOTER. OKAY. THANK YOU.

2 A BUT IT'S CLASSIFIED AS A MOTORCYCLE.

3 Q I UNDERSTAND. BUT IT'S A LARGE SCOOTER.

4 SOLICITOR ARIAIL: THANK YOU VERY MUCH.

5 MR. BANNISTER: THANK YOU. NO FURTHER QUESTIONS.

6 THE COURT: MR. MILLER, WE APPRECIATE YOU BEING HERE.
7 THANK YOU, SIR.

8 (WITNESS STEPS DOWN AT 10:44 A.M.)

9 MR. MAULDIN: WE HAVE A MATTER, YOUR HONOR.

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE HAVE A
11 LEGAL ISSUE WE NEED TO ADDRESS. IF YOU WOULD, JUST BEAR WITH
12 US. DON'T DISCUSS THE CASE DURING THIS BREAK. I'LL GET YOU
13 OUT HERE AS QUICKLY AS I CAN. THANK YOU.

14 (JURY EXITS COURTROOM AT 10:45 A.M.)

15 THE COURT: THE JURY HAS BEEN EXCUSED. AND YOU SORT OF
16 GAVE ME THE HIGH SIGN, SO I -- THAT'S WHY WE BROKE.

17 MR. MAULDIN: YES, SIR.

18 THE COURT: YES, SIR?

19 MR. MAULDIN: THE POINT WOULD BE, YOUR HONOR, I THINK
20 IT WOULD BE APPROPRIATE AT THIS TIME FOR THE DEFENDANT TO
21 RESPOND TO THE ISSUE OF RIGHT TO TESTIFY OR NOT TO BE PUT ON
22 THE RECORD.

23 THE COURT: VERY GOOD.

24 MR. MAULDIN: WOULD YOU LIKE FOR ME TO QUESTION HIM OR
25 WOULD THE COURT?

MATTERS AND MOTIONS

1 **THE COURT:** I WILL AND I'LL CERTAINLY GIVE THE
2 OPPORTUNITY TO FOLLOW UP.

3 MR. WOOD, IF YOU WOULD PLEASE STAND.

4 **DEFENDANT:** (COMPLIES)

5 **EXAMINATION OF MR. WOOD CONTINUES BY THE COURT:**

6 **Q** WE ARE AT THE STAGE OF THE CASE, ACCORDING TO DEFENSE
7 COUNSEL, WHERE THE DECISION FOR YOU TO TESTIFY OR NOT TESTIFY
8 IS TO BE MADE. HAVE YOU BEEN ABLE TO CAREFULLY CONSIDER THIS
9 DECISION, SIR?

10 **A** YES, SIR.

11 **Q** AND WHAT IS YOUR CHOICE?

12 **A** NOT.

13 **Q** I'M SORRY?

14 **A** NOT TO TESTIFY.

15 **Q** OKAY. IS THAT A DECISION THAT YOU HAVE MADE OF YOUR OWN
16 FREE WILL?

17 **A** YES.

18 **Q** HAS ANYBODY FORCED YOU INTO THAT DECISION, SIR?

19 **A** NO.

20 **THE COURT:** VERY GOOD. IF YOU WOULD LIKE ME TO POSE
21 ANY ADDITIONAL QUESTIONS TO MR. WOOD, I'LL DO SO, SIR, OR IF
22 YOU WOULD LIKE TO QUESTION HIM.

23 **MR. MAULDIN:** NO. I WOULD SAY FOR THE RECORD AS LEAD
24 COUNSEL THAT THIS SUBJECT HAS BEEN THE MATTER OF DISCUSSION
25 BETWEEN JOHN AND I FOR MONTHS, AND HE HAS BEEN CONSISTENT IN

MATTERS AND MOTIONS

1 THAT POSITION, AND I AM COMPLETELY SATISFIED THAT IT IS IN
2 FACT A FREE AND VOLUNTARY CHOICE, AND I BELIEVE THAT IT IS
3 THE RIGHT CHOICE FOR HIM TO MAKE IN THIS MATTER, YOUR HONOR,
4 IN MY OPINION.

5 THE COURT: VERY GOOD, SIR.

6 THE RECORD WILL REFLECT THAT MR. WOOD HAS BEEN FULLY
7 ADVISED OF HIS RIGHTS IN CONNECTION WITH HIS FIFTH AMENDMENT
8 PRIVILEGE. HE HAS AFTER CAREFUL DELIBERATION ELECTED OF HIS
9 OWN FREE WILL TO EXERCISE THAT RIGHT AND NOT TESTIFY.

10 WILL THERE BE ANY FURTHER EVIDENCE TO BE OFFERED BY
11 DEFENDANT?

12 MR. MAULDIN: NO FURTHER EVIDENCE, YOUR HONOR.

13 THE COURT: ALL RIGHT. I WOULD LIKE TO -- I'M SORRY.
14 GO AHEAD.

15 MR. MAULDIN: YOU KNOW, THAT -- CAN WE HAVE A SIDE BAR,
16 YOUR HONOR, IF THE COURT PLEASE?

17 THE COURT: SURE.

18 (BENCH CONFERENCE OFF RECORD FROM 10:47 TO 10:53 A.M.)

19 THE COURT: SOLICITOR, WILL THERE BE ANY REPLY?

20 SOLICITOR ARIAIL: NO, YOUR HONOR.

21 THE COURT: THAT CONCLUDES THE EVIDENCE IN THE FIRST
22 PHASE OF THIS TRIAL.

23 MR. WOOD, IF YOU WOULD PLEASE STAND. I INFORMED YOU
24 EARLIER UNDER THE LAW YOU HAVE THE RIGHT TO MAKE THE FINAL
25 ARGUMENT TO THE JURY TOGETHER WITH YOUR COUNSEL.. DO YOU WISH

MATTERS AND MOTIONS

1 TO EXERCISE THAT RIGHT OR NOT EXERCISE THAT RIGHT?

2 DEFENDANT: NO.

3 THE COURT: YOU WISH NOT TO MAKE THE FINAL ARGUMENT; IS
4 THAT CORRECT?

5 DEFENDANT: YES.

6 THE COURT: IS THAT A DECISION YOU HAVE MADE OF YOUR
7 OWN FREE WILL?

8 DEFENDANT: YES.

9 THE COURT: THANK YOU, MR. WOOD.

10 MR. MAULDIN: FOR THE RECORD, YOUR HONOR, THAT HAS BEEN
11 DISCUSSED NUMEROUS OCCASIONS AND IT IS CONSISTENT WITH WHAT
12 JOHN HAS SAID TODAY.

13 THE COURT: VERY GOOD. I WILL BRING THE JURY IN AND
14 ASK IF THERE'S ANYTHING FURTHER. I'LL ASK IF THERE IS ANY
15 REPLY. I'LL INSTRUCT THE JURY ACCORDINGLY.

16 BRING THE JURY.

17 IT'S F-O-U-S-T.

18 MS. HERVEY: I FOUND IT. IT'S PRINTING. I'VE GOT A
19 SLOW PRINTER.

20 THE COURT: OKAY.

21 (JURY REENTERS COURTROOM AT 10:55 A.M.)

22 THE COURT: ANYTHING FURTHER FROM DEFENDANT?

23 MR. MAULDIN: THAT'S THE DEFENSE CASE, YOUR HONOR.

24 THE COURT: SOLICITOR, WILL THERE BE ANY REPLY
25 EVIDENCE?

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** NO, YOUR HONOR.

2 **THE COURT:** LADIES AND GENTLEMEN, THAT CONCLUDES ALL OF
3 THE EVIDENCE AT THIS TIME. ALL THAT REMAINS AT THIS JUNCTURE
4 IS FOR THE FINAL ARGUMENTS OF THE ATTORNEYS AND MY CHARGE TO
5 YOU ON THE LAW. THEN YOU WILL BEGIN YOUR DELIBERATIONS. AT
6 THIS STAGE THERE ARE ADDITIONAL LEGAL MATTERS THAT I AM
7 REQUIRED TO TAKE ON AND ADDRESS. I HAVE TO DO SO OUTSIDE
8 YOUR PRESENCE. SO THERE IS GOING TO BE A DELAY OF PROBABLY
9 ABOUT A COUPLE HOURS, AND I'M GOING TO SPEAK TO YOUR COURT
10 SECURITY OFFICERS AND SEE IF THERE IS SOME WAY WE CAN
11 ACCOMMODATE YOU AND NOT KEEP YOU COOPED UP HERE BECAUSE I
12 KNOW YOU HAVE ALREADY SAT FOR THE MAJORITY OF THE TIME THIS
13 MORNING, AND I CERTAINLY UNDERSTAND THAT AND THAT FACT DOES
14 NOT ESCAPE ME.

15 AGAIN, UNTIL WE ARE ABLE TO PROCEED TO CLOSING
16 ARGUMENTS, PROBABLY ABOUT ONE O'CLOCK, DO NOT DISCUSS THE
17 CASE AMONG YOURSELVES AND I WILL GET YOU BACK IN HERE ABOUT
18 ONE O'CLOCK. THANK YOU VERY MUCH. PLEASE RETIRE TO THE JURY
19 ROOM.

20 (JURY EXITS COURTROOM AT 10:57 A.M.)

21 **THE COURT:** THE JURY HAS BEEN EXCUSED. ANY MOTIONS AT
22 THIS TIME?

23 **MR. MAULDIN:** JUST A RENEWAL OF THE MOTION WE MADE AT
24 THE CLOSE OF STATE'S CASE, YOUR HONOR.

25 **THE COURT:** VERY GOOD. THE SAME RULING APPLIES.

MATTERS AND MOTIONS

1 WE'RE GOING TO TAKE A FIVE-MINUTE BREAK. WE'RE GOING TO
2 COME BACK -- AND I'VE DISCUSSED THIS WITH COUNSEL OFF THE
3 RECORD, THAT WHEN WE COME BACK WE'RE GOING TO DISCUSS IN
4 ESSENTIALLY A CHARGE CONFERENCE OFF THE RECORD TO ALLOW US TO
5 THINK OUT LOUD WITH EACH OTHER, TO SHARE OUR THOUGHTS. AND
6 EITHER THEREAFTER OR JUST BEFORE WE BRING THE JURY BACK IN WE
7 WILL GO ON THE RECORD, PUT ALL THE ISSUES ON THE RECORD SO
8 EACH SIDE'S POSITION, OBJECTIONS AND EXCEPTIONS WILL BE
9 PROPERLY PRESERVED. SO LET'S TAKE A FIVE-MINUTE BREAK. WHEN
10 WE COME BACK, WE'LL HAVE THE CHARGE CONFERENCE. THANK YOU.

11 (A RECESS WAS TAKEN FROM 10:58 TO 11:06 A.M.)

12 (A CHARGE CONFERENCE WAS HELD OFF RECORD FROM 11:08 TO
13 11:34 A.M.)

14 THE COURT: WE'RE BACK ON THE RECORD. AND COUNSEL IN
15 REVIEWING THIS I MAY WELL OVERLOOK A COUPLE ISSUES, AND
16 PLEASE LET'S MAKE THE RECORD COMPLETE.

17 WE HAVE HAD A FAIRLY EXTENSIVE CHARGE CONFERENCE. I
18 HAVE ADVISED THE ATTORNEYS THAT THE INDICTMENT WILL NOT SERVE
19 AS THE VERDICT FORM. A SEPARATE VERDICT FORM HAS BEEN
20 PREPARED.

21 I HAVE REVIEWED THE CHARGE FROM THE BOILERPLATE PORTIONS
22 WITH WHICH WE'RE ALL FAMILIAR -- JUDGE OF LAW, JUDGE OF THE
23 FACTS. I HAVE A CHARGE ON THE DEFENDANT'S ELECTION OF HIS
24 CONSTITUTIONAL RIGHT NOT TO TESTIFY. I HAVE A CHARGE ON
25 CONSIDERATION OF EXPERT WITNESS TESTIMONY IDENTICAL TO WHAT

MATTERS AND MOTIONS

1 WAS INSTRUCTED TO THE JURY DURING THE COURSE OF THE TRIAL. I
2 HAVE A CHARGE ON CIRCUMSTANTIAL EVIDENCE THAT I STILL WANT TO
3 REVISIT BEFORE A FINAL DECISION IS MADE. I'M INCLINED TO
4 CHARGE STATE v. GRIPPON. THE DEFENSE WANTS ME TO CONSIDER A
5 MORE RECENT CASE OF STATE v. CHERRY. AND I'LL BE GLAD TO DO
6 SO. SO THAT'S STILL SOME ISSUE THAT WE DON'T KNOW WITH
7 FINALITY. ON REASONABLE DOUBT, I'M GOING TO CHARGE VICTOR v.
8 NEBRASKA.

9 I HAVE REVIEWED WITH COUNSEL, BASICALLY READING
10 VERBATIM, THE CHARGE ON MURDER, WHICH IS A STANDARD CHARGE.
11 THERE IS NO REQUIREMENT OF A SPECIFIC INTENT UNDER THE LAW,
12 AND DEFENSE COUNSEL WANTS TO TAKE EXCEPTION TO THE STATE OF
13 SOUTH CAROLINA LAW IN THAT REGARD.

14 REGARDING THE RELATED CHARGE OF POSSESSION OF A WEAPON
15 DURING THE COMMISSION OF A VIOLENT CRIME, IT IS AGREED BY
16 BOTH SIDES THE STATUTE DEFINES ITSELF AND THERE IS NO NEED TO
17 DEFINE THE TWO TYPES OF POSSESSION. THERE IS NO NEED TO
18 DEFINE A FIREARM IN TECHNICAL TERMS.

19 THE JURY WILL BE INSTRUCTED THEY MAY CONSIDER ALL
20 EVIDENCE BEFORE THEM WITH RESPECT TO THE ALLEGED EVENTS IN
21 ANDERSON COUNTY. WHILE THEY MAY CERTAINLY CONSIDER THAT
22 EVIDENCE, THEIR CONSIDERATION IS LIMITED TO A DETERMINATION
23 OF WHETHER THE STATE HAS PROVEN THE NECESSARY ELEMENTS AS TO
24 THE TWO INDICATED OFFENSES IN GREENVILLE COUNTY.

25 SO THAT SUMS UP WHERE WE ARE. THERE IS A REQUEST FOR A

MATTERS AND MOTIONS

1 LESSER INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER. I'LL
2 ALLOW YOU TO PUT THAT ON THE RECORD TO THE EXTENT YOU SO
3 DESIRE. I INDICATED I WOULD NOT CHARGE THAT, AND THE STATE
4 HAD A RESPONSE AND I'M GOING TO ALLOW THAT TO BE PUT ON THE
5 RECORD AS WELL.

6 MR. MAULDIN: ON THE MANSLAUGHTER, YOUR HONOR, IF MR.
7 BANNISTER COULD PUT THAT ON THE RECORD?

8 THE COURT: YES, SIR.

9 MR. BANNISTER: THANK YOU, JUDGE. AS YOU HAD
10 INDICATED, WE HAD REQUESTED A CHARGE ON MANSLAUGHTER. I WANT
11 TO MAKE IT CLEAR THAT IT IS OUR UNDERSTANDING THAT THE
12 CURRENT STATE OF THE LAW IS IF THERE IS ANY EVIDENCE THAT
13 WOULD SUPPORT THE DEFENSE THEORY OF MANSLAUGHTER THAT HAS
14 BEEN PRESENTED IN THE COURT, THEN WE ARE ENTITLED TO THE
15 CHARGE. AND CONSIDERING THE FACT THAT WE HAVE BEEN HERE FOR
16 SEVERAL DAYS TAKING TESTIMONY, I'M GOING TO LIMIT MY
17 RECITATION OF THE FACTS OR WE'LL BE HERE TOO LONG. YOU AND I
18 KNOW THAT WE ARE INCORPORATING WHAT HAS BEEN PRESENTED, THE
19 ENTIRE EVIDENCE THAT'S IN THE CASE. BUT I THINK IN SUMMARY
20 WHAT I CAN SAY WE BELIEVE REACHES THE ANY EVIDENCE STANDARD
21 IS THE FACT THAT YOU HAVE A DEFENDANT ON A MOTORCYCLE THAT IS
22 LEGALLY UPON THE FREEWAY. THERE IS NO EVIDENCE THAT HE WAS
23 CONDUCTING HIMSELF IN AN ILLEGAL MANNER, EITHER BY WEAVING IN
24 AND OUT OF THE LANE, OR GOING TOO SLOW OR GOING TOO FAST OR
25 NOT USING TURN SIGNALS, NOTHING OF THAT SORT, THAT THERE IS

MATTERS AND MOTIONS

1 NO EVIDENCE IN THE RECORD THAT THE TAG ON THE SCOOTER WAS
2 ILLEGAL. THERE IS---

3 THE COURT: I'VE GOT TO STOP YOU. THERE IS ABSOLUTELY
4 EVIDENCE IT WAS ILLEGAL.

5 MR. BANNISTER: I'M SORRY. THAT THE TAG WAS ILLEGAL?

6 THE COURT: ABSOLUTELY.

7 MR. BANNISTER: I GUESS FROM THE STANDPOINT OF THERE
8 BEING ANY EVIDENCE THAT -- WELL, MAYBE I'M MISTAKEN.

9 THE COURT: THE ONLY EVIDENCE IS IT'S ILLEGAL. KAREN
10 MCCALL ACKNOWLEDGED IT WAS NOT THE PROPER TAG. SHE
11 WOULDN'T---

12 MR. BANNISTER: SHE SAID SHE DIDN'T KNOW HOW IT GOT ON
13 THERE.

14 THE COURT: RIGHT. BUT SHE KNEW IT WAS NOT A PROPER
15 TAG. IT WAS -- THE VEHICLE WAS NOT EVEN REGISTERED.

16 MR. BANNISTER: ALL RIGHT.

17 THE COURT: IT HAD TO BE AN ILLEGAL TAG. I MEAN,
18 THERE'S -- I'M WITH YOU BUT---

19 MR. BANNISTER: THAT'S AN ASSUMPTION THAT -- I MEAN,
20 THE FACTS CAN LEAD YOU IN THAT DIRECTION BUT IT ALSO COULD
21 CONCEIVABLY BE IN THE OTHER DIRECTION. I REALIZE THAT'S NOT
22 THE CASE BUT...

23 THE COURT: ALL RIGHT. OKAY.. WELL, WE'VE GOT TO TALK
24 ABOUT THE CASE. TELL ME WHAT'S IN THIS RECORD THAT BY
25 INFERENCE PERMITS A SUGGESTION OR A FINDING OF ANY KIND THAT

MATTERS AND MOTIONS

1 THAT TAG WAS PROPER.

2 MR. BANNISTER: I DON'T -- I THINK IT'S THE LACK OF
3 WHAT IS IN THE EVIDENCE THAT PERMITS THE INFERENCE THAT THE
4 TAG WAS PROPER.

5 THE COURT: WELL, THE ONLY EVIDENCE IS KAREN MCCALL
6 ACKNOWLEDGING IT WAS NOT REGISTERED, AND THAT TAG WAS NOT
7 HERS AND SHE DIDN'T KNOW WHERE IT CAME FROM.

8 MR. BANNISTER: OKAY. I AGREE THAT THAT'S THE ONLY
9 EVIDENCE THAT'S IN THE RECORD.

10 THE COURT: AND I UNDERSTAND THAT YOU ARE VIEWING IT
11 FROM THE LIGHT MOST FAVORABLE TO THE DEFENDANT---

12 MR. BANNISTER: RIGHT.

13 THE COURT: ---AND I APPRECIATE THAT. BUT THAT JUST
14 CAUGHT ME AS NOT EVEN---

15 MR. BANNISTER: OKAY. WELL, I THOUGHT I HAD EXPRESSED
16 THAT EARLIER WHEN WE WERE OFF THE RECORD. BUT---

17 THE COURT: I APOLOGIZE. GO AHEAD.

18 MR. BANNISTER: SO I'M JUST TRYING TO REPEAT WHAT I
19 THOUGHT I SAID EARLIER.

20 THE COURT: YES, SIR.

21 MR. BANNISTER: AND THAT WHEN HE GOT ON -- WHEN HE
22 FOLLOWED -- SO WHEN THE LIGHTS CAME ON, I BELIEVE THAT WE
23 HAVE -- WHEN THE TROOPER'S LIGHTS CAME ON, I BELIEVE UNDER
24 THE ANY EVIDENCE STANDARD THAT AT THAT POINT THERE WAS NO
25 REASON TO PULL THE SCOOTER OVER OTHER THAN THE TROOPER WAS

MATTERS AND MOTIONS

1 MISTAKEN THAT HE THOUGHT IT WAS A MOPED AND THEREFORE
2 ILLEGALLY ON THE HIGHWAY.

3 SO WHEN THEY GET ON FRONTAGE ROAD, AT THAT POINT YOU'VE
4 GOT A PERSON ON A SCOOTER VERSUS A PATROL VEHICLE, AND THAT
5 BASED ON THE EVIDENCE THAT WE'VE HAD AND THE ANY EVIDENCE
6 STANDARD AND IN THE LIGHT MOST FAVORABLE TO THE DEFENDANT,
7 WHAT YOU'VE GOT IS AN AGGRESSIVE STOP WHERE THE SCOOTER WAS
8 CUT OFF WITH NO OTHER DIRECTION TO GO OTHER THAN TO EITHER
9 HIT THE PATROL VEHICLE OR TO HIT THE CURB AND THE BUSHES THAT
10 WERE OVER THERE, AND THAT AT THAT POINT THAT THAT PERSON
11 COULD REASONABLY HAVE BEEN CONSIDERED TO BE IN FEAR OF THEIR
12 OWN SAFETY AND THAT THEREFORE WE WOULD BE ENTITLED TO THE
13 CHARGE ON MANSLAUGHTER.

14 THE COURT: VERY GOOD, SIR. STATE, IF YOU WOULD PUT
15 YOUR POSITION ON THE RECORD, PLEASE.

16 MS. HERVEY: THE STATE BELIEVES I THINK THERE'S TWO
17 ISSUES REALLY THE DEFENSE RAISED. AND ONE IS THAT HE IS
18 ENTITLED TO AN INVOLUNTARY MANSLAUGHTER CHARGE. FOR THAT THE
19 COURT, I BELIEVE, WOULD HAVE TO FIND THAT THERE IS SOME
20 EVIDENCE THAT THE TROOPER IN SOME WAY LEGALLY -- OR PROVOKED
21 THE DEFENDANT INTO HIS REACTION. THERE IS NO EVIDENCE THAT
22 THE TROOPER BUMPED OR HIT OR OTHERWISE STRUCK THE MOTORCYCLE.
23 THERE IS NO EVIDENCE OF A SKID MARK OR ANY OTHER TYPE OF
24 AGGRESSIVE STOP. ALL THE EVIDENCE IS THAT HE PULLED IN FRONT
25 OF HIM IN ORDER TO FORCE HIM TO STOP. THERE IS NO EVIDENCE

MATTERS AND MOTIONS

1 THAT THE VICTIM FIRED AT THE DEFENDANT OR EVEN SPOKE TO HIM
2 IN ANY WAY SUFFICIENT THAT THERE MIGHT BE FIGHTING WORDS
3 INCIDENT TO HIM.

4 THE DEFENSE CONTENTION THAT THIS WAS SOMEHOW AN UNLAWFUL
5 ARREST PRESUMES THAT THE DEFENDANT KNEW THAT HE WAS BEING
6 PULLED OVER FOR THE SCOOTER VERSUS MOTORCYCLE ISSUE. IT
7 WOULD BE ONE THING IF THEY HAD ACTUALLY STOPPED AND THE
8 TROOPER GOT OUT AND SAID, "I THINK THAT'S A MOPED," AND HE
9 SAID, "NO, LOOK IT SAYS 24 CUBIC FEET" OR WHATEVER ON THE
10 SIDE OF IT, AND THEY GOT IN A DISAGREEMENT ABOUT THE MOPED
11 LAW, AND HE SAID, "NO, I'M RIGHT. THAT'S A MOPED. I'M
12 PUTTING YOU UNDER ARREST. YOU'RE GOING TO JAIL WITH ME,"
13 AND THEN A FIGHT ENSUES. THAT WOULD BE RESISTING ARREST, AND
14 I THINK THERE IS STILL SOME QUESTION ABOUT WHETHER OR NOT
15 HE'D BE ABLE TO USE DEADLY FORCE FOR THAT. BUT IT PRESUMES
16 THAT THAT ARGUMENT WENT ON WHEN IN REALITY WHAT HAPPENED IS
17 HE IS BEING PULLED OVER FOR REASONS UNKNOWN TO HIM AND HE
18 GOES ON THIS KILLING RAMPAGE.

19 AND I THINK THAT -- I DRAW THE COURT'S ATTENTION TO
20 STATE v. IVY WHERE IT SAYS THE LAWFUL ACTS OF AN OFFICER IN
21 ATTEMPTING TO AFFECT A DETENTION -- NOT AN ARREST, A
22 DETENTION -- CAN NEVER PRESUME TO BE LEGAL PROVOCATION
23 SUFFICIENT TO JUSTIFY A VOLUNTARY MANSLAUGHTER CHARGE.

24 AND WHEN VIEWED IN THAT LIGHT, WHEN THERE ARE NO
25 EXCESSIVE ACTS ON THE PART OF THE OFFICER IN ATTEMPTING TO

MATTERS AND MOTIONS

1 AFFECT HIS DETENTION, THERE IS NO PROVOCATION. NOW, IF HE'S
2 GOING FOR RESISTING ARREST AND WHETHER HE HAD A RIGHT TO USE
3 DEADLY FORCE, THAT'S AN ENTIRELY DIFFERENT ISSUE, AND THE
4 STATE SUBMITS THERE IS NO EVIDENCE THERE AS WELL.

5 BUT AS TO VOLUNTARY MANSLAUGHTER, UNLESS THERE IS SOME
6 EVIDENCE OF PROVOCATION ON THE PART OF THE OFFICER -- THAT HE
7 WENT FOR HIS GUN, THAT HE WENT TO SHOOT HIM, THAT HE DID, YOU
8 KNOW, THAT HE STRUCK HIM IN SOME WAY -- THE STATE SUBMITS
9 THAT THE CHARGE IS NOT WARRANTED.

10 THE COURT: ALL RIGHT. I STATED EARLIER OFF THE RECORD
11 THAT I DID NOT BELIEVE VIEWING THE EVIDENCE IN THE LIGHT MOST
12 FAVORABLE TO THE DEFENDANT THAT IT WOULD JUSTIFY A VOLUNTARY
13 MANSLAUGHTER CHARGE. THOSE COMMENTS STAND. I DON'T THINK
14 THEY NEED TO BE REPEATED. I FIND NO LEGAL PROVOCATION. WHEN
15 AN INDIVIDUAL FLEES FROM A MARKED POLICE UNIT WITH LIGHTS AND
16 SIREN AND TRIES TO EVADE THE LAW ENFORCEMENT OFFICER, I THINK
17 THE LAW PERMITS, I HOPE, LAW ENFORCEMENT TO DO WHATEVER
18 ACTION IS REASONABLY NECESSARY TO STOP A FLEEING MOTORIST AND
19 TO CONDUCT AN APPROPRIATE INVESTIGATION. AND I DO NOT
20 BELIEVE SOUTH CAROLINA LAW UNDER THESE CIRCUMSTANCES WOULD
21 SANCTION THE LESSER INCLUDED OFFENSE OF VOLUNTARY
22 MANSLAUGHTER. I APPRECIATE THE ARGUMENTS ON BOTH SIDES AND
23 THE RECORD WILL REFLECT DEFENDANT'S EXCEPTION TO MY RULING IN
24 DECLINING TO CHARGE A LESSER INCLUDED OFFENSE.

25 MR. MAULDIN: YOUR HONOR, I WOULD LIKE THE OPPORTUNITY

MATTERS AND MOTIONS

1 TO PUT MY POSITION ON WITH REGARD TO CIRCUMSTANTIAL EVIDENCE
2 BEFORE WE CONCLUDE THIS.

3 THE COURT: RIGHT. AND IF YOU COULD SORT OF HELP ME
4 OUT AND GET ME A COPY OF THE CASE SO I COULD LOOK AT IT, I'LL
5 LOOK AT IT. I KNOW YOU'LL BE TIED UP WORKING ON YOUR CLOSING
6 ARGUMENT.

7 MR. MAULDIN: YES, SIR. I'LL SEND IT OVER.

8 THE COURT: BUT IF SOMEONE COULD JUST BRING IT OVER,
9 I'D BE GLAD TO LOOK AT IT.

10 MR. MAULDIN: YES, SIR. THE POSITION THAT I WANT TO
11 PUT ON THE RECORD REGARDING CIRCUMSTANTIAL EVIDENCE, I'VE
12 DONE THIS A NUMBER OF TIMES, SOUTH CAROLINA FOR MANY YEARS
13 PROCEEDED UNDER WHAT I WILL CALL FOR PURPOSES OF THIS
14 PRESENTATION THE EDWARDS CASE ON CIRCUMSTANTIAL EVIDENCE.
15 THAT IS THE CASE THAT CITES, QUOTE, TO THE EXCLUSION OF ALL
16 OTHER REASONABLE HYPOTHESES, END QUOTE. AND THEN GRIPPON
17 CAME ALONG AND CHANGED THAT TO A DIFFERENT STANDARD OF
18 EVALUATION OF CIRCUMSTANTIAL EVIDENCE.

19 THEN I BELIEVE THE NEXT CASE WAS THE NEEDS (PHONETIC)
20 CASE, AND THE NEEDS CASE BASICALLY SAID BOTH OF THESE ARE
21 OKAY. AND THAT'S WHERE I REALLY HAVE A REAL SERIOUS PROBLEM.
22 NOW WHAT CHERRY THAT I WILL BRING TO THE COURT ESSENTIALLY
23 DEALS WITH IS THIS EXTRAORDINARILY INTERESTING DEBATE GOING
24 ON IN THE APPEALS COURTS ABOUT WHICH IS RIGHT. WHO IS RIGHT?
25 WHO IS ON FIRST? KIND OF ARGUMENT. AND I BELIEVE THAT WHAT

MATTERS AND MOTIONS

1 IS BEING SET UP AS A DETERMINATION BY OUR SOUTH CAROLINA
2 SUPREME COURT FINALLY ABOUT CLARIFYING IT.

3 BUT THE POINT THAT I MAKE IS THAT IT IS A CLEAR, IN MY
4 OPINION, DENIAL OF EQUAL PROTECTION TO HAVE TWO
5 SIMULTANEOUSLY APPROVED JURY INSTRUCTIONS ON CIRCUMSTANTIAL
6 EVIDENCE THAT I, AT LEAST, SUBMIT TO THE COURT SAY DIFFERENT
7 THINGS. IT MEANS THAT A DEFENDANT IN COURTROOM NUMBER 8
8 BEING TRIED AND GIVEN AN EDWARDS INSTRUCTION ON
9 CIRCUMSTANTIAL EVIDENCE AND A DEFENDANT IN COURTROOM 7
10 SIMULTANEOUSLY HAVING A JURY INSTRUCTED UNDER THE GRIPPON
11 STANDARD ARE ESSENTIALLY HAVING TWO SETS OF JURY INSTRUCTIONS
12 GIVEN ON THE SAME DAY BY JUST A RANDOM DRAW. THAT, TO ME,
13 VIOLATES EQUAL PROTECTION AND IS REALLY WHAT EQUAL PROTECTION
14 IS ALMOST DESIGNED NOT TO ALLOW TO HAPPEN. SO I DID WANT TO
15 GET THAT ON THE RECORD.

16 I RESPECT THE COURT'S POSITION REGARDING GRIPPON. UNTIL
17 OVERRULED, IT IS AVAILABLE, BUT WE JUST THINK THAT ITS
18 POSITION IS VERY WEAK AND WE HAVE TO PUT THAT ON THE RECORD.
19 AND I WILL GET THE CHERRY CASE TO YOU, YOUR HONOR.

20 THE COURT: ALL RIGHT. AND IF THE STATE DOESN'T REALLY
21 CARE WHICH ONE IS CHARGED -- I DON'T KNOW IF IT MAKES A
22 DIFFERENCE TO THE STATE.

23 MS. STROM: YOUR HONOR, I THINK AS FAR AS -- SO LONG AS
24 GRIPPON HAS BEEN DETERMINED TO BE A VALID CHARGE, THE STATE
25 WOULD ASK FOR THE GRIPPON CHARGE.

MATTERS AND MOTIONS

1 THE COURT: ALL RIGHT.

2 MS. STROM: AND I BELIEVE MS. HERVEY HAS ONE OTHER
3 MATTER.

4 THE COURT: ALL RIGHT. WE'LL JUST WAIT UNTIL I LOOK AT
5 THE CHERRY CASE AND I'LL LET YOU KNOW BEFORE WE START.

6 MR. MAULDIN: YES, SIR.

7 THE COURT: I WON'T LEAVE YOU IN THE DARK ON THAT.

8 MR. MAULDIN: YES, SIR.

9 THE COURT: YES, MA'AM?

10 MS. HERVEY: HAVING DENIED THE DEFENDANT'S REQUEST FOR
11 A CHARGE ON VOLUNTARY MANSLAUGHTER, SOME COMMENT ON THE RIGHT
12 TO USE DEADLY FORCE IN RESISTING ARREST, THE STATE WOULD AT
13 LEAST PUT THEM ON NOTICE AND AT LEAST SEEK CERTAIN LIMITING
14 INSTRUCTION THAT THE DEFENDANT NOT BE ALLOWED TO ARGUE THAT
15 HE WAS SOMEHOW JUSTIFIED IN ACTING THE WAY HE DID OR THAT IT
16 SOMEHOW DETRACTED FROM HIS MALICE BECAUSE HE WAS DOING
17 SOMETHING HE WAS LAWFULLY ENTITLED TO DO.

18 MR. MAULDIN: YOUR HONOR, I DON'T KNOW -- IS SHE
19 SUGGESTING THAT WE BE TOLD WHAT WE CAN'T -- SHE'S SAYING WHAT
20 YOU'RE GOING TO TELL THE JURY OR WHAT YOU'RE GOING TO TELL
21 US?

22 THE COURT: I THINK SHE WANTS ME TO TELL YOU SOMETHING
23 AND SHE WANTS ME TO TELL YOU THAT SINCE VOLUNTARY
24 MANSLAUGHTER HAS BEEN REJECTED THAT YOU CANNOT USE WHAT I
25 HAVE FOUND IS NOT A LEGAL PROVOCATION AS AN ATTACK ON THE

MATTERS AND MOTIONS

1 ELEMENT OF MALICE, IF I UNDERSTAND THE POSITION CORRECTLY.

2 MR. MAULDIN: IF IT IS UNAVAILABLE AS A POSSIBLE
3 VERDICT. I MEAN, WE CAN GET UP HERE AND TALK ABOUT LEGAL
4 PROVOCATION TILL THE COWS COME HOME. BUT IF WE DON'T HAVE AN
5 ALTERNATIVE VERDICT MADE AVAILABLE TO THE COURT THROUGH ITS
6 INSTRUCTIONS, IT'S A MOOT ISSUE.

7 MS. HERVEY: AND IN THAT RESPECT, I DON'T KNOW WHAT JIM
8 IS GOING TO ARGUE AND THAT TYPE THING. BUT THERE HAS
9 CERTAINLY BEEN ENOUGH WHERE WE'VE SEEN THIS DONE WHERE IT'S
10 NOT THAT ARGUE -- IF HE CAN SAY, WELL, THERE'S NO REMEDY
11 THERE BECAUSE THERE IS NO CHARGE, THAT DOESN'T NEGATE THEM
12 FROM GETTING UP THERE AND SOMEHOW TRYING TO GET THEM TO
13 NULLIFY THE VERDICT OR DETRACT OR DISREGARD THE CHARGE. AND
14 I'M -- I KNOW YOU MAY BE HESITANT TO MAKE AN INSTRUCTION, BUT
15 IF THEY GO DOWN THAT ROAD, WE'RE GOING TO OBJECT.

16 THE COURT: OKAY.

17 MS. HERVEY: AND MAYBE THAT'S ALL I'M SAYING.

18 MR. MAULDIN: WE INTEND TO ASSAULT THE STATE'S EVIDENCE
19 OF INTENT AS AN ELEMENT OF MURDER. WE DO INTEND TO FOCUS ON
20 THEIR LEVEL OF PROOF OF INTENT. WE DO INTEND. NOW, THAT
21 DOESN'T -- AND I AGREE WITH MS. HERVEY TO THE EXTENT THAT
22 THERE IS NO MANSLAUGHTER ALTERNATIVE AND THEREFORE THE TERM
23 LEGAL -- THIS GIVES A PERSON LEGAL PROVOCATION TO DO
24 SOMETHING ILLEGAL IS NOT REALLY AVAILABLE. I AGREE WITH
25 THAT. BUT THE -- BUT TO THE EXTENT THAT WE ARE BEING

MATTERS AND MOTIONS

1 RESTRAINED FROM ARGUING THAT THE STATE HAS FAILED TO PROVE
2 THE NECESSARY ELEMENT OF INTENT, AND THAT IS A FORMED PURPOSE
3 -- THAT'S RIGHT OUT OF YOUR LANGUAGE. THAT'S THE LAW, AND WE
4 CAN'T BE KEPT FROM ARGUING THAT THEY DIDN'T DO THAT.

5 MS. HERVEY: AND THAT'S NOT WHAT WE REQUESTED.

6 THE COURT: ALL RIGHT. I'M JUST GOING TO---

7 MS. HERVEY: THAT'S FINE. JUST LEAVE IT AT THAT.

8 THE COURT: I'M NOT GOING TO -- I UNDERSTAND YOUR
9 CONCERN. I'M NOT INCLINED TO PUT PARAMETERS ON ARGUMENTS ON
10 EITHER SIDE AT THIS STAGE.

11 ANYTHING FURTHER?

12 AND YOU DO WANT THE RECORD TO REFLECT THAT YOU TAKE
13 EXCEPTION TO THE STATE OF THE LAW BY THE SUPREME COURT OF
14 SOUTH CAROLINA IN FOUST. YOU TOLD ME EARLIER YOU---

15 MR. MAULDIN: I RECOGNIZE THAT OUR LAW SAYS THAT THE
16 OFFENSE OF MURDER DOES NOT -- THAT YOU CAN REFUSE OUR REQUEST
17 THAT THE JURY BE INSTRUCTED THAT THEY MUST HAVE A SPECIFIC
18 INTENT TO KILL. I UNDERSTAND THAT.

19 THE COURT: RIGHT. IN FACT, THE LAW IS A SPECIFIC
20 INTENT TO KILL IS NOT REQUIRED.

21 MR. MAULDIN: RIGHT. AND I EXCEPT TO THAT. I AM
22 ASKING YOU TO DO IT AND YOU'RE TURNING ME DOWN FROM WHAT I
23 UNDERSTAND.

24 THE COURT: I'M JUST FOLLOWING MY HIGHER UPS.

25 MR. MAULDIN: YES, SIR. AND I'M SAYING WE WANT A

MATTERS AND MOTIONS

1 SPECIFIC INTENT TO KILL INSTRUCTION, AND YOUR RULING IS---

2 THE COURT: JUST THE OPPOSITE.

3 MR. MAULDIN: YES, SIR.

4 THE COURT: ALL RIGHT. AND IS MR. BANNISTER GOING TO
5 DO -- ARE YOU BOTH GOING TO DO THE ARGUMENT?

6 MR. MAULDIN: NO, SIR, MUST MR. BANNISTER.

7 THE COURT: OKAY. WHEN WE COME BACK I WANT TO SORT OF
8 GET A HEAD'S UP ON HOW LONG EACH MR. ARIAIL AND MR. BANNISTER
9 ANTICIPATE THEIR ARGUMENTS TO BE, BECAUSE I HAVE FOUND THAT
10 JURIES LIKE TO KNOW WHEN THEY SIT DOWN ARE WE TALKING 30
11 MINUTES EACH SIDE, AN HOUR EACH SIDE? THEY FEEL -- THEY LIKE
12 TO GO IN KNOWING WHEN THEY CAN SEE THE LIGHT AT THE END OF
13 THE TUNNEL. SO -- AND I'M NOT GOING TO HOLD ANYBODY TO IT.
14 IF YOU TELL ME 45 MINUTES AND YOU GO AN HOUR, I'M NOT GOING
15 TO DO ANYTHING. BUT GIVE ME A HEAD'S UP ON ANTICIPATED TIME
16 OF ARGUMENT.

17 MS. STROM: SOLICITOR ARIAIL GENERALLY GOES AROUND 30
18 MINUTES, YOUR HONOR.

19 MR. MAULDIN: I DON'T KNOW, YOUR HONOR.

20 THE COURT: OKAY. WE'LL FIND OUT FROM MR. BANNISTER.
21 THANK YOU VERY MUCH.

22 (A LUNCH RECESS WAS TAKEN FROM 11:59 TO 1:02 P.M.)

23 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD.
24 THERE IS ONE FINAL ISSUE ON THE CHARGE I WANT TO ADDRESS.
25 THE CIRCUMSTANTIAL EVIDENCE I HAVE THAT WAS PRE-GRIPPON HAS

MATTERS AND MOTIONS

1 STANDARD LEAD-IN LANGUAGE SIMILAR TO EDWARDS. IN ORDER TO
2 PROVE AN ELEMENT OF AN OFFENSE ON CIRCUMSTANTIAL EVIDENCE,
3 CERTAIN REQUIREMENTS MUST BE MET. FACTS AND CIRCUMSTANCES
4 RELIED UPON BY THE STATE MUST BE ESTABLISHED TO YOUR
5 SATISFACTION BEYOND A REASONABLE DOUBT. THESE FACTS AND
6 CIRCUMSTANCES MUST BE CONSISTENT WITH EACH OTHER AND WITH THE
7 GUILT OF THE DEFENDANT. THESE FACTS AND CIRCUMSTANCES MUST
8 BE OF SUCH A CONCLUSIVE NATURE AND POINT DIRECTLY TO THE
9 GUILT OF THE DEFENDANT. THESE FACTS AND CIRCUMSTANCES MUST
10 POINT SO CONCLUSIVELY TO THE GUILT OF THE DEFENDANT AS TO
11 EXCLUDE ANY OTHER REASONABLE THEORY THAN THE GUILT OF THE
12 DEFENDANT, BEARING IN MIND THE BURDEN IS ALWAYS ON THE STATE
13 TO PROVE GUILT BEYOND A REASONABLE DOUBT. THAT'S THE CHARGE.
14 IS THAT THE CHARGE YOU WERE SEEKING?

15 MR. MAULDIN: AND THAT IS THE CHARGE WE REQUEST.

16 THE COURT: ALL RIGHT. AND I'M GOING TO GIVE THAT
17 CIRCUMSTANTIAL EVIDENCE CHARGE IN LIEU OF STATE v. GRIPPON.

18 NOW, IF COUNSEL WOULD BE KIND ENOUGH TO GIVE ME JUST AN
19 APPROXIMATION OF HOW LONG YOU ANTICIPATE YOUR ARGUMENTS TO
20 BE. FROM THE STATE?

21 SOLICITOR ARIAIL: FIFTEEN TO THIRTY.

22 THE COURT: MR. BANNISTER?

23 MR. BANNISTER: I'LL BE THE SAME. I DON'T HAVE THE
24 ENERGY TO GO MUCH FURTHER THAN THAT.

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THOSE

MATTERS AND MOTIONS

1 PEOPLE IN THE COURTROOM, WE'VE HAD A RULE DURING THE COURSE
2 OF THE TRIAL THAT YOU ARE WELCOME TO LEAVE DURING THE PROCESS
3 OF THE COURT SESSION. THE RULE ALTERS DURING ARGUMENTS OF
4 THE ATTORNEYS. SO YOU ARE WELCOME TO BE HERE. BUT ONCE AN
5 ARGUMENT BEGINS, YOU ARE NOT PERMITTED TO LEAVE UNTIL THE
6 NEXT BREAK. I JUST WANTED YOU TO BE AWARE OF THAT SO IF THAT
7 WAS A PROBLEM YOU COULD EXIT AT THIS TIME.

8 ALL RIGHT. BRING THE JURY, PLEASE.

9 (JURY REENTERS COURTROOM AT 1:07 P.M.)

10 THE COURT: ALL RIGHT. MADAME FORELADY, LADIES AND
11 GENTLEMEN, WE'RE READY TO PROCEED WITH THE CLOSING ARGUMENTS.
12 LET ME SORT OF GIVE YOU A HEAD'S UP OF THE ORDER WE GO IN AND
13 THE ANTICIPATED LENGTH OF TIME THAT YOU WILL BE IN HERE. WE
14 WILL HEAR AN ARGUMENT FROM BOTH SIDES. THE STATE GOES FIRST
15 AND MAKES ITS FINAL ARGUMENT, FOLLOWED BY THE FINAL ARGUMENT
16 ON BEHALF OF THE DEFENDANT. THAT WILL BE FOLLOWED BY MY
17 CHARGE ON THE LAW. IN SPEAKING WITH THE FINE ATTORNEYS IN
18 THIS CASE, I ANTICIPATE THE ARGUMENTS TO BE SOMEWHERE IN THE
19 NEIGHBORHOOD OF ABOUT 30 MINUTES EACH. SO IT WILL TAKE ABOUT
20 AN HOUR. NOW, IF AFTER ONE ARGUMENT WE NEED TO TAKE A BREAK,
21 YOU CERTAINLY CAN DO THAT. OR AFTER BOTH ARGUMENTS BEFORE MY
22 CHARGE ON THE LAW WE CAN TAKE A BREAK. MY CHARGE ON THE LAW
23 WILL TAKE ABOUT 20 TO 25 MINUTES. SO IF WE GO STRAIGHT
24 THROUGH AND THINGS HOLD TRUE, ABOUT AN HOUR AND A HALF FROM
25 NOW, SAY 2:30ISH, YOU SHOULD BE BACK IN THE JURY ROOM

MATTERS AND MOTIONS

1 BEGINNING YOUR DELIBERATIONS. OF COURSE, WE WILL TAKE A
2 BREAK WHENEVER YOU NEED TO.

3 SOLICITOR, YOU MAY PROCEED.

4 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

5 MADAME FORELADY, LADIES AND GENTLEMEN OF THE JURY, WE
6 HAVE NOW GOTTEN TO THAT PHASE THAT IS CALLED OR DESIGNATED AS
7 CLOSING ARGUMENT. AND REALLY WHAT CLOSING ARGUMENT IS ALL
8 ABOUT IS THAT THE CASE THAT YOU'VE BEEN HEARING HAS COME TO
9 YOU IN BITS AND PIECES, THAT IS, WE BROUGHT EVIDENCE IN AND
10 WITNESSES AND DIFFERENT THINGS. AND YOU MAY NOT HAVE KNOWN
11 IN THE BEGINNING WHAT WAS COMING LATER, ALTHOUGH WE TALKED IN
12 OPENING STATEMENT. BUT THE POINT OF THE CLOSING STATEMENT IS
13 TO ONCE AGAIN BRING TO YOU A SUMMARIZATION OF WHAT WE HAVE
14 PRESENTED AND TRY TO PUT IT IN SOME ORDER AS IT STACKS UP IN
15 REGARD TO ISSUES THAT YOU HAVE TO DECIDE.

16 AND THE ISSUE THAT YOU HAVE TO DECIDE IS THE GUILT OF
17 JOHN RICHARD WOOD ON THE CHARGE OF MURDER. I MEAN, THAT'S
18 WHAT WE'RE GOING TO DO. THIS IS NOT T.V. THERE IS NOBODY IN
19 THE BACK GOING TO JUMP UP AND SAY, "I DID IT." IT'S A
20 DECISION OF DID JOHN RICHARD WOOD KILL ERIC NICHOLSON ON
21 DECEMBER THE 6TH OF THE YEAR 2000. AND WHAT WE WANT TO LOOK
22 AT IS THE EVIDENCE AND THEN SOME INTERPRETATION AND SOME
23 ARGUMENTS RELATED TO IT.

24 AND ALTHOUGH I'VE BEEN DOING THIS FOR SOME 30 YEARS, I
25 STILL HAVE A HABIT OF MAKING NOTES. AND A LOT OF PEOPLE WILL

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 TELL YOU, YOU OUGHT TO STAND AND FREE TALK AND OTHERS SAY YOU
2 OUGHT TO MAKE NOTES. I NEED NOTES BECAUSE I CAN'T REMEMBER
3 EVERYTHING I WANT TO SAY, AND YOU SURE DON'T WANT TO SIT HERE
4 AND LISTEN TO ME RAMBLE AROUND ABOUT ME TRYING TO FIGURE OUT
5 WHAT I WANT TO SAY. SO I WILL REFER TO THOSE NOTES.

6 THE FIRST THING I WANT TO TALK ABOUT IS, EDUCATE YOU A
7 LITTLE BIT. WE BROUGHT YOU A LOT OF STUFF, AND WE NORMALLY
8 BRING A LOT OF STUFF. AND THE REASON WE BRING A LOT OF
9 STUFF, EVEN THOUGH IT MAY SEEM TEDIOUS AND IT MAY SEEM
10 SOMEWHAT MAYBE UNNECESSARY TO YOU AFTER YOU HAVE HEARD
11 SOMETHING AS TO WHY YOU ARE DOING ALL OF THESE -- BRINGING
12 THESE THINGS IN, BUT THERE ARE CERTAIN THINGS AS CHAIN OF
13 CUSTODY AND RULES OF EVIDENCE THAT WE HAVE TO ESTABLISH THESE
14 ITEMS GO FROM ONE PLACE TO ANOTHER. AND, OF COURSE, THE
15 ISSUE HERE IS THE STATE WANTS TO BRING TO YOU EVERYTHING WE
16 POSSIBLY HAVE TO PROVE THE ISSUES BEFORE YOU SO THAT YOU WILL
17 HAVE ALL OF THE EVIDENCE. SO SOME OF THIS MAY NOW NOT BE
18 THAT IMPORTANT, BUT WHEN WE STARTED THIS CASE WE DIDN'T KNOW
19 WHAT MIGHT BE IMPORTANT ABOUT SOMETHING THAT WAS GOING TO BE
20 PUT IN CONTEST.

21 SO THE EVIDENCE IS HERE AND YOU CAN TAKE, FOR EXAMPLE,
22 HAD WE NOT BROUGHT TO YOU THE G.S.R. KIT TAKEN FROM THE
23 HANDLEBARS OF THE MOTOR SCOOTER THERE COULD HAVE BEEN SOME
24 ISSUE RAISED THAT MAYBE THAT WASN'T THE MOTOR SCOOTER, OR
25 THAT THE GLASS HADN'T BEEN COLLECTED AND TESTED AND ANALYZED

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 AND FOUND TO BE CONSISTENT, SOMEBODY COULD RAISE THE ISSUE.
2 OR MAYBE THAT WASN'T THE MOTOR SCOOTER. BUT WHEN YOU START
3 NARROWING THE BASIS ON WHICH THESE CIRCUMSTANCES APPEAR, THEN
4 YOU BEGIN TO FOCUS VERY CLEARLY WHERE WE'RE GOING. AND THAT
5 WAS THE PURPOSE OF WHAT WE DID.

6 NOW LET'S GO BACK AND TALK ABOUT THE JURY'S ROLE AS A
7 FACT FINDER. THE NUMBER ONE RULE OF ANY JURY IN SOUTH
8 CAROLINA IN A CRIMINAL CASE, MOTIVE IS IRRELEVANT. MOTIVE IS
9 NEVER REQUIRED TO BE PROVEN BECAUSE MOTIVE IS IN THE MIND OF
10 THE BEHOLDER WHERE NONE OF US CAN GO. SO THE LAW DOES NOT
11 REQUIRE US TO PROVE WHY, AND YOU SHOULD NOT SPECULATE WHY.
12 IT'S NOT A CONCERN FOR YOU. YOUR JOB IS FACT ORIENTED. WHAT
13 ARE THE FACTS AS THEY APPLY TO THE LAW?

14 YOU SHOULD NOT DEAL WITH EMOTION. YOU SHOULD NOT DEAL
15 WITH MERCY. THOSE ARE NOT ISSUES THAT APPLY TO A GUILT
16 DETERMINATION. AND I TELL YOU THAT FOR A PARTICULAR REASON,
17 AND THAT REASON IS THAT YOU ARE NOW AN INTEGRAL PART OF THE
18 PROCESS OF LAW OF THIS STATE, AND PARTICULARLY THIS COUNTY,
19 IN A VERY IMPORTANT CASE. BUT IRRELEVANT -- IT'S IRRELEVANT
20 AS TO THE CASE BECAUSE THE PROCESS IS WHAT'S IMPORTANT. AND
21 IF EMOTION AND MERCY ARE ALLOWED TO COME INTO THE CASE, THEN
22 EACH JURY'S DECISION WILL BE BASED ON SOMETHING THAT IS NOT
23 CONSISTENT. AND INCONSISTENCY IN THE PROCESS OF LAW AND
24 FACTFINDING BY OUR CITIZENS LEADS TO UNREST, CIVIL UNREST AND
25 EVENTUALLY ANARCHY. BECAUSE IF WE CAN'T BELIEVE IN THE TRUTH

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 AND FAIRNESS OF A JURY'S DECISION TO KEEP ITS DECISIONS
2 CONFINED TO THE FACTS, THEN WHAT WE ARE INVITING IS
3 ULTIMATELY ANARCHY.

4 SO YOUR ROLE IS FACT ONLY, AND HIS HONOR WILL CHARGE YOU
5 THIS, THAT YOU WILL STAY OUT OF THE AREA OF EMOTION, STAY OUT
6 OF THE AREA OF MERCY, AND YOU WILL STAY OUT OF THE AREA OF
7 MOTIVE, BECAUSE THOSE DEAL WITH THINGS WE'RE NOT CONCERNED
8 WITH. WE'RE CONCERNED WITH FACTS.

9 NOW LET'S LOOK AT THE FIRST CHARGE. MURDER. MURDER IS
10 THE KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT. FIRST
11 WE MUST PROVE TO YOU THAT THERE HAS BEEN A KILLING OF A HUMAN
12 BEING. DR. MICHAEL WARD TESTIFIED ERIC NICHOLSON WAS KILLED.
13 ERIC NICHOLSON IS A HUMAN BEING WHO WAS KILLED BY BEING SHOT
14 WITH A GUN FIVE TIMES. WE HAVE SATISFIED ELEMENT NUMBER ONE.
15 THERE IS NO CONTEST.

16 SO WE GO TO THE SECOND ISSUE, WHICH IS THE OVERRIDING
17 ISSUE OUTSIDE OF THE ELEMENTS, AND THAT DEALS WITH THE ISSUE
18 OF WHO DID THE MURDER. WE CAN PROVE A MURDER, BUT WHEN WE
19 PROVE IT WE ALSO HAVE TO PROVE WHO DID IT SO WE'LL KNOW WHO
20 THE RIGHT PERSON TO CONVICT IS. AND HIS HONOR WILL CHARGE
21 YOU IN THIS REGARD THERE ARE TWO TYPES OF EVIDENCE, EQUALLY
22 FINE, EQUALLY STRONG, BOTH ARE JUST THE SAME. THEY'RE JUST
23 CALLED DIFFERENT BECAUSE THEY'RE DIFFERENT TYPES. ONE I CALL
24 -- HE'LL CALL CIRCUMSTANTIAL EVIDENCE. THE OTHER IS DIRECT
25 EVIDENCE.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 CIRCUMSTANTIAL EVIDENCE, THE BEST WAY I CAN EXPLAIN IS A
2 WAY AN OLD DETECTIVE FRIEND OF MINE A NUMBER OF YEARS AGO
3 EXPLAINED IT AS THE SNOWFALL THEORY. THE SNOWFALL THEORY IS
4 THAT WHEN YOU GO TO BED AT NIGHT AND IT'S CLOUDY, IT'S COLD
5 AND IT'S CHILL IN THE AIR, MOISTURE, YOU WAKE UP THE NEXT
6 MORNING AND THERE IS SNOW ON THE GROUND. YOU DIDN'T SEE IT
7 SNOW, SO YOU DON'T HAVE DIRECT EVIDENCE OF THAT EVENT. BUT
8 CIRCUMSTANCE "A" LEADING TO CIRCUMSTANCE "B," THEN YOU CAN
9 REACH A CONCLUSION THAT CIRCUMSTANCE "A" LED TO CIRCUMSTANCE
10 "B." THAT'S CALLED CIRCUMSTANTIAL EVIDENCE.

11 DIRECT EVIDENCE IS WHERE SOMEBODY WITH ONE OF THEIR FIVE
12 SENSES -- I SAW, I SMELL, I HEARD, I TOUCH OR I TASTE --
13 THOSE ARE OBSERVATIONS HUMAN BEINGS MAKE. WHEN WITNESSES
14 TESTIFY FROM THE WITNESS STAND, "I SAW THE DEFENDANT DO THIS"
15 OR "I SAW A WITNESS DO THIS," THEN THEY ARE OBSERVING, AND
16 THAT'S DIRECT EVIDENCE.

17 WE WILL USE BOTH OF THOSE TYPES OF EVIDENCE IN THIS CASE
18 TO PROVE BOTH THE -- ALL OF THE INTEGRAL ELEMENTS OF THE
19 CHARGE OF MURDER.

20 SO IN KEEPING THAT IN MIND, WHAT WE WANT TO FOCUS ON IS
21 THE EVIDENCE THAT'S CONSISTENT WITH THE DEFENDANT BEING THE
22 PERSON WHO PERPETRATED THIS CRIME. AND I DON'T THINK THIS IS
23 GOING TO BE SERIOUSLY CONTESTED IN ANY ARGUMENT BY THE
24 DEFENSE, BUT IT -- I STILL MUST ADDRESS IT FOR PURPOSES OF
25 PROVING TO YOU AND ESTABLISHING TO YOU WHAT WE'RE TALKING

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 ABOUT.

2 AND I WANT TO POINT OUT SOMETHING THAT IS LOGICAL IN
3 REGARD TO CIRCUMSTANTIAL EVIDENCE. BECAUSE WE STARTED OUT
4 THIS EVENT ON DECEMBER THE 6TH WITH ABOUT EIGHT OR NINE
5 EYEWITNESSES WHO SAW A RED SCOOTER BEING DRIVEN BY AN
6 INDIVIDUAL WITH A BEIGE COAT AND A BLACK HELMET AND A BLACK
7 PAIR OF PANTS. THEN THE STATE FROM THAT POINT FORWARD WAS
8 EXTREMELY LIMITED IN WHAT IT COULD PROVE BECAUSE EVERY
9 ELEMENT THAT WE PROVE HAD TO BE CONSISTENT WITH THE FIRST
10 BEGINNING FACTS. SO WHEN WE FOUND A RED SCOOTER, IT NEEDED
11 TO HAVE GLASS ON IT. IT NEEDED TO HAVE GUNSHOT RESIDUE. IF
12 WE BROUGHT TO YOU EVIDENCE OF A SCOOTER WITH NO GLASS AND NO
13 GUNSHOT RESIDUE, THERE'S AN ISSUE. IS THIS THE RIGHT
14 SCOOTER? WE NEEDED TO FIND A DEFENDANT WHO HAD ON A BLACK
15 HELMET. WE NEEDED TO FIND A DEFENDANT WHO HAD A COAT. THEY
16 ALL -- ALL OF THOSE CIRCUMSTANCES HAD TO BE CONSISTENT FROM
17 THE BEGINNING TO THE END. AND THAT'S THE WAY YOU MEASURE
18 CIRCUMSTANTIAL EVIDENCE.

19 THE RED SCOOTER WAS PART OF IT. THE G.S.R. ON THE
20 SCOOTER, THE DRESS HAD TO BE THE SAME AS THESE FACTS STACK UP
21 AS THEY POINT -- AS THEY NARROWLY FOCUS ON WHO THE DEFENDANT
22 IS IN THIS CASE.

23 IN ADDITION TO THAT WE NEEDED PROOF OF THE BULLETS, THE
24 BULLETS MATCHING. BECAUSE IF WE BRING TO YOU PROOF THAT
25 THERE IS A GUN FOUND IN THE CAR OF THE DEFENDANT AND IT

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 DOESN'T MATCH THE BULLETS, THEN YOU'RE GOING TO SAY, "WELL,
2 THAT DOESN'T SEEM RIGHT."

3 SO OUR PROOF AS WE BRING IT MUST FOCUS TO THAT IDENTITY.
4 AND WE DID THAT. THE BULLETS HAD TO MATCH. THE GUN NEEDED
5 TO MATCH. THE GUN HAD TO MATCH THE FIRED ITEMS. ALL OF
6 THOSE THINGS HAD TO BE CONSISTENT. THE CAR NEEDED TO MATCH.
7 THE TAG NEEDED TO MATCH. THE SCOOTER NEEDED TO MATCH. AND
8 THE PERSON WITH THE GUN HAD TO BE RIDING ON THE SCOOTER.

9 SO WHAT WE'RE LOOKING AT ON CIRCUMSTANTIAL EVIDENCE
10 RELATING TO IDENTITY, THOSE ARE THE TYPE THINGS THAT YOU
11 WOULD BE CONSIDERING.

12 HOWEVER, A LOT OF THAT WAS RENDERED UNNECESSARY OR NOT
13 AS IMPORTANT BECAUSE KAREN MCCALL TESTIFIED, AND KAREN MCCALL
14 TOLD YOU WHO WAS ON THAT SCOOTER. SHE TOLD YOU WHO OWNED
15 THAT SCOOTER. SHE TOLD YOU WHO WAS IN THE VEHICLE, THE JEEP.
16 AND SHE TOLD YOU THAT THE TROOPER PULLED JOHN RICHARD WOOD
17 OVER. JOHN RICHARD WOOD WAS ON THAT SCOOTER THAT ERIC
18 NICHOLSON STOPPED. WE HAVE THAT BY CIRCUMSTANTIAL EVIDENCE,
19 IF YOU FOLLOW THE CIRCUMSTANCES THROUGH. WE HAVE IT BY
20 ABSOLUTE TESTIMONY FROM THE GIRL WHO IS HIS GIRLFRIEND IN THE
21 CAR FOLLOWING HIM. JOHN RICHARD WOOD WAS ON THE SCOOTER.

22 THEN YOU PROCEED TO DETERMINE THAT NO ONE ELSE WAS IN
23 THE AREA AT THE TIME THE SHOOTING OCCURRED. AND WHEN THE
24 SHOOTING OCCURRED THE DEFENDANT WAS PRESENT BY MEANS OF
25 TESTIMONY OF HIS GIRLFRIEND AND ALSO BY MEANS OF TESTIMONY OF

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 THE CIRCUMSTANTIAL EVIDENCE AND ALL OF THE LAY WITNESSES.

2 SO FROM THAT STANDPOINT I'M GOING TO SUBMIT TO YOU, THE
3 ISSUE OF IDENTITY IS PROVEN BEYOND ANY DOUBT BY BOTH DIRECT
4 AND CIRCUMSTANTIAL EVIDENCE, PARTICULARLY AS A RESULT OF THE
5 BALLISTICS COMPARISON OF ALL THE BULLETS FOUND BOTH IN THE
6 BODY OF ERIC NICHOLSON, THE VEST, THE CASINGS FOUND AT THE
7 SCENE. ALL OF THESE THINGS POINT TO ONE INDIVIDUAL, AND THAT
8 IS JOHN RICHARD WOOD, WHO HAD POSSESSION OF THE GUN THAT WAS
9 FOUND UNDER HIS FEET IN THE BLUE RIDGE UTILITY TRUCK.

10 SO LET'S TALK ABOUT THE NEXT ISSUE, AFORETHOUGHT. IT
11 MUST BE MALICE AFORETHOUGHT. DON'T WANT TO TALK ABOUT
12 MALICE. LET'S TALK ABOUT AFORETHOUGHT.

13 AFORETHOUGHT IS INTENT. INTENT. THE LAW CALLS IT
14 AFORETHOUGHT. THE LAW ALSO CALLS IT INTENT. BUT MALICE
15 AFORETHOUGHT MEANS THE MALICE MUST BE WITH INTENT. IT MUST
16 INTEND THE MALICE. NOW -- OR MALICE AND IT MUST BE INTENDED.

17 THE INTENT RELATES TO THE ACT -- THE ACT -- NOT THE
18 MURDER. NOW, FOLLOW ME ON THIS BECAUSE THIS IS VERY
19 IMPORTANT. THE ACT IS THE ACT OF PULLING THE TRIGGER. ONE
20 MUST INTEND TO PULL THE TRIGGER. ONE NEED NOT INTEND TO
21 COMMIT MURDER. THE INDIVIDUAL DOES NOT HAVE TO SAY, "WHEN
22 I'M GOING TO PULL THE TRIGGER, I'M GOING TO PULL THIS TRIGGER
23 AND I'M GOING TO COMMIT MURDER." THE INTENT DOES NOT RELATE
24 TO AN INTENT TO COMMIT MURDER. IT RELATES TO AN INTENT TO DO
25 AN ACT WHICH IS LOGICALLY AND REASONABLY KNOWN TO THAT

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 DEFENDANT TO RESULT IN THE DEATH OF AN INDIVIDUAL.

2 AN INDIVIDUAL DRIVING A CAR THROUGH A SCHOOL DISTRICT AT
3 100 MILES AN HOUR HAS NO INTENT IN HIS MIND TO COMMIT MURDER.
4 IF HE IS UNDER THE INFLUENCE AND DRIVING THE VEHICLE AT THAT
5 SPEED AND HITS A CHILD AND KILLS HIM, THAT'S MURDER IN THIS
6 STATE, NOT BECAUSE HE INTENDED TO HIT ANYBODY, BUT BECAUSE
7 HIS ACTIONS -- HE INTENDED HIS ACTIONS. HE INTENDED TO DRIVE
8 THE CAR. HE INTENDED TO DRINK. AND HE INTENDED TO GO 100
9 MILES AN HOUR.

10 SO WHAT WE'RE LOOKING AT HERE, DON'T GET SIDETRACKED ON
11 THE IDEA THAT DID HE CONTEND -- INTEND TO COMMIT MURDER?
12 BECAUSE INTENT IS IN HERE (INDICATING). WHAT WE ARE LOOKING
13 FOR IS DID HE INTEND TO PICK HIS ARM UP, PUT A GUN IN HIS
14 HAND AND FIRE AT THE TROOPER? IF THE TROOPER LIVED, IT'S ONE
15 THING. IF THE TROOPER DIED, IT'S ANOTHER. BUT THE INTENT IS
16 HERE. BAM. THAT'S THE LAST MOMENT WE HAVE TO PROVE INTENT.
17 WE DON'T HAVE TO PROVE WHAT'S UP HERE. JUST WHEN HE PICKED
18 HIS GUN UP AND FIRED.

19 ALL RIGHT. NOW THAT'S WHAT WE'RE TALKING ABOUT. AND IT
20 HAS TO BE NO PARTICULAR ILL WILL. HE DOESN'T HAVE TO HAVE
21 ANY ILL WILL. THE INDIVIDUAL DOESN'T HAVE TO HAVE AN ILL
22 WILL AGAINST ANYBODY HE KILLS. AND IN THIS CASE HE DOES NOT
23 HAVE TO HAVE PARTICULAR ILL WILL AGAINST TROOPER NICHOLSON.
24 HE JUST SIMPLY HAS TO HAVE THE INTENT TO PULL THE GUN UP AND
25 SHOOT IT. AND ONCE HE DOES, HE IS CRIMINALLY RESPONSIBLE FOR

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 THE CONSEQUENCES OF HIS ACTION. PULLING A GUN AND POINTING
2 IT AT AN INDIVIDUAL AND PULLING THE TRIGGER IS A CONSEQUENCE
3 THAT'S REASONABLY KNOWN TO EVERYBODY TO LIKELY RESULT IN
4 DEATH, AND HE IS CRIMINALLY RESPONSIBLE ONCE HE MAKES THE
5 DECISION TO PULL THE TRIGGER. SO WHAT WE'RE TALKING ABOUT IN
6 INTENT IS ONLY THE ISSUE OF RAISING -- RAISING HIS HAND.

7 NOW, BEFORE I TALK ABOUT MALICE I WANT TO TALK ABOUT ONE
8 LITTLE SIDE DISCUSSION THAT WE'RE GOING TO -- I ANTICIPATE
9 WE'RE GOING TO HEAR ABOUT INTENT. AND I THINK IT'S GOING TO
10 ARISE -- AND I HAVE -- I DON'T HAVE THE LAST ARGUMENT. I
11 HAVE THE FIRST ARGUMENT. SO WHEN WE GET TO THE END WHEN IT'S
12 OVER AND AFTER YOU HAVE HEARD THE LAST ARGUMENT, YOU'RE JUST
13 GOING TO HAVE TO SAY TO YOURSELF, "WELL, IF BOB WERE ABLE TO
14 STAND BACK UP HERE AND SAY SOMETHING, WHAT WOULD HE SAY IN
15 REGARD TO THAT?" BECAUSE I WON'T BE ABLE TO COME BACK. SO
16 I'M DOING THE BEST I CAN AT ANTICIPATING WHAT THEY MAY TELL
17 YOU IS AN ISSUE RELATED TO INTENT.

18 THEY'RE GOING TO ARGUE TO YOU THAT THIS DEFENDANT HAD A
19 FEAR OF POLICE -- SOMEWHERE IN HIS MIND HE HAD A FEAR OF
20 POLICE -- AND THAT THE MOTOR SCOOTER WAS NOT A MOTOR SCOOTER,
21 AND THAT THE MOTOR SCOOTER WAS REALLY A MOTORCYCLE, AND THAT
22 TROOPER NICHOLSON AS A RESULT DIDN'T HAVE A RIGHT TO STOP
23 HIM, AND AS A RESULT OF THAT TROOPER NICHOLSON WAS AGGRESSIVE
24 IN THE MANNER IN WHICH HE STOPPED HIM.

25 NOW, I'M GOING TO SUGGEST TO YOU THAT WHAT THEY ARE

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 GOING TO SUGGEST TO YOU IS THAT AN OFFICER WHO BEGINS TO PULL
2 A CITIZEN OVER AND THAT CITIZEN DECIDES THAT WHAT HE IS BEING
3 PULLED OVER FOR IS NOT A VIOLATION OF THE LAW AND HE FORMS AN
4 OPINION IN HIS MIND THAT HE IS NOT GOING TO SUBMIT TO THAT
5 STOP AND HE MOVES ON FROM THE SCENE AND THE OFFICER PURSUES,
6 AND IN AN EFFORT TO EFFECTUATE A STOP THAT THE OFFICER
7 BELIEVES IS LEGAL, HE BECOMES AGGRESSIVE. HE SPEEDS UP. HE
8 CUTS HIM OFF OR DOES WHATEVER, TURNS ON THE P.A. SYSTEM,
9 ORDERS HIM TO THE SIDE, TURNS ON BRIGHT LIGHTS, MOVES HIM
10 OVER, WHATEVER, BECOMES AGGRESSIVE. THEY WILL SUBMIT TO YOU
11 UNDER THESE FACTS THAT THAT CITIZEN CAN AMBUSH AND KILL THAT
12 OFFICER. AND THAT'S WHAT THEY ARE GOING TO SUGGEST TO YOU
13 BASED ON THE CLAIM THAT HE HAD A FEAR OF POLICE, AND HE HAD A
14 LAWFUL RIGHT TO BE ON THAT MOTORCYCLE, AND HE HAD A RIGHT NOT
15 TO BE AGGRESSIVELY PURSUED BY A LAW ENFORCEMENT OFFICER.

16 NOW, I'M GOING TO TELL YOU THAT IS NOT THE LAW IN THIS
17 STATE, AND THE JUDGE WILL GIVE YOU NO SUCH INSTRUCTION. BUT
18 THEY'RE GOING TO ARGUE IT TO YOU ON THE BASIS OF INTENT, AND
19 THEY'RE GOING TO ATTEMPT TO SAY HE DIDN'T HAVE THE REQUISITE
20 INTENT BECAUSE HE HAD THIS FEAR OF POLICE OFFICERS AND HE WAS
21 PUT IN AN UNJUSTIFIED SITUATION OF BEING WRONGFULLY STOPPED.

22 NOW, LET ME REMIND YOU OF ONE VERY IMPORTANT FACT THAT'S
23 THE VERY FOUNDATION OF THAT POSITION. AND ONCE YOU
24 APPRECIATE THIS FACT, YOU WILL KNOW THAT POSITION HAS NO
25 MERIT EVEN IF IT HAD ANY TO BEGIN WITH.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 JOHN RICHARD WOOD DID NOT KNOW AT THE TIME HE WAS BEING
2 STOPPED WHY HE WAS BEING STOPPED BY ERIC NICHOLSON. HE KNOWS
3 NOW. HE KNOWS NOW, AND HE KNOWS THAT IT WAS BECAUSE ERIC
4 NICHOLSON THOUGHT HE WAS ON A MOPEd. BUT HE DIDN'T KNOW AT
5 THE TIME. HE DIDN'T KNOW IF HE WAS BEING STOPPED FOR AN
6 ILLEGAL LANE CHANGE. HE DIDN'T KNOW IF HE WAS BEING STOPPED
7 FOR SPEEDING, OR HE DIDN'T KNOW THAT MAYBE HE WAS BEING
8 STOPPED BECAUSE HE WAS DRIVING A MOTORCYCLE THAT WAS NOT
9 REGISTERED IN THE STATE OF SOUTH CAROLINA AND HAD AN ILLEGAL
10 TAG ON IT. HE DIDN'T KNOW ANY OF THAT. SO HIS OBLIGATION AS
11 A CITIZEN WAS TO SUBMIT TO A LAWFUL STOP.

12 THIS IS NOT AN ARREST. THIS WAS A STOP BY AN OFFICER
13 WHO PERCEIVED AN ILLEGAL VEHICLE ON THE ROADWAY, THE SAME
14 ILLEGAL VEHICLE, THE MOPEd THEY WILL ARGUE TO YOU IS A
15 MOTORCYCLE, AND THEY'LL SHOW YOU THE PICTURES WITH THE LITTLE
16 244 CCs ON THE SIDE. THAT'S THE SAME MOTORCYCLE THAT ALL
17 EIGHT CIVILIAN WITNESSES REFERRED TO AS A MOPEd. THEY SAW A
18 MOPEd JUST LIKE ERIC NICHOLSON SAW A MOPEd. BECAUSE IT LOOKS
19 LIKE A MOPEd. AND EVEN THE DEALER SAID, SKILLED AS HE WAS,
20 "IT WAS A MOTOR SCOOTER."

21 THE POINT IS THAT THE DEFENDANT HAD NO KNOWLEDGE OF WHY
22 HE WAS BEING STOPPED. SO TO ASSERT THAT DEFENSE TO YOU BASED
23 ON THOSE FACTS HAS ABSOLUTELY NO FACTUAL SUPPORT, AND THAT'S
24 WHAT YOU'RE LOOKING FOR. YOU'RE LOOKING FOR FACTUAL SUPPORT
25 TO SUPPORT ANY SUGGESTION HE DIDN'T HAVE THE REQUISITE INTENT.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 I'LL ALSO POINT OUT TO YOU THAT NEITHER HIS MOTHER OR
2 HIS GIRLFRIEND FELT THERE WAS ANY BASIS TO THE FEAR OF POLICE
3 OTHER THAN HE WAS ON PROBATION AND HE HAD A FEAR OF BEING
4 ARRESTED AGAIN.

5 NOW, WHEN THEY TALK ABOUT THE SKID MARK, THE SKID MARK
6 DOESN'T MATTER. THE SKID MARK COULD BE A SKID MARK FROM SIX
7 MONTHS BEFORE. IT MAY BE AN ACCELERATION MARK. IT MAY BE A
8 SKID MARK BECAUSE THE OFFICER WAS TRYING TO MAKE HIM STOP.
9 THERE IS NO PROOF ON THAT. THERE IS NO EVIDENCE TO THAT.

10 AND THE INTERPRETATION OF AN AGGRESSIVE STOP, THAT'S AN
11 INTERPRETATION. NONE OF US WERE THERE. NONE OF THE
12 WITNESSES SAW ANY CONTACT. THE DETECTIVE TOOK THE VEHICLE --
13 THE SCOOTER AND CHECKED IT OUT. NO EVIDENCE OF ANY CONTACT.
14 SO THAT IS NOT FACTUALLY SUPPORTED EITHER.

15 LET ME TELL YOU WHAT THIS IS. THIS IS AN EFFORT -- OR
16 WILL BE AN EFFORT TO DIVERT YOU FROM THE FACTS AND CREATE
17 SOMETHING IN YOUR MIND RELATED TO INTENT, THAT WE HAVEN'T
18 PROVED THAT THIS INDIVIDUAL CREATED -- OR HAD THE RECKLESS
19 INTENT. BUT AS I SAID TO YOU EARLIER, THE ONLY INTENT WE
20 HAVE TO DO IS SHOW THE INTENT TO RAISE HIS ARM AND FIRE THE
21 GUN. IT'S NOT NECESSARY TO SHOW HE INTENDED TO KILL, ONLY
22 THE CONSEQUENCES OF HIS ACT.

23 NOW -- BUT I WANT TO TALK TO YOU A LITTLE BIT ABOUT
24 INTENT BECAUSE THERE ARE A COUPLE OF FACTS IN THIS CASE THAT
25 I THOUGHT WERE INTERESTING THAT WENT TO INTENT. THE FIRST

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 WAS, I SUBMIT TO YOU, THAT JOHN RICHARD WOOD INTENDED TO
2 MURDER ERIC NICHOLSON, AND THAT MURDER AND THAT PLANNING WAS
3 DONE WELL IN ADVANCE OF THE EXECUTION OF THE DEED. JOHN
4 RICHARD WOOD WAS STOPPED FIRST -- THE TRAFFIC SIGNAL CAME ON
5 FROM THE BLUE LIGHTS OF THE PATROLMAN WELL DOWN I-85, AND HE
6 CARRIED ALL THE WAY UP 85 ALL THE WAY ALONG WITH AN EMERGENCY
7 LANE, ALL THE WAY UP THAT LONG RAMP -- DEFENSE COUNSEL ASKED,
8 ISN'T THAT AN EXTRA LONG RAMP? IT'S AN EXTRA LONG RAMP. GO
9 UP THE RAMP, TURN RIGHT, WOODRUFF ROAD IS RIGHT THERE, PLENTY
10 OF PLACES TO PULL OVER. BUT WHAT DOES HE DO? HE TAKES THAT
11 TROOPER DOWN IN A HOLE BACK UP UNDER THE INTERSTATE IN AN
12 ATTEMPT TO GET TO A SECLUDED AREA. HE PROBABLY DIDN'T GET AS
13 FAR AS HE WANTED TO GET BECAUSE THE TROOPER GOT A LITTLE MORE
14 AGGRESSIVE IN SPEEDING UP BECAUSE THE TROOPER CALLED BACK AND
15 SAID, "I DON'T THINK HE'S GOING TO STOP. OH, NO. HE'S
16 MAKING THE RIGHT DECISION. I THINK HE'S GOING TO MAKE THE
17 RIGHT DECISION. HE'S GOING TO PULL OVER."

18 BUT LET ME TELL YOU THE OTHER FACT THAT I KNOW THAT JOHN
19 RICHARD WOOD PLANNED. ERIC NICHOLSON DID NOT EVEN GET HIS
20 CAR FROM -- EXCEPT FROM DRIVE TO NEUTRAL. NOW WHAT THAT
21 MEANS IS JOHN RICHARD WOOD HAD THAT GUN IN HIS POSSESSION
22 BEFORE ERIC NICHOLSON EVEN GOT HIS CAR STOPPED BECAUSE HE
23 COULDN'T HAVE SHOT HIM THAT QUICK WITHOUT IT. HE WAS
24 AMBUSHING ERIC NICHOLSON AND HE LED HIM INTO AN AREA THAT HE
25 HOPED WAS SECLUDED. AND AS SOON AS THE TROOPER GOT THERE,

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 THAT GUN WAS IN HIS RIGHT HAND. THAT GUN WAS IN HIS HAND TO
2 DO SOMETHING WITH, AND IT WAS TO KILL THAT TROOPER.

3 SO I TELL YOU, BASED ON THESE FACTS, HE FORMED THAT
4 INTENT TO KILL TROOPER NICHOLSON LONG BEFORE THEY EVER KNEW
5 -- OR THE DEFENDANT EVER KNEW ABOUT ANY SKID MARK OR EFFORT
6 TO STOP HIM. HE HAD THE GUN READY.. HE DIDN'T STOP THAT
7 MOTOR SCOOTER, GET OFF, GO AROUND THE BACK, UNLOCK THE DEAL
8 AND PULL IT OUT. HE STOPPED THAT MOTORCYCLE, STOOD UP ON HIS
9 TWO LEGS AND FIRED EIGHT TIMES. AND THAT GUN WAS RIGHT THERE
10 READY TO GO THROUGH THE TROOPER'S WINDOW BEFORE HE GOT HIS
11 CAR IN GEAR. HE NEVER OPENED HIS DOOR. HE NEVER GOT OUT OF
12 HIS SEAT. HE SHOT HIM IN AN AMBUSH, AND THAT'S WHAT THIS IS
13 ALL ABOUT.

14 THIS IS NOT ABOUT TALKING ABOUT AGGRESSIVE STOPS AND
15 MOPEDS AND INTENT. THIS IS TALKING ABOUT COLD BLOODED,
16 PREDETERMINED, CALCULATED MURDER. NOW, HE DIDN'T WAKE UP
17 THAT MORNING DOING THAT. BUT HE HAD THAT GUN IN HIS BELT OR
18 IN HIS COAT. HE WAS PLANNING ON DOING SOMETHING WITH IT.
19 AND WHEN IT GOT TO THE POINT THAT HE NEEDED IT, IT WAS READY
20 BEFORE THAT TROOPER COULD MOVE.

21 NOW, ANY SUGGESTION TO YOU HE LACKED INTENT IS NOTHING
22 MORE THAN AN EFFORT TO ESCAPE RESPONSIBILITY. TO ESCAPE
23 RESPONSIBILITY. AND LET'S LOOK AT THIS DEFENDANT'S EFFORTS
24 AT ESCAPING RESPONSIBILITY.

25 FIRST HE FLED TO ESCAPE RESPONSIBILITY FROM SHOOTING

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 TROOPER NICHOLSON AT THE SCENE. THEN THE POLICE CHASED HIM
2 DOWN. HE FIRED AT THEM AND FLED, STOMPING HIS GIRLFRIEND'S
3 FOOT ON THE FLOOR, FIRING OUT THE BACK, ATTEMPTING TO KILL
4 OFFICERS WHO WERE ATTEMPTING TO ARREST HIM SO HE COULD ESCAPE
5 RESPONSIBILITY. AND THEN DOING SOMETHING THAT'S VERY
6 UNUSUAL, EVEN IN THE KIND OF WORK THAT WE DO HERE, HE TRULY
7 FOUGHT TO WHAT HE THOUGHT WAS HIS DEATH TO ESCAPE
8 RESPONSIBILITY. HE WENT THROUGH THAT ROADBLOCK. HE WAS
9 FIRING. HE WAS GUNNING. HE WAS COMING THROUGH TO ESCAPE
10 RESPONSIBILITY. AND THE ONLY THING THAT STOPPED HIM WAS THAT
11 VIC WOOTEN SHOT HIM. OTHERWISE, HE'D STILL BE OUT THERE.

12 SO NOW HE'S PRESENTING TO YOU AN EFFORT TO ESCAPE
13 RESPONSIBILITY ONE MORE TIME, AND I URGE YOU TO ACT IN
14 ACCORDANCE WITH THE EVIDENCE AND RECOGNIZE THAT FOR WHAT IT
15 IS.

16 NOW, THE ARGUMENT THAT WE'VE TALKED ABOUT THAT INTENT --
17 I WANT TO GO BACK AND JUST POINT OUT ALSO THAT HE WAS SHOT --
18 THAT TROOPER NICHOLSON WAS SHOT AT EIGHT TIMES. THIS IS
19 EIGHT TIMES. BAM, BAM, BAM, BAM, BAM. WHEN YOU'RE TALKING
20 ABOUT INTENT, JUST THINK ABOUT INTENT. INTENT, YOU SHOOT AT
21 SOMETHING. BUT WHEN YOU SHOOT EIGHT TIMES AND YOU'VE GOT TO
22 PULL THE TRIGGER EACH TIME -- I MEAN, THAT'S BAM, BAM, BAM --
23 THEY'RE TALKING ABOUT RECOIL -- BAM, RECOIL -- YOU HAVE IN
24 YOUR MIND TO DO WHAT YOU'RE DOING. THAT'S INTENT. AND HE
25 WAS HIT FIVE TIMES -- ONCE IN THE FACE, FOUR IN THE BACK.

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 TWO IN THE UPPER BACK SHOULDER, TWO IN THE BACK.

2 SO WHAT THIS IS REALLY ABOUT WHEN YOU BOIL IT DOWN IS AN
3 AMBUSH, AND IT'S A MALICIOUS KILLING. WHEN WE TALK ABOUT
4 MALICIOUSNESS, LET'S TALK ABOUT MALICE. HIS HONOR WILL
5 CHARGE YOU MALICE IS EVIL. IT'S A WICKED SPIRIT. IT'S A
6 HEART BENT ON MISCHIEF. BUT THE GOOD OLD COMMON SENSE WAY
7 THAT I DESCRIBE IT, IT'S MEANNESS. IT'S JUST OUT AND OUT
8 MEANNESS.

9 AND THE PROOF OF MALICE IN THIS CASE IS OVERWHELMING,
10 AND THE PROOF OF MEANNESS IN THIS CASE IS OVERWHELMING. AND
11 IF YOU DON'T BELIEVE THAT, IF YOU DON'T BELIEVE THAT THERE IS
12 MEANNESS IN THE HEART OF JOHN RICHARD WOOD AT THE TIME THAT
13 HE SHOT AT ERIC NICHOLSON EIGHT TIMES AND HIT HIM FIVE TIMES,
14 I WANT YOU TO GO BACK IN YOUR JURY ROOM AND I WANT YOU TO
15 PICK UP THIS 9 MILLIMETER GLOCK PISTOL, AND I WANT YOU TO
16 IMAGINE THAT THERE IS ONE OF YOUR FELLOW JURORS AT THE END OF
17 THAT WALL AND I WANT YOU TO POINT THIS GUN AT THEM AND PULL
18 THE TRIGGER -- IMAGINARY ONLY. HOW MUCH MEANNESS DOES IT
19 TAKE IN THE HEART OF AN INDIVIDUAL TO PICK UP A GUN AND POINT
20 IT AT ANOTHER PERSON? THAT'S BASELINE MEANNESS.

21 BUT LET'S GO A STEP FURTHER. LET'S GO TO THE MEANNESS
22 IT TAKES TO KNOWING THAT YOU'VE GOT A HIGHWAY PATROLMAN IN A
23 MARKED CAR WHO IS AS VULNERABLE AS A SITTING DUCK ON WATER
24 STOPPING YOU BECAUSE HE THINKS YOU'RE DRIVING A MOPED AND YOU
25 SHOOT HIM EIGHT TIMES. HE NEVER GOT HIS CAR IN GEAR. HOW

CLOSING ARGUMENTS -- BY SOLICITOR ARIAIL

1 MUCH MEANNESS DOES THAT TAKE? AND TO PULL THAT TRIGGER EIGHT
2 TIMES WHILE THAT OFFICER IS SITTING THERE WRITHING, TRYING TO
3 AVOID FURTHER BEING SHOT, WITH HIS SPINAL CORD SEVERED AND
4 HIS HEART BLOWN APART BY A BULLET, AND YOU CONTINUE TO FIRE.
5 THAT'S THE KIND OF MEANNESS WE'RE TALKING ABOUT.

6 BUT I'M GOING TO TELL YOU ONE OTHER MEANNESS TOO. WHEN
7 HE TOLD KAREN MCCALL THAT HE SHOT THE SON OF A BITCH, THAT'S
8 WHAT HE THOUGHT OF ERIC NICHOLSON, AND THAT'S WHAT HE THOUGHT
9 OF EVERY OTHER LAW ENFORCEMENT OFFICER THAT HE WAS GOING TO
10 COME INTO. THEY WERE SONS OF BITCHES, AND THAT'S ALL HE
11 CARED ABOUT. AND HE WAS MEAN AND ROTTEN TO THE CORE.

12 AND, LADIES AND GENTLEMEN, THAT KIND OF MEANNESS IS THE
13 MALICE THAT IS REQUISITE AND NECESSARY TO PROVE MURDER, AND I
14 SUBMIT TO YOU THAT JOHN RICHARD WOOD IS AN AMBUSHING, COLD-
15 BLOODED MURDERER. THANK YOU.

16 THE COURT: ANY MEMBER OF THE JURY NEED TO TAKE A
17 BREAK? (PAUSE)

18 YOU MAY CONTINUE WITH YOUR ARGUMENT, MR. BANNISTER.

19 OH, I'M SORRY. DID I MISS ONE? OH, I'M SORRY. LET'S
20 TAKE A SHORT BREAK, FIVE MINUTES. WE'LL GET YOU BACK OUT
21 HERE. PLEASE DON'T DISCUSS THE CASE. THANK YOU SO MUCH.

22 (JURY EXITS COURTROOM AT 1:39 P.M.)

23 THE COURT: THE JURY HAS BEEN EXCUSED. FIVE-MINUTE
24 RECESS, PLEASE.

25 (A RECESS WAS TAKEN FROM 1:39 TO 1:46 P.M.)

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 THE COURT: BRING THE JURY. .

2 (JURY REENTERS COURTROOM AT 1:46 P.M.)

3 THE COURT: WE WILL PROCEED WITH DEFENDANT'S FINAL
4 ARGUMENT.

5 YOU MAY PROCEED, MR. BANNISTER.

6 MR. BANNISTER: THANK YOU, JUDGE.

7 IF I APPEAR NERVOUS OR IF I APPEARED NERVOUS AT THE
8 OPENING STATEMENT, LET ME ASSURE YOU THAT THAT IS NOTHING
9 COMPARED TO THE NERVOUSNESS THAT I FEEL RIGHT NOW STANDING IN
10 FRONT OF YOU. IF I STOP, IF I STUTTER, IF I HAVE TO LOOK AT
11 MY NOTES, PLEASE UNDERSTAND THAT IT IS THE NERVOUSNESS THAT
12 IS CAUSING THAT. AND I TELL YOU THAT BECAUSE I DON'T WANT --
13 IF I STOP OR IF I HAVE TO PAUSE FOR A MOMENT TO GATHER MY
14 THOUGHTS, I DON'T WANT YOU TO MISCONSTRUE THAT FOR THE
15 PASSION THAT I HAVE FOR THE PRESUMPTION OF INNOCENCE AND FOR
16 THE JUDICIAL PROCESS THAT WE HAVE.

17 SOMETIMES THE PRESUMPTION OF INNOCENCE IS THE ONLY THING
18 THAT KEEPS A PERSON FROM BEING CONVICTED OF A CRIME THAT THE
19 GOVERNMENT HAS CHARGED THEM WITH. SOMETIMES THE PRESUMPTION
20 OF INNOCENCE IS THE ONLY THING THAT KEEPS AN INNOCENT MAN
21 FROM GOING TO JAIL. THAT IS A FOUNDATION OF OUR JUDICIAL
22 SYSTEM. OUR FOREFATHERS BELIEVED THAT IT WAS BETTER THAT TEN
23 GUILTY MEN WOULD WALK OUT OF A COURTROOM THAN THAT ONE PERSON
24 SHOULD BE CONVICTED OF A CRIME THAT THEY DID NOT COMMIT OR
25 THAT ONE INNOCENT PERSON SHOULD GO TO JAIL FOR A CRIME THAT

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 THEY DID NOT COMMIT.

2 SO I WANT YOU TO CONSIDER AGAIN YOUR OATH TO FOLLOW THE
3 JUDGE'S INSTRUCTIONS AND YOUR OATH TO PRESUME THE DEFENDANT
4 INNOCENT. BECAUSE, REMEMBER, AT THIS STAGE RIGHT NOW THE
5 SCALES ARE STILL OVER HERE, AND THAT HEAVY LEAD WEIGHT IS
6 STILL SITTING ON TOP OF THAT SCALE AND IT'S STILL GOT
7 INNOCENT WRITTEN ACROSS IT. AND THERE IS NOTHING ON THE
8 OTHER SIDE OF THE SCALE THAT IS IN THE STATE. IT'S GOT THE
9 STATE WRITTEN ACROSS IT. THERE IS NOTHING SITTING IN THAT
10 HOLDER ON THAT SIDE OF THE SCALE. ONLY WHEN YOU HAVE THE
11 CHANCE TO GO BACK INTO THE JURY ROOM AND DELIBERATE AND TALK
12 ABOUT THE EVIDENCE IN THIS CASE AND TO WEIGH IT DO YOU THEN
13 GET TO PUT IT ON THE SCALE.

14 NOW, YOU HEARD THE SOLICITOR TALK ABOUT INTENT, AND YOU
15 HEARD THE SOLICITOR TALK ABOUT MALICE. I TAKE ISSUE WITH HIS
16 DESCRIPTION OF BOTH OF THOSE, AND I URGE YOU TO LISTEN TO THE
17 JUDGE'S INSTRUCTIONS BECAUSE HE IS THE GIVER OF THE LAW. AND
18 I WILL REMIND YOU THAT THE SCALES NEED TO APPLY TO EACH
19 INDIVIDUAL ELEMENT THAT THE GOVERNMENT HAS TO PROVE.

20 THIS FOR SOME OF YOU MAY BE THE FIRST TIME THAT YOU HAVE
21 EVER BEEN ON A JURY. AND YOU GET VERY LITTLE INSTRUCTION
22 OTHER THAN WHAT THE LAW IS AND WHAT YOUR OATH IS ABOUT HOW TO
23 CONDUCT YOURSELVES IN THE JURY ROOM, SO I'M GOING TO MAKE
24 SOME SUGGESTIONS BASED ON THE PRINCIPLES THAT ARE PART OF THE
25 OATH THAT YOU TOOK.

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 ONE OF THOSE IS THIS, IF YOU WILL RECALL, WE TALKED A
2 LOT ABOUT HOW YOU WOULD FEEL IF YOU WERE IN A POSITION OF A
3 -- YOU WERE IN THE MINORITY IN THE JURY ROOM OR YOU WERE IN
4 THE MAJORITY. WHAT THAT BOILS DOWN TO IS THAT EACH ONE OF
5 YOU, YOUR OPINIONS, YOUR FEELINGS, YOUR THOUGHTS ABOUT THE
6 EVIDENCE IS JUST AS IMPORTANT AS EVERY OTHER PERSON'S. IT
7 SORT OF FALLS IN LINE WITH THE PRINCIPLE OF ONE MAN, ONE
8 VOTE; ONE WOMAN, ONE VOTE; ONE PERSON, ONE VOTE.

9 AND SO I WOULD SUGGEST TO YOU THAT AS YOU ARE IN THE
10 JURY ROOM, BECAUSE EACH OF YOU HAS SOMETHING IMPORTANT TO ADD
11 TO THE DISCUSSION, THAT YOU ADOPT SOME RULES. I SUGGEST TO
12 YOU THAT WHEN YOU ARE IN THERE YOU TAKE THE POSITION --
13 BECAUSE SOME PEOPLE ARE MORE APT TO SPEAK OUT AND OTHERS TEND
14 TO BE MORE QUIET, I SUGGEST THAT YOU TAKE THE POSITION THAT
15 EVERY PERSON MUST TALK ONCE BEFORE ANYBODY CAN TALK TWICE,
16 THAT EVERYBODY MUST TALK TWICE BEFORE ANYBODY CAN TALK THREE
17 TIMES. AND FURTHERMORE, IN LINE WITH ONE MAN AND ONE VOTE,
18 WHEN YOU GO INTO THE BALLOT BOX, NOBODY KNOWS HOW YOU VOTED.
19 I SUGGEST THAT THE VOTES THAT YOU TAKE BE ANONYMOUS, AT LEAST
20 INITIALLY, SO THAT IF THERE IS SOMEBODY THAT HAS SOME REAL
21 CONVICTIONS OR SOME PROBLEMS, THAT YOU GET TO SEE THAT
22 WITHOUT SCARING SOMEBODY AWAY FROM WHAT THEY MAY FEEL IN
23 THEIR HEART IS AN ISSUE THAT NEEDS TO BE DISCUSSED. I OFFER
24 THOSE ONLY AS SUGGESTIONS. THE JUDGE IS NOT GOING TO TELL
25 YOU YOU HAVE TO DO THAT, AND I WANT YOU TO KNOW THAT UP

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 FRONT.

2 WHEN YOU GO BACK IN AND YOU START APPLYING THOSE SCALES
3 TO EACH ELEMENT AND YOU TAKE YOUR VOTE AS TO EACH ELEMENT
4 THAT THE GOVERNMENT HAS TO PROVE BEYOND A REASONABLE DOUBT,
5 LET'S GO AHEAD AND FOCUS ON THE ONE THAT THE SOLICITOR TALKED
6 ABOUT LAST. MALICE.

7 YOU'RE GOING TO HAVE A HARD DECISION TO MAKE WHEN IT
8 COMES TO MALICE. LISTEN CLOSELY TO THE JUDGE'S INSTRUCTIONS.
9 I LIKE TO THINK OF MALICE AS BEING A CONSCIOUSLY FORMED
10 PURPOSE. SAY THAT AGAIN. A FORMED PURPOSE.

11 LET ME GIVE YOU ONE OF THE OLDEST EXAMPLES THAT I CAN
12 COME UP WITH OF A FORMED PURPOSE. YOU MAY KNOW THE STORY OF
13 CAIN AND ABEL. THEY WERE THE TWO BROTHERS OF ADAM AND EVE IN
14 GENESIS. CAIN WAS A FARMER. ABEL WAS A HERDER. THEY BOTH
15 MADE A SACRIFICE. THE LORD LOOKED WITH FAVOR ON ABEL'S
16 SACRIFICE AND DID NOT LOOK WITH FAVOR ON CAIN'S SACRIFICE.
17 CAIN BECAME FURIOUS BECAUSE HE SAW THAT HIS SACRIFICE HAD NOT
18 BEEN LOOKED UPON WITH FAVOR, AND HE HARBORED THAT FURY AND
19 THAT HATRED, AND THEN HE INVITED HIS BROTHER INTO A FIELD
20 WHERE NO ONE WAS WATCHING AND THERE HE KILLED HIM. THAT'S A
21 GOOD EXAMPLE OF A FORMED PURPOSE.

22 A FAIR INTERPRETATION OF THE FACTS THAT YOU HAVE SEEN AS
23 WE HAVE GONE THROUGH THIS TRIAL IS THAT WHAT HAPPENED ON
24 DECEMBER 6TH HAPPENED IN A SPLIT SECOND AT THAT STOP. SO WE
25 ARE NOT TALKING ABOUT SOMEBODY WHO WAS HIDING, LAYING IN

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 WAIT, WHO HAD CALCULATEDLY SET HIMSELF UP TO TAKE THE LIFE OF
2 ANOTHER INDIVIDUAL, SOMEBODY WHO CAME UP AND FORMED A PURPOSE
3 IN THEIR MIND AND BEGAN TO CHECK OFF THE STEPS TO GET TO THE
4 ULTIMATE END CONCLUSION TO TAKE ANOTHER PERSON'S LIFE. THAT
5 KIND OF CALCULATED DECISION MAKING PROCESS IS NOT WHAT WE ARE
6 HERE ABOUT TODAY. THAT IS NOT THIS CASE.

7 FURTHERMORE, WHAT IS NOT THIS CASE IS THAT YOU HAVE GOT
8 SOMEONE WHO IS CONSIDERED LIKE A PREDATOR, LIKE AN ANIMAL
9 CROUCHING IN WAIT AT DARK AT NIGHT BEHIND SOMETHING WHERE AN
10 UNSUSPECTING PERSON WOULD WALK IN FRONT OF HIM AND THEY KNOW
11 THAT THEY'RE GOING TO TAKE THAT PERSON'S LIFE. THIS IS NOT A
12 PREDATOR CASE.

13 WE'RE TALKING ABOUT SOMETHING THAT HAPPENED IN A MOMENT.
14 AND IT'S THAT MOMENT THAT THE GOVERNMENT HAS TO PROVE TO YOU
15 THAT THERE WAS A FORMED PURPOSE, MALICE, IN THAT ONE MOMENT.

16 NOW I WANT TO STEP BACK JUST A SECOND BEFORE I GIVE YOU
17 WHAT I BELIEVE IS AN APPROPRIATE INTERPRETATION OF THE FACTS.
18 STEP BACK A SECOND. AND LET ME ASSURE YOU THAT IF I HAVE
19 SUGGESTED OR IF I SUGGEST IN ANYWAY THAT TROOPER NICHOLSON
20 DID ANYTHING WRONG THAT THAT IS NOT WHAT I AM TRYING TO TELL
21 YOU. THAT MAN MADE A LAWFUL STOP. THE MAN TURNED ON HIS
22 LIGHTS. THE SCOOTER SHOULD HAVE PULLED OVER. HE DIDN'T DO
23 ANYTHING THAT WAS WRONG OR ILLEGAL OR UNJUSTIFIED. NOTHING.

24 AND I'M NOT TRYING TO SUGGEST THAT BECAUSE WE'RE NOT
25 HERE ABOUT WHAT WAS IN THE TROOPER'S MIND. HE WAS BLAMELESS.

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 HE THOUGHT HE HAD AN ILLEGAL MOPED. .WHAT WE ARE HERE ABOUT
2 IS WHAT WAS IN THE DEFENDANT'S MIND.. THAT'S THE BURDEN OF
3 PROOF. THAT'S WHAT THE GOVERNMENT HAS TO FOCUS THIS ISSUE
4 ON.

5 AT THE MOMENT WHEN THE BLUE LIGHTS CAME ON, WHAT WAS IN
6 JOHN WOOD'S MIND? KAREN MCCALL TOLD YOU. HE BELIEVED THAT
7 HE COULD OUTRUN ANY LAW ENFORCEMENT OFFICER ON HIS
8 MOTORCYCLE. DO YOU REMEMBER THAT ON THE STAND? SHE SAID --
9 AND THAT'S THE EVIDENCE THAT YOU'VE GOT IN FRONT OF YOU, THAT
10 HE BELIEVED HE COULD OUTRUN AN OFFICER ON HIS MOTORCYCLE.

11 SHE ALSO TOLD YOU THAT WHAT WAS IN HIS MIND WAS THAT HE
12 WAS AFRAID OF LAW ENFORCEMENT. IT CERTAINLY IS REASONABLE TO
13 ASSUME THAT AT THE TIME THE OFFICER CUT ON HIS LIGHTS THAT
14 THOSE WERE THE TWO THOUGHTS IN HIS MIND -- HE COULD OUTRUN
15 LAW ENFORCEMENT AND HE WAS AFRAID OF THE POLICE.

16 HE TURNS ONTO FRONTAGE ROAD. NOW, I WOULD SUGGEST TO
17 YOU THAT IF YOU TURN ONTO FRONTAGE ROAD AND YOU'RE TAKING A
18 TROOPER TO A HOLE WHERE YOU CAN QUIETLY TAKE CARE OF THE
19 PROBLEM THAT YOU WOULDN'T HAVE EIGHT OR TEN WITNESSES WHO SAW
20 THE WHOLE THING. THIS IS RUSH HOUR ON WOODRUFF ROAD.

21 FURTHERMORE, TO MAKE THAT ASSUMPTION YOU WOULD HAVE TO
22 ASSUME THAT JOHN WOOD MADE THE DECISION TO DRIVE HIS MOPED
23 INTO THE CURB AND THAT THE TROOPER WOULD FOLLOW HIM TO THAT
24 CURB, AND THAT JUST DOESN'T MAKE SENSE TO ME. AND I WANT TO
25 POINT THAT OUT BECAUSE WHY IS THE STATE SO AFRAID OF THE SKID

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 MARK? WE FOUND OUT YESTERDAY FOR THE FIRST TIME THAT THEY
2 HAD ACTUALLY TAKEN MEASUREMENTS OF THE SKID MARK, AND
3 APPARENTLY OFFICER GREENWAY HAD DONE AN ACCIDENT
4 RECONSTRUCTION. WELL, WOULDN'T YOU LIKE TO KNOW HOW FAST WAS
5 THE SCOOTER GOING? GRADY MILLER SAID THEY CAN GO UP TO 70
6 MILES AN HOUR. AND WOULDN'T THAT BE IMPORTANT TO YOU IN
7 TRYING TO DETERMINE WHAT WAS IN THE MIND OF THE PERSON THAT
8 WAS ON THE SCOOTER AT THE TIME THAT HE ACTUALLY CAME TO A
9 STOP? IT'S NOT OUR BURDEN TO BRING THAT EVIDENCE TO YOU.

10 I FEEL LIKE WITH THE SKID MARK THAT I'M WATCHING SORT OF
11 A STREET SHOW MAGICIAN WHERE THE NUT'S UNDER HERE AND IT'S
12 GETTING MOVED BACK AND FORTH AROUND. I MEAN, LET'S CALL A
13 SPADE A SPADE. I THINK THAT PART OF THE RESPONSIBILITY THAT
14 THE GOVERNMENT HAS IS TO BRING TO YOU ALL THE EVIDENCE. WHY
15 DID WE HAVE TO BRING OUT THE SCOOTER IS A LEGAL VEHICLE ON
16 THE HIGHWAY?

17 NOW, I DON'T WANT TO DETRACT FROM THE INVESTIGATION THAT
18 TOOK PLACE BECAUSE I KNOW THE INDIVIDUALS INVOLVED AND THEY
19 DID AS THOROUGH A JOB IN THIS CASE AS COULD POSSIBLY BE DONE.
20 BUT THEY WORK FOR GOVERNMENT. AND THE FACT THAT THEY THINK
21 IT'S IRRELEVANT TO PROVING THAT JOHN WOOD IS GUILTY DOESN'T
22 NECESSARILY MEAN THAT THEY DON'T HAVE TO BRING IT TO YOU TO
23 GIVE IT TO YOU FOR YOUR CONSIDERATION. IN ESSENCE, WHAT THAT
24 MEANS IS THAT DOESN'T HELP THEIR CASE. AND THE OPPOSITE OF
25 THAT IS IT DOES HELP OUR CASE.

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 SO HERE WE ARE. THE SCOOTER IS IN FRONT OF THE PATROL
2 VEHICLE. IT'S TRAVELING DOWN THE ROAD. WE DON'T KNOW HOW
3 FAST, BUT WE CAN CERTAINLY ASSUME THAT IF HE'S TRYING TO
4 ESCAPE, IT'S GOING AS FAST AS THE SCOOTER CAN GO. A SCOOTER
5 THAT'S CAPABLE OF GOING 70 MILES PER HOUR. NOW, I GRANT YOU,
6 HE WASN'T GOING 70 MILES PER HOUR, BUT HE CERTAINLY WAS
7 ACCELERATING AS FAST AS HE COULD. IT WAS A SHORT DISTANCE
8 DOWN THE FRONTAGE ROAD BEFORE HE GOT CUT OFF.

9 AND, YES, IT WAS AN AGGRESSIVE STOP. AND, YES, HE DID
10 GET CUT OFF. AND, YES, HE WAS FORCED UP AGAINST THE CURB.
11 BUT I OFFER THAT NOT TO SHOW YOU THAT TROOPER NICHOLSON DID
12 ANYTHING WRONG, BUT TO SHOW YOU THE POSITION THAT THIS
13 PARTICULAR PERSON ON THE SCOOTER WAS IN. HE'S ON A SCOOTER
14 WHERE THERE IS NO PROTECTION TO HIM PHYSICALLY ON EITHER
15 SIDE. HE IS UP AGAINST A PATROL VEHICLE, A CAR THAT WEIGHS A
16 LOT. THE PERSON AND THE SIDE OF THE CAR, IF THEY COLLIDE,
17 YOU KNOW WHO IS GOING TO LOSE. IT'S GOING TO BE THE SCOOTER.
18 AND SO AS THEY ARE GOING DOWN THE ROAD AND THE PATROL VEHICLE
19 MOVES PAST PUSHING THE SCOOTER TO THE LEFT, MOVES PAST THE
20 SCOOTER AND THEN PULLS IN FRONT OF THE SCOOTER TO CUT HIM OFF
21 ON THE CURB.

22 YOU HEARD THE GUY STANDING ON THE LOADING DOCK, HE'S GOT
23 A GOOD FIELD OF VISION. HE'S THREE OR FOUR FEET OVER THE
24 PARKING LOT. HE'S GOT NO OTHER DISTRACTIONS SUCH AS LOOKING
25 IN A REAR VIEW MIRROR TO SEE WHAT'S GOING ON, LOOKING OVER

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 HIS SHOULDER OR TRYING TO WATCH FOR TRAFFIC. HE'S SMOKING A
2 CIGARETTE. THIS IS THE BEST THING GOING ON FOR HIM AT THIS
3 POINT, AND HE'S FOCUSED IN ON IT. AND WHAT DOES HE SEE? HE
4 SEES A SCOOTER THAT HAS TWO OPTIONS -- WELL, THREE OPTIONS
5 REALLY -- STOP OR RUN INTO THE PATROL VEHICLE OR RUN INTO THE
6 CURB WHERE THE BUSHES ARE AND, YOU KNOW -- LOOK IN THE
7 PICTURES. YOU'LL SEE. IT'S NOT AN INSIGNIFICANT LITTLE BERM
8 THAT'S THERE. AND SO THE SCOOTER SLAMS ON BRAKES AND SKIDS
9 TO A STOP.

10 NOW, WHERE DOES THAT PUT THE PERSON ON THE SCOOTER IN
11 RELATION TO THE VEHICLE? THE TESTIMONY YOU HEARD FROM THE
12 EYEWITNESSES IS THAT ONCE THE SCOOTER COMES TO A STOP, IT
13 DOESN'T MOVE. IN OTHER WORDS, THE PERSON ON THE SCOOTER IS
14 NOT REPOSITIONING THEMSELVES TO GET A BETTER SHOT. THE
15 PERSON ON THE SCOOTER IS RIGHT AT THE PATROL VEHICLE'S
16 WINDOW.

17 NOW, I AM BREAKING THIS DOWN INTO A SECOND BY SECOND
18 VIEW OF THE FACTS OF THE CASE AT THIS POINT. BUT PLEASE
19 REMEMBER THAT I AM DOING THAT TO POINT OUT TO YOU WHAT'S
20 GOING ON BUT THAT THE WHOLE THING HAPPENED JUST LIKE THIS
21 (SNAPS FINGERS). IT WAS QUICK. EVERYBODY SAID IT HAPPENED
22 IN A INSTANT. THERE WAS A STOP. THEN THERE WAS GUNFIRE.
23 THEN THE SCOOTER LEFT.

24 BUT FOCUS ON THAT NANOSECOND, THAT SPLIT SECOND, THAT
25 LITTLE BIT OF TIME WHERE THE PERSON ON THE SCOOTER IS UP

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 AGAINST THE PATROL VEHICLE AND LOOKING INTO THE FRONT OF THE
2 CAR. AND WHAT DOES HE SEE?

3 YOU HEARD THE WOMAN COME IN -- BLONDE HAIR, BLUE SUIT --
4 AND SHE TESTIFIED ABOUT THE GUNSHOT RESIDUE ON THE PALM OF
5 TROOPER NICHOLSON, AND SHE SAID THAT WAS INDICATIVE OF A
6 DEFENSIVE POSTURE. THAT MAKES SENSE. SHE SAID THAT WHEN I
7 ASKED HER, "WELL, IF YOU HAD SOMETHING IN YOUR HAND WOULD
8 THERE BE ANY GUNSHOT RESIDUE ON YOUR HAND?" AND SHE SAID,
9 "WELL, THERE WOULD BE LESS." AND THEN SHE SAID, "BUT THERE
10 WAS A SUBSTANTIAL AMOUNT ON THE PALM OF TROOPER NICHOLSON'S
11 HAND, HIS RIGHT HAND." TAKE THAT PIECE OF EVIDENCE AND HOLD
12 ON TO IT FOR JUST A SECOND.

13 YOU'VE GOT EVIDENCE THAT THE TROOPER HAD THE MICROPHONE
14 IN HIS RIGHT HAND AND WAS TALKING AS HE'S DRIVING DOWN
15 FRONTAGE ROAD, "IT LOOKS LIKE HE'S GOING TO MAKE THE RIGHT
16 DECISION," AND THEN HE QUILTS. IT IS CERTAINLY REASONABLE TO
17 ASSUME THAT HE'S GOT THAT MICROPHONE IN HIS HAND AND THAT
18 HE'S GOT THE OTHER HAND ON THE WHEEL AS HE'S COMING TO THE
19 STOP. HOLD ON TO THAT PIECE OF EVIDENCE.

20 YOU'VE NOW GOT THE GEAR SHIFT WHICH IS NOT IN DRIVE.
21 IT'S IN NEUTRAL. LET ME PLAY A SCENARIO TO YOU THAT FITS
22 THOSE FACTS. TROOPER NICHOLSON HAD THE RADIO IN HIS RIGHT
23 HAND. HE GOES TO DROP IT OR HOOK IT, AND THEN HE GOES TO PUT
24 HIS HAND ON THE GEAR SHIFT TO BRING IT UP TO PUT IT INTO
25 PARK. THE PERSON ON THE SCOOTER IS LOOKING IN THE VEHICLE

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 AND SEES A SUDDEN MOVEMENT DOWN AND UP WITH THE TROOPER'S
2 RIGHT HAND. TROOPER NICHOLSON WEARS HIS BELT, AND HIS GUN IS
3 ON HIS RIGHT-HAND SIDE. WE KNOW, AND I'M TELLING YOU UP
4 FRONT, HE NEVER TOUCHED THAT GUN. BUT THE PERSON SITTING
5 THERE ON THE SCOOTER COULD CERTAINLY MISINTERPRET THE ACTIONS
6 OF THE TROOPER.

7 THAT IS WHY I BELIEVE THE STATE IS TAKING SO MUCH TIME
8 IN ARGUMENT. IF THIS WAS JUST A SLAM DUNK, YOU WOULDN'T HAVE
9 HEARD 20 MINUTES ABOUT MALICE AND INTENT. THAT IS ONE OF THE
10 THINGS THAT YOU HAVE GOT TO DISCUSS BACK IN THE JURY ROOM AND
11 DELIBERATE OVER TO DECIDE HOW YOU ARE GOING TO WEIGH THAT AND
12 WHETHER OR NOT THAT'S GOING TO TILT THE SCALES -- DOES IT GET
13 ALL THE WAY DOWN? IS IT A REASONABLE DOUBT? I SUGGEST TO
14 YOU THAT IT IS.

15 WE'RE NOT THE ONES THAT HAVE TO ILLUMINATE FEAR OR PANIC
16 OR MISINTERPRETATION. THE GOVERNMENT IS. THE GOVERNMENT IS.

17 AFTER, AND WITHIN SECONDS, THOSE FIRST COUPLE OF SHOTS
18 ARE FIRED THERE IS NOT A SINGLE EYEWITNESS ANYWHERE THAT SAID
19 IT DIDN'T HAPPEN ALL IN AN INSTANT. BAM, BAM, BAM, BAM, BAM.
20 IF YOU HEARD -- IF YOU CAN REMEMBER THE PATHOLOGIST HOLDING
21 UP HIS HANDS AND SAYING, YES, ALL THE SHOTS WERE FIRED WITHIN
22 A SIX-INCH DIAMETER. AND HE ALSO TESTIFIED THAT THE TWIN
23 BULLETS THAT WENT IN, ONE OF THEM THAT MISSED THE KEVLAR WAS
24 FATAL, AND ONE OF THEM THAT HIT THE KEVLAR -- I MEAN, THE ONE
25 OF THEM THAT DID HIT THE KEVLAR. THOSE TWO BULLETS WERE

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 FIRED -- HE SAID IT WOULD BE CONSISTENT THAT THEY WERE FIRED
2 VERY RAPIDLY. OF COURSE IT WOULD, BECAUSE THEY ARE ALL
3 LITERALLY THE SAME PATH. THE PATHOLOGIST TESTIFIED THAT HE
4 COULDN'T TELL WHICH ONE WAS WHICH 'ONCE THEY CAME OUT FROM
5 UNDER THE ARMPIT. HE JUST DIDN'T KNOW WHETHER IT WAS ONE OR
6 TWO.

7 WE TALKED ABOUT RECOIL. THIS MAY HAVE SEEMED LIKE ONE
8 OF THOSE TRIVIAL LITTLE PARTS OF THE CASE, BUT I'M GOING TO
9 POINT OUT TO YOU THAT A GLOCK 9 MILLIMETER HAS GOT A
10 SIGNIFICANT AMOUNT OF RECOIL. AND YOU BRING YOUR OWN COMMON
11 EXPERIENCE. FOR THOSE OF YOU WHO HAVE FIRED A GUN BEFORE,
12 YOU KNOW THAT WHEN YOU HOLD A PISTOL IN ONE HAND AND YOU PULL
13 THE TRIGGER THAT RECOIL WILL CAUSE A GUN TO JUMP UP. THESE
14 TWO BULLETS, THE ONE AND TWO, THE TWINS AS I'VE BEEN CALLING
15 THEM, WERE FIRED SO QUICKLY ONE AFTER THE OTHER AND YOU'VE
16 GOT TO PUT IN BETWEEN THAT SOME KIND OF RECOIL.

17 SO WHAT DOES THAT MEAN? THAT MEANS THAT THE PERSON WHO
18 WAS HOLDING THAT GUN VIRTUALLY HAD SOME KIND OF SUPERHUMAN
19 VICE-LIKE STRENGTH TO HOLD A GUN AND RESIST THE RECOIL AND TO
20 PUT THOSE TWO BULLETS SO CLOSE TO EACH OTHER THAT THE
21 PATHOLOGIST COULDN'T TELL THEM APART. I WOULD SUGGEST TO YOU
22 THAT THAT IS AS CONSISTENT WITH SOMEONE WHO IS OPERATING
23 UNDER FEAR OR PANIC OR MISINTERPRETATION OF THE SCENE. IF
24 NOTHING ELSE, IT SHOWS YOU THAT THE DEFENDANT DID NOT FIRE AT
25 THE PATROL OFFICER AND THEN MOVE HIS SCOOTER AND AS HE'S

CLOSING ARGUMENTS -- BY MR. BANNISTER

1 GOING OUT REACH IN AND SHOOT ANOTHER ROUND. THAT DIDN'T
2 HAPPEN. IT ALL HAPPENED IN AN INSTANT. AND THAT'S WHERE THE
3 FOCUS SHOULD BE.

4 I HAVE SUGGESTED TO YOU SOME ALTERNATIVES TO THE
5 EVIDENCE, SOME THAT I THINK DICTATE AGAINST A FINDING OF
6 GUILTY ON THE ELEMENT OF MALICE. THAT'S MY JOB. BUT GUESS
7 WHAT? IT'S YOUR JOB AS WELL TO GO BACK THERE AND DECIDE IF
8 THERE IS ANY OTHER REASONABLE CONSISTENT ANALYSIS OF THE
9 FACTS THAT WOULD FIND THIS DEFENDANT NOT GUILTY. AND THAT
10 MEANS IF YOU COME UP WITH YOUR OWN VERSION OF THE FACTS,
11 YOU'VE GOT A DUTY TO LET THE REST OF YOU KNOW SO YOU CAN TALK
12 ABOUT IT.

13 I CLAIM YOUR OATH FOR JOHN WOOD TO FOLLOW THE JUDGE'S
14 INSTRUCTIONS. IT'S GOING TO BE HARD. THIS IS NOT AN EASY
15 CASE. Y'ALL HAVE GOT ONE OF THE TOUGHEST DECISIONS IN THE
16 WORLD TO MAKE BACK THERE, BUT IT IS NOT A SLAM DUNK. AND SO
17 I REMIND YOU, YOU GAVE AN OATH TO FOLLOW THE JUDGE'S
18 INSTRUCTIONS AND TO PRESUME THIS DEFENDANT INNOCENT AND TO
19 REQUIRE PROOF BEYOND A REASONABLE DOUBT. THAT SCALE HAS GOT
20 TO TIP ALL THE WAY TO THE FLOOR AND TOUCH. THANK YOU.

21 **THE COURT:** LADIES AND GENTLEMEN, ANYBODY IN THE JURY
22 LIKE TO TAKE A SHORT BREAK BEFORE WE DO THE CHARGE? THE
23 CHARGE WILL TAKE, I'M GUESSING, ABOUT 20 MINUTES. (PAUSE)
24 ALL RIGHT. LET'S GO FORWARD WITH THE CHARGE THEN.

25 THE CHARGE IS FAIRLY LENGTHY. I'M GIVING YOU A GOOD BIT

JURY CHARGE

1 OF LAW TO DIGEST. AND HERE IS WHAT I WANT YOU TO UNDERSTAND
2 UP FRONT. I DON'T WANT YOU TO BE SITTING THERE MULLING OVER
3 A CERTAIN POINT AND I'VE MOVED ON TO SOMETHING ELSE AND YOU
4 THINK YOU HAVE MISSED IT. DURING YOUR DELIBERATIONS, IF YOU
5 WANT ME TO REPEAT ANY PART OF MY CHARGE, PLEASE REDUCE THAT
6 REQUEST TO WRITING. I'LL BE GLAD TO BRING YOU BACK OUT HERE
7 AND CHARGE YOU FURTHER. SO YOU HAVE ANOTHER OPPORTUNITY OR
8 AS MANY AS YOU NEED TO COME BACK OUT HERE FOR CLARIFICATION
9 TO HAVE A PRINCIPLE OF LAW RESTATED TO YOU. UNFORTUNATELY,
10 MY CHARGE IS NOT IN SOME NEAT TYPEWRITTEN FORMAT THAT I CAN
11 GIVE YOU A COPY TO TAKE TO THE JURY ROOM. BUT I CAN BRING
12 YOU OUT HERE AS OFTEN AS NECESSARY AND RESPOND TO ANY
13 QUESTION YOU HAVE AND CLARIFY OR INSTRUCT FURTHER TO THE
14 EXTENT THE LAW PERMITS ME TO DO SO.

15 LET ME TELL YOU SOMETHING ELSE. OFTENTIMES A JURY WILL
16 SEND A NOTE OUT AND ASK TO SEE ANOTHER PIECE OF EVIDENCE OR A
17 DOCUMENT THAT MAY HAVE BEEN REFERRED TO BUT WAS NOT RECEIVED
18 AS AN EXHIBIT. PLEASE UNDERSTAND THE RECORD IS CLOSED. THE
19 LAW DOES NOT PERMIT ME TO SUPPLEMENT THE RECORD. YOU MUST
20 MAKE YOUR DECISION BASED ON THE EVIDENCE OF RECORD THAT IS
21 BEFORE YOU.

22 AGAIN, LET ME JUST REMIND YOU ABOUT NOTE TAKING THAT I
23 INDICATED AT THE OUTSET. YOU ARE WELCOME TO USE YOUR NOTES
24 FOR YOUR INDIVIDUAL BENEFIT. YOU MAY NOT USE YOUR NOTES TO
25 SWAY OR INFLUENCE THE OPINION OF ONE OF YOUR FELLOW JURORS.

JURY CHARGE

1 IT IS MY DUTY TO CHARGE YOU ON THE LAW. IT'S YOUR DUTY
2 TO ACCEPT AND APPLY THE LAW AS I STATE IT TO YOU. YOU MAY
3 HAVE A VIEW OF THE LAW THAT DIFFERS FROM WHAT I SAY. YOU MAY
4 THINK THE LAW IS SOMETHING DIFFERENT OR WHAT THE LAW OUGHT TO
5 BE. IN SUCH CASE, YOU MUST DISREGARD ANY PRECONCEPTION YOU
6 HAVE AND FOLLOW THE LAW PRECISELY AS I STATE IT.

7 WHILE I AM THE JUDGE OF THE LAW, YOU ARE JUDGES OF THE
8 FACTS. YOU WILL DETERMINE THE FACTS AND TRUTH IN THIS
9 PARTICULAR CASE AND YOU WILL DO SO FROM EVALUATING THE
10 EVIDENCE. YOU ARE THE SOLE JUDGES OF THE FACTS, SOLE JUDGES
11 OF THE EVIDENCE, THE WEIGHT OF THE EVIDENCE.

12 AND, LADIES AND GENTLEMEN, AS I HAVE INSTRUCTED YOU FROM
13 THE VERY BEGINNING, THE CONSTITUTION OF SOUTH CAROLINA DOES
14 NOT PERMIT ME AS THE TRIAL JUDGE TO HAVE AN OPINION ABOUT THE
15 FACTS. THAT IS A MATTER SOLELY AND EXCLUSIVELY WITHIN YOUR
16 PROVINCE. SO PLEASE DO NOT CONSTRUE FROM ANYTHING I HAVE
17 SAID DURING THE PROGRESS OF THIS TRIAL IN RULING ON THE
18 ADMISSIBILITY OF EVIDENCE OR OTHERWISE OR ANYTHING I SAY TO
19 YOU NOW IN THE COURSE OF THIS INSTRUCTION THAT I HAVE ANY
20 OPINION ABOUT THE FACTS OF THIS CASE. THAT IS A MATTER FOR
21 YOU TO DETERMINE.

22 NOW, AS A PART OF YOUR FACT FINDING FUNCTION YOU ARE
23 CALLED UPON TO ASSESS THE CREDIBILITY OR THE BELIEVABILITY OF
24 THE WITNESSES WHO HAVE TESTIFIED. IN THAT REGARD YOU MAY
25 BELIEVE ONE WITNESS AS AGAINST SEVERAL OR SEVERAL AS AGAINST

JURY CHARGE

1 ONE. YOU MAY BELIEVE PART OF WHAT A WITNESS HAS SAID AND
2 DISREGARD OTHER PORTIONS OF THE TESTIMONY OF THAT SAME
3 WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS
4 ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS
5 ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED
6 TO YOU ANY INTEREST, ANY BIAS, ANY PREJUDICE IN THE CASE.
7 YOU MAY CONSIDER THE Demeanor OF A WITNESS, THAT IS, THE
8 MANNER AND APPEARANCE OF THE WITNESS AS HE OR SHE MAY HAVE
9 TESTIFIED FROM THE WITNESS STAND. YOU MAY CONSIDER THE
10 OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH
11 A WITNESS HAS TESTIFIED.

12 NOW LET ME REITERATE SOMETHING I TOLD YOU DURING THE
13 COURSE OF THE TRIAL, AND THAT'S YOUR CONSIDERATION OF THE
14 OPINION TESTIMONY OF AN EXPERT. WHEN SOMEONE WHO BY WAY OF
15 BACKGROUND, TRAINING, EXPERIENCE OR EDUCATION ACQUIRES A
16 PARTICULAR DEGREE OF SKILL IN AN AREA, THE LAW WILL RECOGNIZE
17 THAT INDIVIDUAL AS AN EXPERT. AS SUCH, HE OR SHE WOULD BE
18 ENTITLED TO GIVE TESTIMONY IN THE FORM OF OPINIONS. THE
19 OPINIONS CONSTITUTE EVIDENCE WHICH YOU MAY CONSIDER. BUT YOU
20 ARE TO TREAT THE OPINION TESTIMONY OF AN EXPERT JUST AS YOU
21 DO ALL OF THE OTHER EVIDENCE IN THE CASE, THAT IS, YOU MAY
22 EXCEPT IT, YOU MAY REJECT IT BASED ON YOUR VIEW OF THE
23 EVIDENCE.

24 NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU AND EMPHASIZE
25 TO YOU THAT THE ELECTION OF A DEFENDANT IN THE TRIAL OF A

JURY CHARGE

1 CRIMINAL CASE NOT TO TESTIFY IN HIS OWN BEHALF IS NOT A
2 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
3 DELIBERATION. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
4 WHATSOEVER AND MITIGATE AGAINST THE DEFENDANT IN ANY RESPECT
5 WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO
6 REMAIN SILENT. AND THE ASSERTION OF SUCH CONSTITUTIONAL
7 RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN THE COURSE
8 OF YOUR DELIBERATIONS. UNDER YOUR OATH, THEN, YOU ARE TO
9 REACH NO CONCLUSION AND DRAW NO INFERENCE FROM THE FACT THAT
10 THE DEFENDANT IN THIS CASE DID NOT HIMSELF TESTIFY. THE
11 ELECTION OF THIS DEFENDANT NOT TO TESTIFY SHOULD NOT EVEN BE
12 DISCUSSED IN THE JURY ROOM.

13 MADAME FORELADY AND LADIES AND GENTLEMEN, IN THE CONTEXT
14 OF DETERMINING THE BELIEVABILITY OF WITNESSES, YOUR OBJECTIVE
15 IS TO FIND THE TRUTH. IN DOING SO THE LAW REQUIRES YOU
16 EXERCISE YOUR GOOD JUDGMENT, YOUR COMMON SENSE, YOUR SENSE OF
17 LOGIC AND REASON. YOU APPLY THESE ATTRIBUTES TO THE
18 EVIDENCE, DETERMINE WHAT YOU CONSIDER TO BE THE TRUE
19 STATEMENTS OF FACT, THE TRUE EVIDENCE IN THE CASE. YOU THEN
20 APPLY THE LAW AS I GIVE IT, AND THROUGH THAT PROCESS ARRIVE
21 AT A VERDICT WHICH SPEAKS THE TRUTH AS TO THE CHARGE OR
22 CHARGES PRESENTED.

23 IT IS YOUR DUTY TO FIND THE FACTS, THE TRUTH FROM THE
24 EVIDENCE AND APPLY THE LAW. YOU ARE NOT TO SWAYED BY
25 SYMPATHY, PASSION OR PREJUDICE.

JURY CHARGE

1 IN THE TRIAL OF A CASE THE STATE CAN RELY ON DIRECT
2 EVIDENCE, CIRCUMSTANTIAL EVIDENCE OR A COMBINATION OF THE
3 TWO. DIRECT EVIDENCE PROVES THE EXISTENCE OF A DISPUTED FACT
4 THROUGH THE USE OF ONE OR MORE OF OUR SENSES WITHOUT THE AID
5 OF ANY INFERENCES. OUR SENSES, AS WE WELL KNOW, ARE SEEING,
6 HEARING, FEELING, TASTING OR SMELLING. CIRCUMSTANTIAL
7 EVIDENCE, ON THE OTHER HAND, EXISTS WHERE CERTAIN FACTS WHICH
8 ARE KNOWN THROUGH ONE OF OUR SENSES GIVE RISE TO LOGICAL
9 INFERENCES THAT OTHER FACTS DO IN FACT EXIST WITHOUT DIRECTLY
10 PROVING THOSE FACTS. THE STATE MAY RELY ON EITHER OR BOTH OF
11 THESE TYPES OF EVIDENCE, CIRCUMSTANTIAL OR DIRECT.

12 WITH RESPECT TO DIRECT EVIDENCE, THE STATE MUST PROVE
13 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT. IN
14 ORDER TO PROVE AN ELEMENT OF AN OFFENSE OR WARRANT A
15 CONVICTION ON CIRCUMSTANTIAL EVIDENCE, CERTAIN REQUIREMENTS
16 MUST BE MET. THE FACTS AND CIRCUMSTANCES RELIED UPON BY THE
17 STATE MUST BE ESTABLISHED TO YOUR SATISFACTION BEYOND A
18 REASONABLE DOUBT. THESE FACTS AND CIRCUMSTANCES MUST BE
19 CONSISTENT WITH EACH OTHER AND WITH THE GUILT OF THE
20 DEFENDANT. THESE FACTS AND CIRCUMSTANCES MUST BE OF A
21 CONCLUSIVE NATURE AND POINT DIRECTLY TO THE GUILT OF THE
22 DEFENDANT. THESE FACTS AND CIRCUMSTANCES MUST POINT SO
23 CONCLUSIVELY AS TO THE GUILT OF THE DEFENDANT AS TO EXCLUDE
24 ANY OTHER REASONABLE THEORY THAN THE GUILT OF THE DEFENDANT,
25 BEARING IN MIND THAT THE BURDEN IS ALWAYS ON THE STATE TO

JURY CHARGE

1 PROVE GUILT BEYOND A REASONABLE DOUBT.

2 LADIES AND GENTLEMEN, I'M GOING TO INSTRUCT YOU AND
3 REITERATE TO YOU SOMETHING THAT HAS BEEN CHARGED FROM THE
4 VERY BEGINNING, THAT IS, THE CONCEPT OF PRESUMPTION OF
5 INNOCENCE. IT IS A CARDINAL AND FUNDAMENTAL RULE OF LAW THAT
6 A DEFENDANT WILL ALWAYS BE PRESUMED INNOCENT FOR THE CRIME OR
7 CRIMES FOR WHICH HE HAS BEEN INDICTED UNLESS AND UNTIL YOU
8 ARE CONVINCED THAT GUILT HAS BEEN ESTABLISHED BY PROOF BEYOND
9 A REASONABLE DOUBT. PRESUMPTION OF INNOCENCE IS NOT A MERE
10 LEGAL THEORY BUT A SUBSTANTIAL RIGHT TO WHICH ANY ACCUSED,
11 INCLUDING MR. WOOD, IS ENTITLED. THE PRESUMPTION OF
12 INNOCENCE ACCOMPANIES A DEFENDANT FROM THE TIME OF HIS OR HER
13 INITIAL ARREST, THROUGH EVERY APPEARANCE IN COURT AND EVEN
14 THROUGHOUT EVERY STAGE OF THE TRIAL. IN FACT, THE
15 PRESUMPTION OF INNOCENCE CONTINUES IN EXISTENCE TO THE
16 BENEFIT OF A DEFENDANT EVEN AFTER A JURY RETIRES TO THE JURY
17 ROOM TO CONSIDER ITS VERDICT. IN OTHER WORDS, THE
18 PRESUMPTION OF INNOCENCE REMAINS IN FULL FORCE AND EFFECT
19 UNTIL A JURY IN THE COURSE OF ITS DELIBERATIONS DETERMINES
20 THAT THE STATE HAS INDEED PROVEN GUILT BEYOND A REASONABLE
21 DOUBT.

22 NOW LET'S TALK ABOUT THIS PHRASE "PROOF BEYOND A
23 REASONABLE DOUBT." IT MAY BE THAT SOME OF YOU IN THE PAST
24 HAVE SERVED ON CIVIL JURIES WHERE YOU ARE TOLD THAT IT IS
25 ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN

JURY CHARGE

1 NOT TRUE IN ORDER FOR A PLAINTIFF, THE ONE WHO BRINGS A CASE,
2 TO PREVAIL. THAT'S A LEGAL STANDARD OF PROOF.

3 IN A CRIMINAL CASE THE STATE'S PROOF MUST BE MORE
4 POWERFUL THAN THAT, AND THE TERM WE USE TO DESCRIBE THIS MOST
5 STRINGENT BURDEN KNOWN TO THE LAW IS PROOF BEYOND A
6 REASONABLE DOUBT. PROOF BEYOND A REASONABLE DOUBT IS PROOF
7 THAT LEAVES YOU FIRMLY CONVINCED OF A DEFENDANT'S GUILT.

8 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW
9 WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES
10 NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF
11 BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY
12 CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME OR CRIMES
13 CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND YOU
14 THINK THERE IS A REAL POSSIBILITY THAT HE'S NOT GUILTY, YOU
15 MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT
16 GUILTY.

17 NOW, THERE ARE TWO CHARGES CONTAINED IN ONE INDICTMENT
18 AND I'M GOING TO INSTRUCT YOU IN THE ORDER IN WHICH THEY
19 APPEAR IN THE INDICTMENT. THE FIRST COUNT IS THE COUNT OF
20 MURDER. IT IS ALLEGED THAT JOHN RICHARD WOOD DID IN
21 GREENVILLE COUNTY ON OR ABOUT THE 6TH DAY OF DECEMBER OF THE
22 YEAR 2000 UNLAWFULLY WITH MALICE AFORETHOUGHT KILL ERIC
23 NICHOLSON BY MEANS OF SHOOTING HIM AND THAT ERIC NICHOLSON
24 DIED AS A PROXIMATE RESULT THEREOF IN VIOLATION OF THE LAWS
25 OF SOUTH CAROLINA.

JURY CHARGE

1 THE CODE OF LAWS APPLICABLE STATES IN PART THAT MURDER
2 IS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER
3 EXPRESSED OR IMPLIED. THEREFORE, IN ORDER TO CONVICT ONE OF
4 MURDER THE STATE MUST NOT ONLY PROVE THE KILLING OF THE
5 DECEASED BY THE DEFENDANT BUT THAT SUCH KILLING WAS DONE WITH
6 MALICE AFORETHOUGHT. MALICE AFORETHOUGHT IS AN ESSENTIAL
7 ELEMENT IN THE CRIME OF MURDER.

8 NOW LET ME START WITH THE TERM "MALICE" AND THEN WE'LL
9 GROUP THAT TOGETHER WITH THE COMPLETE PHRASE OF "MALICE
10 AFORETHOUGHT." MALICE INDICATES A FOREIGN PURPOSE AND DESIGN
11 TO DO A WRONGFUL ACT UNDER CIRCUMSTANCES THAT EXCLUDE ANY
12 LEGAL RIGHT TO DO IT. MALICE IS A TERM OF ART THAT -- A TERM
13 OF ART THAT IMPARTS WICKEDNESS AND EXCLUDES A JUST CAUSE OR
14 EXCUSE. IT IS SOMETHING THAT SPRINGS FROM WICKEDNESS, FROM
15 DEPRAVITY, FROM A DEPRAVED SPIRIT WHICH SHOWS A HEART DEVOID
16 OF SOCIAL DUTY AND ONE FATALLY BENT ON MISCHIEF. MALICE DOES
17 NOT OF NECESSITY IMPORT ILL WILL TOWARD THE INDIVIDUAL
18 INJURED BUT SIGNIFIES A GENERAL RECKLESSNESS OF THE LIVES AND
19 SAFETY OF OTHERS AND CONSISTS OF THE INTENTIONAL DOING OF A
20 WRONGFUL ACT TOWARD ANOTHER WITHOUT LEGAL JUSTIFICATION OR
21 EXCUSE.

22 THE WORDS EXPRESSED OR IMPLIED MALICE DO NOT MEAN
23 DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER OR WAY IN
24 WHICH THE ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN
25 TO EXIST. MALICE MAY BE ESTABLISHED BY EITHER DIRECT OR

JURY CHARGE

1 CIRCUMSTANTIAL EVIDENCE OR A COMBINATION OF THE TWO.

2 EXPRESSED MALICE EXISTS WHERE A PERSON BY WORD OF MOUTH
3 EXPRESSES HATRED OR ILL WILL TO ANOTHER OR WHERE THE STATE
4 OTHERWISE PROVES BEYOND A REASONABLE DOUBT THAT AN INTENT TO
5 KILL WAS EXPRESSLY ENTERTAINED. MALICE MAY BE INFERRED ALSO
6 IF IT IS PROVED BEYOND A REASONABLE DOUBT THAT THERE IS A
7 WILFUL, DELIBERATE, INTENTIONAL DOING OF AN UNLAWFUL ACT
8 WITHOUT JUST CAUSE OR EXCUSE. MALICE MAY BE INFERRED IF THE
9 FACTS AND CIRCUMSTANCES WARRANT SUCH AN INFERENCE ALTHOUGH NO
10 EXPRESSED INTENT TO KILL IS PROVED. HOWEVER, IF YOU FIND
11 FACTS PROVED ARE SUFFICIENT TO RAISE AN INFERENCE OF MALICE,
12 THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT FOR YOU TO
13 TAKE INTO CONSIDERATION TOGETHER WITH ALL OF THE OTHER
14 EVIDENCE IN THE CASE AND YOU MAY GIVE IT SUCH WEIGHT AS YOU
15 DETERMINE IT SHOULD RECEIVE IN DETERMINING WHETHER OR NOT
16 MALICE HAS BEEN PROVED BEYOND A REASONABLE DOUBT. YOU ARE,
17 AS JURORS, FREE TO ACCEPT OR REJECT ANY PERMISSIVE INFERENCE
18 IN THIS REGARD DEPENDING ON YOUR VIEW OF THE EVIDENCE. THE
19 LAW FURTHER SAYS IF ONE INTENTIONALLY KILLS ANOTHER WITH A
20 DEADLY WEAPON, AN INFERENCE OF MALICE MAY ARISE. IF FACTS
21 ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN
22 INFERENCE OF MALICE IN THIS REGARD, THIS INFERENCE WOULD
23 SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN IN CONSIDERATION BY
24 YOU ALONG WITH ALL OF THE OTHER EVIDENCE IN THE CASE. YOU
25 MAY ACCEPT IT, YOU MAY REJECT IT BASED ON YOUR VIEW OF THE

JURY CHARGE

1 EVIDENCE. PLEASE REMEMBER THAT THE BURDEN OF PROOF REMAINS
2 AT ALL TIMES ON THE STATE TO PROVE GUILT BEYOND A REASONABLE
3 DOUBT.

4 LADIES AND GENTLEMEN, THAT'S THE CONCEPT OF MALICE. IT
5 CAN BE EITHER EXPRESSED OR IMPLIED OR INFERRED. BUT THERE
6 MUST NOT ONLY BE MALICE BUT MALICE AFORETHOUGHT. UNDER THE
7 LAW MALICE NEED NOT EXIST FOR ANY APPRECIABLE PERIOD OF TIME
8 BEFORE THE COMMISSION OF THE ACT. WHILE THE LAW DOES NOT
9 REQUIRE THAT MALICE SHALL EXIST FOR ANY PARTICULAR LENGTH OF
10 TIME BEFORE THE COMMISSION OF THE ACT, IT MUST BE
11 AFORETHOUGHT, THAT IS, THERE MUST BE A COMBINATION OF THE
12 MALICE AND THE ACT WHICH PRODUCES THE FATAL RESULT.

13 NOW, LADIES AND GENTLEMEN, THAT'S THE LAW ON THE CHARGE
14 OF MURDER. IF YOU FIND THAT THE STATE HAS PROVEN EACH
15 ELEMENT OF THE OFFENSE BEYOND A REASONABLE DOUBT, YOUR
16 VERDICT WOULD BE GUILTY AS TO COUNT ONE, MURDER. IF YOU FIND
17 THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT ANY
18 ELEMENT OF THE OFFENSE OF MURDER, IT WOULD BE YOUR DUTY TO
19 FIND THE DEFENDANT NOT GUILTY. THOSE ARE YOUR TWO VERDICT
20 OPTIONS. IN THE EVENT YOU FIND THE DEFENDANT GUILTY OF THE
21 OFFENSE OF MURDER, YOU THEN WOULD BE REQUIRED TO CONSIDER THE
22 SECOND OFFENSE OR COUNT TWO IN THE INDICTMENT.

23 COUNT TWO IS CAPTIONED "POSSESSION OF A WEAPON DURING
24 THE COMMISSION OR THE ATTEMPT TO COMMIT A VIOLENT CRIME." IT
25 IS ALLEGED THAT JOHN RICHARD WOOD DID IN GREENVILLE COUNTY ON

JURY CHARGE

1 OR ABOUT THE 6TH DAY OF DECEMBER 2000 POSSESS OR VISIBLY
2 DISPLAY A PISTOL DURING THE COMMISSION OR ATTEMPTED
3 COMMISSION OF A VIOLENT CRIME. IT IS ALLEGED THAT THE
4 VIOLENT CRIME IS MURDER.

5 UNDER THE STATUTORY LAWS OF SOUTH CAROLINA IT PROVIDES
6 IN PART AS FOLLOWS: IT IS UNLAWFUL FOR A PERSON TO POSSESS A
7 FIREARM DURING THE COMMISSION OF OR ATTEMPT TO COMMIT A
8 VIOLENT CRIME. LADIES AND GENTLEMEN, I CHARGE YOU THAT
9 MURDER UNDER SOUTH CAROLINA LAW IS CLASSIFIED AS A VIOLENT
10 CRIME. THAT IS THE SECOND COUNT IN THE INDICTMENT. IF YOU
11 FIND THE DEFENDANT NOT GUILTY AS TO THE CHARGE OF MURDER,
12 THEN YOU NEED NOT CONSIDER THE SECOND CHARGE OF POSSESSION OF
13 A WEAPON OR FIREARM DURING THE COMMISSION OF A VIOLENT CRIME.
14 YOU CONSIDER THE SECOND CHARGE, COUNT TWO, ONLY IF YOU FIRST
15 FIND THE DEFENDANT GUILTY OF THE OFFENSE OF MURDER.

16 NOW, LADIES AND GENTLEMEN, YOU HAVE HEARD EVIDENCE OF
17 THE ALLEGED EVENTS IN ANDERSON COUNTY. PLEASE REMEMBER IN
18 THIS CASE YOU ARE CALLED UPON TO CONSIDER AND DELIBERATE ON
19 THE GREENVILLE COUNTY OFFENSE OR OFFENSES ONLY. MOREOVER,
20 YOU MAY CONSIDER EVIDENCE OF THE ALLEGED EVENTS IN ANDERSON
21 COUNTY ONLY AS IT MAY BEAR UPON THE ESTABLISHMENT OF THE
22 NECESSARY ELEMENTS OF THE GREENVILLE COUNTY OFFENSES.

23 LADIES AND GENTLEMEN, AS YOU DELIBERATE PLEASE REMEMBER
24 YOUR VERDICT OR VERDICTS MUST BE UNANIMOUS. ALL TWELVE MUST
25 AGREE. MADAME FORELADY, YOU WILL BE RESPONSIBLE FOR

JURY CHARGE

1 COMPLETING THE VERDICT FORM, WHICH WILL BE THIS DOCUMENT
2 HERE. IT WILL BE WITH YOU IN THE JURY ROOM. AND, MA'AM,
3 WHILE YOU WILL BE RESPONSIBLE FOR COMPLETING THE VERDICT
4 FORM, THE TWELVE OF YOU WHO DELIBERATE, OF COURSE, CAN REVIEW
5 IT AND STUDY IT JUST AS YOU CAN ALL OF THE EXHIBITS THAT WILL
6 BE WITH YOU IN THE JURY ROOM.

7 I HAVE PUT COUNT ONE, MURDER; COUNT TWO, POSSESSION OF A
8 WEAPON DURING THE COMMISSION OR ATTEMPTED COMMISSION OF A
9 VIOLENT CRIME. YOU WILL SEE YOUR VERDICT OPTIONS. PLEASE
10 PLACE NO SIGNIFICANCE IN THE ORDER IN WHICH YOUR VERDICT
11 OPTIONS APPEAR. THEY MUST, OF COURSE, BE IN ONE ORDER AND
12 THEN THE NEXT. THERE IS NO SIGNIFICANCE TO THE ORDER IN
13 WHICH THE OFFENSE APPEARS.

14 NUMBER ONE, MURDER. WE, THE JURY, UNANIMOUSLY FIND THE
15 DEFENDANT -- YOU HAVE TWO OPTIONS. YOU WILL SEE YOU CAN
16 EITHER PUT AN "X" BY IT, A CHECK MARK, CIRCLE IT, SOME
17 SIGNIFYING MARK TO KNOW THAT IS THE COLLECTIVE UNANIMOUS
18 JUDGMENT OF THE JURY. IF THE VERDICT IS NOT GUILTY, THAT
19 WILL CONCLUDE YOUR DELIBERATIONS. PLEASE SIGN AND DATE WHERE
20 INDICATED. NOTIFY THE BAILIFF YOU HAVE REACHED A DECISION.

21 IF YOUR VERDICT IS GUILTY AS TO THE OFFENSE OF MURDER,
22 YOU THEN GO TO COUNT TWO. AGAIN, YOU HAVE TWO OPTIONS,
23 GUILTY OR NOT GUILTY. AGAIN, THE VERDICT MUST BE UNANIMOUS.
24 ONCE THE VERDICT OR VERDICTS HAVE BEEN REACHED PLEASE SIGN
25 AND DATE WHERE INDICATED.

JURY CHARGE

1 AGAIN, IF THERE IS ANY QUESTION OR CONCERN, PLEASE
2 REDUCE IT TO WRITING. I'LL GET YOU BACK OUT HERE AND GIVE
3 YOU FURTHER INSTRUCTIONS OR CLARIFICATION TO THE EXTENT THE
4 LAW PERMITS ME TO DO SO.

5 NOW, IN JUST A MOMENT, I'M GOING TO EXCUSE ALL FIFTEEN
6 OF YOU TO GO BACK TO THE JURY ROOM. IN GIVING YOU ALL OF
7 THIS LAW, I MAY HAVE INADVERTENTLY OVERLOOKED SOMETHING. IN
8 THAT EVENT, THESE FINE ATTORNEYS WILL QUICKLY BRING IT TO MY
9 ATTENTION. AND IF THAT HAPPENS, I MAY NEED TO BRING YOU BACK
10 OUT HERE FOR FURTHER INSTRUCTION. IT MAY BE THAT YOU DON'T
11 NEED TO COME BACK HERE.

12 HERE -- THIS WILL BE THE SIGNAL FROM ME TO YOU TO BEGIN
13 YOUR DELIBERATIONS. WHEN THE BAILIFF BRINGS THE VERDICT FORM
14 AND BRINGS THE EXHIBITS AND RELEASES THE EXHIBITS TO YOU IN
15 THE JURY ROOM, THAT WILL BE THE SIGNAL TO BEGIN YOUR
16 DELIBERATIONS.

17 THANK YOU SO MUCH FOR YOUR KIND ATTENTION. IF YOU
18 WOULD, PLEASE RETIRE TO THE JURY ROOM. DO NOT DISCUSS THE
19 CASE AND AWAIT FURTHER INSTRUCTION.

20 (JURY EXITS COURTROOM AT 2:28 P.M.)

21 THE COURT: THE JURY HAS BEEN EXCUSED. I'D LIKE TO
22 HEAR EXCEPTIONS AND ADDITIONS. I'LL START WITH THE STATE.

23 SOLICITOR ARIAIL: NOTHING, YOUR HONOR.

24 MR. MAULDIN: YOUR HONOR, THE DEFENSE SIMPLY REASSERTS
25 THE REQUESTED INSTRUCTIONS THAT WE HAD AT CHARGE CONFERENCE.

MATTERS AND MOTIONS

1 IF I NEED TO ONCE AGAIN LIST ANY OR MAKE SPECIFICS, I'LL BE
2 GLAD TO. BUT WHATEVER I WAS OBJECTING TO THEN THAT YOU
3 DIDN'T DO, I OBJECT TO NOW.

4 THE COURT: I THOUGHT I HAD DONE EVERYTHING EXCEPT I
5 FOLLOWED THE SUPREME COURT IN NOT CHARGING THAT INTENT---

6 MR. MAULDIN: RIGHT.

7 THE COURT: ---IS AN ELEMENT.

8 MR. MAULDIN: SPECIFIC INTENT WAS ONE, AND MANSLAUGHTER
9 REQUEST WAS ONE.

10 THE COURT: RIGHT. THAT'S RIGHT.

11 MR. MAULDIN: AND -- AND, YOUR HONOR, I WOULD JUST
12 STAND BY THE COMMENTS AT THE CHARGE CONFERENCE. THE
13 CIRCUMSTANTIAL EVIDENCE WE DO AGREE AND ACCEPT THAT
14 INSTRUCTION.

15 THE COURT: ALL RIGHT. APPRECIATE THE FINE JOB OF
16 PREPARATION THUS FAR BY THE ATTORNEYS, AND I COMMEND YOU FOR
17 YOUR PROFESSIONALISM ON BOTH SIDES. IF Y'ALL WILL BE KIND
18 ENOUGH, WE'VE GOT A MYRIAD OF EXHIBITS.

19 LET'S JUST MAKE SURE THAT WE HAVE EVERYTHING THAT HAS
20 BEEN RECEIVED AS APPROPRIATELY MARKED AND SO WE DON'T HAVE AN
21 ISSUE OF SOMETHING THAT'S BEEN PERHAPS RECEIVED JUST FOR
22 IDENTIFICATION. SO IF Y'ALL WILL TAKE JUST A MOMENT TO CHECK
23 THE EXHIBITS, THEY'LL BE READY TO GO.

24 IN THE MEANTIME I WILL TAKE THE THREE ALTERNATES AND
25 THEY WILL BE PLACED IN A SECURE JURY ROOM WITH A COURT

MATTERS AND MOTIONS

1 SECURITY OFFICER ON THE OUTSIDE.

2 MR. MAULDIN: YOUR HONOR, WOULDN'T THEY BE -- WOULDN'T
3 THE ALTERNATES NEED TO BE TOLD THAT THEY CAN'T DISCUSS THE
4 CASE AMONG THEMSELVES?

5 THE COURT: ALL RIGHT. IF YOU WILL, CHECK THE EXHIBITS
6 AND WE'LL BE GOOD TO GO.

7 (COUNSEL REVIEW EXHIBITS FROM 2:33 TO 2:42 P.M.)

8 (DELIBERATIONS BEGIN AT 2:42 P.M.)

9 (AT EASE FROM 2:42 TO 3:31 P.M.)

10 THE COURT: I HAVE RECEIVED A NOTE FROM THE JURY AS
11 FOLLOWS: IF I COULD PROVIDE THE DEFINITION OF MALICE AND, AS
12 STATED IN THE NOTE, "FORETHOUGHT." THEY ARE ALSO REQUESTING
13 A WRITTEN COPY OF THE INSTRUCTION, IF POSSIBLE.

14 I'LL BE GLAD TO HEAR FROM EITHER SIDE. IT'S MY INTENT
15 TO WRITE A NOTE BACK TO THE FORELADY, HAVE THIS, OF COURSE,
16 MARKED AS A COURT'S EXHIBIT. I'LL BE GLAD TO REDEFINE THE
17 ELEMENT OF MALICE AFORETHOUGHT OR RESPOND TO ANY SPECIFIC
18 QUESTION OR CLARIFICATIONS NECESSARY. I AM NOT AT THIS TIME
19 INCLINED TO GIVE THEM A COPY OF THAT PORTION OF THE CHARGE.

20 SO I'LL BE GLAD TO HEAR FROM EITHER SIDE IF THEY HAVE
21 ANY OBJECTION TO THAT MANNER OF RESPONSE.

22 SOLICITOR ARIAIL: NO OBJECTION.

23 MR. MAULDIN: NO OBJECTION TO THAT MANNER OF RESPONSE.

24 THE COURT: AND WHAT I WILL DO, I'LL MAKE THE NOTE --
25 WE'LL HAVE IT MARKED AS A COURT'S EXHIBIT AND I'LL LET

MATTERS AND MOTIONS

1 COUNSEL REVIEW IT. (PAUSE WHILE NOTE IS WRITTEN)

2 IF COUNSEL WOULD, REVIEW THE PROPOSED NOTE TO THE JURY,
3 PLEASE. (COUNSEL REVIEW NOTE)

4 MR. MAULDIN: YOUR HONOR, WE HAVE NO OBJECTION TO THAT
5 SOLUTION TO THIS PARTICULAR QUESTION. WE AT THIS TIME WOULD
6 RENEW OUR REQUEST FOR A MANSLAUGHTER INSTRUCTION AS WE HAVE
7 SUGGESTED.

8 THE COURT: THANK YOU. THAT'S RESPECTFULLY DENIED.

9 MR. MAULDIN: YES, SIR.

10 MS. STROM: WE HAVE NO OBJECTION TO THE NOTE.

11 THE COURT: ALL RIGHT. IT WILL BE MARKED AS A COURT'S
12 EXHIBIT. IT WILL BE TAKEN TO THE JURY. JUST ADVISE THEM NOT
13 TO DESTROY THE NOTE. WE NEED TO KEEP IT FOR RECORD DOWN THE
14 ROAD. THANK YOU.

15 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 20)

16 THE COURT: WE'LL BE AT EASE PENDING FURTHER WORD FROM
17 THE JURY.

18 (AT EASE FROM 3:37 TO 3:44 P.M.)

19 THE COURT: I HAVE RECEIVED A NOTE BACK FROM THE
20 FORELADY THAT THEY WOULD LIKE TO COME BACK INTO COURT AND
21 HEAR THE INSTRUCTION ON MALICE AFORETHOUGHT. IT IS MY INTENT
22 -- AND I'D LIKE TO HEAR FROM BOTH SIDES -- IS TO TELL THE
23 JURY THAT MALICE AFORETHOUGHT IS AN ESSENTIAL ELEMENT OF
24 MURDER. IN THAT REGARD, I WILL INSTRUCT THE JURY THAT THE
25 OFFENSE OF MURDER DOES NOT REQUIRE THAT A SPECIFIC INTENT TO

MATTERS AND MOTIONS

1 KILL BE SHOWN. IS THERE ANY OBJECTION TO THAT FROM THE
2 STATE?

3 MS. STROM: NO, SIR.

4 THE COURT: FROM THE DEFENDANT?

5 MR. MAULDIN: YES, SIR.

6 THE COURT: AND WHAT IS THE EXCEPTION?

7 MR. MAULDIN: WELL, WE HAD ACTUALLY PUT A REQUEST THAT
8 THAT IN FACT BE CHARGED. SO WITH REGARD TO THE QUESTION,
9 YOUR HONOR, I BELIEVE -- WE WOULD PROPOSE THAT THE COURT --
10 OF COURSE, YOU'RE GOING TO HAVE TO LIFT PORTIONS OUT OF THE
11 CHARGE WITHOUT LOSING CONTEXT. WE PROPOSE THAT THE COURT
12 INSTRUCT THE JURY EXACTLY AS YOU DID BEFORE WITH WHATEVER YOU
13 FELT WAS NECESSARY FOR THE INTRODUCTION, AND THEN THE
14 CONCLUSION WITHOUT LOSING CONTEXT. AND THE REASON, YOUR
15 HONOR, IS THIS, IF YOU CHANGE TO DIFFERENT TERMINOLOGY, WHICH
16 IS WHAT I BELIEVE THAT WOULD BE A SUGGESTION, THEN IF THERE
17 IS CONFUSION, IT REALLY COULD BECOME VERY CONFUSING.

18 THE COURT: NO, WHAT IT -- AND I'M PROBABLY NOT GOING
19 TO DO IT, BUT LET ME TELL YOU WHY. I'VE NEVER DONE IT BEFORE
20 IN MANY MURDER CASES. BUT I'VE NEVER HAD A JURY INVITED IN
21 CLOSING ARGUMENT TO APPLY A STANDARD THAT'S NOT THE LAW, AND
22 THERE WAS NO OBJECTION TO THAT.

23 THIS JURY WAS INVITED TO APPLY A STANDARD OF SPECIFIC
24 INTENT TO KILL FAR BEYOND WHAT THE LAW REQUIRES. THAT'S THE
25 BASIS OF THE CONFUSION. I UNDERSTAND WHERE THE CONFUSION

MATTERS AND MOTIONS

1 LIES, AND I'M JUST TRYING TO -- AND AGAIN, I DON'T WANT TO --
2 IN FACT, I HAD PENCILLED IN MY STANDARD CHARGE, AND I DEBATED
3 AS I HEARD THE CLOSING ARGUMENT WHETHER TO GO AHEAD AND
4 EDUCATE THE JURY AS TO WHAT THE LAW IS, SPECIFICALLY HIT THE
5 BULL'S-EYE. AND I'M JUST VERY CONCERNED THAT THEY HAVE
6 FALLEN DOWN THAT PATH.

7 SOLICITOR ARIAIL: AND WE WOULD ONCE AGAIN REITERATE
8 WHAT WE SAID EARLIER, THAT WE ARE ABSOLUTELY VULNERABLE AT
9 THAT STAGE. IT'S EITHER STAND UP AND LOOK LIKE WE'RE HIDING
10 SOMETHING OR WE'RE SCARED OF SOMETHING. AND MY HOPE WAS WE
11 WEREN'T GOING TO CROSS THAT LINE, BUT WE OBVIOUSLY DID AND WE
12 WOULD URGE THE COURT TO GO ON AND STRAIGHTEN IT OUT. HIT THE
13 BULL'S-EYE.

14 THE COURT: ALL RIGHT. I'M GOING TO RULE AND YOU CAN
15 EXCEPT TO IT AND THAT'S THE END OF IT.

16 MR. MAULDIN: YES, SIR.

17 THE COURT: I'M GOING TO CHARGE EXACTLY WHAT I DID
18 EARLIER. BUT I'M GOING TO TELL THE JURY IF THEY HAVE A
19 CONCERN ABOUT ANY PART OF THIS ELEMENT THAT TO THE EXTENT THE
20 LAW PERMITS ME TO DO SO I WILL CLARIFY ANY SPECIFIC QUESTION.
21 BUT I WILL SIMPLY FOLLOW YOUR LEAD AND RESTATE THE LAW.

22 MR. MAULDIN: IS THAT A QUESTION ACTUALLY THAT WOULD
23 COME OUT IN THE COURTROOM FROM THE JURY BOX?

24 THE COURT: NO.

25 MR. MAULDIN: RIGHT.

MATTERS AND MOTIONS

1 **THE COURT:** THEY WOULD GO BACK AND I WOULD INVITE THEM
2 THAT THEY MAY HAVE A CONCERN THAT IS NOT SPECIFICALLY
3 ADDRESSED IN MY INSTRUCTION. I HAVE NOT IN THE PAST LOOKED
4 THE JURY IN THE EYE AND MADE THE STATEMENT, "THE OFFENSE OF
5 MURDER DOES NOT REQUIRE THE SPECIFIC INTENT TO KILL TO BE
6 SHOWN." I HAVE NEVER BEFORE HAD A JURY INVITED TO DO THAT.
7 SO I WROTE IT IN IN PENCIL AS I LISTENED TO THE CLOSING
8 ARGUMENTS, BUT I DECIDED JUST TO GO BACK TO THE STANDARD
9 CHARGE, AND I THINK THAT'S WHEREIN THE CONFUSION LIES.

10 BUT IF THEY DON'T RESPOND, WE'LL PROCEED. BUT I'M GO TO
11 CHARGE JUST AS I DID EARLIER.

12 BRING THE JURY.

13 (JURY REENTERS COURTROOM AT 3:50 P.M.)

14 **THE COURT:** MADAME FORELADY, LADIES AND GENTLEMEN, I
15 RECEIVED YOUR NOTE. I APPRECIATE YOUR WILLINGNESS TO COME
16 BACK OUT HERE. I SIMPLY AM GOING TO REPEAT WHAT I TOLD YOU
17 EARLIER. IF YOU HAVE ANY PARTICULAR QUESTION OF CONCERN,
18 PLEASE REDUCE THAT TO WRITING AND I WILL DO MY BEST TO
19 RESPOND TO YOU TO CLARIFY ANY ISSUE OR CONCERN YOU MAY HAVE
20 TO THE EXTENT THE LAW PERMITS ME TO DO SO.

21 REMEMBER I TOLD YOU EARLIER ABOUT I HAVE NO OPINION
22 ABOUT THE FACTS OF THIS CASE? THERE IS ALSO SORT OF A
23 CORRELATED PRINCIPLE OF LAW THAT I CANNOT COMMENT ON THE
24 FACTS OF A CASE. I SIMPLY CHARGE YOU ON THE LEGAL PRINCIPLE.
25 I SIMPLY STATE TO YOU WHAT THE LAW IS. YOU FIND THE FACTS

RECHARGE

1 FROM THE EVIDENCE AND THEN APPLY THAT EVIDENCE AS YOU FIND IT
2 TO THE LAW, AND THROUGH THAT PROCESS THE RESULT SHOULD BE A
3 VERDICT THAT SPEAKS THE TRUTH. SO I WILL CHARGE YOU ON THIS
4 PARTICULAR QUESTION.

5 NOW, I'M SIMPLY RESPONDING TO YOUR QUESTION. THE FACT
6 THAT I AM ONLY CHARGING A PART OF WHAT I DID EARLIER DOES NOT
7 MEAN OTHER PARTS OF THE CHARGE ARE NOT SIGNIFICANT. BUT YOUR
8 QUESTION DEALS WITH THIS ELEMENT OF MALICE AFORETHOUGHT. SO
9 THAT WILL BE THE PARAMETERS OF MY INSTRUCTION TO YOU.

10 MALICE AFORETHOUGHT IS AN ESSENTIAL ELEMENT IN THE CRIME
11 OF MURDER. MALICE, THE FIRST WORD, MALICE INDICATES A FORMED
12 PURPOSE AND DESIGN TO DO A WRONGFUL ACT UNDER CIRCUMSTANCES
13 THAT EXCLUDE ANY LEGAL RIGHT TO DO IT. MALICE IS A TERM OF
14 ART THAT IMPARTS WICKEDNESS AND EXCLUDES A JUST CAUSE OR
15 EXCUSE. IT IS SOMETHING THAT SPRINGS FROM WICKEDNESS, FROM
16 DEPRAVITY, FROM A DEPRAVED SPIRIT, WHICH SHOWS A HEART DEVOID
17 OF SOCIAL DUTY AND ONE FATALLY BENT ON MISCHIEF. MALICE DOES
18 NOT OF NECESSITY IMPORT ILL WILL TOWARD THE INDIVIDUAL
19 INJURED BUT SIGNIFIES A GENERAL RECKLESSNESS OF THE LIVES AND
20 SAFETY OF OTHERS AND CONSISTS OF THE INTENTIONAL DOING OF A
21 WRONGFUL ACT TOWARD ANOTHER INDIVIDUAL WITHOUT LEGAL
22 JUSTIFICATION OR EXCUSE.

23 THE WORDS EXPRESSED OR IMPLIED MALICE DO NOT MEAN
24 DIFFERENT KINDS OF MALICE BUT THE MANNER OR WAY IN WHICH THE
25 ONLY KIND OF MALICE KNOWN TO THE LAW MAY BE SHOWN TO EXIST.

RECHARGE

1 MALICE MAY BE ESTABLISHED BY DIRECT EVIDENCE, CIRCUMSTANTIAL
2 OR A COMBINATION OF THE TWO.

3 EXPRESS MALICE. WE SAY EXPRESSED OR IMPLIED, OR EXPRESS
4 OR INFERRED. WHAT IS EXPRESSED MALICE? EXPRESSED MALICE
5 EXISTS WHERE A PERSON BY WORD OF MOUTH EXPRESSED HATRED OR
6 ILL WILL FOR ANOTHER OR THE STATE OTHERWISE PROVES BEYOND A
7 REASONABLE DOUBT THAT AN INTENT TO KILL WAS EXPRESSLY
8 ENTERTAINED.

9 HOWEVER, MALICE MAY BE INFERRED OR IMPLIED. MALICE MAY
10 BE INFERRED IF IT'S PROVED BEYOND A REASONABLE DOUBT THAT
11 THERE WAS A WILFUL, DELIBERATE AND INTENTIONAL DOING OF AN
12 UNLAWFUL ACT WITHOUT JUST CAUSE OR EXCUSE. MALICE MAY BE
13 INFERRED IF THE FACTS OR CIRCUMSTANCES WARRANT SUCH AN
14 INFERENCE ALTHOUGH NO EXPRESSED INTENT TO KILL IS PROVED. IF
15 YOU FIND FACTS PROVED ARE SUFFICIENT TO RAISE AN INFERENCE OF
16 MALICE, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO
17 BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH ALL OF THE
18 OTHER EVIDENCE IN THE CASE AND YOU MAY ACCEPT IT OR YOU MAY
19 REJECT IT BASED ON YOUR VIEW OF THE EVIDENCE IN DETERMINING
20 WHETHER OR NOT MALICE HAS BEEN ESTABLISHED BEYOND A
21 REASONABLE DOUBT.

22 THE LAW FURTHER SAYS IF ONE INTENTIONALLY KILLS ANOTHER
23 WITH A DEADLY WEAPON, AN INFERENCE OF MALICE MAY ARISE. IF
24 FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO
25 RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS

RECHARGE

1 INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN
2 INTO CONSIDERATION BY YOU ALONG WITH OTHER EVIDENCE IN THE
3 CASE, AND YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT
4 SHOULD RECEIVE. YOU MAY ACCEPT IT OR REJECT IT BASED ON YOUR
5 VIEW OF THE EVIDENCE.

6 NOW, THAT'S MALICE EXPRESSED OR IMPLIED. LADIES AND
7 GENTLEMEN, THERE MUST BE MALICE, MALICE AFORETHOUGHT. MALICE
8 NEED NOT EXIST FOR ANY APPRECIABLE PERIOD OF TIME BEFORE THE
9 COMMISSION OF THE ACT. WHILE THE LAW DOES NOT REQUIRE THAT
10 MALICE SHALL EXIST FOR ANY PARTICULAR LENGTH OF TIME BEFORE
11 THE COMMISSION OF THE ACT, IT MUST BE AFORETHOUGHT, THAT IS,
12 THERE MUST BE A COMBINATION OF MALICE AND THE ACT WHICH
13 PRODUCES THE FATAL RESULT.

14 LADIES AND GENTLEMEN, THAT'S MY INSTRUCTION TO YOU AGAIN
15 ON MALICE, MALICE AFORETHOUGHT AS AN ESSENTIAL ELEMENT OF THE
16 CRIME OF MURDER. AGAIN, DON'T HESITATE TO SEEK ANY FURTHER
17 CLARIFICATION IF YOU SO DESIRE.

18 NOW, WHEN YOU GET BACK TO YOUR JURY ROOM, DON'T RESUME
19 YOUR DELIBERATIONS QUITE YET. SINCE I HAVE CHARGED YOU
20 AGAIN, I MUST TAKE UP MY CHARGE WITH THE ATTORNEYS. SO
21 PLEASE WAIT FOR INSTRUCTIONS BEFORE YOU RESUME YOUR
22 DELIBERATIONS. THANK YOU, AND PLEASE RETIRE TO THE JURY
23 ROOM.

24 (JURY EXITS COURTROOM AT 3:55 P.M.)

25 THE COURT: THE JURY HAS BEEN EXCUSED. ANY EXCEPTIONS

MATTERS AND MOTIONS

1 OR ADDITIONS FROM THE STATE FIRST?

2 SOLICITOR ARIAIL: NONE, YOUR HONOR.

3 THE COURT: FROM DEFENDANT?

4 MR. MAULDIN: NO, YOUR HONOR. WE'D LIKE TO ASK CO-
5 COUNSEL A MATTER WHILE WE'RE ON THE RECORD, YOUR HONOR.

6 THE COURT: SURE.

7 MR. MAULDIN: NO EXCEPTION TO THAT PARTICULAR CHARGE.

8 THE COURT: ALL RIGHT. TELL THE JURY TO RESUME.

9 (DELIBERATIONS RESUME AT 3:56 P.M.)

10 MR. MAULDIN: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: THANK YOU. WE'LL BE IN RECESS PENDING
12 FURTHER WORD FROM THE JURY.

13 (AT EASE FROM 3:56 TO 4:26 P.M.)

14 THE COURT: I'VE BEEN INFORMED THE JURY HAS REACHED A
15 VERDICT. IS THE STATE READY TO RECEIVE THE VERDICT?

16 SOLICITOR ARIAIL: YES, YOUR HONOR.

17 THE COURT: DEFENDANT READY TO RECEIVE THE VERDICT?

18 MR. MAULDIN: YES, SIR.

19 THE COURT: AGAIN, I THANK THE ATTORNEYS AND THOSE WHO
20 PARTICIPATED, AND THOSE WHO HAVE BEEN PRESENT IN THE
21 COURTROOM. YOU'VE CONDUCTED YOURSELF VERY RESPONSIBLY.
22 THAT FACT HAS NOT GONE UNNOTICED AND I THANK ALL OF YOU FOR
23 THAT: WE WILL CONTINUE IN THE SAME MANNER WITH THE RECEIPT
24 OF THE JURY'S VERDICT. IN OTHER WORDS, THERE WILL BE NO
25 EXPRESSION OF PLEASURE OR DISPLEASURE WITH THE JURY'S VERDICT

VERDICT

1 IN THE COURTROOM OR VICINITY OF THE COURTHOUSE.

2 WITH THAT ADMONITION, BRING THE JURY.

3 (JURY REENTERS COURTROOM AT 4:28 P.M.)

4 THE COURT: MADAME FORELADY, HAVE YOU AND THE LADIES
5 AND GENTLEMEN OF THE JURY REACHED A VERDICT IN THIS CASE?

6 MADAME FORELADY: WE HAVE, YOUR HONOR.

7 THE COURT: PLEASE HAND IT TO THE BAILIFF.

8 (BAILIFF APPROACHES BENCH WITH VERDICT)

9 THE COURT: THE VERDICT IS IN PROPER FORM. MADAME
10 CLERK, PLEASE PUBLISH THE VERDICT.

11 MADAME CLERK: YOUR HONOR, 2001-GS-23-3106, THE STATE
12 OF SOUTH CAROLINA VERSUS JOHN RICHARD WOOD, DEFENDANT. COUNT
13 ONE, MURDER, WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT
14 GUILTY. COUNT TWO, POSSESSION OF A WEAPON DURING THE
15 COMMISSION OF OR ATTEMPTED COMMISSION OF A VIOLENT CRIME, WE,
16 THE JURY, UNANIMOUSLY FIND THE DEFENDANT GUILTY. SIGNED,
17 NORMA B. PITTS, FOREPERSON.

18 THIS IS YOUR VERDICT SO SAY YOU ALL?

19 THE COURT: ALL TWELVE INDICATE IN THE AFFIRMATIVE.

20 ANYTHING WITH RESPECT TO THE JURY AT THIS STAGE PRIOR TO
21 RELEASE TO THE NEXT PHASE?

22 SOLICITOR ARIAIL: NOTHING FROM THE STATE, YOUR HONOR.

23 THE COURT: FROM DEFENDANT?

24 MR. MAULDIN: NOTHING FROM THE DEFENSE, YOUR HONOR.

25 THE COURT: LADIES AND GENTLEMEN, THERE ARE CERTAIN

VERDICT

1 MATTERS THAT I MUST NOW ADDRESS WITH THE ATTORNEYS. YOU WILL
2 BE BACK IN YOUR JURY ROOM JUST VERY BRIEFLY. WE WILL GET YOU
3 BACK OUT HERE AND I WILL GIVE YOU FURTHER INSTRUCTIONS AND
4 YOUR THREE FELLOW JURORS WILL BE WITH YOU AT THE TIME.

5 THANK YOU, AND WE'RE GOING TO RETURN TO THE RULES WE HAD
6 EARLIER. DO NOT DISCUSS THE CASE FROM THIS POINT FORWARD
7 UNTIL INSTRUCTED TO AGAIN. THANK YOU.

8 (JURY EXITS COURTROOM AT 4:30 P.M.)

9 THE COURT: THE JURY HAS BEEN EXCUSED. IN SPEAKING
10 WITH THE ATTORNEYS PREVIOUSLY I UNDERSTAND THAT WE WILL
11 FOLLOW THE 24-HOUR WAITING PERIOD. THERE ARE OTHER ISSUES
12 THAT NEED TO BE ADDRESSED IN THE INTERIM. IS THAT CORRECT
13 FROM DEFENSE SIDE?

14 MR. MAULDIN: YES, SIR.

15 THE COURT: OKAY. I WILL BRING THE JURY BACK IN WITH
16 ALL FIFTEEN OF THEM, INSTRUCT THEM TO NOT DISCUSS THE CASE,
17 AND THEY WILL BE ADVISED AT SOME POINT TOMORROW WHEN THEY
18 WILL RETURN.

19 ANYTHING FURTHER BEFORE I BRING THE JURY AND RELEASE
20 THEM FOR THE EVENING?

21 SOLICITOR ARIAIL: YOU WILL ADVISE THEM -- I KNOW YOU
22 WILL. BUT I JUST WANTED TO -- THAT WE ARE GOING INTO A
23 PERIOD -- IT'S NOT JUST THAT WE'RE JUST WANDERING AROUND NOT
24 DOING ANYTHING, BUT THE LAW REQUIRES IT. I DON'T THINK WE'VE
25 EVER TOLD THEM THAT. WE NEVER GOT THAT SPECIFIC IN THE JURY

MATTERS AND MOTIONS

1 VOIR DIRE. AND IT WOULD BE THE STATE'S REQUEST THAT WE BEGIN
2 TOMORROW AT 4:30 TO AT LEAST BEGIN PRESENTATION OF ADDITIONAL
3 EVIDENCE.

4 THE COURT: THANK YOU.

5 MR. MAULDIN: AND IN THAT REGARD, YOUR HONOR, WITH
6 REGARD TO THE SCHEDULE PLANNING, THE ONLY THING I'D LIKE TO
7 PUT ON THE COURT'S TABLE TO CONSIDER IS IF WE BEGIN AT THIS
8 TIME OF DAY WE WOULD HAVE INSTRUCTIONS AND OPENING STATEMENTS
9 AND THEN THE PRESENTATION OF THE EVIDENCE. AND THE CONCERN I
10 WOULD HAVE IS IF WE HAVE THE PRESENTATION OF CERTAIN EVIDENCE
11 AND THEN AN OVERNIGHT TO, I GUESS YOU MIGHT CALL IT, SLEEP ON
12 IT. WE MIGHT CONSIDER INSTRUCTIONS AND OPENING STATEMENTS
13 AND THEN A BREAK BEFORE THE PRESENTATION OF ANY EVIDENCE.
14 THAT'S, OF COURSE, UP TO THE COURT.

15 THE COURT: AND I DO WANT YOUR THOUGHTS ON THAT, AND
16 THAT'S SOMETHING I'M NOT GOING TO DECIDE RIGHT NOW.

17 BRING THE ENTIRE PANEL, ALL FIFTEEN.

18 MR. MAULDIN: WHILE THE JURY IS BEING BROUGHT, YOUR
19 HONOR, I SHOULD PROBABLY PERHAPS PUT A MOTION -- I DON'T KNOW
20 EXACTLY THE TERMINOLOGY, BUT I BELIEVE IT WOULD BE TO VACATE
21 THE VERDICT AND FOR A NEW TRIAL. I MAKE THAT MOTION AT THIS
22 TIME.

23 THE COURT: FOR ALL THE REASONS PREVIOUSLY STATED?

24 MR. MAULDIN: YES, SIR.

25 THE COURT: VERY GOOD, SIR. SO NOTED. MOTION

MATTERS AND MOTIONS

1 RESPECTFULLY DENIED.

2 (JURY REENTERS COURTROOM AT 4:34 P.M.)

3 THE COURT: LADIES AND GENTLEMEN, LET ME JUST GIVE YOU
4 INSTRUCTIONS AS WE HAVE CONCLUDED THE FIRST PHASE BEFORE WE
5 MOVE TO THE NEXT PHASE, WHICH I DISCUSSED WITH EACH OF YOU
6 DURING THE SELECTION PROCESS, A PHASE THAT WE HAVE CALLED AND
7 REFERRED TO AS THE SENTENCING PHASE. UNDER STATE LAW, THERE
8 IS A MANDATORY 24-HOUR WAITING PERIOD BEFORE WE MAY COMMENCE
9 THE NEXT PHASE. WE WILL OBSERVE THE LAW AND HONOR THAT 24-
10 HOUR WAITING PERIOD.

11 WE WILL DO OUR BEST TO KEEP YOU COMFORTABLE AND HAVE
12 YOUR NEEDS TAKEN CARE OF DURING THIS PERIOD. THERE ARE
13 ISSUES THAT I WILL BE ADDRESSING WITH THE ATTORNEYS AS WE
14 PREPARE FOR THE NEXT PHASE. BUT I WANT TO AGAIN EMPHASIZE TO
15 YOU, AS I DID THE TWELVE WHO WERE IN HERE JUST MOMENTS AGO,
16 HAVING CONCLUDED THE FIRST PHASE OF THIS TRIAL, WE RETURN TO
17 THE RULES WE HAD AT THE BEGINNING. THERE IS TO BE NO
18 DISCUSSION OF THE CASE, ANY ISSUE IN THE CASE OR ANY MATTER
19 THAT COULD ARISE IN A SENTENCING PHASE. THE NEXT OPPORTUNITY
20 YOU WILL HAVE TO DISCUSS THIS CASE WILL BE IN THE
21 DELIBERATION PORTION OF THE SENTENCING PHASE. PLEASE
22 REMEMBER YOUR OATH IN THAT REGARD.

23 LADIES AND GENTLEMEN, I'M GOING TO DISCHARGE YOU AT THIS
24 TIME UNTIL EITHER TOMORROW OR FIRST THING WEDNESDAY. WE MAY
25 TRY TO BRING YOU BACK UP HERE AT 4:30 TOMORROW TO DO A LITTLE

MATTERS AND MOTIONS

1 BIT OR WE MAY JUST START WEDNESDAY MORNING. I WILL CHECK
2 WITH YOUR COURT SECURITY OFFICER TO SEE WHAT YOUR PREFERENCE
3 IS, AND I WILL SEE HOW MUCH PROGRESS WE CAN MAKE IN THE
4 MORNING AND THE EARLY AFTERNOON ON THE LEGAL ISSUES THAT WE
5 MUST ADDRESS. SO I WILL TRY TO WORK TOGETHER AND ACCOMMODATE
6 YOUR WISHES IN THAT REGARD.

7 THANK YOU VERY MUCH. YOU MAY RETIRE WITH YOUR COURT
8 SECURITY OFFICERS.

9 (JURY EXITS FOR THE DAY AT 4:36 P.M.)

10 THE COURT: THE JURY HAS BEEN EXCUSED. I TELL YOU WHAT
11 LET'S DO, FOR THE BENEFIT OF THOSE IN COURTROOM, IF YOU WOULD
12 LIKE TO LEAVE, LET'S JUST TAKE A FIVE-MINUTE RECESS. AND
13 THEN LET'S -- AND IF YOU WANT TO COME BACK, FOLKS, THOSE IN
14 THE COURTROOM, YOU ARE WELCOME TO. WE'RE NOT TRYING TO HIDE
15 ANYTHING FROM YOU. BUT I'D LIKE TO GET BACK ON THE RECORD IN
16 FIVE MINUTES WITH THE ATTORNEYS AND LET'S WORK OUT A SCHEDULE
17 OF WHEN WE'RE GOING TO START DISCUSSING THE ISSUES, THE
18 PROFFER OF THE EVIDENCE, THINGS OF THAT NATURE THAT WE
19 DISCUSSED EARLIER.

20 SO LET'S TAKE A FIVE-MINUTE BREAK AND COME BACK AND
21 LET'S IRON OUT A SCHEDULE THAT IS ACCEPTABLE TO BOTH SIDES.
22 THANK YOU.

23 (A RECESS WAS TAKEN FROM 4:36 TO 4:45 P.M.)

24 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD. I DO
25 WANT TO SHARE WITH YOU THAT WORD FROM THE COURT SECURITY

MATTERS AND MOTIONS

1 OFFICER IS THE JURY VERY MUCH WANTS TO START WEDNESDAY
2 MORNING AND NOT DO ANYTHING TOMORROW. THEY WANT TO WAIT
3 UNTIL WEDNESDAY MORNING, AND I'M GOING TO HONOR THAT REQUEST.

4 MS. STROM: THERE IS NO OBJECTION FROM THE STATE ON
5 THAT, YOUR HONOR.

6 MR. MAULDIN: NO OBJECTION.

7 THE COURT: ALSO, I WANT TO MENTION SOMETHING THAT
8 WAS -- WHEN I ORDERED SEQUESTRATION OF WITNESSES LONG AGO
9 JUST TO MAKE SURE THERE IS NO MISUNDERSTANDING, I ORDERED
10 SEQUESTRATION FOR THE FIRST PHASE ONLY. I DO NOT ORDER
11 SEQUESTRATION FOR THE SENTENCING PHASE, IF EITHER SIDE WANTS
12 THE RECORD TO REFLECT AN EXCEPTION.

13 MS. STROM: NONE FROM THE STATE.

14 THE COURT: IF YOU WANT TO WAIT UNTIL TOMORROW TO THINK
15 ABOUT IT, I HAVE NO PROBLEM WITH THAT (TO MR. MAULDIN).

16 I KNOW ONE OF THE THINGS THAT WE NEED TO DO IS THE STATE
17 BY WAY OF COUNSEL TO MAKE A PROFFER OF THE VICTIM IMPACT
18 TESTIMONY, AND I'M SURE THERE ARE OTHER ISSUES AS WELL. WHAT
19 I'D LIKE TO DO IS SORT OF DECIDE WHAT WE NEED TO DO AND THEN
20 LET'S GET A SCHEDULE. IF YOU WANT TO DO SOMETHING THIS
21 AFTERNOON, IF YOU WANT TO BACK UP AND LET'S CATCH OUR BREATH
22 AND START IN THE MORNING, THAT SUITS ME FINE.

23 MR. MAULDIN: YOUR HONOR, I CAN TELL YOU WHAT I SEE AS
24 DANGLING ISSUES.

25 THE COURT: YES, SIR.

MATTERS AND MOTIONS

1 **MR. MAULDIN:** MOTION FOR MORE DEFINITE AND CERTAIN ON
2 JANUARY THE 18TH. THIS IS WHAT I WROTE DOWN THAT YOU HELD
3 REGARDING THEIR MOTION -- MY MOTION TO MAKE THEIR EVIDENCE IN
4 AGGRAVATION MORE DEFINITE.

5 WITH REGARD TO SPECIFIC UNCHARGED UNADJUDICATED OR
6 SPECIFIC BAD CONDUCT, THEY HAD TO PROVIDE ME NOTICE BY
7 JANUARY 30TH, AND THAT WAS DONE TO THE EXTENT IT COULD BE.

8 REGARDING VICTIM IMPACT, IT WAS DENIED. HOWEVER, THE
9 COURT INTENDED TO REVIEW VICTIM IMPACT EVIDENCE BETWEEN THE
10 PHASES AND ATTEMPT ON THE FRONT END TO DETERMINE PROPER AND
11 RELEVANT.

12 **THE COURT:** CORRECT.

13 **MR. MAULDIN:** REGARDING FUTURE DANGEROUSNESS, YOU
14 INTENDED TO REVIEW BETWEEN PHASES AND THAT THE 24-HOUR
15 REQUIREMENT MAY BE REASONABLY EXTENDED.

16 THEN, YOUR HONOR, THAT SAME DAY, JANUARY THE 18TH,
17 SPECIFICALLY AS TO VICTIM IMPACT YOU GENERALLY DENIED OUR
18 MOTIONS BUT DID SAY THAT YOU WOULD REVIEW PRIOR TO
19 PRESENTATION TO THE JURY, AND I'VE WRITTEN DOWN THE WORD,
20 NAME WITNESSES AND SUMMARY. NOT GOING TO RULE REGARDING
21 SPECIFICS.

22 AND THAT'S -- AND THEN THE OTHER ONE, YOUR HONOR, WAS
23 THE EVIDENCE REGARDING OUR MOTION REGARDING ANDERSON
24 INFORMATION, WHICH I THINK IS TO SOME EXTENT CHANGED. BUT
25 YOU DID MENTION THAT CHARACTER TYPE EVIDENCE WOULD BE

MATTERS AND MOTIONS

1 ADMISSIBLE AT THE SENTENCING PHASE IF WE HAD SOME COMPELLING
2 ARGUMENT TO THE CONTRARY.

3 SO THAT'S WHAT I SEE AS PENDING RIGHT NOW.

4 THE COURT: THAT LAST POINT ABOUT YOU SAID YOU HAD
5 COMPELLING ARGUMENT TO THE CONTRARY, DOES THAT DEAL WITH A
6 ANDERSON EVIDENCE?

7 MR. MAULDIN: YES, SIR. YOU SAID THAT IT WAS LIKELY TO
8 BE ADMISSIBLE AGAINST MR. WOOD UNLESS WE HAD COMPELLING
9 ARGUMENTS THAT IT WAS NOT ADMISSIBLE, THEN WE COULD REVISIT.

10 THE COURT: I INDICATED I LIKELY WOULD ADMIT IT.

11 MR. MAULDIN: RIGHT.

12 THE COURT: YES.

13 MR. MAULDIN: RIGHT. AND THAT'S ALL THE ONES I HAVE
14 NOTED, YOUR HONOR.

15 THE COURT: SINCE THE JURY IS VERY MUCH DESIROUS OF NOT
16 STARTING THE SENTENCING PHASE UNTIL WEDNESDAY MORNING, WOULD
17 Y'ALL LIKE TO STOP NOW AND ADJOURN AND COME BACK IN THE
18 MORNING?

19 MR. MAULDIN: YES, YOUR HONOR.

20 THE COURT: AND Y'ALL TELL ME A TIME. I REALLY DON'T
21 -- GIVEN THE FACT WE'RE NOT GOING TO DO ANYTHING IN TERMS OF
22 THE JURY TOMORROW, WE COULD DO A COUPLE OF HOURS IN THE
23 MORNING, SAY, STARTING AT 10:00 AND THEN TAKE A BREAK AND
24 FINISH UP IN THE AFTERNOON. I THINK WE WOULD HAVE PLENTY OF
25 TIME TO ACCOMPLISH THAT. ALSO, IT WOULD GIVE YOU SOME TIME

MATTERS AND MOTIONS

1 IN THE MORNING, BOTH SIDES, IN TERMS OF CONTACTING WITNESSES
2 AS WELL AS TIME IN THE AFTERNOON AND EVENING.

3 MR. MAULDIN: YES, SIR.

4 THE COURT: DOES THAT SUIT THE STATE?

5 MS. STROM: JUST ONE MOMENT, YOUR HONOR.

6 (OFF RECORD DISCUSSION)

7 SOLICITOR ARIAIL: YOUR HONOR, 10:00 OR 10:30 WILL BE
8 FINE WITH US. I DON'T BELIEVE IT'S GOING TO TAKE LONG.

9 THE COURT: IT MAY NOT. BUT I JUST -- WHATEVER TIME IT
10 TAKES, WE'LL -- I'M AVAILABLE.

11 SOLICITOR ARIAIL: I DON'T THINK WE SHOULD START AT
12 1:00 JUST IN CASE SOMETHING HAPPENS AND---

13 THE COURT: RIGHT. LET'S DO TEN O'CLOCK. AND, MR.
14 MAULDIN, IS CORRECT. I DO WANT TO HEAR THE PROPOSED VICTIM
15 IMPACT EVIDENCE, NOT BY THE WITNESSES BUT BY IDENTIFICATION
16 OF THE WITNESSES AND A SUMMARY OF THE PROFFER OF WHAT THAT
17 TESTIMONY WILL BE. AND I WOULD LIKE FOR BOTH SIDES TO BE
18 PREPARED TO ARGUE THE ISSUE OF FUTURE DANGEROUSNESS, WHICH
19 WAS RESERVED, AND MR. MAULDIN'S ARGUMENT AS WHY THE JURY
20 SHOULD NOT CONSIDER THE ANDERSON EVIDENCE. SO IT'S IN THE
21 RECORD---

22 MR. MAULDIN: THAT PROBABLY IS NOT GOING TO TAKE VERY
23 LONG TO ARGUE, YOUR HONOR, CONSIDERING THE ULTIMATE APPROACH
24 TO THE CASE THAT WE HAVE TAKEN.

25 THE COURT: OKAY. I'M JUST TRYING TO THINK THAT ONE

MATTERS AND MOTIONS

1 THROUGH.

2 ALSO, I WANT TO GIVE YOU FOLKS TONIGHT -- IT'S BEING
3 COPIED RIGHT NOW. I MADE SOME CHANGES. YOU MADE A REQUEST,
4 MR. MAULDIN, THREE OR FOUR WEEKS AGO ABOUT THE CHARGE.

5 MR. MAULDIN: THE WRITTEN INSTRUCTIONS.

6 THE COURT: YEAH.

7 MR. MAULDIN: YOUR WRITTEN INSTRUCTIONS.

8 THE COURT: I MADE SOME CHANGES AND---

9 MR. MAULDIN: AND I HAVE LOOKED AT THEM AND I WAS GOING
10 TO HAVE SOME OBJECTIONS, AND I'LL TRY---

11 THE COURT: RIGHT. LOOK AT THE NEW DRAFT.

12 MR. MAULDIN: YES, SIR. I'LL TRY BY LUNCHTIME TO HAVE
13 A RESPONSE TO THAT.

14 THE COURT: I'M SURE THERE WILL BE OBJECTIONS. I DON'T
15 THINK THERE ARE GOING TO BE AS MANY. AND I PROBABLY -- WHEN
16 I GOT THAT REQUEST, I JUST PRINTED SOMETHING OFF THERE I WAS
17 GOING TO USE, AND I SHOULD HAVE GIVEN IT MORE THOUGHT. BUT
18 WHEN I WENT BACK AND LOOKED AT IT MYSELF, I HAD LEFT A FEW
19 THINGS OUT. SO I WANTED Y'ALL TO UNDERSTAND I RECOGNIZE THAT
20 AND I WANTED TO GIVE YOU WHAT I THINK IS PROBABLY STILL NOT
21 THE FINAL DRAFT BUT I THINK IT'S CLOSER TO THE FINAL DRAFT.

22 MR. MAULDIN: WELL, IF WE COULD -- IF YOUR HONOR---

23 THE COURT: YOU'RE GOING TO GET IT TODAY.

24 MR. MAULDIN: ALL RIGHT, SIR::

25 THE COURT: IT'S BEING COPIED RIGHT NOW.

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** WE WOULD RENEW ALSO OUR MOTION IN
2 RELATION TO THE FULL TEXT OF DR. NARAYAN'S REPORT. AND
3 DEPENDING UPON WHAT OCCURS AND WHAT IS SAID BY WHAT EXPERTS,
4 THEN WE'LL REVISIT THAT.

5 **THE COURT:** YEAH. LET'S ADDRESS THAT IN THE MORNING.

6 **SOLICITOR ARIAIL:** YES, SIR.

7 **THE COURT:** THAT'S AN ISSUE WE NEED TO ADDRESS. I'LL
8 TELL YOU WHAT, LET'S BE IN RECESS. IF Y'ALL DON'T MIND, JUST
9 WAIT HERE A COUPLE MINUTES. I THOUGHT THE COPIES WOULD BE
10 BACK BY NOW. I'LL CHECK ON IT AND GET THOSE BROUGHT TO YOU
11 QUICKLY.

12 (THAT TRIAL RECESSED FOR THE DAY AT 5:00 P.M.)

13 (THAT TRIAL RESUMED AT 10:03 A.M. ON 2/12/02)

14 **THE COURT:** GOOD MORNING.

15 **MS. STROM:** GOOD MORNING.

16 **MR. MAULDIN:** GOOD MORNING.

17 **THE COURT:** MR. MAULDIN, DO YOU WANT TO PUT ON THE
18 RECORD ANY EXCEPTION TO MY RULING THAT THE POTENTIAL
19 WITNESSES IN THE SENTENCING PHASE WILL NOT BE SEQUESTERED?

20 **MR. MAULDIN:** I WANTED TO ASK YOUR HONOR TO MAKE SURE I
21 HAVE AN UNDERSTANDING AND THEN PERHAPS AN OBJECTION.

22 OBVIOUSLY, VICTIMS UNDER THE VICTIM'S RIGHTS BILL WOULD
23 NOT BE SUBJECT TO SEQUESTRATION EVEN IN THE EVENT OTHER
24 WITNESSES WERE. SO I'M ASSUMING THAT WITNESSES THAT YOU --
25 YOU KNOW, WE HAVE VICTIM IMPACT TESTIMONY. WE HAVE THE

MATTERS AND MOTIONS

1 SUBMISSION OF THE EVIDENCE IN THE PRIOR TRIAL. WE HAVE
2 FUTURE DANGEROUSNESS EVIDENCE, WHICH I DON'T KNOW WHAT THAT
3 IS YET BECAUSE THEY HAVEN'T MADE THEIR PRESENTATION. SO I AM
4 ASSUMING THAT THE ONLY ISSUE FOR ME TO CONSIDER IN THE
5 SEQUESTRATION WOULD BE POTENTIAL REBUTTAL EXPERT WITNESSES.
6 I MEAN, THAT'S -- BECAUSE ALL OF THE OTHERS -- THE VICTIMS
7 CAN'T BE SEQUESTERED. IT DOESN'T -- YOU DON'T HAVE ANY LIVE
8 WITNESSES FOR THE MOVING OF THE EVIDENCE OF THE PRIOR TRIAL
9 INTO THIS TRIAL. YOU DON'T HAVE ANY LIVE WITNESSES FOR PRIOR
10 RECORD BECAUSE THAT'S A MATTER OF OFFICIAL -- THEY JUST
11 PRESENT THE OFFICIAL CERTIFIED COPIES. SO I THINK THAT THE
12 ONLY WITNESSES THAT I HAVE TO BE CURIOUS OF WOULD BE THE ONES
13 THAT COULD POSSIBLY BE REPLY EXPERT WITNESSES FOR ALL INTENTS
14 AND PURPOSES.

15 UNDER THOSE CIRCUMSTANCES, I THINK THAT THE FAILURE TO
16 SEQUESTER IS DIRECTED SPECIFICALLY AT THE ABILITY OF THE
17 STATE TO OFFER REBUTTAL EVIDENCE THROUGH EXPERTS. THEREFORE,
18 THE STATE IS THE ONLY ONE WHO BENEFITS FROM IT. IN OTHER
19 WORDS, IT IS A DIRECT BENEFIT TO THE GOVERNMENT TO ALLOW
20 THEIR REBUTTAL EXPERT WITNESSES TO SIT IN THE COURTROOM, AND
21 THERE IS NO -- THERE APPEARS TO BE NO OTHER ADVANTAGE OR
22 DISADVANTAGE EITHER WAY. SO TO ME THAT IS AN UNFAIR
23 CALCULATION OF THE EFFECT AND THEREFORE WE WOULD TAKE
24 EXCEPTION TO IT ON THAT -- TO THAT EXTENT.

25 THE COURT: VERY GOOD. YOUR EXCEPTION IS NOTED. I

MATTERS AND MOTIONS

1 WILL NOT SEQUESTER WITNESSES DURING THE SENTENCING PHASE.

2 ALL RIGHT. THE FIRST MATTER THAT WAS BROUGHT TO MY
3 ATTENTION YESTERDAY IS THE MATTER OF VICTIM IMPACT TESTIMONY.
4 I WOULD LIKE THE STATE TO PRESENT THE IDENTITY OF THE
5 PROPOSED WITNESSES IN THAT REGARD AND A PROFFER OF THE
6 MATERIAL OF WHAT THAT TESTIMONY WOULD BE.

7 MS. STROM: YES, YOUR HONOR. THE STATE INTENDS TO CALL
8 TROOPER BILL MCCAULEY, WHO TESTIFIED EARLIER IN THE GUILT
9 PHASE OF THE TRIAL. TROOPER MCCAULEY HAS KNOWN ERIC -- HAD
10 KNOWN ERIC NICHOLSON SINCE THE TIME THAT HE CAME TO
11 GREENVILLE.

12 THE COURT: AND WHEN WAS THAT, MA'AM?

13 MS. STROM: I BELIEVE, YOUR HONOR -- I DON'T HAVE THE
14 EXACT DATE. I LEFT THAT PAD OVER IN THE OTHER OFFICE. BUT I
15 BELIEVE IT WAS BACK IN '98 WHEN HE FIRST CAME TO GREENVILLE.
16 I COULD BE WRONG ON THAT YEAR, BUT THAT'S THE APPROXIMATE
17 TIME. AND, IN FACT, WHEN ERIC NICHOLSON CAME TO GREENVILLE,
18 TROOPER MCCAULEY WAS HIS TRAINING OFFICER, SO HE SPENT A GOOD
19 DEAL OF TIME WITH HIM, GOT TO KNOW HIM, WOULD BE ABLE TO TALK
20 ABOUT THAT THEY WORKED CLOSELY TOGETHER NOT ONLY AT THAT TIME
21 BUT ALSO THEY DID A MAJOR INVESTIGATION TOGETHER, AND THAT'S
22 HOW HE WAS ABLE TO REALLY GET TO KNOW HIM, GET TO KNOW WHAT
23 TYPE OF PERSON HE WAS, THAT ERIC NICHOLSON HAD TALKED ABOUT
24 AND THERE HAD BEEN, FOR LACK OF A BETTER TERM, KIDDING
25 CONVERSATIONS ABOUT WHY HADN'T ERIC STARTED A FAMILY YET, WHY

MATTERS AND MOTIONS

1 DOESN'T HE JUST JUMP IN WITH BOTH FEET LIKE THE REST OF THE
2 TROOPERS AND GO AHEAD AND HAVE KIDS. SO THERE WERE
3 DISCUSSIONS BETWEEN ERIC NICHOLSON AND BILL MCCAULEY
4 REGARDING ERIC'S FUTURE TO HAVE A FAMILY.

5 ALSO WE PLAN TO GET FROM TROOPER MCCAULEY THE IMPACT
6 THAT ERIC'S DEATH HAS HAD ON HIM PERSONALLY AS A FRIEND OF
7 ERIC'S, THE FACT THAT ERIC WAS THE TYPE OF PERSON WHO ALWAYS
8 BROUGHT LAUGHTER AND POSITIVE ENERGY TO HIM AS A FRIEND AND
9 AS A TROOPER. ONE OF THE COMMENTS THAT TROOPER MCCAULEY
10 STATED TO ME WAS NO MATTER HOW MUCH HE MAY BE MAD AT THE
11 WORLD, WHEN ERIC CAME IN HE COULD TAKE THAT AWAY. HE WAS
12 JUST THAT TYPE OF PERSON.

13 I WOULD ALSO INTEND TO ELICIT FROM TROOPER MCCAULEY THE
14 IMPACT THIS HAS HAD ON HIM AS A TROOPER, THE FACT THAT EVERY
15 TIME HE MAKES A STOP WHICH IS NORMALLY CONSIDERED A ROUTINE
16 STOP, IT'S NO LONGER ROUTINE. HE CONSTANTLY THINKS ABOUT
17 WHAT HAPPENED TO ERIC WHEN ERIC WAS MAKING A ROUTINE STOP AND
18 HOW THAT HAS AFFECTED HIM AND HIS FAMILY ASKING HIM TO LEAVE
19 LAW ENFORCEMENT FOR THIS VERY REASON.

20 ALSO, YOUR HONOR, I WOULD ELICIT FROM TROOPER MCCAULEY
21 THE IMPACT THAT IT HAD UPON HIM WHEN HE ARRIVED AT THE SCENE
22 AND SAW ERIC IN THE CONDITION HE WAS AND HIS RESUSCITATIVE
23 EFFORTS AT THAT TIME, WHAT HE WAS THINKING, WHAT HE WAS GOING
24 THROUGH IN ATTEMPTING TO SAVE HIS FRIEND'S LIFE. AND HIS
25 TESTIMONY WOULD BE THAT BASICALLY HIS TRAINING KICKED IN. HE

MATTERS AND MOTIONS

1 HAD TO BLOCK EVERYTHING OUT AT THAT TIME IN ORDER TO DO WHAT
2 HE WAS TRAINED TO DO, AND IT WASN'T UNTIL E.M.S. ARRIVED AND
3 TOOK OVER THE RESUSCITATIVE EFFORTS THAT BASICALLY HE WENT
4 BACK TO HIS PATROL CAR, SAT DOWN IN HIS PATROL CAR, SHUT THE
5 DOOR AND BROKE DOWN. THAT WOULD BE TROOPER MCCAULEY'S
6 TESTIMONY.

7 THE COURT: ALL RIGHT. GO TO THE NEXT ONE, PLEASE.

8 MS. STROM: YOUR HONOR, WE WOULD ALSO CALL MISTY
9 NICHOLSON, WHO IS THE WIDOW OF ERIC NICHOLSON. I WOULD
10 ELICIT FROM HER TESTIMONY AS TO WHEN AND HOW SHE MET ERIC,
11 THE FACT THEY HAD DATED FOR SEVERAL YEARS PRIOR TO GETTING
12 ENGAGED AT CHRISTMAS OF '97, AND THE FACT THAT HE WAS
13 ACTUALLY IN THE ACADEMY, THAT HE ALWAYS WANTED TO BE A
14 TROOPER. THAT'S ONE THING HE HAD ALWAYS TALKED ABOUT, HE
15 ALWAYS WANTED TO BE A TROOPER. SHE KNEW WHEN SHE WAS DATING
16 HIM. SHE KNEW BEFORE SHE MARRIED HIM THAT HE WANTED TO BE A
17 TROOPER AND, IN FACT, WAS IN THE ACADEMY AT THE TIME THAT
18 THEY GOT MARRIED. WHEN HE LEFT THE ACADEMY, HE WENT TO
19 FLORENCE TO BEGIN HIS DUTIES AS A HIGHWAY PATROLMAN, AND AS
20 SUCH THEY HAD TO POSTPONE THEIR HONEYMOON, THAT THEIR PLANS
21 WERE TO HAVE A FAMILY. THEY HAD RECENTLY BOUGHT A HOUSE JUST
22 A FEW MONTHS BEFORE ERIC WAS KILLED, THAT THE NEXT WEEKEND,
23 THE WEEKEND AFTER ERIC'S DEATH, THEY HAD PLANNED TO GO TO
24 GATLINBURG FOR A CHRISTMAS VACATION SINCE IT WAS SO CLOSE TO
25 CHRISTMAS. SHE WOULD ALSO TESTIFY, YOUR HONOR, THAT AGAIN

MATTERS AND MOTIONS

1 THEY HAD LONG TERM PLANS TO HAVE A FAMILY, THAT THE IMPACT
2 THIS HAS HAD UPON HER FROM THE STANDPOINT OF CONSTANTLY
3 LOOKING FOR HIM TO COME HOME, THE IMPACT IT HAS HAD ON HIS
4 FAMILY. SHE HAS NOTICED THAT HIS FAMILY HAS AGED MORE SO
5 THAN WHAT WOULD NORMALLY BE EXPECTED. THAT SHE HAS HAD TO DO
6 THINGS NOW THAT SHE'S NEVER HAD TO DO BEFORE. WHEN ERIC WAS
7 ALIVE SHE WAS A SUPPORTING INCOME, AND NOW SHE IS THE ONLY
8 INCOME. SHE MENTIONED LITTLE THINGS SUCH AS SHE HAD NEVER
9 CRANKED A LAWN MOWER. SHE DOES NOT GROCERY SHOP ANYMORE
10 BECAUSE IT IS -- THERE IS NO POINT IN COOKING FOR ONE PERSON.
11 AND HOW HER LIFE HAS COMPLETELY CHANGED SINCE THIS EVENT. I
12 ALSO INTEND TO ELICIT FROM HER, YOUR HONOR, THE TESTIMONY OF
13 HOW SHE FOUND OUT ABOUT HIS DEATH THAT DAY, THAT ERIC HAD
14 ONCE TOLD HER THAT IF ANYTHING EVER HAPPENED YOU WOULD GET A
15 KNOCK ON THE DOOR, AND HOW SHE RECEIVED THE CALL FROM A
16 TROOPER SAYING, "I'M COMING TO GET YOU TO TAKE YOU TO THE
17 HOSPITAL BECAUSE THERE HAS BEEN AN ACCIDENT." AND THE WHOLE
18 TIME UNTIL THEY GOT TO THE HOSPITAL SHE WAS THINKING HE HAD
19 BEEN IN A CAR ACCIDENT. AND WHEN SHE GOT TO THE HOSPITAL AND
20 SAW THAT NO ONE WOULD LOOK AT HER, SHE KNEW HE WAS DEAD, SHE
21 WOULD ALSO TESTIFY THAT SHE ASKED TO SEE ERIC BEFORE SHE LEFT
22 THE HOSPITAL, AND THEY TOLD HER THEY COULD NOT -- THAT SHE
23 COULD NOT SEE HIM AT THAT TIME BECAUSE HE WAS STILL VERY
24 BLOODY. SHE WOULD NOT USE THE TERM BLOODY. SHE WOULD SIMPLY
25 SAY SHE WAS NOT ALLOWED TO SEE HIM AT THAT TIME BECAUSE THEY

MATTERS AND MOTIONS

1 HAD NOT CLEANED HIM UP YET. SO SHE HAD TO LEAVE THE HOSPITAL
2 WITHOUT SEEING HIM. ALSO, YOUR HONOR, THAT SHE WILL TESTIFY
3 THAT ALSO THE IMPACT ON HIS FAMILY IS THAT THEY WILL NEVER
4 HAVE GRANDCHILDREN. HE WAS THE LAST OF THE NICHOLSONS.
5 THAT'S A SUMMARY OF HER TESTIMONY.

6 THE COURT: WHO IS NEXT?

7 MS. STROM: YOUR HONOR, WE INTEND TO OFFER OFFICER MIKE
8 GRANT OF ANDERSON AS HE WAS A VICTIM OF THIS DEFENDANT'S
9 ACTIONS. YOU WILL RECALL FROM THE EARLIER TESTIMONY HE WAS
10 THE OFFICER WHO WAS HIT DURING THE ANDERSON CHASE. HE WOULD
11 TESTIFY, YOUR HONOR, THAT BASICALLY WHAT HE WAS THINKING AT
12 THAT TIME, THAT HIS RESPONSE WAS WHEN HE KNEW HE HAD BEEN
13 SHOT WAS THAT HE WOULD NOT SEE HIS FAMILY AGAIN, AND THAT WAS
14 THE PRIMARY THING ON HIS MIND, THAT HE WOULD NOT SEE HIS
15 FAMILY AGAIN. AND AS A RESULT OF BEING SHOT, ALTHOUGH IT
16 ENDED UP NOT BEING LIFE THREATENING, HE HAS RETIRED EARLY
17 FROM THE FORCE AND IS IN COUNSELING TO DEAL WITH THAT ISSUE.
18 YOUR HONOR, WE WOULD ALSO INTEND TO -- THAT WOULD BE THE
19 SUMMARY OF MIKE GRANT'S TESTIMONY.

20 THE COURT: ALL RIGHT. WHO IS NEXT?

21 MS. STROM: THAT WOULD BE THE EXTENT OF VICTIM IMPACT
22 TESTIMONY.

23 THE COURT: ALL RIGHT.

24 MS. STROM: WE DO INTEND TO INTRODUCE TWO PHOTOGRAPHS
25 OF ERIC NICHOLSON IN LIFE. BOTH OF THE PHOTOGRAPHS SHOW HIM

MATTERS AND MOTIONS

1 IN THE HIGHWAY PATROL UNIFORM.

2 THE COURT: ANYTHING ELSE IN CONNECTION WITH VICTIM
3 IMPACT EVIDENCE?

4 MS. STROM: NO, SIR.

5 THE COURT: ALL RIGHT. MR. MAULDIN, I'LL BE GLAD TO
6 HEAR FROM YOU, SIR.

7 MR. MAULDIN: YOUR HONOR, LET ME GO BACK TO START AT
8 THE FINAL. I HAD FOUR ITEMS. LET ME START WITH NUMBER FOUR,
9 THE PHOTOS. WE DO REQUEST THAT THE COURT AND DEFENSE HAVE AN
10 OPPORTUNITY TO AT LEAST SEE THEM BEFORE THEY ARE PRESENTED.
11 I MEAN, I HAVE NO IDEA WHAT THEY EVEN ARE.

12 THE COURT: I AGREE.

13 MR. MAULDIN: (REVIEWS PHOTOGRAPHS) YOUR HONOR, WE
14 HAVE NO OBJECTION TO THE TWO PHOTOGRAPHS. THERE IS AN ITEM
15 STUCK ON THE BACK OF ONE OF THE PHOTOGRAPHS THAT WE WOULD
16 WANT TO HAVE THE COURT DETERMINE ITS APPROPRIATENESS. OTHER
17 THAN THAT, THE FACE OF THE PHOTOGRAPHS WE HAVE NO -- IF YOU
18 WANT TO JUST COVER THAT UP.

19 MS. STROM: YOUR HONOR, WHAT IT IS---

20 MR. MAULDIN: IT'S A RETURN ADDRESS STICKER WITH A
21 LITTLE PHOTO ON IT, AND WE JUST THINK THAT IT'S SOMETHING
22 THAT COULD PERHAPS HAVE AN EFFECT ON ONE OR MORE JURORS, AND
23 IT JUST IS UNNECESSARY. BUT THE PICTURES THEMSELVES, YOUR
24 HONOR, WE HAVE NO OBJECTION TO.

25 MS. STROM: THE RETURN ADDRESS, YOUR HONOR, IS OF HIS

MATTERS AND MOTIONS

1 MOTHER. SHE HAD USED THAT PHOTOGRAPH TO SEND TO DIFFERENT
2 PEOPLE SO THAT THEY COULD PUT HIS PICTURE IN THE PAPER AND
3 THAT SORT OF THING SO IT WAS RETURNED TO HER. WE CAN COVER
4 THAT UP WITH A---

5 THE COURT: YOU MIGHT BE ABLE TO PEEL IT OFF.

6 MS. STROM: I CAN EITHER PEEL IT OFF OR COVER IT UP.

7 MR. MAULDIN: YES, SIR. THE FACE AND THE PHOTOS, THE
8 FRONT COVER OF THE PHOTOS, WE HAVE NO OBJECTION TO.

9 THE COURT: ALL RIGHT.

10 MR. MAULDIN: WITH REGARD TO OFFICER MIKE GRANT, YOUR
11 HONOR, HE WAS, IF YOU WILL RECALL, A GENTLEMAN WHO A SHOT WAS
12 FIRED THROUGH THE PASSENGER WINDSHIELD AND A FRAGMENT OF WHAT
13 I BELIEVE HAS BEEN IDENTIFIED AS A FRAGMENT OF A BULLET CAME
14 ACROSS AND HIT HIM RIGHT BETWEEN THE EYES, RIGHT HERE IN THE
15 FOREHEAD. THE -- AND THEN THE STATEMENTS BY THE SOLICITOR
16 ARE THAT HE KNEW HE WAS SHOT, HE HAD -- IT CAUSED HIM TO THEN
17 TAKE EARLY RETIREMENT AND THAT HE HAS GONE THROUGH COUNSELING
18 AS A RESULT OF THAT EARLY RETIREMENT.

19 THE QUESTION I WOULD HAVE WITH REGARD TO OFFICER MIKE
20 GRANT IS THE -- HOW THAT WOULD CONSTITUTE VICTIM IMPACT
21 EVIDENCE IN THIS CASE. YOU KNOW, THE VICTIM IMPACT CONCEPT
22 IS ESSENTIALLY AN OPPORTUNITY FOR JURORS TO KNOW MORE ABOUT
23 THE VICTIM OF THE OFFENSE FOR WHICH THE DEFENDANT HAD BEEN
24 CONVICTED. THAT'S KIND OF THE OVERALL CONCEPT. LIMITATIONS
25 AND SO FORTH ON THAT HAVE DEVELOPED SINCE PAYNE v. TENNESSEE

MATTERS AND MOTIONS

1 (PHONETIC). BUT THE IDEA IS THE DEMONSTRATION OF MORE THAN
2 SIMPLY AN IMAGINARY THING BUT AN OPPORTUNITY TO HAVE A
3 GLIMPSE -- A BRIEF GLIMPSE OF THE LIFE OF THE VICTIM. THERE
4 IS NO DIRECT CONNECTION BETWEEN A GLIMPSE AT THE LIFE OF ERIC
5 NICHOLSON AND MIKE GRANT. THE EVIDENCE REGARDING WHAT
6 OCCURRED IN ANDERSON, THE STATE TOOK THE POSITION THROUGHOUT
7 THE LAST SEVERAL MONTHS THAT THAT WAS RELEVANT TO PROVE
8 ELEMENTS OF THE OFFENSE IN GREENVILLE. AND THAT WAS WHAT WE
9 STRUGGLED WITH THROUGH OUR MOTIONS AND ARGUMENTS AND THE
10 COURT RULED. SO TO EXTEND A -- I GUESS THE ARGUMENT WOULD BE
11 SHOOTING -- HERE'S WHAT CAN HAPPEN TO A LAW ENFORCEMENT
12 OFFICER IF HE GETS SHOT AND DOESN'T DIE. HE GOES THROUGH
13 PSYCHOLOGICAL STRESS AND RETIRES. AND I'VE GOT ALL THE
14 SYMPATHY IN THE WORLD FOR HIM, BUT IT IS NOT VICTIM IMPACT
15 REGARDING A MURDER CONVICTION IN A CAPITAL SENTENCING OF ERIC
16 NICHOLSON. SO WE OBJECT STRENUOUSLY -- WE OBJECT TO MIKE
17 GRANT EVIDENCE.

18 THE COURT: I UNDERSTAND.

19 MR. MAULDIN: NOW, YOUR HONOR, WITH REGARD TO BILL
20 MCCAULEY AND MISTY NICHOLSON. FOR THE RECORD, WE ENTER AN
21 OBJECTION RESPECTFULLY TO THE MCCAULEY EVIDENCE. WE REALIZE
22 THE CASE AUTHORITY, AND SO I WILL NOT ARGUE UNLESS THE COURT
23 SIMPLY WANTS ME TO PUT WORDS ON THE RECORD. I JUST OBJECT TO
24 ESSENTIALLY A PROFESSIONAL VICTIM IMPACT PRESENTATION AS
25 OPPOSED TO A PERSONAL FAMILY PRESENTATION. THAT HAVING BEEN

MATTERS AND MOTIONS

1 SAID, YOUR HONOR, I WOULD JUST POINT OUT A COUPLE OF THINGS
2 WITHIN HIS PRESENTATION THAT I WOULD LIKE TO MAKE A SPECIFIC
3 EXCEPTION TO. THE FIRST WOULD BE REFERENCE TO, I BELIEVE,
4 THE SOLICITOR SAID, A MAJOR INVESTIGATION WHERE THEY HAD
5 BECOME -- THEY HAD GOTTEN TO KNOW EACH OTHER BETTER OR
6 SOMETHING TO THAT EFFECT. I DON'T THINK -- I THINK THAT IS
7 BEYOND THE SCOPE OF WHAT THE JURY NEEDS TO HEAR. HIS WORKING
8 RELATIONSHIP AND HIS KNOWLEDGE OF ERIC AND HIS CONNECTIONS
9 WITH ERIC IN TRAINING AND WORKING CASES IN GENERAL IS FINE.
10 BUT I HAVE NO IDEA WHAT IS GOING TO COME WHEN THEY START
11 TALKING ABOUT A MAJOR INVESTIGATION. I MEAN, ARE WE GOING TO
12 GET INTO THE FACTS OF SOME OTHER CASE? ARE WE GOING TO GET
13 INTO ALLEGATIONS OF SOMETHING OR SOMETHING THAT WAS VERY
14 HIGHLY PUBLICIZED? THAT IS NOT APPROPRIATE AND IS A POSSIBLE
15 BRINGING OF SOMETHING -- AN OUTSIDE INFLUENCE ONTO THE JURY'S
16 DELIBERATION BY INVITATION. SO I TAKE EXCEPTION TO THE RIGHT
17 OF THE STATE TO REFER TO A "MAJOR INVESTIGATION" AND TO DEAL
18 WITH IT IN WHATEVER METHOD THEY INTENDED TO.

19 THE OTHER TWO MATTERS WITH REGARD TO MR. MCCAULEY WOULD
20 BE THE STATEMENTS BY OFFICER MCCAULEY REGARDING ERIC
21 NICHOLSON AND HIS CONVERSATIONS WHERE HE IS PURPORTEDLY
22 SAYING TO ERIC, "GO AHEAD AND START A FAMILY. ALL THE
23 TROOPERS ARE DOING IT" AND ALL THAT. THE -- THAT IS FOR THE
24 WIDOW TO TESTIFY TO. WHAT BILL MCCAULEY MIGHT HAVE TOLD ERIC
25 ABOUT HE NEEDS TO GO AHEAD AND START A FAMILY IS WHAT I FEEL

MATTERS AND MOTIONS

1 LIKE IS KIND OF SIMILAR TO PILING ON. MISTY NICHOLSON HAS
2 EVERY RIGHT AND SHOULD BE GIVEN THE OPPORTUNITY TO DESCRIBE
3 HER RELATIONSHIP WITH HER HUSBAND AND THEIR PLANS AND WHAT
4 THIS INCIDENT INTERRUPTED AND HAS ESSENTIALLY ENDED FOR HER.
5 BUT I DON'T THINK THAT WE SHOULD THEN ALLOW ANOTHER PERSON TO
6 COME IN AND SAY, "YEAH, I TOLD HIM TO GO AHEAD AND HAVE
7 CHILDREN" BECAUSE THEY DIDN'T HAVE CHILDREN. AND THAT'S FOR
8 MISTY NICHOLSON TO TELL THIS JURY. BUT I DON'T THINK THAT IT
9 IS SOMETHING THAT AN OFFICER SHOULD BE ABLE TO TESTIFY TO IN
10 THAT PRESENTATION.

11 THE FINAL COMMENT REGARDING MR. MCCAULEY IS I DON'T KNOW
12 HOW THE -- SHE SAID THAT THERE WOULD BE A PRESENTATION
13 REGARDING WHAT OCCURRED AT THE SCENE. HE HAS ALREADY -- HE
14 HAS TESTIFIED TO WHAT HAPPENED AT THE SCENE. HIS -- WHEN SHE
15 -- SHE SAID THAT THE REASON HE WAS ABLE TO DO THINGS AT THE
16 SCENE WAS BECAUSE OF HIS -- THAT HIS TRAINING KICKED IN. I
17 GUESS IT WOULD BE ALMOST LIKE HE WAS OPERATING ON ADRENALINE
18 AND WITHOUT REALLY EMOTIONALLY THINKING ABOUT WHAT HE WAS
19 DOING BUT THAT WHEN HE WENT BACK TO HIS CAR HE BROKE DOWN.
20 I'M GOING TO ADDITIONALLY PUT IN AN OBJECTION TO THAT.

21 AND THAT'S ALL I'LL SAY UNLESS THE COURT WANTS ME TO
22 NECESSARILY GET INTO ANY DETAIL. SO I HAVE THREE SPECIFIC
23 OBJECTIONS TO MCCAULEY PLUS A GENERAL OBJECTION TO MCCAULEY.

24 NOW, WITH REGARD TO MISTY, I WOULD BRING TO THE COURT'S
25 ATTENTION THESE -- OUT OF THE POINTS THAT I NOTED, THE

MATTERS AND MOTIONS

1 COMMENT WAS MADE THAT THEY HAD JUST BOUGHT A HOUSE BEFORE
2 ERIC WAS KILLED, AND THEN ANOTHER COMMENT WAS --

3 AND LET ME SAY BEFORE I TALK ABOUT THESE POINTS, I WANT
4 TO SAY THAT THESE ARE PUT ON THIS RECORD WITH ABSOLUTE
5 RESPECT. WE HAVE A DUTY, AND I'M GOING TO MAKE SURE THAT MY
6 DUTY IS DONE.

7 ANYWAY, THE INCOME ISSUES, I HAVE NO CLUE. I CERTAINLY
8 HOPE THAT OUR STATE GOVERNMENT HAS A WAY OF CARING FOR PEOPLE
9 WHERE A STATE EMPLOYEE LIKE ERIC NICHOLSON MEETS A TRAGEDY
10 LIKE THIS. I DON'T HAVE ANY IDEA, AND I DON'T WANT TO EVEN
11 ASK. I DON'T WANT TO BE PLACED IN A SITUATION WHERE
12 INFORMATION IS PUT BEFORE THE JURY THAT -- IT'S RIDICULOUS
13 FOR IT TO BE ASKED WHETHER OR NOT MISTY WAS HELPED TO FACE OR
14 DEAL WITH THE FINANCIAL HARDSHIPS THAT SHE OBVIOUSLY HAD TO
15 DEAL WITH. I DON'T HAVE ANY IDEA ABOUT THAT. BUT THE JURY
16 -- IT WOULD SEEM TO ME LIKE IF THE JURY IS CHALLENGED TO TAKE
17 INTO CONSIDERATION OR TO REACT TO A FINANCIAL IMPACT -- YOU
18 KNOW, SHE BOUGHT A -- THEY BOUGHT A HOUSE AND THEN HE GOT
19 KILLED. I'M NOT GOING TO ASK HER QUESTIONS ABOUT THE
20 CONSEQUENCES AND WHAT HAPPENED WITH THAT BECAUSE I THINK IT'S
21 DOWNRIGHT RUDE FOR ME TO DO THAT. BUT I CAN'T -- BUT IT'S
22 DIFFICULT FOR ME TO THEN -- FOR SOMETHING TO BE PUT INTO THE
23 JURY THAT I THINK IS INAPPROPRIATE AND THEN NO ABILITY. YOU
24 KNOW, IT'S EASY FOR THE STATE TO SAY, WELL, YOU CAN JUST ASK
25 HER. BUT THAT'S JUST TACKY. I MEAN, IT'S UGLY. SO I'M

MATTERS AND MOTIONS

1 ASKING THAT THE COURT TAKE INTO CONSIDERATION WHETHER THERE
2 SHOULD BE SOME LIMITATION ON AN INFERENCE TO THE JURY THAT
3 THEY SHOULD TAKE THAT INTO CONSIDERATION WHEN THERE IS GOING
4 TO BE NO INTENTION OF TRYING TO FURTHER QUESTION AS TO WHAT
5 TYPE OF ASSISTANCE THAT THE STATE CERTAINLY, I HOPE, GAVE
6 HER.

7 I THINK THAT THE -- I THINK THAT THE TESTIMONY REGARDING
8 GOING TO THE HOSPITAL -- AND THE ONE AREA THAT I HAD PUT A
9 MARK BY WAS HER PROPOSED TESTIMONY THAT NO ONE WOULD LOOK AT
10 HER. I DON'T KNOW WHETHER THAT'S OBJECTIONABLE OR NOT. I
11 MEAN, I'LL OBJECT TO IT. I JUST -- YOU KNOW, IT'S A HORRIBLE
12 SITUATION. I DON'T -- SO THOSE ARE THE OFFICIAL OBJECTIONS I
13 PUT ON THOSE WITNESSES, YOUR HONOR.

14 THE COURT: ALL RIGHT, SIR. IF THE STATE WANTS TO
15 RESPOND, PLEASE DO SO. I'M PARTICULARLY INTERESTED IN THE
16 STATE'S POSITION REGARDING OFFICER GRANT.

17 MS. STROM: YOUR HONOR, I BELIEVE AS I STATED EARLIER,
18 OFFICER GRANT IS NOT ONLY A VICTIM OF THE DIRECT ACTIONS OF
19 THIS DEFENDANT, LAW ENFORCEMENT IN GENERAL IS A VICTIM OF THE
20 ACTIONS OF THIS DEFENDANT. AND I THINK THIS JURY IS ALLOWED
21 TO KNOW AND SHOULD KNOW WHAT IT IS THAT A LAW ENFORCEMENT
22 OFFICER -- HOW HE IS AFFECTED BY THIS. THIS IS SOMETHING
23 THAT THEY HAVE TO DEAL WITH ON A DAILY BASIS, AND IT'S NOT
24 JUST ERIC NICHOLSON IS THE VICTIM. LAW ENFORCEMENT IS THE
25 VICTIM. AND WHAT HE EXPERIENCED AS A RESULT OF THESE ACTIONS

MATTERS AND MOTIONS

1 AS A LAW ENFORCEMENT OFFICER, I THINK, IS VERY APPROPRIATE
2 FOR THIS JURY.

3 AND, YOUR HONOR, IF I MAY MENTION ONE THING BACK ON
4 MISTY NICHOLSON THAT I FAILED TO NOTE TO YOU. IT'S SIMPLY I
5 JUST FORGOT IT.

6 THE COURT: YES, MA'AM.

7 MS. STROM: ONE OF THE THINGS THAT SHE WOULD ALSO
8 TESTIFY TO IS TO SHOW THE IMPACT THAT ERIC HAD ON THE LIVES
9 OF OTHERS AS FAR AS HOW MANY CARDS AND LETTERS SHE RECEIVED
10 FROM VARIOUS INDIVIDUALS WHEN THEY LEARNED THAT HE HAD BEEN
11 KILLED. I'M NOT GOING TO INTRODUCE THOSE LETTERS. I'M NOT
12 GOING TO INTRODUCE THOSE CARDS. BUT IN PARTICULAR SHE
13 RECEIVED A CARD FROM A FAMILY DOWN IN FLORENCE WHO NOTED TO
14 HER THAT ONE DAY ERIC HAD MET THEIR THREE-YEAR-OLD CHILD AND
15 HAD TAKEN TIME TO TALK WITH HER AND MADE A POSITIVE
16 IMPRESSION ON THAT CHILD, AND THAT SHE HAD RECEIVED A CARD
17 FROM THEM WHEN THEY LEARNED OF HIS DEATH, JUST TO SHOW THE
18 EXTENT OF THE IMPACT AND THE EFFECT THAT ERIC HAD ON THE
19 LIVES OF OTHERS.

20 MR. MAULDIN: YOUR HONOR, I WOULD POINT OUT THAT, YOU
21 KNOW, THAT WOULD APPEAR TO BE HEARSAY. THAT REFERENCE WOULD
22 APPEAR TO BE A HEARSAY VIOLATION FROM A TECHNICAL POINT OF
23 VIEW. SO WE WOULD CERTAINLY OBJECT TO THE CONTENT. THAT SHE
24 RECEIVED CONDOLENCES, CARDS, LETTERS, HUNDREDS IS ABSOLUTELY
25 APPROPRIATE. BUT TO GO INTO THE CONTENTS OF IT FOR TRUTH OF

MATTERS AND MOTIONS

1 THE MATTER ASSERTED IS JUST SIMPLY NOT EVIDENTIARILY ALLOWED.

2 THE COURT: ALL RIGHT.

3 SOLICITOR ARIAIL: CAN I MAKE ONE POINT? I JUST HAD
4 THIS -- AND I'VE BEEN ASSIGNED OTHER DUTIES. THE REASON THAT
5 -- THERE IS A REASON WHY KILLING A LAW ENFORCEMENT OFFICER IS
6 AN AGGRAVATED CIRCUMSTANCE IN THIS STATE. AND THE REASON IS
7 MORE THAN THAT THE LAW ENFORCEMENT OFFICER IS A HUMAN BEING.
8 IT'S MORE THAN THAT. HE REPRESENTS SOMETHING IN OUR SOCIETY
9 THAT IS FUNDAMENTAL TO ITS CONTINUED EXISTENCE, AND THAT IS,
10 THAT LINE BETWEEN GOOD AND EVIL. THAT'S WHY THE ASSAULT --
11 IF THIS CASE WERE LIMITED TO ONE ASSAULT, ONE BULLET AND ONE
12 SHOT, TWO BULLETS, TWO SHOTS, BUT IT'S MULTIPLE BULLETS AND
13 IT'S AN OVERALL ASSAULT. AND THEY MADE THE POINT. THEY MADE
14 THE POINT AD NAUSEAM IN THEIR CLOSING ARGUMENT. HE DIDN'T
15 SHOOT -- OR IN CROSS EXAMINATION. HE DIDN'T SHOOT ANY
16 CIVILIANS. HE JUST SHOT A LAW ENFORCEMENT. THAT'S THE WHOLE
17 POINT OF WHY IT'S AN AGGRAVATING CIRCUMSTANCE, OF WHY MIKE
18 GRANT'S TESTIMONY IS SO IMPORTANT. THIS IS AN ATTACK ON LAW
19 ENFORCEMENT. THIS WHOLE CASE IS AN ATTACK ON LAW ENFORCEMENT
20 AND WHAT IT REPRESENTS TO THE FOUNDATION OF OUR SOCIETY.

21 THE COURT: ALL RIGHT. I'M GOING TO RULE AND THEN
22 WE'LL MOVE ON TO ANOTHER ISSUE.

23 FIRST OF ALL, I APPRECIATE WHAT THE STATE HAS DONE IN
24 TERMS OF LIMITING VICTIM IMPACT TESTIMONY, THAT WE'RE NOT
25 DEALING WITH AN EFFORT TO PUT UP EIGHT TROOPERS, AND I

MATTERS AND MOTIONS

1 APPRECIATE THE STATE'S APPROACH.

2 I DO NOT FIND THAT OFFICER MIKE GRANT FALLS WITHIN THE
3 VICTIM IMPACT EVIDENCE AND HIS TESTIMONY WILL NOT BE
4 PERMITTED. THAT DOES NOT MEAN THAT ARGUMENT CANNOT BE MADE
5 AS WE DEAL WITH OTHER BAD ACTS. BUT I DECLINE TO PERMIT HIS
6 TESTIMONY UNDER THE AUSPICES OF VICTIM IMPACT EVIDENCE, AND I
7 SUSTAIN THE OBJECTION TO THAT.

8 I FIND THE TESTIMONY OF TROOPER MCCAULEY AND MS.
9 NICHOLSON AS OUTLINED TO BE APPROPRIATE WITH THE FOLLOWING
10 STATEMENTS.

11 I OVERRULE THE OBJECTION TO TROOPER MCCAULEY REFERENCING
12 A MAJOR INVESTIGATION. I DO NOT ANTICIPATE THAT MUCH TIME
13 WILL BE SPENT ON DESCRIBING THAT MAJOR INVESTIGATION. THE
14 PURPOSE OF THAT DESCRIPTION IS SIMPLY TO GIVE THE JURY AN
15 OPPORTUNITY TO UNDERSTAND THAT THESE TWO INDIVIDUALS KNEW
16 EACH OTHER QUITE WELL, AND HAVING AN IMPORTANT TASK TO WHICH
17 THEY WERE BOTH ASSIGNED WAS AN ADDITIONAL OPPORTUNITY FOR
18 THEM TO GROW CLOSER, TO KNOW EACH OTHER, JUST AS TROOPER
19 MCCAULEY BEING THE TRAINING OFFICER. SO TO ME THAT FACT MAY
20 CERTAINLY BE REFERENCED AND I OVERRULE THE OBJECTION. AND I
21 DON'T BELIEVE THE STATE HAS ANY INTENT TO STOP THE PROCESS
22 AND THEN DISCUSS THE DETAILS OF THAT MAJOR INVESTIGATION.

23 I ALSO OVERRULE THE OBJECTION TO TROOPER MCCAULEY, GIVEN
24 HIS CLOSE ASSOCIATION WITH TROOPER NICHOLSON, AS TO THEIR
25 DISCUSSIONS OF THE FAMILY, STARTING A FAMILY, THINGS OF THAT

MATTERS AND MOTIONS

1 NATURE. I FIND THAT TO BE ENTIRELY APPROPRIATE AND
2 ADMISSIBLE.

3 I FURTHER OVERRULE THE OBJECTION TO HIS DESCRIPTION AT
4 THE SCENE. ONCE E.M.S. ARRIVED AND HIS ACTIONS THEREAFTER, I
5 FIND TO BE APPROPRIATE.

6 I FIND WHAT THE STATE HAS OUTLINED WITH REGARD TO THE
7 WIDOW, MS. NICHOLSON, TO BE APPROPRIATE WITH THE FOLLOWING
8 CLARIFICATION. I THINK IT'S APPROPRIATE AND ADMISSIBLE FOR
9 HER TO REFERENCE TWO INCOMES DOWN TO ONE AND TO REFERENCE THE
10 HARDSHIP THAT JUST NORMALLY, AND ANYONE WOULD UNDERSTAND,
11 FLOWS FROM THAT. BUT I DO NOT WANT ANY TESTIMONY AS TO "OUR
12 JOINT INCOME WAS 'X' AND NOW IT'S ONE-THIRD 'X' AND I AM EACH
13 MONTH BEHIND \$500." I'M JUST MAKING THOSE FIGURES UP. BUT I
14 DO THINK IT'S PERMISSIBLE. THAT'S AN EFFECT OF THIS CRIME,
15 AND IT'S A VERY REAL EFFECT IS THE FINANCIAL HARDSHIP THAT
16 SHE ENCOUNTERS. BUT WITHOUT FIGURES, WITHOUT SPECIFIC
17 REFERENCES TO DEBTS THAT MAY BE BEHIND, THINGS OF THAT
18 NATURE, BUT THE FINANCIAL HARDSHIP AND DIFFICULTY TESTIMONY
19 IN GENERAL I FIND ADMISSIBLE.

20 I THINK IT'S ENTIRELY APPROPRIATE FOR MS. NICHOLSON TO
21 TALK ABOUT HOW MOVED SHE WAS BY THE RECEIPT OF SO MANY
22 SYMPATHY CARDS, CONDOLENCES. I THINK SHE CAN REFERENCE IN
23 GENERAL THAT SHE RECEIVED CARDS FROM PEOPLE WHO HAD CONTACT
24 WITH HER HUSBAND IN THE LINE OF HIS DUTY THAT HE HAD
25 POSITIVELY IMPACTED IN A GENERAL WAY, BUT NOT TO SINGLE ONE

MATTERS AND MOTIONS

1 OR TWO OUT AS TO A PARTICULAR PERSON IN A PARTICULAR COUNTY
2 DEALING WITH A PARTICULAR CHILD AND THE EFFECT IT HAD. I
3 AGREE THAT THAT WOULD BE HEARSAY. SO I WILL PERMIT THE
4 EFFECT IT HAS HAD ON HER AND THE GENERAL NATURE OF ONE OR
5 MORE NOTES REFLECTING ON FAVORABLE COMMENTS AND THE POSITIVE
6 IMPACT THAT TROOPER NICHOLSON HAD ON OTHERS DURING THE
7 PERFORMANCE OF HIS DUTY, BUT ONLY TO THAT EXTENT.

8 TO THE EXTENT THAT I HAVE NOT RULED WITH A PARTICULAR
9 PARTY, THE RECORD WILL REFLECT EACH SIDE'S EXCEPTION TO MY
10 RULING.

11 LET'S MOVE---

12 MR. MAULDIN: YOUR HONOR, BEFORE WE MOVE TO ANOTHER
13 AREA, THIS, I THINK, WOULD BE CONSIDERED AN IN LIMINE MOTION
14 OR AN IN LIMINE REVIEW OF PROSPECTIVE TESTIMONY. I REALIZE
15 MY OBLIGATION TO MAKE CONTEMPORANEOUS OBJECTIONS. UNDER
16 THESE CIRCUMSTANCES, AND I WOULD ASK THAT THE COURT AT LEAST
17 TO THE EXTENT THE COURT FEELS EMPOWERED TO TO ALLOW ME TO
18 RESERVE THE OBJECTIONS THAT HAVE BEEN RULED ON IN THIS
19 HEARING AND NOT TO INTERRUPT THE TESTIMONY OF THESE PERSONAL
20 PRESENTATIONS. IT'S UNLIKE A MATTER WHERE SPECIFIC FACTS ARE
21 BEING DEALT WITH OR SPECIFIC QUESTIONS ARE BEING ELICITED
22 FROM A WITNESS THAT MAY BORDERLINE ON A RULES VIOLATION.
23 THAT'S NOT WHAT WE HAVE HERE. WE HAVE A WIDOW MAKING A
24 PERSONAL PRESENTATION TO A JURY, AND I DON'T BELIEVE I HAVE
25 EVER OBJECTED DURING ANY TESTIMONY IN VICTIM IMPACT, WHETHER

MATTERS AND MOTIONS

1 IT WAS A WIDOW OR A FAMILY MEMBER OR AN EMPLOYEE OR ANYBODY
2 BECAUSE I JUST DON'T THINK IT'S HUMANLY RIGHT. BECAUSE I'M
3 UNDER AN OBLIGATION TO CONTEMPORANEOUS OBJECTION, I WOULD
4 LIKE THE COURT TO AT LEAST PROTECT ME TO THE EXTENT YOU FEEL
5 LIKE YOU CAN.

6 THE COURT: I HAVE NO PROBLEM WITH THAT PERSONALLY. I
7 DON'T THINK I HAVE THE LEGAL AUTHORITY TO DO THAT.

8 MR. MAULDIN: ALL RIGHT, SIR.

9 THE COURT: AND IF THERE IS SOME OTHER WAY, I MEAN, FOR
10 EXAMPLE, IF YOU SAY, JUDGE, IS THERE A MATTER OF LAW THAT WE
11 CAN ADDRESS, I CAN HAVE MS. KOFFSKEY TURN AROUND AND YOU CAN
12 COME UP OUTSIDE THE JURY'S HEARING AND SAY, "THIS IS IT.
13 THIS IS WHERE I OBJECT. I JUST WANT IT NOTED FOR THE
14 RECORD."

15 MR. MAULDIN: YES, SIR.

16 THE COURT: BUT THAT DOES REQUIRE YOU IN THE MIDDLE OF
17 SOMEONE'S TESTIMONY TO STAND UP AND SAY, "JUDGE, CAN I
18 ADDRESS AN ISSUE OF LAW?"

19 MR. MAULDIN: YES, SIR.

20 THE COURT: ALL RIGHT. IT DOESN'T MATTER TO ME WHAT
21 ORDER WE GO IN. I HAVE THE NEXT THING WRITTEN DOWN AS WE
22 NEED TO DISCUSS FUTURE DANGEROUSNESS, AND I HAD ASKED Y'ALL
23 TO BRING LEGAL AUTHORITY Y'ALL BELIEVE SUPPORTS YOUR
24 RESPECTIVE POSITIONS ON THAT.

25 MR. MAULDIN: I WOULD SAY FIRST JUST UP FRONT, WE

MATTERS AND MOTIONS

1 OBJECT -- ENTERED AN OBJECTION EARLIER AND I WILL ELABORATE
2 NOW. WE OBJECT TO THE USE OF FUTURE DANGEROUSNESS EVIDENCE.
3 IN THIS CASE WITH THE DEFENDANT HAVING BEEN FOUND GUILTY OF
4 THE MURDER OF A LAW ENFORCEMENT OFFICER IN THE LINE OF DUTY,
5 FROM A FACTUAL POINT OF VIEW, THE AGGRAVATOR IS ABOUT AS EASY
6 A DECISION AS THIS JURY WILL EVER HAVE. SO THERE IS A CASE
7 IN SOUTH CAROLINA RECENTLY DECIDED THAT SAID THAT FUTURE
8 DANGEROUSNESS RELATES TO PRISON PEOPLE AS WELL AS IT DOES THE
9 GENERAL PUBLIC. I DON'T -- I BELIEVE THE SOUTH CAROLINA
10 SUPREME COURT IS RESPECTFULLY INCORRECT.

11 THE COURT: OKAY.

12 MR. MAULDIN: AND BECAUSE OF THE NATURE OF THE APPEALS
13 OF THESE KIND OF CASES, I'D LIKE TO PUT ON THE RECORD THAT
14 FUTURE DANGEROUSNESS EVIDENCE IN GENERAL, I BELIEVE, SHOULD
15 BE PROHIBITED BECAUSE THIS DEFENDANT WILL NEVER BE AGAIN IN
16 THE PUBLIC TO PRESENT A DANGER TO ANYONE. AND SO TO THE
17 EXTENT THAT IS CONTRARY TO THE PRECEDENT IN OUR STATE, I PUT
18 THAT ON THE RECORD, YOUR HONOR.

19 THE COURT: THANK YOU, SIR.

20 SOLICITOR ARIAIL: IS WHAT WE'RE DOING NOW IS YOU ARE
21 LOOKING FOR US TO EXPLAIN LEGALLY WHY WE CAN PUT IN FUTURE
22 DANGEROUSNESS?

23 THE COURT: NO.

24 SOLICITOR ARIAIL: OKAY.

25 THE COURT: AND I THINK MR. MAULDIN HAS CUT IT SHORT.

MATTERS AND MOTIONS

1 YESTERDAY HE SAYS, "I WANT ON THE RECORD TO ADDRESS FUTURE
2 DANGEROUSNESS." AND HE HAS INDICATED THAT THERE IS PRECEDENT
3 FROM OUR SUPREME COURT DIRECTLY OPPOSED TO HIS EFFORT TO
4 PREVENT ANY REFERENCE TO FUTURE DANGEROUSNESS BECAUSE OF THE
5 CONTEXT OF PRISON GUARDS, EVEN WITH A LIFE WITHOUT PAROLE
6 SITUATION. BUT HE SAID I WANT THE RECORD PROTECTED FOR
7 FUTURE -- FOR THE RECORD OF THIS CASE THAT HE THINKS THE
8 SOUTH CAROLINA SUPREME COURT DECIDED THAT CASE INCORRECTLY
9 AND HE WANTS TO PRESERVE THAT ISSUE. I'M GOING TO -- UNTIL
10 THEY CHANGE, I HONOR PRECEDENT FROM OUR STATE SUPREME COURT.

11 SOLICITOR ARIAIL: SURE. SO YOU'RE NOT LOOKING FOR US
12 TO RESPOND?

13 THE COURT: NO. I GAVE YOU AN OPPORTUNITY TO. I
14 DIDN'T WANT TO MOVE TO THE NEXT THING AND YOU GET---

15 SOLICITOR ARIAIL: NO, NO.

16 THE COURT: ---YOUR FEELINGS HURT.

17 SOLICITOR ARIAIL: YEAH, I THOUGHT YOU WERE GETTING
18 READY TO GET US INTO ANOTHER PROFFER SITUATION. I WAS GOING
19 TO SAY I THINK WE HAVE PROFFERED ENOUGH ON THE SITUATION. I
20 MEAN, IT'S IN THE RECORD AND, YOU KNOW, THEY TALKED ABOUT HIS
21 HATRED AND FEAR AND ALL THAT OF UNIFORMED PEOPLE. PRISON
22 GUARDS ARE UNIFORMED PEOPLE. SO, I MEAN, I THINK IT'S
23 ALREADY IN THERE NOW. WE CAN'T AVOID IT.

24 MR. MAULDIN: AND I DIDN'T BRING MY MOTIONS NOTEBOOK.
25 BUT MY RECOLLECTION IS ON JANUARY THE 18TH YOU HEARD OUR

MATTERS AND MOTIONS

1 MOTION REGARDING MORE DEFINITE AND CERTAIN AND YOU ISSUED, IF
2 I RECALL CORRECTLY, YOU ISSUED A RULING REGARDING THE
3 SENTENCE IN THEIR NOTICE OF FUTURE DANGEROUSNESS OF THE
4 DEFENDANT. AND IF I RECALL CORRECTLY, YOU TOLD THE STATE
5 THAT THEY WOULD BE CALLED UPON DURING THE 24-HOUR WAITING
6 PERIOD TO PROVIDE INFORMATION REGARDING THE NATURE AND EXTENT
7 OF FUTURE DANGEROUSNESS EVIDENCE. AND I THINK YOU EVEN SAID
8 THAT THE 24-HOUR PERIOD MAY HAVE TO BE EXTENDED IF IT PLACED
9 THE DEFENSE IN A POSITION WHERE WE DIDN'T HAVE TIME TO
10 RESPOND TO SOMETHING THAT THEY PUT BEFORE YOU. THE STATEMENT
11 BY ME WAS A LEGAL POSTURE THAT I BELIEVE YOU PUT ON THE
12 RECORD FIRST.

13 NOW, WHAT I AM EXPECTING OR WHAT I FEEL LIKE WE NEED IS
14 IN FACT A PROFFER IN THE FORM OF A SUMMARY, JUST LIKE WITH
15 THE VICTIM IMPACT. THAT'S WHAT I WAS EXPECTING HERE, THAT
16 WITH REGARD TO THEIR SPECIFIC LINE IN THEIR NOTICE, FUTURE
17 DANGEROUSNESS OF THE DEFENDANT, THE EVIDENCE ESSENTIALLY
18 WOULD BE IN SOME SUMMARY FORM, NOT NECESSARILY BRINGING
19 WITNESSES IN BUT AT LEAST A REPORT TO THE COURT ABOUT WHAT
20 TYPE FUTURE DANGEROUSNESS EVIDENCE THEY INTEND TO ESTABLISH.
21 NOW, IF IT IS THE STATE'S POSITION THAT THE EVIDENCE AT THE
22 FIRST TRIAL IS THE FUTURE DANGEROUSNESS ISSUE, THEN OBVIOUSLY
23 I WAS HERE AND HEARD IT AND SO I UNDERSTAND THAT EVIDENCE.
24 I'M TALKING ABOUT OTHER EVIDENCE.

25 THE COURT: WHAT ABOUT THAT, MR. ARIAIL AND MS. STROM?

MATTERS AND MOTIONS

1 SOLICITOR ARIAIL: OUR POSITION IS WE NEED TO GO BACK
2 TO THE BEGINNING WHERE -- I MEAN, WE GIVE HIM THE WHOLE FILE
3 AND THEN WE HAVE TO COME IN HERE AND OUTLINE IN VIRTUAL
4 DETAIL WHAT ELSE WE'RE GOING TO DO SO HE CAN TAKE NOTES, AND
5 THEN FIGURE OUT HOW TO DEAL WITH THAT. I MEAN, THERE IS A
6 LIMIT AT SOME POINT TO HOW FAR WE SHOULD BE MADE TO GO.

7 NOW, I UNDERSTAND VICTIM IMPACT BECAUSE THAT IS HIGHLY
8 -- OR POTENTIALLY HIGHLY PREJUDICIAL. FUTURE DANGEROUSNESS
9 IS A LEGAL ISSUE. IT'S NOT A FACTUAL ISSUE. IT'S A LEGAL
10 ISSUE. THERE'S NOT GOING TO BE ANY PREJUDICIAL EVIDENCE THAT
11 COMES IN THAT HE'S NOT AWARE OF THAT HE CAN'T ANTICIPATE.
12 HE'S GOT A LEGAL ARGUMENT. AND BASED ON HIS LEGAL ARGUMENT
13 HE SAYS NONE OF IT'S ADMISSIBLE IN THIS CASE. WE SHOULDN'T
14 HAVE TO TURN AROUND AND SAY, "OKAY, JUDGE, WE'RE GOING TO
15 TELL YOU EVERYTHING SO YOU CAN RULE IN LIMINE IN ADVANCE."
16 IT'S NOT LIKE VICTIM IMPACT. IT'S DIFFERENT. IT'S GOING TO
17 BE ARGUMENT AND IT'S GOING TO BE -- AND I WOULD SAY ALSO THAT
18 MIKE GRANT FALLS IN THE CATEGORY OF FUTURE DANGEROUSNESS.
19 THE ACTIONS OF THE DEFENDANT FOLLOWING THE EVENTS, THE
20 OFFICERS WHO TESTIFIED, THOSE ARE FUTURE DANGEROUSNESS.

21 NOW, YOU KNOW, HE MIGHT WANT TO ARGUE AS PART OF HIS
22 CASE, "WELL, LOOK HOW GOOD HE'S DONE IN JAIL WITH THREE
23 GUARDS ON HIM EVERY TIME HE MOVES AND UNDER VIDEOTAPE SO WE
24 CAN VIDEO EVERYTHING THAT'S GOING ON." HE CAN MAKE THAT
25 ARGUMENT. HE CAN PRESENT THAT EVIDENCE. "HE'S A GOOD BOY.

MATTERS AND MOTIONS

1 HE'S BEEN -- YOU KNOW, WHILE WE'VE GOT HIM SHACKLED AND
2 BOUND, HE HASN'T HURT ANYBODY." BUT WE'VE GOT A RIGHT TO
3 ARGUE FOR THE OPPOSITE OF THAT. AND IF THERE IS SOME
4 EVIDENCE TO INDICATE THAT, THEN I THINK WE OUGHT TO HAVE THE
5 RIGHT TO PUT IT IN, BUT I DON'T SEE THAT WE NEED TO TELL HIM
6 IN ADVANCE WHAT IT IS. IT'S NOT LIKE -- I THINK THERE'S --

7 I UNDERSTAND THE COURT'S POSITION ON VICTIM IMPACT, AND
8 I AGREE WITH THAT, AND THAT'S WHY WE HAVE COMPLIED. BUT I
9 THINK WE -- YOU KNOW, IF WE'RE GOING THROUGH IT AND WE'VE GOT
10 TO GO THROUGH EVERY PIECE OF EVIDENCE WE'RE GOING TO PUT IN,
11 I THINK WE'VE GONE FAR ENOUGH. I WOULD ARGUE WE HAVE GONE
12 FAR ENOUGH.

13 MR. MAULDIN: ONE FINAL POINT, THEN, YOUR HONOR. I'LL
14 USE TWO EXAMPLES. THE MIKE GRANT EXAMPLE IS EXACTLY THE
15 POINT. IF WE CAN'T PUT HIM IN ON VICTIM IMPACT, WE'LL CALL
16 HIM A FUTURE DANGEROUSNESS WITNESS AND USE HIM ANYWAY. SO
17 THAT HAVING -- THAT'S EXACTLY -- YOU KNOW, WE'RE AT A POINT
18 IN THIS TRIAL AND THE REASON WE TRY TO DO THESE PRETRIAL
19 MATTERS AND I DO MOTIONS PRACTICE EXTENSIVELY IN THESE CASES
20 TO TRY TO PREVENT THIS THING -- WHAT ARE WE GOING TO DO IF
21 WE GOT TO A MISTRIAL POSITION IN A SENTENCING PHASE OF A
22 CAPITAL CASE? THAT WOULD BE THE NIGHTMARE FROM YOU KNOW
23 WHERE. I MEAN, THAT'S HORRIBLE. SO TO TRY TO MAKE SURE
24 THERE IS SOME UNDERSTANDING OF THE GENERAL AREA, I THINK, IS
25 APPROPRIATE FOR THE TRIAL COURT IN ITS ADMINISTRATION OF THIS

MATTERS AND MOTIONS

1 CASE.

2 THE OTHER EXAMPLE THAT I WOULD USE, WE TRIED A CASE --
3 BOB AND I TRIED A CASE IN OCTOBER INVOLVING A DEFENDANT IN A
4 CAPITAL CASE AND THEY CLAIMED FUTURE DANGEROUSNESS. AND MAKE
5 NO BONES ABOUT IT, THE DEFENDANT HAD KILLED ANOTHER PERSON BY
6 STABBING HIM IN THE HEAD WITH A HORRIBLE WEAPON. AND IN THE
7 CASE HE WAS ON TRIAL FOR HE HAD CUT THE THROATS OF THE
8 VICTIMS WITH A KNIFE. THAT WAS EVIDENCE OF THIS -- THAT
9 DEFENDANT'S FUTURE DANGEROUSNESS. AND I THOUGHT THAT -- I
10 MEAN, I OBJECTED TO IT, BUT I KNEW THAT THAT WAS IN FACT
11 EVIDENTIARY SUPPORTIVE AND SIGNIFICANT FOR THAT JURY TO
12 CONSIDER FUTURE DANGEROUSNESS.

13 SO IT'S NOT LIKE I'M -- THIS IS AN UNUSUAL TACTIC. THIS
14 IS A THING THAT I THINK EVERY TRIAL COURT SHOULD REQUIRE AT
15 THIS STAGE, BECAUSE WE SURE ARE WAY DOWN THE ROAD TO HAVE TO
16 TRY TO FIGURE OUT WHAT TO DO WHEN IT'S TOO LATE.

17 THAT'S ALL I HAVE, YOUR HONOR.

18 THE COURT: THANK YOU, SIR.

19 I DO RECALL VERY SPECIFICALLY REQUIRING THAT THE STATE
20 WOULD DURING THE 24-HOUR WAITING PERIOD PROVIDE IN DETAIL THE
21 PROPOSED VICTIM IMPACT EVIDENCE. I DO NOT RECALL THAT SAME
22 DEGREE OF SPECIFICITY REQUIRED TO SPECIFIC ACTS UNDER WHICH
23 FUTURE DANGEROUSNESS WOULD BE EXPLORED, AND I REMAIN OPEN TO
24 BE EDUCATED TO LEARN AS MUCH AS I CAN ABOUT IT. IT WAS MY
25 SENSE THAT FUTURE DANGEROUSNESS WAS MORE OF A LEGAL ISSUE

MATTERS AND MOTIONS

1 BASED ON THE FACTS IN THE RECORD. AND IF NEW MATTER IS
2 SOUGHT TO BE INTRODUCED, I WILL DEAL WITH IT AT THAT TIME,
3 BUT I DECLINE TO FORCE THE STATE'S HAND TO PRESENT AT THIS
4 TIME ITS ENTIRE APPROACH AND STRATEGY TO FUTURE
5 DANGEROUSNESS.

6 MR. MAULDIN, I HAD A NOTE THAT YOU WANTED TO REVISIT THE
7 ADMISSIBILITY OF THE ANDERSON EVIDENCE, AND I JUST WANT TO
8 GIVE YOU THAT OPPORTUNITY TO DO SO, SIR.

9 MR. MAULDIN: LET ME SEE, YOUR HONOR, IF I BROUGHT --
10 ONE MOMENT. (PAUSE)

11 THE LETTER FROM BETTY STROM DATED JANUARY THE 30TH WAS
12 THE LETTER THAT YOU WILL RECALL WAS PURSUANT TO YOUR
13 REQUIREMENT THAT THEY NOTIFY BY THAT DATE REGARDING
14 UNADJUDICATED TYPE INFORMATION. SO I ASSUME THAT WE'RE
15 TALKING ABOUT THAT NOW, YOUR HONOR, IS THAT...

16 THE COURT: WELL, IT'S REALLY YOUR CALL.

17 MR. MAULDIN: YES, SIR.

18 THE COURT: YOU HAD A THING YOU SAID YOU WANTED TO
19 DISCUSS THE ANDERSON EVIDENCE, AND HERE WE ARE.

20 MR. MAULDIN: YES, SIR. ALL RIGHT. THREE PARAGRAPHS
21 IN THEIR LETTER OF JANUARY 30TH WAS THE SHOOTING OF OFFICER
22 MIKE GRANT AND THE SHOOTING OF OTHER OFFICERS DURING THE
23 PURSUIT, THE HIJACKING OF THE BLUE RIDGE ELECTRIC TRUCK FROM
24 GENE SHERIFF AND THE EXTENT OF THE PURSUIT OF THE DEFENDANT
25 IN ANDERSON COUNTY TO INCLUDE THE INCIDENT INVOLVING MICHAEL

MATTERS AND MOTIONS

1 CHAD YOUNG WHO WAS DRIVING THE VAN THAT WAS RUN OFF THE ROAD.

2 WE WOULD TAKE THE POSITION FIRST OF ALL WITH REGARD TO
3 THOSE THREE SPECIFICATIONS THAT THE TESTIMONY HAS ALREADY
4 BEEN PROVIDED TO THE JURY. THERE WAS EXTENSIVE TESTIMONY AS
5 TO ALL THREE OF THESE MATTERS IN THE RECORD IN THE TRIAL ON
6 THE ISSUE OF GUILT OR INNOCENCE.

7 NOW, IF THEY -- THE NOTICE SAYS THAT THEIR INTENT TO
8 PRESENT EVIDENCE OF UNCHARGED, UNADJUDICATED OR UNCONVICTED
9 BAD ACTS IN OUR CASE IN CHIEF IN THE SENTENCING PHASE, WELL,
10 I DON'T KNOW IF AN ASKED AND ANSWERED OBJECTION IS
11 NECESSARILY THE RIGHT WAY I WANT TO PUT IT AT THIS POINT, BUT
12 I IMAGINE THAT THAT IS EVIDENCE THAT IS ALREADY IN THIS
13 RECORD.

14 NOW, IF WHAT THEY'RE GOING TO DO IS -- I MEAN, I GUESS
15 THEY COULD CALL 25 ANDERSON COUNTY -- IF THE COURT JUST SAYS
16 YOU CAN RETRY THE ANDERSON COUNTY CHARGES, I THINK THAT IS
17 ERROR. I JUST THINK THAT'S ERROR. IN A SENTENCING HEARING
18 WHERE THE UNCHARGED ACTS HAVE ALREADY BEEN TESTIFIED TO AND
19 AGGRESSIVELY ARGUED ABOUT, I MEAN, THE STATE'S CONCEPT OF
20 WICKEDNESS AND MEANNESS RELATED EXACTLY TO THE FOLLOW-UP
21 CONDUCT IN ANDERSON COUNTY. SO I THINK THAT THAT MATTER HAS
22 BEEN PRESENTED TO THIS JURY IN THE FACTUAL CONTACT OF THE
23 GUILT-INNOCENCE TRIAL.

24 SO I THINK IT NOW BECOMES IMPROPER FOR THE STATE TO
25 SIMPLY BE ALLOWED TO TAKE UNCHARGED, UNADJUDICATED MATTERS

MATTERS AND MOTIONS

1 THAT ARE PENDING IN ANOTHER COUNTY ON THE INDICTMENT DOCKET,
2 BRING ALL OF -- BRING WITNESSES IN TO JUST FURTHER
3 CONTAMINATE THE SENTENCING PHASE OF THE DEFENDANT'S TRIAL---

4 THE COURT: LET ME ASK YOU SOMETHING, MR. MAULDIN.

5 MR. MAULDIN: YES, SIR.

6 THE COURT: IS YOUR OBJECTION TO THE -- AND WE'LL FIND
7 OUT -- TO WHAT YOU ANTICIPATE TO BE ADDITIONAL EVIDENCE FROM
8 THE WITNESS STAND OR -- OR PERHAPS BOTH -- THE STATE'S
9 RELIANCE ON WHAT IS ALREADY IN THE RECORD IN TERMS OF
10 ARGUING?

11 MR. MAULDIN: OH, I THINK THAT THEY CAN ARGUE WHAT'S IN
12 THE RECORD.

13 THE COURT: OKAY. SO YOUR CONCERN IS NEW WITNESSES
14 REHASHING THE SAME THINGS BUT FROM A DIFFERENT OFFICER'S
15 PERSPECTIVE?

16 MR. MAULDIN: DIFFERENT OFFICERS PERSPECTIVE, DIFFERENT
17 ANGLE, DIFFERENT ATTITUDE. I DON'T KNOW HOW TO ANTICIPATE
18 THE DIMENSIONS OF THE OBJECTION. BUT THE OBJECTION IS TO
19 EVIDENTIARY PRESENTATIONS NOT TO PERSUASION AND ARGUMENT.

20 THE COURT: OKAY.

21 MR. MAULDIN: PERSUASION AND ARGUMENT IS AVAILABLE IN
22 FULL.

23 THE COURT: EITHER ONE.

24 MS. STROM: I DIDN'T KNOW IF YOU WERE READY TO HEAR
25 FROM US.

MATTERS AND MOTIONS

1 YOUR HONOR, THE STATE DOES NOT INTEND TO CALL EVERY
2 SINGLE OFFICER THAT WAS INVOLVED IN THAT CHASE. WE WOULD NOT
3 DO THAT. AS YOU CAN SEE FROM OUR LIMITATION OF VICTIM
4 IMPACT, YOU CAN ALSO EXPECT THE SAME REGARDING WHAT HAS BEEN
5 PRESENTED ALREADY AS FAR AS ANDERSON, OF COURSE, WE WILL RELY
6 ON THAT. BUT I THINK THE STATE HAS A RIGHT TO PUT IN, TO
7 SHOW THE CHARACTER OF THE DEFENDANT, THE TESTIMONY FROM
8 OFFICER MIKE GRANT AS TO EXACTLY WHAT HAPPENED TO HIM. SO
9 FAR WE HAVE HEARD THAT HE PULLED OFF THE SIDE OF THE ROAD, HE
10 HAD AN INJURY TO HIS HEAD, THAT IT WAS FROM A FRAGMENT. I
11 THINK HE HAS THE RIGHT TO TESTIFY AS TO EXACTLY WHAT HE
12 OBSERVED AND WHAT HE SAW.

13 ALSO, YOUR HONOR, AS TO MR. YOUNG AND MR. SHERIFF, THESE
14 ARE CIVILIANS, YOUR HONOR.

15 **THE COURT:** TELL ME WHO THEY ARE, PLEASE.

16 **MS. STROM:** CHAD -- MICHAEL CHAD YOUNG AND GENE SHERIFF
17 ARE CIVILIANS, YOUR HONOR, WHO MR. SHERIFF WAS IN THE UTILITY
18 TRUCK WHICH WAS HIJACKED, AS FAR AS THE ACTIONS OF THE
19 DEFENDANT AGAINST HIM IN ORDER TO GET HIM OUT OF THAT TRUCK,
20 CHAD YOUNG, THE DRIVER OF THE VAN THAT WAS HIT AND PUSHED
21 INTO THE DITCH. THEY HAVE MADE AN ARGUMENT AT LEAST TO THIS
22 JURY THAT HE HAS DONE NOTHING TO ANY CIVILIANS. I THINK THAT
23 IS ABSOLUTELY APPROPRIATE TO GO TO THE CHARACTER OF THIS
24 DEFENDANT WHICH THEY ARE ENTITLED TO HEAR.

25 **MR. MAULDIN:** WITH MIKE GRANT, IT'S THE VICTIM IMPACT.

MATTERS AND MOTIONS

1 THE COURT: WELL, LET ME -- I'LL JUST---

2 MR. MAULDIN: ALL RIGHT. YES, SIR.

3 THE COURT: ---TELL YOU. IT'S SOMETHING YOU DON'T HAVE
4 TO ARGUE. I DON'T KNOW WHETHER HE'S GOING TO TESTIFY OR NOT.
5 BUT IF HE TESTIFIES, HE'LL TESTIFY AS TO WHAT HAPPENED TO HIM
6 AS IT RELATES. BECAUSE IF IT'S ADMISSIBLE, IT'S ADMISSIBLE
7 AS A BAD ACT. ALL RIGHT. AND IF THAT'S THE RELEVANCE OF HIS
8 TESTIMONY, I WOULD NOT THEN ALLOW VICTIM IMPACT EVIDENCE
9 THROUGH THE BACK DOOR. WE WOULD NOT THEN GO INTO THAT HE HAD
10 TO RETIRE BECAUSE HE WAS SO DISTRESSED OVER THIS AND HE IS
11 NOW IN COUNSELING. SO AS YOU MAKE YOUR COMMENTS---

12 MR. MAULDIN: YES, SIR.

13 THE COURT: ---WE'RE NOW TALKING ABOUT BAD ACTS.

14 MR. MAULDIN: YES, SIR.

15 THE COURT: I'M OUT OF THE VICTIM IMPACT EVIDENCE.
16 SO -- AND LET ME TELL YOU, IT SORT OF STRIKES A CHORD WITH ME
17 THAT THEY REALLY DIDN'T REFERENCE -- THERE WAS A BRIEF
18 DESCRIPTION THERE WAS A TRUCK. IT WAS TAKEN. BUT ABOUT THIS
19 INDIVIDUAL, MR. SHERIFF, AND MR. YOUNG, THE DRIVER OF THE
20 VAN, OR OFFICER GRANT WHO DIDN'T TESTIFY SAYING HE WAS SHOT,
21 I MEAN, THOSE TO ME ARE BAD ACTS, AND I WOULD NEED FOR YOU TO
22 EDUCATE ME WHY THEY WOULD NOT BE ADMISSIBLE. I'M NOT
23 BRINGING IN -- I'M NOT GOING TO LET THEM BRING IN THE
24 OFFICERS AND REHASH EVERYTHING OR A SLEW OF OTHER ANDERSON
25 DEPUTIES. BUT THESE SEEM TO BE VERY TARGETED WITNESSES FOR A

MATTERS AND MOTIONS

1 NARROW PURPOSE ON THE ISSUE OF BAD ACTS, CHARACTER EVIDENCE.
2 AND I WANT YOU TO TELL ME WHERE MY THINKING HAS GONE ASTRAY.

3 MR. MAULDIN: WELL, YOU CERTAINLY NARROWED MY POSITION,
4 YOUR HONOR, BECAUSE IF THAT IS WHERE HIS PRESENTATION IS, AND
5 THAT IS, A FACTUAL DESCRIPTION OF AN ACT BY THE DEFENDANT
6 UNCONNECTED WITH THE RESULTING EFFECT ON THAT WITNESS -- IN
7 OTHER WORDS, CUTTING OFF THE EFFECT ON THAT WITNESS IS
8 OBVIOUSLY ONE OF THE ISSUES THAT WE FELT LIKE THE COURT
9 NEEDED TO ADDRESS, AND I UNDERSTOOD YOU TO SAY THAT THAT IS
10 NOT THE TESTIMONY THAT WOULD BE APPROPRIATE.

11 THE COURT: THAT DOESN'T MEAN THAT SOMEONE WHO HAS
12 THEIR CAR FORCED OFF THE ROAD CAN'T SAY, "I WAS FRIGHTENED."

13 MR. MAULDIN: OH, YEAH. SCARED.

14 THE COURT: "I WAS SCARED." I WAS JERKED OUT OF MY
15 ELECTRIC BLUE RIDGE TRUCK ON THE SIDE OF THE ROAD."

16 MR. MAULDIN: RIGHT.

17 THE COURT: "AND I WAS SCARED TO DEATH AND I THOUGHT I
18 WAS GOING TO DIE."

19 MR. MAULDIN: AND I UNDERSTAND THAT. BUT THAT IS---

20 THE COURT: BUT THE OTHER---

21 MR. MAULDIN: ---INCIDENT GENERATED, FACT GENERATED,
22 FOCUSED INFORMATION, AND IT DOES RELATE NOT TO THE REACTION
23 OF THE WITNESS BUT THE CONDUCT OF THE PERSON WHO IS ON TRIAL
24 IN THE SENTENCING PHASE. AND THAT, TO ME, WOULD BE THE
25 THRESHOLD ISSUE. SO IT DOES NARROW MY POINT.

MATTERS AND MOTIONS

1 I WOULD ONLY OFFER FOR THE COURT AN OBJECTION ON THE
2 GROUNDS THAT I WOULD REASSERT THE GROUNDS THAT WE ORIGINALLY
3 RAISED IN OUR MOTION TO PREVENT THE USE OF BAD ACT EVIDENCE
4 IN THIS CASE, THE LENGTHY MEMORANDUM THAT RESULTED IN THE
5 RESPONSE FROM THE STATE AND ALL OF OUR BANTERING BACK AND
6 FORTH. WE REASSERT ALL OF THE POSITIONS WE TOOK AT THAT
7 TIME.

8 AND THE -- AND THEN WE PUT IN A SPECIFIC OBJECTION THAT
9 THE DEFENDANT IS CURRENTLY INDICTED BUT NOT TRIED ON THOSE
10 CASES, SO THEY ARE UNADJUDICATED. WE OBJECT TO THAT ON THAT
11 GROUND.

12 WE FURTHERMORE OBJECT, YOUR HONOR, TO THE USE OF
13 "CHARACTER EVIDENCE" OF THE DEFENDANT IN THE SENTENCING
14 PHASE. WE'RE JUST PUTTING IN A GENERAL OBJECTION TO THE
15 COURT'S ALLOWING THE STATE TO PRESENT CHARACTER EVIDENCE OF
16 THE DEFENDANT.

17 THE COURT: IF I PREVENT THEM CAN I LIKEWISE PREVENT
18 YOU FROM INTRODUCING ANY EVIDENCE AS TO THE CHARACTER OF THE
19 DEFENDANT? AND IT'S OBVIOUSLY A LOADED QUESTION, BECAUSE YOU
20 WANT TO PRESENT WHAT YOU WANT TO PRESENT IN A LIGHT MOST
21 FAVORABLE TO THE DEFENDANT. I'M NOT ABOUT TO TELL THE STATE
22 THAT, YOU KNOW, WE'RE GOING TO LET THE DEFENDANT HAVE A ONE-
23 SIDED ARGUMENT AND THE STATE HAS TO SIT OVER THERE AND KEEP
24 ITS MOUTH SHUT AND CAN'T TELL ANY THINGS ABOUT THIS DEFENDANT
25 CONTRARY TO YOUR PRESENTATION FROM YOUR EXPERTS.

MATTERS AND MOTIONS

1 MR. MAULDIN: ARE YOU ASKING ME THAT QUESTION?

2 THE COURT: I'VE ALREADY ANSWERED IT.

3 MR. MAULDIN: YES, SIR. THANK YOU, YOUR HONOR.

4 THE COURT: I'M NOT PRECLUDING THE STATE FROM WHAT THE
5 LAW CLEARLY PERMITS IT TO DO.

6 MR. MAULDIN: AND I PUT THOSE MATTERS ON THE RECORD.

7 THE COURT: THANK YOU, SIR.

8 SOLICITOR ARIAIL: AND GOING BACK TO THAT ONE-SIDED
9 ARGUMENT THAT TOOK PLACE IN THE FIRST PHASE OF THIS WHERE THE
10 STATE WAS NOT ABLE TO DEFEND ITSELF, WE WOULD RENEW OUR
11 MOTION TO HAVE THE ENTIRE REPORT OF DR. NARAYAN BASED ON THE
12 ISSUES THAT THEY PUT BEFORE THE JURY YESTERDAY.

13 THE COURT: WE'LL GET TO THAT RIGHT NOW. BUT I DO WANT
14 THE RECORD TO REFLECT I AM INCLINED TO PERMIT UNDER THE
15 CHARACTER-BAD ACTS TYPE EVIDENCE WHAT'S BEEN PROPOSED AS
16 DEPUTY MIKE GRANT AS TO WHAT HAPPENED TO HIM, THE IMMEDIATE
17 INCIDENT BUT NOT FOR THAT TO SEGUE INTO VICTIM IMPACT
18 TESTIMONY. AND I DO BELIEVE THE FOCUSED TESTIMONY OF MR.
19 YOUNG AND MR. SHERIFF WOULD LIKEWISE BE APPROPRIATE, AND IT'S
20 MY INTENT AT THIS TIME TO PERMIT IT.

21 AND, SOLICITOR, I KNOW THAT AT EVERY TURN WE HAVE
22 BROUGHT UP THIS REPORT AND YOU ONLY HAVE A REDACTED PORTION,
23 AND THAT'S WHAT I HAVE NEXT ON THE LIST. SO LET'S ADDRESS
24 THAT.

25 MS. STROM: MAY I ADDRESS SOMETHING VERY QUICKLY? AS

MATTERS AND MOTIONS

1 TO MIKE GRANT, HE WOULD ALSO BE ABLE TO TESTIFY, I THINK, IN
2 ACCORDANCE WITH AS YOUR HONOR RULED AS FAR AS GENE SHERIFF
3 AND MR. YOUNG, THAT HE, TOO, WAS AFRAID. HE THOUGHT HE WAS
4 GOING TO DIE.

5 THE COURT: YEAH, AS A RESULT OF THE IMMEDIATE EVENT.

6 MS. STROM: SURE.

7 THE COURT: BUT WE'RE NOT GOING TO GO FROM THERE AND
8 TRANSITION TO---

9 MS. STROM: I HAD TO RETIRE. I HAD---

10 THE COURT: I'M IN COUNSELING.

11 MS. STROM: ---TO GO TO COUNSELING. RIGHT. I JUST
12 WANTED TO MAKE SURE I WAS CLEAR BEFORE I---

13 THE COURT: THE SAME RULES APPLY TO MR. GRANT, MR.
14 YOUNG AND MR. SHERIFF AS TO THE IMMEDIACY OF THE EVENT.

15 MS. STROM: YES, SIR.

16 THE COURT: BECAUSE IT'S VIS A VIS THE BAD ACT THAT
17 RELATES TO THE DEFENDANT NOT VICTIM IMPACT.

18 MS. STROM: SURE.

19 THE COURT: THANK YOU.

20 MS. STROM: I JUST WANTED TO BE CLEAR BEFORE I PUT THEM
21 UP.

22 THE COURT: ALL RIGHT. SOLICITOR, LET ME HEAR FROM YOU
23 ON THE STATE'S REPORT.

24 SOLICITOR ARIAIL: I THINK I'VE ARGUED EVERYTHING I CAN
25 ARGUE. I MEAN, I'VE ADDRESSED IT SO MANY TIMES. BUT I THINK

MATTERS AND MOTIONS

1 IT WAS REALLY FIRMED UP YESTERDAY WHEN THE JURY WAS SUGGESTED
2 -- OR IT WAS SUGGESTED TO THE JURY THIS SCENARIO OF THIS GUY
3 HAVING THIS FEAR, THEN HE REACTS. HE REACTS WITHOUT ANY
4 FACTUAL SUPPORT. HE'S EVEN REACTING TO WHERE HE CAN HANDLE A
5 GUN WITHOUT ANY RECOIL BECAUSE HE IS IN SUCH PANIC AND SUCH
6 FEAR OF HIS LIFE. AND I DON'T KNOW WHAT'S IN THE REPORT, BUT
7 I'M ASSUMING THERE'S SOMETHING IN THERE, IF IT HAD A PAGE AND
8 A HALF OUT OF IT, THAT'S GOING TO CONTRADICT THAT THAT WAS
9 ASSERTED TO THE JURY YESTERDAY. AND I THINK AT THIS POINT WE
10 HAVE GONE FAR ENOUGH IN DENYING IT.

11 I WOULD ALSO AT THIS POINT WOULD -- KNOWING THE COURT IS
12 GOING TO DENY, IN AN ABUNDANCE OF CAUTION, WHICH I RESPECT A
13 DENIAL, OF AN INDEPENDENT EXAMINATION. BUT I DO ANTICIPATE
14 SOMETHING HAPPENING IN THE COURSE OF THIS PRESENTATION IF
15 IT'S NORMALLY -- IT RUNS THE NORMAL WAY THAT I'M USED TO THEM
16 GOING, SOMETHING IS GOING TO COME OUT THAT'S GOING TO GET
17 INTO PSYCHOLOGICAL AT THAT TIME.

18 SO IN THAT REGARD, IT MAY BE THAT I CAN'T GET AN
19 INDEPENDENT EXAMINATION AND I'M FORCED TO DEFEND THE STATE'S
20 POSITION WITH USING DR. NARAYAN. AND I JUST THINK -- I KNOW
21 WE'RE NOT GOING TO USE HIM IN OUR CASE IN CHIEF. THAT'S NOT
22 OUR PLAN. BUT I NEED SOME PLANNING -- I DON'T NEED TO GET A
23 REPORT AND HAVE TO TRY TO FIGURE THINGS OUT IN A THIRTY
24 SECOND -- OR THIRTY MINUTE -- AND TRY TO GET A WITNESS HERE.
25 JUST FOR PLANNING PURPOSES, I DON'T SEE ANY HARM AT THIS

MATTERS AND MOTIONS

1 PHASE, AT THIS STAGE, THE GUILT'S OVER. AND IF THOSE THINGS
2 RELATED TO HIS GUILT, THEN I THINK IT'S FAIR THAT -- IN MY
3 ANTICIPATION, I'M JUST THINKING THROUGH THIS THING, WE'RE
4 GOING TO CALL DR. NARAYAN, AND I'M GOING TO -- I DON'T KNOW
5 WHAT'S IN THE REPORT. AND WHAT I'M BEING FORCED TO DO IS PUT
6 HIM UP HERE, YOU KNOW, SUBPOENA THE RECORDS FROM THE JAIL
7 THAT THEY WON'T GIVE US. WE'LL SUBPOENA THEM UP HERE SO HE
8 CAN LOOK AT THEM. I MEAN, WE'RE GOING TO GO ABOUT IT THE
9 HARD WAY, I GUESS, BUT WE'RE GOING TO -- THAT'S THE WAY WE'RE
10 GOING TO HAVE TO RESPOND BECAUSE THEY ARE USING THE LEGAL
11 RIGHTS AFFORDED THEM TO PREVENT US FROM GETTING INTO THAT
12 AREA.

13 I THINK AT THIS POINT, THOUGH, WITH THE ISSUE OF HIM
14 ACTING IN FEAR, PANIC, THAT HE MAY HAVE DONE SOMETHING
15 BECAUSE ERIC MAY HAVE DONE SOMETHING, ALL SPECULATION,
16 THEY'VE NOW RAISED IN THIS JURY'S MIND TO SOME EXTENT THAT
17 THERE IS A REASONABLE ALTERNATIVE. AND IF THAT'S NOT A
18 REASONABLE ALTERNATIVE AS REFLECTED IN THAT REPORT, I THINK
19 WE'RE ENTITLED TO SHOW THIS JURY THAT IT'S NOT A REASONABLE
20 ALTERNATIVE AND IT'S NOT SOMETHING THEY SHOULD BE ALLOWED TO
21 RELY ON BECAUSE THIS DEFENDANT KNEW SOMETHING -- WAIT A
22 MINUTE. MY LAWYERS ARE -- (OFF RECORD WITH CO-COUNSEL)

23 WE HAVEN'T READ THIS, BUT I ALSO POINT THIS OUT WHILE
24 WE'RE AT IT, SINCE WE'RE IN THE PSYCHOLOGICAL ASPECT. STATE
25 V. SLOAN, IN 1982 OUR SUPREME COURT RULED IF A CAPITAL

MATTERS AND MOTIONS

1 DEFENDANT INVOKES HIS FIFTH AMENDMENT PRIVILEGE AND REFUSES A
2 CUSTODIAL PSYCHIATRIC EXAMINATION BY THE STATE, IT IS PROPER
3 TO EXCLUDE HIS OWN EXPERT'S PSYCHIATRIC TESTIMONY OFFERED IN
4 MITIGATION. I'M NOT EXACTLY SURE OF THE TOTAL RELEVANCE OF
5 THAT. I'LL HAVE TO THINK THAT THROUGH.

6 WE ARE IN ESSENCE -- HE IN ESSENCE IS -- I GUESS WE'RE
7 BEING REFUSED THAT INFORMATION. THE CITE ON THAT IS 278 S.C.
8 435 AND 298 S.E. 2D 92. (OFF RECORD WITH CO-COUNSEL)

9 I GUESS IN SUMMARY THE STATE'S POSITION IS THAT HE IS
10 GOING TO TESTIFY EITHER DIRECTLY OR THROUGH OTHER WITNESSES
11 OF SOME PSYCHIATRIC ISSUE, AND THERE IS EVIDENCE IN THE
12 RECORD, WE BELIEVE, BASED ON THE REDACTION -- THAT'S THE ONLY
13 BASIS -- THAT IS CONTRARY TO THAT, IS CONTRARY TO WHAT THEY
14 HAVE ASSERTED AND CONTRARY TO WHAT THEY'RE GOING TO PRESENT,
15 AND WE WOULD LIKE TO BE ABLE TO, IN FAIRNESS, EXPLAIN TO THE
16 JURY WHAT HE REALLY KNOWS AND WHAT HE REALLY KNEW.

17 THE COURT: YES, SIR.

18 MR. MAULDIN: YOUR HONOR, IT'S -- TO ME, THIS IS A
19 MULTI-LEVEL ISSUE, AND I WANT TO TRY, TO THE EXTENT I CAN, TO
20 KEEP MY THOUGHTS IN SIMPLE AND LINE, AND I'LL TRY TO DO THAT.

21 THERE WAS AN EVALUATION ORDERED BY THIS COURT, OBJECTED
22 TO BY THE DEFENSE. IT AROSE OUT OF ANDERSON, THE
23 CONSOLIDATION, THE HEARING WHERE THE EVALUATION WAS
24 CONSOLIDATED, AND THE RECORD SPEAKS FOR ITSELF. SO TO THE
25 EXTENT THE RECORD IS CLEAR ON HOW WE GOT ALL OF THAT, I'LL

MATTERS AND MOTIONS

1 REST ON IT.

2 THERE WERE THREE ISSUES. AND TO THE EXTENT HE HAS
3 REFERRED TO STATE v. SLOAN, THAT'S EASY. THE QUESTION WAS
4 WHETHER OR NOT THE DEFENDANT WOULD HAVE REFUSED AN EVALUATION
5 ON CRIMINAL RESPONSIBILITY AND GUILTY BUT MENTALLY ILL, AND
6 THE STATE'S -- AND, OF COURSE, IN THAT PARTICULAR SITUATION,
7 IF HE REFUSED THE EVALUATION FOR IT, THEN HE COULDN'T THEN
8 TURN AROUND AND CLAIM IT. SO THAT'S NOT COMPLICATED, AND
9 THAT'S NOT WHAT WE HAVE IN THIS CASE. SO IT ISN'T RELEVANT
10 TO THIS CASE, I DON'T BELIEVE.

11 BUT YOU HAVE COMPETENCY TO STAND TRIAL, CRIMINAL
12 RESPONSIBILITY AND GUILTY BUT MENTALLY ILL EVALUATION. THE
13 STATE HAS BEEN GIVEN, OVER OUR OBJECTION, PORTIONS OF THE
14 STATE HOSPITAL REPORT THAT HE'S BEEN BEGGING FOR THE REST OF.
15 THEY WERE GIVEN THE PORTION THAT RELATED TO COMPETENCY TO
16 STAND TRIAL, OVER OUR OBJECTION BUT STILL THEY WERE GIVEN IT.
17 THE COMPETENCY TO STAND TRIAL ISSUE WAS NOT PLACED BEFORE THE
18 COURT AS A CHALLENGE BEFORE THIS TRIAL. YOU RECALL YOUR
19 RULING. WE DIDN'T -- WE DIDN'T RAISE IT. WE HAD OBJECTED TO
20 IT ALL ALONG. WE DID NOT RAISE IT: THEREFORE, THE RULING ON
21 MONDAY WAY BACK, HOWEVER LONG AGO IT WAS, WAS RELATIVELY
22 SIMPLE FOR THE COURT.

23 NOW, CRIMINAL RESPONSIBILITY AND GUILTY BUT MENTALLY ILL
24 ARE NOW OUT OF THE WAY. WE HAVEN'T -- THEY ASKED US FOR
25 NOTICE OF IT AND WE DIDN'T GIVE IT TO THEM. WE NEVER CLAIMED

MATTERS AND MOTIONS

1 IT. WE DIDN'T ASK FOR AN INSTRUCTION ON INSANITY. WE DIDN'T
2 BRING IN A WITNESS AS TO THE DEFENDANT'S INSANITY AND
3 THEREFORE AN EFFORT TO HAVE THIS JURY CONSIDER AN ACQUITTAL
4 ON THE ISSUE -- ON THAT ISSUE. WE DID NOT ASK THIS COURT TO
5 INSTRUCT THE JURY ON GUILTY BUT MENTALLY ILL CONSIDERATIONS.
6 WE DIDN'T BRING ANY PSYCHOLOGICAL OR PSYCHIATRIC TESTIMONY TO
7 THIS JURY. THE FACTS OF THE CASE PRESENTED FROM THE WITNESS
8 STAND THAT YOU AND I AND ALL OF US IN HERE HEARD WERE
9 PRESENTED TO THIS JURY AS A QUESTION OF WHETHER THE STATE HAS
10 PROVEN THE ELEMENTS OF THE EVENTS OF MURDER. THEY HAD THAT
11 TO EITHER TAKE IT OR LEAVE IT. THEY LEFT IT AND WROTE A
12 VERDICT OF GUILTY. SO THE CRIMINAL RESPONSIBILITY AND GUILTY
13 BUT MENTALLY ILL ARE NOW NONISSUES. THEY ARE NOT ENTITLED TO
14 THAT INFORMATION THAT IS NO LONGER AN ISSUE IN THIS CASE SO
15 THEY CAN SIMPLY TRY TO TWIST IT AROUND WITH REGARD TO THE
16 GUILT -- THE PUNISHMENT OF THE DEFENDANT FOR AN OFFENSE HE
17 HAS NOW BEEN CONVICTED OF. WE NEVER RAISED THE QUESTION. WE
18 OBJECTED TO IT AT EVERY TURN. WE DIDN'T PRESENT IT. HE CAN
19 STAND THERE AND SAY TO THIS COURT -- AND YOU HEARD THE
20 ARGUMENTS. YOU HEARD THE TESTIMONY. THERE HAS BEEN SOME
21 REFERENCE TO WHETHER THE ARGUMENT OF MR. BANNISTER WAS
22 INAPPROPRIATE. I DON'T THINK IT WAS A BIT INAPPROPRIATE AND
23 I WAS REALLY PROUD OF THE ARGUMENT. BUT THE QUESTION WAS
24 WHETHER OR NOT THAT JURY WAS ASKED TO FIND OUR CLIENT,
25 ESSENTIALLY, NOT GUILTY BY REASON OF INSANITY WHEN IT WASN'T

MATTERS AND MOTIONS

1 EVEN AN ISSUE IN THE COURT'S INSTRUCTIONS OR THE JURY -- THE
2 JURY DIDN'T EVEN HAVE THAT OPTION.

3 NOW---

4 THE COURT: MR. MAULDIN?

5 MR. MAULDIN: YES, SIR.

6 THE COURT: TAKE A DEEP BREATH. CALM DOWN.

7 MR. MAULDIN: ALL RIGHT, SIR.

8 THE COURT: THERE'S NOTHING YOU'VE SAID YET THAT
9 ADDRESSES THEIR REQUEST.

10 MR. MAULDIN: ALL RIGHT.

11 THE COURT: AND YELLING, HISTORIONICS ARE GOING TO PLACE
12 NO WEIGHT WHATSOEVER IN MY DECISION. AND LET ME SHARE WITH
13 YOU MY PERSPECTIVE AND MAYBE WE CAN HONE IN ON THE ISSUE.

14 IT'S MY GUESS THAT A MENTAL HEALTH EXPERT WILL TESTIFY,
15 PERHAPS A PSYCHIATRIST. AND IT WON'T BE CALLED NOT GUILTY BY
16 REASON OF INSANITY. IT WON'T BE CALLED GUILTY BUT MENTALLY
17 ILL. BUT IT WILL BE THE SAME TYPES OF ANALYSIS IN MENTAL
18 HEALTH ISSUES THAT OVERLAP WITH WHAT DR. NARAYAN DID. AND IT
19 SEEMS TO ME UNFAIR TO ALLOW THE HIRED EXPERTS OF THE
20 DEFENDANT TO PRESENT A MENTAL HEALTH PICTURE WHICH MAY BE AT
21 ODDS WITH THE REPORT FROM THE DEPARTMENT OF MENTAL HEALTH,
22 THE STATE REPORT. IT WOULD FURTHER, TO ME, BE UNFAIR IF AN
23 EFFORT IS MADE TO USE A MENTAL HEALTH APPROACH, PSYCHIATRIC
24 APPROACH, AND TRY TO REVISIT THE FACTS OF THIS CASE IF,
25 HYPOTHETICALLY SPEAKING, A DEFENDANT HAS GIVEN A STATEMENT

MATTERS AND MOTIONS

1 THAT THERE IS NO RESEMBLANCE TO. AND I DON'T KNOW WHERE IT'S
2 GOING.

3 SO IF -- SEE, THAT'S MY CONCERN. I'M TRYING TO BE FAIR
4 TO BOTH SIDES. I HAVE NOT GIVEN HIM THE ENTIRE REPORT. HE
5 HAS ASKED ME EVERY TIME WE'VE HAD A HEARING. HE STOOD UP,
6 AND AS YOU SAY, BEGGED FOR THE REPORT. I HAVEN'T PERMITTED
7 IT. BUT IT SEEMS TO ME THAT WHEN YOU CALL, IF YOU DO, A
8 MENTAL HEALTH EXPERT, SUCH AS A PSYCHIATRIST, AND WE HEAR
9 THESE TERMS AND WE HEAR THINGS THAT WILL DOVETAIL WITH THE
10 STATUTORY MITIGATING CIRCUMSTANCES -- THE MENTAL IMPAIRMENT,
11 THE CAPACITY OF AN INDIVIDUAL TO MAKE RIGHT DECISIONS -- I
12 JUST THINK I SEE WHERE IT'S GOING, AND THEN THE REPORT THAT I
13 HAVE THAT THE STATE DOESN'T HAVE IS OPPOSED TO THE APPROACH
14 TAKEN BY THE DEFENSE EXPERTS, SEE, TO ME, AT THAT POINT IT
15 WOULDN'T BE FAIR TO THEN GIVE THEM ACCESS. DOES THAT MAKE
16 ANY SENSE?

17 MR. MAULDIN: YES, SIR, YOUR HONOR. THEY WANT -- THEY
18 SEEK AN OPPORTUNITY TO REBUT, AND THEY SAY THAT WE ARE
19 PREVENTING THEM FROM REBUTTAL BY EXERCISING THE LEGAL RIGHTS
20 AFFORDED HIM. WELL, OF COURSE WE'RE EXERCISING THE LEGAL
21 RIGHTS AFFORDED HIM. THIS IS A CAPITAL TRIAL. SO OUR
22 OBJECTIONS AND OUR POSITIONS ARE PROVIDED TO US AND WE WILL,
23 IN FACT, STAND BY THEM.

24 AND THE JUDGE ALSO YOURSELF MADE THE POINT ABOUT IT
25 BEING A STATUTORY MITIGATING INFORMATION. THE LEGISLATURE

MATTERS AND MOTIONS

1 PROVIDED CERTAIN INFORMATION FOR THE PURPOSES OF SENTENCING A
2 DEFENDANT. NOW, LET'S SAY, HYPOTHETICALLY, LET US ASSUME FOR
3 THE PURPOSES OF THE DISCUSSION THAT A PSYCHOLOGIST OR A
4 PSYCHIATRIST COMES IN AND TESTIFIES IN THE CASE OF STATE v.
5 JOHN SMITH AT THE SENTENCING HEARING AS TO PSYCHOLOGICAL OR
6 PSYCHIATRIC IMPAIRMENT, MENTAL IMPAIRMENTS, AND THOSE
7 IMPAIRMENTS OFFER WHAT THE LAW ALLOWS TO BE OFFERED AT A
8 SENTENCING HEARING, AN EXPLANATION FOR THE INCIDENT. NOT AN
9 EXCUSE. THE EXCUSE WOULD HAVE BEEN THE INSANITY OR GUILTY
10 BUT MENTALLY ILL. THE EXPLANATION IS HERE IS HOW SUCH A
11 THING COULD HAVE HAPPENED. NOW, THAT'S WHAT, TO ME, THE
12 SENTENCING HEARING IS ACTUALLY IN FACT IN ESSENCE ALL ABOUT.

13 NOW, THE -- WE OBJECTED TO THE EVALUATION IN THE FIRST
14 PLACE AND WE OBJECTED CERTAINLY TO DISCLOSURE BECAUSE THE
15 STATE WAS GETTING ESSENTIALLY -- PLACED THEMSELVES IN THE
16 POSITION THEY ARE NOW IN INDIRECTLY WHEN THEY COULD HAVE DONE
17 IT DIRECTLY.

18 LET ME GIVE YOU AN EXAMPLE, YOUR HONOR. LET'S SAY AT
19 THE END OF A GUILT PHASE OF A CAPITAL TRIAL IN ANTICIPATION
20 OF A MENTAL HEALTH EXPERT BEING PUT UP THE STATE STOOD UP AND
21 SAID, "YOUR HONOR, WE ANTICIPATE THAT THE DEFENSE MAY WANT TO
22 TAKE ADVANTAGE OF MITIGATION 3, 4, 6, 8, 10," WHATEVER THE
23 NUMBERS ARE, "THAT RELATE TO THE MENTAL STATE OF THE
24 DEFENDANT. IN ORDER TO RESPOND TO THAT INFORMATION WE WANT
25 YOU TO ORDER THE DEFENDANT TO DO X, Y OR Z." I KNOW OF NO

MATTERS AND MOTIONS

1 AUTHORITY FOR THAT. I DON'T THINK THAT SHOULD BE DONE. I
2 DON'T THINK THE COURT SHOULD JUST ALL OF A SUDDEN RESPOND TO
3 SUCH A MOTION BY THE PROSECUTION, AND I CERTAINLY INTEND TO
4 CONTEST IT AND DISPUTE IT AT EVERY TURN. AND THAT IS
5 PARTICULARLY AND SPECIFICALLY IN LIGHT OF THE FACT THAT THE
6 CRIMINAL RESPONSIBILITY AND THE GUILTY BUT MENTALLY ILL
7 ISSUES ARE ESSENTIALLY NOT NOW AND NEVER WERE ON THE TABLE,
8 AND THE REFERENCES IN THE STATE HOSPITAL REPORT REGARDING
9 CONVERSATIONS THAT TOOK PLACE BETWEEN WHOEVER THIS PERSON
10 WAS, I THINK NARAYAN, AND OUR CLIENT JUST SIMPLY WOULD BE
11 INAPPROPRIATE.

12 ONE MOMENT, YOUR HONOR. (OFF RECORD WITH CO-COUNSEL).

13 THE COURT: WHILE YOU ARE CONFERRING, I JUST WANT THE
14 RECORD TO REFLECT THE RECASTING OF THE PROCEDURAL HISTORY
15 WHICH GAVE RISE TO THE COURT ORDERED EXAMINATION IS NOT AS
16 STATED. AND I AM NOT AT LIBERTY TO DISCUSS -- THE STATE HAS
17 NO CONCEPT OF WHAT I HAVE RECEIVED IN TERMS OF INFORMATION
18 THROUGH FUNDING AND EX PARTE COMMUNICATIONS FROM THE
19 DEFENDANT WHICH HAVE BEEN FILED UNDER SEAL.

20 MR. MAULDIN: THE OTHER MATTER, YOUR HONOR, AND I WOULD
21 LIKE TO AT LEAST PUT THIS ON THE RECORD -- WELL, AND I
22 DON'T -- I WILL NOT SAY THAT AT THIS POINT BECAUSE I'M NOT
23 REAL -- I WANT TO MAKE SURE THAT MY WORDS AREN'T
24 MISCONSTRUED, SO I WILL HOLD THAT.

25 THE COURT: AND YOUR POSITION, MR. MAULDIN, ASIDE FROM

MATTERS AND MOTIONS

1 YOUR ABILITY TO HAVE EXPERTS COME IN ON BEHALF OF DEFENDANT
2 -- AND MAYBE MY CONCERN WAS JUST A SENSE OF FUNDAMENTAL
3 FAIRNESS AND I HAVE TO BE BIG ENOUGH TO REALIZE THAT FAIRNESS
4 AND THE LAW OFTENTIMES PART COMPANY. AND I DEAL WITH THAT ON
5 A DAILY BASIS, SO THAT'S NOT AN UNUSUAL CONCEPT. BUT BEYOND
6 THE MENTAL HEALTH ISSUE, I AM CONCERNED THAT THE FACTUAL
7 SCENARIO OF WHAT HAPPENED WILL BE PORTRAYED SOMEHOW
8 CONSISTENT WITH THE TESTIMONY FROM KAREN MCCALL AND WHAT WAS
9 PORTRAYED TO THE JURY. AND IF AN INDIVIDUAL HAS BEEN ADVISED
10 OF HIS RIGHTS IN CONNECTION WITH A COURT-ORDERED EVALUATION
11 AND GAVE A STATEMENT, IT JUST STRIKES ME AS OFFENSIVE NOT TO
12 PERMIT THE STATE TO BE AWARE OF THAT STATEMENT. AND MAYBE
13 THAT'S JUST SOMETHING I'VE GOT TO LIVE WITH.

14 MR. MAULDIN: WELL, YOUR HONOR, LET ME ASK IF THE COURT
15 WOULD DO THIS BECAUSE I -- LET ME -- AND, AGAIN, I'M GOING TO
16 DO A HYPOTHETICAL BECAUSE I JUST SEE WHAT THIS -- THE JOHN
17 WOOD CASE COULD BECOME AN EXTRAORDINARY SITUATION, AND LET ME
18 TELL YOU WHY I THINK THAT. I HAVE NEVER HAD THE FIRST OUNCE
19 OF FEAR WHEN I HAVE IN REPRESENTATION OF CAPITAL DEFENDANTS
20 -- AND THE COURT HAS MADE REFERENCE TO THE CONFIDENTIAL EX
21 PARTE MATTER REGARDING ISSUES OF FUNDING. WHEN I HAVE GONE
22 BEFORE THESE HYPOTHETICAL JUDGES AND SAID, "I WANT TO HAVE MY
23 CLIENT EVALUATED FOR PSYCHOLOGICAL OR PSYCHIATRIC OR
24 NEUROLOGICAL OR WHATEVER," IT'S BECOME -- THAT IS PART OF THE
25 TERRITORY AND PART OF WHAT I DO IN EVERY SINGLE CASE. NOW,

MATTERS AND MOTIONS

1 IF ONE -- IF THE DOOR WE'RE GETTING READY TO OPEN HERE IS
2 THAT THE PROSECUTION IN EVERY SINGLE CASE COULD SAY, "WE WANT
3 THE COURT TO ORDER THIS PERSON EVALUATED BECAUSE WE KNOW THAT
4 THE DEFENSE IN CAPITAL CASES WILL PRESENT MITIGATION
5 INFORMATION THAT RELATES TO THE STATUTORY MITIGATORS ON
6 MENTAL HEALTH OR MENTAL ISSUES," THEN I THINK THAT IS A DOOR
7 THAT WOULD JUST FLY OPEN AND CHANGE THE ENTIRE PROCESS. AND
8 I'M JUST -- YOU KNOW, I'M REALLY NERVOUS ABOUT THAT.

9 THE COURT: I AM TOO, AND I AGREE WITH THAT. IT'S
10 BEYOND THAT.

11 MR. MAULDIN: WELL, THAT'S -- YOU KNOW, THAT'S -- IT IS
12 -- I'M FEELING AN EXTRAORDINARY AMOUNT OF SIGNIFICANCE ABOUT
13 MY CLIENT'S CASE. BUT I'M ALSO FEELING LIKE THIS IS
14 SOMETHING THAT IS JUST MASSIVE IN ITS POTENTIAL.

15 I'M GOING TO ASK THE COURT TO GIVE ME AN OPPORTUNITY AT
16 LEAST -- BECAUSE I DO WANT TO MAKE SURE THE RECORD IS RIGHT.
17 THERE HAVE BEEN SOME REFERENCES DURING THESE PRETRIAL MOTIONS
18 AND ALL THAT SOMETIMES MISSTATEMENTS HAVE BEEN MADE. AND TO
19 THE EXTENT THE DEFENSE HAS BEEN THE CULPRIT OF THOSE, YOUR
20 HONOR, I OFFER MY APOLOGIES. I DON'T -- I WANT TO MAKE
21 SURE -- AND I KNOW THAT YOU'RE NOT GOING TO BE FOOLED. SO
22 I'VE GOT CONFIDENCE IF WE TRY TO PULL SOMETHING OVER ON YOU,
23 THAT'S NOT GOING TO WORK. BUT I WANT TO MAKE SURE THAT WHEN
24 I MAKE MY PRESENTATION ON THIS ISSUE THAT I'M DOING IT RIGHT,
25 BECAUSE I FEEL LIKE I'M REPRESENTING EVERY CAPITAL DEFENDANT

MATTERS AND MOTIONS

1 IN THE UNITED STATES ON AN ISSUE THIS SIGNIFICANT. I MEAN,
2 THIS IS A BIG DEAL, AND I CAN SEE THE MOTIONS COMING ON ALL
3 OF MY CASES. SO I DO WANT TO MAKE SURE THIS IS DECIDEDLY
4 CORRECTLY AND---

5 THE COURT: AND I DO TOO, AND I'M NOT GOING TO DISCLOSE
6 IT AT THIS TIME.

7 MR. MAULDIN: YOU KNOW, EVEN IF IT'S LATER THIS
8 AFTERNOON IF WE NEED TO GET BACK TOGETHER TO---

9 THE COURT: I'M GOING TO WAIT AND SEE WHAT YOU OFFER.
10 I WANT TO HEAR PRECISELY WHAT THE EXPERTS SAY. I WANT TO SEE
11 IF THEY VENTURE INTO ATTEMPTING TO CONVEY TO THE JURY A
12 FACTUAL SCENARIO OF WHAT HAPPENED, MEASURE THAT AGAINST THE
13 RECORD THAT I HAVE OF WHICH THE STATE IS UNAWARE, AND
14 CAREFULLY CONSIDER IT AND DECIDE AT THAT TIME.

15 AND IF I DECIDE TO DISCLOSE IT, I WILL NOT GIVE THE
16 STATE 30 MINUTES TO LOOK AT THE REPORT. I WILL GIVE AMPLE
17 TIME, WHATEVER IS REASONABLY NECESSARY. BUT I DO HAVE THE
18 FULL REPORT, OBVIOUSLY. AND I DO HAVE THE REPORT THAT I
19 ORDERED DR. NARAYAN TO SUBMIT TO THE DEFENDANT. A COPY WAS
20 MADE FOR ME. I HAVE NOT REVIEWED THAT. IT IS STILL UNDER
21 SEAL. BUT IT IS IN -- IT'S IN MY OFFICE.

22 MR. MAULDIN: ANOTHER MATTER, YOUR HONOR, ON THAT.
23 WHEN WE -- I WANT TO MAKE SURE I'M -- ARE WE REFERRING TO THE
24 STATE HOSPITAL REPORT THAT THEN WAS DISCLOSED IN A REDACTED
25 AND A UNREDACTED FORM OR ARE WE TALKING ABOUT THAT THING THAT

MATTERS AND MOTIONS

1 I INSISTED BE GIVEN TO ME---

2 THE COURT: WE'RE TALKING ABOUT AT LEAST THE FIRST AND
3 MAYBE THE SECOND.

4 MR. MAULDIN: ALL RIGHT. .

5 THE COURT: AND QUITE FRANKLY, THAT'S STILL SEALED. I
6 HAVEN'T EVEN LOOKED AT IT.

7 MR. MAULDIN: ALL RIGHT. I -- AND I -- I'M WITH YOU,
8 YOUR HONOR.

9 SOLICITOR ARIAIL: COULD I JUST RAISE -- I'VE BEEN
10 QUIET AND I'VE BEEN GOOD.

11 THE COURT: YES, SIR, LAY IT ON ME.

12 SOLICITOR ARIAIL: ALL RIGHT. I'M NOT GOING TO LAY IT
13 ON YOU. I'M JUST GOING TO SORT OF PREP YOU WHERE WE'RE
14 GOING. AND I CONCUR THAT I WANT THE DECISION TO BE THE RIGHT
15 ONE. BUT AS YOU WELL KNOW, YOU'VE BEEN DOWN THIS ROAD AND
16 YOU'VE SEEN IT COMING FOR A COUPLE OF YEARS, I KNOW, AND THIS
17 IS NOT SOMETHING THAT I JUST DREAMED UP IN THIS CASE. IT'S
18 BEEN A -- THIS HAS BEEN A PLANNED ATTACK ON THIS AREA OF THE
19 LAW THAT I THINK IS UN -- NOT ONLY UNFAIR, I THINK WE DON'T
20 REALLY HAVE A GOOD FEEL FOR WHAT IT IS. BUT BEYOND THAT, I
21 HAVE A RIGHT TO CROSS EXAMINE ANY EXPERT PUT UP ON MENTAL
22 HEALTH, AND AS A VERY FUNDAMENTAL FOUNDATION OF THAT I HAVE A
23 RIGHT TO KNOW EVERY RECORD AND THE CONTENTS OF IT THAT THEY
24 REVIEWED AND EVERY RECORD THEY DIDN'T REVIEW.

25 THE COURT: IF THEY HAVE REVIEWED IT, YOU HAVE A RIGHT

MATTERS AND MOTIONS

1 TO QUESTION THEM.

2 SOLICITOR ARIAIL: BUT WHAT IF HE DIDN'T REVIEW IT?

3 THE COURT: AND I'M SURE THEY DIDN'T.

4 SOLICITOR ARIAIL: EXACTLY. AND THEN WHERE AM I?

5 BECAUSE I'M GOING TO BE HAMSTRUNG BY SAYING, "YOU DIDN'T TALK
6 TO DR. NARAYAN?" YOU KNOW, I CAN BEAT THAT HORSE PRETTY
7 GOOD, BUT I'D LIKE TO HAVE THE FULL HORSE BEFORE I START
8 BEATING IT. BECAUSE I THINK I CAN SHOW A -- IF THEY HAVEN'T
9 REVIEWED THAT REPORT, IF THAT WITNESS HASN'T REVIEWED THAT
10 REPORT, YOUR HONOR, HE'S NOT COMPETENT TO TESTIFY IN THIS
11 COURT. THAT WOULD BE A PURPORTED FRAUD TO ALLOW AN EXPERT
12 NOT TO REVIEW A KEY EXAMINATION BY THE STATE MENTAL HOSPITAL.
13 AND I KNOW WHO THESE WITNESSES ARE GOING TO BE, AND THEY'RE
14 GOING TO KNOW HE WENT TO THE STATE HOSPITAL. SO I DON'T KNOW
15 HOW HE CAN STAND UP HERE IN GOOD FAITH CREDIBILITY AND NOT
16 SAY HE REVIEWED IT. SO JUST SO YOU'VE GOT A HEAD'S UP,
17 THAT'S WHERE WE'RE GOING TO END UP.

18 THE COURT: ALL RIGHT.

19 SOLICITOR ARIAIL: AND I HATE TO PUT IT IN THE BOX, BUT
20 IT'S TIME TO BRING THIS MESS TO A CONCLUSION, IN MY OPINION.

21 THE COURT: THANK YOU, SIR..

22 SOLICITOR ARIAIL: THANK YOU. I'M SORRY.

23 THE COURT: I'M NOT GOING TO DISCLOSE IT AT THIS TIME.

24 THE FINAL THING IS, MR. BANNISTER, I THOUGHT YOU MADE AN
25 EXCELLENT CLOSING ARGUMENT. IT'S NOT MY INTENT TO SAY THERE

MATTERS AND MOTIONS

1 WAS ANYTHING UNETHICAL ABOUT IT, AND IF IT CAME ACROSS THAT
2 WAY, I APOLOGIZE TO YOU. IN FACT, AFTER YOU LEFT, WE CAME
3 BACK ON THE RECORD TO PUT THE SCHEDULING OF HOW WE WERE GOING
4 TO DEAL WITH TODAY'S HEARING AND I TOLD THEM THEY BETTER BE
5 PREPARED WHEN YOU'RE INVOLVED IN A CASE IN THE FUTURE,
6 BECAUSE YOU TOOK A CASE WITH ON THE FRONT END, ON THE GUILT
7 PHASE, QUITE FRANKLY, VERY LITTLE TO WORK WITH AND YOU DID AN
8 EXCELLENT JOB. AND THE JURY'S QUESTION WAS STRONG EVIDENCE
9 OF YOUR ADVOCACY SKILLS, AND THAT'S WHAT I INDICATED TO THE
10 ATTORNEYS YESTERDAY. SO PLEASE DON'T TAKE ANY -- YESTERDAY
11 AND CONSTRUE IT IN A NEGATIVE LIGHT. IT WAS NOT INTENDED IN
12 THAT WAY. BUT IT WAS MY DUTY, PARTICULARLY IN A CASE OF THIS
13 MAGNITUDE, TO INSURE THAT THE JURY IS PROPERLY INSTRUCTED.

14 I'LL BE AVAILABLE TODAY. I'LL BE HERE IF SOMETHING ELSE
15 COMES UP. BUT WE'LL BE IN RECESS. PENDING FURTHER NEED TO GO
16 ON THE RECORD. THANK YOU.

17 OH, LET ME MENTION ONE OTHER THING FOR THE RECORD. I'VE
18 GIVEN Y'ALL A COPY OF THE PROPOSED FINAL INSTRUCTION. I KNOW
19 THAT'S DOWN THE ROAD. I'LL TELL YOU WHAT I'D LIKE FOR YOU TO
20 DO IF -- JUST GO THROUGH IT. WRITE, YOU KNOW, WE DON'T LIKE
21 THIS WORD. ADD THIS SENTENCE. WRITE IN THE MARGIN. WRITE
22 ON THE BACK OF THE PAGE. AND JUST SEND IT TO MY OFFICE.
23 LET ME LOOK AT IT. I MEAN, IT MAY JUST BE SOMETHING THAT'S
24 VERY EASY TO DO AND NO PROBLEM. JUST COPY THE OTHER SIDE SO
25 THEY KNOW WHAT YOU'RE REQUESTING, WHAT ADDITIONS YOU WANT AND

MATTERS AND MOTIONS

1 WHAT DELETIONS YOU WANT. AND WE'LL HOOK UP AGAIN WHEN THE
2 TIME IS APPROPRIATE. BUT, NO, I'M LOOKING TO GUIDANCE ON
3 THAT PROPOSED FINAL INSTRUCTION.

4 MR. MAULDIN: THANK YOU, JUDGE.

5 (COURT RECESSED FOR THE DAY AT 11:37 A.M.)
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CERTIFICATE

I, THE UNDERSIGNED, DAWN V. KOFFSKEY, OFFICIAL COURT REPORTER FOR THE 13TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR GREENVILLE COUNTY, SOUTH CAROLINA, ON THE 11TH AND 12TH DAYS OF FEBRUARY, 2002.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MARCH 20, 2003



DAWN V. KOFFSKEY
COURT REPORTER

MATTERS AND MOTIONS

1 (TRIAL RESUMED AT 9:37 A.M. ON 2/13/02)

2 **THE COURT:** GOOD MORNING, COUNSEL. ANYTHING BEFORE WE
3 BRING THE JURY IN?

4 **MS. STROM:** DO WE NEED TO TAKE UP ANYTHING ON YOUR
5 OPENING CHARGE, YOUR HONOR?

6 **THE COURT:** I DON'T THINK SO.

7 **MS. STROM:** I HAVE NO OBJECTION TO THE WAY YOU HAVE
8 CHARGED. I JUST DIDN'T KNOW.

9 **THE COURT:** OF COURSE, YOU KNOW, WE'LL REVISIT THE
10 FINAL CHARGE AT THE APPROPRIATE TIME.

11 HEARING NOTHING, WE WILL PROCEED.

12 I DID RECEIVE A LETTER YESTERDAY FROM MR. MAULDIN. I
13 DON'T KNOW IF IT WAS COPIED TO THE OTHER SIDE OR NOT. IT
14 DOESN'T INDICATE IT. SO I JUST DIDN'T WANT IT INDICATED THAT
15 I RECEIVED AN EX PARTE COMMUNICATION. IT'S GOING TO BE
16 MARKED AS A COURT'S EXHIBIT.

17 IF YOU WOULD, MAKE THAT AS A COURT'S EXHIBIT, MS.
18 KOFFSKEY.

19 (LETTER FROM MR. MAULDIN MARKED AS COURT'S EXHIBIT
20 NUMBER 21)

21 **THE COURT:** BRING THE JURY, PLEASE.

22 (JURY ENTERS COURTROOM AT 9:42 A.M.)

23 **THE COURT:** MADAME FORELADY, LADIES AND GENTLEMEN, GOOD
24 MORNING.

25 LADIES AND GENTLEMEN OF THE JURY, THE DEFENDANT, JOHN

PRELIMINARY INSTRUCTION

1 RICHARD WOOD, WAS CONVICTED ON FEBRUARY THE 11TH OF THE
2 OFFENSE OF MURDER AND THE ADDITIONAL OFFENSE OF POSSESSION OF
3 A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. IT
4 THEREFORE BECOMES NECESSARY FOR US TO HOLD THIS ADDITIONAL
5 PROCEEDING WHICH WILL DETERMINE THE PUNISHMENT THAT THE COURT
6 IS TO IMPOSE UPON THIS DEFENDANT.

7 SECTION 16-3-20 OF THE CODE OF LAWS OF SOUTH CAROLINA
8 PROVIDES IN PART "A PERSON WHO IS CONVICTED OF MURDER MUST BE
9 PUNISHED BY DEATH OR BY IMPRISONMENT FOR LIFE." THAT SECTION
10 ALSO PROVIDES IN PART "UPON CONVICTION OF A DEFENDANT OF THE
11 OFFENSE OF MURDER, THE COURT SHALL CONDUCT A SEPARATE
12 SENTENCING PROCEEDING TO DETERMINE WHETHER THE DEFENDANT
13 SHOULD BE SENTENCED TO DEATH OR LIFE IMPRISONMENT."

14 SO OUR PURPOSE IN CONDUCTING THIS PROCEEDING, IN WHICH
15 WE ARE NOW ENGAGED, IS TO DETERMINE WHETHER THE DEFENDANT,
16 JOHN RICHARD WOOD, SHOULD BE SENTENCED BY THE COURT TO DEATH
17 OR TO LIFE IMPRISONMENT. WITH RESPECT TO YOUR PARTICULAR
18 ROLE IN THIS PROCEEDING YOU WILL BE ASKED TO DETERMINE FIRST
19 WHETHER THE STATE HAS PROVED AN AGGRAVATING CIRCUMSTANCE
20 BEYOND A REASONABLE DOUBT. IN THIS CASE THE STATE ASSERTS
21 UNDER STATE LAW ONE AGGRAVATING CIRCUMSTANCE.

22 THE ALLEGED CIRCUMSTANCE OF AGGRAVATION WHICH SOUTH
23 CAROLINA LAW RECOGNIZES AS A CIRCUMSTANCE OF AGGRAVATION IS
24 AS FOLLOWS: THE MURDER OF A FEDERAL, STATE OR LOCAL LAW
25 ENFORCEMENT OFFICER, PEACE OFFICER OR FORMER PEACE OFFICER,

PRELIMINARY INSTRUCTION

1 CORRECTIONS EMPLOYEE OR FORMER CORRECTIONS EMPLOYEE, OR
2 FIREMAN OR FORMER FIREMAN DURING OR BECAUSE OF THE
3 PERFORMANCE OF HIS OFFICIAL DUTIES.

4 LADIES AND GENTLEMEN, THE STATE HAS THE BURDEN OF
5 PROVING THAT CIRCUMSTANCE OF AGGRAVATION BEYOND A REASONABLE
6 DOUBT. ANY DETERMINATION AS TO THE PRESENCE OF THE ALLEGED
7 CIRCUMSTANCES OF AGGRAVATION MUST BE UNANIMOUS. IF YOU DO
8 NOT FIND THAT THE STATE HAS PROVED THE AGGRAVATING
9 CIRCUMSTANCE BEYOND A REASONABLE DOUBT, YOU WILL INFORM THE
10 COURT AT THAT STAGE IN YOUR DELIBERATIONS, AND AT THAT POINT
11 YOUR JOB WILL BE COMPLETE. THIS IS SO BECAUSE A FINDING OF
12 AN AGGRAVATING CIRCUMSTANCE UNANIMOUSLY AND BEYOND A
13 REASONABLE DOUBT IS NECESSARY BEFORE YOU CAN EVEN CONSIDER
14 DEATH AS A POSSIBLE PUNISHMENT OR LIFE IMPRISONMENT AS A
15 POSSIBLE PUNISHMENT. IF YOU FIND THE EXISTENCE OF THE
16 ALLEGED AGGRAVATING CIRCUMSTANCE, YOU WILL THEN DETERMINE
17 WHETHER THIS COURT SHOULD SENTENCE THE DEFENDANT TO DEATH OR
18 LIFE IMPRISONMENT.

19 AT THIS TIME I WANT TO BRING TO YOUR ATTENTION TWO
20 IMPORTANT POINTS. FIRST, ONCE A JURY HAS FOUND THE EXISTENCE
21 OF AN AGGRAVATING CIRCUMSTANCE, LIFE IMPRISONMENT MEANS UNTIL
22 THE DEATH OF THE OFFENDER. IN OTHER WORDS, NO SUCH PERSON
23 SENTENCED TO LIFE IMPRISONMENT IS ELIGIBLE FOR PAROLE.

24 SECOND, THE APPLICABLE STATUTE UNDER WHICH WE ARE
25 GOVERNED SPEAKS IN TERMS OF A JURY RECOMMENDATION OF

PRELIMINARY INSTRUCTION

1 SENTENCE. YOU WILL MAYBE HEAR THAT TERM. YOU WILL SEE IT
2 AND HEAR IT DURING THE CLOSING INSTRUCTION.

3 PLEASE UNDERSTAND THIS VERY IMPORTANTLY. THE COURT WILL
4 FOLLOW YOUR RECOMMENDATION. YOUR VERDICT WILL BE THE
5 SENTENCE IMPOSED. PLEASE DON'T HARBOR ANY ILLUSION THAT YOU
6 CAN MAKE A RECOMMENDATION AND THE COURT HAS SOME VETO POWER.
7 IT DOES NOT EXIST. YOUR DECISION WILL BE THE SENTENCE
8 IMPOSED BY THIS COURT. IF YOU FIND THE PRESENCE OF AN
9 AGGRAVATING CIRCUMSTANCE, YOU WILL DETERMINE THE SENTENCE OF
10 LIFE IMPRISONMENT OR DEATH. IF YOU FIND UNDER THE LAW THAT
11 LIFE IMPRISONMENT IS THE APPROPRIATE SENTENCE AND YOU
12 UNANIMOUSLY RECOMMEND A SENTENCE OF LIFE IMPRISONMENT, THE
13 COURT WILL SENTENCE DEFENDANT TO LIFE IMPRISONMENT. ON THE
14 OTHER HAND, IF YOU FIND UNDER THE LAW THAT THE DEATH PENALTY
15 IS THE APPROPRIATE SENTENCE AND YOU UNANIMOUSLY RECOMMEND A
16 SENTENCE OF DEATH, THE COURT WILL SENTENCE DEFENDANT TO
17 DEATH. I REPEAT, YOUR VERDICT WILL BE FOLLOWED. YOUR
18 VERDICT WILL BE THE COURT'S VERDICT.

19 DURING THIS SENTENCING PROCEEDING THE STATE AND THE
20 DEFENDANT WILL HAVE AN OPPORTUNITY TO INTRODUCE ADDITIONAL
21 EVIDENCE WHICH THE LAW PERMITS IN A SENTENCING PROCEEDING AND
22 BOTH SIDES WILL HAVE AN OPPORTUNITY TO PRESENT ARGUMENTS FOR
23 AND AGAINST THE DEATH PENALTY. AFTER THE LAST ARGUMENT HAS
24 BEEN MADE TO YOU CONCERNING THE PUNISHMENT THAT SHOULD BE
25 IMPOSED UPON THE DEFENDANT, I WILL GIVE YOU CERTAIN

PRELIMINARY INSTRUCTION

1 INSTRUCTIONS. YOU WILL THEN RETIRE TO DETERMINE FIRST
2 WHETHER THE STATE HAS PROVED THE EXISTENCE OF THE ALLEGED
3 AGGRAVATING CIRCUMSTANCE. IF AN AGGRAVATING CIRCUMSTANCE AS
4 ALLEGED IS FOUND, YOU WILL THEN DETERMINE WHETHER A DEATH
5 SENTENCE OR A LIFE SENTENCE WITHOUT PAROLE SHOULD BE IMPOSED.

6 THESE ARE THE ISSUES PRESENTED TO YOU. YOU WILL DECIDE
7 THESE ISSUES. SHOULD DEFENDANT BE SENTENCED TO LIFE
8 IMPRISONMENT OR SHOULD DEFENDANT BE SENTENCED TO DEATH? THAT
9 IS THE ISSUE BEFORE YOU.

10 NOW, LADIES AND GENTLEMEN, WE WILL HAVE OPENING
11 STATEMENTS AND MOVE FORWARD WITH THE RECEIPT AND PRESENTATION
12 OF EVIDENCE.

13 SOLICITOR?

14 SOLICITOR ARIAIL: THANK YOU, YOUR HONOR.

15 MS. STROM: MAY IT PLEASE THE COURT, YOUR HONOR.

16 GOOD MORNING. AS HIS HONOR TOLD YOU, WE ARE AT THAT
17 STAGE OF THE PROCEEDING WHERE YOU WILL BEGIN THE PROCESS OF
18 DETERMINING WHICH SENTENCE IS THE APPROPRIATE SENTENCE IN
19 THIS CASE. YOU HAVE ALREADY FOUND THIS DEFENDANT GUILTY OF
20 MURDER. THAT IS NO LONGER AN ISSUE FOR YOU. YOU WILL STILL
21 HAVE EVIDENCE TO CONSIDER, BUT YOUR DETERMINATION IS WHAT
22 SENTENCE IS THE APPROPRIATE SENTENCE.

23 HOW DO YOU GO ABOUT MAKING THAT DETERMINATION? IS IT
24 SIMPLY TO SAY HE COMMITTED A SERIOUS CRIME, SO LET ME GIVE
25 HIM A SERIOUS PUNISHMENT? AND I SUBMIT TO YOU THAT THAT IS

OPENING STATEMENTS -- BY MS. STROM

1 NOT YOUR ROLE. THAT'S NOT HOW YOU GO ABOUT MAKING YOUR
2 DECISION. BECAUSE AS HIS HONOR TOLD YOU, IN THE OATH THAT
3 YOU TOOK TO FOLLOW THE LAW, YOU MUST FIRST CONSIDER ALL
4 EVIDENCE IN AGGRAVATION THAT YOU FIND, ALL EVIDENCE IN
5 MITIGATION. YOU MUST HEAR THE INSTRUCTIONS ON THE LAW BEFORE
6 YOU ACTUALLY MAKE A DETERMINATION AS TO SENTENCE.

7 IN MAKING A DETERMINATION AS TO SENTENCE, YOU MUST LOOK
8 AT THE BLAMEWORTHINESS OF THIS DEFENDANT, THE MORAL
9 CULPABILITY OF THIS DEFENDANT. AND THAT'S WHAT YOU'RE GOING
10 TO BE ASKED TO DO WHEN YOU LISTEN TO THE EVIDENCE IN
11 AGGRAVATION, WHEN YOU LISTEN TO THE EVIDENCE IN MITIGATION,
12 AND WHEN YOU HEAR THE INSTRUCTIONS FROM THE COURT.

13 IT WILL NOT BE AN EASY DECISION. WE KNOW THAT.
14 EVERYONE HERE KNOWS THIS IS NOT AN EASY TASK FOR YOU, FOR
15 ANYONE. WE RECOGNIZE THAT. AND WE ALL HERE APPRECIATE THE
16 SOLEMN NATURE OF THE PATH THAT YOU ARE ABOUT TO TAKE.

17 BUT THINK ABOUT ONE THING. ALTHOUGH THE DECISION MAY BE
18 DIFFICULT, AREN'T MOST DIFFICULT DECISIONS DIFFICULT BECAUSE
19 THEY ARE THE MOST NECESSARY?

20 I HOPE YOU REALIZE AFTER YOUR SERVICE HERE THE
21 IMPORTANCE OF HAVING ATTENTIVE JURORS AS YOU ALL HAVE BEEN.
22 WE HAVE ALL COMMENTED ON THE FACT THAT Y'ALL WERE SO
23 ATTENTIVE DURING THE FIRST PHASE OF THIS TRIAL. AND WE ARE
24 CONFIDENT THAT YOU WILL DO THE SAME IN THIS PHASE. AND I
25 HOPE THAT AFTER YOUR SERVICE HERE YOU WILL RECOGNIZE THE

OPENING STATEMENTS -- BY MS. STROM

1 IMPORTANCE OF HAVING ATTENTIVE CONSCIENTIOUS JURORS WHO WILL
2 BE THE VOICE OF THE COMMUNITY, THE VOICE OF THIS COMMUNITY.

3 HIS HONOR TOLD YOU A LITTLE BIT THIS MORNING ABOUT THE
4 STRUCTURE OF THIS PROCEEDING, AND IT'S THE SAME AS THE
5 EARLIER PROCEEDING. WE HAVE OPENING STATEMENTS. YOU HEAR
6 EVIDENCE. WE HAVE CLOSING ARGUMENTS. YOU HEAR INSTRUCTIONS
7 FROM THE LAW -- FROM THE JUDGE ON THE LAW, JUST AS WE DID IN
8 THE FIRST PHASE. AND HIS HONOR HAS ALREADY TOLD YOU THAT
9 THAT EVIDENCE IS CONSIDERED EVIDENCE IN AGGRAVATION AND
10 EVIDENCE IN MITIGATION.

11 AND THOSE TYPES OF THINGS, I WON'T BELABOR THEM, BUT A
12 COUPLE THAT HE POINTED OUT TO YOU IN VOIR DIRE WHEN WE
13 INDIVIDUALLY ASKED YOU QUESTIONS WAS YOU MAY HEAR ABOUT THE
14 DEFENDANT'S CRIMINAL RECORD. YOU MAY HEAR ABOUT HIS MENTAL
15 STATUS. YOU MAY HEAR ABOUT EVIDENCE OF HIS CHARACTER. AND
16 THAT EVIDENCE MAY BE STUFF THAT YOU'VE ALREADY HEARD. IT MAY
17 BE WHAT WAS IN THE FIRST PHASE. IT MAY BE NEW. IT MAY BE
18 ANOTHER WITNESS WHO COMES IN AND GIVES YOU MORE DETAIL ON
19 THAT ONE PARTICULAR SUBJECT.

20 AND YOU WILL ALSO HEAR EVIDENCE CALLED VICTIM IMPACT
21 TESTIMONY. AND I WILL TELL YOU UP FRONT THAT THAT EVIDENCE
22 AND THAT TESTIMONY MAY BE DIFFICULT TO HEAR BECAUSE IT WILL
23 RELATE TO THE UNIQUENESS OF ERIC NICHOLSON, ERIC NICHOLSON AS
24 AN INDIVIDUAL AND HOW HIS DEATH HAS IMPACTED HIS FAMILY, NOT
25 ONLY HIS IMMEDIATE FAMILY, HIS WIDOW, HIS MOTHER AND FATHER

OPENING STATEMENTS -- BY MS. STROM

1 BUT HOW IT HAS AFFECTED HIS LAW ENFORCEMENT FAMILY.

2 THE JUDGE INSTRUCTED YOU THIS MORNING, AND HE WILL AGAIN
3 AT THE END OF THE CASE, THAT BEFORE YOU CAN CONSIDER PENALTY
4 YOU MUST FIRST DETERMINE IS THERE AN EXISTENCE OF A STATUTORY
5 AGGRAVATING CIRCUMSTANCE. WHAT IS A STATUTORY AGGRAVATING
6 CIRCUMSTANCE? AGAIN, IT IS ONE OF THOSE SELECT CIRCUMSTANCES
7 THAT'S OUTLINED IN OUR LAW THAT THE LEGISLATURE HAS
8 DETERMINED WORSENS OR HEIGHTENS OR AGGRAVATES THE CRIME OF
9 MURDER. AND IN THOSE SELECT CASES, THE STATE IS ALLOWED TO
10 SEEK THE DEATH PENALTY.

11 AS HIS HONOR TOLD YOU, THE STATE RELIES ON THE
12 CIRCUMSTANCE OF AGGRAVATION OF THE KILLING OF A LAW
13 ENFORCEMENT OFFICER. HE, IN FACT, READ OUT TO YOU THE ACTUAL
14 STATUTE, ALL THE WORDING IN THE LAW. IT COVERS MANY PEOPLE,
15 BUT ONE OF THE PERSONS IT COVERS IS A LAW ENFORCEMENT OFFICER
16 ACTING IN THE LINE OF DUTY, IN THE PERFORMANCE OF HIS
17 OFFICIAL DUTIES.

18 LADIES AND GENTLEMEN, I SUBMIT TO YOU THAT AFTER HEARING
19 ALL OF THE EVIDENCE AND IF YOU FIND THAT ERIC NICHOLSON -- IF
20 YOU FIND BEYOND A REASONABLE DOUBT THAT ERIC NICHOLSON WAS A
21 LAW ENFORCEMENT OFFICER AND WAS ACTING IN HIS OFFICIAL DUTIES
22 AT THE TIME OF HIS MURDER, THAT IS WHEN YOU CAN CONSIDER THE
23 DEATH PENALTY, AND ONLY THEN CAN YOU CONSIDER THE DEATH
24 PENALTY OR ANY PENALTY. YOU MUST FIRST FIND THE EXISTENCE OF
25 A STATUTORY AGGRAVATING CIRCUMSTANCE BEFORE YOU CAN CONSIDER

OPENING STATEMENTS -- BY MS. STROM

1 THE PENALTY -- IMPOSING A PENALTY. AND I SUBMIT TO YOU THAT
2 YOU CAN CONSIDER THAT PENALTY NOT BECAUSE A LAW ENFORCEMENT
3 OFFICER'S LIFE IS MORE VALUABLE THAN ANYONE ELSE'S LIFE BUT
4 BECAUSE THE LAW ENFORCEMENT OFFICER REPRESENTS THE VERY
5 FOUNDATION OF OUR SOCIETY. YOU CAN CONSIDER THAT PENALTY
6 BECAUSE THE LAW ENFORCEMENT OFFICER REPRESENTS THAT BASIC
7 PART OF OUR SOCIETY THAT WE ARE BASED UPON LAWS AND THE
8 OBSERVANCE OF LAWS AND THAT THERE ARE CONSEQUENCES IF YOU
9 BREAK THOSE LAWS. SO IT'S NOT THAT HIS LIFE IS MORE VALUABLE
10 THAN ANYONE ELSE'S BUT WHAT HE REPRESENTS -- WHAT HE
11 REPRESENTED THAT DAY.

12 LADIES AND GENTLEMEN, AFTER YOU HAVE HEARD ALL OF THE
13 EVIDENCE, AFTER YOU HAVE HEARD THE INSTRUCTIONS FROM THE
14 JUDGE ON THE LAW, AND AFTER YOU HAVE HEARD CLOSING ARGUMENTS,
15 IT WILL BE YOUR JOB TO DETERMINE WHICH SENTENCE IS
16 APPROPRIATE, WHICH SENTENCE FITS THE MORAL CULPABILITY OF
17 THIS DEFENDANT, WHICH SENTENCE WILL PROTECT THOSE WHO PROTECT
18 US.

19 THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU, MA'AM.

21 MR. MAULDIN?

22 MR. MAULDIN: MADAME FOREMAN, INDIVIDUAL JURORS, I'M
23 GOING TO REFER TO MY NOTES BECAUSE I MUST. ON MONDAY WHEN
24 YOU FILED INTO THIS COURTROOM WITH YOUR VERDICT AND THE
25 VERDICT WAS PASSED TO THE CLERK AND READ BY THE CLERK, I

OPENING STATEMENTS -- BY MR. MAULDIN

1 WATCHED YOU, AND I SAW THE SADNESS IN YOUR FACES, AND I SAW
2 THE ANGER IN YOUR FACES, AND I KNEW THAT THAT SORROW WAS FOR
3 ERIC NICHOLSON AND FOR MISTY NICHOLSON AND THAT ANGER WAS FOR
4 JOHN WOOD.

5 I KNOW THAT YOU BELIEVE THAT JOHN WOOD DESERVES TO DIE
6 FOR WHAT YOU CONVICTED HIM OF. I KNOW THAT YOU BELIEVE THAT
7 JUST THE CRIME ITSELF, THE NATURE OF THE CRIME ITSELF, IS
8 JUST ENOUGH. I KNOW THAT SOMEHOW THE IMPOSITION OF EXECUTION
9 FEELS RIGHT TODAY.

10 AND I GUESS YOU MAY FEEL SHOCKED TO HEAR ME, OF ALL
11 PEOPLE, ACTUALLY SAYING THAT. BUT QUITE FRANKLY I THINK THAT
12 NEEDS TO BE SAID. YOU ARE ONLY HALFWAY THROUGH THIS ORDEAL,
13 THIS JOURNEY, THIS RESPONSIBILITY. AND I DON'T KNOW THAT --
14 THE SECOND HALF IS NOT GOING TO BE AS LONG IN TIME AS THE
15 FIRST HALF, BUT I THINK IT'S GOING TO BE A WHOLE LOT LONGER
16 IN SIGNIFICANCE TO YOU. BUT I ALSO BELIEVE THAT YOU ACTUALLY
17 WANT DO TO WHAT'S RIGHT. I THINK YOU ACTUALLY WANT TO DO
18 WHAT'S RIGHT, OTHERWISE YOU WOULDN'T HAVE SUBJECTED YOURSELF
19 TO THIS ORDEAL.

20 I BELIEVE THAT IN ORDER TO GO FORWARD AND DO WHAT IS
21 RIGHT YOU'VE GOT TO ACKNOWLEDGE YOUR OWN FEELINGS, AND THAT'S
22 WHY I MAKE THESE COMMENTS. YOU KNOW, WE NEED TO KIND OF
23 STRIP AWAY SOME OF THE FACADE AND SOME OF THE COVERING AND
24 ACTUALLY FACE SOME OF THESE FACTS. THERE IS NO REASON TO
25 ASSUME YOU HAVE SOME FALSE SENSE OF IMPARTIALITY, I MEAN

OPENING STATEMENTS -- BY MR. MAULDIN

1 AFTER WHAT YOU'VE HEARD. IT DOESN'T REALLY MAKE GOOD SENSE
2 TO ME. YOU ARE ANGRY AND YOU ARE OUTRAGED, AND WE UNDERSTAND
3 THAT. YOU KNOW, WHEN JURORS COME INTO THE COURTROOM, THEY'RE
4 SUPPOSED TO BE SOMEHOW SOME KIND OF CONTROLLED, STOIC,
5 TOUGH -- BUT THE FACT IS THAT JURORS ARE HUMAN BEINGS JUST
6 LIKE EVERYBODY ELSE.

7 AND NOW WE'RE GOING TO ASK YOU TO GO EVEN FARTHER.
8 WE'RE GOING TO ASK YOU TO CONSIDER BETWEEN LIFE AND DEATH FOR
9 A MAN WHOSE ACTS YOU DESPISE AND AT THE SAME TIME TRY TO BE
10 CALM AND COLLECTED ABOUT IT.

11 WELL, MY MESSAGE TO YOU THIS MORNING IS THAT IT'S OKAY
12 TO BE HUMAN ABOUT IT. YOU REALLY DON'T HAVE A LOT OF CHOICE.
13 BUT IT'S OKAY TO FEEL THAT. I MEAN, I'M TELLING YOU -- I
14 KNOW HOW YOU FEEL BECAUSE I KNOW HOW I FEEL RIGHT NOW.

15 YOU CAN BELIEVE THESE FEELINGS THAT I'VE COMMENTED TO
16 YOU AND STILL KEEP ON LISTENING. KEEP ON LISTENING. DON'T
17 STOP LISTENING.

18 IN THE JURY SELECTION PROCESS WE TALKED ABOUT THE FACT
19 THAT IN ORDER TO COME TO THIS SPOT YOU HAD TO GO THROUGH THAT
20 FIRST PHASE. YOU HAVE TO GO THROUGH THE FIRST PHASE TO BE
21 PUT IN A POSITION TO GO THROUGH THE SECOND PHASE. AND WE
22 TALKED ABOUT THE FACT THAT AT THAT SECOND PHASE THAT YOU
23 WOULD HEAR INFORMATION, YOU WOULD HEAR TESTIMONY. AND EACH
24 OF YOU TOLD ME THAT YOU WOULD LISTEN. AND IF YOU KEEP
25 LISTENING IN SPITE OF THESE FEELINGS THAT I REALLY BELIEVE

OPENING STATEMENTS -- BY MR. MAULDIN

1 YOU HAVE AND YOU HAD, EVEN THOUGH IT'S PERHAPS IMPOSSIBLE TO
2 IMAGINE WHAT COULD JUSTIFY NOT EXECUTING JOHN WOOD, I WOULD
3 HOPE THAT YOU WOULD FIND A REASON TO CHOOSE LIFE -- EVEN FOR
4 JOHN WOOD.

5 AND IT IS THIS REASON FOR LIFE THAT WE WILL BRING TO
6 YOU, THIS MESSAGE THAT WE HOPE YOU WILL HONESTLY, FAIRLY,
7 INDIVIDUALLY CONSIDER. FOR ONE THING, IT'S YOUR SWORN DUTY
8 TO. BUT, YOU KNOW, THAT'S THE EASY WAY OUT. I'M DOING THIS
9 BECAUSE IT'S MY SWORN DUTY TO IS NOT REALLY WHAT I WANT TO
10 SAY TO YOU. I WANT TO SAY THAT BECAUSE IT'S A LIFE, NOT
11 BECAUSE YOU'RE SWORN THAT YOU HAVE TO BUT BECAUSE IT'S A
12 LIFE, AND ANY LIFE IS WORTH CONSIDERING.

13 YOUR TASK, YOUR JOURNEY IS NOT OVER UNTIL EACH OF YOU
14 INDIVIDUALLY, HONESTLY, FAIRLY AND MORALLY CONSIDER BOTH THE
15 DEATH PENALTY AND LIFE IN PRISON WITHOUT PAROLE.

16 NOW, IN EXCHANGE FOR ME ASKING YOU TO SIMPLY LISTEN AND
17 CONSIDER, I'M GOING TO PROMISE YOU THAT I'M NOT GOING TO ASK
18 YOU TO GIVE UP YOUR FEELINGS. I'M NOT GOING TO ASK YOU TO
19 FORGET FOR A MOMENT THE SADNESS AND THE ANGER THAT YOU FEEL.
20 I'M NOT GOING TO ASK YOU FOR A MOMENT TO GIVE UP THE FEELINGS
21 OF TRAGEDY FOR ERIC NICHOLSON AND HIS FAMILY. ALL I WANT YOU
22 TO DO IS JUST LISTEN AND CONSIDER.

23 THIS CASE IS FULL OF TRAGEDY, TRAGEDY FOR ERIC NICHOLSON
24 AND TRAGEDY FOR HIS WIDOW, TRAGEDY FOR PEOPLE WHO HAVE YET TO
25 TESTIFY AND WHOSE TEARS YOU HAVE NOT YET SEEN. YOU SEE, ERIC

OPENING STATEMENTS -- BY MR. MAULDIN

1 NICHOLSON WAS SOMEBODY'S SON, AND HE WAS SOMEBODY'S FRIEND,
2 AND HE WAS SOMEBODY'S HUSBAND. IT'S REALLY NOT THAT --
3 WHETHER HE HAD BEEN A POLICE OFFICER OR NOT, THE FACT IS THE
4 TRAGEDY IS IN THE LOSS.

5 YOU WILL HEAR TESTIMONY FROM MISTY NICHOLSON REGARDING
6 HOW THEY MET AND THEIR LIFE TOGETHER. YOU'RE GOING TO HEAR
7 TESTIMONY ABOUT THE DAY THAT HE DIED AND -- AND IT'S -- YOU
8 KNOW, THAT'S HARD TESTIMONY. AND YOU'RE GOING TO HEAR
9 TESTIMONY FROM THE LAW ENFORCEMENT COMMUNITY ABOUT
10 FRIENDSHIPS AND LOYALTIES AND COMMITMENTS AND TRAININGS, AND
11 THAT'S GOING TO BE HARD TESTIMONY.

12 IT'S A TRAGEDY FOR EVERYBODY -- FOR SO MANY PEOPLE.
13 WE'RE NOT GOING TO FOR ONE MOMENT ATTEMPT TO REDUCE THAT
14 TRAGEDY. WE'RE NOT GOING TO TRY IN ANY WAY TO DIMINISH THE
15 HUMAN NATURE OF WHAT HAPPENED ON DECEMBER THE 6TH AND
16 CONTINUES TO BE A BURDEN TO PEOPLE. A LOT OF PEOPLE HAVE
17 SUFFERED AND THEY DO DESERVE THEIR DIGNITY. THEY DESERVE
18 THEIR EMOTION. AND THEY'RE NOT GOING TO GET ANY INTERFERENCE
19 FROM ME.

20 WHATEVER I SAY ON BEHALF OF JOHN WOOD SHOULD NOT BE IN
21 ANY WAY INTERPRETED AS AN EFFORT TO DIMINISH THEIR PAIN. A
22 WORD FOR JOHN WOOD IS NOT A NEGATIVE WORD FOR ANYONE.

23 YOU'RE NOT GOING TO HAVE A REHEARING OR A REARGUMENT OF
24 THE FIRST CASE. YOU HEARD THAT EVIDENCE. YOU PERHAPS WILL
25 HEAR ADDITIONAL INFORMATION ABOUT THE EVIDENCE, I WOULD SAY,

OPENING STATEMENTS -- BY MR. MAULDIN

1 IN AN EFFORT TO SOMEHOW EVEN FURTHER ENRAGE YOU.

2 BUT THE FACT IS, IS THAT YOU BROUGHT YOUR VERDICT BACK
3 AND WE ACCEPT IT AND RESPECT IT. IN FACT, WE RESPECT THE
4 FACT THAT YOU TOOK THE TIME TO DECIDE WHAT WAS RIGHT. YOU
5 WILL NOT BE PRESENTED ANY EFFORT OR ANY INFORMATION THAT
6 WOULD JUSTIFY WHAT HAPPENED BECAUSE THE ACTS OF JOHN WOOD ARE
7 NOT JUSTIFIABLE IN ANY WAY AND THEY WILL NEVER BE EXCUSED.
8 THERE IS NO EXCUSE AND WE'LL NOT OFFER ANY SUCH.

9 BUT THE PROSECUTOR SAID IN HIS CLOSING STATEMENTS TO YOU
10 THE OTHER DAY WHY IS NOT IMPORTANT. WELL, AT THE FIRST PHASE
11 IT WASN'T, BUT NOW IT IS.

12 YOU WON'T HAVE TO WORRY ABOUT US TRYING TO PLEAD TO YOU
13 OR CONVINCE YOU NOT TO PUNISH JOHN WOOD BECAUSE THAT HAS
14 ALREADY BEEN TAKEN CARE OF WITH YOUR VERDICT. HE MUST BE AND
15 HE WILL BE PUNISHED SEVERELY. YOU HAVE MADE THAT
16 DETERMINATION AND SEALED JOHN WOOD'S FATE WITH YOUR VERDICT
17 ON MONDAY. YOU DECIDED THAT HE WILL NEVER EVER BE A FREE
18 MAN. YOU DECIDED THAT HE WILL NEVER EVER---

19 MS. STROM: I WOULD OBJECT, YOUR HONOR.

20 THE COURT: SUSTAINED.

21 MR. MAULDIN: IN THE EVENT THE VERDICT OF GUILTY
22 CREATED IN THE EVENT OF AN AGGRAVATING CIRCUMSTANCE, WHICH IS
23 THE PROOF THAT HE WAS IN THE PERFORMANCE OF HIS DUTY, WHICH
24 SEEMS PRETTY CLEAR, UPON THAT DETERMINATION YOU HAVE IN FACT
25 DECIDED THAT THIS DEFENDANT WILL DIE IN PRISON, AND SO BE IT.

OPENING STATEMENTS -- BY MR. MAULDIN

1 THERE IS PERHAPS A DISPUTE IN THE EVENT THE GOVERNMENT
2 SAYS THAT DEATH IS THE ONLY ANSWER, BECAUSE THAT'S NOT WHAT
3 OUR LAW IS. DEATH IS THE LAST ANSWER, NEVER THE ONLY ANSWER.

4 IS THERE ANY OTHER WAY? IS IT EVEN POSSIBLE THAT
5 THERE'S A REASON FOR SENTENCING JOHN WOOD TO LIFE IN PRISON
6 WITHOUT PAROLE? WELL, I HAVE AT LEAST BEEN TOLD OR HEARD --
7 I'VE HEARD PEOPLE SAY THAT LIFE WITHOUT PAROLE IS PERHAPS A
8 MORE PUNISHING PENALTY. YOU KNOW, LIKE THE GIRL OVER IN
9 UNION THAT DROWNED HER TWO CHILDREN? EVERY DAY SHE LIVES
10 WITH THAT GUILT IN HER MISERABLE IMPRISONED LIFE. AND JOHN
11 WOOD, EVERY DAY FOR THE REST OF HIS LIFE WHEN HE LOOKS IN THE
12 MIRROR AND SEES THE SCAR ON HIS FACE, THE MARK OF SIN
13 EMBLAZONED ON HIS OWN FACE---

14 MS. STROM: YOUR HONOR, I'M GOING TO HAVE TO OBJECT.
15 THIS IS GETTING INTO ARGUMENT AND IS NOT PROPER FOR OPENING
16 STATEMENTS.

17 THE COURT: I'LL PERMIT A LITTLE LATITUDE IF YOU WANT
18 TO PROCEED.

19 MR. MAULDIN: YOU MIGHT BE SAYING, IS ALL OF THAT EVEN
20 WORTH CONSIDERING? WELL, THE ANSWER IS YES. AND THE REASON
21 THE ANSWER IS YES IS BECAUSE IT'S A LIFE AND DEATH SITUATION.

22 I WANT TO TALK TO YOU FOR A FEW MOMENTS ABOUT SOME OF
23 THE TESTIMONY THAT YOU WILL HEAR DURING THIS PROCEEDING. WE
24 WILL BRING TESTIMONY TO YOU THROUGH WITNESSES IN AN EFFORT TO
25 OFFER AN EXPLANATION TO HOW THIS COULD HAVE HAPPENED, WHY

OPENING STATEMENTS -- BY MR. MAULDIN

1 THIS COULD HAVE HAPPENED, AND WHAT NOW.

2 JOHN WAS BORN IN 1967 IN INDIANAPOLIS. HE HAD TWO OLDER
3 SISTERS. HIS FATHER WAS A SELF-PROCLAIMED PREACHER, HIS
4 MOTHER A DOMINEERING, STRICT DISCIPLINARIAN. THE FIRST 18
5 YEARS OF JOHN'S LIFE THIS FAMILY MOVED 23 TIMES. THEY HAD
6 VERY FEW DEVELOPMENTAL RELATIONSHIPS WITH ANYONE BECAUSE THEY
7 WERE MOVING AROUND SO MUCH. THEY MOVED FROM SCHOOL TO
8 SCHOOL, PLACE TO PLACE, JOB TO JOB. IN FACT, SCHOOL TO
9 SCHOOL, THE EVIDENCE WILL SHOW YOU THAT JOHN WOOD SPENT TWO
10 YEARS AT BOB JONES ACADEMY HERE IN GREENVILLE DURING THAT
11 EARLY STAGES OF HIS LIFE. HE THEN WAS SUBSEQUENTLY HOME
12 SCHOOLED, SCHOOLED THROUGH CORRESPONDENCE COURSES, NO SCHOOL
13 FRIENDS, NO SOCIAL DEVELOPMENT, NO SOCIAL ASSOCIATIONS WITH
14 ANYTHING OR ANYBODY. THEN BETWEEN THE AGE OF 18 AND 33 YOU
15 WILL HEAR TESTIMONY OF 14 ADDITIONAL MOVES, THE FAMILY MOVING
16 AROUND EVERYWHERE.

17 YOU WILL HEAR TESTIMONY REGARDING JOHN SPENDING TIME IN
18 PRISON IN FLORIDA AND IN FEDERAL PRISON FOR FRAUDULENT
19 PAYCHECK PASSING FROM 1997 TO THE YEAR 2000, TILL MARCH OF
20 2000. AND ON THAT POINT, BY THE WAY, PRIOR TO DECEMBER THE
21 6TH, JOHN WOOD HAD NEVER HURT ANOTHER HUMAN BEING. WITH
22 COUNTLESS JOBS AND FEW RELATIONSHIPS, OBVIOUSLY INSTABILITY,
23 INSECURITY, LOW SELF-ESTEEM, LACK OF CONFIDENCE. ALL ALONG
24 THE MOTHER WAS THE DOMINEERING OR DOMINATING FORCE IN THE
25 FAMILY. IN FACT, THAT MOTHER WAS A CODEFENDANT IN THE

OPENING STATEMENTS -- BY MR. MAULDIN

1 FEDERAL CASE. WITH HIS OWN -- AND HIS DAUGHTER WAS -- AND
2 HER DAUGHTER WAS THE OTHER CODEFENDANT, THE MOTHER AND TWO OF
3 HER OWN CHILDREN. HER HISTORY WILL SHOW SHOPLIFTING AND
4 PETTY CRIMES AND PETTY THEFT IN THE PRESENCE OF HER OWN
5 CHILDREN, AND YET A STRICT, FUNDAMENTAL, RELIGIOUS, DOGMATIC
6 ATTITUDE AT HOME WITH NO RECONCILIATION ABOUT OBVIOUS
7 CONTRADICTION IN TERMS OF THE DEVELOPMENT OF HER CHILDREN.

8 IN FLORIDA, WHILE LIVING WITH HIS MOTHER, JOHN MET KAREN
9 AND THEY LEFT TOGETHER. KAREN BECAME PREGNANT WITH JOHN'S
10 CHILD THAT HAS NOW BEEN BORN. AND THEY WENT TO ALABAMA AND
11 THEN THEY WENT TO SOUTH CAROLINA AND TO ANDERSON AND
12 GREENVILLE, AND THEN DECEMBER THE 6TH OCCURRED.

13 HOW, WHY AND WHAT NOW? WE BRING YOU HOW BY A
14 DEVELOPMENT OF THE SHOWING OF JOHN'S BACKGROUND, THE SOCIAL
15 DEVELOPMENT INFORMATION, INFORMATION THAT EACH OF YOU SAID
16 DURING YOUR SELECTION AS JURORS THAT YOU WOULD AT LEAST WANT
17 TO CONSIDER. AND THAT'S WHY WE BRING IT TO YOU. WHY? WHY
18 DID THIS HAPPEN? WE WILL PRESENT TESTIMONY OF MENTAL
19 IMPAIRMENT. WE WILL PRESENT TESTIMONY OF A SPIRAL PATTERN OF
20 ACTS AND CIRCUMSTANCES ALMOST LIKE THE LINING UP OF THE
21 PLANETS, ALMOST LIKE THE BLOWING OF AIR INTO A BALLOON UNTIL
22 DECEMBER THE 6TH WHEN THAT BALLOON EXPLODED, ALMOST LIKE
23 CLIMBING THE STAIRWAY TO A GOAL AND THEN ALMOST REACHING THE
24 TOP AND THE STAIRWAY CAVING IN. WE WILL PRESENT TESTIMONY OF
25 WHAT NOW.

OPENING STATEMENTS -- BY MR. MAULDIN

1 WE WILL DEMONSTRATE TO YOU THAT BY YOUR VERDICT TWO
2 CRITICAL THINGS HAVE BEEN ACCOMPLISHED. THE FIRST THING
3 THAT'S BEEN ACCOMPLISHED IS THAT THE SOCIETY IS IN FACT
4 PROTECTED. SOCIETY IS IN FACT PROTECTED. AND THE SECOND
5 CRITICAL POINT IS THAT JOHN WOOD IS IN FACT HARSHLY PUNISHED.

6 ARE THESE REASONS TO CONSIDER A LIFE SENTENCE IN A LIFE
7 OR DEATH SITUATION? IS EXTERMINATION THE ONLY ANSWER? WELL,
8 WHILE DEATH IS AN ANSWER, I HOPE THAT YOU WILL SEE IN THE
9 NEXT DAY OR TWO THAT IT'S NOT THE ONLY ANSWER. AND IT IS THE
10 ANSWER OF LIFE WHICH WE WILL BRING TO YOU, THE ALTERNATIVE OF
11 LIFE IN PRISON WITHOUT PAROLE.

12 SO WHILE I STAND BEFORE YOU AND ACKNOWLEDGE YOUR
13 FEELINGS THAT YOU MUST HAVE, I TELL YOU THAT WHILE DEATH
14 MIGHT FEEL RIGHT TODAY, I HOPE THAT DEATH WILL NOT
15 NECESSARILY FEEL SO RIGHT TOMORROW. THANK YOU.

16 THE COURT: THANK YOU, SIR..
17 IS THE STATE READY TO PROCEED?

18 MS. STROM: THE STATE IS READY TO PROCEED, YOUR HONOR.
19 THE FIRST ORDER OF BUSINESS, WE WOULD MOVE, AT THIS
20 TIME, FOR ALL EVIDENCE THAT WAS SUBMITTED IN THE GUILT PHASE
21 OF THIS TRIAL BE SUBMITTED INTO THE SENTENCING PHASE OF THIS
22 TRIAL FOR THE JURY'S CONSIDERATION.

23 THE COURT: ANY OBJECTION?

24 MR. MAULDIN: NO OBJECTION.

25 THE COURT: WITHOUT OBJECTION. ALL EVIDENCE FROM THE

MATTERS AND MOTIONS

1 INITIAL PHASE IS NOW PART OF THIS PROCEEDING AS WELL.

2 SOLICITOR ARIAIL: YOUR HONOR, AS THE SECOND, WE WOULD
3 AT THIS TIME LIKE TO PROVIDE TO THE COURT THE DEFENDANT'S
4 PRIOR RECORD, CERTIFIED COPIES OF EACH, AND ALSO PUBLISH
5 THOSE TO THE JURY. I WILL HAND THESE UP TO THE COURT
6 REPORTER.

7 MR. MAULDIN: YOUR HONOR, IT WOULD TAKE A SECOND FOR ME
8 TO...

9 THE COURT: SURE. I UNDERSTAND. TAKE YOUR TIME, SIR.

10 MR. MAULDIN: (REVIEWS DOCUMENTS)

11 THE COURT: YES, SIR.

12 JUROR: YOUR HONOR, CAN WE PLEASE TAKE A BREAK?

13 MR. MAULDIN: YOUR HONOR, I HAVE LOOKED AT THEM---

14 THE COURT: ONE OF THE JURORS NEEDS TO TAKE A BREAK.
15 SO WE'LL TAKE A SHORT BREAK. CERTAINLY, SIR. FIVE-MINUTE
16 BREAK AND WE'LL GET YOU BACK OUT HERE. PLEASE DO NOT DISCUSS
17 THE CASE DURING THIS BRIEF RECESS. THANK YOU.

18 (JURY EXITS COURTROOM AT 10:23 A.M.)

19 MR. MAULDIN: YOUR HONOR, I'M GOING TO ASK -- I'M GOING
20 TO ASK THAT THE STATE PASS THIS UP TO THE COURT. THE ONLY
21 CONCERN I HAVE IS THAT EACH CONTAINS A NUMBER OF ATTACHMENTS
22 THAT INVOLVES SUCH THINGS AS PROBATIONARY MATERIAL AND
23 THINGS. AND THE QUESTION IS WITH REGARD TO THE PRESENTATION
24 AS AN EXHIBIT WHETHER THEY SHOULD ALL BE ATTACHED OR WHETHER
25 IT SHOULD SIMPLY BE THE CHARGE THAT WAS -- THAT HE PLED

MATTERS AND MOTIONS

1 GUILTY TO AND PERHAPS THE SENTENCE ITSELF. SO THERE'S A LOT
2 OF---

3 THE COURT: I'LL BE GLAD TO LOOK AT IT.

4 MR. MAULDIN: YES, SIR.

5 THE COURT: AND I'LL TELL YOU, JUST SO WE'LL BE ON THE
6 SAME CLOCK AS THE JURY, LET'S TAKE A FIVE-MINUTE BREAK. I'LL
7 LOOK AT THIS DURING THE BREAK AND THEN WE'LL VISIT THE ISSUE
8 WHEN WE GET BACK ON THE RECORD.

9 (A RECESS WAS TAKEN FROM 10:25 TO 10:32 A.M.)

10 THE COURT: MR. MAULDIN, AS I UNDERSTAND, YOUR
11 OBJECTION IS TO THE ORDER OF JUDGMENT THAT IS ATTACHED TO THE
12 ACTUAL ADJUDICATION THAT INCLUDES FINES, PROBATION, THINGS OF
13 THAT NATURE?

14 MR. MAULDIN: MY OBJECTION -- AND I DID - YOU KNOW, I
15 HAVEN'T SEEN EACH ONE WITH SUFFICIENT TIME TO ACTUALLY PICK
16 OUT LINE BY LINE, BUT THE OBJECTION IS TO THE EXTENT THAT IT
17 DEMONSTRATES MORE THAN SIMPLY THE PRIOR RECORD. IN OTHER
18 WORDS, THE STATE HAS THE RIGHT TO PUT IN HIS PRIOR RECORD.
19 IT WOULD CONSTITUTE A CHARGE, AN ADJUDICATION OR SOME SORT.
20 BUT THE ADDITIONAL PAGES, I WOULD SUSPECT, AND LIKE I SAY, I
21 HAVEN'T HAD A CHANCE TO LOOK AT EVERY PAGE, BUT ADDITIONAL
22 PAGES COULD IN FACT CONTAIN INFORMATION THAT WOULD BE
23 INAPPROPRIATE FOR THIS JURY TO RECEIVE. THAT'S WHY I WANTED
24 THE COURT TO ACTUALLY LOOK AT THE ATTACHMENTS.

25 THE COURT: THE JURY IS NOT IN HERE. I'LL TAKE

MATTERS AND MOTIONS

1 WHATEVER TIME YOU WANT IF YOU WANT TO LOOK AT IT FURTHER.

2 **MR. MAULDIN:** AND THE COURT IS SATISFIED THAT THE
3 ATTACHMENTS ARE APPROPRIATE, YOUR HONOR?

4 **THE COURT:** THEY ARE CERTIFIED JUDGMENTS. TYPICALLY
5 IT'S A CHARGE, THE ADJUDICATION BY THE TRIAL COURT AND THEN
6 THE ORDER OF JUDGMENT. AND IT APPEARS TO BE A FORM ORDER
7 THAT DEALS WITH EITHER THE SPLIT SENTENCE OR THE PROBATIONARY
8 SENTENCE, THE LENGTH OF THE PROBATION, CHECKING THE
9 APPROPRIATE BOX FOR THE TERMS OF DEGREE OF SUPERVISED
10 RELEASE, THE FINES THAT MAY BE IMPOSED, COURT COSTS AND
11 THINGS OF THAT NATURE. SO IT APPEARS TO BE PART OF THE
12 OFFICIAL RECORD IN JUDGMENT. BUT I HAVE NO PROBLEM TAKING
13 WHATEVER TIME YOU WANT IF YOU WANT TO LOOK THROUGH IT
14 FURTHER.

15 **MR. MAULDIN:** IF YOU COULD JUST GIVE ME JUST ENOUGH
16 TIME TO FLIP THROUGH IT, YOUR HONOR. AND I APOLOGIZE FOR
17 THIS DELAY.

18 **THE COURT:** NO, THAT'S FINE.

19 **MR. MAULDIN:** (REVIEWS DOCUMENTS) YOUR HONOR, WE SIMPLY
20 PUT ON THE RECORD THE OBJECTION TO MATTERS ATTACHED THAT ARE
21 NOT NECESSARY FOR THE ESTABLISHMENT OF THE CHARGE AND
22 SENTENCE. THAT'S THE LIMIT OF THE OBJECTION.

23 **THE COURT:** VERY WELL, SIR. AND IF THE STATE WISHES TO
24 BE HEARD ON THAT ISSUE, I'LL GIVE YOU AN OPPORTUNITY. IT'S
25 NOT NECESSARY, BUT IF YOU WOULD LIKE TO RESPOND, YOU MAY.

MATTERS AND MOTIONS

1 **SOLICITOR ARIAIL:** NO.

2 **THE COURT:** THE OBJECTION IS OVERRULED. I HAVE
3 REVIEWED THE DOCUMENTS. ALL MATTERS DEAL WITH THE SENTENCE,
4 THE CRIME CHARGED, ADJUDICATION OF GUILT AND SENTENCE
5 IMPOSED.

6 SOLICITOR, YOU MIGHT WANT TO MAKE SURE THOSE ARE IN THE
7 ORDER YOU WANT THEM , AND I AM GOING TO OVERRULE THE
8 OBJECTION. THOSE WILL BE PERMITTED. DO YOU WANT TO MARK
9 THEM COLLECTIVELY OR AS---

10 **SOLICITOR ARIAIL:** I WOULD SAY COLLECTIVELY.

11 **THE COURT:** VERY GOOD, SIR.

12 BRING THE JURY, PLEASE.

13 (DEFENDANT'S CRIMINAL RECORD MARKED AS STATE'S EXHIBIT
14 NUMBER 59 AND MOVED INTO EVIDENCE)

15 (JURY REENTERS COURTROOM AT 10:40 A.M.)

16 **THE COURT:** LADIES AND GENTLEMEN, WE'RE READY TO
17 PROCEED.

18 FROM THE STATE, PLEASE?

19 (SOLICITOR ARIAIL AND MR. MAULDIN OFF RECORD)

20 **SOLICITOR ARIAIL:** YOUR HONOR, WE WOULD LIKE TO OFFER
21 THESE, WHICH HAVE BEEN REVIEWED BY THE COURT, AS A COLLECTIVE
22 EXHIBIT.

23 **THE COURT:** THEY WILL BE RECEIVED SUBJECT TO THE
24 PREVIOUSLY STATED OBJECTION WHICH IS NOTED ON THE RECORD.

25 **SOLICITOR ARIAIL:** I WILL PUBLISH THE CONVICTED CHARGE

MATTERS AND MOTIONS

1 AND OTHER PERTINENT INFORMATION, YOUR HONOR, IF THAT'S
2 PERMISSIBLE.

3 THE COURT: YOU MAY PROCEED, SIR.

4 SOLICITOR ARIAIL: THE FIRST CHARGE IS A CONVICTION
5 DATE OF JUNE 8, 1987, FOR SHOPLIFTING SECOND OFFENSE IN
6 GREENVILLE COUNTY. ON MAY 28, 1991, IN THE STATE OF FLORIDA,
7 CONVICTION FOR GRAND THEFT. MAY 28, 1992, STATE OF FLORIDA,
8 SECOND CONVICTION FOR GRAND THEFT. MARCH THE 12TH, 1993,
9 STATE OF FLORIDA, CONVICTION FOR GRAND THEFT. MARCH THE
10 12TH, 1993, STATE OF FLORIDA, OBTAINING CONTROLLED SUBSTANCE
11 BY FRAUD, POSSESSION OF CANNABIS OVER 20 GRAMS. ALSO ON
12 MARCH 12TH, 1993, STATE OF FLORIDA, ANOTHER CHARGE,
13 CONVICTION FOR OBTAINING CONTROLLED SUBSTANCE BY FRAUD.
14 MARCH THE 12TH, 1993, STATE OF FLORIDA, BURGLARY OF A
15 STRUCTURE, GRAND THEFT, DEALING IN STOLEN PROPERTY. AND ON
16 JANUARY THE 20TH, 1998, UNITED STATES DISTRICT COURT,
17 GREENVILLE COUNTY, SOUTH CAROLINA, CONSPIRACY TO USE
18 FRAUDULENT IDENTIFICATION IN CONNECTION WITH MAKING AND
19 UTTERING COUNTERFEIT SECURITIES.

20 THANK YOU, YOUR HONOR.

21 MS. STROM: THE STATE CALLS BILL MCCAULEY.

22 WILLIAM H. MCCAULEY, JR.,

23 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MS. STROM:

25 Q TROOPER MCCAULEY, I BELIEVE YOU PREVIOUSLY TESTIFIED IN

1 THE EARLIER PROCEEDING THAT YOU ARE EMPLOYED WITH THE SOUTH
2 CAROLINA HIGHWAY PATROL?

3 A YES, MA'AM, THAT'S CORRECT.

4 Q AND IS THAT HOW YOU GOT TO KNOW ERIC NICHOLSON?

5 A YES, MA'AM, THAT'S CORRECT.

6 Q PLEASE TELL THIS JURY HOW IT WAS THAT YOU GOT TO KNOW
7 ERIC NICHOLSON.

8 A WHEN ERIC WAS HIRED ORIGINALLY HE WAS ASSIGNED TO
9 FLORENCE COUNTY. IN THAT PROCESS HE AND MISTY HAD MARRIED
10 AND SHE WAS EMPLOYED UP HERE AND HE WAS EMPLOYED DOWN IN
11 FLORENCE COUNTY, AND SO THEY WERE A DISTANT RELATIONSHIP SO
12 TO SPEAK. HE EVENTUALLY GOT TRANSFERRED BACK HOME, WHAT HE
13 CALLED HOME, HERE, TO GREENVILLE COUNTY TO START HIS LIFE
14 WITH HIS WIFE. AND WHEN HE TRANSFERRED TO GREENVILLE COUNTY,
15 HE WAS ASSIGNED TO ME FOR A PERIOD OF TWO WEEKS SHOWING HIM
16 AROUND THE COUNTY AND CONTINUING ON TRAINING AND SO FORTH.

17 Q DID YOU HAVE AN OCCASION TO WORK WITH HIM CLOSELY?

18 A YES, MA'AM, I DID. SEVERAL OCCASIONS, ME BEING ONE OF
19 SENIOR OFFICERS AT THAT TIME ON THE ROAD, HE WOULD HAVE
20 QUESTIONS ABOUT SOME TYPES OF INVESTIGATIONS, AND WE WOULD
21 MEET. WE WOULD DISCUSS THEM. I GOT TO KNOW HIM THROUGH
22 EMPLOYMENT. I GOT TO KNOW HIM PERSONALLY. RECENTLY WE
23 INVESTIGATED A VERY LARGE INCIDENT THAT OCCURRED IN
24 GREENVILLE COUNTY AND SPENT A LOT OF QUALITY TIME TOGETHER
25 DURING THE DAY AND NIGHT AND GOT TO KNOW HIM MORE PERSONALLY

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 ABOUT HIS PERSONAL LIFE AS WELL AS HIS BELIEFS AND SO FORTH.

2 Q TELL THIS JURY, WHAT KIND OF PERSON WAS ERIC?

3 A ERIC IS -- WAS FULL OF PRIDE. HE WAS A VERY STRONG MAN.

4 HE WORKED OUT ALL THE TIME. HE WAS A MARINE, THEN CAME ON

5 THE HIGHWAY PATROL. HE WAS VERY CARING ABOUT HIS APPEARANCE.

6 HE LOOKED SHARP IN THAT UNIFORM. IF HIS SHOES WASN'T SHINED,

7 THAT'S BECAUSE HE STUCK HIS FOOT IN A MUD HOLE SOMEWHERE.

8 BUT HE -- I MEAN, HE WAS PRESSED AND PRIM AND PROPER.

9 ERIC WAS A VERY GIVING PERSON, A VERY GENTLE PERSON. IN

10 THE TIME THAT I GOT TO KNOW HIM, I NEVER SAW ANY SIGNS OF ANY

11 AGGRESSION WHATSOEVER. AND I COULD BE IN THE OFFICER DOING

12 WORK AT THE END OF THE SHIFT AND HAD A REALLY ROUGH DAY AND I

13 WAS KIND OF IN A BAD MOOD, HE WOULD COME WALKING IN THAT

14 OFFICE ALL BUBBLY, CUTTING UP AND CARRYING ON, AND BEFORE YOU

15 LEFT THAT OFFICE, YOU WERE LAUGHING BECAUSE HE ALWAYS BROUGHT

16 THAT OUT IN PEOPLE.

17 Q TROOPER MCCAULEY, I WANT TO TAKE YOU BACK TO DECEMBER 6,

18 2000. YOU PREVIOUSLY TESTIFIED IN THE FIRST PHASE AS FAR AS

19 WHAT YOUR ACTIONS WERE ON THAT DAY. WHAT I WOULD LIKE FOR

20 YOU TO DO IS TELL THIS JURY WHAT HAPPENED TO YOU WHEN YOU

21 RODE UP ON THAT SCENE ON DECEMBER THE 6TH AND SAW ERIC

22 NICHOLSON THERE.

23 A SURE. THAT'S A DAY I WILL NEVER FORGET. WHEN I ARRIVED

24 ON THE SCENE AND SAW ERIC LYING THERE IN THE CAR, AND I'M --

25 YOU KNOW, MY LIFE CHANGED. BUT THEN AGAIN, MY TRAINING

1 KICKED IN. WE HAD A BAD SITUATION AT HAND, AND MY ONLY GOAL
2 AT THAT TIME WAS TO GIVE HIM WHATEVER CHANCE HE COULD
3 POSSIBLY HAVE. WE EXTRACTED HIM FROM THAT CAR. WE STARTED
4 CPR. MEDICAL PERSONNEL HAD NOT ARRIVED AT THE SCENE YET. WE
5 -- I STARTED DOING CHEST COMPRESSIONS ON HIM. TROOPER CRAFT,
6 HARRY, WE PULLED UP AT THE SAME TIME. ERIC WAS A BLOODY
7 MESS. AND SO WE WERE LOOKING FOR SOME TYPE OF BREATHING
8 APPARATUS SO WE COULD GIVE THIS MAN SOME AIR. HARRY'S GONE
9 BACK TO MY CAR BECAUSE I KNEW WHERE MINE WAS IN THE TRUNK OF
10 THE CAR. I TOLD HIM WHERE IT WAS. AND, YOU KNOW, I DIDN'T
11 -- IT JUST SEEMED LIKE AN ETERNITY FOR HIM TO GET BACK, BUT
12 IN REALITY IT PROBABLY WASN'T BUT JUST SECONDS, BUT WE
13 CONTINUED CPR. I STARTED BREATHING FOR HIM. TO THIS DAY I
14 KNOW THIS CITY OFFICER BUT I COULDN'T TELL YOU WHO IT WAS
15 ARRIVED AT THE SCENE WITH A BREATHING APPARATUS AND STARTED
16 BREATHING FOR HIM.

17 SOME TIME LATER THE MEDICAL PERSONNEL SHOWED UP AT THE
18 SCENE. AND WHEN HE ARRIVED, HE CAME AROUND HE HAD -- AND I'M
19 NOT REAL SMART ON MEDICAL TERMINOLOGY OR SO FORTH, BUT HE HAD
20 ALL OF HIS EQUIPMENT THERE AND MY FIRST RESPONSE WAS TO
21 MYSELF IS, "GOD, I HOPE I'M DOING THIS RIGHT." AND THEN I
22 ASKED HIM, I SAID, "WHAT DO YOU WANT ME TO CONTINUE TO DO?
23 WHAT DO I NEED TO DO?" HE SAYS, "KEEP DOING WHAT YOU'RE
24 DOING." WE CONTINUED ON WHILE HE WAS -- AT THIS TIME I HAD
25 ERIC'S SHIRT AND HIS VEST AND ALL OF THAT WAS ALREADY RIPPED

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 OFF OF HIM. HE STARTS PLACING THE ELECTRODES AROUND HIM SO
2 WE COULD HOOK UP A HEART MONITOR. I'M THE TYPE PERSON I'M
3 BULLHEADED. I DON'T GIVE UP. AND I WANTED TO KEEP ON. HE
4 TOLD ME TO STOP. THERE WAS A FLAT LINE ON THE MONITOR. AT
5 THAT TIME WE CONTINUED ON. HE WAS ADMINISTERING MEDICINE.
6 STOPPED AGAIN. AND AT THIS TIME WE HAD JUST A LITTLE BIT OF
7 A WAVE, AND I'M THINKING, "ALL RIGHT. IT'S WORKING." VERY
8 POSITIVE. I FELT GOOD. I KEPT ON.

9 APPARENTLY THIS HAD BEEN GOING ON FOR 10 MINUTES, 15. I
10 KNEW THE HELICOPTER WAS ON THE WAY. WE -- SOME UNKNOWN
11 FIREMAN, I DON'T KNOW WHO IT WAS, CAME UP TO ME AND HE SAYS,
12 "LET ME RELIEVE YOU." I SAID, "NO, I'M FINE." AND FINALLY
13 AFTER ABOUT FOUR OR FIVE MORE MINUTES, HE KNEW I WAS
14 EXHAUSTED AND HE JUST CAME OVER AND HE SAID, "I'M FREE.
15 YOU'RE OUT." AND AT THAT POINT THAT'S WHEN WE CHANGED
16 PLACES, AND I STOOD UP. REALITY KICKED IN. I WAS ABLE TO
17 SEE WHAT WAS GOING ON AND -- A TREMENDOUS AMOUNT OF PEOPLE
18 WERE AROUND THERE -- MEDICAL PEOPLE, POLICE OFFICERS,
19 CIVILIANS THAT WERE JUST OBSERVING AND SO FORTH. THERE WAS
20 NOWHERE TO REALLY GO BE BY YOURSELF FOR SOME PRIVATE TIME.
21 SO -- OF COURSE, THE FIRST THING THAT POPPED IN MY MIND WAS,
22 YOU KNOW, I SAW THE NEWS MEDIA THERE, AND I'M THINKING, OKAY.
23 I NEED TO CALL HOME, LET MY WIFE KNOW I'M OKAY, WHICH I DID.
24 AND THEN I PROCEEDED TO GO BACK TO MY CAR AND SAT DOWN AND
25 THAT'S WHAT I BROKE DOWN AND HAD MY TIME.

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 Q TROOPER NICHOLSON -- TROOPER MCCAULEY, WHAT IMPACT HAS
2 ERIC'S DEATH HAD ON YOU AS A PERSON AS HIS FRIEND?

3 A WELL, YOU KNOW, THIS IS MY CHOSEN CAREER, AND ANYONE
4 THAT STAYS IN LAW ENFORCEMENT KNOWS THIS COULD BE THE LAST
5 TIME THEY LEAVE THEIR HOME, WHETHER THEY'RE IN LAW
6 ENFORCEMENT OR THE PRIVATE SECTOR, BUT MORE SO IN THE JOB
7 THAT WE DO. A LOT OF THE YOUNG TROOPERS HAVE COME TO ME AND
8 SPOKEN WITH ME BECAUSE THEIR SPOUSES OR THEIR MOMS OR THEIR
9 DADS, YOU KNOW, IMMEDIATELY COME TO THEM AND SAY, "HEY, I
10 WANT YOU OUT." MINE HAS. BUT SHE KNOWS I'M NOT GOING TO BE
11 HAPPY DOING NOTHING ELSE. BUT THAT'S WHERE WE PULL OURSELVES
12 TOGETHER, OUR FAITH, OUR TRUST, AND WE PICK UP AND GO ON.
13 EVERYBODY DEALS WITH THIS IN A DIFFERENT WAY. SOME CAN
14 ACCEPT IT EASIER THAN THE OTHERS. BUT IN THE LONG RUN,
15 THAT'S WHERE WE HAVE FAITH IN THE SYSTEM, AND WE GO FROM
16 THERE.

17 Q TROOP MCCAULEY, SINCE ERIC'S DEATH HOW HAS THAT IMPACTED
18 YOU AS A LAW ENFORCEMENT OFFICER? AND WHAT I'M GETTING TO
19 IS, IS THERE ANY SUCH THING AS A ROUTINE TRAFFIC STOP
20 ANYMORE?

21 A YOU KNOW, THAT'S ONE THING THAT HAS ALWAYS IRKED ME, SO
22 TO SPEAK, IS EVERYBODY CALLS -- OR WHEN YOU HEAR THIS IN THE
23 NEWS MEDIA THAT OFFICER SO AND SO DURING A ROUTINE TRAFFIC
24 STOP. IN MY OPINION, THERE IS NOTHING ROUTINE ABOUT NO
25 TRAFFIC STOP. A TRAFFIC STOP IS A TRAFFIC STOP. WITHIN

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 THOSE FIRST FEW SECONDS YOU'RE GOING TO BE ABLE TO EVALUATE
2 THAT SITUATION, WHETHER IT'S GOING TO GO GOOD OR BAD. AND I
3 KNOW ERIC NICHOLSON. HE TREATED PEOPLE THE WAY HE WANTED TO
4 BE TREATED. BUT THEN IN THE SAME TOKEN, HE ALWAYS HAD
5 CONTROL OF THE SITUATION, BECAUSE WE HAVE TO. THAT'S WHAT
6 WE'RE PAID TO DO. ROUTINE? NOTHING ROUTINE ABOUT IT.
7 WHETHER YOU'RE THREAT LEVEL, SO TO SPEAK, IS UP THERE ON A
8 PARTICULAR TRAFFIC STOP DEPENDS ON THE TYPE OF CIRCUMSTANCES,
9 THE AREA YOU ARE IN, AND WHAT YOU'RE STOPPING. THIS
10 PARTICULAR SITUATION HAS OPENED A LOT OF EYES TO A LOT OF
11 PEOPLE WITHIN THE LAW ENFORCEMENT COMMUNITY SIMPLY BECAUSE
12 YOU NEVER KNOW WHETHER IT COULD BE A TRACTOR TRAILER OR IT
13 COULD BE A MOPED. YOU DON'T KNOW WHAT YOU'RE DEALING WITH
14 ANYMORE.

15 MS. STROM: COURT'S INDULGENCE, YOUR HONOR?

16 THE COURT: YES, MA'AM.

17 MS. STROM: (OFF RECORD WITH CO-COUNSEL) THANK YOU.

18 PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

19 WITNESS: YES, MA'AM.

20 MR. MAULDIN: YOUR HONOR, WE HAVE NO QUESTIONS OF THIS
21 TROOPER.

22 THE COURT: VERY GOOD.

23 MS. STROM: YOUR HONOR, WE'D ASK THAT HE BE EXCUSED.

24 THE COURT: TROOPER MCCAULEY, THANK YOU, SIR. WE
25 APPRECIATE YOU BEING HERE.

WILLIAM H. MCCAULEY, JR. -- DIRECT BY MS. STROM

1 MR. MAULDIN: NO OBJECTION.

2 THE COURT: WITHOUT OBJECTION.

3 (WITNESS EXCUSED AT 10:54 A.M.)

4 SOLICITOR ARIAIL: WE CALL DR. NARAYAN.

5 MR. MAULDIN: YOUR HONOR, AT THIS POINT WE MIGHT HAVE
6 ASK TO BE HEARD ON A MATTER -- ON ANOTHER MATTER, YOUR HONOR.

7 THE COURT: ALL RIGHT. I UNDERSTAND.

8 LADIES AND GENTLEMEN, JUST BEAR WITH US. THERE IS A
9 LEGAL ISSUE I NEED TO ADDRESS AND IT WILL PROBABLY TAKE ABOUT
10 TEN MINUTES. DON'T DISCUSS THE CASE DURING THIS BRIEF
11 RECESS. THANK YOU.

12 (JURY EXITS COURTROOM AT 10:55 A.M.)

13 THE COURT: THE JURY HAS BEEN EXCUSED. YES, SIR, MR.
14 MAULDIN.

15 YOU CAN JUST HAVE A SEAT RIGHT THERE, DOCTOR.

16 DR. NARAYAN: THANK YOU.

17 MR. MAULDIN: YOUR HONOR, THE STATE HAS CALLED DR.
18 NARAYAN, WHO WAS THE DOCTOR WHO SIGNED THE COURT ORDERED
19 EVALUATION REPORT. THE EVALUATION BY ORDER OF THE COURT WAS
20 ON THREE MATTERS -- COMPETENCY TO STAND TRIAL, CRIMINAL
21 RESPONSIBILITY AND THE NOT GUILTY BUT MENTALLY ILL STANDARD.
22 THOSE ARE THE THREE QUESTIONS. IN FACT, DR. NARAYAN WAS
23 ASKED AT THE BLAIR HEARING ON, I THINK IT WAS, MONDAY -- IT
24 WAS SOME TIME AT THE BEGINNING OF THIS PROCEEDING.

25 THE COURT: IT MIGHT HAVE BEEN LAST FRIDAY, I'M

MATTERS AND MOTIONS

1 THINKING.

2 MR. MAULDIN: YEAH, I CAN'T REMEMBER WHICH DAY.
3 WHATEVER DAY IT WAS I THINK IT MAY HAVE BEEN BY THE COURT'S
4 QUESTION REGARDING THE THREE DIRECT QUESTIONS, AND DR.
5 NARAYAN'S COMMENT WAS THAT HIS EVALUATION WAS LIMITED AND
6 NARROW AS TO ONLY THOSE THREE QUESTIONS. THOSE ARE THE
7 QUESTIONS HE WAS ASKED. THOSE ARE THE ANSWERS HE WAS
8 PROVIDED. AND THAT WAS HIS POLICY.

9 IN LIGHT OF THAT, I BELIEVE AT THIS POINT IT WOULD BE
10 APPROPRIATE THAT THE STATE MAKE A PROFFER OUT OF THE PRESENCE
11 OF THE JURY OF THIS WITNESS TO DETERMINE THE ADMISSIBILITY OF
12 HIS TESTIMONY AT THIS TIME. THE COMPETENCY TO STAND TRIAL,
13 ESSENTIALLY, I WOULD SAY, AT THIS POINT IS A NONISSUE. HE
14 TESTIFIED THAT HE HAD FOUND COMPETENCY SOME TIME BACK, AT THE
15 BLAIR HEARING, AND HAD NOT UPDATED IT. THE COURT, I BELIEVE,
16 WAS LOOKING TO THE DEFENSE TO TAKE A POSITION ONE WAY OR THE
17 OTHER. THAT POSITION WAS NOT TAKEN, AND THEREFORE THE COURT
18 ESSENTIALLY DID NOT HAVE TO RULE. SO THAT IS WHAT I WOULD
19 SUSPECT AND BELIEVE WOULD BE A NONISSUE AT THIS PHASE.

20 THE OTHER TWO QUESTIONS ASKED OF DR. NARAYAN ARE --
21 WOULD HAVE BEEN RELEVANT AT THE TRIAL PHASE OF THE CASE ON
22 THE SUBMITTING OF A DEFENSE BY THE DEFENDANT AND WHETHER OR
23 NOT IT WAS CONSISTENT WITH HIS FINDINGS, AND HE COULD HAVE
24 TESTIFIED CONTRARY.

25 WITH THOSE PARAMETERS, YOUR HONOR, I BELIEVE THAT IT

MATTERS AND MOTIONS

1 WOULD BE APPROPRIATE FOR A PROFFER TO BE MADE JUST TO AVOID A
2 REAL UNREPAIRABLE SITUATION.

3 THE COURT: YES, SIR?

4 SOLICITOR ARIAIL: THE ENTIRE OPENING WAS FOCUSED ON
5 NOTHING BUT MENTAL IMPAIRMENT. THAT'S THE WHOLE ISSUE THEY
6 HAVE PUT BEFORE THIS JURY. WHAT WE WANT TO DO WITH DR.
7 NARAYAN IS ESTABLISH MENTAL STATUS OF THE DEFENDANT AT THE
8 TIME OF THE CRIME, HIS MENTAL STATUS AT THE TIME WHEN DR.
9 NARAYAN EXAMINED AND EVALUATED HIM, AND DEAL WITH THE ISSUES
10 OF THE -- PRESENTED IN THE DEFENDANT'S CASE IN CHIEF ON GUILT
11 -- DEALING WITH PANIC, FEAR AND THOSE SORTS OF THINGS. THOSE
12 ISSUES ARE IN THIS RECORD, AND THAT'S -- IT'S OUR DUTY TO
13 ESTABLISH AS PART OF THIS CASE THE STATE OF MIND OF THE
14 DEFENDANT AND ALSO THE ISSUES RELATED TO HIS MENTAL
15 CONDITION. AND THAT'S ALL WE INTEND TO DO.

16 NOW, I UNDERSTAND FROM THE COURT -- AND I'M WELL AWARE
17 THAT I AM -- I HAVE NO KNOWLEDGE OF WHAT IS IN PART OF THIS
18 REPORT. AND I HAVE MET WITH DR. NARAYAN AND TOLD HIM CERTAIN
19 AREAS -- VERY CRAFTED TO WHERE I'M GOING. HE KNOWS WHAT I AM
20 GOING TO ASK, SO THAT WE TRY TO TREAD THROUGH THIS THIN LINE.
21 THE PROBLEM THAT HAS COME UP AND HE'S ASKED ME IS IF I ASK
22 OPINIONS ON CERTAIN THINGS, THERE ARE CERTAIN PIECES OF
23 INFORMATION IN THE REPORT THAT I DON'T HAVE THAT HE WOULD
24 LIKE TO USE BECAUSE THAT WAS THE BASIS OF HIS OPINION. AND
25 HE HAS ASKED ME TO GET A CLARIFICATION. SHOULD HE JUST KEEP

MATTERS AND MOTIONS

1 TALKING OR WAIT FOR AN OBJECTION? AND I SAID, NO, WE WILL
2 BRING THAT TO THE JUDGE'S ATTENTION AT THIS POINT SO HE CAN
3 GET CLARIFICATION AS TO HOW TO RESPOND. I DO NOT INTEND TO
4 ASK HIM AT THIS JUNCTURE WHAT'S IN THAT PORTION OF THE
5 REPORT.

6 THE COURT: ANYTHING FURTHER?

7 (DEFENSE COUNSEL OFF RECORD)

8 THE COURT: I'M READY TO RULE UNLESS THERE IS SOMETHING
9 FURTHER

10 MR. MAULDIN: PARDON, YOUR HONOR?

11 THE COURT: I'M READY TO RULE UNLESS THERE IS SOMETHING
12 FURTHER.

13 MR. MAULDIN: ONE MOMENT, YOUR HONOR. (OFF RECORD WITH
14 CO-COUNSEL)

15 LET'S -- I'LL USE AS AN EXAMPLE THE SECOND QUESTION THAT
16 HE WAS ASKED TO ADDRESS, CRIMINAL RESPONSIBILITY ON THE DAY
17 OF THE OFFENSE. IF I AM NOT MISTAKEN, THE SOLICITOR WILL ASK
18 HIM ABOUT HIS OPINION AS TO THE DEFENDANT'S CRIMINAL
19 RESPONSIBILITY, WHICH I WOULD SUBMIT TO THE COURT IS NOT FOR
20 THE JURY'S -- IT IS NOT RELEVANT TO THE JURY'S DETERMINATION
21 BECAUSE THE CRIMINAL RESPONSIBILITY WAS -- IF EVER RELEVANT,
22 WAS -- WOULD HAVE BEEN RELEVANT AT THE GUILT PHASE UNDER OUR
23 LAW. THAT SEEMS TO BE THE LAW.

24 THE COURT: THANK YOU.

25 MR. MAULDIN: YES, SIR.

MATTERS AND MOTIONS

1 **THE COURT:** THE OBJECTION TO DR. NARAYAN'S TESTIMONY AT
2 THIS TIME IS RESPECTFULLY SUSTAINED. I UNDERSTAND WHAT
3 COUNSEL SAID IN THE OPENING STATEMENT. THAT'S NOT EVIDENCE.
4 IN MY JUDGMENT IT WOULD BE APPROPRIATE TO REVISIT THIS MATTER
5 ONCE WE KNOW PRECISELY THE DEFENSE AND MITIGATION EVIDENCE
6 THAT WILL BE OFFERED. MY INITIAL INCLINATION IS THAT
7 ADDRESSING THIS TESTIMONY IN THE NARROW CONTEXT OF CRIMINAL
8 RESPONSIBILITY MAY BE INAPPROPRIATE. WE MAY NEED TO REVISIT
9 THAT. BUT AS DR. NARAYAN TESTIFIED LAST WEEK DURING THE
10 BLAIR HEARING THAT THE INFORMATION HE RECEIVES FOR VARIOUS
11 REASONS -- COMPETENCY, CRIMINAL RESPONSIBILITY, MCNAUGHTON
12 AND OTHERWISE -- COME FROM A COMMON POOL OF INFORMATION, AN
13 INDIVIDUAL'S BACKGROUND AND A VARIETY OF THINGS FROM AN
14 INDIVIDUAL'S LIFE, WHICH OVERLAP. AND IT MAY BE THAT THAT
15 SAME INFORMATION THAT BEARS UPON CRIMINAL RESPONSIBILITY
16 WITHOUT CALLING IT CRIMINAL RESPONSIBILITY MAY BEAR UPON AND
17 BE PROPER REPLY TO WHAT COMES OUT. I JUST THINK IT'S
18 PREMATURE TO SPECULATE AS TO WHETHER THE PRECISE ALLEGED
19 IMPAIRMENT THAT WE HEARD IN OPENING STATEMENT MATERIALIZES,
20 AND I'M NOT GOING TO PERMIT THE EVIDENCE UNTIL THAT OCCURS.
21 I CERTAINLY UNDERSTAND AND RESPECT THE STATE'S POSITION, BUT
22 THAT'S MY RULING.

23 DR. NARAYAN, THANK YOU, SIR.

24 **DR. NARAYAN:** THANK YOU, YOUR HONOR.

25 **SOLICITOR ARIAIL:** IN LIGHT OF THAT RULING, WHICH

MATTERS AND MOTIONS

1 BRINGS US TO ANOTHER POINT---

2 THE COURT: YES, SIR.

3 SOLICITOR ARIAIL: THE NEXT POINT -- THE NEXT WITNESS
4 WE WOULD CALL IS AN EMPLOYEE OF THE SOUTH CAROLINA DEPARTMENT
5 OF CORRECTIONS. THE PURPOSE OF CALLING THIS WITNESS WILL BE
6 TO ESTABLISH WHAT LIFE IN PRISON WITHOUT PAROLE MEANS AND TO
7 HAVE A DISCUSSION AS TO THE DIFFERENCE BETWEEN LIFE IN PRISON
8 WITHOUT PAROLE VERSUS THE PUNISHMENT OF DEATH.

9 AND OUR BASES FOR THIS ARE NUMEROUS. BUT TO BEGIN WITH
10 IT STARTED AT THE VERY FIRST JUROR WHEN EVERY JUROR WAS MADE
11 OR LED TO ANSWER THAT LIFE IN PRISON IS A SERIOUS OFFENSE --
12 OR A SERIOUS PUNISHMENT. SECONDLY, I BELIEVE THAT IN THE --
13 OR I WOULD SAY TO COURT IN THE -- WITH THE LATEST SUPREME
14 COURT DECISION BEARING ON THE FACT THAT THE JURY MUST KNOW
15 WHAT LIFE IN PRISON WITHOUT PAROLE -- THAT'S WHAT LIFE MEANS,
16 THAT THAT IS AN AREA IN WHICH THE JURY TO DETERMINE THE
17 APPROPRIATE PUNISHMENT NEEDS TO KNOW WHAT IS THAT.

18 THE COURT: ALL RIGHT.

19 SOLICITOR ARIAIL: AND SO IF YOUR HONOR'S POSITION IS
20 THAT THAT'S PREMATURE AT THIS POINT BECAUSE IT'S BEEN RAISED
21 IN OPENING, ONLY RAISED IN OPENING, THERE'S NO EVIDENCE OF
22 THAT, THERE IS A DISTINCTION THERE ABOUT DIFFERENCE.

23 THE COURT: DO YOU OBJECT TO THAT AT THIS TIME, MR.
24 MAULDIN? IF YOU WANT TO STATE YOUR OBJECTION, YOU MAY DO SO.

25 MR. MAULDIN: YOUR HONOR, WE DO THINK THERE IS A CLEAR

MATTERS AND MOTIONS

1 DISTINCTION BETWEEN WHAT WAS ATTEMPTED A MOMENT AGO AND THIS.

2 SO, IF YOU CAN, BEAR WITH ME FOR ONE MOMENT---

3 THE COURT: YES, SIR.

4 MR. MAULDIN: ---I'LL BE GLAD TO PUT OUR POSITION---

5 THE COURT: AND I UNDERSTAND THE DISTINCTION.

6 SOLICITOR ARIAIL: I DO WANT TO BRING HIM IN, IF I CAN.

7 THE COURT: SURE. YES, SIR.

8 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL) IF OUR
9 UNDERSTANDING OF THE SUMMARY PROFFER IS THAT A DEPARTMENT OF
10 CORRECTIONS PERSONNEL WILL TESTIFY AS TO CONDITIONS OF LIFE
11 WITHOUT PAROLE, IF THAT'S WHAT THIS REALLY IS BEING OFFERED
12 AS, THEN WE'RE NOT GOING TO ENTER AN OBJECTION AT THIS POINT
13 TO THAT WITNESS.

14 THE COURT: ALL RIGHT. I THINK IT WOULD BE RELEVANT.
15 THAT ISSUE IS BEFORE THE JURY. EITHER OPTION IS AVAILABLE
16 AND BEFORE THE JURY PREMISED UPON A FINDING OF AN AGGRAVATED
17 CIRCUMSTANCE. I THINK IT'S BEFORE THE COURT AND THAT WOULD
18 BE APPROPRIATE AND RELEVANT TESTIMONY. IF THERE IS AN
19 OBJECTION, WE'LL DEAL WITH IT AT THAT TIME.

20 AS FAR AS COUNSEL, IS THERE ANYONE WHO WOULD LIKE TO
21 TAKE A BREAK?

22 MR. MAULDIN: ABOUT LONG ENOUGH FOR ME TO RUN DOWN TO
23 THE END OF THE HALL AND BACK.

24 THE COURT: ALL RIGHT. WELL, I WANT US TO BE
25 COMFORTABLE, AND I WANT THE JURY TO BE COMFORTABLE. SO LET'S

MATTERS AND MOTIONS

1 TAKE A FIVE-MINUTE BREAK AND THEN WE'LL CRANK BACK UP. FIVE
2 MINUTES, PLEASE.

3 (A RECESS WAS TAKEN FROM 11:08 TO 11:13 A.M.)

4 THE COURT: BRING THE JURY, PLEASE.

5 (JURY REENTERS COURTROOM AT 11:15 A.M.)

6 THE COURT: NEXT WITNESS FROM THE STATE, PLEASE.

7 MS. HERVEY: THE STATE CALLS, JIMMY SLIGH.

8 JIMMY SLIGH, HAVING BEEN DULY
9 SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION BY MS. HERVEY:

11 Q GOOD MORNING, MR. SLIGH. BY WHOM ARE YOU EMPLOYED?

12 A WITH THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

13 Q AND JUST FOR THE COURT REPORTER'S REFERENCE, COULD YOU
14 SPELL YOUR LAST NAME FOR HER?

15 A S-L-I-G-H.

16 Q THANK YOU. YOU ARE WITH THE SOUTH CAROLINA DEPARTMENT
17 OF CORRECTIONS?

18 A YES, MA'AM.

19 Q WHAT IS CORRECTIONS?

20 A IT IS THE ADULT PRISON SYSTEM IN THE STATE OF SOUTH
21 CAROLINA.

22 Q AND HOW LONG HAVE YOU BEEN WITH THEM?

23 A A LITTLE OVER 20 YEARS.

24 Q AND IN THOSE 20 YEARS WHAT POSITIONS HAVE YOU HELD IN
25 THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS?

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 A I'VE BEEN A JOB PLACEMENT OFFICER AT A WORK RELEASE
2 CENTER, DEPUTY WARDEN IN A MEDIUM-MAXIMUM SECURITY
3 INSTITUTION, A WARDEN OF A WORK RELEASE CENTER. I'VE BEEN
4 OUR AGENCY'S OMBUDSMAN, AND I AM CURRENTLY THE ACTING
5 DIRECTOR OF CLASSIFICATION AND INMATE RECORDS FOR THE
6 DEPARTMENT.

7 Q HOW MANY PRISONS DO WE HAVE HERE IN SOUTH CAROLINA?

8 A WE'VE GOT 30 PRISONS IN SOUTH CAROLINA.

9 Q THAT INCLUDES A VARIED RANGE OF TYPE FACILITIES, DOES IT
10 NOT?

11 A THAT'S CORRECT.

12 Q WHAT IS COMMONLY REFERRED TO -- OR JUST GO OVER WHAT IS
13 A DESCRIPTION OF WHAT IS DEATH ROW?

14 A DEATH ROW IS A HOUSING UNIT LOCATED AT LIEBER
15 CORRECTIONAL INSTITUTION, WHICH IS IN RIDGEVILLE, SOUTH
16 CAROLINA, WHICH IS ABOUT 30 MILES WEST OF CHARLESTON. IT IS
17 A -- LIEBER IS A LEVEL THREE OR A MAXIMUM SECURITY PRISON,
18 AND THE DEATH ROW HOUSING UNIT IS LOCATED WITHIN THE CONFINES
19 OF LIEBER IN WHAT IS A STANDARD LOCK UP UNIT.

20 Q JUST TELL -- YOU SAID YOU WERE THE DEPUTY -- THE
21 DIRECTOR OF CLASSIFICATION?

22 A YES, MA'AM.

23 Q WHAT IS CLASSIFICATION? WHAT DOES THAT MEAN?

24 A CLASSIFICATION BASICALLY IS RESPONSIBLE FOR THE
25 RECEPTION AND EVALUATION PROCESS. ANY INMATE WHO IS NEWLY

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 COMMITTED TO OUR AGENCY GOES THROUGH A RECEPTION AND
2 EVALUATION PROCESS UPON COMMITMENT. THAT DETERMINES THE
3 LEVEL OF SECURITY WHICH WILL DETERMINE THE TYPE OF
4 INSTITUTION HE WILL BE ASSIGNED TO. ONCE THE INSTITUTION IS
5 ASSIGNED, THERE IS AN INSTITUTIONAL CLASSIFICATION PROCESS
6 THAT BASICALLY TOUCHES ON EVERYTHING HE DOES THERE, HIS CELL
7 ASSIGNMENT, JOB ASSIGNMENT, DORM ASSIGNMENT, PROGRAM
8 ASSIGNMENT, CUSTODY LEVELS, MOVING UP AND DOWN WITHIN THE
9 INSTITUTION, AND SECURITY LEVELS IF HE HAS THE OPPORTUNITY TO
10 ADVANCE HIS SECURITY.

11 Q IN TERMS OF CLASSIFICATIONS IS THERE A CERTAIN -- LIKE
12 THERE ARE FIVE GROUPS OF CLASSIFICATION THAT ARE---

13 A AS FAR AS SECURITY LEVELS THERE ARE ACTUALLY THREE --
14 LEVEL ONE, TWO AND THREE -- ONE BEING MINIMUM SECURITY, TWO
15 BEING MEDIUM AND THREE BEING MAXIMUM.

16 Q AND JUST BRIEFLY, WHAT IS THE DIFFERENCE BETWEEN THOSE
17 CLASSIFICATIONS OF SECURITY?

18 A MINIMUM SECURITY INSTITUTIONS BASICALLY ARE FOR INMATES
19 WHO ARE IN FOR LESSER CRIMES, DON'T HAVE A BAD BACKGROUND.
20 THEY ARE GENERALLY UNFENCED. THE INMATES HAVE A LITTLE BIT
21 MORE PRIVILEGES AS FAR AS WORKING OUTSIDE THE CONFINES OF THE
22 INSTITUTION.

23 MEDIUM SECURITY BASICALLY IS IN THE MIDDLE. IT'S
24 INMATES WHO EITHER AREN'T IN FOR THE MORE SEVERE PENALTIES OR
25 HAVE WORKED THEIR WAY DOWN INTO THAT. IT IS A MORE SECURE

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 ENVIRONMENT, GENERALLY FENCED INSTITUTIONS.

2 AND A MAXIMUM SECURITY, OBVIOUSLY, ARE THE -- OR LEVEL
3 THREE IS THE HIGHEST SECURITY FOR EITHER INMATES WHO ARE IN
4 FOR SERIOUS CRIMES OR WHO HAVE WORKED THEIR WAY BACKWARDS
5 THROUGH OUR SYSTEM BY THEIR CONDUCT WITHIN THE SYSTEM.

6 Q SO IT'S FOR THOSE WHO HAVE BEEN CONVICTED OF MORE
7 SERIOUS MORE VIOLENT CRIMES AND THOSE WHO HAVE MISBEHAVED IN
8 JAIL?

9 A YES, MA'AM, THAT'S CORRECT.

10 Q WOULD -- AND JUST BRIEFLY, HOW MANY CLASS THREE PRISONS
11 ARE THERE IN SOUTH CAROLINA?

12 A SEVEN.

13 Q THERE ARE SEVEN?

14 A YES, MA'AM.

15 Q BUT IS THERE ONLY ONE DEATH ROW?

16 A YES, MA'AM.

17 Q AND THAT'S AT LIEBER?

18 A YES, MA'AM.

19 Q COULD YOU JUST BRIEFLY DESCRIBE TO THE JURY AND TAKE --
20 DO YOU HAVE OTHER -- OF A CLASS THREE INSTITUTION, WHAT IS
21 THE LAYOUT OF A PRISON? HOW BIG IS IT? WHAT DOES IT ENTAIL
22 IN TERMS OF BUILDING ON AVERAGE?

23 A ON AVERAGE THERE ARE EITHER FOUR OR FIVE GENERAL
24 POPULATION HOUSING UNITS THAT HOUSE ANYWHERE FROM 1100 TO
25 1350 INMATES. THERE USUALLY IS A SPECIAL MANAGEMENT UNIT OR

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 A LOCKUP UNIT THAT HOUSES ANOTHER HUNDRED. THAT'S UNDER
2 NORMAL CIRCUMSTANCES. WE ARE IN SOME TRIPLE CELLING RIGHT
3 NOW. INSIDE A PERIMETER FENCE YOU ARE USUALLY TALKING ABOUT
4 SOMEWHERE IN THE NEIGHBORHOOD OF 30 OR 35 ACRES AND THERE ARE
5 ALSO SUPPORT BUILDINGS OBVIOUSLY, CAFETERIA, MEDICAL, SCHOOL,
6 THAT TYPE OF THING.

7 Q IN TERMS OF ACREAGE, WHAT WOULD BE THE LARGEST YOU MIGHT
8 GO EVEN OUTSIDE OF THAT?

9 A I'M REALLY NOT SURE.

10 Q WITHIN A PRISON YOU SAID THAT YOU HAVE SUPPORT
11 BUILDINGS. WOULD IT BE FAIR TO SAY THAT A PRISON IS KIND OF
12 LIKE A MINI CITY?

13 A YES, MA'AM.

14 Q AND DO THEY HAVE THEIR OWN -- DO THEY HAVE THEIR OWN
15 CAFETERIA?

16 A RIGHT.

17 Q INMATES DON'T GO OUT TO LUNCH OR ANYTHING LIKE THAT?

18 A NO, MA'AM.

19 Q NO. THEY STAY THERE. DO THEY HAVE THEIR OWN LAUNDRY?

20 A RIGHT.

21 Q WHAT OTHER DAY-TO-DAY SERVICES DO THEY SUPPORT AMONGST
22 THEMSELVES?

23 A THERE'S A CANTEEN THAT THE INMATES WITH MONEY CAN BUY
24 THEIR PERSONAL HYGIENE ITEMS AND SOME VERY BASIC NECESSITIES.
25 THERE IS AN EDUCATION BUILDING WHERE WE OFFER SOME BASIC ED

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 AND G.E.D. PREP COURSES. THERE IS A MEDICAL UNIT WHERE WE DO
2 DAILY SICK CALL AND TRIAGE OF DIFFERENT TYPES OF PROBLEMS.
3 AND IN SOME INSTITUTIONS THEY ACTUALLY HAVE AN IN-BED
4 INFIRMARY FOR THOSE INMATES THAT NEED THAT. THE IDEA
5 OBVIOUSLY IS TO TRY TO BE AS SELF-CONTAINED AS WE CAN SO YOU
6 ARE NOT IN A POSITION TO HAVE TO TRANSPORT SOMEBODY OUTSIDE
7 THE CONFINES OF THE INSTITUTION.

8 Q AND HOW MUCH DO YOU BRING IN ON A DAILY BASIS? DO THEY
9 GROW THEIR OWN FOOD? YOU CERTAINLY IMPORT CERTAIN ITEMS?

10 A WE DO GROW SOME FOOD AND RAISE SOME BEEF AND PORK
11 PRODUCTS. BUT WE HAVE A CENTRAL FOOD SERVICE OPERATION IN
12 COLUMBIA THAT IS BASICALLY RESPONSIBLE FOR SUPPLYING ALL OF
13 THAT TO ALL OF OUR INSTITUTIONS. SO SOME OF IT WE GROW
14 OURSELVES AND SOME OF IT WE PURCHASE FROM THE OUTSIDE.

15 Q DO THEY HAVE VOCATIONAL TRAINING AVAILABLE TO THEM?

16 A YES, THERE IS.

17 Q AND IS THAT DEPENDING ON WHAT INSTITUTION YOU MIGHT
18 HAPPEN TO BE IN?

19 A THAT'S RIGHT. THERE ARE DIFFERENT -- SOME OF THE
20 VOCATIONAL SCHOOLS SUPPORT DIFFERENT THINGS THAT ARE
21 AVAILABLE IN THE NEEDED AREA AS FAR AS THE TEACHERS THAT CAN
22 COME IN. SOME SUPPORT SOME OF OUR INDUSTRY'S PROGRAMS AS FAR
23 AS THE TRAINING PROGRAM. BUT THEY ARE DIFFERENT IN EACH OF
24 THE INSTITUTIONS THAT THEY ARE OFFERED.

25 Q YOU STATED YOU WERE ONCE IN CHARGE OF A WORK RELEASE

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 PROGRAM?

2 A YES, MA'AM.

3 Q LET ME MAKE CLEAR, ANYONE CONVICTED OF MURDER IS NOT
4 GOING TO BE ON WORK RELEASE?

5 A NO, MA'AM.

6 Q THEY MAY WORK WITHIN THE PRISON?

7 A YES, MA'AM.

8 Q ARE THEY ENCOURAGED TO DO SO?

9 A WE BASICALLY REQUIRE IT UNLESS THERE IS SOME REASON,
10 PHYSICAL REASON, THEY CANNOT.

11 Q THEY'RE GOING TO DO SOMETHING?

12 A YES, MA'AM.

13 Q EITHER MOPPING A FLOOR OR DOING LAUNDRY, THEY'RE DOING
14 SOMETHING WITHIN THE PRISON?

15 A THAT'S CORRECT.

16 Q DO THEY EARN MONEY FOR THOSE SERVICES?

17 A NO, MA'AM.

18 Q THEY DO NOT.

19 A THERE WAS A TIME IN THE PAST WHERE WE DID PAY INMATE
20 PAYROLL AND WE STILL HAVE SOME INMATES WHO ARE GRANDFATHERED
21 UNDER THAT SYSTEM. BUT ANYONE COMING INTO OUR SYSTEM RIGHT
22 NOW IS NOT PAID.

23 Q BY VIRTUE OF THEIR WORK DO THEY EARN ANY PRIVILEGES OR
24 BENEFITS?

25 A OUR CUSTODY SYSTEM IS BASED ON GOOD BEHAVIOR AND GOOD

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 WORK RECORD. SO, YES, IF THEY WORK AND DO A GOOD JOB, THEN
2 THEY WILL BE ABLE TO MAINTAIN THEIR BENEFITS WITHIN THE
3 INSTITUTION.

4 Q WHEN YOU SAY WORK RELEASE, DOES THAT MEAN WHERE, YOU
5 KNOW, A VAN DROPS THEM OFF AT A FACTORY OR DOES THAT MEAN THE
6 PEOPLE WE SEE PICKING STUFF UP ON THE SIDE OF THE ROAD?

7 A IT'S ACTUALLY BOTH PROGRAMS. ALL OF OUR -- WE CALL THEM
8 PRE-RELEASE CENTERS. BUT ALL OF THEM HAVE BOTH LABOR CREW
9 PROGRAMS THAT SUPPLY INMATES TO COUNTIES OR DO THE ROAD
10 DETAILS AND WORK RELEASE PROGRAMS WHERE THE INMATE ACTUALLY
11 HAS THE OPPORTUNITY TO GO OUT AND WORK IN THE COMMUNITY.

12 Q LET'S JUST TAKE HYPOTHETICALLY A PERSON CONVICTED OF
13 MURDER AND SENTENCED TO LIFE, WHAT TYPE OF FACILITY WOULD
14 THEY IN ESSENCE GO TO IRRELEVANT OF THEIR CRIMINAL RECORD?

15 A UNDER OUR CURRENT CLASSIFICATION SYSTEM IT WOULD
16 AUTOMATICALLY BE ASSIGNED TO A HIGH SECURITY LEVEL THREE
17 INSTITUTION.

18 Q AND JUST PAINT A PICTURE OF THE JAIL. IN TERMS OF WHEN
19 YOU SAY HIGH SECURITY LEVEL THREE INSTITUTION, WHAT DOES THAT
20 MEAN? IF I WAS DRIVING DOWN THE ROAD, WHAT WOULD I SEE?

21 A YOU WOULD SEE A VERY LARGE INSTITUTION WITH TWO SECURE
22 FENCES THAT COMPLETELY SURROUND THE PERIMETER. THE FENCES
23 ARE COVERED WITH WHAT WE CALL CONCERTINA WIRE, RAZOR WIRE.
24 THEY ALL HAVE THE TOUCH SYSTEMS ON THEM THAT IF SOMETHING
25 HITS THE FENCE AN ALARM GOES OFF. THERE ARE PERIMETER

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 PATROLS AND A ROVING PATROL AROUND THE INSTITUTION. AND THEN
2 AS -- COMPARATIVELY SPEAKING, THERE IS MORE SECURITY AS FAR
3 AS MOVING IN THE INSTITUTION AND ACTUALLY SECURITY PERSONNEL
4 IN A LEVEL THREE INSTITUTION.

5 Q SO WOULD IT BE FAIR TO SAY THAT AT A CLASS ONE FACILITY
6 YOU HAVE ONE GUARD WHERE AT A CLASS THREE FACILITY YOU MIGHT
7 HAVE TWO?

8 A YES, MA'AM. THAT'S FAIR TO SAY.

9 Q BUT WITHIN THAT FENCING, WITHIN THAT SYSTEM, AND OTHER
10 THAN THE DIFFERENCE IN THE NUMBER OF GUARDS, ARE THE PRISONS
11 SUBSTANTIALLY DIFFERENT IN APPEARANCE AND LAY OUT?

12 A YES, THEY ARE.

13 Q CLASS THREE AND A CLASS ONE?

14 A YES, MA'AM, ABSOLUTELY.

15 Q AND COULD YOU DESCRIBE THAT?

16 A IN A CLASS THREE WE HAVE INDIVIDUAL CELLS THAT WE HOUSE
17 EITHER TWO OR THREE INMATES. THE BUILDINGS ARE BUILT TO
18 PROVIDE MORE ON SITE AND SOUND SECURITY. GENERALLY THEY ARE
19 MUCH BIGGER. GENERALLY THE FENCING IS PROBABLY THE BIG
20 THING. THAT'S THE FIRST THING YOU'RE GOING TO SEE WHEN YOU
21 PULL IN. THERE IS A WHOLE LOT LESS FREEDOM OF MOVEMENT
22 WITHIN THE INSTITUTION. IT IS MUCH MORE CONTROLLED. IN A
23 MINIMUM SECURITY INSTITUTION THE HOUSING IS GENERALLY OPEN
24 BAY CUBICLES, WHICH IS THERE ARE NO DOORS. THERE ARE JUST
25 INDIVIDUAL CUBICLE AREAS THAT HAVE TWO BEDS IN EACH ONE.

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 Q LET'S JUST, IF YOU COULD, ARE YOU FAMILIAR WITH THE DAY-
2 TO-DAY OPERATIONS OF A PRISON HAVING BEEN A WARDEN?

3 A YES, MA'AM.

4 Q A PERSON SENTENCED TO LIFE AS A RESULT OF BEING
5 CONVICTED OF MURDER, WHAT IS THERE DAY-TO-DAY ROUTINE?

6 A GENERALLY THEY ARE AWAKENED AT 5:30 FOR A STANDING
7 COUNT. WE START SERVING BREAKFAST AFTER THE COUNT CLEARS,
8 WHICH IS GENERALLY ABOUT SIX O'CLOCK. IN ORDER TO SERVE
9 BREAKFAST WE RELEASE EACH LIVING UNIT INDIVIDUALLY. THEY GO
10 IN AND EAT AND COME BACK, AND THERE'S FOUR OR FIVE THAT GO
11 OUT. ONCE BREAKFAST IS SERVED THEN THE INMATES ARE RELEASED
12 IN A CONTROLLED MANNER TO EITHER GO TO WORK OR SCHOOL OR
13 WHATEVER THEIR SITUATION IS. WE ONLY ALLOW INMATES TO MOVE
14 ONCE AN HOUR. IT'S UNDER A CONTROLLED MOVEMENT SYSTEM. AND
15 THE ONLY WAY THE INMATE CAN MOVE IS IF HE IS GOING TO WORK OR
16 SCHOOL OR IF HE'S GOT A PASS TO REPORT TO A CERTAIN AREA. WE
17 COUNT THROUGHOUT THE DAY. BASICALLY, AT LUNCHTIME THE
18 INMATES RETURN TO THEIR UNITS AND THEN REPEAT THE FEEDING
19 PROCESS. THEY GO BACK TO WORK. USUALLY, THE WORKDAY ENDS
20 FOR THE NORMAL INMATES LATE IN THE AFTERNOON. THEY RETURN TO
21 THEIR UNITS. THEY ARE FED SUPPER. AFTER SUPPER AND AT DARK
22 THEY ARE LOCKED INTO THE UNITS. THEY HAVE SOME---

23 Q WHEN YOU SAY "LOCKED INTO THEIR UNIT," DOES THAT MEAN
24 THEY ARE LOCKED BACK IN THEIR CELL?

25 A NO, MA'AM, NOT NECESSARILY. THEY ARE LOCKED INTO THEIR

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 WINGS. THERE'S TWO WINGS IN THE BUILDING. THEY CAN MOVE
2 AROUND A LITTLE BIT AT THAT POINT. WE HAVE DAY ROOMS AND WE
3 HAVE TELEVISIONS IN A COMMON AREA ON EACH SIDE OF THE WINGS.
4 USUALLY AROUND 9:30 THEN THEY ARE LOCKED INTO THEIR CELLS FOR
5 THE REST OF THE NIGHT.

6 Q WHEN YOU SAY THEY HAVE THESE COMMON AREAS WITH T.V.,
7 OTHER THAN WORK AND GOING TO SCHOOL, WHAT OTHER ACTIVITIES
8 CAN A LIFE IN PRISON INMATE PARTICIPATE IN ON ANY GIVEN DAY?
9 DO THEY PLAY CARDS?

10 A YEAH.

11 Q DO THEY GET TO PLAY BASKETBALL?

12 A RIGHT.

13 Q DO THEY READ BOOKS?

14 A EACH INSTITUTION -- EACH UNIT HAS A FENCED IN RECREATION
15 AREA THAT THE INMATES HAVE ACCESS TO DURING THE DAY. WE HAVE
16 A CENTRAL RECREATION AREA -- ACTUALLY TWO CENTRAL RECREATION
17 AREAS AT SOME INSTITUTIONS, ONE INDOOR AND ONE OUTDOOR THAT
18 THERE IS LIMITED ACCESS TO BASED ON THE UNIT YOU ARE IN AND
19 YOUR BEHAVIOR. OBVIOUSLY THERE IS VISITING. FOR A LEVEL
20 THREE INSTITUTION, VISITING IS ON FRIDAYS, SATURDAYS AND
21 SUNDAY.

22 Q LET'S GO BACK TO THAT BEFORE -- CAN THEY PLAY
23 BASKETBALL?

24 A YES, MA'AM.

25 Q ANYTHING THEY COULD BASICALLY DO WITHIN THAT SPACE THAT

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 YOU AFFORD THEM OUTSIDE?

2 A YES, MA'AM, THAT'S CORRECT.

3 Q AND THEN THEY GO BACK AND -- DO YOU TURN THE LIGHTS OUT
4 AT 9:30 OR...

5 A GENERALLY A LITTLE AFTER THAT.

6 Q GENERALLY A LITTLE AFTER THAT?

7 A YES, MA'AM.

8 Q AND JUST BRIEFLY, HOW BIG IS THE AVERAGE PRISON CELL IN
9 SOUTH CAROLINA?

10 A THE AVERAGE GENERAL POPULATION CELL IS ABOUT 75 SQUARE
11 FEET.

12 Q AS BIG AS THAT JURY BOX?

13 A NO, IT'S MUCH SMALLER.

14 Q MUCH SMALLER?

15 A YEAH.

16 Q ABOUT HALF THAT SIZE?

17 A ROUGHLY, YES, MA'AM.

18 Q AND IN THE GENERAL POPULATION YOU HAVE ABOUT TWO PEOPLE
19 IN WITHIN THAT?

20 A TWO OR THREE.

21 Q AND WHAT ARE THEY ALLOWED TO HAVE WITHIN THEIR CELL IF
22 THEY ARE IN THE GENERAL POPULATION?

23 A VERY MINIMAL PROPERTY. WE PROVIDE UNIFORMS FOR ALL
24 INMATES TO WEAR. SO BASICALLY UNDERGARMENTS, A PAIR OF
25 SHOES. I MEAN, IT'S A WIDE VARIETY OF THINGS BUT IT IS

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 LIMITED AS FAR AS PERSONAL ITEMS ARE CONCERNED.

2 Q LETTERS?

3 A PARDON?

4 Q LETTERS FROM LOVED ONES?

5 A OH, YES, MA'AM.

6 Q BOOKS, THAT TYPE THING?

7 A THEY CAN HAVE TEN BOOKS OR MAGAZINES, LETTERS AND
8 PICTURES AND THAT TYPE OF THING.

9 Q LET'S GO OVER VISITATION. WHAT VISITATION DOES SOMEONE
10 IN GENERAL POPULATION HAVE?

11 A EACH INMATE CAN HAVE UP TO 15 INDIVIDUALS ON THE
12 VISITING LIST. THOSE INDIVIDUALS HAVE TO FILL OUT AN
13 APPLICATION. THEY ARE SCREENED AS FAR AS THERE IS A
14 BACKGROUND CHECK DONE. ONCE THEY ARE PLACED ON THE VISITING
15 LIST, AN INMATE AT MINIMAL CUSTODY WHO WOULD HAVE FULL
16 PRIVILEGES CAN GET UP TO EIGHT VISITS A MONTH BASED ON THE
17 INSTITUTIONAL SITUATION. GENERALLY, FRIDAYS IS FROM 3:00
18 P.M. TO 9:00 P.M., AND THAT'S USUALLY OPEN TO THE ENTIRE
19 POPULATION. AND SATURDAYS AND SUNDAYS THEY USUALLY DO IT BY
20 FIRST LETTER OF THE LAST NAME AND YOU GET ONE OR THE OTHER,
21 AND IT ROTATES LIKE THAT THROUGH THE MONTH.

22 Q SO IF MY LAST NAME IS ANDERSON, I HAVE VISITATION ON
23 SATURDAY BUT IF IT'S SMITH I'M GOING ON SUNDAY?

24 A YES, MA'AM.

25 Q AND WHEN YOU SAY UP TO 15 PEOPLE, THAT'S NOT FOR THE

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 ENTIRE TIME, THAT'S JUST AT ANY GIVEN TIME?

2 A THAT'S AT ANY GIVEN TIME ON THEIR APPROVED LIST.

3 GENERALLY, THEY CAN HAVE NO MORE THAN SIX TO COME IN FOR AN
4 INDIVIDUAL VISIT.

5 Q IF I DECIDED I DON'T WANT TO SEE MY BROTHER JIM BOB
6 ANYMORE BUT I DO WANT TO SEE MY HIGH SCHOOL FRIEND, I CAN
7 SWITCH THOSE OUT?

8 A YES, MA'AM.

9 Q AND WHEN YOU SAY VISITATION, THAT THEY CAN HAVE UP TO
10 SIX PEOPLE, IN TERMS OF THE GENERAL POPULATION WHAT IS THE
11 ENVIRONMENT WITHIN WHICH ONE WOULD VISIT WITH AN INMATE?

12 A IT'S A LARGE OPEN VISITING ROOM WITH INDIVIDUAL TABLES
13 AND THE INMATE IS ASSIGNED TO A PARTICULAR TABLE IN THE
14 VISITING ROOM. THEY ARE EITHER SQUARE OR ROUND DEPENDING
15 UPON THE INSTITUTION. IF IT'S A FEMALE VISITOR, THEY ARE
16 REQUIRED TO SIT ACROSS THE TABLE FROM THE INMATE. CHILDREN
17 CAN COME AROUND AND SIT IN LAPS AND THINGS LIKE THAT. WE
18 MONITOR THAT VERY CLOSELY, OBVIOUSLY. BUT FOR THE MOST -- IT
19 IS CONSIDERED CONTACT VISITATION, BUT WE DON'T ALLOW A LOT OF
20 PHYSICAL---

21 Q WE DON'T HAVE CONJUGAL VISITS IN SOUTH CAROLINA?

22 A NO, MA'AM. WE DON'T.

23 Q OKAY. BUT CAN THEY HUG THEIR WIFE?

24 A WHEN THEY COME IN FOR THE VISIT AND WHEN THEY LEAVE.

25 Q BUT THEN THEIR CHILDREN CAN SIT IN THEIR LAPS?

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 A YES, MA'AM.

2 Q BUT OTHER THAN THAT THERE IS NO BARRIER BETWEEN CONTACT
3 IT'S JUST SOMEONE WATCHING THEM?

4 A IN THE GENERAL POPULATION, NO, MA'AM, JUST MONITORING.

5 Q WHAT IS THE DIFFERENCE FOR A PERSON'S DAY-TO-DAY ROUTINE
6 IF THEY ARE ON DEATH ROW?

7 A ON DEATH ROW THE BIGGEST DIFFERENCE IS THAT YOU --
8 OUTSIDE OF RECREATION, SHOWERS AND SOME VERY LIMITED
9 PROGRAMS, YOU REMAIN IN YOUR CELL ALL DAY.

10 Q HOW MANY HOURS ON ANY GIVEN DAY DOES AN AVERAGE DEATH
11 ROW INMATE STAY IN THEIR CELL?

12 A TWENTY-THREE.

13 Q HOW BIG IS THEIR CELL?

14 A EIGHTY-FOUR SQUARE FEET.

15 Q SO A LITTLE BIT BIGGER THAN THE GENERAL POPULATION?

16 A THAT'S CORRECT.

17 Q AND THEY'RE IN THERE ALONE; IS THAT FAIR TO SAY?

18 A THAT'S CORRECT.

19 Q THERE IS NO DOUBLING UP ON DEATH ROW?

20 A NO, MA'AM.

21 Q WITHIN THEIR CELL WHAT TYPE OF FURNITURE MIGHT YOU FIND?

22 A THEIR BED, A -- IT'S A SINK-COMMODE COMBINATION AND A
23 WRITING TABLE.

24 Q ARE THEY ALLOWED TO HAVE THE SAME THINGS WITHIN THEIR
25 CELL THAT THE PERSONS IN GENERAL POPULATION CAN IN TERMS OF

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 BOOKS AND PERSONAL EFFECTS?

2 A FOR THE MOST PART, YES, MA'AM, THERE'S NOT ANY
3 DIFFERENCE.

4 Q YOU SAID THAT THEY ARE NOT ALLOWED WORK RELEASE?

5 A NO, MA'AM.

6 Q DO THEY WORK WITHIN THE PRISON?

7 A WE'RE TALKING ABOUT GENERAL POPULATION?

8 Q ON DEATH ROW, I'M SORRY.

9 A THERE MAY BE A VERY SMALL NUMBER THAT WILL DO SOME
10 MENIAL THINGS WITHIN THE UNIT. BUT FOR THE MOST PART, NO,
11 MA'AM, THEY DON'T.

12 Q AND IS DEATH ROW SELF-CONTAINED? IS IT ONE BUILDING OR
13 IS IT JUST A WING OR A FLOOR?

14 A IT'S ACTUALLY A WING OF A BUILDING, BUT IT IS ENTIRELY
15 SELF-CONTAINED.

16 Q IS THERE ANY REASON WHY THEY WOULD LEAVE THAT BUILDING?

17 A YES, MA'AM.

18 Q WHY MIGHT THAT BE?

19 A WELL, TO GO TO COURT, FOR SOME ACUTE MEDICAL TYPE
20 PROBLEMS THAT COULD NOT BE DEALT WITH ON THE UNIT. THEY HAVE
21 PRETTY MUCH EVERYTHING IS BROUGHT IN THERE. THEY ARE FED
22 THERE. IF THERE IS A MEDICAL PROBLEM, THEY ARE TRIAGED
23 THERE. ALL OF THE PROGRAMMATIC ISSUES TAKE PLACE THERE. THE
24 CHAPLAINS VISIT THERE. SO UNLESS THERE IS SOME TYPE OF ACUTE
25 PROBLEM OR A COURT SITUATION, THEY DON'T LEAVE.

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 Q THEY GET UP IN THE MORNING, SAME TIME?

2 A I THINK THE FIRST COUNT ON DEATH ROW IS AT SEVEN
3 O'CLOCK.

4 Q THEY GET TO SLEEP IN COMPARED TO EVERYBODY ELSE, SO TO
5 SPEAK?

6 A COMPARATIVELY, YES, MA'AM.

7 Q THEY GET UP AND -- DO THEY GO OUT TO BREAKFAST? DO THEY
8 GO TO THE MESS HALL WITH EVERYBODY ELSE?

9 A NO, MA'AM. THEY ARE FED IN THEIR CELLS.

10 Q THEY ARE FED. SO -- NOW I'M GUESSING, SINCE I HAVEN'T
11 BEEN THERE. THERE IS A FOOD PORT, YOU JUST SLIDE A TRAY IN--

12 -

13 A THAT'S CORRECT.

14 Q ---IS THAT FAIR TO SAY?

15 A THAT'S CORRECT.

16 Q ARE THEY FED THE SAME FOOD?

17 A YES, MA'AM.

18 Q HOW IS PRISON FOOD THESE DAYS?

19 A IT'S A RELATIVE QUESTION.

20 Q IT'S A RELATIVE QUESTION?

21 A YEAH. IT'S INSTITUTION FOOD.

22 Q IT'S INSTITUTIONAL FOOD?

23 A YEAH.

24 Q IT'S NOT THE SAME MENU EVERY DAY?

25 A NO, MA'AM. NO, MA'AM. WE HAVE NUTRITIONISTS THAT

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 PROVIDE -- WE HAVE TO DO U.S.D.A. BALANCED MENUS. SO IT'S A
2 NUTRITIONAL MEAL.

3 Q THEY'RE BROUGHT BREAKFAST. THEN WHAT DO THEY DO? DO
4 THEY LEAVE THEIR CELL AFTER THAT?

5 A THEY'LL START OFFERING SHOWERS AND OFFERING RECREATION
6 AFTER THAT, USUALLY AROUND 8:00 OR 8:15 IN THE MORNING. AND
7 THE INMATES BASICALLY ARE AWAKE. THEY GO AROUND AND ASK ANY
8 INMATES AWAKE WHETHER OR NOT THEY WANT TO SHOWER. ALTHOUGH
9 WE -- ON DEATH ROW, WE PRETTY MUCH REQUIRE THAT THEY SHOWER.
10 BUT RECREATION, WE ARE REQUIRED TO OFFER UP TO FIVE HOURS A
11 WEEK OF RECREATION, WEATHER PERMITTING, OR UNLESS THE INMATE
12 IS PRONE TO BE A SECURITY PROBLEM. SO WE OFFER THAT AND
13 DENOTE THAT EVERY DAY.

14 Q ARE THEY OFFERED RECREATION EVERY DAY OR DOES IT JUST
15 DEPEND ON WHOSE TURN IT IS?

16 A IT'S USUALLY MONDAY THROUGH FRIDAY, BUT EVERYBODY IS
17 OFFERED THE OPPORTUNITY TO RECREATE. THAT'S ONE HOUR IN AN
18 ENCLOSED OUTSIDE RECREATION AREA.

19 Q SO THEY'RE NOT GOING TO PLAY BASKETBALL WITH THE GENERAL
20 POPULATION?

21 A ABSOLUTELY NOT.

22 Q ARE THERE OTHER DEATH ROW INMATES IN THAT SAME
23 RECREATION PERIOD AT THE SAME TIME?

24 A GENERALLY THEY -- UNLESS THERE IS A REASON TO SEGREGATE
25 SOMEBODY, THEY RECREATE IN VERY SMALL GROUPS, USUALLY THREE

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 TO FIVE.

2 Q THEY GET ONE HOUR OF THAT A DAY?

3 A YES, MA'AM.

4 Q CAN THEY TAKE ALL FIVE HOURS AT A TIME?

5 A NO, MA'AM.

6 Q SO THEY WOULD THEN GO BACK TO THEIR CELL?

7 A CORRECT.

8 Q GET FED LUNCH?

9 A RIGHT.

10 Q WHAT DO THEY DO IN THE AFTERNOON?

11 A POSSIBLY JUST REMAIN IN THEIR CELLS. IT DEPENDS ON --

12 THERE ARE SOME RELIGIOUS PROGRAMS THAT COME IN. THAT'S

13 USUALLY IN THE AFTERNOON ONE DAY A WEEK. AND IF THEY HAVE

14 EARNED THE PRIVILEGE TO BE IN A POSITION TO ATTEND, THEY CAN

15 ATTEND THAT.

16 Q AND DO THEY EARN THAT PRIVILEGE THROUGH GOOD BEHAVIOR?

17 A YES, MA'AM.

18 Q AND THAT RELIGIOUS PROGRAM, WOULD THAT BE A MINISTER OR

19 SOMEONE COMING IN TO OFFER---

20 A USUALLY A VOLUNTEER COMING IN TO---

21 Q TO JUST MINISTER TO THEM, SO TO SPEAK?

22 A YES, MA'AM.

23 Q T.V.?

24 A THOSE INMATES WHO HAD T.V. PRIOR TO OUR DOING AWAY WITH

25 THEM STILL HAVE THEM, YES.

JIMMY SLIGH -- DIRECT BY MS. HERVEY

- 1 Q SO IF YOU GOT GRANDFATHERED IN, YOU'VE STILL GOT IT?
- 2 A THAT'S CORRECT.
- 3 Q BUT IF YOU COME IN TODAY?
- 4 A YOU DON'T HAVE THEM.
- 5 Q IS THERE A T.V. ROOM THEY CAN GO TO?
- 6 A NO, MA'AM.
- 7 Q THEY ARE GIVEN BOOKS THOUGH?
- 8 A YES, MA'AM.
- 9 Q AND THEN THEY ARE FED DINNER?
- 10 A CORRECT.
- 11 Q AND THAT'S IT?
- 12 A YES, MA'AM.
- 13 Q OKAY. WHAT IS THE VISITATION SCHEDULE FOR DEATH ROW
- 14 INMATES, FRIDAY, SATURDAY, SUNDAY?
- 15 A IT'S THURSDAY, FRIDAY, SATURDAY AND SUNDAY. ON DEATH
- 16 ROW VISITS ARE LIMITED TO TWO HOURS. THE INMATE HAS TO PUT
- 17 IN A REQUEST AHEAD OF TIME SO IT CAN BE SCHEDULED BECAUSE OF
- 18 THE NUMBERS INVOLVED. THEY HAVE A TWO-HOUR BLOCK IN THE
- 19 MORNING AND AFTERNOON ON THURSDAY AND FRIDAY. AND IT CAN BE
- 20 AT ANY POINT FROM 8:00 TO 5:00 ON SATURDAY OR SUNDAY, BUT
- 21 IT'S STILL LIMITED TO TWO HOURS AND BASED ON THE APPROVAL --
- 22 THE REQUEST AND THE APPROVAL.
- 23 Q ARE WE ALL SITTING AROUND A TABLE?
- 24 A NO, MA'AM. IN DEATH ROW IT'S NONCONTACT VISITATION.
- 25 THERE IS A PLEXIGLASS SHEET THAT'S UP BETWEEN THE INMATE AND

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 HIS VISITOR.

2 Q DO YOU HAVE TO TALK ON THE PHONE LIKE WE SEE ON T.V.?

3 A NO, MA'AM. THERE IS A LITTLE CUTOUT THERE.

4 Q LIKE A SCREEN YOU CAN TALK THROUGH?

5 A YES, MA'AM.

6 Q BUT THEY DON'T HUG THEIR WIFE WHEN THEY GET THERE?

7 A NO, MA'AM. IT'S NONCONTACT.

8 Q CHILDREN DON'T SIT IN THEIR LAP?

9 A NO, MA'AM.

10 Q IS THAT FAIR TO SAY?

11 A THAT'S FAIR.

12 Q YOU'VE BEEN IN CORRECTIONS FOR 20 YEARS?

13 A YES, MA'AM.

14 Q COULD YOU -- ARE YOU FAMILIAR WITH THE INCIDENCES OF
15 VIOLENCE BETWEEN INMATES AND GUARDS?

16 A YES, MA'AM.

17 Q IS THAT PART AND PARCEL OF BEING IN CORRECTIONS?

18 A YOU KNOW, OBVIOUSLY OUR GOAL IS TO MINIMIZE OR ELIMINATE
19 THOSE TYPES OF THINGS, BUT THEY DO OCCUR, YES, MA'AM.

20 Q DO THEY OCCUR ON DEATH ROW?

21 A THERE HAVE BEEN SOME INCIDENCES ON DEATH ROW, YES.

22 Q ARE THEY MORE LIMITED ON DEATH ROW?

23 A YES, MA'AM.

24 Q WHAT ABOUT IN THE GENERAL POPULATION?

25 A A LITTLE BIT MORE PREVALENT IN THE GENERAL POPULATION

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 BECAUSE OF THE NATURE OF THE INTERACTION BETWEEN THE INMATES
2 ESPECIALLY.

3 Q AND BECAUSE THEY HAVE MORE FREEDOM OF MOVEMENT, WOULD
4 THAT BE FAIR TO SAY?

5 A YES, MA'AM.

6 Q THERE IS MORE OPPORTUNITY FOR IT?

7 A ABSOLUTELY.

8 Q CORRECTIONS OFFICERS WEAR UNIFORMS?

9 A YES, MA'AM.

10 Q IS THERE ANYBODY WITHIN THE PRISON THAT THE INMATES SEE
11 THAT DON'T HAVE UNIFORMS?

12 A YES, MA'AM.

13 Q WHO WOULD THAT BE?

14 A ADMINISTRATIVE PERSONS. THE WARDEN AND DEPUTY WARDENS,
15 ANY KIND OF ADMINISTRATIVE PERSON, CLASSIFICATION CASE
16 WORKERS, SOCIAL WORKERS.

17 Q NURSES?

18 A WELL, YOU KNOW, THEY---

19 Q THEY HAVE A NURSING UNIFORM?

20 A ---WEAR A NURSE'S UNIFORM.

21 Q THEY DON'T HAVE A BADGE ON THEIR SHOULDER AND A GUN ON
22 THEIR HIP?

23 A NO, MA'AM. WELL, OUR OFFICERS AREN'T ARMED.

24 Q AREN'T ARMED?

25 A NO, MA'AM.

JIMMY SLIGH -- DIRECT BY MS. HERVEY

- 1 Q EVEN ON DEATH ROW?
- 2 A NO, MA'AM.
- 3 Q ARE THERE ANY -- NO ONE'S GOT A GUN---
- 4 A ON THE PERIMETER. OUTSIDE THE PERIMETER, YES, MA'AM.
- 5 Q SO THE ONES WHO GUARD THE ACTUAL PERIMETER OF THE PRISON
- 6 HAVE WEAPONS?
- 7 A YES, MA'AM.
- 8 Q AND WHY DON'T YOU GIVE THE GUYS INSIDE?
- 9 A YOU'VE GOT, YOU KNOW, 30 CORRECTIONAL OFFICERS ON DUTY
- 10 AND A THOUSAND INMATES. THE ODDS AREN'T REAL GOOD THAT
- 11 SOMEBODY COULD KEEP A WEAPON.
- 12 Q OKAY. SO THERE IS A RISK THAT AN INMATE WOULD GET A
- 13 GUN; IS THAT FAIR?
- 14 A OH, ABSOLUTELY. YES, MA'AM.
- 15 Q DO YOU JUST TEACH THEM MARTIAL ARTS OR WHAT DO THEY DO?
- 16 DO THEY HAVE ANY TYPE---
- 17 A CORRECTIONAL OFFICERS?
- 18 Q YES.
- 19 A DEFENSIVE TACTICS, YES, MA'AM.
- 20 Q OKAY.
- 21 A THEN WE HAVE PR-24s FOR DEFENSIVE PURPOSES AND ALSO---
- 22 Q WHICH IS LIKE SOME TYPE OF BATON?
- 23 A RIGHT.
- 24 Q OKAY.
- 25 A AND THEN -- I'M SORRY. AND THEN ALSO GAS, PEPPER SPRAY

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 OR WHATEVER, THAT CAN BE USED.

2 Q OKAY. WHEN INMATES MOVE ABOUT IN TERMS OF GENERAL
3 POPULATION EVEN IN A CLASS THREE FACILITY DO THEY WALK DOWN A
4 HALL BY THEMSELVES? DO THEY HAVE AN ESCORT WHEN THEY MOVE?

5 A NO, MA'AM. THEY'RE MONITORED, BUT THEY'RE NOT
6 NECESSARILY ESCORTED.

7 Q SO SOMEBODY IS WATCHING THEIR MOVEMENT AT ALL TIMES AND
8 SOMEBODY IS OBVIOUSLY OPENING DOORS FOR THEM---

9 A RIGHT.

10 Q ---BUT THEY DON'T HAVE ANYBODY WITHIN SO MANY FEET OF
11 THEM?

12 A NOT NECESSARILY, NO, MA'AM.

13 Q IS THAT DIFFERENT IF YOU'RE ON DEATH ROW?

14 A YES, MA'AM. YOU ARE RESTRAINED ANY TIME YOU COME OUT OF
15 YOUR CELL, BOTH IN LEG IRONS AND HANDCUFFS AND BELLY CHAIN.
16 AND GENERALLY YOU HAVE TWO SECURITY PERSONNEL ESCORTING YOU.

17 Q AND THAT WOULD BE WHY THERE ARE LESSER INCIDENCES OF
18 VIOLENCE ON DEATH ROW?

19 A CORRECT.

20 Q THEY JUST DON'T HAVE THE OPPORTUNITY?

21 A CORRECT.

22 Q AND DO YOU MEAN HANDCUFFS?

23 A HANDCUFFS AND BELLY CHAINS.

24 Q SO HANDCUFFS AND THEY ARE CHAINED AROUND YOUR WAIST?

25 A RIGHT.

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 Q AND THERE IS A CHAIN THAT DROPS AND LIKE HANDCUFFS ON
2 YOUR ANKLES?

3 A CORRECT.

4 Q IF SOMEONE IS SENTENCED TO LIFE IMPRISONMENT DO THEY
5 HAVE THE OPPORTUNITY TO GO TO SCHOOL?

6 A YES, MA'AM.

7 Q DO THEY HAVE THE OPPORTUNITY TO WORK?

8 A YES, MA'AM.

9 Q WITHIN THE PRISON OR TO EARN MONEY?

10 A WITHIN THE PRISON.

11 Q WITHIN THE PRISON?

12 A RIGHT.

13 Q AND THEY WOULD EARN BENEFITS FROM THAT?

14 A WELL, THEY JUST RETAIN THEIR PRIVILEGES, YES, MA'AM.

15 Q DEATH ROW, NO WORKING EXCEPT WITHIN PERHAPS THEIR LITTLE
16 POD?

17 A IN A VERY LIMITED MANNER, YES, MA'AM.

18 Q THEY MIGHT SWEEP OR THAT TYPE THING?

19 A CORRECT.

20 Q ARE THEY ALLOWED TO GO TO SCHOOL?

21 A THEY CAN DO SOME IN CELL TYPES OF CORRESPONDENCE THINGS
22 THAT WE PROVIDE, BUT THEY AREN'T ALLOWED TO GO OUT AND GO
23 INTO A SCHOOL SETTING, NO, MA'AM.

24 Q WHERE THEY HAVE A CLASS?

25 A CORRECT.

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 Q IS THERE A CANTEEN ON DEATH ROW?

2 A NOT AS SUCH, BUT THERE IS A MOBILE TYPE OF CANTEEN THAT
3 COMES ONTO DEATH ROW, YES, MA'AM.

4 Q AND WHAT'S ON A CANTEEN? WHAT'S OFFERED IN A CANTEEN?

5 A BASICALLY PERSONAL HYGIENE ITEMS AND THEN SOME BASIC
6 SNACK TYPE, YOU KNOW, SOFT DRINKS AND CRACKERS AND THAT TYPE
7 OF THING.

8 Q SO RAZORS?

9 A RIGHT.

10 Q THOSE TYPES OF THINGS?

11 A DEODORANT, RAZORS, SOAP, THAT TYPE OF THING, RIGHT.

12 Q ON DEATH ROW AND THEY'RE NOT WORKING, HOW ARE THEY
13 PAYING FOR THAT?

14 A IF THEY ARE CONSIDERED INDIGENT, THEN WE PROVIDE THAT.

15 Q OKAY.

16 A IF THEY HAVE MONEY IN THEIR ACCOUNT THAT THEY CAN
17 MAINTAIN, THEN THEY ARE RESPONSIBLE FOR PURCHASING THOSE
18 ITEMS FOR THEMSELVES.

19 Q IN THE GENERAL POPULATION WHAT CAN YOU GET AT THE
20 CANTEEN?

21 A IN ADDITION TO THOSE ITEMS, WRITING PAPER AND PENS AND
22 CERTAIN -- PROBABLY A LITTLE BIT BROADER RANGE OF THINGS, YOU
23 KNOW, SNACKS, CANDY BARS AND THAT TYPE OF THING.

24 Q BOOKS?

25 A WE HAVE A LIBRARY AS A PART OF OUR EDUCATION THAT

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 SUPPORTS THAT TYPE OF THING.

2 Q MAGAZINES?

3 A SAME THING.

4 Q OKAY. SO YOU DETERMINE WHAT BOOKS AND MAGAZINES ARE
5 COMING INTO THE PRISON?

6 A YES, MA'AM. ABSOLUTELY.

7 Q HOW DOES THE CANTEEN AFFECT LIFE IN THE GENERAL
8 POPULATION VERSUS LIFE ON DEATH ROW? WHAT IS ITS IMPACT?

9 A IT'S PROBABLY NOT APPRECIABLY DIFFERENT OTHER THAN THE
10 FACT THAT THERE ARE MORE ITEMS AVAILABLE TO AN INMATE IN
11 GENERAL POPULATION THAN THERE ARE ON DEATH ROW.

12 Q IS THE CANTEEN ONE OF THE PRIVILEGES THAT YOU TAKE AWAY
13 FROM INMATES?

14 A ABSOLUTELY, YES, MA'AM.

15 Q THEY STILL GET THEIR BASIC HYGIENE ITEMS THOUGH?

16 A THAT'S CORRECT.

17 Q THEY'RE NOT DRINKING COCA-COLA EVERY DAY IF THEY'RE
18 MISBEHAVING?

19 A NO, MA'AM.

20 Q IS THERE ANY HIGHER SECURITY OTHER THAN DEATH ROW?

21 A YES, MA'AM. WE HAVE A MAXIMUM SECURITY UNIT AT KIRKLAND
22 CORRECTIONAL INSTITUTION IN COLUMBIA THAT'S BASICALLY -- IT'S
23 A 50 BED UNIT THAT'S FOR OUR WORST GENERAL POPULATION
24 INMATES.

25 Q ANYBODY IN DEATH ROW EVER ENDED UP THERE?

JIMMY SLIGH -- DIRECT BY MS. HERVEY

1 A YES, MA'AM.

2 Q SO THAT'S THE PEOPLE WE JUST CAN'T CONTROL?

3 A FOR A NUMBER OF REASONS, YES, MA'AM.

4 MS. HERVEY: I HAVE NO MORE QUESTIONS.

5 CROSS EXAMINATION BY MR. RICHEY:.

6 Q HOW ARE YOU DOING, SIR?

7 A I'M FINE.

8 Q GOOD. I'M RODNEY RICHEY. I'VE GOT A FEW QUESTIONS TO
9 ASK YOU ABOUT THE SUBJECT MATTER. YOU HAVE BEEN A WARDEN
10 BEFORE?

11 A YES, SIR.

12 Q OKAY. AND YOU WORK IN CLASSIFICATION WITH INMATES RIGHT
13 NOW, RIGHT?

14 A THAT'S CORRECT.

15 Q IN THIS CASE WHERE SOMEONE HAS BEEN CONVICTED OF LIFE
16 WITHOUT PAROLE AND THE CLASSIFICATION ISSUE IS OVER, HE'S
17 GOING TO BE LIFE WITHOUT PAROLE. HE'S GOING TO BE HIGH
18 SECURITY?

19 A IN THIS SITUATION, YES, SIR.

20 Q SO WE DON'T HAVE TO WORRY ABOUT HIM BEING WITH THE CHECK
21 WRITERS. HE'S GOING TO BE AT MAXIMUM HIGH LEVEL OF SCRUTINY?

22 A HE'LL BE IN A LEVEL THREE INSTITUTION, YES, SIR.

23 Q AND HE'S NOT GOING TO BE SOMEWHERE WORKING OUT A WENDY'S
24 OR OUTSIDE THE FACILITY, HE'S NOT ELIGIBLE FOR THAT?

25 A NO, SIR.

JIMMY SLIGH -- CROSS BY MR. RICHEY

1 Q AND HIS SENTENCE OF LIFE WITHOUT PAROLE, WHEN HE GETS TO
2 YOU HE WILL NEVER BE REINTRODUCED TO THIS SOCIETY AGAIN?

3 A THAT'S CORRECT.

4 Q AND THE EMPHASIS WITH THIS PERSON IS NOT REHABILITATION,
5 THAT'S NOT WHAT WE'RE DOING HERE, HE'S NOT IN THERE TO BE
6 REHABILITATED AND PUT OUT, TO BE RELEASED ONE DAY. THAT'S
7 NOT THE FOCUS FOR HIM?

8 A THE RELEASE ASPECT IS NOT THE FOCUS, YES, SIR.

9 Q SO WE'RE NOT PUTTING HIM IN A HALFWAY HOUSE TO GET HIM
10 READY TO GET BACK OUT?

11 A CORRECT.

12 Q AND THE DEPARTMENT OF CORRECTIONS HAVE THE RESOURCES THE
13 MANPOWER AND THEY HAVE THE AUTHORIZATION OF LAW TO CONTROL
14 THIS MAN?

15 A CORRECT.

16 Q THE WARDEN HAS THE POWER TO USE DEADLY FORCE IF HE HAS
17 TO TO CONTROL THE FOLKS?

18 A IN LIMITED CIRCUMSTANCES, YES, SIR.

19 Q RIGHT. AND THE BEST PREDICTOR OF HOW SOMEONE IS GOING
20 TO ACT IN PRISON IS THEIR INSTITUTION BEHAVIOR ON PRIOR
21 OCCASIONS, THAT'S YOUR BEST PREDICTOR?

22 A INITIALLY, YES, SIR.

23 Q RIGHT. YOU SEE HOW THEY ACT WHEN THEY'RE THERE BEFORE
24 AND THAT'S AN INDICATION OF HOW THEY'RE GOING TO ACT WHEN
25 THEY'RE THERE AGAIN, PRETTY GOOD INDICATION?

JIMMY SLIGH -- CROSS BY MR. RICHEY

1 A PRETTY GOOD INDICATION, YES, SIR.

2 Q AND IN THE DEPARTMENT OF CORRECTIONS HE'LL BE BEHIND
3 BARS, FENCED IN, BEHIND BARS? HE'LL BE FENCED IN?

4 A YES, SIR.

5 Q YOU'LL HAVE SHARPSHOOTERS THERE LOOKING? THEY DON'T
6 HAVE THEIR GUNS ON THEIR HOLSTER WHEN THEY COME TO THE CELL,
7 BUT AT THE TOWERS THEY HAVE SHARP SHOOTERS? THEY HAVE PEOPLE
8 WHO CAN CONTROL FOLKS?

9 A CORRECT.

10 Q AND HIS CRIME THAT HE COMMITTED, HIS CRIME THAT HE
11 COMMITTED OF MURDER, FORFEITS HIS OPPORTUNITY IN THE
12 COMMUNITY?

13 A YES, SIR.

14 Q AND LET ME GET THIS STRAIGHT ABOUT ALL THIS ABOUT THE
15 GENERAL POPULATION. THERE ARE THREE LEVELS, THREE LEVELS OF
16 CLASSIFYING, ONE, TWO AND THREE?

17 A SECURITY LEVELS, YES, SIR.

18 Q AND HE'S GOING TO BE A THREE?

19 A YES, SIR.

20 Q I MEAN, HE AIN'T GOING TO BE A ONE, HE'S GOING TO BE A
21 THREE?

22 A THAT'S CORRECT.

23 Q OKAY. SO HE'S GOING TO BE AT THE HIGHEST LEVEL THE
24 ENTIRE TIME?

25 A CORRECT.

JIMMY SLIGH -- CROSS BY MR. RICHEY

1 Q SO WE DON'T HAVE TO WORRY ABOUT HIM GETTING DOWN TO ONE
2 AND DOING ALL THIS OTHER STUFF?

3 A CORRECT.

4 Q AND BEING IN THE GENERAL POPULATION FOR THE INMATE
5 CREATES A SAFETY RISK FOR THAT INMATE MORE SO THAN DEATH ROW?

6 A COMPARABLY SPEAKING, YES, SIR.

7 Q AND TO BE STRAIGHTFORWARD WITH YOU UP FRONT, SOMEONE --
8 YOU SEE JOHN WOOD HERE? DO YOU SEE HIM RIGHT THERE?

9 A YES, SIR.

10 Q AS A WARDEN THERE ARE GANGS IN PRISON, AREN'T THERE?

11 A YES, SIR.

12 Q AND IF YOU WITH THEM -- IT'S LIKE SOCIETY. YOU COME IN.
13 IF YOU WITH THEM, YOU'RE PROTECTED FROM THAT PARTICULAR
14 SETTING FOR THE MOST PART?

15 A JUST LIKE ANY GANG SITUATION, YES, SIR.

16 Q RIGHT. AND THERE ARE CERTAIN PEOPLE -- BECAUSE I'M
17 GOING TO CLEAR UP THIS MISCONCEPTION THIS IS A PIECE OF CAKE.
18 IN THE PRISONS IF YOU'RE IN A GANG, YOUR SURVIVAL RATE OR
19 YOUR ABILITY TO PROTECT YOURSELF IS A LITTLE BIT BETTER FROM
20 THE OTHER INMATES?

21 A WELL, WE HAVE A SYSTEM IN PLACE RIGHT NOW WHERE WE
22 IDENTIFY THOSE FOLKS AND HAVE TARGETED THEM FOR CERTAIN
23 THINGS. BUT OBVIOUSLY YOU CAN'T BE EVERYWHERE AT ALL TIMES.
24 SO IN THE GENERAL SENSE, YOUR STATEMENT IS CORRECT.

25 Q RIGHT. AND IF YOU ARE IN THAT GENERAL POPULATION THE

JIMMY SLIGH -- CROSS BY MR. RICHEY

1 DANGER IS ENHANCED IN TERMS OF YOUR PERSONAL SAFETY?

2 A COMPARATIVELY SPEAKING, AGAIN, YES, SIR.

3 Q OKAY. AND JOHN WOOD GOING IN WOULD HAVE TWO STRIKES
4 AGAINST HIM, WOULDN'T HE, TWO STRIKES? THE FIRST STRIKE IS
5 SIZE AND HIS RACE.

6 A THAT'S -- YOUR ASKING ME TO MAKE A PERSONAL JUDGMENT,
7 AND I---

8 Q TO YOU AS A WARDEN WOULD THE PRESENT A SECURITY ALARM TO
9 YOU?

10 A IT IS CERTAINLY LOOKED AT AS FAR AS HIS -- ONCE HE IS
11 ASSIGNED TO AN INSTITUTION AS FAR AS HIS CELL ASSIGNMENT, IT
12 IS TAKEN INTO CONSIDERATION, YES. BUT IT DOESN'T NECESSARILY
13 MEAN IT'S AN ALARM.

14 Q OKAY. AND HIS CLASSIFICATION IS GOING TO BE WITH THE
15 HIGHEST LEVEL OF FOLKS AS WELL. HE'S NOT GOING TO BE IN WITH
16 CHECK WRITERS?

17 A CORRECT.

18 Q HE'S GOING TO BE IN THERE -- HE'S GOING TO -- ON DEATH
19 ROW HE WOULD GO TO BED AT NIGHT BY HIMSELF?

20 A CORRECT.

21 Q IN A CELL LOCKED BY HIMSELF?

22 A CORRECT.

23 Q AND SO HIS SAFETY WOULD BE AT THE HIGHEST IT COULD BE?

24 A CORRECT.

25 Q IF HE'S IN THIS LEVEL THREE GENERAL POPULATION HE WILL

JIMMY SLIGH -- CROSS BY MR. RICHEY

1 BE WITH OTHER MURDERERS, RAPISTS, HE WILL BE WITH THEM?

2 A (INDICATES AFFIRMATIVE RESPONSE)

3 Q AND HE WOULD BE IN A CELL THAT SMALL BESIDE THAT PERSON?

4 A POTENTIALLY, YES, SIR.

5 Q AND IT WOULD BE HARD -- AND HIS SAFETY LEVEL -- THERE
6 WOULD BE AN ISSUE IN THE SAFETY LEVEL AS TO THE OTHER
7 INMATES?

8 A NO MORE SO THAN ANY OTHER INMATE IN THE GENERAL
9 POPULATION.

10 Q MORE SO BECAUSE HE'S AT THE HIGHEST LEVEL? HE'S WITH
11 THE MORE -- HE'S WITH THE VIOLENT OF THE VIOLENT?

12 A I SAID NO MORE SO THAN ANYBODY ELSE IN THE GENERAL
13 POPULATION.

14 Q IN LEVEL THREE?

15 A RIGHT.

16 Q OKAY. NO MORE THAN ANY OTHER RAPIST, ROBBER OR
17 WHATEVER?

18 A CORRECT.

19 Q AND PRISON IS A TOUGH PLACE BECAUSE IT HAS TOUGH PEOPLE
20 IN IT, IT'S NOT A DAY AT THE BEACH, IS IT?

21 A NO, SIR.

22 Q IT'S A TOUGH PLACE WITH TOUGH PEOPLE?

23 A YES, SIR.

24 Q AND WHEN YOU GO TO BED AT NIGHT, IT AIN'T NO ASSURANCE
25 YOU'RE GOING TO GET UP?

JIMMY SLIGH -- CROSS BY MR. RICHEY

1 A AGAIN, IN A GENERAL TERM, YEAH.

2 MR. RICHEY: ONE MOMENT, PLEASE.

3 Q AND I'M JUST GOING TO ASK YOU, THE WARDENS AT THE
4 DEPARTMENT OF CORRECTIONS, THEY CAN HANDLE THESE FACILITIES,
5 CAN'T THEY?

6 A ABSOLUTELY. YES, SIR.

7 Q AND THEY SIGN THEIR NAMES ON LIFE AND DEATH DECISIONS
8 EVERY DAY?

9 A THEY MAKE TOUGH DECISIONS EVERY DAY.

10 Q AND THEY -- AND THEY'LL DO WHATEVER IT TAKES, WHATEVER
11 IT TAKES, TO PROTECT NOT ONLY THE INMATES BUT THEIR FOLKS,
12 INCLUDING DEADLY FORCE?

13 A TO PROTECT THE PROPERTY, PROTECT OUR EMPLOYEES AND
14 PROTECT THE INMATES, YES, SIR. THAT'S OUR MISSION.

15 MR. RICHEY: AND Y'ALL DO A GOOD JOB. THANK YOU.

16 WITNESS: THANK YOU.

17 THE COURT: ANY REDIRECT?

18 MS. HERVEY: YEAH, JUST BRIEFLY.

19 REDIRECT EXAMINATION BY MS. HERVEY:

20 Q YOU SAY IN CORRECTIONS YOU ACTUALLY WEAR A UNIFORM?

21 A (NO RESPONSE)

22 Q IN THE PRISON POPULATION, THE GUARDS, RIGHT, THEY ARE
23 ACTUALLY IN A UNIFORM?

24 A THE CORRECTIONAL OFFICERS?

25 Q YEAH.

JIMMY SLIGH -- REDIRECT BY MS. HERVEY

1 A YES, MA'AM.

2 Q NOT MUCH DIFFERENT THAN THE DEPUTIES HERE IN THE
3 COURTROOM?

4 A IT'S SIMILAR.

5 Q DIFFERENT COLOR---

6 MR. RICHEY: I OBJECT, YOUR HONOR. (OFF RECORD WITH
7 MR. MAULDIN) IT'S OUTSIDE CROSS EXAMINATION.

8 MS. HERVEY: I BELIEVE THE SCOPE OF CROSS EXAMINATION
9 IS ANY ISSUE THAT'S RELEVANT. HE'S TALKED ABOUT SECURITY AND
10 WHAT THESE OFFICERS DO AND DEADLY FORCE, AND I'D LIKE TO
11 REVISIT THAT ISSUE.

12 THE COURT: ALL RIGHT. OVERRULED.

13 Q NOW, MR. RICHEY ASKED YOU ABOUT USING DEADLY FORCE. IF
14 A PERSON IS A GUARD WITHIN THE INSTITUTION AND THEY'RE NOT ON
15 THE PERIMETER THEY DON'T HAVE A WEAPON. DO THEY?

16 A NO, MA'AM.

17 Q SO FOR DEADLY FORCE THE BEST THEY CAN DO IS ARM THEM
18 WITH A BATON?

19 A AND THAT'S NOT CONSIDERED DEADLY FORCE, BUT, YES, MA'AM.
20 THAT'S...

21 Q SO THAT OPTION IS NOT AVAILABLE TO THEM. IF A FIGHT
22 BREAKS OUT IN THE CAFETERIA, THEY DON'T HAVE GUNS?

23 A NO, MA'AM.

24 Q THEY DON'T MOW EVERYONE DOWN WITH RIFLES?

25 A NO, MA'AM.

JIMMY SLIGH -- REDIRECT BY MS. HERVEY

1 Q WHEN WOULD YOU EVEN ANTICIPATE SOMEONE ATTEMPTING TO USE
2 DEADLY FORCE IN A PRISON SITUATION?

3 A SOMEONE ATTEMPTING TO BREACH A SECURITY FENCE OR IF
4 THERE IS A PROBLEM WITHIN THE CONFINES OF THE INSTITUTION, WE
5 HAVE POSTS AVAILABLE TO PUT FOLKS WHO ARE ARMED IN ORDER TO
6 BE ABLE TO MAINTAIN THE SECURITY OF THAT PART OF THE
7 PERIMETER.

8 Q SO THEY WOULD HAVE TO BE THREATENING THE LIFE OF ANOTHER
9 INDIVIDUAL WITHIN THE PRISON SYSTEM?

10 A GENERALLY WE'RE TALKING PROBABLY ABOUT A SERIOUS
11 DISTURBANCE WHERE THERE IS A THREAT OF BREACH OF THE SECURITY
12 OF THE INSTITUTION. YES, MA'AM.

13 Q SO UNLESS YOU ARE GOING OVER THE WALL, THEY ARE NOT
14 GOING TO USE DEADLY FORCE TO TRY TO CONTAIN YOU OR CONTROL
15 YOU?

16 A NO, MA'AM.

17 Q DO YOU USE PHYSICAL PUNISHMENT AS A MEANS TO -- CORPORAL
18 PUNISHMENT AS A MEANS TO CONTROL INMATES?

19 A NO, MA'AM.

20 Q WHEN IS CORPORAL PUNISHMENT OR THAT TYPE OF PHYSICAL
21 PUNISHMENT USED?

22 A COULD YOU DEFINE WHAT YOU MEAN BY CORPORAL OR PHYSICAL,
23 PLEASE?

24 Q YOU'RE NOT SPANKING THEM, YOU'RE NOT BEATING THEM IF
25 THEY DON'T GET UP IN THE MORNING OR THEY---

JIMMY SLIGH -- REDIRECT BY MS. HERVEY

1 A NO, MA'AM.

2 Q ---THEY TALK WHEN THEY'RE NOT SUPPOSED TO?

3 A NO, MA'AM.

4 Q MR. RICHEY ASKED YOU ABOUT REHABILITATION. IN TERMS OF
5 PEOPLE WHO ARE ON -- ARE IN THEIR FOR LIFE IN THE GENERAL
6 POPULATION, THEY CAN STILL BETTER THEMSELVES THROUGH SCHOOL?

7 A CORRECT.

8 Q THROUGH RELIGION?

9 A CORRECT.

10 Q THROUGH FRIENDSHIPS WITH OTHER PEOPLE?

11 A CORRECT.

12 Q THROUGH THEIR INTERACTION WITH THEIR FAMILY?

13 A CORRECT.

14 Q THEY HAVE COUNSELING SERVICES AVAILABLE TO THEM?

15 A CORRECT.

16 Q MR. RICHEY ASKED YOU ABOUT WHETHER OR NOT PRIOR BEHAVIOR
17 IN THAT FACILITY WOULD BE AN INDICATOR OF HOW THEY WOULD
18 BEHAVE AGAIN?

19 A YES, MA'AM.

20 Q HE SAID THAT WAS AN INDICATOR?

21 A YES, MA'AM. THAT'S CORRECT.

22 Q IF SOMEONE HAD DONE 30 DAYS AT THE LOCAL JAIL WOULD YOU
23 CONSIDER THAT A WORTHY FACTOR AS TO HOW THEY ARE GOING TO
24 PERFORM DOING LIFE?

25 A WE -- WE ONLY HAVE ACCESS TO INFORMATION FROM INMATES

JIMMY SLIGH -- REDIRECT BY MS. HERVEY

1 WHO HAVE PREVIOUSLY BEEN COMMITTED TO OUR SYSTEM. WE
2 WOULDN'T NECESSARILY KNOW -- IN OUR STATE, OTHER THAN
3 GREENVILLE COUNTY, AN INMATE HAS TO BE SENTENCED TO 91 DAYS
4 OR LONGER TO COME TO THE DEPARTMENT OF CORRECTIONS. IN
5 GREENVILLE COUNTY IT'S 30 DAYS OR LONGER. SO IF HE DID ANY
6 TIME IN A COUNTY TO SATISFY HIS SENTENCE, WE WOULDN'T
7 NECESSARILY BE AWARE OF ANY OF HIS BEHAVIOR IN THAT REGARD.

8 Q IS A CRIME FOR WHICH THEY ARE CONVICTED A GOOD INDICATOR
9 OF HOW THEY ARE GOING TO BEHAVE?

10 A ON THE CURRENT LEVEL?

11 Q YEAH.

12 A IT IS TAKEN INTO ACCOUNT, YES, MA'AM.

13 Q SO IF SOMEONE IS CONVICTED OF A VIOLENT CRIME, THAT IS
14 PERHAPS AN INDICATOR THAT THEY MAY POTENTIALLY COMMIT VIOLENT
15 ACTS WHILE IN PRISON?

16 A POTENTIALLY, YES, MA'AM.

17 Q WHEREAS SOMEONE WHO COMMITS A WHITE COLOR CRIME, A
18 FORGED CHECK, YOU WOULDN'T NECESSARILY ANTICIPATE WOULD BE A
19 VIOLENT PERSON IN JAIL?

20 A THAT'S CORRECT.

21 Q OKAY. IN MY DISCUSSIONS WITH YOU, WHEN YOU TALKED ABOUT
22 GENERAL POPULATION WERE YOU FOR THE MOST PART REFERRING TO
23 CLASS THREE GENERAL POPULATION?

24 A YES, MA'AM.

25 Q SO THEY GET THE VISITS, THEY GET THE HUGS, THEY GET THE

JIMMY SLIGH -- REDIRECT BY MS. HERVEY

1 COCA COLA, THEY GET ALL THAT?

2 A CORRECT.

3 Q EVEN IF THEY ARE THERE LIFE WITHOUT PAROLE?

4 A CORRECT.

5 Q DOES THE LENGTH OF A SENTENCE -- SOMEONE IS DOING LIFE
6 VERSUS SOMEONE DOING THREE YEARS, DOES THAT AFFECT THAT
7 INMATE'S, NECESSARILY, CONDUCT WHILE THEY ARE WITHIN THE
8 JAIL?

9 A I DON'T EXACTLY UNDERSTAND YOUR QUESTION.

10 Q OKAY.

11 MR. RICHEY: I'M GOING TO OBJECT AS FAR AS THIS IS
12 BEYOND THE SCOPE OF THE CROSS EXAMINATION.

13 THE COURT: HOW IS THIS RESPONSIVE?

14 MS. HERVEY: I BELIEVE IT'S RESPONSIVE BECAUSE HE TALKED
15 ABOUT WHAT ARE INDICATORS AND WHAT ARE THINGS THAT THEY WOULD
16 ANTICIPATE A PERSON WOULD DO. NOW, I BELIEVE THAT IF
17 SOMEONE---

18 MR. RICHEY: SHE -- SHE -- YOUR HONOR, SHE OUGHT TO AT
19 LEAST REPHRASE THE QUESTION SOMEHOW AS TO HOW IT'S GOING TO
20 BE RELEVANT.

21 THE COURT: I SUSTAIN THE OBJECTION.

22 Q OTHER THAN THE ACTUAL TERM OF IMPRISONMENT DO YOU
23 CONSIDER THE PERSON'S LENGTH OF SENTENCE IN CLASSIFYING THEM?

24 A YES, MA'AM.

25 Q MR. RICHEY TALKED ABOUT PRISON BEING A DANGEROUS PLACE

JIMMY SLIGH -- REDIRECT BY MS. HERVEY

1 TO BE. IS THAT BECAUSE OF THE DANGER INMATES POSE TO OTHER
2 INMATES OR GUARDS POSE TO INMATES?

3 A PRIMARILY INMATE TO INMATE.

4 Q AND HE TALKED ABOUT GANGS IN PRISON. YOU SAID YOU
5 ATTEMPTED TO CONTROL THAT; IS THAT CORRECT?

6 A THAT'S CORRECT.

7 Q THERE IS NOTHING TO PRECLUDE THE DEFENDANT FROM JOINING
8 ONE OF THESE GANGS, IS THERE?

9 A NO, MA'AM.

10 Q ARE THERE MANY INMATES WHO MAKE IT THROUGH THEIR ENTIRE
11 TIME WITH YOU THAT SOMEHOW AVOID A VIOLENT INCIDENT?

12 A THE GREAT MAJORITY OF THEM DO, YES, MA'AM.

13 Q SO THE GREAT MAJORITY OF THEM EVEN IF THEY ARE THERE FOR
14 LIFE OR THERE FOR THREE YEARS MAKE IT WITHOUT EVER BEING
15 INVOLVED IN SOME TYPE OF VIOLENT ATTACK BY ANOTHER INMATE?

16 A THAT'S CORRECT.

17 Q WOULD A DEFENDANT'S PHYSICAL CHARACTERISTICS BE TAKEN
18 INTO CONSIDERATION IN CELL ASSIGNMENT?

19 A YES, MA'AM.

20 Q SO WE'RE NOT GOING TO PUT A 6'8", 300 POUND GUY IN WITH
21 A 5'2" LITTLE GUY?

22 A WE MAKE EVERY EFFORT NOT TO DO THAT, YES, MA'AM.

23 Q SO WE TRY AND PAIR THEM UP AS TO SIZE AND THOSE TYPE
24 THINGS?

25 A YES, MA'AM.

JIMMY SLIGH -- REDIRECT BY MS. HERVEY

1 Q YOU DON'T PUT OUT A PERSONALITY QUESTIONNAIRE ABOUT
2 THEIR HOBBIES BUT WE TRY AND MATCH THEM SO TO SPEAK?

3 A THAT'S CORRECT.

4 MS. HERVEY: THAT'S ALL.

5 THE COURT: ANY FOLLOW UP, MR. RICHEY?

6 RECROSS EXAMINATION BY MR. RICHEY:

7 Q DO YOU ALL HAVE THE LOCKDOWN AT THE DEPARTMENT OF
8 CORRECTIONS?

9 A (NO RESPONSE)

10 Q ARE YOU FAMILIAR WITH THE TERM LOCKDOWN?

11 A YES, SIR.

12 Q THAT'S WHEN YOU TAKE AN INMATE AND LOCK HIM DOWN FOR
13 DISCIPLINARY REASONS?

14 A WELL, WE CALL IT SECURITY DETENTION, YEAH.

15 Q YOU TAKE THEM AND YOU LOCK THEM DOWN?

16 A YES, MA'AM. YES, SIR.

17 Q IF THEY HAVE A PROBLEM, YOU TAKE THEM AND YOU PUT THEM
18 -- YOU LOCK THEM DOWN, ISOLATE THEM?

19 A CORRECT.

20 MR. MAULDIN: THANK YOU, SIR.

21 THE COURT: MR. SLIGH, WE APPRECIATE YOU BEING HERE.
22 THANK YOU, SIR.

23 MS. HERVEY: COULD WE ASK THAT MR. SLIGH BE EXCUSED TO
24 GO BACK TO COLUMBIA?

25 MR. RICHEY: WITHOUT OBJECTION.

JIMMY SLIGH -- RECROSS BY MR. RICHEY

1 THE COURT: WITHOUT OBJECTION.

2 MS. HERVEY: THANK YOU, MR. SLIGH.

3 (WITNESS EXCUSED AT 12:01 P.M.)

4 THE COURT: NEXT WITNESS, PLEASE.

5 MS. STROM: THE STATE CALLS CHARLES P. BLACKBURN.

6 MR. MAULDIN: YOUR HONOR, WE MIGHT...

7 THE COURT: LADIES AND GENTLEMEN, I'M GOING TO ASK YOU
8 JUST TO BEAR WITH US AND BE PATIENT. I'M GOING TO SEND YOU
9 TO THE JURY ROOM. PLEASE DO NOT DISCUSS THE CASE. WE'LL GET
10 YOU BACK OUT HERE VERY BRIEFLY. THANK YOU.

11 (JURY EXITS COURTROOM AT 12:01 P.M.)

12 THE COURT: THE JURY HAS BEEN EXCUSED. IS THE PURPOSE
13 OF THIS TESTIMONY TO ELICIT THE PURPORTED STATEMENT OF MR.
14 WOOD THAT WAS EXCLUDED DURING THE FIRST PHASE?

15 MS. STROM: YES, SIR.

16 THE COURT: ALL RIGHT. AND I'D BE PLEASED TO HEAR ANY
17 OBJECTION AND THE GROUNDS OF THE OBJECTION FROM DEFENDANT.

18 MR. MAULDIN: WE -- FIRST OF ALL, WE WOULD ENTER THE
19 OBJECTION -- THE FIRST LINE OF OBJECTION WOULD BE ON THE SAME
20 GROUNDS THAT WE ENTERED -- THAT WE ENTERED THE OBJECTION TO
21 BOTH STATEMENTS AT THE FIRST TRIAL. THE COURT ALLOWED THE
22 FIRST STATEMENT BUT DISALLOWED THE SECOND. WE RENEW THAT ON
23 THE SAME GROUNDS. THE COURT DID REVIEW THE MEDICAL RECORDS
24 IN MAKING A RULING AS TO THAT FIRST STATEMENT.

25 THE SECOND STATEMENT, IF I AM NOT MISTAKEN, RELATED TO A

MATTERS AND MOTIONS

1 QUESTION FROM THE ACCUSED TO THIS OFFICER WHO WAS GUARDING
2 HIM ABOUT WHETHER THIS OFFICER HAD EVERY BEEN SHOT, AND I
3 DIDN'T -- I ACTUALLY DID NOT WRITE DOWN WHAT THE ACTUAL
4 COMMENT WAS.

5 THE COURT: THE ANSWER WAS NO. AND ACCORDING TO THE
6 PRIOR TESTIMONY, UNSOLICITED BY THE DEPUTY THE DEFENDANT MADE
7 A FURTHER STATEMENT AS TO HIS FEELINGS OR OPINION ABOUT BEING
8 SHOT AND ANALOGIZED IT TO TURNING OFF A LIGHT SWITCH.

9 MR. MAULDIN: AND THE QUESTION, I GUESS, WOULD BE WHAT
10 WOULD BE THE -- WHAT IS IT OFFERED FOR AT THE SENTENCING
11 PHASE IN THIS CASE? I THINK THAT UNLESS IT IS OFFERED FOR A
12 PARTICULAR PURPOSE, THEN I DON'T THINK IT'S ADMISSIBLE.

13 THE COURT: ALL RIGHT. SO YOU RESTATE YOUR EARLIER
14 GROUNDS AND INCORPORATE THOSE?

15 MR. MAULDIN: YES, SIR.

16 THE COURT: AND YOU CHALLENGE THE RELEVANCE EVEN AT
17 THIS STAGE?

18 MR. MAULDIN: ESSENTIALLY. ESSENTIALLY RELEVANCE OR,
19 IN ANOTHER WAY, YOUR HONOR, I BELIEVE THAT THE STATE WOULD
20 HAVE TO BE OFFERING IT FOR A PURPOSE, AND THEY WOULD HAVE TO
21 BE ABLE TO ENUNCIATE THAT PURPOSE---

22 THE COURT: VERY GOOD.

23 MR. MAULDIN: ---IN LIGHT OF THE LAW.

24 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR FROM THE
25 STATE AS TO WHAT IS THE RELEVANCE OF THAT STATEMENT IN THIS

MATTERS AND MOTIONS

1 PROCEEDING.

2 MS. STROM: YOUR HONOR, IN THIS PROCEEDING THE JURY IS
3 ALLOWED TO CONSIDER EVIDENCE OF THE DEFENDANT'S CHARACTER.
4 THAT IS NOT LIMITED TO CRIMINAL CONVICTIONS OR BAD ACTS. IT
5 CAN ALSO COME FROM STATEMENTS MADE BY THE DEFENDANT, YOUR
6 HONOR. AND WE BELIEVE THIS GOES TO SHOW THE CAVALIER
7 ATTITUDE OF THIS OFFICER -- I MEAN, EXCUSE ME, OF THIS
8 DEFENDANT REGARDING THIS ENTIRE SITUATION. WE BELIEVE IT
9 GOES TO HIS CHARACTER.

10 THE COURT: HUDDLE UP AND THEN LET ME KNOW YOUR
11 RESPONSE.

12 (OFF RECORD DISCUSSION)

13 MR. MAULDIN: YOUR HONOR, FURTHERMORE, AND HAVING HEARD
14 THE COMMENT OF THE STATE, THE -- AND I HAVE DONE A LOT OF
15 THIS KIND OF WORK AND A LOT OF THESE CASES, AND I REALLY
16 NEVER HAVE FIGURED OUT WHAT THE RULES ARE IN A SENTENCING
17 HEARING, BUT I CAN ONLY REFER BACK TO THE RULES OF COURT.
18 YOU KNOW, WE'VE GOT THE 403 AND THE 402 AND THE 404s, BUT
19 THERE'S GOT TO BE A BALANCE, YOU KNOW, THERE'S GOT TO BE A
20 BURDEN SOMEWHERE, AND I BELIEVE THE BURDEN IS PROPERLY ON THE
21 STATE TO PROVE THAT THE DEATH PENALTY IS IN FACT THE PROPER
22 PENALTY BEYOND A REASONABLE DOUBT. I PUT THAT ON THE RECORD
23 RIGHT NOW. BUT THE -- THERE'S GOT TO BE STANDARDS BY WHICH
24 APPROPRIATENESS OR RELEVANCY OR PREJUDICE ARE WEIGHED, AND I
25 THINK BECAUSE WE HAVE NO OTHER GUIDANCE WE HAVE TO LOOK BACK

MATTERS AND MOTIONS

1 AT THE RULES OF THE COURT. I BELIEVE THAT A CONVERSATION IN
2 A HOSPITAL SETTING WITH A DEFENDANT WHO HAD ACCORDING TO --
3 AND YOU'VE SEEN MEDICAL RECORDS REGARDING THE COMMENTS BY THE
4 TREATING PHYSICIANS. BUT THE FACT OF THE MATTER IS HE WAS IN
5 THAT HOSPITAL WITH A HEAD WOUND AND THE BULLET STILL IS IN
6 HIS HEAD TO THIS VERY DAY. HE HAD SUFFERED WHAT I BELIEVE
7 HAS BEEN DESCRIBED AS A SERIOUS INJURY, AND IT TURNED OUT
8 THAT BY THE GRACE OF GOD HE LIVED.

9 NOW, THE CIRCUMSTANCES UNDER WHICH THIS UNSOLICITED, WE
10 CONCEDE, CONVERSATION TOOK PLACE HAVE TO BE TAKEN INTO
11 ACCOUNT. THE VALUE OF IT AS TO WHAT IT IS INTENDED TO PROVE,
12 AND THAT IS, A TRAIT OF CHARACTER VERSUS THE PREJUDICIAL
13 EFFECT ON THE DEFENDANT. THERE'S STILL GOT TO BE SOME
14 BALANCE WITH REGARD TO THE EXERCISE OF THE DISCRETION OF THE
15 COURT AND THE ADMISSION -- OR RECEPTION OF EVIDENCE. SO WE
16 ENCOURAGE THE COURT TO RULE THAT THAT PARTICULAR STATEMENT IS
17 INADMISSIBLE BASED UPON THE NATURE OF THE ENVIRONMENT AND
18 CIRCUMSTANCES UNDER WHICH IT OCCURRED. AND THEREFORE, SOME
19 LEVEL OF RELIABILITY IS STILL UNCLEAR, AND THE IDEA THAT THE
20 BALANCE BETWEEN PROBATIVE VALUE ON THE ISSUE OF CHARACTER
21 VERSUS PREJUDICIAL EFFECT.

22 THE COURT: THANK YOU.

23 I WOULD LIKELY ADMIT THE EVIDENCE. I FIND IT'S
24 PROBATIVE GIVEN THE CONCEPT OF RELEVANCE IN A SENTENCING
25 PROCEEDING, AND I DO NOT BELIEVE THAT PROBATIVE VALUE IN THIS

MATTERS AND MOTIONS

1 CONTEXT IS OUTWEIGHED BY ITS PREJUDICIAL EFFECT.

2 I KNOW WE'VE BEEN GOING ABOUT AN HOUR. BUT I THINK IF
3 WE'RE GOING TO BE ON THE SAME CLOCK AS THE JURY, I'M GOING TO
4 TAKE FIVE MINUTES AGAIN.

5 SOLICITOR ARIAIL: LET ME ALSO SUGGEST THIS JUST AS A
6 MECHANICAL -- I WILL HAVE ANOTHER WITNESS THAT OVERHEARD
7 ANOTHER STATEMENT BY THE DEFENDANT THAT WE HAVE NOT YET GONE
8 THROUGH A JACKSON v. DENNO. IT'S GOING TO BE IDENTICAL
9 SETTING, IDENTICAL SITUATION, IDENTICAL ROOM, JUST A
10 DIFFERENT TIME. AND RATHER THAN BRINGING THEM IN AND SENDING
11 THEM BACK OUT, MAYBE WE CAN DO THE JACKSON v. DENNO REAL
12 QUICK?

13 THE COURT: THAT SUITS ME FINE.

14 SOLICITOR ARIAIL: ALL RIGHT.

15 THE COURT: MR. BLACKBURN, THANK YOU.

16 SOLICITOR ARIAIL: AFTER WE GET BACK FROM BREAK?

17 THE COURT: OH, DO IT NOW.

18 SOLICITOR ARIAIL: OKAY. MR. HANKS?

19 DAVID LEE HANKS, HAVING BEEN
20 DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION BY SOLICITOR ARIAIL:

22 Q MR. HANKS, WOULD YOU STATE YOUR NAME FOR THE RECORD,
23 PLEASE, SIR?

24 A MY NAME IS DAVID LEE HANKS.

25 Q AND BY WHOM ARE YOU EMPLOYED?

DAVID LEE HANKS -- DIRECT BY SOLICITOR ARIAIL

JACKSON v. DENNO

1 A I EMPLOYED BY THE GREENVILLE COUNTY SHERIFF'S OFFICE.

2 Q HOW LONG HAVE YOU BEEN WITH THE GREENVILLE SHERIFF'S
3 OFFICE?

4 A JUST OVER 16 YEARS.

5 Q AND I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER THE
6 6TH OF 2000. DID YOU HAVE OCCASION AS PART OF YOUR DUTIES
7 WITH THE SHERIFF'S OFFICE TO BE ON GUARD DUTY AT THE
8 GREENVILLE MEMORIAL HOSPITAL IN REGARD TO JOHN RICHARD WOOD?

9 A THAT IS CORRECT.

10 Q AND WHAT TIME DID YOU GO ON DUTY THAT DAY?

11 A WE WORK 12-HOUR SHIFTS. MYSELF AND MY PARTNER WENT ON
12 DUTY AT 7:00 A.M., AND WE COMPLETED OUR DUTIES AT THE END OF
13 THE DAY AT 7:00 P.M.

14 Q ALL RIGHT. I SAID EARLIER DECEMBER THE 6TH. I MEANT TO
15 SAY DECEMBER THE 9TH. I'M SORRY.

16 WHAT TIME DID YOU ACTUALLY GO TO THE HOSPITAL?

17 A WE WENT TO THE HOSPITAL RIGHT AROUND 1:00 P.M.

18 Q AND WHILE YOU WERE AT THE HOSPITAL DID YOU HAVE OCCASION
19 TO OVERHEAR A STATEMENT MADE BY THE DEFENDANT, JOHN RICHARD
20 WOOD?

21 A YES, I DID.

22 Q PRIOR TO THAT STATEMENT DID YOU -- HAD YOU HAD ANY
23 CONVERSATION WITH MR. WOOD?

24 A NONE WHATSOEVER.

25 Q AND HAD YOU FORCED OR THREATENED HIM IN ANY MANNER?

DAVID LEE HANKS -- DIRECT BY SOLICITOR ARIAIL

JACKSON v. DENNO

1 A NONE WHATSOEVER.

2 Q WHAT WAS YOUR SOLE FUNCTION OF BEING THERE?

3 A MYSELF AND MY PARTNER WERE THERE FOR SECURITY PURPOSES
4 TO MAKE SURE THAT HE WOULD NOT ESCAPE, DIDN'T HURT HIMSELF OR
5 NO ONE ELSE CAME TO THE HOSPITAL THERE TO DO ANY HARM TO HIM
6 OR TO AID IN HIS ESCAPE.

7 Q AND WHERE WERE YOU LOCATED IN THE ROOM WHEN THIS
8 STATEMENT TOOK PLACE?

9 A MYSELF AND MY PARTNER WERE SITTING IN CHAIRS THAT WERE
10 JUST OUTSIDE THE DOORWAY OF THE HOSPITAL ROOM. WE WERE
11 FACING INWARD AT SOMEWHAT OF AN ANGLE SO WE COULD ALSO
12 OBSERVE HIM AND OBSERVE ANY ACTIVITY ON THE HALLWAY AS WELL
13 AS THE STAIRWELL COMING UP BESIDE HIS ROOM.

14 Q AND WHILE YOU WERE IN THAT POSITION DID YOU GET UP FOR
15 ANY REASON?

16 A I GOT UP A COUPLE TIMES JUST TO STRETCH, AND THEN ONE
17 PARTICULAR TIME I GOT UP WHEN JOHN WOOD WAS GETTING READY TO
18 USE THE URINAL.

19 Q AND WHAT WAS THE PURPOSE OF GETTING UP?

20 A FIRST OF ALL TO GIVE HIM A LITTLE BIT OF MODESTY SINCE
21 THE DOOR WAS OPEN. SECOND OF ALL TO -- FOR SECURITY REASONS,
22 HIS HANDS WAS, YOU KNOW, MAKING A LOT OF MOVEMENT, AND I
23 WANTED TO MAKE SURE THAT IT WASN'T FOR ANY INSECURED REASON.

24 Q AND TELL US WHAT WHAT HAPPENED OR WHAT WAS SAID WHEN YOU
25 STOOD UP.

DAVID LEE HANKS -- DIRECT BY SOLICITOR ARIAIL

JACKSON v. DENNO

1 A MR. WOOD ASKED ME IF I WAS THE GREENVILLE COUNTY
2 SHERIFF'S OFFICE OR THE ANDERSON COUNTY SHERIFF'S OFFICE.

3 Q DID YOU RESPOND?

4 A I REPLIED BY SAYING I WAS WITH GREENVILLE COUNTY.

5 Q AND DID HE RESPOND TO THAT?

6 A HE SAID THAT I HOPE THAT GREENVILLE COUNTY IS A BETTER
7 SHOT BECAUSE ANDERSON COUNTY DIDN'T DO A GOOD ENOUGH JOB.

8 SOLICITOR ARIAIL: THAT WOULD BE OUR PROFFER.

9 (DEFENSE COUNSEL OFF RECORD)

10 MR. MAULDIN: ONE MOMENT.

11 THE COURT: TAKE YOUR TIME, SIR.

12 MR. MAULDIN: (DEFENSE COUNSEL OFF RECORD) BEAR WITH
13 ME, YOUR HONOR.

14 THE COURT: YES, SIR.

15 MR. MAULDIN: (OFF RECORD WITH CO-COUNSEL)

16 CROSS EXAMINATION BY MR. MAULDIN:

17 Q OFFICER HANKS, LET ME GET A FEW TECHNICAL THINGS. NOW,
18 YOU HAVE -- I HAD 7:00 A.M. UNTIL A TIME, AND THEN YOU -- BUT
19 THEN YOU SAID YOU CAME IN AT 1:00. SO I MUST HAVE WRITTEN
20 THAT DOWN WRONG.

21 A OKAY. WHEN WE GO ON PATROL, UNIFORM PATROL, WE WORK
22 SEVEN-HOUR SHIFTS. OKAY? OUR DUTY IS TO -- WHEN WE WENT ON
23 DUTY ON DAY AT 7:00 A.M. TO 7:00 P.M. -- 7:00 A.M. TO 7:00
24 P.M.---

25 Q THAT'S A 12-HOUR SHIFT, ISN'T IT?

DAVID LEE HANKS -- CROSS BY MR. MAULDIN

JACKSON v. DENNO

1 A TWELVE-HOUR SHIFTS.

2 Q OH, IS THAT WHAT YOU -- ARE YOU SAYING TWELVE? I
3 THOUGHT YOU SAID SEVEN. LET ME START OVER. I'M GOING TO
4 START OVER.

5 A UH-HUH (AFFIRMATIVE).

6 Q ALL RIGHT. LET'S JUST TALK ABOUT THAT.

7 A OKAY.

8 Q THIS WAS DECEMBER THE 9TH, AND YOU HAD HOW LONG A SHIFT
9 TO SERVE ON THE DAY OF DECEMBER THE 9TH? WHAT WAS YOUR
10 HOUR---

11 A ALTOGETHER OR AT THE HOSPITAL?

12 Q WELL, LET'S---

13 THE COURT: HE GOT TO THE HOSPITAL AT ONE O'CLOCK.
14 LET'S GET TO THE CORE OF THE ISSUE, PLEASE.

15 Q ALL RIGHT.

16 A 1:00 P.M. AT THE HOSPITAL, AND I LEFT AT 7:20 WHEN MY
17 RELIEF GOT THERE.

18 Q ALL RIGHT. NOW FROM 1:00 TO 7:20. AND WHAT TIME DID
19 THE CONVERSATION THAT YOU RELATED TO TAKE PLACE?

20 A IT WAS LATER IN THE AFTERNOON, SOMETIME BEFORE 4:30 OR
21 FIVE O'CLOCK, SOMEWHERE AROUND IN THERE.

22 Q SO THIS WAS 4:30 TO FIVE O'CLOCK ON THE AFTERNOON OF
23 DECEMBER THE 9TH?

24 A UH-HUH (AFFIRMATIVE).

25 Q NOW, LET ME ASK YOU, AS HE GOT UP TO GO TO THE

DAVID LEE HANKS -- CROSS BY MR. MAULDIN

JACKSON v. DENNO

1 RESTROOM---

2 A HE DIDN'T GET UP.

3 Q ALL RIGHT. AS HE WAS GOING TO GO TO THE REST --
4 BATHROOM?

5 A HE REACHED FOR THE URINAL AND PUT IT UNDER THE SHEET.

6 Q ALL RIGHT. SO HE WOULD STAY IN BED?

7 A UH-HUH (AFFIRMATIVE).

8 Q ALL RIGHT. AND AS HE DID THAT THAT'S WHEN YOU STEPPED
9 IN OUT OF THE HALLWAY AND CLOSED THE DOOR?

10 A NO. I STEPPED AT THE DOORWAY. I DIDN'T CLOSE THE DOOR.
11 I DIDN'T STEP INSIDE. I STOOD RIGHT AT THE DOORWAY.

12 Q ALL RIGHT. AND HOW FAR THEN WOULD YOU HAVE BEEN FROM
13 HIM AT THAT POINT?

14 A CLOSER THAN YOU AND I.

15 Q ALL RIGHT. TEN OR FIFTEEN FEET?

16 A MORE LIKE PROBABLY TEN FOOT OR LESS.

17 Q ALL RIGHT. AND HE INITIATED THE CONVERSATION AND ASKED
18 YOU WHETHER YOU WERE FROM GREENVILLE OR ANDERSON?

19 A YES, HE DID.

20 Q AND YOUR STATEMENT WAS WHAT?

21 A I ANSWERED HIM WITH GREENVILLE COUNTY.

22 Q DID YOU SAY ANYTHING ELSE TO HIM ABOUT WHY HE ASKED OR
23 WHAT -- ANYTHING?

24 A NOPE.

25 Q AND HIS STATEMENT WAS -- AND I WROTE IT DOWN. MAKE SURE

DAVID LEE HANKS -- CROSS BY MR. MAULDIN

JACKSON v. DENNO

1 I'VE GOT THIS QUOTE -- "I HOPE THAT GREENVILLE IS A BETTER
2 SHOT BECAUSE ANDERSON DIDN'T DO A GOOD ENOUGH JOB"?

3 A UH-HUH (AFFIRMATIVE).

4 Q DID YOU RESPOND TO THAT IN ANY WAY?

5 A NO.

6 Q DID HE -- SO HE MADE THAT STATEMENT, THEN YOU DIDN'T
7 MAKE ANY FOLLOW UP?

8 A NO STATEMENTS.

9 Q WHAT DID YOU THINK -- WHAT WAS YOUR -- WHAT WAS YOUR
10 STATE OF MIND WITH REGARD TO RECEIVING THAT STATEMENT? DID
11 YOU HAVE ANY---

12 A MY FIRST THOUGHT WAS NOT TO ENTERTAIN HIM WITH AN
13 ANSWER.

14 Q ALL RIGHT. YOUR FIRST THOUGHT WAS JUST SIMPLY NOT TO
15 TALK TO HIM?

16 A NO.

17 MR. MAULDIN: NOTHING FURTHER, YOUR HONOR.

18 (WITNESS STEPS DOWN AT 12:19 P.M.)

19 THE COURT: ALL RIGHT. DO YOU OBJECT TO THE STATEMENT?

20 MR. MAULDIN: WE WOULD -- THE SAME GROUNDS AS PRIOR
21 OBJECTION, YOUR HONOR.

22 THE COURT: THANK YOU. ANYTHING FURTHER FROM THE
23 STATE?

24 SOLICITOR ARIAIL: NO, YOUR HONOR.

25 THE COURT: I SUSTAIN THE OBJECTION. I DON'T PERCEIVE

MATTERS AND MOTIONS

1 ANY RELEVANCE OTHER THAN THE FACT THAT IT BOLSTERS HIS -- THE
2 RELIABILITY OF THE STATEMENT WHICH I DO FIND ADMISSIBLE THAT
3 OCCURRED AT ELEVEN O'CLOCK THAT NIGHT TO DEPUTY BLACKBURN.
4 BUT THAT STATEMENT THAT I FIND ADMISSIBLE DEALS WITH THIS
5 INDIVIDUAL'S VIEW OF WEAPONS, THE SENSATION OF BEING SHOT AND
6 OTHER RELATED MATTERS. THIS SIMPLY IS A STATEMENT MADE TO
7 DEPUTY HANKS WHICH, IN MY JUDGMENT, IS NOT RELEVANT AND DOES
8 NOT BEAR UPON THE ISSUES BEFORE THE COURT IN THE SENTENCING
9 PROCEEDING.

10 WE'LL TAKE A FIVE-MINUTE BREAK, AND THEN WE'LL PROCEED.

11 (A RECESS WAS TAKEN FROM 12:20 TO 12:25 P.M.)

12 SOLICITOR ARIAIL: YOUR HONOR, BEFORE WE BRING THE JURY
13 BACK, I'D LIKE TO PUT ONE THING ON THE RECORD REGARDING THE
14 TESTIMONY OF MR. HANKS. IS IT OKAY?

15 THE COURT: YES, SIR.

16 SOLICITOR ARIAIL: OKAY. WE BELIEVE THAT STATEMENT IS
17 RELEVANT, AND THE REASON THAT WE PROPOSE TO PUT IT IN IS TO
18 SHOW -- THE JURY IS IMPANELED IN THIS PHASE FOR THE PURPOSE
19 OF DETERMINING THE APPROPRIATE PUNISHMENT THAT SHOULD BE
20 CARVED OR CRAFTED FOR A PARTICULAR CRIME AND THIS INDIVIDUAL.
21 AND THE PURPOSE OF THIS STATEMENT WAS TO SHOW THE ATTITUDE OF
22 THIS DEFENDANT AND HIS TOTAL LACK OF ANY SORT OF SERIOUS
23 RESPONSIBILITY OR SERIOUS UNDERSTANDING AFTER HAVING CLEARLY
24 SHORTLY BEFORE MURDERED A POLICE OFFICER AND THAT HE WAS
25 BEING FLIPPANT ABOUT THE ENTIRE SITUATION. AND THAT'S WHY WE

MATTERS AND MOTIONS

1 OFFERED IT.

2 THE COURT: THANK YOU, SIR. THE RECORD WILL REFLECT
3 YOUR EXCEPTION.

4 JURY, PLEASE.

5 MS. STROM: YOUR HONOR, SHOULD WE GO AHEAD AND HAVE MR.
6 BLACKBURN BACK ON THE STAND?

7 THE COURT: NO. I'D RATHER YOU CALL HIM AND NOT HAVE
8 THEM SPECULATE AS TO WHAT HE MAY HAVE SAID DURING THAT
9 ABSENCE.

10 MS. STROM: YES, SIR.

11 (JURY REENTERS COURTROOM AT 12:28 P.M.)

12 THE COURT: LADIES AND GENTLEMEN, WE'RE READY TO
13 PROCEED.

14 NEXT WITNESS, PLEASE, FROM THE STATE.

15 MS. STROM: THE STATE CALLS CHARLES P. BLACKBURN.

16 CHARLES P. BLACKBURN, HAVING
17 BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION BY MS. STROM:

19 Q OFFICER BLACKBURN, I'LL NEED FOR YOU TO KEEP YOUR VOICE
20 UP SO ALL THE JURORS CAN HEAR YOU. YOU PREVIOUSLY TESTIFIED
21 IN THIS CASE, CORRECT?

22 A YES, MA'AM.

23 Q THAT WAS TO THE EFFECT THAT ON DECEMBER THE 9TH OF 200
24 YOUR DUTIES WERE TO GUARD JOHN RICHARD WOOD WHILE HE WAS IN
25 THE HOSPITAL?

1 A CORRECT.

2 Q AND WHILE YOU WERE THERE YOU STATED UNDER YOUR FIRST
3 EXAMINATION ABOUT A STATEMENT HE MADE IN REGARDS TO A NEWS
4 PROGRAM?

5 A THAT'S RIGHT.

6 Q AND AFTER THAT I HAD ASKED YOU DID HE MAKE ANY OTHER
7 STATEMENTS AS IT RELATED TO TROOPER NICHOLSON'S SITUATION AND
8 YOU STATED HE DID NOT?

9 A CORRECT.

10 Q DID HE MAKE ANY OTHER STATEMENTS?

11 A YES, MA'AM, HE DID.

12 Q AND WAS THAT BEFORE OR AFTER THE STATEMENT REGARDING
13 KAREN MCCALL IN RESPONSE TO THE NEWS PROGRAM?

14 A IT WAS ABOUT 20 MINUTES AFTERWARD.

15 Q AND WHAT DID HE SAY?

16 A HE TURNED AND SAID TO ME AGAIN -- LOOKED AT ME AND OUT
17 OF THE CLEAR BLUE HE SAYS, "HEY, MAN, YOU EVER BEEN SHOT?" I
18 SAID, "NO." AND HE SAYS, "IT'S THE COOLEST FEELING IN THE
19 WORLD. IT'S LIKE BEING TURNED OFF LIKE A LIGHT." AND THAT
20 WAS THE END OF THE CONVERSATION..

21 Q THAT WAS THE EXTENT OF WHAT HE SAID?

22 A THAT'S CORRECT.

23 Q DID YOU MAKE ANY RESPONSE TO HIM WHEN HE TOLD YOU THAT
24 IT WAS LIKE TURNING OFF A LIGHT?

25 A NO, MA'AM.

CHARLES P. BLACKBURN -- DIRECT BY MS. STROM

1 **MS. STROM:** THANK YOU. PLEASE ANSWER ANY QUESTIONS THE
2 DEFENSE MAY HAVE.

3 **MR. MAULDIN:** ONE MOMENT, YOUR HONOR.

4 **THE COURT:** YES, SIR.

5 (DENSENSE COUNSEL OFF RECORD)

6 **CROSS EXAMINATION BY MR. MAULDIN:**

7 **Q** OFFICER BLACKBURN, LET ME ASK JUST A COUPLE QUESTIONS,
8 SIR. TO REFRESH THE JURY'S RECOLLECTION SO WE GET THE
9 SUBSTANCE OF THE STATEMENTS MADE AND THE TIMING OF THE
10 STATEMENTS MADE, YOU BEGAN YOUR WATCH ON JOHN WOOD ABOUT
11 WHEN?

12 **A** SHORTLY AFTER 7:00 P.M.

13 **Q** AND AT THE FIRST TRIAL YOU TESTIFIED THAT THE FIRST
14 STATEMENT WAS ABOUT THE TIME WHEN THE ELEVEN O'CLOCK NEWS
15 CAME ON?

16 **A** RIGHT. JUST A COUPLE MINUTES PAST THE ELEVEN O'CLOCK
17 NEWS.

18 **Q** ALL RIGHT. AND THEN THIS SUBSEQUENT COMMENT MADE BY HIM
19 OR STATEMENT TO YOU MADE BY HIM WAS ABOUT 20 MINUTES OR THERE
20 OR MORE AFTER THAT?

21 **A** THAT'S CORRECT.

22 **Q** THE FIRST STATEMENT THAT WAS MADE WAS IN REGARD TO THE
23 NEWS PROGRAM WHERE JOHN SAID, "SHE WASN'T EVEN THERE WHEN IT
24 HAPPENED"?

25 **A** RIGHT.

- 1 Q IS THAT -- TO REFRESH THE JURY'S MEMORY.
- 2 A THAT'S CORRECT.
- 3 Q NOW, THE SECOND STATEMENT THAT WAS MADE WERE YOU -- YOU
- 4 WERE NOT QUESTIONING HIM OR YOU WEREN'T HAVING A CONVERSATION
- 5 WITH HIM, WERE YOU?
- 6 A NO, SIR, I WAS NOT.
- 7 Q THIS WAS JUST A STATEMENT THAT HE JUST OUT OF THE BLUE
- 8 MADE?
- 9 A THAT'S CORRECT.
- 10 Q HE WAS IN THE HOSPITAL IN THE HOSPITAL BED IN A ROOM BY
- 11 HIMSELF?
- 12 A THAT'S RIGHT.
- 13 Q THERE WAS YOU AND I BELIEVE ANOTHER PERSON ALSO?
- 14 A THAT'S RIGHT.
- 15 Q THERE WERE TWO PEOPLE GUARDING THE ROOM?
- 16 A THAT'S CORRECT.
- 17 Q THE DEFENDANT WAS AT THE HOSPITAL FOR HAVING THE SHOT IN
- 18 THE HEAD, RIGHT?
- 19 A RIGHT.
- 20 Q THAT WAS THE REASON HE WAS THERE INSTEAD OF AT THE JAIL?
- 21 A THAT'S CORRECT.
- 22 Q AND DURING THE TIME YOU WERE THERE HE WAS UNDER -- AND
- 23 I'LL USE THE WORD CONSTANT, BUT LET ME MAKE SURE AND KIND OF
- 24 DEFINE THAT. THERE WAS A NUMBER OF MEDICAL PERSONNEL WHO
- 25 WERE IN AND OUT OF THAT ROOM DURING YOUR GUARD AND ANYBODY

CHARLES P. BLACKBURN -- CROSS BY MR. MAULDIN

1 ELSE'S GUARD. THERE WAS A CONSTANT MOVEMENT OF MEDICAL
2 PEOPLE IN AND OUT OF THAT ROOM BECAUSE OF HIS CONDITION,
3 WASN'T THERE?

4 A DURING MY GUARD THERE WAS.

5 Q ALL RIGHT. AND THAT IS PRIOR TO THESE STATEMENTS THERE
6 WERE DOCTORS, NURSES AND OTHER MEDICAL PERSONNEL GOING IN AND
7 OUT OF THAT ROOM WHILE YOU WERE AT THE DOOR?

8 A RIGHT.

9 MR. MAULDIN: ALL RIGHT. NOTHING FURTHER.

10 THE COURT: REDIRECT, PLEASE?

11 MS. STROM: NO, SIR, YOUR HONOR.

12 THE COURT: OKAY. DEPUTY BLACKBURN, THANK YOU, SIR.

13 MS. STROM: WE'D ASK THAT HE BE EXCUSED, YOUR HONOR.

14 MR. MAULDIN: NO OBJECTION.

15 THE COURT: WITHOUT OBJECTION.

16 (WITNESS EXCUSED AT 12:34 P.M.)

17 MS. STROM: THE STATE CALLS GENE SHERIFF.

18 GENE SHERIFF, HAVING BEEN DULY
19 SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION BY MS. STROM:

21 Q MR. SHERIFF, I NEED FOR YOU TO STATE YOUR FULL NAME FOR
22 THE RECORD.

23 A GENE MARSHALL SHERIFF.

24 Q I'LL NEED FOR YOU TO SPEAK UP SO THAT I CAN HEAR YOU AND
25 ALL THESE JURORS CAN HEAR YOU, OKAY?

GENE SHERIFF -- DIRECT BY MS. STROM

1 A YES.

2 Q BY WHOM ARE YOU EMPLOYED?

3 A I'M EMPLOYED BY BLUE RIDGE ELECTRIC CO-OP AT THE OCONEE
4 DIVISION.

5 Q AND WERE YOU WORKING FOR BLUE RIDGE ELECTRIC CO-OP BACK
6 ON DECEMBER 6TH OF 2000?

7 A YES, I WAS.

8 Q DO YOU RECALL WHERE YOU WERE THAT DAY AT APPROXIMATELY
9 TWO O'CLOCK OR THEREABOUTS?

10 A WELL, I HAD CHECKED ON A CREW THAT WE HAD WORKING DOWN
11 IN THE STONE CREEK COVE AREA. AND, OF COURSE, THEN I WAS
12 TRAVELING NORTH ON HIGHWAY 187 HEADING BACK TO OUR OFFICE.

13 Q WERE YOU HEADED BACK TOWARDS I-85?

14 A WELL, 85 AND HIGHWAY 24.

15 Q ALL RIGHT. WHAT HAPPENED WHILE YOU WERE TRAVELING ON
16 THAT ROAD?

17 A WELL, AS I WAS TRAVELING ON THE ROAD I NOTICED A JEEP
18 WAGONEER COMING TOWARD -- DOWN THE ROAD TRAVELING SOUTH
19 TOWARD ME. AND, OF COURSE, THE PASSENGER SIDE TIRE ON THE
20 FRONT HAD BEEN BLOWN OUT AND HE WAS DOWN ON THE RIM. AND AS
21 THEY GOT CLOSER TO ME, OF COURSE, THEY BLOCKED ME OFF. I HAD
22 SLOWED DOWN BECAUSE I DIDN'T KNOW WHAT WAS HAPPENING. AND,
23 OF COURSE, WHEN THEY GOT CLOSE TO ME, THE JEEP WAGONEER
24 BLOCKED MY LANE AND STOPPED MY WAY.

25 Q SO THE JEEP WAGONEER PULLED INTO YOUR LANE?

GENE SHERIFF -- DIRECT BY MS. STROM

1 A YEAH.

2 Q ALL RIGHT. PLEASE CONTINUE.

3 A WELL, OF COURSE, NATURALLY, I STOPPED. AND WHEN I
4 STOPPED, OF COURSE, IT WAS JUST A SECOND, A MAN WAS AT MY
5 WINDOW ON THE DRIVER'S SIDE HOLDING A PISTOL ON ME.

6 Q YOU SAY HE WAS HOLDING A PISTOL ON YOU. WHAT DO YOU
7 MEAN BY THAT? WHAT WAS HE DOING WITH THAT GUN?

8 A WELL, HE WAS POINTING THE PISTOL AT ME AT MY HEAD AND
9 FACE AREA.

10 Q DID HE SAY ANYTHING TO YOU?

11 A YES, HE SAID, "GET OUT OF THE TRUCK. GET OUT OF THE
12 TRUCK." THAT'S ALL HE EVER SAID TO ME.

13 Q AND WHAT DID YOU DO WHEN HE SAID THAT?

14 A WELL, WHEN HE SAID THAT, OF COURSE, I UNFASTENED MY SEAT
15 BELT AND STARTED GETTING OUT OF THE TRUCK. AND WHEN I GOT
16 OUT OF THE TRUCK STANDING NEXT TO HIM, HE TURNED AROUND AND
17 FIRED FOUR ROUNDS AT THE POLICE OFFICERS BACK UP THE ROAD.

18 Q WHAT DID YOU DO?

19 A WELL, MY THOUGHTS WERE JUST TO GET AWAY FROM HIM AND
20 ALSO THE TRUCK, AND I WENT AROUND BACK OF THE TRUCK AND THERE
21 WAS A BIG YARD THERE, AND I GOT IN AND THERE WAS SOME TREES
22 THERE, AND MY THOUGHTS WERE TO GET INTO THOSE TREES AND GET
23 INTO THAT YARD AND GET AWAY, AWAY FROM HIM.

24 Q DID THE BLUE RIDGE TRUCK EVENTUALLY PULL OFF?

25 A (NO RESPONSE)

GENE SHERIFF --- DIRECT BY MS. STROM

1 Q DID YOU SEE THE MAN GET IN THE BLUE RIDGE TRUCK?

2 A YEAH.

3 Q AND THEN THE TRUCK LEFT?

4 A YEAH. HE BACKED OUT INTO ANOTHER DRIVEWAY AND HEADED
5 INTO THE -- HEADED TO THE SOUTH IN THE DIRECTION THAT I HAD
6 COME FROM.

7 Q AND WAS ANYBODY IN THE TRUCK WITH HIM WHEN HE LEFT? DID
8 YOU SEE ANYBODY ELSE GET IN THE TRUCK?

9 A YEAH. AS I WENT AROUND THE BACK OF THE TRUCK I
10 NOTICED -- I DIDN'T TURN AROUND OR ANYTHING BUT I NOTICED
11 SOMEONE CAME RUNNING TO THE TRUCK AND GOT IN THE TRUCK WITH
12 HIM.

13 MS. STROM: COURT'S INDULGENCE, YOUR HONOR. (OFF
14 RECORD WITH CO-COUNSEL) THANK YOU. PLEASE ANSWER ANY
15 QUESTIONS THE DEFENSE MAY HAVE.

16 MR. MAULDIN: ONE MOMENT, MR. SHERIFF, PLEASE. (OFF
17 RECORD WITH CO-COUNSEL)

18 SUBJECT TO OUR IN CAMERA POSITION, YOUR HONOR?

19 THE COURT: YES, SIR.

20 MR. MAULDIN: THANK YOU.

21 CROSS EXAMINATION BY MR. MAULDIN:

22 Q MR. SHERIFF, YOUR -- WHEN -- AND JUST SO THE JURY WILL
23 HAVE SOME IDEA OF YOUR ABILITY TO OBSERVE DOWN THIS ROAD, I
24 WANT -- THIS, WHILE IT'S NOT A MAJOR ROAD, IT IS A WELL-
25 TRAVELLED---

GENE SHERIFF -- CROSS BY MR. MAULDIN

1 A YEAH, IT'S A WELL-TRAVELLED ROAD.

2 Q AND THE -- LIKE THE SHOULDERS AND THE SIDES OF THE ROAD
3 ARE CLEAR ENOUGH TO WHERE YOU HAVE A PRETTY CLEAR VIEW OF
4 WHAT WAS GOING ON RIGHT IN FRONT OF YOU?

5 A YEAH.

6 Q NOW, WHEN YOU FIRST NOTICED THE JEEP WAGONEER COMING IN
7 YOUR -- YOU WERE GOING -- Y'ALL WERE GOING LIKE THIS, RIGHT,
8 COMING---

9 A YEAH. OF COURSE, HE WAS IN HIS RIGHT LANE UNTIL HE GOT
10 TO MY TRUCK.

11 Q SO HE WAS IN THE CORRECT LANE?

12 A YEAH.

13 Q THIS JEEP WAS?

14 A YEAH.

15 Q AND -- BUT IT -- BUT YOU NOTICED THAT IT DIDN'T HAVE A
16 TIRE ON THE FRONT RIGHT SIDE, RIGHT?

17 A YES.

18 Q COULD YOU TELL -- HOW -- CAN YOU GIVE US AN ESTIMATE OF
19 THE DISTANCE -- WHEN YOU FIRST SAW HIM CAN YOU GIVE US AN
20 ESTIMATE ABOUT HOW FAR HE WOULD HAVE BEEN AHEAD OF YOU AT
21 THAT POINT?

22 A WELL, NOT VERY FAR. HE WAS CLOSE. PROBABLY HALFWAY OF
23 THIS COURTROOM. HE WAS THAT CLOSE TO ME WHEN I NOTICED HIM.

24 Q SO WHEN YOU FIRST NOTICED HIM HE WAS ABOUT AS FAR AWAY
25 AS FROM YOU TO THE FRONT ROW OF THE COURTROOM THERE?

GENE SHERIFF -- CROSS BY MR. MAULDIN

1 A YEAH.

2 Q ALL RIGHT. AND WHEN YOU NOTICED HIM, WAS THE JEEP
3 MOVING? WAS IT...

4 A IT WAS MOVING.

5 Q WAS IT GOING FAST OR SLOW?

6 A WELL---

7 Q HOW WOULD YOU DESCRIBE IT?

8 A IT WAS PROBABLY GOING AS FAST AS IT COULD UNDER THE
9 CIRCUMSTANCES WITH IT BEING DOWN ON -- ON THE RIM.

10 Q RIGHT. AND DID YOU -- AND IF YOU DIDN'T, WE CERTAINLY
11 UNDERSTAND, YOU KNOW, THAT YOU OBVIOUSLY WERE UNDER A LOT OF
12 STRESS AT THAT POINT, BUT DID YOU NOTICE THE DRIVER OF THAT
13 VEHICLE? CAN YOU---

14 A NO, I DID NOT NOTICE THE DRIVER.

15 Q WHEN YOU SAY THAT A MAN CAME TO YOUR DOOR AND HAD A GUN
16 DO YOU RECALL WHICH SIDE OF THE VEHICLE HE GOT OUT OF?

17 A I WOULD SAY THE -- AND I'M ALMOST SURE HE GOT OUT ON THE
18 PASSENGER SIDE.

19 Q SO WHEN THIS VEHICLE TURNED IN FRONT OF YOU AND HE GOT
20 OUT ON THE SIDE THAT WAS CLOSEST TO YOUR TRUCK?

21 A CLOSEST TO MY TRUCK.

22 Q ALL RIGHT.

23 A THAT IS CORRECT.

24 Q ALL RIGHT. AND WHEN HE TOLD YOU -- YOU SAY HE KEPT
25 SAYING, "GET OUT OF THE TRUCK. GET OUT OF THE TRUCK" OR

GENE SHERIFF -- CROSS BY MR. MAULDIN

1 ORDERING YOU TO GET OUT OF THE TRUCK---

2 A HE ONLY SAID IT TWO TIMES.

3 Q TWO TIMES?

4 A PRETTY CLOSE TOGETHER, "GET OUT OF THE TRUCK. GET OUT
5 OF THE TRUCK," ABOUT LIKE THAT.

6 Q AND WHEN YOU GOT OUT OF THE TRUCK DID HE DO ANYTHING TO
7 YOU TO TRY TO INTERFERE WITH YOUR ABILITY TO GO ON AND GET
8 OUT OF THE WAY?

9 A NO.

10 Q DID HE TRY TO GRAB AT YOU OR ANYTHING LIKE THAT?

11 A NO.

12 Q ALL RIGHT. AND THE NEXT THING THEN THAT HAPPENED IS HE
13 TURNED YOUR TRUCK AROUND -- YOUR TRUCK WAS HEADING BACK
14 TOWARD THE POLICE?

15 A YES, THAT'S CORRECT.

16 Q AND HE TURNED THAT TRUCK AROUND AND WENT THE OTHER WAY?

17 A YES.

18 MR. MAULDIN: NO FURTHER QUESTIONS.

19 THE COURT: ANY REDIRECT?

20 MS. STROM: NO, SIR, YOUR HONOR. WE'D ASK THAT MR.
21 SHERIFF BE EXCUSED.

22 MR. MAULDIN: NO OBJECTION.

23 THE COURT: MR. SHERIFF, THANK YOU FOR BEING HERE, SIR.
24 WATCH YOUR STEP ON THE WAY DOWN, PLEASE.

25 WITNESS: OKAY.

GENE SHERIFF -- CROSS BY MR. MAULDIN

(WITNESS EXCUSED AT 12:45 P.M.)

MS. STROM: THE STATE CALLS MIKE GRANT.

SAMUEL MICHAEL GRANT, HAVING
BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MS. STROM:

Q MR. GRANT, IF YOU WOULD, PLEASE STATE YOUR FULL NAME FOR
THE RECORD.

A SAMUEL MICHAEL GRANT.

Q I WANT TO DIRECT YOUR ATTENTION BACK TO DECEMBER 6TH OF
2000. ON THAT DATE WERE YOU EMPLOYED WITH THE ANDERSON
COUNTY SHERIFF'S OFFICE?

A YES, MA'AM.

Q AS A ROAD DEPUTY?

A YES, MA'AM, PATROL DIVISION.

Q PATROL DIVISION. DID YOU HAVE AN OCCASION TO BECOME
INVOLVED IN THE PURSUIT OF A BLUE JEEP WAGONEER?

A YES, I DID.

Q WOULD YOU PLEASE TELL THIS JURY WHERE IT WAS THAT YOU
CAME INTO THAT PURSUIT?

A EARLIER I HAD BEEN ADVISED TO TAKE POSITION ALONG I-85
ALONG SOUTHBOUND LANE FOR THIS PARTICULAR VEHICLE, AND WHEN
THE VEHICLE CAME BACK AROUND DOWN 24 HIGHWAY, FROM WHAT
DIRECTION I NEVER DID FIND OUT, BUT THEY CAME BACK DOWN 24
TRAVELLING EAST GOING IN TOWARD ANDERSON. ONE OF OUR
OFFICERS CAME OVER THE RADIO. I WAS POSITIONED AT EXIT 14,

SAMUEL MICHAEL GRANT -- DIRECT BY MS. STROM

1 HIGHWAY 187 NORTH AND I-85. ONE OF OUR OFFICERS CAME OVER
2 THE RADIO AND HE STATED, "I HAVE THIS BLUE JEEP WITH WOOD
3 GRAIN SIDING SPOTTED." AND THE NEXT THING I KNOW, HE SAID,
4 "THEY'RE NOT STOPPING. THEY'RE NOT STOPPING." THEY WERE
5 TRAVELING 24, AS I SAID. I WAS BACK UP ON 187 WHERE IT
6 INTERSECTS WITH 24 FROM I-85, AND I LEFT MY POSITION
7 IMMEDIATELY AS QUICKLY AS I -- BECAUSE I KNEW WHICH WAY THEY
8 WERE COMING, AND I HAD A GOOD CHANCE TO COME INTO THE CHASE.
9 AND THAT'S WHAT I DID.

10 AS I ENTERED THE INTERSECTION OF 187 NORTH AND HIGHWAY
11 24, RIGHT BEFORE I ENTERED I CAME UP TO THE SIGNAL LIGHT IN
12 MY PATROL CAR. THEY CAME THROUGH AT A VERY HIGH RATE OF
13 SPEED. I SEEN THAT IT WAS A FEMALE DRIVER AND A MALE, WHITE
14 MALE -- BOTH WHITE. THE MALE WAS IN THE FRONT PASSENGER SIDE
15 OF THE VEHICLE. I STOPPED AND WAS REALLY SHOCKED THAT I HAD
16 RUN INTO THIS. AND I LOOKED BACK DOWN HIGHWAY 24, BACK WEST,
17 TO SEE WHERE THE OTHER OFFICERS -- BECAUSE IT WAS A LOT OF
18 OFFICERS IN MARKED VEHICLES THAT WERE COMING THAT WAY, AND
19 THEY WERE RIGHT ON ME AND I PULLED OUT IN FRONT OF THEM.
20 RATHER THAN SIT AND WASTE MORE TIME, I PULLED OUT IN FRONT OF
21 THEM.

22 AND WHEN I FINALLY CAUGHT UP TO THE JEEP, I CROSSED OVER
23 HARTWELL LAKE, WHICH IS AN AREA OF HIGHWAY 24. THERE'S TWO
24 BRIDGES THERE WE CALL -- WHICH IS A MARKER TO US, A LAND
25 MARKER TO ALL DEPUTIES, IT'S DOUBLE BRIDGES ON HIGHWAY 24.

SAMUEL MICHAEL GRANT -- DIRECT BY MS. STROM

1 WHEN I CROSSED OVER DOUBLE -- OR ENTERED DOUBLE BRIDGES, THEY
2 WERE STILL WAY AHEAD OF ME, AND I GOT DOWN ON MY CAR EVEN
3 MORE TO GET CLOSER, AND I GOT CLOSER RIGHT BEFORE -- OR AS WE
4 CAME OFF DOUBLE BRIDGES. AND THERE WAS -- JUST A SHORT
5 DISTANCE ON UP THE ROAD THERE THERE IS HARBORGATE
6 CONDOMINIUMS ON THE LEFT. IT SEEMS LIKE TO ME THAT RIGHT IN
7 THAT AREA RIGHT THERE AS SOON AS WE PASSED HARBORGATE I SAW
8 THE WHITE MALE LOOK BACK LIKE THIS (DEMONSTRATING), AND THEN
9 HE LOOKED BACK AROUND LIKE THIS, AND THE BACK WINDOW WAS DOWN
10 ON THE JEEP AND I SEEN THE HANDGUN. AND WHEN HE COME AROUND
11 IN THAT POSITION, I HEARD TWO SHOTS. AND REALLY, IT STUNNED
12 ME THAT I WAS BEING SHOT AT BECAUSE MY FULL INTENTIONS WAS TO
13 PUSH THEM AND STAY ON THEM CLOSE AND PUSH THEM FAST INTO THE
14 OFFICERS THAT I KNEW WAS AHEAD AND PROBABLY HAD STOP STICKS
15 OUT THE WAY THEY TALKED. BUT AS HE TURNED IN THAT POSITION,
16 IT SEEMED IMMEDIATE I HEARD TWO GUNSHOTS AND IT -- AS I SAID,
17 IT STUNNED ME. HE'S SHOOTING AT ME. AND AS I LEANED OVER IN
18 MY PATROL CAR, A BULLET CAME THROUGH TO THE RIGHT OF MY REAR
19 VIEW MIRROR AND RIGHT WHERE MY HEAD WAS. I WAS GETTING DOWN
20 TO HOPEFULLY GET OUT OF THE WAY BECAUSE IT APPEARED HE WAS
21 READY TO DO SOME SHOOTING, AND I HAD NO POSSIBLE WAY TO
22 RETURN FIRE BECAUSE OF THE SAFETY OF ONCOMING TRAFFIC
23 INDIVIDUALS AND FAMILIES AND BUSINESSES. I COULD NOT RETURN
24 FIRE.

25 AND I -- AFTER I LEANED OVER IN MY VEHICLE AND THE SHOT

SAMUEL MICHAEL GRANT -- DIRECT BY MS. STROM

1 CAME THROUGH, THE BULLET SPLIT OFF AND A FRAGMENT OF IT HIT
2 ME BETWEEN THE EYES AND THE OTHER FRAGMENT BLOWED THE BACK
3 GLASS OF MY CAR, PATROL CAR, OUT. AND I GOT -- I FELT A DEEP
4 BURNING IN MY FOREHEAD, AND I KEPT MY EYE UP OVER THE DASH
5 WHERE I COULD SEE ONCOMING TRAFFIC AND THEN TRY TO GET
6 STOPPED, AND I BECAME VERY SICK AT MY STOMACH. AND THAT'S
7 SOMETHING I DON'T DO. I DON'T GET SICK AT MY STOMACH FOR ANY
8 REASON WHENEVER I AM SICK. I GOT VERY, VERY SICK AT MY
9 STOMACH. AND AS I SAID, A DEEP BURNING IN MY FOREHEAD, AND I
10 RAISED UP AND I LOOKED IN MY REAR VIEW MIRROR AND I SEEN A
11 HOLE BETWEEN MY EYES, AND THIS PORTION OF MY FACE HERE
12 (INDICATING) HAD BLOOD ALL OVER IT ALREADY THAT QUICKLY. AND
13 I NOTICED AS MY HEART PUMPED IT APPEARED BLOOD PUMPED OUT OF
14 THAT AREA RIGHT THERE.

15 AND I GOT MY PATROL CAR STOPPED AND I JUST SAT THERE, I
16 REMEMBER, AS I LOOK BACK MANY TIMES NOW. I SAT THERE LOOKING
17 AT MYSELF -- (PAUSE) -- LOOKING AT MYSELF IN THAT MIRROR.
18 AND AT THAT TIME MY LITTLE BOY, HE WAS FIVE YEARS OLD, AND HE
19 WAS ALL THAT I COULD THINK OF, ALL I COULD FOCUS ON. MY
20 WHOLE WORLD STOPPED. EVERYTHING STOPPED. I DIDN'T CARE. I
21 DIDN'T THINK ABOUT NOTHING BUT MY LITTLE BOY. I FELT IN
22 THERE, AND I FELT, AND I COULDN'T FEEL -- I KNEW IT WAS A
23 BULLET OR A PORTION. I THOUGHT A BULLET, AND IT WAS A
24 FRAGMENT. AND I COULDN'T EVER FEEL IT UNDER THE SKIN OR
25 AROUND MY SKULL, BUT LATER I FOUND OUT AT THE EMERGENCY ROOM

SAMUEL MICHAEL GRANT -- DIRECT BY MS. STROM

1 THAT IT WAS A FRAGMENT THAT DID FRAGMENT OFF OF THAT BULLET.
2 AND WHEN I THOUGHT OF MY BOY IT JUST -- IT SHATTERED ME THAT
3 DAY. IT SHATTERED ME INSIDE, AND FROM THAT DAY IT HAS
4 AFFECTED ME.

5 MS. STROM: THANK YOU, OFFICER GRANT. PLEASE ANSWER
6 ANY QUESTIONS THE DEFENSE MAY HAVE.

7 MR. MAULDIN: ONE MOMENT, YOUR HONOR.

8 THE COURT: YES, SIR.

9 (DEFENSE COUNSEL OFF RECORD)

10 CROSS EXAMINATION BY MR. MAULDIN:

11 Q MR. GRANT, LET ME ASK YOU JUST A COUPLE OF
12 CLARIFICATIONS, PLEASE, SIR. NUMBER ONE, I WANT TO ASK YOU
13 NOW ABOUT WHEN YOU SAY -- WHEN YOU SAY RIGHT, LEFT AND
14 WHATEVER, IT KIND OF DEPENDS ON WHICH WAY YOU'RE HEADING.
15 AND WHEN YOU SAID THAT YOU SAW A -- THAT A BULLET CAME
16 THROUGH THE RIGHT SIDE OF YOUR WINDSHIELD---

17 A I SAID IT CAME THROUGH THE RIGHT SIDE OF MY REAR VIEW
18 MIRROR.

19 Q ALL RIGHT.

20 A WHEN I'M LOOKING AT MY REAR VIEW MIRROR, THIS TO ME---

21 Q OH, OKAY.

22 A ---WOULD BE THE RIGHT SIDE OF MY REAR VIEW MIRROR.

23 Q ALL RIGHT. SO YOU'RE -- SO IF YOU'RE SITTING BEHIND THE
24 STEERING WHEEL AND THE REAR VIEW MIRROR IS HERE, IT WAS TO
25 THE RIGHT OF?

SAMUEL MICHAEL GRANT -- CROSS BY MR. MAULDIN

1 A YES, SIR.

2 Q OKAY. ALL RIGHT. NOW THE OTHER QUESTION THAT I HAVE --
3 AND NOBODY WAS IN THE CAR WITH -- YOU WERE ALONE IN YOUR
4 PATROL CAR?

5 A YES, SIR.

6 Q AND THEN THE OTHER QUESTION, YOU SAID THAT AS YOU WERE
7 ON THE DOUBLE BRIDGES YOU HIT IT TO CATCH UP?

8 A YES, SIR, I DID.

9 Q WAS THERE OR DO YOU RECALL IF THERE WAS A TRUCK UP IN
10 FRONT THAT HAD A BULLDOZER OR SOME KIND OF PIECE OF HEAVY
11 EQUIPMENT ON THE BACK THAT HAD SLOWED DOWN TRAFFIC? DO YOU
12 REMEMBER THAT? AND IF NOT, THAT'S OKAY.

13 A NO, SIR, I DO NOT REMEMBER THAT.

14 Q OKAY.

15 A NO, SIR.

16 Q WHEN YOU DID ACTUALLY CATCH UP WITH THE JEEP CAN YOU
17 GIVE US ANY IDEA OF HOW CLOSE -- AND IF YOU WANT TO JUST---

18 A I WOULD SAY 15 TO 20 YARDS. I'M GOING TO GUESS.

19 Q HERE TO THE BACK OF THE COURTROOM?

20 A I'M GOING TO GUESS -- YES, SIR.

21 Q ALL RIGHT.

22 A I'M GOING TO SAY SOMETHING LIKE THAT DISTANCE RIGHT
23 THERE.

24 Q ALL RIGHT. SO FROM HERE TO THE BACK OF THE COURTROOM IS
25 ABOUT HOW FAR YOU WERE BEHIND THEM WHEN THESE SHOTS RANG OUT?

SAMUEL MICHAEL GRANT -- CROSS BY MR. MAULDIN

1 **A** YES, SIR.

2 **MR. MAULDIN:** ALL RIGHT. NOTHING FURTHER. THANK YOU.

3 **THE COURT:** ANY REDIRECT?

4 **MS. STROM:** NO, SIR, YOUR HONOR. WE'D ASK THAT HE BE
5 EXCUSED.

6 **MR. MAULDIN:** NO OBJECTION.

7 **THE COURT:** WITHOUT OBJECTION.

8 **MR. GRANT,** THANK YOU, SIR. APPRECIATE YOU BEING HERE.

9 (WITNESS EXCUSED AT 12:56 P.M.)

10 **MS. STROM:** YOUR HONOR, MAY WE HAVE A BRIEF SIDEBAR?

11 (BENCH CONFERENCE OFF RECORD FROM 12:56 TO 12:57 P.M.)

12 **THE COURT:** ONE SECOND, LADIES AND GENTLEMEN. (PAUSE)

13 LADIES AND GENTLEMEN, IT'S ABOUT ONE O'CLOCK. WE'RE
14 GOING TO BREAK FOR LUNCH. YOUR LUNCH SHOULD BE HERE
15 MOMENTARILY. DURING THE LUNCH BREAK -- AND WE'LL PROBABLY
16 TAKE JUST ABOUT AN HOUR. DURING THE LUNCH BREAK, DO NOT
17 DISCUSS THE CASE AMONG YOURSELVES. WE'LL GET YOU BACK HERE
18 IN AN HOUR. HOPE YOU ENJOY YOUR LUNCH. SEE YOU IN AN HOUR.
19 THANK YOU.

20 (JURY EXITS COURTROOM AT 12:58 P.M.)

21 **THE COURT:** ALL RIGHT. THE JURY HAS BEEN EXCUSED. AND
22 WE'RE NOT GOING TO DEAL WITH IT NOW, BUT JUST A HEAD'S UP,
23 **MR. MAULDIN.** WHEN I RECEIVED THE COMMENTS ON THE PROPOSED
24 FINAL INSTRUCTIONS -- I'LL MAKE ANOTHER COPY FOR BOTH SIDES
25 -- I'LL AT SOME POINT NEED SOME AUTHORITY FROM YOU FOR YOUR

MATTERS AND MOTIONS

1 PROPOSITION THAT THE PENALTY ELEMENT MUST ALSO BE ESTABLISHED
2 BEYOND A REASONABLE DOUBT. SO I JUST GIVE YOU A HEAD'S UP ON
3 THAT.

4 MR. MAULDIN: ONE MOMENT, YOUR HONOR. I THOUGHT I READ
5 THAT IN YOUR -- I THOUGHT THAT WAS WHAT ACTUALLY WAS IN
6 THERE.

7 THE COURT: THAT'S RIGHT.

8 MR. MAULDIN: ALL RIGHT, SIR.

9 THE COURT: AND I DON'T BELIEVE IT'S A CORRECT
10 STATEMENT OF THE LAW, AND THE STATE HAS BROUGHT IT TO MY
11 ATTENTION, CITING A CASE.

12 MR. MAULDIN: OH, OKAY. ALL RIGHT. I THOUGHT -- I
13 CERTAINLY DIDN'T---

14 THE COURT: OH, I KNOW YOU LIKE IT.

15 MR. MAULDIN: YES, SIR. I WAS CONFUSED. SO YOU GAVE
16 THEM THE SAME COPY YOU GAVE ME. THEY NOW HAVE OBJECTED TO
17 THAT PART ABOUT THE PROOF OF THE---

18 THE COURT: THEY JUST OBJECT TO THE -- YOU KNOW, THE
19 AGGRAVATING CIRCUMSTANCE, FINE.

20 MR. MAULDIN: RIGHT.

21 THE COURT: BUT NOT THE APPROPRIATE PENALTY.

22 MR. MAULDIN: RIGHT.

23 THE COURT: SO IF YOU CONTEND THAT THAT STANDARD IS
24 APPLICABLE TO THE DECISION AS TO THE APPROPRIATE PENALTY, I'D
25 LIKE SOME LEGAL RESEARCH OR OTHER THOUGHTS.

MATTERS AND MOTIONS

1 MR. MAULDIN: I'LL TRY TO GET THAT DONE OVER THAT
2 LUNCH, YOUR HONOR.

3 THE COURT: WELL---

4 MR. MAULDIN: YES, SIR.

5 THE COURT: ---JUST -- I DON'T WANT TO DUMP IT ON YOU
6 THIS EVENING OR TOMORROW WHEN THE TIME COMES AND ALL OF A
7 SUDDEN YOU'RE SITTING THERE AND---

8 MR. MAULDIN: I'LL START WORKING ON IT, YOUR HONOR.

9 THE COURT: THANK YOU.

10 (A LUNCH RECESS WAS TAKEN FROM 1:00 TO 1:59 P.M.)

11 THE COURT: WHEN THE JURY IS READY, BRING THEM IN.

12 (JURY REENTERS COURTROOM AT 2:02 P.M.)

13 THE COURT: MADAME FORELADY, LADIES AND GENTLEMEN,
14 WE'RE READY TO PROCEED.

15 NEXT WITNESS, PLEASE, FROM THE STATE.

16 MS. STROM: THE STATE CALLS MISTY NICHOLSON.

17 MISTY NICHOLSON, HAVING BEEN
18 DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MS. STROM:

20 Q MS. NICHOLSON, IF YOU WOULD, PLEASE STATE YOUR FULL NAME
21 FOR THE RECORD.

22 A MISTY NICHOLSON.

23 Q I'M GOING TO NEED FOR YOU TO SPEAK UP SO ALL THESE
24 JURORS CAN HEAR YOU. IF YOU NEED TO GET CLOSER TO THAT
25 MICROPHONE, PLEASE DO SO, OKAY?

1 A OKAY.

2 Q YOU WERE MARRIED TO ERIC?

3 A (INDICATES AFFIRMATIVE RESPONSE)

4 Q I WANT YOU TO TELL THIS JURY A LITTLE BIT ABOUT ERIC,
5 WHEN Y'ALL FIRST MET.

6 A OKAY. WHEN ERIC AND I MET, I WAS 18 AND HE WAS 21, SO
7 WE KIND OF GREW UP TOGETHER. HE WAS IN THE MARINE CORPS AND
8 I WAS LIVING IN MYRTLE BEACH. WE MET THROUGH A FRIEND OF
9 OURS, STARTED DATING, AND WE DATED ABOUT FIVE YEARS BEFORE WE
10 GOT ENGAGED. WE WERE MARRIED TWO YEARS. HE WAS JUST A GOOD
11 GUY. HE WAS HONEST AND FUN LOVING. HE LOVED HIS JOB. HE
12 KNEW THAT HE ALWAYS WANTED TO BE A MARINE, AND HE DID. HE
13 KNEW HE ALWAYS WANTED TO BE A STATE TROOPER, AND HE DID.
14 JUST A GOOD GUY.

15 Q WHERE WAS ERIC LIVING WHEN Y'ALL GOT MARRIED?

16 A ACTUALLY, WE HAD GOTTEN ENGAGED CHRISTMAS EVE OF '97,
17 AND HAD PLANNED AN OCTOBER WEDDING BECAUSE FALL WAS OUR
18 FAVORITE SEASON. SO WE PLANNED AN OCTOBER WEDDING, OCTOBER
19 31ST OF 1998. JULY OF '98 HE FOUND OUT THAT HE HAD GOTTEN
20 ACCEPTED TO THE PATROL AND THAT HE WOULD BE ATTENDING THE
21 ACADEMY. SO INSTEAD OF REARRANGING OUR PLANS, WE JUST WENT
22 WITH IT. THE PATROL WAS REALLY GOOD. HE GOT AN EXTRA DAY
23 THAT WEEKEND SO HE WOULDN'T HAVE TO BE BACK SO EARLY. BUT WE
24 ACTUALLY GOT MARRIED WHILE HE WAS STILL IN THE ACADEMY. IN
25 THE MEANTIME, I HAD GOTTEN A JOB HERE IN GREENVILLE

MISTY NICHOLSON -- DIRECT BY MS. STROM

1 PERMANENT. I HAD BEEN TEMPORARY. SO THAT POSED ANOTHER
2 PROBLEM. WHEN HE GOT HIS ASSIGNMENT, HE WAS GOING TO BE
3 STATIONED IN FLORENCE COUNTY AND I WAS HERE IN GREENVILLE
4 COUNTY. SO WE MADE A DIFFICULT DECISION TO SPEND, YOU KNOW,
5 THE FIRST TEN MONTHS OF OUR MARRIED LIFE BACK AND FORTH
6 BETWEEN FLORENCE AND GREENVILLE BECAUSE OUR CAREERS WERE
7 IMPORTANT TO BOTH OF US. SO WE DECIDED THAT WE WOULD WORK
8 WITH IT AND SEE WHAT HAPPENED. HE EVENTUALLY DID GET HIS
9 TRANSFER AND CAME TO GREENVILLE IN JULY OF THE YEAR.

10 Q I BELIEVE YOU SAID -- LET ME MAKE SURE I'M CORRECT.
11 ERIC WAS IN THE ACADEMY WHEN Y'ALL GOT MARRIED?

12 A YES.

13 Q AND HE GOT AN EXTRA DAY TO BE AWAY?

14 A YEAH.

15 Q DID Y'ALL EVER GET TO HAVE A HONEYMOON?

16 A NO. WE HAD DECIDED SINCE WE DIDN'T GET A HONEYMOON --
17 WE HAD JUST BOUGHT A HOUSE ALSO WHEN HE GOT BACK UP HERE. SO
18 FOR OUR FIFTH WEDDING ANNIVERSARY, WE WERE GOING TO GO TO
19 IRELAND FOR TWO WEEKS, AND THAT NEVER GOT TO HAPPEN.

20 Q MS. NICHOLSON, YOU, OF COURSE KNOW ERIC'S PARENTS, HIS
21 FAMILY?

22 A YES.

23 Q TELL THIS JURY, IF YOU COULD, HOW ERIC'S DEATH HAS
24 IMPACTED THEM.

25 A I KNOW IT'S REALLY DIFFICULT FOR THEM BECAUSE THEY ARE

1 OUT OF STATE. THEY'RE NOT HERE. I THINK FOR THE MOST PART
2 THEY CAN KIND OF GET ON WITH THEIR LIVES PER SE, BUT WHEN THE
3 SUNDAY PHONE CALL THAT HE USED TO ALWAYS GIVE THEM DOESN'T
4 HAPPEN, I KNOW THAT'S HARD FOR THEM. HIS DAD IS NOT IN THE
5 BEST OF MY HEALTH, AND I KNOW ERIC'S DEATH PUT A REAL STRAIN
6 ON HIS HEALTH. HIS MOTHER, HE WAS HER ONLY SON. SHE'LL
7 NEVER HAVE ANOTHER SON. INSTEAD OF TWO CHILDREN, SHE NOW HAS
8 ONE. AMY WILL NEVER HAVE ANOTHER BROTHER. SO LOSING HIM HAS
9 AFFECTED THEM A LOT. I KNOW IT HAS.

10 Q ERIC HAS ONE SISTER?

11 A YES, AMY.

12 Q TELL THIS JURY, MS. NICHOLSON, HOW YOUR LIFE HAS BEEN
13 IMPACTED BY ERIC'S DEATH.

14 A EVERY ASPECT OF MY LIFE HAS BEEN CHANGED. ERIC AND I
15 HAD PLANNED TO HAVE CHILDREN. THAT WON'T HAPPEN. THE
16 NICHOLSONS WON'T HAVE GRANDCHILDREN TO CARRY ON THEIR NAME.
17 ONE OF THE THINGS THAT JOHN SAID WHEN HE CAME DOWN TO THE
18 FUNERAL, ERIC'S FATHER, AS HE LOOKED AT ERIC IN THE CASKET HE
19 SAID, "THIS ENDS THE NICHOLSON LEGACY." AND WE WON'T HAVE
20 NIECES AND NEPHEWS. AND THAT'S JUST THE TIP OF THE ICEBERG.

21 EVERYTHING THAT I -- EVERY DAY THAT I GET UP NOW AND
22 WAKE UP, FROM THE TIME I GET UP TILL THE TIME I GO TO BED,
23 THERE'S NOT ANYTHING THAT DOESN'T REMIND ME OF HIM. THE WAY
24 I GO TO WORK TAKES ME PAST THE DETENTION CENTER. IT TAKES ME
25 PAST THE PLACE WHERE WE GOT MARRIED. THERE'S NOT A ROAD I

1 DON'T TRAVEL THAT THERE'S A RESTAURANT WE DIDN'T EAT AT OR
2 WE'D BE DRIVING AROUND AND HE'D BE TALKING ABOUT HOW HE HAD
3 PULLED A CAR OVER HERE OR HAD A CHASE OVER HERE. THERE'S NOT
4 A PLACE IN GREENVILLE COUNTY THAT I CAN'T GO THAT I DON'T
5 THINK OF HIM. I DRIVE DOWN WOODRUFF ROAD AND THERE'S A SIGN
6 BECAUSE THAT STRETCH OF THE INTERSTATE IS NAMED AFTER HIM.
7 ALL THAT'S JUST A CONSTANT REMINDER.

8 BUT THE HARDEST PART IS I COME HOME TO AN EMPTY HOUSE. I
9 LOOK AT THE CLOCK SOMETIMES AND I'M THINKING, WHEN IS HE
10 GOING TO COME HOME? AND THEN IT DAWNS ON ME, HE'S NOT. HE'S
11 NOT COMING HOME. AND THE HARDEST PART OF ACCEPTING THAT HE'S
12 GONE BECAUSE WE DIDN'T HAVE A BREAK UP, WE DIDN'T HAVE A
13 FIGHT, WE WERE VERY MUCH IN LOVE AND HE JUST NEVER CAME HOME
14 FROM WORK ONE DAY. SO THERE'S NOT A LOT OF CLOSURE THERE,
15 WHICH IS -- THE EMPTINESS AND LONELINESS JUST GOES ON.

16 Q MS. NICHOLSON, I WANT TO TALK TO YOU ABOUT THE DAY THAT
17 ERIC DID NOT COME HOME. TELL THIS JURY, WHEN WAS THE LAST
18 TIME YOU SAW ERIC ALIVE?

19 A THE LAST TIME OR JUST THE EVENTS OF THAT DAY?

20 Q THE EVENTS OF THAT DAY.

21 A I BELIEVE THAT PARTICULAR DAY HE WAS WORKING 7:00 TO
22 7:00. SO HE GOT UP EARLY, LIKE HE ALWAYS DID, BECAUSE HIS
23 UNIFORM HAD TO LOOK JUST SO AND HE HAD TO SIT AROUND AND
24 DRINK COFFEE AND EAT BREAKFAST. HE DID THAT. HE CAME AND
25 WOKE ME UP TO TELL ME GOODBYE, LIKE HE ALWAYS DID. AND WE

MISTY NICHOLSON -- DIRECT BY MS. STROM

1 TOLD EACH OTHER THAT WE LOVED EACH OTHER, AND THEN HE LEFT TO
2 GO TO WORK. AND I GOT UP AND, YOU KNOW, PROCEEDED LIKE I DID
3 EVERY MORNING GETTING READY AND LETTING THE DOGS IN, AND
4 LETTING THE DOGS OUT. AND I LOOK BACK NOW AND I WISH I HAD
5 WOKEN UP WITH A FEELING LIKE SOMETHING BAD IS GOING TO HAPPEN
6 TODAY OR THAT I HAD HAD SOME KIND OF WARNING. BUT IT WAS
7 JUST LIKE ANY OTHER DAY. NOTHING THAT MORNING STUCK OUT. IT
8 WAS JUST LIKE ANY OTHER DAY.

9 AND I GOT READY AND I GOT TO WORK, AND I HAD FORGOTTEN
10 THAT THE BLOOD CONNECTION WAS GOING TO COME DO A BLOOD DRIVE
11 AT MY OFFICE THAT DAY. SO WHEN I GOT THERE AND REALIZED THEY
12 WERE GOING TO BE THERE, AND I'M THE BLOOD DRIVE COORDINATOR
13 FOR THE OFFICE, YOU KNOW, I'M SCURRYING AROUND TRYING TO GET
14 PEOPLE, YOU KNOW, "GO DOWNSTAIRS AND GIVE BLOOD."

15 AND IT WAS DECEMBER AND A LOT OF PEOPLE HAD COLDS AND,
16 YOU KNOW, WEREN'T ABLE TO GIVE. SO I CALLED ERIC AND SAID,
17 YOU KNOW, "ARE YOU BUSY?" HE SAID, "NO, I'M ON THE
18 INTERSTATE. I'M RUNNING RADAR. NOTHING MUCH IS HAPPENING."
19 I SAID, "WELL, IF YOU GET A FREE MINUTE, CAN YOU COME BY THE
20 OFFICE AND GIVE BLOOD?" AND HE SAID, "YEAH, I'LL SEE WHAT I
21 CAN DO." SO A FEW MINUTES LATER HE CALLED ME BACK AND SAID,
22 "I'LL BE THERE IN A COUPLE OF MINUTES."

23 SO HE CAME TO MY OFFICE AND GAVE BLOOD -- WELL, STARTED
24 TO WRITE OUT HIS PAPERWORK, AND I BELIEVE HE HAD CALLED INTO
25 THE OFFICE TO ASK THEM, "IS IT OKAY I'M OUT OF MY CAR FOR A

MISTY NICHOLSON -- DIRECT BY MS. STROM

1 FEW MINUTES?" BECAUSE HE WAS ALWAYS BY THE BOOK. SO HE
2 STARTED FILLING OUT HIS PAPERWORK. AND I REMEMBER -- AND I
3 TOLD HIM I WAS BUSY SO I WAS GOING TO GO BACK UPSTAIRS.

4 AND I REMEMBER ONE OF THE LADIES ASKING ME AS I WAS
5 LEAVING THE BLOODMOBILE, SHE SAID, "HOW DO YOU DO IT?" AND I
6 LOOKED AT HER REAL PUZZLED AND I SAID, "WHAT DO YOU MEAN?"
7 SHE GOES, "HOW DO YOU LET HIM DO HIS JOB?" I SAID, "I DON'T
8 WORRY ABOUT HIM. GOD WILL TAKE CARE OF HIM." AND SHE JUST
9 KIND OF SMILED AND I LEFT.

10 AND I WENT BACK UPSTAIRS AND I WAS WORKING, AND WHEN HE
11 CAME BACK UPSTAIRS I CAME OUT TO THE LOBBY TO MEET HIM. HE
12 HAD A COKE IN ONE HAND AND A DEVIL DOG IN THE OTHER HAND, AND
13 I ASKED HIM IF THAT WAS ALL HE HAD HAD TO EAT TODAY, AND HE
14 SAID, NO, HE HAD EATEN BREAKFAST AT TOMMY'S THIS MORNING WITH
15 A BUNCH OF THE GUYS. SO WE TALKED FOR A FEW MORE MINUTES AND
16 HE WAS REAL ANXIOUS TO GET BACK OUT ON THE ROAD BECAUSE
17 THAT'S JUST THE TYPE PERSON HE WAS. HE LOVED HIS JOB. SO WE
18 HUGGED GOODBYE AND KISSED GOODBYE. AND AS THE ELEVATOR DOOR
19 WAS CLOSING I SAID, "I LOVE YOU. BE CAREFUL." HE JUST
20 LOOKED AT ME, ROLLED HIS EYES, LIKE, YEAH, OKAY. AND THAT
21 WAS THE LAST TIME I SAW HIM.

22 ABOUT AN HOUR LATER I GOT A PHONE CALL AND IT WAS DAN
23 MARSCEAU WITH THE HIGHWAY PATROL SAYING THAT THERE HAD BEEN
24 AN ACCIDENT AND THAT HE NEEDED TO COME GET ME AND TAKE ME TO
25 THE HOSPITAL.

MISTY NICHOLSON -- DIRECT BY MS. STROM

1 Q DID HE TAKE YOU TO THE HOSPITAL?

2 A HE DID.

3 Q WHAT HAPPENED WHEN YOU WERE THERE AT THE HOSPITAL?

4 A WHEN I GOT TO THE HOSPITAL THEY BROUGHT ME IN A BACK
5 DOOR AND THERE WERE MEDIA -- NEWS TRUCKS OUTSIDE, SO I KNEW
6 SOMETHING WAS REALLY WRONG BECAUSE I HAD BEEN THINKING CAR
7 ACCIDENT. ON THE WAY OVER I WAS TOLD THAT HE HAD BEEN SHOT.
8 IN THE PIT OF MY STOMACH I KNEW SOMETHING WAS WRONG. AND AS
9 SOON AS I GOT TO THE HOSPITAL AND I WALKED IN THE BACK DOOR,
10 THE HALLWAY WAS LINED WITH PEOPLE ALL THE WAY DOWN, AND
11 NOBODY WOULD MAKE EYE CONTACT WITH ME. SO I KNEW. EVEN
12 BEFORE I GOT THERE, I KNEW SOMETHING WAS WRONG. AND THEY PUT
13 ME IN A ROOM AND SAID THE DOCTOR WOULD BE IN WITH ME SHORTLY.
14 AND THE DOCTOR CAME IN A LITTLE BIT LATER AND HE GOT DOWN ON
15 HIS KNEES AND HE SAID THAT WE HAD DONE ALL THAT WE COULD BUT
16 HE'S GONE. AT THAT POINT I LOST IT, BECAUSE I JUST KEPT
17 SAYING, "HE CAN'T BE GONE. I JUST SAW HIM. HE JUST GAVE
18 BLOOD. HE'S ALIVE." AND THEY WERE LIKE, "NO, HE'S GONE. WE
19 DID EVERYTHING WE COULD." SO FROM THAT POINT ON I HAD TO
20 LIVE WITH WHAT HAPPENED, HOW IT HAPPENED, THE QUESTIONS.

21 Q DID YOU TRY TO SEE ERIC THERE AT THE HOSPITAL?

22 A I DID. I ASKED TO SEE HIM. BUT I WAS TOLD THAT IF I
23 DID I WOULD HAVE TO SEE HIM THE WAY THAT HE WAS, AND THAT
24 MEANT BLOOD AND TUBES AND ALL THE EFFORTS THEY HAD DONE TO
25 RESUSCITATE HIM, AND ALSO BECAUSE OF THE INVESTIGATION THAT

MISTY NICHOLSON -- DIRECT BY MS. STROM

1 THE CORONER STILL HADN'T GOTTEN ALL OF THE EVIDENCE THAT HE
2 NEEDED. SO IF I SAW HIM, I WOULD HAVE TO SEE HIM THE WAY HE
3 WAS. THEY COULDN'T CLEAN HIM UP. AND I KNEW -- I KNEW I
4 DIDN'T WANT TO SEE HIM THAT WAY, BECAUSE ONCE I GOT THAT
5 PICTURE IN MY HEAD I WOULD NEVER BE ABLE TO GET RID OF IT.
6 SO I MADE THE DECISION TO LEAVE HIM AT THE HOSPITAL, AND I
7 DIDN'T SEE HIM. I LEFT HIM THERE BECAUSE I COULDN'T HANDLE
8 THAT.

9 MS. STROM: (SHOWS PHOTOGRAPHS TO MR. MAULDIN)

10 MR. MAULDIN: NO OBJECTION.

11 THE COURT: WITHOUT OBJECTION.

12 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 58A AND
13 MOVED INTO EVIDENCE)

14 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 58B AND
15 MOVED INTO EVIDENCE)

16 Q MISTY, I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
17 STATE'S EXHIBIT 58A AND 58B. ARE THOSE PICTURES OF ERIC?

18 A YES.

19 Q IS THAT HOW YOU REMEMBER ERIC NICHOLSON?

20 A (INDICATES AFFIRMATIVE RESPONSE) THAT'S HOW HE LOOKED
21 THE LAST TIME I SAW HIM.

22 MS. STROM: PERMISSION TO PUBLISH TO THE JURY, YOUR
23 HONOR.

24 THE COURT: YES, MA'AM.

25 MS. STROM: I HAVE NO FURTHER QUESTIONS.

MISTY NICHOLSON -- DIRECT BY MS. STROM

1 MR. MAULDIN: WE'LL HAVE NO QUESTIONS FOR MS.
2 NICHOLSON.

3 THE COURT: VERY GOOD, SIR.

4 MS. NICHOLSON, THANK YOU, MA'AM. YOU MAY STEP DOWN.

5 (WITNESS STEPS DOWN AT 2:18 P.M.)

6 THE COURT: ANYTHING FURTHER FROM THE STATE?

7 MR. MAULDIN: YOUR HONOR, I THINK THE FORELADY---

8 THE COURT: I UNDERSTAND.

9 MS. STROM: STATE'S CASE.

10 THE COURT: THANK YOU. LADIES AND GENTLEMEN, WE NEED
11 TO TAKE A BREAK AT THIS STAGE IN ANY EVENT. WE'LL GET YOU
12 BACK OUT HERE IN ABOUT 10 OR 15 MINUTES AND RESUME WITH THE
13 RECEIPT OF TESTIMONY. THANK YOU.

14 JUST PUT THEM ON THE RAIL WHEN YOU GET THROUGH UP WITH
15 THE OTHER EXHIBITS. THANK YOU, SIR.

16 (JURY EXITS COURTROOM AT 2:18 P.M.)

17 THE COURT: ALL RIGHT. I AM INFORMED THAT CONCLUDES
18 THE STATE'S PRESENTATION OF ITS CASE IN CHIEF?

19 SOLICITOR ARIAIL: THAT'S CORRECT, YOUR HONOR.

20 THE COURT: ALL RIGHT. AT THIS STAGE I AM REQUIRED TO
21 ONCE AGAIN QUESTION MR. WOOD.

22 MR. WOOD, IF YOU WOULD, PLEASE STAND.

23 JOHN RICHARD WOOD, HAVING BEEN
24 DULY SWORN, TESTIFIED AS FOLLOWS:

25 EXAMINATION BY THE COURT:

JOHN RICHARD WOOD -- EXAMINATION BY THE COURT

1 Q MR. WOOD, YOU HAVE A RIGHT IN THE SENTENCING PROCEEDING
2 NOT ONLY TO TESTIFY BUT ALSO TO MAKE THE FINAL ARGUMENT.
3 REMEMBER WE TALKED ABOUT YOU MAKING A FINAL ARGUMENT IN THE
4 FIRST PHASE? YOU HAVE THAT RIGHT AS WELL IN THIS PHASE.

5 YOU ALSO HAVE THE RIGHT TO TESTIFY IN THIS PHASE, BUT
6 YOU ARE NOT REQUIRED TO. THE SAME PRIVILEGE AND PROTECTION
7 WHICH WE DISCUSSED IN DETAIL APPLIES WITH EQUAL FORCE IN THE
8 SENTENCING PHASE. DO YOU UNDERSTAND THAT?

9 A YES.

10 Q SHOULD YOU EXERCISE YOUR RIGHT TO REMAIN SILENT, I WOULD
11 AGAIN INSTRUCT THE JURY THAT THE EXERCISE OF YOUR RIGHT TO
12 REMAIN SILENT CANNOT IN ANY WAY BE HELD AGAINST YOU. AND I
13 WOULD AGAIN INSTRUCT THE JURY THAT THE EXERCISE OF THAT RIGHT
14 AND YOUR REMAINING SILENT CANNOT EVEN BE DISCUSSED IN THE
15 JURY ROOM. DO YOU UNDERSTAND THAT THE SAME ISSUE OF
16 TESTIMONY AND YOUR RIGHT TO TESTIFY OR NOT TESTIFY APPLIES
17 HERE?

18 A YES, SIR.

19 Q AND HAS ANYONE TO THIS POINT FORCED YOU TO MAKE A
20 DECISION IN THIS PHASE OF THE TRIAL?

21 A NO, SIR.

22 Q OKAY. AND DO YOU UNDERSTAND FULLY THIS IS YOUR
23 DECISION?

24 A YES.

25 Q AND YOU ALSO HAVE THE RIGHT TO MAKE THE FINAL ARGUMENT

JOHN RICHARD WOOD -- EXAMINATION BY THE COURT

1 TO THE JURY. AND WE -- IF YOU WISH TO PURSUE THAT THROUGH
2 COUNSEL, IF YOU WOULD, PLEASE ADVISE AT THE APPROPRIATE TIME.
3 THANK YOU, SIR. YOU MAY BE SEATED.

4 THE COURT: ANYTHING FURTHER FROM COUNSEL ON EITHER
5 SIDE?

6 MR. MAULDIN: YOUR HONOR, DURING THAT LUNCH BREAK I
7 TRIED TO DO AS MUCH AS I COULD ON ANY POSSIBLE REQUESTED
8 INSTRUCTIONS. I DO HAVE FOUR OR FIVE THAT I WOULD LIKE TO
9 HAVE THE COURT AT LEAST BE CONSIDERING.

10 THE COURT: SURE. I'LL BE GLAD TO LOOK AT THEM, SIR.

11 MR. MAULDIN: AND I WOULD GO AHEAD AND MAKE REFERENCE
12 TO THAT PARTICULAR POINT. IT IS NOT ONE OF THESE REQUESTS,
13 BUT I WOULD LIKE TO AT LEAST ADDRESS THE QUESTION THAT YOU
14 HAD PUT TO ME REGARDING THE QUESTION OF WHETHER IT IS CORRECT
15 FOR THE COURT TO INSTRUCT THE JURY THAT THEY MUST ESTABLISH
16 BEYOND A REASONABLE DOUBT THAT THE DEATH PENALTY IS
17 APPROPRIATE.

18 I DID HAVE THE OPPORTUNITY -- BUT THAT'S NOT REALLY THE
19 POINT. I DIDN'T HAVE THE OPPORTUNITY ACTUALLY TO FIND CASE
20 AUTHORITY, BUT I WOULD LIKE TO GIVE YOU SOME FOOD FOR THOUGHT
21 ON THAT ISSUE.

22 THE COURT: YES, SIR.

23 MR. MAULDIN: OUR LAW SAYS THAT IN ORDER TO IMPOSE THE
24 DEATH PENALTY THE JURY MUST NOT ONLY MAKE THE DECISION OF
25 IMPOSITION BUT ALL TWELVE MUST ACTUALLY SIGN THE SENTENCING

MATTERS AND MOTIONS

1 FORM. NO SUCH REQUIREMENT IS PROVIDED FOR A LIFE SENTENCE.
2 IN FACT, WE ALL KNOW OUT OF THE PRESENCE OF THE JURY -- WE
3 ALL KNOW THAT A SENTENCE OF LIFE IN PRISON, ONCE THE -- AND
4 I'M GOING TO ACT AS THOUGH, YOUR HONOR, AN AGGRAVATING -- FOR
5 THE PURPOSES OF THIS PRESENTATION, AN AGGRAVATING
6 CIRCUMSTANCE HAS IN FACT BEEN SIGNED OFF AS HAVING BEEN
7 FOUND. WE REALLY ALL KNOW THAT IF A JURY FINDS THEMSELVES IN
8 THAT PLACE THAT THEY ALL MUST EITHER SIGN THE DEATH FORM OR
9 IT'S A LIFE SENTENCE. IN OTHER WORDS, THERE ARE ONLY TWO
10 CONSEQUENCES OF THAT SITUATION, WHETHER THEY UNANIMOUSLY
11 AGREE ON THE IMPOSITION OF A LIFE SENTENCE BECAUSE THEY CAN'T
12 ALL TWELVE SIGN THE FORM OR WHETHER THEY SIMPLY REPORT TO THE
13 COURT THAT THEY CANNOT AGREE, AND THEN THE COURT ACTUALLY
14 DOES THE IMPOSITION. EITHER WAY YOU HAVE A BURDEN UPON THE
15 JURY TO ALL TWELVE SIGN THE FORM FOR ONE SENTENCE. ANYTHING
16 OTHER, ANY OTHER ALTERNATIVE RESULTS IN THE OTHER SENTENCE.
17 I THINK THAT THAT LEGAL SCHEME PLACES BEFORE THE COURT
18 THE POSTURE THAT THERE WOULD BE A BURDEN TO ESTABLISH THAT
19 HEAVY RESPONSIBILITY IN THE ACT OF THE JURY. I THINK THAT
20 WITH THE WAY THE SCHEME IS SET UP THAT IT -- I DON'T THINK
21 IT'S EVER BEEN DEFINED BY LAW NECESSARILY -- I'M GOING TO
22 KEEP LOOKING DURING OUR BREAKS, BUT I CAN'T -- HAVEN'T FOUND
23 AN ACTUAL CASE THAT SAYS THAT THE WORDING IS THIS, BUT I
24 THINK THAT THE SCHEME ITSELF REFLECTS THE LEGISLATIVE
25 INTENTION THAT THE BURDEN BE PRESENT TO ESTABLISH THE

MATTERS AND MOTIONS

1 APPROPRIATENESS OF THE DEATH PENALTY. AND SO, THAT'S ABOUT
2 ALL THE THINKING I COULD DO OVER LUNCH, YOUR HONOR, BUT
3 THAT'S KIND OF WHAT I HAVE ON MY MIND FOR NOW.

4 THE COURT: ALL RIGHT. THANK YOU.

5 DOES THE STATE HAVE A COPY OF THAT CASE THAT WAS
6 REFERENCED IN THE LETTER?

7 MS. STROM: STATE v. SINGLETON?

8 THE COURT: I BELIEVE THAT'S IT.

9 MS. STROM: YES, SIR.

10 THE COURT: I'LL GIVE IT BACK TO YOU.

11 MS. STROM: OH, THAT'S FINE. I WAS GOING TO TELL YOU I
12 ONLY HAVE ONE COPY. I DON'T HAVE ANOTHER FOR COUNSEL.

13 THE COURT: WE'RE NOT AT THE POINT WHERE WE HAVE TO
14 MAKE A FINAL DECISION AS TO THE TERMS OF THE FINAL CHARGE. I
15 APPRECIATE WHAT YOU HAVE PROVIDED. LET ME READ THIS CASE.
16 I'LL GIVE IT BACK TO THE STATE. AND AS WE MOVE THROUGH THIS
17 PROCESS, WE'LL CONTINUE TO REVISIT IT UNTIL WE FINALIZE IT.

18 WE'LL BE IN RECESS FOR TEN MINUTES, PLEASE.

19 MS. STROM: I DON'T NEED IT BACK, YOUR HONOR. I'VE GOT
20 ANOTHER COPY OVER AT THE OFFICE. I JUST DIDN'T BRING IT WITH
21 ME.

22 THE COURT: ALL RIGHT.

23 (A RECESS WAS TAKEN FROM 2:25 TO 2:34 P.M.)

24 THE COURT: ALL RIGHT. WE'RE BACK ON THE RECORD. IS
25 THE DEFENDANT READY TO PROCEED?

MATTERS AND MOTIONS

1 **MR. BANNISTER:** YES, YOUR HONOR.

2 **THE COURT:** BRING THE JURY, PLEASE.

3 (JURY REENTERS COURTROOM AT 2:35 P.M.)

4 **THE COURT:** WE'RE READY TO PROCEED. THE DEFENSE MAY
5 PROCEED.

6 **MR. BANNISTER:** THANK YOU, YOUR HONOR. THE DEFENSE
7 WOULD CALL JEFF YOUNGMAN.

8 **MR. BANNISTER:** JUDGE, IF I COULD HAVE JUST A MOMENT TO
9 GET SOME THINGS MARKED.

10 **THE COURT:** YES, SIR. TAKE YOUR TIME, MR. BANNISTER.

11 ("CRITICAL FACTORS IN THE POSITIVE DEVELOPMENT OF A
12 CHILD" DOCUMENT MARKED AS DEFENDANT'S EXHIBIT NUMBER 11 FOR
13 PURPOSES OF IDENTIFICATION ONLY)

14 ("PRESENT IN JOHN WOOD" DOCUMENT MARKED AS DEFENDANT'S
15 EXHIBIT NUMBER 12 FOR PURPOSES OF IDENTIFICATION ONLY)

16 **MADAME FORELADY:** COULD WE SEE THE PICTURES AGAIN,
17 PLEASE? SOME OF OUR GROUP DID NOT SEE THEM.

18 **THE COURT:** CERTAINLY, YES, MA'AM. THEY ARE IN THE
19 RECORD AND YOU ARE ABSOLUTELY ENTITLED TO DO THAT.

20 **MR. BANNISTER:** YOUR HONOR, JUST LET ME KNOW WHEN....

21 **THE COURT:** RIGHT. FOLKS, JUST TAKE YOUR TIME. (PAUSE)
22 MR. BANNISTER, YOU MAY PROCEED.

23 **MR. BANNISTER:** THANK YOU, YOUR HONOR.

24 **JEFF YOUNGMAN,** HAVING BEEN DULY
25 SWORN, TESTIFIED AS FOLLOWS:

JEFF YOUNGMAN -- DIRECT BY MR. BANNISTER

1 DIRECT EXAMINATION BY MR. BANNISTER:

2 Q IF YOU WOULD, PLEASE STATE YOUR NAME FOR THE RECORD,
3 PLEASE.

4 A JEFFREY YOUNGMAN.

5 Q ALL RIGHT. MR. YOUNGMAN, THE JURY NEEDS TO KNOW A
6 LITTLE BIT ABOUT YOU, SO LET'S START OFF WITH WHAT YOUR
7 EDUCATIONAL BACKGROUND IS.

8 A I'VE A MASTER'S -- BACHELOR'S FROM OHIO STATE
9 UNIVERSITY, AND I HAVE A MASTER'S IN SOCIAL WORK FROM TULANE
10 UNIVERSITY, AND A MASTER'S IN PUBLIC HEALTH FROM TULANE
11 UNIVERSITY.

12 Q AND IF YOU WOULD, GIVE US A WORK HISTORY AND A SUMMARY
13 OF YOUR WORK EXPERIENCE.

14 A OKAY. I'VE BEEN A SOCIAL WORKER FOR 21 YEARS THIS
15 APRIL. I WORKED SEVEN YEARS IN CHILD PROTECTION IN
16 LOUISIANA, FIRST AS A CHILD ABUSE INVESTIGATOR, THEN AS A
17 SUPERVISOR OF AN INVESTIGATIVE UNIT AND THEN SUPERVISOR OF AN
18 ENTIRE PARISH -- OR COUNTY HERE BUT PARISHES IN LOUISIANA.
19 I'VE ALSO WORKED AT A RUNAWAY AND HOMELESS SHELTER. I'VE
20 WORKED FOR THE HEALTH DEPARTMENT. I'VE WORKED FOR AN ABUSE
21 AND NEGLECTED SHELTER IN CHARLESTON. AND I AM CURRENTLY THE
22 CLINICAL DIRECTOR OF CRISIS MINISTRIES, THE HOMELESS SHELTER
23 IN CHARLESTON.

24 Q ALL RIGHT. DO YOU HAVE A MASTER'S?

25 A YES, SIR, I DO. TWO MASTER'S DEGREES.

JEFF YOUNGMAN -- DIRECT BY MR. BANNISTER

1 Q ALL RIGHT. AND DO YOU HAVE ANY RELEVANT PRE-MASTER'S
2 WORK HISTORY?

3 A PRIOR TO GOING BACK TO SCHOOL TO BE A SOCIAL WORKER, I
4 WAS A NEW ORLEANS POLICE OFFICER.

5 Q ARE YOU LICENSED?

6 A YES, I AM.

7 Q IN WHAT?

8 A IN SOUTH CAROLINA THERE IS THREE LEVELS OF LICENSURE FOR
9 SOCIAL WORKERS. I HAVE AN L.I.S.W. I AM A LICENSED
10 INDEPENDENT SOCIAL WORKER. OF THE THREE CLASSIFICATIONS,
11 THAT'S THE HIGHEST CLASSIFICATION.

12 Q TELL US A LITTLE BIT MORE ABOUT WHAT YOU DO AS A
13 CLINICIAN FOR THE HOMELESS?

14 A FOR THE HOMELESS SHELTER?

15 Q FOR THE HOMELESS SHELTER, YES, SIR.

16 A AS THE CLINICAL COORDINATOR FOR THE HOMELESS SHELTER I
17 SUPERVISE THE OTHER STAFF THAT WORK WITH THE HOMELESS
18 POPULATION. BUT I AM ALSO THE MENTAL HEALTH EXPERT THERE, SO
19 I SEE ANYBODY THAT COMES INTO THE SHELTER WITH MENTAL HEALTH
20 PROBLEMS, ANY OF THE MALES THAT COME IN WITH MENTAL HEALTH
21 PROBLEMS, WHICH IS ABOUT 40 PERCENT OF THE POPULATION. AND I
22 WORK WITH THEM, PROVIDE TREATMENT FOR THEM, PROVIDE REFERRALS
23 TO OTHER SERVICES, WHATEVER WE CAN TO MOVE THE FOLKS OUT OF
24 THE SHELTER INTO A MORE STABLE SITUATION.

25 Q ALL RIGHT. BECAUSE I KNOW THAT WE'RE GOING TO HEAR

JEFF YOUNGMAN -- DIRECT BY MR. BANNISTER

1 ABOUT A PARTICULAR BOOK, DO YOU KNOW WHAT THE DSM-IV IS?

2 A YES, SIR. I'M FAMILIAR WITH THE DSM-IV. THAT'S A
3 DIAGNOSTIC TOOL THAT PSYCHIATRISTS USE, PSYCHOLOGISTS USE,
4 SOCIAL WORKERS USE. THERE ARE FOUR AXES, FOUR DIFFERENT
5 CLASSIFICATIONS OR FOUR DIFFERENT DIAGNOSES LEVELS. THE
6 FIRST ONE IS MORE OF THE CLINICAL. THE SECOND IS MORE
7 PERSONALITY. THE THIRD AXIS IS THE GENERAL MEDICAL
8 CONDITION. AND THE FOURTH ONE IS SORT OF SOCIETAL FACTORS.
9 AS A SOCIAL WORKER I CAN DIAGNOSE IN ALL FOUR, ALTHOUGH I
10 DON'T CERTAINLY DO MUCH IN THE THIRD ONE, GENERAL MEDICAL,
11 BECAUSE I'M NOT A MEDICAL PERSON. AT THE HOMELESS SHELTER I
12 USUALLY DO DIAGNOSIS IN THE SECOND AND FOURTH AXES. THE
13 FIRST ONE I USUALLY DO IN CONSULTATION WITH A PSYCHIATRIST.

14 Q ALL RIGHT. I'M GOING TO ASK YOU KIND OF A TWO-PART
15 QUESTION. THE FIRST PART IS, WHAT IS FORENSIC SOCIAL WORK?
16 AND IF YOU CAN, PUT THAT IN A CONTEXT OF HOW YOU WORK AT THE
17 HOMELESS SHELTER AND YOUR WORK IN CASES OF THIS NATURE.

18 A FORENSIC SOCIAL WORK IS JUST A SPECIALIZED AREA OF
19 SOCIAL WORK DEALING WITH SOCIAL WORKERS WHO WORK IN THE LEGAL
20 FIELD OR WITH LAW. IN MY CASE I ACTUALLY -- I PROBABLY
21 SHOULD HAVE MENTIONED IT. I HAVE A POST-MASTER'S
22 CERTIFICATION IN SOCIAL WORK FROM TULANE. THAT'S THE FIRST
23 ONE IN THE COUNTRY. I'M QUITE SURE I'M THE ONLY ONE IN SOUTH
24 CAROLINA THAT HAS THAT, THAT POST-MASTER'S CERTIFICATION,
25 BECAUSE THERE WAS NOBODY ELSE IN MY CLASS FROM SOUTH

1 CAROLINA.

2 AT THE HOMELESS SHELTER I DON'T DO A LOT IN THE FIELD OF
3 FORENSIC SOCIAL WORK EXCEPT ANYTHING DEALING WITH DISABILITY
4 DETERMINATION, WHEN I HAVE TO GO TO HEARINGS FOR FOLKS THAT
5 ARE TRYING TO GET SOCIAL SECURITY DISABILITY OR SUPPLEMENTAL
6 SECURITY INCOME. THAT WOULD BE FORENSIC SOCIAL WORK.

7 IN THE CASE HERE, ANY TIME I WORK WITH A -- IN A CAPITAL
8 SENTENCING CASE, THAT'S FORENSIC SOCIAL WORK. THAT'S WORKING
9 WITHIN A LEGAL SETTING AS A SOCIAL WORKER.

10 Q ALL RIGHT. I UNDERSTAND WHERE FORENSIC SOCIAL WORK
11 APPLIES AND THE SETTING THAT IT'S DONE. BUT WHAT DOES A
12 FORENSIC SOCIAL WORKER DO IN A CAPITAL SETTING LIKE THIS?

13 A OKAY. I -- IN CAPITAL SETTINGS LIKE THIS, I DO A
14 COMPLETE -- IT'S KNOWN IN A NUMBER OF TERMS -- SOCIAL
15 HISTORY, SOCIAL WORK EVALUATION, PSYCHOSOCIAL ASSESSMENT.
16 THEY ARE ALL INTERCHANGEABLE. BUT WHAT I DO IS GO FROM THE
17 POINT THE CRIME OCCURRED BACKWARDS AND LOOK AT THE PERSON'S
18 HISTORY. IT'S MORE OR LESS A BIOGRAPHY. I LOOK THROUGH THE
19 PERSON'S ENTIRE LIFE AND SEE WHAT HAPPENED TO THAT PERSON
20 THAT MADE HIM THE WAY HE WAS THE DAY THE CRIME OCCURRED. I
21 DON'T GO FROM THE CRIME FORWARD. THAT'S NOT MY ROLE. THAT'S
22 NOT THE WORK OF A FORENSIC SOCIAL WORKER. THAT'S THE WORK OF
23 SOME OTHER SPECIALIST. BUT MY PART IS FROM THE CRIME
24 BACKWARDS, LOOKING AT THE PERSON'S HISTORY, LOOKING AT WHAT
25 FACTORS INFLUENCED HIM TO BEHAVE THE WAY HE BEHAVES.

JEFF YOUNGMAN -- DIRECT BY MR. BANNISTER

1 Q ALL RIGHT. JUST TO MAKE SURE, IN ANY CASE YOU TESTIFY
2 IN AS A FORENSIC SOCIAL WORKER YOU ARE TESTIFYING ABOUT THE
3 MOMENT OF BIRTH OF THE DEFENDANT UNTIL THE DAY THAT THE
4 CRIMINAL ACT IS COMMITTED THAT YOU ARE IN COURT ABOUT?

5 A ACTUALLY, IN SOME CASES, I WILL GO EVEN FURTHER BACK
6 FROM THE MOMENT OF BIRTH, IF THERE WERE FACTORS, GENERATIONAL
7 FACTORS THAT WOULD AFFECT THE CHILD'S -- OR THE PERSON'S
8 BEHAVIOR. SO IT COULD GO FURTHER BACK, BUT IT NEVER GOES ANY
9 FURTHER FORWARD.

10 Q ALL RIGHT. AND HOW DO YOU FIND THAT INFORMATION?

11 A I REVIEW ANY RECORDS I CAN GET MY HANDS ON. I INTERVIEW
12 THE DEFENDANT. I INTERVIEW ANY OF THE DEFENDANT'S FAMILY,
13 RELATIVES, FRIENDS, ANY SOURCE OF INFORMATION I CAN TO GET AS
14 COMPLETE A PICTURE AS I CAN.

15 Q ALL RIGHT. IS THAT A PROCEDURE THAT YOU CONTINUALLY USE
16 IN COMING IN TO COURT TO TESTIFY?

17 A THAT'S A PROCEDURE ROUTINELY USED BY SOCIAL WORKERS.
18 PERIOD. IT'S SORT OF A BASIC TOOL THAT ANY SOCIAL WORKER
19 USES.

20 Q DO YOU HAVE TO HAVE SPECIAL TRAINING TO COME UP WITH
21 THIS BIOGRAPHY OR SOCIAL ASSESSMENT?

22 A IT -- YOU DO. PEOPLE THAT GO TO THE SCHOOL OF SOCIAL
23 WORK, ATTEND, GET THEIR MASTER'S DEGREE, LEARN WHAT QUESTIONS
24 TO ASK, HOW TO ASK THOSE QUESTIONS, WHAT INFORMATION TO LOOK
25 FOR AND WHAT FACTORS ARE MOST IMPORTANT IN A PERSON'S LIFE TO

JEFF YOUNGMAN -- DIRECT BY MR. BANNISTER

1 CONCENTRATE ON THOSE AREAS. SO, YEAH, IT WOULD TAKE SOMEBODY
2 WITH A SOCIAL WORK DEGREE.

3 Q HOW MANY SOCIAL ASSESSMENTS, BIOGRAPHIES, HAVE YOU DONE
4 FOR COURT PROCEEDINGS LIKE THIS?

5 A FOR JUST CAPITAL CASES?

6 Q JUST CAPITAL CASES.

7 A THIS IS THE TWENTY-FOURTH CASE I'VE WORKED ON, SO I'VE
8 DONE TWENTY-FOUR OF THEM.

9 Q SO IS THIS AN AREA OF SPECIALIZATION?

10 A I THINK IT IS, YES.

11 Q IN PERFORMING A SOCIAL ASSESSMENT IN PUTTING TOGETHER
12 INFORMATION ABOUT A DEFENDANT'S BACKGROUND AND HIS BIOGRAPHY,
13 DO YOU FIND YOURSELF DEALING WITH INCONSISTENCIES SOMETIMES?

14 A SURE. SOMEBODY -- MEMORY ALONE MAKES PEOPLE NOT
15 REMEMBER A THING AS IT HAPPENS. SO I OFTENTIMES FIND
16 INCONSISTENCIES. AND TO SORT OF GUARD AGAINST THAT THAT'S
17 WHY I REVIEW RECORDS, THAT'S WHY I INTERVIEW MULTIPLE PEOPLE,
18 SO THAT I CAN SEE WHERE THOSE INCONSISTENCIES ARE AND GO BACK
19 THEN TO THE PERSON WHO SAID IT AND TRY TO SEE IF IT WAS
20 MISINTERPRETATION ON MY PART, OR MISREMEMBERING BY THE PERSON
21 WHO TOLD ME, OR IT COULD BE JUST A DOWNRIGHT LIE.

22 Q SO YOU DON'T TAKE SOMEBODY'S WORD?

23 A NO. NO.

24 Q YOU FOLLOW UP?

25 A YES, I DO.

JEFF YOUNGMAN -- DIRECT BY MR. BANNISTER

1 Q BEFORE YOU TESTIFY TO IT YOU WILL HAVE MADE SURE THAT
2 YOU---

3 SOLICITOR ARIAIL: I'M GO TO OBJECT TO HIM LEADING,
4 YOUR HONOR.

5 THE COURT: SUSTAINED.

6 MR. BANNISTER: I'LL REPHRASE THE QUESTION, YOUR HONOR.

7 Q HOW MANY HOURS DOES IT TAKE FOR YOU TO COMPLETE AN
8 ASSESSMENT, A SOCIAL ASSESSMENT?

9 A FOR CASES LIKE THIS IT TAKES, WITH TRAVEL AND DOING
10 EVERYTHING I NEED TO DO AND FOLLOWING UP AND MAKING VARIOUS
11 ATTEMPTS TO GET RECORDS AND NUMEROUS TIMES TRYING TO
12 INTERVIEW PEOPLE, PROBABLY 30 TO 40 HOURS.

13 Q AND WHAT KIND OF -- ONCE YOU COME UP WITH AN ASSESSMENT,
14 WHAT KIND OF INSIGHTS DO YOU BRING TO THAT ASSESSMENT AS A
15 SOCIAL WORKER?

16 A WELL, SOCIAL WORKERS AS OPPOSED TO PSYCHOLOGISTS OR
17 PSYCHIATRISTS LOOK AT IT IN A MORE SYSTEMS APPROACH. WE TRY
18 TO SEE NOT ONLY WHAT THE PERSON HIMSELF WAS THINKING OR THE
19 PERSON WAS DOING BUT ALSO HOW THE OTHERS, LIKE HIS FAMILY
20 SYSTEM, HIS NEIGHBORHOOD SYSTEM, HIS SCHOOL SYSTEM,
21 ANYTHING -- IF YOU LOOKED AT CONCENTRIC CIRCLES WITH THE
22 PERSON BEING IN THE MIDDLE AND ALL THE OTHER SYSTEMS THAT
23 AFFECT AN INDIVIDUAL AROUND THAT, WE TRY TO -- I -- I THINK
24 ALL SOCIAL WORKERS, BUT I DO IN THESE CASES LOOK AT ALL THOSE
25 AND TRY TO SEE HOW ALL THOSE ITEMS COULD AFFECT SOMEBODY'S

JEFF YOUNGMAN -- DIRECT BY MR. BANNISTER

1 BEHAVIOR.

2 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT BEFORE?

3 A YES, SIR, I HAVE.

4 Q IN HOW MANY STATES?

5 A IN GEORGIA, FLORIDA AND SOUTH CAROLINA IN THESE KIND OF
6 CASES. THREE STATES.

7 Q ALL RIGHT. SPECIFICALLY HAVE YOU BEEN QUALIFIED TO
8 TESTIFY TO THIS TYPE OF INFORMATION IN CAPITAL CASES IN SOUTH
9 CAROLINA?

10 A YES, I HAVE.

11 MR. BANNISTER: JUDGE, AT THIS TIME I WOULD ASK THAT
12 MR. YOUNGMAN BE QUALIFIED AS AN EXPERT IN THE FIELD OF
13 FORENSIC SOCIAL WORK AND IN CONDUCTING PSYCHOSOCIAL
14 ASSESSMENTS.

15 THE COURT: ANY VOIR DIRE OF THE WITNESS?

16 SOLICITOR ARIAIL: JUST A COUPLE THINGS.

17 THE COURT: YES, SIR.

18 VOIR DIRE BY SOLICITOR ARIAIL:

19 Q MR. YOUNGMAN, IN THE WORK THAT YOU DO IS IT SUBJECT TO
20 PEER REVIEW?

21 A WELL, NOT IN THE CONTEXT OF OTHER -- LIKE MY REGULAR JOB
22 WHERE I WOULD -- QUALITY CONTROL, NO. THERE IS NO GOVERNING
23 BOARD OTHER THAN MY LICENSING BOARD WHICH WOULD HAVE ANY --
24 EVERY OPPORTUNITY TO REVIEW MY WORK.

25 Q AND THE LICENSING BOARD DOES NOT REVIEW YOUR WORK, THEY

JEFF YOUNGMAN -- VOIR DIRE BY SOLICITOR ARIAIL

1 JUST REVIEW YOUR QUALIFICATIONS?

2 A WELL, THEY WOULD -- THEY HAVE THE OPTION OF REVIEWING MY
3 WORK. THEY HAVE NOT.

4 Q BUT THEY DON'T REALLY REVIEW IT?

5 A NO.

6 Q THEY JUST HAVE THE OPTION?

7 A (INDICATES AFFIRMATIVE RESPONSE)

8 Q HAS -- HAVE OTHER PEOPLE IN THE FIELD REVIEWED YOUR
9 WORK?

10 MR. BANNISTER: JUDGE, I'M SORRY. COULD I ENTER -- I
11 WOULD OBJECT AT THIS POINT AS TO THE RELEVANCY OF PEER REVIEW
12 AS TO HIS PARTICULAR WORK. I THINK THE APPROPRIATE QUESTION
13 BEFORE THE COURT IS WHETHER THERE IS PEER REVIEW TO THE
14 PROCEDURES THAT HE USES TO REACH THE CONCLUSIONS THAT HE
15 REACHED. WE'RE NOT TALKING ABOUT A SCIENTIFIC TEST HERE.
16 AND SO I OBJECT TO THE WAY THAT QUESTION IS PHRASED.

17 THE COURT: WHAT KIND OF TEST ARE WE TALKING ABOUT?

18 MR. BANNISTER: WE'RE TALKING ABOUT THE PROCEDURES THAT
19 HE USES TO REACH THE CONCLUSIONS THAT HE REACHED, NOT
20 SCIENTIFIC TESTS. AND SO THE QUESTION IS, IS -- I KNOW THAT
21 WHETHER OR NOT IF PEER REVIEW FOR A PROCEDURE THAT'S USED IS
22 A PROPER QUESTION TO BE ASKED. AND WHAT HE'S ASKING IS THIS
23 PARTICULAR PERSON BEING PEER REVIEWED ON ANY INSTANCE IN
24 WHICH HE TESTIFIES IN A CAPITAL CASE.

25 THE COURT: IT HAS TO BE SCIENTIFIC TO SOME DEGREE AND

JEFF YOUNGMAN -- VOIR DIRE BY SOLICITOR ARIAIL

1 BEYOND THE NORMAL ABILITY OF THE LAY JURY IN ORDER TO ALLOW
2 OPINION TESTIMONY.

3 MR. BANNISTER: THAT IS CORRECT.

4 THE COURT: ALL RIGHT. I UNDERSTAND YOUR POSITION.

5 YOU CAN CONTINUE WITH YOUR VOIR DIRE, IF YOU WISH, SIR.

6 Q HAVE YOUR -- HAVE THE PROCEDURES OR THE PROCESS THAT YOU
7 USE BEEN THE SUBJECT OF PEER REVIEW?

8 A NO. OTHER THAN I'M A MEMBER OF THE NATIONAL
9 ORGANIZATION OF FORENSIC SOCIAL WORKERS, AND I HAVE PRESENTED
10 ONCE AT THE NATIONAL CONFERENCE ABOUT THE TECHNIQUES I USE IN
11 THESE KINDS OF CASES, AND I AM PRESENTING AGAIN THIS MAY. SO
12 I THINK THEY APPROVE OF MY WORK SINCE THEY'VE ASKED ME TO
13 PRESENT TWICE. BUT...

14 Q HAS ANYONE ELSE PRESENTED OR HAS ANYONE ELSE USED OR
15 REVIEWED THE PROCEDURES THAT YOU USE? DOES ANYONE ELSE USE
16 THEM?

17 A ANY SOCIAL WORKER WHO IS HIRED TO DO A CAPITAL SENTENCE
18 CASE DOES THE SAME SIMILAR PROCEDURE. HE DOES A PSYCHOSOCIAL
19 ASSESSMENT, YEAH. BUT THEY DON'T -- I DON'T KNOW IF THEY USE
20 MY EXACT QUESTIONS, NO.

21 SOLICITOR ARIAIL: I DON'T HAVE ANYTHING FURTHER.

22 THE COURT: I'LL PERMIT THE WITNESS TO BE QUALIFIED.

23 LADIES AND GENTLEMEN, AGAIN, WITH MY EARLIER
24 INSTRUCTION, WHEN AN EXPERT GIVES TESTIMONY IN THE FORM OF
25 OPINIONS, YOU MAY ACCEPT IT OR REJECT IT BASED ON YOUR VIEW

JEFF YOUNGMAN -- VOIR DIRE BY SOLICITOR ARIAIL

1 OF THE EVIDENCE. YOU MAY PROCEED, MR. BANNISTER.

2 MR. BANNISTER: THANK YOU, YOUR HONOR.

3 DIRECT CONTINUES BY MR. BANNISTER:

4 Q MR. YOUNGMAN, LET'S GET STRAIGHT TO THE POINT. WHAT
5 CONCLUSION HAVE YOU REACHED AS A RESULT OF THE BIOGRAPHY YOU
6 PUT TOGETHER OF JOHN WOOD AND THE SOCIAL ASSESSMENT OF HIS
7 LIFE?

8 A I RECEIVED -- I CAME TO FOUR CONCLUSIONS. ONE, THAT
9 THERE IS EVIDENCE THAT JOHN WOOD'S SOCIAL AND EMOTIONAL
10 FUNCTIONING AS AN ADULT WAS AFFECTED BY HIS FAMILY
11 DYSFUNCTION, THAT THERE IS EVIDENCE THAT JOHN WOOD'S SOCIAL
12 ENVIRONMENT PLAYED AN ADVERSE ROLE IN HIS LEVEL OF SOCIAL AND
13 EMOTIONAL FUNCTIONING, THERE IS EVIDENCE THAT JOHN WOOD'S
14 BEHAVIOR IS CONSISTENT WITH THAT OF SOMEONE SUFFERING FROM
15 MENTAL ILLNESS, AND THERE IS EVIDENCE THAT JOHN RICHARD WOOD
16 HAS A SIGNIFICANT HISTORY OF PRIOR CRIMINAL -- HAS NO
17 SIGNIFICANT HISTORY OF PRIOR CRIMINAL CONVICTIONS INVOLVING
18 VIOLENCE AGAINST ANOTHER PERSON.

19 Q ALL RIGHT. MR. YOUNGMAN, AS I UNDERSTAND IT, HAVE YOU
20 PREPARED A SUMMARY OF WHAT HAS LED YOU TO THESE CONCLUSIONS?

21 A YES, I HAVE.

22 Q ALL RIGHT. LET ME ASK YOU IF DEFENDANT'S EXHIBIT 11 AND
23 12 ARE IN ESSENCE THE SUMMARY THAT YOU HAVE PREPARED OF WHAT
24 LED YOU TO REACH YOUR CONCLUSIONS?

25 A YES, THEY ARE.

JEFF YOUNGMAN -- DIRECT CONTINUES BY MR. BANNISTER

1 Q ALL RIGHT.

2 MR. BANNISTER: JUDGE, IF I CAN SHOW THE SOLICITOR.
3 (SOLICITOR ARIAIL REVIEWS DOCUMENTS)

4 SOLICITOR ARIAIL: CAN WE HAVE A SIDEBAR?

5 THE COURT: YES, SIR.

6 (BENCH CONFERENCE OFF RECORD FROM 2:55 TO 2:56 P.M.)

7 MR. BANNISTER: JUDGE, WITH YOUR PERMISSION, I'M GOING
8 TO PUT THESE EXHIBITS UP AS DEMONSTRATIVE EVIDENCE TO AID THE
9 JURY AS HE GOES THROUGH HIS TESTIMONY.

10 THE COURT: VERY GOOD. AND THEY WILL JUST BE TREATED
11 FOR IDENTIFICATION AS A DEMONSTRATIVE AIDE.

12 MR. BANNISTER: THAT'S FINE.

13 Q ALL RIGHT. MR. YOUNGMAN, DO YOU HAVE A COPY OF WHAT IS
14 BEING SHOWN TO THE JURY AS DEFENDANT'S EXHIBIT 11 AND 12 IN
15 FRONT OF YOU?

16 A YES, I DO.

17 Q AND IF YOU WOULD, CAN YOU -- IT HAS SEVERAL COLUMNS.
18 WILL YOU JUST TELL US WHAT EACH OF THOSE COLUMNS REPRESENT
19 AND JUST RUN THROUGH IT?

20 A SURE. WELL, LET ME GO BACK. DEVELOPMENTAL THEORISTS
21 SUCH AS SIGMUND FREUD, ERIC ERICSON, PIAGET, ALL HAVE OVER
22 TIME TALKED ABOUT MILESTONES THAT CHILDREN NEED TO REACH AS
23 THEY GO THROUGH THEIR CHILDHOOD IN ORDER TO BECOME A
24 SUCCESSFUL HUMAN BEING, SUCCESSFUL ADULT. WHAT I DID WAS
25 TAKE WHAT THE -- SORT OF THE COGNITIVE THEORY OF PIAGET AND

JEFF YOUNGMAN -- DIRECT CONTINUES BY MR. BANNISTER

1 THE PSYCHOANALYTICAL THEORY OF FREUD AND THE DEVELOPMENTAL
2 IDENTITY THEORY OF ERICSON AND COME UP WITH WHAT I TERM AS
3 CRITICAL FACTORS IN THE POSITIVE DEVELOPMENT OF THE CHILD.

4 IF YOU LOOK IN THE FIRST COLUMN, THERE IS FOUR PRE-BIRTH
5 FACTORS AND TWELVE POST-BIRTH FACTORS. THESE ARE ALL THINGS
6 THAT YOU WOULD EXPECT TO SEE IN A CHILD WHO DEVELOPS NORMALLY
7 AND DEVELOPS AS A REASONABLY HEALTHY INDIVIDUAL, AS AN ADULT.
8 THERE'S THE FOUR PRE-BIRTH ONES OF LACK OF ALCOHOL OR DRUG
9 USE, PROPER PRENATAL CARE, WANTED BABY, NO PHYSICAL.EMOTIONAL
10 TRAUMA TO THE MOTHER OR CHILD DURING PREGNANCY. AND THEN AS
11 THE JURY CAN SEE, THE TWELVE POST-BIRTH FACTORS, EVERYTHING
12 FROM ADEQUATE FOOD, SHELTER AND CLOTHING TO SAFE AND SECURE
13 ENVIRONMENT, POSITIVE ROLE MODELS, MENTAL EMOTIONAL STABLE
14 CAREGIVERS. ALL OF THESE THINGS ARE -- SHOULD -- A CHILD IN
15 ORDER TO DEVELOP NORMALLY AND HEALTHY SHOULD HAVE ALL OF
16 THESE IN HIS OR HER LIFE.

17 THE SECOND COLUMN SHOWS WHAT CAN HAPPEN -- WHAT SHOULD
18 HAPPEN -- WHAT WOULD BE THE POSITIVE IMPACT IF THESE THINGS
19 EXISTED. FOR THE FIRST FOUR, FOR THE PRE-BIRTH ONES, THE
20 BABY'S HEALTH AND WELL BEING ARE PROTECTED, AND YOU CAN GO
21 ACROSS, ADEQUATE FOOD, SHELTER AND CLOTHING, CHILD IS FREE TO
22 GROW AND DEVELOP BECAUSE THEY DON'T HAVE TO WORRY ABOUT
23 SURVIVAL. THAT'S TAKEN CARE OF BY THE PARENTS. POSITIVE
24 ROLE MODELS, THE CHILD DEVELOPS A HEALTHY ACCEPTABLE RESPONSE
25 TO BEHAVIORS THAT -- IT SORT OF -- IF THIS -- IF COLUMN "A"

JEFF YOUNGMAN -- DIRECT CONTINUES BY MR. BANNISTER

1 OCCURS, COLUMN "B" SHOULD HAPPEN IS WHAT THE FIRST TWO
2 COLUMNS SAY.

3 Q ALL RIGHT. THAT'S BASICALLY DEFENDANT'S EXHIBIT 11, THE
4 POSTER ON THE LEFT. WHAT ARE THE TWO COLUMNS ON THE FAR
5 RIGHT IN EXHIBIT 12?

6 A OKAY. THE THIRD COLUMN IS WHAT FROM MY PSYCHOSOCIAL
7 ASSESSMENT I FOUND TO EXIST OR NOT EXIST IN JOHN WOOD'S LIFE
8 WHILE HE GREW UP. AND THEN THE FOURTH COLUMN IS THE NEGATIVE
9 IMPACT ON HIS LIFE BECAUSE THOSE THINGS DIDN'T EXIST. AND I
10 CAN GO THROUGH EVERY ONE OF THOSE IF YOU'D LIKE ME TO.

11 Q BEFORE YOU DO THAT, I HAVE A QUESTION. WHERE IT SAYS IN
12 THE THIRD COLUMN, "PRESENT IN JOHN WOOD'S LIFE," YOU GOT THAT
13 FROM -- OR TELL ME, DID YOU GET THAT FROM THE BIOGRAPHY THAT
14 YOU DEVELOPED THROUGH YOUR SOCIAL ASSESSMENT?

15 A I GOT THAT FROM REVIEWING THE RECORDS THAT I SAW,
16 FEDERAL RECORDS, ALL THE RECORDS FROM THE INCIDENT THAT
17 OCCURRED ON DECEMBER 6TH. I GOT IT FROM TALKING TO JOHN. I
18 GOT IT FROM TALKING TO HIS GIRLFRIEND, KAREN MCCALL. I GOT
19 IT FROM TALKING TO HIS SISTER, BETSY -- OR ELIZABETH. I GOT
20 SOME INFORMATION FROM HIS MOTHER.

21 Q ALL RIGHT. SO WHEN YOU TALKED PREVIOUSLY ABOUT TRAVEL
22 AND FOLLOW UP, THAT'S WHAT YOU'RE TALKING ABOUT IS THESE
23 INTERVIEWS AND THIS INFORMATION GATHERING THAT YOU WENT
24 THROUGH?

25 A YES, SIR.

JEFF YOUNGMAN -- DIRECT CONTINUES BY MR. BANNISTER

1 Q ALL RIGHT. AGAIN, JUST TALKING ABOUT THIS THIRD COLUMN
2 AND WHERE YOU SAY "PRESENT IN JOHN WOOD'S LIFE" AND VARIOUS
3 EITHER UNKNOWN, YES OR NO, WHAT LED YOU TO THOSE CONCLUSIONS?

4 A OKAY.

5 Q YOU FOUND THOSE IN HIS BIOGRAPHY?

6 A UH-HUH (AFFIRMATIVE). WELL, THE UNKNOWNNS WERE JUST
7 THAT. I RECEIVED NO INFORMATION THAT WOULD ALLOW ME TO MAKE
8 A DETERMINATION WHETHER THAT FACTOR -- CRITICAL FACTOR WAS OR
9 WAS NOT EXISTENT IN HIS LIFE. SO IF I DIDN'T KNOW, THAT'S
10 THE ANSWER FOR THE UNKNOWNNS.

11 THE NUMBER ONE, THE ADEQUATE FOOD, CLOTHING AND SHELTER,
12 FROM EVERYTHING I KNOW ABOUT MR. WOOD, HE DID HAVE THAT
13 GROWING UP. HE ALWAYS HAD A PLACE TO STAY. HE ALWAYS HAD
14 FOOD TO EAT. HE ALWAYS HAD CLOTHES ON HIS BACK.

15 Q ALL RIGHT. THEN LET'S GO THROUGH COMPARING COLUMN ONE
16 AND COLUMN THREE AND THEN WHAT RESULT YOU REACH IN COLUMN --
17 WELL, I GUESS I SHOULD ASK YOU, WHAT IS COLUMN FOUR?

18 A COLUMN FOUR IS THE NEGATIVE IMPACT, WHAT HAPPENED TO
19 JOHN WOOD BECAUSE THESE FACTORS DID NOT EXIST IN HIS LIFE.

20 Q ALL RIGHT. SO LET'S TAKE ONE, THREE AND FOUR AND PUT
21 THEM TOGETHER ONE AT A TIME AS YOU GO DOWN.

22 A OKAY. SURE. NUMBER -- IT WOULD BE THE THIRD ONE DOWN,
23 AFFECTION, NURTURING AND CARE, WHICH WOULD NORMALLY LEAD TO
24 SOMEBODY IS CARING AND SENSITIVE OF OTHERS AND MOSTLY
25 ATTACHED. FROM EVERYTHING I FOUND, ALTHOUGH JOHN DESCRIBED

JEFF YOUNGMAN -- DIRECT CONTINUES BY MR. BANNISTER

1 HIS RELATIONSHIP WITH HIS FAMILY, APPARENTLY FROM THE
2 INFORMATION I GOT, THE MOTHER WAS VERY DOMINEERING, VERY OVER
3 CONTROLLING AND SOMEWHAT COLD, AND SO THE NURTURING DID NOT
4 APPEAR TO BE THERE. AS A RESULT OF HIM NOT BEING NURTURED OR
5 NOT RECEIVING THE AMOUNT OF NURTURING THAT A CHILD IS
6 EXPECTED TO RECEIVE, HE BECAME EMOTIONALLY DETACHED AND HE
7 WAS UNABLE TO FORM RELATIONSHIPS AND AN ABILITY TO SHOW
8 AFFECTION. I THINK THAT BEARS OUT BY THE FACT THAT HE IS 33
9 YEARS OLD AND HE COULDN'T GIVE ME THE NAME OF ONE PERSON TO
10 INTERVIEW THAT WAS A FRIEND BECAUSE HE SAID HE HAD NO FRIENDS
11 IN HIS 33 YEARS GROWING UP.

12 Q ALL RIGHT. WAS THAT -- WELL, I'LL GET TO THAT. GO TO
13 THE NEXT ONE.

14 A OKAY. THE NEXT ONE IS A NONVIOLENT ENVIRONMENT. THAT
15 WAS AN UNKNOWN. I DIDN'T GET INFORMATION ONE WAY OR THE
16 OTHER.

17 THE NEXT ONE IS SAFE AND SECURE. THAT WOULD NORMALLY
18 FIND SOMEBODY TO BE GENEROUS, TRUSTING, LESS FEARFUL. IN
19 JOHN'S CASE BOTH HE AND HIS SISTER TOLD ME THAT HIS MOTHER
20 HAD AN EXTREMELY BAD TEMPER, THAT SHE WOULD REACT OUT OF
21 ANGER WHEN SHE PUNISHED THE CHILDREN RATHER THAN OUT OF
22 MAKING AN APPROPRIATE PUNISHMENT FOR THE ACTIONS THEY DID.
23 SO THEY DIDN'T KNOW WHAT KIND OF PUNISHMENT WAS GOING TO BE
24 METED OUT FOR ANY PARTICULAR OFFENSE. AS A RESULT, HE BECAME
25 UNTRUSTING, AFRAID AND SURVIVAL ORIENTED. ANYBODY -- ANY

JEFF YOUNGMAN -- DIRECT CONTINUES BY MR. BANNISTER

1 CHILD WHO DOESN'T KNOW WHAT IS EXPECTED OF HIM, DOESN'T KNOW
2 WHAT BEHAVIORS WILL ELICIT A CERTAIN RESPONSE, BECOMES
3 UNTRUSTING.

4 THE NEXT ONE, CONSISTENT ENVIRONMENT. THAT GIVES YOU A
5 SENSE OF FAMILY BELONGING. YOU FEEL SECURE. YOU ESTABLISH
6 RELATIONSHIPS. AS HAS ALREADY BEEN POINTED OUT THAT JOHN IN
7 HIS FIRST 18 YEARS MOVED 23 TIMES, WHICH WOULD LEND SOMEBODY
8 TO FEEL VERY INSECURE SINCE THEY DON'T KNOW WHERE THEY ARE.
9 LIVING FROM ONE MINUTE TO THE NEXT. IT ALSO BORE OUT IN HIS
10 EDUCATION THE FACT THAT HE HAD MULTIPLE EDUCATIONS. HE WAS
11 HOME SCHOOLED. HE WAS IN PRIVATE SCHOOL. AND AS MENTIONED,
12 HE SPENT THE FIRST AND SECOND GRADE HERE AT THE BOB JONES
13 ACADEMY HERE IN GREENVILLE.

14 Q DID HE EVER HAVE TO REPEAT ANY GRADES?

15 A HE REPEATED -- WELL, ANYBODY THAT'S GOING TO MOVE
16 SCHOOLS IS FREQUENTLY MOVED AS OFTEN AS MR. WOOD DID AND
17 CHANGE SCHOOLS AS FREQUENTLY AS HE DID AND HAVE HOME
18 SCHOOLING, ANYBODY WOULD FALL BEHIND. HE WAS HELD BACK THREE
19 TIMES, AND THEN ENDED UP TAKING A CORRESPONDENCE COURSE TO
20 FINISH HIS HIGH SCHOOL.

21 THE NEXT ONE, CONSISTENT ENVIRONMENT. THAT'S A SENSE OF
22 -- OH, EXCUSE ME, WRONG ONE. FAIR TREATMENT. THAT'S
23 LEARNING TO BE FAIR AND JUST, COMPASSIONATE, TRUSTING OTHERS.
24 IN THIS CASE, AS I MENTIONED, MOTHER WAS VERY STRICT WITH THE
25 CHILDREN, DOMINEERING, BAD TEMPER. SHE ALSO COMMITTED CRIMES

1 IN THE PRESENCE OF HER CHILDREN. SHE SHOPLIFTED. BOTH
2 CHILDREN REPORTED -- BOTH JOHN AND HIS SISTER REPORTED THAT.
3 SO THE FAMILY HAD A VERY STRONG RELIGIOUS BENT TO THEM. THE
4 FATHER WAS A BAPTIST MINISTER. SO THERE WAS THIS THOU SHALL
5 NOT STEAL THAT WENT THROUGH THE FAMILY. BUT THEN ON THE
6 OTHER HAND THEY SAW THEIR OWN MOTHER STEALING. SO THERE WAS
7 SORT OF A MIXED MESSAGE THERE, AND THAT KIND OF INCONSISTENCY
8 IS HARD FOR A CHILD TO DEAL WITH. THEY NEED TO HAVE A CLEAR
9 MESSAGE OF WHAT IS EXPECTED OF THEM AND WHAT THEY ARE
10 SUPPOSED TO DO AND NOT SUPPOSED TO DO. THEY CAN'T BE TOLD
11 ONE THING AND THEN -- KIDS LEARN FROM THEIR PARENTS, THEIR
12 BEHAVIOR MORE THAN WHAT PARENTS SAY TO THEM. SO IF THEY SEE
13 THEIR MOTHER DOING ONE THING AND SAYING ANOTHER, THEY'RE, YOU
14 KNOW, NOT ONLY CONFUSED BUT THEY DON'T UNDERSTAND AND THEY
15 MORE LIKELY EMULATE THE BEHAVIOR RATHER THAN THE VERBAL.

16 SO AS A RESULT JOHN HAD A CONFUSED SENSE OF FAIRNESS.
17 HE WAS UNTRUSTING OF SELF AND OTHERS. HE IS VERY GUARDED.
18 HE IS ALSO -- GO BACK TO BEING TREATED DIFFERENTLY FROM HIS
19 SISTERS IN THAT HE WAS -- HE DESCRIBED IT -- THEY BOTH
20 DESCRIBED IT AS HE WAS HIS MOTHER'S BEST FRIEND, THAT THERE
21 WAS SOME DYSFUNCTION IN THE FAMILY BETWEEN THE MOM AND THE
22 DAD AND THAT JOHN SORT OF TOOK THE PLACE OF THE DAD WITH THE
23 MOM AND, I SAID, WAS, IN QUOTES, HER BEST FRIEND.

24 POSITIVE ROLE MODELS. AGAIN, THAT WOULD LEAD TO
25 SOMEBODY WHO WOULD DEVELOP A HEALTHY ACCEPTABLE RESPONSE AND

1 BEHAVIORS. AND IN THIS CASE, AGAIN, TALKING ABOUT THE
2 DYSFUNCTIONAL FAMILY, THE RELATION BETWEEN HER AND HER
3 HUSBAND AND MOM'S CRIMINAL BEHAVIOR -- I THINK I JUST
4 ENTRANCE OVER THAT.

5 ACCEPTED, VALUED AND REASONABLE EXPECTATIONS. AGAIN, AS
6 I TALKED ABOUT, MOTHER WAS VERY CONTROLLING AND DOMINEERING.
7 IN THE FIRST 33 YEARS OF JOHN'S LIFE, FROM ALL REPORTS, HE
8 HAD NO RELATIONSHIPS WITH ANYBODY, MALE OR FEMALE. HE HAD NO
9 GIRLFRIENDS. HE WAS AT HOME WITH HIS MOM. IN FACT,
10 CERTAINLY WHEN HE GOT IN TROUBLE IN FLORIDA AND WAS ARRESTED
11 AND SPENT THREE YEARS IN FEDERAL PRISON FOR SOME CHECK FRAUD
12 SCHEME, ALTHOUGH JOHN TOOK THE FALL, HE WAS THE ONE THAT GOT
13 THE HARSHTEST SENTENCE, EVERYONE I TALKED TO BELIEVED THAT THE
14 MOTHER WAS THE BRAINS BEHIND THIS PLAN AND THAT JOHN TOOK
15 THAT SENTENCE TO LET HIS MOTHER HAVE A LIGHTER SENTENCE THAN
16 HE WOULD HAVE.

17 Q DID ANYBODY ELSE IN THE FAMILY PARTICIPATE IN THAT?

18 A HIS SISTER AS WELL. HIS SISTER LIVES WITH -- BETSY
19 PARTICIPATED IN THAT PLAN AS WELL. JOHN -- NOT JOHN, KAREN
20 SAID THAT, WHEN I INTERVIEWED MS. MCALL, SAID THAT SHE
21 BELIEVED THAT THE ONLY REASON SHE AND JOHN BECAME A COUPLE IS
22 BECAUSE JOHN'S MOTHER WAS AWARE THAT SHE HAD A SIZEABLE
23 INHERITANCE, THAT SHE WAS -- SHE GOT JOHN TO GET CLOSE TO
24 KAREN IN ORDER TO GET THAT INHERITANCE AWAY FROM HER.
25 ALTHOUGH, IN THIS CASE, THE PLAN BACKFIRED BECAUSE JOHN AND

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1 KAREN THEN FELL IN LOVE. AND REPORTEDLY MS. WOOD WAS VERY
2 ANGRY AND UPSET WHEN JOHN MOVED OUT CALAVERAS, FLORIDA, AND
3 WENT TO -- HE WAS PLANNING TO LEAVE THE COUNTRY WITH KAREN.

4 Q SO THE RELATIONSHIP BETWEEN KAREN AND JOHN WAS INITIATED
5 BY THE MOTHER FOR ULTERIOR MOTIVES?

6 A THAT'S THE REPORTS I HAVE RECEIVED, YES.

7 OKAY. BALANCED VALUES AND PRIORITIES TAUGHT. YOU KNOW,
8 I MENTION THAT CRIMINAL BEHAVIOR VERSUS HER RELIGIOUSNESS AND
9 THE FACT THAT THAT'S A DOUBLE MESSAGE. AND AGAIN, THE
10 RELATIONSHIP BETWEEN THE MOM AND THE DAD. MOM SORT OF -- THE
11 FACT THAT THEY WERE REPORTEDLY DIVORCED FOR SIX YEARS -- THE
12 FEDERAL RECORDS SHOW THAT THEY WERE AT LEAST SEPARATED FOR
13 SIX YEARS OVER THE COURSE OF THEIR MARRIAGE, AND IT CERTAINLY
14 WASN'T A MODEL RELATIONSHIP FROM EVERYBODY'S REPORTS. AND
15 THAT WOULD LEAD TO SOME IDENTITY DISTORTION AND APPROPRIATE
16 RESPONSES.

17 JOHN HAD NO SENSE OF PURPOSE OR DIRECTION, AND THAT'S
18 BORNE OUT IN HIS WORK HISTORY. HE WORKED MAYBE EIGHT, TEN
19 DIFFERENT OCCUPATIONS, INCLUDING A TRASH TRUCK DRIVER, A
20 COOK, A TENNIS BALL MAKER, AN AIRPORT LIMO DRIVER, A COMPUTER
21 STORE OWNER. HE HAD A LOT OF THINGS HE WANTED TO DO AND A
22 LOT OF THINGS HE TRIED, BUT FROM EVERYTHING I'VE GOTTEN HE
23 DIDN'T HAVE -- HE HAD A LOT OF GRAND PLANS WITH NO ABILITY TO
24 FOLLOW THROUGH. HE THOUGHT THIS WAS WHAT HE WAS GOING TO DO,
25 THIS WAS WHAT HE WAS GOING TO BE SUCCESSFUL WITH AND NOTHING

1 SEEMED TO BE ABLE TO COME TO FRUITION WITH HIM. HE NEVER HAS
2 CARRIED ANYTHING THROUGH. LIKE IN DECEMBER OF 2000, HIS PLAN
3 WAS TO GO TO BELIZE AND BUILD HOUSES. THAT WAS HIS NEW GRAND
4 PLAN, AND THAT'S WHAT HE WANTED TO DO, AND HE THOUGHT HE WAS
5 GOING TO ACCOMPLISH THAT WITH HIS GIRLFRIEND, KAREN.

6 Q HOW FAR HAD HE GOTTEN ALONG IN THAT PLAN?

7 A AT -- IN DECEMBER OF 2000, HE HAD LEFT FLORIDA. HE AND
8 KAREN HAD GONE TO ALABAMA TO SAY GOODBYE TO HER FAMILY, AND
9 THEY WERE IN SOUTH CAROLINA TO SAY GOODBYE TO HIS FAMILY, AND
10 THEN THE PLAN WAS TO LEAVE AND GO TO BELIZE. SO THIS SEEMED
11 TO BE, FROM ALL REPORTS, THE CLOSEST HE HAS GOTTEN TO
12 FULFILLING A PLAN OF HIS.

13 INDEPENDENCE ENCOURAGED. MAKES PERSON FEEL SELF-
14 CONFIDENT, SELF-DIRECTED, GOOD JUDGMENT AND GOOD
15 DECISIONMAKER. AND AS I SAID NUMEROUS TIMES, THE MOTHER WAS
16 VERY CONTROLLING. SHE HELD THE REINS TIGHT OVER JOHN. AS A
17 RESULT, HE HAS LIMITED -- IN TERMS OF SKILLS AND RESOURCES,
18 HIS JUDGMENT IS POOR AND HIS DECISION MAKING IS POOR. IN
19 FACT, AS I MENTIONED, THE ONE THING HE SEEMED TO SUCCEED WITH
20 FOR A WHILE, THE CHECK FRAUD THING, WAS REALLY SPEARHEADED BY
21 HIS MOTHER. HE DIDN'T -- HE WASN'T THE ONE IN CHARGE OF
22 THAT. APPARENTLY, SHE WAS.

23 AND THE LAST ONE, THE EMOTIONAL AND MENTALLY STABLE
24 CAREGIVERS. OBVIOUSLY, THAT'S A VITAL COMPONENT OF ANY
25 CHILD'S LIFE. THEY HAVE TO HAVE EMOTIONALLY AND MENTALLY

1 STABLE CAREGIVERS. IN JOHN'S CASE, HIS FATHER HAS BEEN
2 DIAGNOSED WITH DEPRESSION. HE HAS THREATENED SUICIDE
3 NUMEROUS TIMES. HE IS ON MEDICATION. HIS OLDER SISTER --
4 HIS MIDDLE SISTER CONNIE IS DIAGNOSED WITH DEPRESSION. SHE
5 IS ALSO ON MEDICATION. HIS MOTHER, DEPENDING ON WHO YOU TALK
6 TO, HAS BEEN DESCRIBED AS PARANOID, WHACKO, OR JUST PLAIN
7 CRAZY WAS ONE QUOTE.

8 WITH ALL THAT GOING ON, JOHN CERTAINLY WAS AT RISK TO
9 DEVELOP EMOTIONAL AND MENTAL DISORDERS. AND AS I SAID, MY
10 THIRD CONCLUSION WAS THE FACT THAT THERE IS EVIDENCE THAT HE
11 SUFFERED FROM MENTAL ILLNESS. HE CERTAINLY -- I DON'T THINK
12 THERE'S ANY DOUBT HE SUFFERS FROM SOME PARANOID PERSONALITY
13 DISORDER. I WAS GIVEN NUMEROUS STORIES OF HIS BEHAVIOR, HIS
14 PARANOID BEHAVIOR. ON ONE OCCASION THEY WERE -- HE HAD JUST
15 ORDERED LUNCH AT -- OR DINNER AT A STEAK AND SHAKE WHEN TWO
16 POLICE OFFICERS CAME IN. HE GOT UP AND WALKED OUT. HE
17 COULDN'T BE THERE WITH THE POLICE OFFICERS. HE REFUSED TO GO
18 INTO ANY KIND OF LIKE A WAL-MART OR A SUPERMARKET, ANYTHING
19 IF THERE WAS A POLICE OFFICER ON DUTY. AND ONE---

20 SOLICITOR ARIAIL: YOUR HONOR, I'M GOING TO OBJECT TO
21 ALL OF THIS HEARSAY AT THIS POINT, TALKING ABOUT WHAT OTHER
22 PEOPLE HAVE TOLD HIM.

23 THE COURT: IF YOU CAN LAY THE FOUNDATION THAT HE
24 RELIED ON IT IN FORMING HIS OPINION AND IF IT IS REASONABLE
25 WITHIN THE CONFINES OF HIS PROFESSION TO RELY ON SUCH

1 INFORMATION IN REACHING AN OPINION.

2 MR. BANNISTER: THANK YOU, JUDGE.

3 Q MR. YOUNGMAN, DO YOU RELY ON INFORMATION YOU RECEIVE
4 FROM OTHERS IN REACHING YOUR CONCLUSIONS?

5 A THAT'S THE ONLY WAY I CAN DO IT. I AM NOT THERE AT THE
6 TIME THE EVENTS OCCUR. YES.

7 Q ALL RIGHT. ARE YOU SATISFIED WITH THE INFORMATION THAT
8 -- WELL, IS THE INFORMATION REGARDING HIS PARANOIA, IS THAT
9 BASED ON WHAT YOU'RE TELLING US HERE TODAY ABOUT THE INCIDENT
10 WITH THE STEAK AND SHAKE AND THE OTHER INCIDENTS?

11 A THAT AND OTHER INFORMATION I RECEIVED FROM HIS FAMILY,
12 YES.

13 Q ARE YOU SATISFIED WITH THE RELIABILITY OF THOSE REPORTS?

14 A IT WAS CONSISTENT. SURE. SO...

15 Q ALL RIGHT. SO IF YOU WILL, LET'S GO BACK AGAIN, YOU
16 WERE TELLING US ABOUT STEAK AND SHAKE. WHAT WAS THE OTHER
17 INCIDENT THAT YOU WERE REFERRING TO?

18 A I WAS REFERRING TO THE FACT THAT HE WON'T GO INTO WAL-
19 MART, SUPERMARKETS IF THERE IS A POLICE OFFICER ON DUTY. AT
20 ONE TIME MS. MCCALL REPORTED THAT THEY WERE AT A MOBILE HOME
21 PARK. HE WAS WORKING ON A BOAT. A POLICE CAR PULLED IN, AND
22 HE IMMEDIATELY RAN INTO A TRAILER AND HID IN A BACK ROOM FOR
23 A PERIOD OF TIME. EVEN IT GOES BEYOND POLICE OFFICERS, JUST
24 PEOPLE IN GENERAL. MS. MCCALL AND HIS SISTER WOULD TELL ME
25 THAT MOVIES, HE WOULDN'T GO TO A MOVIE UNLESS HE WENT TO THE

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1 LATE SHOW AND WOULD SIT IN THE CAR UNTIL THERE WAS NO LINE AT
2 THE THEATRE BEFORE HE WOULD GO GET IN LINE TO GET HIS TICKET
3 TO THE MOVIES. SO THESE KIND OF THINGS WOULD CERTAINLY, YOU
4 KNOW -- TIME AND TIME AGAIN HE PRESENTED AS SOMEBODY WHO
5 ASSUMED OTHER PEOPLE WERE OUT TO GET HIM, OUT TO EXPLOIT HIM
6 OR FOLLOWING HIM OR WHATEVER SO THAT EVEN WHEN THERE WAS NO
7 EVIDENCE FOR HIM THAT THAT ACTUALLY EXISTED, WHICH WOULD
8 CERTAINLY LEAD SOMEBODY TO BELIEVE THAT -- ANYBODY IN THE
9 MENTAL HEALTH PROFESSION TO BELIEVE THAT THERE WOULD BE A --
10 THAT HE WOULD HAVE A PERSONALITY DISORDER, PARANOID
11 PERSONALITY DISORDER.

12 Q ALL RIGHT. WERE ANY OF THE PIECES OF INFORMATION YOU
13 GATHERED FROM HIS BIOGRAPHY INCONSISTENT WITH THE CONCLUSIONS
14 THAT YOU REACHED REGARDING THE FACT THAT HE WAS -- THAT HIS
15 SOCIAL AND EMOTIONAL FUNCTIONING WAS AFFECTED BY HIS FAMILY
16 DYSFUNCTION, THAT HIS ENVIRONMENT PLAYED AN ADVERSE ROLE IN
17 HIS SOCIAL AND EMOTIONAL FUNCTION AND THAT HIS BEHAVIOR IS
18 CONSISTENT WITH THAT OF SOMEONE SUFFERING FROM A MENTAL
19 ILLNESS?

20 A NO. THE INFORMATION WAS THERE. I WOULDN'T HAVE COME TO
21 THESE CONCLUSIONS OTHERWISE. IN FACT, THE THIRD ONE, I
22 DIDN'T EVEN TOUCH ON THE FACT THAT JOHN TOLD ME HIS SISTER
23 AND HIS -- AND MS. MCCALL TOLD ME THAT HE -- GOD TALKS TO
24 HIM. HE SAYS GOD TALKS TO HIM AND TELLS HIM WHAT TO DO AND
25 WHAT NOT TO DO, AND THAT GOD INSTRUCTED HIM TO GO TO BELIZE

1 AND TO MAKE BELIZE A BETTER LAND THAN AMERICA FOR THE PEOPLE
2 OF BELIZE. THAT WAS WHAT HE THOUGHT. NOW, WHETHER, YOU KNOW
3 -- WHETHER THIS WAS JUST PERCEIVED BY HIM, A DELUSION BY HIM
4 OR WHAT, I DON'T KNOW. THAT'S NOT MY AREA. ALL I DO KNOW IS
5 THAT THAT'S WHAT HE BELIEVED, THAT GOD WAS TALKING TO HIM AND
6 THAT HE WAS GOING TO GO TO BELIZE AND HELP THE PEOPLE OF
7 BELIZE AND HE WAS GOING TO GO BUILD HOUSES IN BELIZE. HE
8 ALSO TOLD ME GOD TOLD HIM -- YOU KNOW, THAT HE HAD BATTLES
9 WITH GOD BECAUSE SOMETIMES HE WOULD DO THINGS THAT GOD DIDN'T
10 WANT, LIKE THE WAL-MART CHECK FRAUD, IN WHICH CASE HE TOLD ME
11 THAT GOD TOLD HIM THAT HE WAS ARRESTED BECAUSE THAT WAS
12 PUNISHMENT FOR DOING SOMETHING GOD DIDN'T WANT HIM TO DO.

13 Q ALL RIGHT. AS I UNDERSTAND IT THEN, EXHIBITS 11 AND 12,
14 THOSE ARE THE INGREDIENTS FOR YOUR CONCLUSIONS REGARDING YOUR
15 FIRST THREE CONCLUSIONS?

16 A FIRST THREE, YES, NOT THE FOURTH ONE.

17 Q ALL RIGHT. WHAT WAS YOUR LAST CONCLUSION?

18 A MY LAST CONCLUSION WAS THAT THERE WAS NO EVIDENCE THAT
19 JOHN WOOD HAD A SIGNIFICANT HISTORY OF PRIOR CRIMINAL
20 CONVICTIONS INVOLVING VIOLENCE AGAINST ANOTHER PERSON.
21 EVERYBODY I TALKED TO, NOBODY COULD TELL ME AN INCIDENT WHERE
22 JOHN WAS VIOLENT EITHER CRIMINALLY OR NONCRIMINALLY. AND
23 CERTAINLY A REVIEW OF ALL THE FEDERAL RECORDS I'VE LOOKED AT,
24 THEY SHOW A NUMBER OF ARRESTS, SURE, BUT NO ARRESTS THAT
25 INCLUDE VIOLENCE AGAINST ANOTHER PERSON.

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1 Q WOULD IT BE FAIR TO SAY THEN THAT UNTIL DECEMBER 6TH,
2 2000, JOHN WOOD DID NOT CAUSE PHYSICAL HARM TO ANOTHER
3 PERSON?

4 A TO THE BEST OF MY KNOWLEDGE FROM THE INFORMATION I HAVE
5 RECEIVED, THAT WOULD BE TRUE, YES.

6 MR. BANNISTER: THANK YOU. NO FURTHER QUESTIONS.

7 CROSS EXAMINATION BY SOLICITOR ARIAIL:

8 Q MR. YOUNGMAN, SO I CAN SEE YOU, I'LL MOVE THESE. I JUST
9 HAVE A COUPLE QUESTIONS. DO YOU HAVE A WRITTEN REPORT?

10 A NO, I USUALLY DON'T DO A WRITTEN REPORT. I DO A SUMMARY
11 FOR MY NOTES HERE SO I CAN TESTIFY. BUT I DON'T NORMALLY DO
12 A WRITTEN REPORT.

13 Q IS THAT A STANDARD PROCEDURE RECOMMENDED BY THE GROUP
14 THAT OVERSEES YOU OR IS THAT SOMETHING THAT YOU DEVELOPED ON
15 YOUR OWN?

16 A I'LL DO A WRITTEN REPORT IF SOMEBODY ASKS ME TO DO ONE.
17 IF NOT, THEN I DON'T. IN THIS CASE, NOBODY ASKED ME TO DO
18 ONE, SO I DON'T -- I DIDN'T.

19 Q AND NO ONE THAT YOU ARE WORKING WITH IN THIS CASE ASKED
20 YOU TO DO A WRITTEN REPORT?

21 A NO, THEY DID NOT.

22 Q SO IF I ASKED TO SEE YOUR WRITTEN REPORT SO THAT I MAY
23 HAVE SOME BASIS UPON WHICH TO CROSS EXAMINE YOU, YOU DON'T
24 HAVE ONE?

25 A NO. I HAVE MY NOTES, BUT THAT'S IT.

1 Q YOU DO HAVE NOTES?

2 A YES, SIR.

3 Q AND DO YOU HAVE ALL OF YOUR INFORMATION THAT YOU
4 REVIEWED FOR PURPOSES OF TESTIFYING WITH YOU TODAY?

5 A YES.

6 Q ALL RIGHT. AND COULD YOU SHOW THAT -- IS THAT IT RIGHT
7 THERE?

8 A ALL THE INFORMATION?

9 Q YES.

10 A NO. IT'S IN A BIG BINDER IN MY CAR THAT I HAVE.

11 Q ALL RIGHT. AND TELL ME THE PEOPLE YOU TALKED TO? JOHN,
12 HIS SISTER AND HIS MOTHER?

13 A I TALKED TO JOHN THREE TIMES OVER THE COURSE OF---

14 Q I DON'T NEED TO KNOW HOW LONG YET. JUST GIVE ME A
15 TOTAL.

16 A I TALKED TO HIS SISTER, ELIZABETH, TWICE AND KAREN
17 MCCALL.

18 Q ALL RIGHT. SAY IT AGAIN. HIS SISTER, ELIZABETH?

19 A YEAH. THERE'S TWO SISTERS, ELIZABETH AND CONNIE. I DID
20 NOT TALK TO CONNIE.

21 Q YOU DIDN'T TALK TO CONNIE. CONNIE LIVES IN WEST
22 VIRGINIA?

23 A NO. I THINK SHE LIVES IN MARYLAND NOW.

24 Q ALL RIGHT. LET'S ASSUME SHE LIVES SOMEWHERE ELSE OTHER
25 THAN HERE. WHY DID YOU NOT TALK TO CONNIE?

JEFF YOUNGMAN -- CROSS BY SOLICITOR ARIAIL

1 A NOBODY COULD LOCATE HER. NONE OF THE FAMILY KNOWS WHERE
2 SHE'S AT.

3 Q AND SO YOU TALKED TO THE SISTER AND THE MOTHER AND JOHN,
4 THOSE ARE THE THREE. WHO ELSE DID YOU TALK TO?

5 A KAREN MCCALL.

6 Q AND KAREN MCCALL. WHO ELSE?

7 A THAT'S ALL.

8 Q AND THOSE FOUR -- ARE THOSE THE SOLE SOURCE OF YOUR
9 INFORMATION?

10 A YES, IN THIS CASE.

11 Q AND THREE OF THEM WERE CODEFENDANTS IN A CONSPIRACY TO
12 ISSUE FRAUDULENT CHECKS TOGETHER?

13 A YES.

14 Q THE MOTHER, THE SISTER AND THE SON?

15 A UH-HUH (AFFIRMATIVE). YES, SIR.

16 Q AND DID YOU FEEL BASED -- AND THE FOURTH ONE, KAREN
17 MCCALL, IS A CODEFENDANT IN THE CURRENT CHARGE?

18 A YES, SIR.

19 Q DID YOU FEEL THAT EVIDENCE THAT YOU RECEIVED FROM THEM
20 WAS RELIABLE ON ALL OF THESE POINTS?

21 A IF IT WAS CONSISTENT, IF EVERYBODY SAID THE SAME THING,
22 YES. IF THERE WAS AN INCONSISTENCY, THEN I QUESTIONED THE
23 RELIABILITY.

24 Q DID YOU REVIEW A REPORT FROM THE STATE HOSPITAL?

25 A YES, I DID.

1 Q DID YOU REVIEW THE ENTIRE REPORT?

2 A I BELIEVE SO. I DON'T KNOW HOW MANY PAGES. I REVIEWED
3 A REPORT.

4 Q EIGHT OR NINE PAGES?

5 A I THINK THAT WAS IT.

6 Q DID YOU REVIEW ANY OF THE RECORDS GENERATED AT THE STATE
7 HOSPITAL?

8 A NO.

9 Q DID THE REPORT OF THE STATE HOSPITAL FORM A BASIS OR A
10 PART OF YOUR OPINIONS THAT YOU HAVE STATED HERE TODAY?

11 A IT WAS ANOTHER PIECE OF INFORMATION. IT RECEIVED NO
12 MORE WEIGHT THAN ANY OTHER PIECE OF INFORMATION.

13 Q SO THEN I ASSUME THE ANSWER TO THAT IS YES?

14 A UH-HUH (AFFIRMATIVE).

15 Q DID YOU HAVE OR DETECT OR FIND ANY MEDICAL RECORDS?

16 A YES, I DID.

17 Q AND WHAT WERE -- WHAT WERE THOSE MEDICAL RECORDS OTHER
18 THAN THE ONE WHERE HE WAS CONFINED AT GREENVILLE HOSPITAL AND
19 THE ANDERSON HOSPITAL?

20 A THAT'S IT.

21 Q THAT'S IT?

22 A YES, SIR.

23 Q HOW ABOUT ANY MEDICAL RECORDS PREVIOUSLY WHERE THERE
24 WERE ANY HISTORY OF MENTAL TREATMENT OR ANY HISTORY OF
25 COUNSELING OR DYSFUNCTIONAL THINGS?

1 A NO. TO MY KNOWLEDGE, THERE WERE NONE TO OBTAIN.

2 Q ALL RIGHT. AND WOULD IT BE FAIR TO SAY GOING THROUGH
3 THIS, AND I DON'T MEAN TO BE FLIPPANT ABOUT THIS, BUT GOING
4 THROUGH THIS THERE WERE A LOT OF THINGS YOU MENTIONED IN
5 THERE THAT SEEM TO SORT OF APPLY TO MY EARLY CHILDHOOD.
6 YOU'VE GOT A STRICT MOTHER. YOU'VE GOT A FATHER WHO IS
7 DEEPLY RELIGIOUS. FORTUNATELY, WE DIDN'T INVOLVE OURSELVES
8 IN CRIMINAL ACTIVITY. BUT A LOT OF THE THINGS YOU WERE
9 TALKING ABOUT SEEM TO BE THINGS THAT WOULD BE PRETTY BROAD
10 SPREAD ACROSS THE UNITED STATES?

11 A CERTAINLY SOME OF THEM ARE, YES.

12 Q OKAY. AND PEOPLE -- I ASSUME THERE ARE OTHER PEOPLE OUT
13 HERE WHO HAVE THESE IDENTICAL PROBLEMS, ASSUMING ALL OF THIS
14 IS VERIFIED AND TRUE, THAT HAVE THESE PROBLEMS THAT DON'T
15 COMMIT CRIMINAL ACTS OF VIOLENCE?

16 A THEY MAY HAVE SOME OF THOSE PROBLEMS. I THINK THOSE
17 THAT I LISTED THERE ARE SPECIFIC ONLY TO JOHN WOOD. I DON'T
18 THINK THERE IS ANYBODY ELSE WHO HAS THOSE SAME IDENTICAL
19 PROBLEMS.

20 Q OKAY. SO THIS WOULD BE SORT OF A THUMB SKETCH OF---

21 A THUMBNAIL SKETCH?

22 Q I MEAN, A FINGERPRINT FOR HIM?

23 A YEAH.

24 Q OKAY. ALL RIGHT. HOW MANY TIMES HAVE YOU -- WHEN WAS
25 THE FIRST TIME YOU WERE CONTACTED TO DO THIS WORK?

JEFF YOUNGMAN -- CROSS BY SOLICITOR ARIAIL

1 A IN THIS CASE?

2 Q YES, SIR.

3 A SOMETIME THIS SUMMER. I DON'T RECALL. AUGUST.

4 Q AND YOU WERE CONTACTED BY MR. MAULDIN?

5 A YES, SIR. WELL, NO, ACTUALLY -- WELL, SOMEBODY FROM HIS
6 OFFICE, NOT HIM.

7 Q AND HAVE YOU WORKED ON OTHER CASES WITH HIM IN THE PAST?

8 A YES, I HAVE.

9 Q AND OUT OF THE 24 CASES INVOLVING -- LET ME -- BEFORE WE
10 GO THERE, WHAT IS YOUR OPINION REGARDING THE DEATH PENALTY?

11 A AS TO?

12 Q I'M SORRY?

13 A AS TO WHAT?

14 Q WHAT IS YOUR OPINION AS TO THE DEATH PENALTY?

15 A WHETHER I FAVOR IT OR NOT, IS THAT WHAT YOU'RE ASKING?

16 Q YES.

17 A OKAY. I'M AGAINST THE DEATH PENALTY PERSONALLY,
18 RELIGIOUSLY AND PROFESSIONALLY.

19 Q IN ANY WAY POSSIBLE?

20 A WELL, N.A.S.W., MY GOVERNING AGENCY, HAS COME OUT
21 AGAINST THE DEATH PENALTY. I'M A ROMAN CATHOLIC. THE POPE
22 HAS COME OUT AGAINST THE DEATH PENALTY. AND PERSONALLY, I
23 DON'T APPROVE OF THE DEATH PENALTY.

24 Q ALL RIGHT. SO OF THE 24 CASES THAT YOU HAVE CONSULTED
25 ON, YOU TALKED ABOUT THE DEATH PENALTY CASES, ARE ANY OF

JEFF YOUNGMAN -- CROSS BY SOLICITOR ARIAIL

1 THOSE CONSULTATIONS WITH OR ON BEHALF OF THE PROSECUTION
2 SEEKING THE DEATH PENALTY?

3 A NO.

4 Q THEY WOULD ALL BE FOR THE DEFENSE?

5 A YES.

6 Q AND I ASSUME THAT BASED ON THAT YOU ALSO CHARGE A FEE
7 FOR YOUR SERVICES?

8 A YES, I DO.

9 Q AND TELL US THE LENGTH OF TIME YOU TALKED TO MR. JOHN
10 RICHARD WOOD.

11 A WELL, THREE VISITS, APPROXIMATELY TWO HOURS, TWO AND
12 HALF HOURS A VISIT. SO, SEVEN, EIGHT HOURS.

13 Q AND THEN KAREN MCCALL, YOU TALKED TO HER?

14 A PROBABLY ABOUT TWO HOURS.

15 Q DID YOU GO TO ANDERSON?

16 A YES, SIR.

17 Q SISTER, THE SISTER LIVES IN ANDERSON ALSO?

18 A YEAH. I MET WITH HER IN ANDERSON AND HERE. SO TWO,
19 THREE -- THREE HOURS PROBABLY.

20 Q AND THE MOTHER?

21 A THE MOTHER JUST THROUGH INFORMATION FROM THE -- PHONE
22 INFORMATION. I DIDN'T SEE HER IN PERSON.

23 Q YOU TALKED TO HER OVER THE TELEPHONE?

24 A I GOT INFORMATION OVER THE TELEPHONE, YES.

25 Q DID YOU TALK WITH HER DIRECTLY?

JEFF YOUNGMAN -- CROSS BY SOLICITOR ARIAIL

1 A NO.

2 Q HOW DID YOU GET -- I'M SORRY. HOW DID YOU GET THAT
3 INFORMATION?

4 A THROUGH THE MITIGATION INVESTIGATOR HERE.

5 Q THE MITIGATION -- I'M NOT FAMILIAR WITH THAT TERM. I'M
6 SORRY. IS THAT ANOTHER PERSON?

7 A SOMEBODY I WORK WITH, YES.

8 Q SOMEBODY YOU WORK WITH MADE A TELEPHONE CALL TO HER, GOT
9 THE INFORMATION AND GAVE IT TO YOU?

10 A YES, SIR.

11 Q ALL RIGHT. SO YOU DIDN'T TALK WITH HER DIRECTLY?

12 A NO, SIR.

13 Q I ASSUME THEN THERE IS NO WAY YOU CAN REALLY ASCRIBE
14 CREDIBILITY TO HER IN NOT HAVING TALKED TO HER?

15 A OTHER THAN THE STATEMENTS THAT I GOT THAT WERE
16 CONSISTENT WITH WHAT OTHER PEOPLE SAID, YES.

17 SOLICITOR ARIAIL: YOUR HONOR, WE WOULD AT THIS POINT
18 MOVE TO RECEIVE A COPY OF HIS NOTES AND ANY RECORDS HE RELIED
19 UPON TO REVIEW FOR PURPOSES OF ANY FURTHER CROSS EXAMINATION.

20 THE COURT: DO YOU HAVE THE RECORDS IN YOUR CAR?

21 WITNESS: YES, SIR, I DO.

22 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL
23 TAKE A SHORT BREAK TO PURSUE THIS MATTER, AND WE'LL GET YOU
24 BACK OUT HERE IN ABOUT TEN MINUTES. PLEASE DO NOT DISCUSS
25 THE CASE.

JEFF YOUNGMAN -- CROSS BY SOLICITOR ARIAIL

1 (JURY EXITS COURTROOM AT 3:27 P.M.)

2 THE COURT: THE JURY HAS BEEN EXCUSED. ANY OBJECTION
3 TO THE STATE REVIEWING THE MATERIAL ON WHICH THIS EXPERT
4 WITNESS BASED HIS OPINION?

5 MR. MAULDIN: WE HAVE PLACED ON THE RECORD OUR POSITION
6 ALL ALONG REGARDING CERTAIN RECORDS THAT I BELIEVE HAVE BEEN
7 REFERRED TO IN THE CROSS EXAMINATION. ON THE OTHER HAND, IF
8 MR. YOUNGMAN, WHO SAID THAT IT WAS PART OF THE MATERIAL HE
9 LOOKED AT, I REALLY DON'T THINK AN OBJECTION IS APPROPRIATE
10 QUITE FRANKLY, JUDGE.

11 THE COURT: ALL RIGHT. AND I APPRECIATE YOUR CANDOR.
12 I CAN'T THINK OF ANY LEGAL BASIS -- WHEN AN EXPERT SAYS HE OR
13 SHE RELIED ON CERTAIN DOCUMENTS, THE RULES UNEQUIVOCALLY
14 PERMIT CROSS EXAMINATION ON THE SOURCES OF THE EXPERT'S
15 OPINION. AND WE'LL TAKE A BREAK, MR. YOUNGMAN, FOR YOU TO BE
16 ABLE TO RETRIEVE THE DOCUMENTS FROM YOUR VEHICLE.

17 WITNESS: SURE.

18 THE COURT: AND WE'LL SEE IF YOU HAVE ALL THE DOCUMENTS
19 ON WHICH YOU RELY. THEN WE'LL PROCEED. THANK YOU FOR YOUR
20 PATIENCE, SIR.

21 (WITNESS STEPS DOWN AT 3:29 P.M.)

22 MR. MAULDIN: WHILE WE'RE ON THAT SUBJECT, YOUR HONOR,
23 I AM CURIOUS AS TO -- AND I'M TRYING TO EVEN FIGURE OUT HOW
24 TO EXPRESS THIS. THE STATE HOSPITAL REPORT, AS YOU HAVE
25 CERTAINLY HAD AN OPPORTUNITY TO REVIEW, MAKES REFERENCE TO

MATTERS AND MOTIONS

1 COMMUNICATIONS BETWEEN THE DOCTOR AND THE DEFENDANT. AND THE
2 QUESTION WOULD BE -- I GUESS THE QUESTION THAT I'M POSING FOR
3 THE COURT WHILE WE'RE IN THIS LULL, SO WE CAN TAKE INTO
4 CONSIDERATION WHAT THE ANSWER MIGHT BE WOULD BE IF A THIRD
5 PERSON HAD POSSESSION, WHAT WOULD BE THE PARAMETERS OR WHAT
6 WOULD BE THE FOUNDATION QUESTIONS THAT WOULD THEN ALLOW THAT
7 THIRD PERSON WHO MAY OR MAY NOT HAVE RELIED UPON STATEMENTS
8 MADE. IN OTHER WORDS, A REVIEW OF THE RECORD IS ONE THING.
9 BUT RELIANCE IN FORMING HIS OPINION ON MATTERS OTHER THAN
10 WHAT SOMEBODY TOLD SOMEBODY THEN WOULD MAKE THOSE STATEMENTS
11 NOT NECESSARILY APPROPRIATE FOR THAT THIRD PERSON'S CROSS
12 EXAMINATION. I DON'T KNOW -- THAT MIGHT HAVE SOUNDED
13 CIRCULAR.

14 THE COURT: WE'LL WORK THROUGH IT. I DON'T -- YOU
15 HAVEN'T HIT THE BULL'S-EYE YET.

16 MR. MAULDIN: ALL RIGHT. MR. JONES IS TESTIFYING. MR.
17 SMITH AND MR. WILLIAMS HAD A CONVERSATION. MR. JONES IS
18 TESTIFYING AND MR. SMITH AND MR. WILLIAMS' CONVERSATION IS
19 CONTAINED IN A REPORT. IF MR. JONES DID NOT NECESSARILY RELY
20 UPON THE STATEMENTS BACK AND FORTH -- IN OTHER WORDS, HE
21 COULD HAVE RELIED ON OTHER MATTERS -- THEN WE'VE GOT TO
22 FIGURE OUT HOW TO PRESERVE THAT WITHOUT, YOU KNOW, A REAL BIG
23 PROBLEM ALL OF A SUDDEN POPPING UP IN THE PRESENCE OF THE
24 JURY. AND I JUST THOUGHT I'D BRING THAT UP.

25 THE COURT: COUPLE OF POINTS. NUMBER ONE, AND THERE'S

MATTERS AND MOTIONS

1 BEEN NO MENTION BY COUNSEL TO THIS, WHEN AN EXPERT REFERS TO
2 SOURCES -- IT MIGHT BE LITERATURE, IT MIGHT BE SOME LEARNED
3 TREATISE, IT MIGHT BE SPEAKING TO SOMEONE WHO SPOKE TO
4 SOMEBODY'S MOTHER -- THOSE ARE NOT ADMISSIBLE FOR THE TRUTH
5 OF THE MATTER CONTAINED THEREIN. THEY ARE ONLY LIMITED TO
6 THE JURY'S CONSIDERATION OF THEIR ASSESSMENT OF THE OPINION
7 TESTIMONY OF THE EXPERT. SO IF THERE NEEDS TO BE SOME
8 LIMITING INSTRUCTION AS TO THE JURY'S CONSIDERATION OF WHAT
9 WOULD OTHERWISE BE HEARSAY, I'M WILLING TO DISCUSS THAT WITH
10 COUNSEL.

11 AND I'LL TAKE YOUR ANALOGY AND USE IT TO THIS CASE.
12 WITNESS TALKS TO MR. OR MRS. MITIGATION EXPERT. MR. OR MS.
13 MITIGATION EXPERT TELLS MR. WITNESS, "I SPOKE TO MRS. WOOD
14 AND MRS. WOOD SAYS, 'BLAH, BLAH, BLAH.'" THE WITNESS GETS ON
15 THE WITNESS STAND AND SAYS, "BLAH, BLAH, BLAH." WELL, YOU'VE
16 STILL GOT THE THIRD PARTY WITH AN INTERMEDIARY SOURCE.

17 THE WITNESS HAS TESTIFIED THAT HE RELIED IN PART ON THE
18 STATE REPORT IN FORMING HIS OPINION OR SUPPORTING HIS
19 OPINION. AND YOUR SPECIFIC CONCERN IS YOU WANT TO SORT OF
20 CARVE OUT DIFFERENT PARTS OF THE REPORT THAT HE CONSIDERED
21 CERTAIN PARTS BUT NOT THE DEFENDANT'S STATEMENT?

22 MR. MAULDIN: WELL, AND I DON'T KNOW. I DON'T KNOW. I
23 MEAN, I DON'T KNOW WHAT PART HE DID OR DIDN'T RELY ON. THE
24 PROBLEM IS IF THE STATE GOES FISHING AND ASKS HIM QUESTIONS
25 REGARDING CERTAIN THINGS THAT HE THEN ACTUALLY DIDN'T RELY