

VOLUME SIX OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Larry R. Patterson, Circuit Court Judge

RECEIVED

NOV - 5 2010

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

VOLUME SIX
PAGES 2500 - 2999

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENDA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General

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

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT	
JURY QUALIFICATIONS – DAY 1 (FEBRUARY 4, 2002)	
COURT REPORTER’S INDEX	ii
MATTERS AND MOTIONS	1
VOIR DIRE – PANEL NUMBER 1	22
WILL M. SHARPE	
VOIR DIRE BY THE COURT	31
VOIR DIRE BY MR. MAULDIN	38
MATTERS AND MOTIONS	48
KEITH A. WHITE	
VOIR DIRE BY THE COURT	54
VOIR DIRE BY MR. MAULDIN	63
VOIR DIRE BY SOLICITOR ARIAIL	81
MATTERS AND MOTIONS	84
HAMILTON E. RUSSELL, III	
VOIR DIRE BY SOLICITOR ARIAIL	92
VOIR DIRE BY MR. RICHEY	93
MATTERS AND MOTIONS	99
CALVIN F. DONALDSON	
VOIR DIRE BY THE COURT	102
VOIR DIRE BY MR. MAULDIN	110
VOIR DIRE BY SOLICITOR ARIAIL	116
MATTERS AND MOTIONS	123

CYNTHIA B. STANCIL	
VOIR DIRE BY THE COURT	125
VOIR DIRE BY SOLICITOR ARIAIL	132
VOIR DIRE BY MR. RICHEY	133
MATTERS AND MOTIONS	136
 JURY QUALIFICATIONS – DAY 2(FEBRUARY 5, 2002)	
MATTERS AND MOTIONS	146
VOIR DIRE – GROUP 2	262
JENNIFER MCKINLEY	
VOIR DIRE BY THE COURT	163
VOIR DIRE BY MR. MAULDIN	170
VOIR DIRE BY SOLICITOR ARIAIL	183
MATTERS AND MOTIONS	185
MARK STUBER	
VOIR DIRE BY THE COURT	187
VOIR DIRE BY SOLICITOR ARIAIL	197
VOIR DIRE BY MR. MAULDIN	199
MATTERS AND MOTIONS	208
CLIFFORD SMITH	
VOIR DIRE BY THE COURT	210
VOIR DIRE BY MR. MAULDIN	215
MATTERS AND MOTIONS	219
CHARLOTTE SMITH	
VOIR DIRE BY THE COURT	219
VOIR DIRE GROUP 1	223
ERNEST MAYER	
VOIR DIRE BY THE COURT	232
VOIR DIRE BY SOLICITOR ARIAIL	239
VOIR DIRE BY MR. MAULDIN	245

GEORGE D. SAUNDERS	
VOIR DIRE BY THE COURT	253
VOIR DIRE BY MR. MAULDIN	259
VOIR DIRE BY SOLICITOR ARIAIL	261
KENYENA V. SMITH	
VOIR DIRE BY THE COURT	263
VOIR DIRE BY MR. MAULDIN	267
VOIR DIRE BY SOLICITOR ARIAIL	271
MATTERS AND MOTIONS	273
PRISCILLA ANN TORELLO	
VOIR DIRE BY THE COURT	278
VOIR DIRE BY MR. MAULDIN	285
PATRICIA L. JOHNSON	
VOIR DIRE BY THE COURT	289
VOIR DIRE BY MR. MAULDIN	295
VOIR DIRE BY SOLICITOR ARIAIL	302
MATTERS AND MOTIONS	305
VOIR DIRE GROUP 1	313
NORMA B. PITTS	
VOIR DIRE BY THE COURT	323
VOIR DIRE BY SOLICITOR ARIAIL	331
VOIR DIRE BY MR. MAULDIN	335
MATTERS AND MOTIONS	345
VERNON DAVID WADE, JR.	
VOIR DIRE BY THE COURT	350
VOIR DIRE BY MR. MAULDIN	360
VOIR DIRE BY SOLICITOR ARIAIL	369
MATTERS AND MOTIONS	374
JOHN R. BAILEY	
VOIR DIRE BY THE COURT	375
VOIR DIRE BY SOLICITOR ARIAIL	382
VOIR DIRE BY MR. RICHEY	384
MATTERS AND MOTIONS	388

TERRY B. MARSHALL	
VOIR DIRE BY THE COURT	390
VOIR DIRE BY MR. MAULDIN	398
MATTERS AND MOTIONS	404
TERRY B. MARSHALL	
VOIR DIRE BY MR. MAULDIN	410
VOIR DIRE BY SOLICITOR ARIAIL	412
MATTERS AND MOTIONS	414
ANN CASEY SMITH	
VOIR DIRE BY THE COURT	417
VOIR DIRE BY SOLICITOR ARIAIL	423
VOIR DIRE BY MR. MAULDIN	425
MATTERS AND MOTIONS	432
VOIR DIRE PANEL NUMBER 5	435
ISSIAC N. MILLER	
VOIR DIRE BY THE COURT	442
VOIR DIRE BY MR. MAULDIN	450
MATTERS AND MOTIONS	457
REBECCA D. ROGERS	
VOIR DIRE BY THE COURT	462
VOIR DIRE BY SOLICITOR ARIAIL	471
VOIR DIRE BY MR. MAULDIN	473
VOIR DIRE CONTINUES BY SOLICITOR ARIAIL	479
VOIR DIRE CONTINUES BY THE COURT	481
MATTERS AND MOTIONS	487
REBECCA D. ROGERS	
VOIR DIRE CONTIUES BY THE COURT	488
MATTERS AND MOTIONS	490
NANCY L. MURPHY	
VOIR DIRE BY THE COURT	492

RALPH MOODY	
VOIR DIRE BY THE COURT	495

THELMA D. HONEYCUTT	
VOIR DIRE BY THE COURT	498

JURY QUALIFICATIONS – FEBRUARY 6, 2002 – FEBRUARY 7, 2002

VOLUME TWO

THELMA D. HONEYCUTT	
VOIR DIRE CONTINUES BY THE COURT	501
VOIR DIRE BY MR. MAULDIN	508
DERRICK P. ROSEMOND	
VOIR DIRE BY THE COURT	519
MATTERS AND MOTIONS	524
VOIR DIRE PANEL NUMBER 6.....	526
VOIR DIRE GROUP 1	527
PRACILLA A. GOODMAN	
VOIR DIRE BY THE COURT	536
VOIR DIRE BY SOLICITOR ARIAIL	543
VOIR DIRE BY MR. MAULDIN	548
MATTERS AND MOTIONS	555
NANCY C. WHERRY	
VOIR DIRE BY THE COURT	562
VOIR DIRE BY MR. MAULDIN	569
VOIR DIRE BY SOLICITOR ARIAIL	579
MATTERS AND MOTIONS	582
RAYMOND E. STARNES	
VOIR DIRE BY THE COURT	583
VOIR DIRE BY SOLICITOR ARIAIL	592
VOIR DIRE BY MR. MAULDIN	597
MATTERS AND MOTIONS	607

LINDA D. PRESSLEY	
VOIR DIRE BY THE COURT	613
VOIR DIRE BY MR. MAULDIN	622
VOIR DIRE BY SOLICITOR ARIAIL	629
MATTERS AND MOTIONS	631
JOSHUA C. COBB	
VOIR DIRE BY THE COURT	633
VOIR DIRE BY SOLICITOR ARIAIL	643
VOIR DIRE BY MR. MAULDIN	647
MATTERS AND MOTIONS	655
VOIR DIRE GROUP 1	660
JACOB M. CAMPBELL	
VOIR DIRE BY THE COURT	670
VOIR DIRE BY MR. MAULDIN	684
VOIR DIRE BY SOLICITOR ARIAIL	692
MATTERS AND MOTIONS	696
ROSITA J. SINGLETON	
VOIR DIRE BY THE COURT	699
VOIR DIRE BY SOLICITOR ARIAIL	706
VOIR DIRE BY MR. MAULDIN	709
MATTERS AND MOTIONS	715
LORETTA WILLIAMS	
VOIR DIRE BY THE COURT	725
VOIR DIRE BY MR. MAULDIN	734
VOIR DIRE BY SOLICITOR ARIAIL	739
MATTERS AND MOTIONS	744
SHIRLEY R. REDMOND	
VOIR DIRE BY THE COURT	746
VOIR DIRE BY MR. MAULDIN	752
RHONDA F. SIMS	
VOIR DIRE BY THE COURT	753

VOIR DIRE PANEL NUMBER 8.....	761
STEPHANIE D. HASELWANDER	
VOIR DIRE BY THE COURT	770
VOIR DIRE BY SOLICITOR ARIAIL	777
VOIR DIRE BY MR. MAULDIN	782
MATTERS AND MOTIONS	791
LARRY D. BUSHONG	
VOIR DIRE BY THE COURT	792
VOIR DIRE BY MR. MAULDIN	802
MATTERS AND MOTIONS	813
JAMES R. CHANCELLOR	
VOIR DIRE BY THE COURT	817
VOIR DIRE BY SOLICITOR ARIAIL	825
VOIR DIRE BY MR. MAULDIN	830
MATTERS AND MOTIONS	840
PETRA M. LACKEY	
VOIR DIRE BY THE COURT	841
VOIR DIRE BY MR. MAULDIN	850
VOIR DIRE BY SOLICITOR ARIAIL	860
MATTERS AND MOTIONS	863
AMY J. KESSLEY	
VOIR DIRE BY THE COURT	869
VOIR DIRE BY SOLICITOR ARIAIL	879
VOIR DIRE BY MR. MAULDIN	883
MATTERS AND MOTIONS	895
FRED C. ROLLER, III	
VOIR DIRE BY THE COURT	904
MATTERS AND MOTIONS	906

PRATAP NARAYAN, M.D.	
EXAMINATION BY THE COURT	952
CROSS-EXAMINATION BY SOLICITOR ARIAIL	963
CROSS-EXAMINATION BY MR. MAULDIN	965
REEXAMINATION BY THE COURT	983
CAMILLA TEZZA, PH.D.	
EXAMINATION BY THE COURT	986
MATTERS AND MOTIONS	990

VOLUME THREE

MATTERS AND MOTIONS	1001
<u>JACKSON V. DENNO HEARING</u>	1022
CHARLES BLACKBURN	
DIRECT EXAMINATION BY MS. STROM	1023
CROSS EXAMINATION BY MR. MAULDIN.....	1026
MATTERS AND MOTIONS	1030
PRELIMINARY INSTRUCTION BY THE COURT	1037
OPENING STATEMENTS BY SOLICITOR ARIAIL.....	1043
OPENING STATEMENTS BY MR. BANNISTER	1053
TESTIMONY	
DONNIE M. GREENWAY, JR.	
DIRECT EXAMINATION BY MS. STROM	1059
CROSS EXAMINATION BY MR. MAULDIN.....	1066
HARRY A. CRAFT, JR.	
DIRECT EXAMINATION BY MS. STROM	1075
CROSS EXAMINATION BY MR. MAULDIN.....	1085
THOMAS MICHAEL GIBSON	
DIRECT EXAMINATION BY MS. STROM	1096
CROSS EXAMINATION BY MR. MAULDIN.....	1102

WILLIAM H. MCCAULEY, JR.	
DIRECT EXAMINATION BY MS. STROM	1103
CROSS EXAMINATION BY MR. MAULDIN.....	1108
CHRIS HINES	
DIRECT EXAMINATION BY MS. STROM	1111
CROSS EXAMINATION BY MR. MAULDIN.....	1115
CHAD ANTHONY JORDAN	
DIRECT EXAMINATION BY MS. STROM	1119
MATTERS AND MOTIONS	1123
TESTIMONY	
DARWIN SHAW	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1127
TRIAL – GUILT PHASE (FEBRUARY 9, 2010)	
MATTERS AND MOTIONS	1147
TESTIMONY	
DARWIN SHAW	
DIRECT EXAMINATION CONTINUES BY SOLICITOR ARIAIL.....	1149
CROSS EXAMINATION BY MR. MAULDIN.....	1167
MATTERS AND MOTIONS	1172
TESTIMONY	
DARWIN SHAW	
CROSS EXAMINATION CONTINUES BY MR. MAULDIN	1176
REDIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1191
RECROSS EXAMINATION BY MR. MAULDIN	1195
ZACK D. OWEN.	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1196
DARWIN SHAW	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1199
CROSS EXAMINATION BY MR. MAULDIN.....	1208
REDIRECT EXAMINATION BY SOLICITOR ARIAL.....	1215

MICHAEL E. WARD, M.D.

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1217
CROSS EXAMINATION BY MR. BANNISTER.....	1234
REDIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1244
RECROSS EXAMINATION BY MR. BANNISTER.....	1246

PAUL A. SILVAGGIO

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1247
CROSS EXAMINATION BY MR. MAULDIN.....	1254

OSWALDO HURTADO

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1260
CROSS EXAMINATION BY MR. BANNISTER.....	1274

MICHAEL J. WALSH

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1276
CROSS EXAMINATION BY MR. BANNISTER.....	1282

RICHARD BEVERAGE

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1285
CROSS EXAMINATION BY MR. BANNISTER.....	1294

TODD HAMLIN

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1298
CROSS EXAMINATION BY MR. BANNISTER.....	1305

ERIN BALMER

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1308
CROSS EXAMINATION BY MR. BANNISTER.....	1314

CAROL MARTIN

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1315
CROSS EXAMINATION BY MR. BANNISTER.....	1320

DAVID MANCINI

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1324
CROSS EXAMINATION BY MR. BANNISTER.....	1333

DEBORAH WHEELER

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1335
CROSS EXAMINATION BY MR. BANNISTER.....	1349

TERRY WHEELER

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1351
CROSS EXAMINATION BY MR. BANNISTER.....	1357

MARY SWAFFORD	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1358
CROSS EXAMINATION BY MR. MAULDIN.....	1363
JEFFREY S. MCCALL	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1364
CROSS EXAMINATION BY MR. BANNISTER.....	1368
MARTY L. CLAPP	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1369
CROSS EXAMINATION BY MR. BANNISTER.....	1379
TANGIE SAYLORS	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1380
JEFFREY M. HOLLIFIELD	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1381
CROSS EXAMINATION BY MR. BANNISTER.....	1398

FEBRUARY 10, 2002

MATTERS AND MOTIONS	1402
TESTIMONY	
ILA SIMMONS	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1409
CROSS EXAMINATION BY MR. BANNISTER.....	1422
KAREN MCCALL	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1424
CROSS EXAMINATION BY MR. MAULDIN.....	1454
REDIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1483
MATTERS AND MOTIONS	1487
TESTIMONY	
KAREN MCCALL	
REDIRECT EXAMINATION CONTINUES BY SOLICITOR ARIAIL	1497
RE CROSS EXAMINATION BY MR. MAULDIN	1498

VOLUME FOUR

ROBERT L. APPELL	
DIRECT EXAMINATION BY MS. STROM	1500
CROSS EXAMINATION BY MR. RICHEY.....	1510
MIKE JONES	
DIRECT EXAMINATION BY MS. STROM	1516
CROSS EXAMINATION BY MR. RICHEY.....	1528
VIC WOOTEN	
DIRECT EXAMINATION BY MS. STROM	1536
CROSS EXAMINATION BY MR. BANNISTER.....	1545
REDIRECT EXAMINATION BY MS. STROM	1553
MATTERS AND MOTIONS	1554
TESTIMONY	
KENNETH BROCK	
DIRECT EXAMINATION BY MS. STROM	1559
GEORGE S. CREMER, III	
DIRECT EXAMINATION BY MS. STROM	1563
JOHN THOMAS CLAMP, JR.	
DIRECT EXAMINATION BY MS. STROM	1571
STEVEN J. REEVES	
DIRECT EXAMINATION BY MS. STROM	1575
NEAL BRADLEY MCGUIRE	
DIRECT EXAMINATION BY MS. STROM	1577
JOHN MARK ORR	
DIRECT EXAMINATION BY MS. STROM	1579
C. P. BLACKBURN	
DIRECT EXAMINATION BY MS. STROM	1582
MATTERS AND MOTIONS	1585

TESTIMONY

C. P. BLACKBURN	
DIRECT EXAMINATION CONTINUES BY MS. STROM	1591
CROSS EXAMINATION BY MR. MAULDIN.....	1591
JEFF PARROTT	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1593
CROSS EXAMINATION BY MR. BANNISTER.....	1602
BRETT BAKER	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1603
CHRISTOPHER B. BRYAN	
DIRECT EXAMINATION BY MS. STROM	1611
ILA SIMMONS	
DIRECT EXAMINATION BY MS. STROM	1621
VELLO PAAVEL	
DIRECT EXAMINATION BY SOLICITOR ARIAIL.....	1623
CROSS EXAMINATION BY MR. MAULDIN.....	1650

FEBRUARY 11, 2002 – FEBRUARY 12, 2002

MATTERS AND MOTIONS	1662

TESTIMONY

JOHN RICHARD WOOD	
EXAMINATION BY THE COURT	1664

MATTERS AND MOTIONS	1667

TESTIMONY

JOHN RICHARD WOOD	
EXAMINATION CONTINUES BY THE COURT	1676

MATTERS AND MOTIONS	1678

TESTIMONY

JOHN RICHARD WOOD	
EXAMINATION CONTINUES BY THE COURT	1682

PAUL A. SILVAGGIO	
DIRECT EXAMINATION BY MR. MAULDIN	1684
CROSS EXAMINATION BY SOLICITOR ARIAIL	1691
J. GRADY MILLER, JR.	
DIRECT EXAMINATION BY MR. BANNISTER	1699
CROSS EXAMINATION BY SOLICITOR ARIAIL	1702
JOHN RICHARD WOOD	
EXAMINATION CONTINUES BY THE COURT	1706
MATTERS AND MOTIONS	1707
CLOSING ARGUMENTS BY SOLICITOR ARIAIL	1726
CLOSING ARGUMENTS BY MR. BANNISTER.....	1744
JURY CHARGE.....	1756
MATTERS AND MOTIONS	1770
RECHARGE.....	1775
MATTERS AND MOTIONS	1778
VERDICT	1780
MATTERS AND MOTIONS	1782
 FEBRUARY 13, 2002	
MATTERS AND MOTIONS	1842
PRELIMINARY INSTRUCTION	1842
OPENING STATEMENTS BY MS. STROM	1846
OPENING STATEMENTS BY MR. MAULDIN	1850
MATTERS AND MOTIONS	1860

TESTIMONY

WILLIAM H. MCCAULEY, JR.

DIRECT EXAMINATION BY MS. STROM 1864

MATTERS AND MOTIONS 1871

TESTIMONY

JIMMY SLIGH

DIRECT EXAMINATION BY MR. HERVEY 1878

CROSS EXAMINATION BY MR. RICHEY.....1905

REDIRECT EXAMINATION BY MR. HERVEY 1911

RECROSS EXAMINATION BY MR. RICHEY 1918

MATTERS AND MOTIONS 1919

JACKSON V. DENNO HEARING.....1923

DAVID LEE HANKS

DIRECT EXAMINATION BY SOLICITOR ARIAIL.....1923

CROSS EXAMINATION BY MR. MAULDIN.....1926

MATTERS AND MOTIONS 1930

TESTIMONY

CHARLES P. BLACKBURN

DIRECT EXAMINATION BY MS. STROM 1931

CROSS EXAMINATION BY MR. MAULDIN.....1933

GENE SHERIFF

DIRECT EXAMINATION BY MS. STROM 1935

CROSS EXAMINATION BY MR. MAULDIN.....1938

SAMUEL MICHAEL GRANT

DIRECT EXAMINATION BY MS. STROM 1942

CROSS EXAMINATION BY MR. MAULDIN.....1946

MATTERS AND MOTIONS 1948

TESTIMONY

MISTY NICHOLSON DIRECT EXAMINATION BY MS. STROM	1950

JOHN RICHARD WOOD EXAMINATION BY THE COURT	1959

MATTERS AND MOTIONS	1961

TESTIMONY

JEFF YOUNGMAN DIRECT EXAMINATION BY MR. BANNISTER	1965
VOIR DIRE BY SOLICITOR ARIAIL	1972
DIRECT EXAMINATION CONTINUES BY MR. BANNISTER	1975
CROSS EXAMINATION BY SOLICITOR ARIAIL	1990

MATTERS AND MOTIONS	1999

VOLUME FIVE

MATTERS AND MOTIONS	2001

OUTSIDE THE PRESENCE OF THE JURY

JEFF YOUNGMAN QUESTIONS BY SOLICITOR ARIAIL	2004

MATTERS AND MOTIONS	2006

OUTSIDE THE PRESENCE OF THE JURY

JEFF YOUNGMAN QUESTIONS CONTINUES BY SOLICITOR ARIAIL	2013
CROSS EXAMINATION CONTINUES BY SOLICITOR ARIAIL	2016
REDIRECT EXAMINATION BY MR. BANNISTER	2021

TED KINSLER DIRECT EXAMINATION BY MR. MAULDIN	2026
CROSS EXAMINATION BY SOLICITOR ARIAIL	2028

JAMES EVANS AIKEN DIRECT EXAMINATION BY MR. RICHEY	2030

MATTERS AND MOTIONS	2044

FEBRUARY 14 – 16, 2002

MATTERS AND MOTIONS	2051

TESTIMONY

RICHARD C. KERNS, JR.	
DIRECT EXAMINATION BY MR. MAULDIN	2052
CROSS EXAMINATION BY SOLICITOR ARIAIL	2054

DONNA MARIE SCHWARTZ-WATTS, M.D.	
DIRECT EXAMINATION BY MR. MAULDIN	2054

MATTERS AND MOTIONS	2094

TESTIMONY

DONNA MARIE SCHWARTZ-WATTS, M.D.	
CROSS EXAMINATION BY SOLICITOR ARIAIL	2102
REDIRECT EXAMINATION BY MR. MAULDIN	2125

MATTERS AND MOTIONS	2129

TESTIMONY

PRATAP NARAYAN, M.D.	
DIRECT EXAMINATION BY SOLICITOR ARIAIL	2136

MATTERS AND MOTIONS	2159

TESTIMONY

PRATAP NARAYAN, M.D.	
CROSS EXAMINATION BY MR. MAULDIN	2162

MATTERS AND MOTIONS	2174

CLOSING ARGUMENTS BY SOLICITOR ARIAIL	2181

CLOSING ARGUMENTS BY MR. MAULDIN	2195

MATTERS AND MOTIONS	2215

JURY CHARGE.....	2216
MATTERS AND MOTIONS	2231
<u>ALLEN</u> CHARGE.....	2243
MATTERS AND MOTIONS	2246
VERDICT	2252
MATTERS AND MOTIONS	2258
SENTENCING	2259
PRELIMINARY HEARING DATED FEBRUARY 13, 2001.....	2262
COURT REPORT'S INDEX.....	2263
TESTIMONY	
PAUL SILVAGGIO	
EXAMINATION BY SOLICITOR ARIAIL	2265
EXAMINATION BY MR. MAULDIN.....	2274
TRANSCRIPT DATED FEBRUARY 28, 2001.....	2301
TRANSCRIPT DATED JANUARY 18, 2002	2338
TRANSCRIPT DATED JANUARY 28, 2002	2430

VOLUME SIX

TRANSCRIPT DATED JANUARY 28, 2002 (CONTINUED).....	2500
TRANSCRIPT DATED DECEMBER 7, 2001	2510
OPINION NO. 25907 FILED DECEMBER 6, 2004	2575
ORDER DENYING PETITION FOR REHEARING.....	2585
ORDER GRANTING STAY OF EXECUTION	2587
APPLICATION FOR POST-CONVICTION RELIEF	2589

RETURN, MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT	2597
TRANSCRIPT DATED SEPTEMBER 30, 2005	2636
TRANSCRIPT DATED JANUARY 8, 2007.....	2657
PETITIONER’S EXHIBIT 1 (AFFIDAVIT OF CONNIE JANTZ)	2693
PETITIONER’S EXHIBIT 2 (LETTER TO JUDGE PATTERSON).....	2694
POST-CONVICTION RELIEF HEARING TRANSCRIPT MARCH 6 – 8, 2007	2697
TESTIMONY	
THOMAS COBB	
DIRECT EXAMINATION BY MR. BROWN.....	2711
CROSS EXAMINATION BY MR. WATERS	2733
REDIRECT EXAMINATION BY MR. BROWN.....	2748
CONNIE JANTZ	
DIRECT EXAMINATION BY MR. BROWN.....	2755
CROSS EXAMINATION BY MR. WATERS	2796
REDIRECT EXAMINATION BY MR. BROWN.....	2802
RECROSS EXAMINATION BY MR. WATERS.....	2805
JEFF NAYLOR	
DIRECT EXAMINATION BY MR. BROWN.....	2807
DONNA SCHWARTZ-WATTS	
DIRECT EXAMINATION BY MR. BROWN.....	2816
CROSS EXAMINATION BY MR. WATERS	2856
REDIRECT EXAMINATION BY MR. BROWN.....	2864
JOHN MAULDIN	
DIRECT EXAMINATION BY MR. BROWN.....	2867

VOLUME SEVEN

JOHN MAULDIN

DIRECT EXAMINATION CONTINUES BY MR. BROWN.....	3000
CROSS EXAMINATION BY MR. WATERS	3051
REDIRECT EXAMINATION BY MR. BROWN.....	3119

BRUCE BYRHOLDT

DIRECT EXAMINATION BY MR. BROWN.....	3131
CROSS EXAMINATION BY MR. WATERS	3132

JOHN STEEDMAN

DIRECT EXAMINATION BY MR. BROWN.....	3134

CAMILLA TEZZA

DIRECT EXAMINATION BY MR. BROWN.....	3141
CROSS EXAMINATION BY MR. WATERS	3151
REDIRECT EXAMINATION BY MR. BROWN.....	3159

CARLOS TORRES

DIRECT EXAMINATION BY MR. BROWN.....	3161

TIMOTHY JONES

DIRECT EXAMINATION BY MR. BROWN.....	3165
CROSS EXAMINATION BY MR. WATERS	3168

PAUL SILVAGGIO

DIRECT EXAMINATION BY MR. BROWN.....	3177

BRIAN BOWEN

DIRECT EXAMINATION BY MR. BROWN.....	3184
CROSS EXAMINATION BY MR. WATERS	3189
REDIRECT EXAMINATION BY MR. BROWN.....	3190

PRAPAP NARAYAN

DIRECT EXAMINATION BY MR. BROWN.....	3195
CROSS EXAMINATION BY MR. WATERS	3224
REDIRECT EXAMINATION BY MR. BROWN.....	3247

JAMES BANNISTER

DIRECT EXAMINATION BY MR. BROWN.....	3256
CROSS EXAMINATION BY MR. WATERS	3310
REDIRECT EXAMINATION BY MR. BROWN.....	3343
RECROSS EXAMINATION BY MR. WATERS.....	3357

RODNEY RICHEY	
DIRECT EXAMINATION BY MR. BROWN.....	3359
CROSS EXAMINATION BY MR. WATERS.....	3370
PLAINTIFF'S EXHIBIT 1 (MEDICAL RECORDS).....	3409

VOLUME EIGHT

PLAINTIFF'S EXHIBIT 1 (MEDICAL RECORDS – CONTINUE).....	3500
PLAINTIFF'S EXHIBIT 2 (DEPOSIT SHEET).....	3505
PLAINTIFF'S EXHIBIT 2A (COPY OF P2).....	3508
PLAINTIFF'S EXHIBIT 3 (SLED REPORT)	3514
PLAINTIFF'S EXHIBIT 4 (POLICE REPORT)	3516
PLAINTIFF'S EXHIBIT 5 (POLICE REPORT)	3520
PLAINTIFF'S EXHIBIT 6 (TRANSCRIPT)	3522
PLAINTIFF'S EXHIBIT 7 (TRANSCRIPT)	3587
PLAINTIFF'S EXHIBIT 8 (LETTER)	3603
PLAINTIFF'S EXHIBIT 9 (LETTER)	3605
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
PLAINTIFF'S EXHIBIT 15 (TABERNACLE RECORDS)	3629
ORDER OF DISMISSAL WITH PREJUDICE	3633
INDICTMENTS	3727

1 don't know. But I could see a scenario where that may be
2 relevant.

3 As to the gloves and the other items, we'll have to
4 address that at trial.

5 So in sum, I do not believe this is 404-B evidence. I
6 may, on the record, at some point make certain findings if
7 I'm convinced by clear and convincing evidence that these
8 alleged facts have been established. Then I'll make that
9 finding on the record in the event the Appellate Court
10 should determine it is 404-B evidence. But it strikes me
11 to be classic res gestae in that the events in Anderson
12 quickly followed from the events in Greenville. That's my
13 ruling on the motion in limine regarding the admissibility
14 of the Anderson evidence.

15 I will now address the motion captioned as "Relief
16 from Unconstitutional and Unlawful Disclosure Of Mental
17 Health Evaluation." The motion is denied. There's no
18 basis to recuse the Solicitor's Office or this Court.
19 Quite frankly, the motion is troubling.

20 I fully understand the desire to create error in a
21 case of this nature. I'm keenly aware of the mine field we
22 proceed through in a case of this nature. I'm also aware
23 that in once zealous representation inadvertently in the
24 heat of the moment liberties may be taken with the facts.
25 I'm not troubled by the claim of error. I'm troubled by

1 the relief sought. I'm troubled by the inaccurate record.
2 I'm confident any inaccuracies were unintentional.

3 In one written submission it states, "Capital counsel
4 was not informed that the mental health evaluation report
5 would be broader than the statutory requirements of section
6 44-23-410." That statement is simply not true. Although
7 unintentional, there are many other incorrect statements
8 purported to be a part of this record.

9 Consequently I feel compelled to approach certain
10 facts on the record. And I regret very much I cannot put
11 all facts on the record, many of which the State is unaware
12 of. In that regard, I may only refer to some facts
13 generally. Given the tone of the motion, I regret that the
14 record cannot be complete at this time. If necessary, I
15 can supplement this bench ruling after the trial.

16 This Defendant had written Defense Counsel and the
17 Court on numerous occasions. The State is aware of some of
18 Defendant's submissions, but not all of them. One of those
19 submissions concerned Defendant's desire to discharge these
20 attorneys from representing him on the Anderson County
21 charges. Greenville counsel had requested to represent
22 Defendant in the Anderson County charges.

23 The request was logical and understandable since the
24 charges in Anderson and Greenville arose from a
25 continuation of events from the same date. I, therefore,

1 appointed Greenville counsel to represent Defendant in the
2 Anderson County charges.

3 We then come to the Anderson trial date. The
4 Defendant, as noted, moved to discharge Greenville
5 attorneys from representing him on the Anderson County
6 charges. That motion was granted. It was granted because
7 a dispute arose concerning whether to pursue a mental
8 health issue.

9 It was my judgment, at the time, that Defendant's
10 wishes be honored delaying the Anderson trial and assigning
11 Defendant new counsel for the Anderson charges accomplished
12 three things. 1) It honored the Defendant's wishes on a
13 matter that transcended strategy related to that. And
14 secondly, it avoided a probable reversal of a conviction on
15 the Anderson charges by way of direct appeal or PCR due to
16 counsel's failure to pursue a particular defense. Third,
17 the delay in resulting lack of publicity would assist in
18 the selection of an impartial jury in the Greenville
19 capital case.

20 I was, however, concerned with the Defendant's
21 competency. Once new counsel was appointed, it was
22 Defendant, himself, who requested a full mental health
23 evaluation. The Defendant wrote asking for a full mental
24 evaluation.

25 I understand counsel's present desire to look at the

1 form order that every county and solicitor uses in this
2 state, but to bootstrap that form order to a fact that does
3 not resemble the truth in this case is unfair. It was
4 Defendant -- and the record should be crystal clear -- who
5 affirmatively requested the mental health examination.

6 At Defendant's request, the form order was completed,
7 which counsel and Defendant signed. That consent order,
8 orchestrated by Defendant, included an evaluation for
9 criminal responsibility. I signed the order.

10 Solicitor Ariail was correct to point out that since
11 an evaluation was going to be performed in any event at
12 Defendant's request that the Greenville County charges
13 should be included. The charges in Greenville and Anderson
14 arise from a continuation of events of a single day. The
15 Greenville charges were naturally included. Everyone
16 understood that the evaluation would be consistent with
17 that set forth in the Anderson consent order.

18 I directed the report be submitted to me under seal.
19 From that time until the report was issued, the case went
20 forward. The Defendant filed a motion pro se to
21 consolidate the Greenville charges with the Anderson
22 charges. That matter was handled in an in-camera
23 proceeding.

24 The Defendant eventually sought once again to
25 discharge Mr. Mauldin and Mr. Banister, this time as to the

1 Greenville charges. That matter was also handled
2 in-camera. My observations of Defendant and review of his
3 continuing notes submitted my initial concern that a
4 legitimate question existed as to his capacity,
5 particularly as it relates to his ability to consult with
6 his attorneys with a reasonable degree of rational
7 understanding. Couple this with my knowledge of funding of
8 mental health experts, which I am not at liberty at this
9 time to discuss.

10 I then received the evaluation report. It was my
11 intent to redact substantial portions primarily dealing
12 with Defendant's statements. It was my intent to redact
13 Defendant's direct statements, although according to the
14 report he was fully Mirandized and waived his rights prior
15 to both interviews.

16 I invited counsel to object and if a valid reason for
17 nondisclosure was presented, I would conduct a hearing.
18 Greenville Defense Counsel objected by letter dated
19 January 4, 2002, but only in a general way, perhaps by
20 design. Much of what is argued now was not included in the
21 January 4 original objection.

22 Perhaps the key challenge from Defendant now comes
23 from the State's December the 11th, 2001, notice of alibi
24 and insanity defense. I was informed of neither the
25 State's December 11 notice, nor the Defendant's failure to

1 respond by December 21. The motion states, "Therefore, at
2 the time of the disclosure of the evaluation, there was no
3 indication from Defendant that he was claiming insanity or
4 guilty but mentally ill."

5 If this is such a material component of Defendant's
6 present motion of parade of horrors, why did Defense
7 Counsel not bring this to my attention on January 4th when
8 setting forth the objections to disclosure? Perhaps if I
9 had simply been informed that Defendant did not and does
10 not challenge competency and that Defendant did not intend
11 to assert a defense based on mental illness, then I might
12 have determined that the report should not be disclosed.
13 But I'm not clairvoyant. I can rule only on what is
14 presented. It's unfair and inconsistent with our
15 procedural default rules to cry foul when a matter could
16 have been timely raised.

17 In any event, substantial portions of the evaluation
18 were redacted. What remained were findings and opinions
19 limited to the scope of the evaluation sought by Defendant.

20 I believe the Court not only has the right, but a duty
21 to ensure that an accused is competent and criminally
22 responsible. This is especially true where the Court has
23 reason to question, as here, the competency and mental
24 state of a Defendant in a capital case. The concern here
25 arises from Defendant's written communications with the

1 Court, the nature of those communications, my observations
2 of Defendant in open proceedings and in-camera proceedings,
3 and knowledge gained through funding of experts.

4 Following the proceedings in Anderson in August of
5 2001, my concerns increased. As it turned out, it was not
6 the Court but the Defendant, himself, who sought the very
7 evaluation that Defense Counsel now objects to. I see no
8 prejudice to the Defendant in the guilt phase. In fact,
9 the statement made during the argument today acknowledges
10 that.

11 The Defense seeks to recuse both the Solicitor and the
12 Court. Alternatively, it would be fine with the Defendant
13 if the death penalty notice were quashed. That's a tacit
14 admission that any error is unrelated to the guilt phase.

15 According to Defense Counsel, there will be no mental
16 illness issue in the guilt phase. Accordingly, the State
17 may not visit the matter of mental health in the guilt
18 phase.

19 If the case proceeds to the sentencing phase, I may
20 well preclude the State from relying on or referring to the
21 report. While it is clear that no prejudice results to
22 Defendant in the guilt phase, I will reserve judgment on
23 the sentencing phase. We will address either parties
24 reliance on the report at that time.

25 The suggestion that the Solicitor's Office and the

1 Court be recused is utterly speechless. Even assuming the
2 report should not have to be disclosed, prosecutors
3 routinely deal with admissible evidence. Cases are
4 routinely prosecuted based on admissible evidence and
5 inadmissible evidence is rejected and not part of the trial
6 process.

7 Similarly, as a judge, I frequently have knowledge of
8 inadmissible evidence both in civil and criminal matters.
9 For example, I have acquitted many criminal Defendants
10 based on illegal searches and seizures.

11 This case has its own example, the Anderson evidence.
12 I'm aware of the Anderson evidence and its prejudicial
13 nature, yet there's no suggestion that I recuse myself
14 because I'm aware of facts beyond the admissible evidence.

15 The motion to recuse the Court is premise, according
16 to its language, on Defendant's option to plead guilty
17 being prejudice. I have not nor will I ever rely on
18 inadmissible evidence in reaching a decision. To do
19 otherwise would be rank dishonesty and complete abandonment
20 of my oath of office. I hope my record of almost 11 years
21 on the bench speaks for itself. To claim error is one
22 thing, to seek recusal is quite another.

23 I apologize for the length of the bench ruling, but I
24 felt it was necessary under the circumstance. I want the
25 record to be factually accurate. I regret I am precluded

1 from revealing in-camera proceedings and funding matters
2 which address mental issues.

3 I also realize that the death penalty is such an
4 emotional issue for me, including lawyers and judges. My
5 research in the past few years in this area reveals that
6 some decisions are emotion-driven and not law-driven.

7 When I conscientiously and objectively review the true
8 record, I do not believe error has been committed,
9 certainly not prejudicial error. The trial will be
10 conducted in a manner to protect the parties rights to a
11 fair trial.

12 If, as Defendant contends, the State has gained access
13 to inadmissible evidence, the Court can protect that. The
14 Court can prevent the State's direct or indirect
15 introduction or use of such evidence.

16 The State's motion for the entire evaluation report is
17 denied without prejudice. That will be determined
18 subsequently at trial.

19 That concludes the matters before me.

20 As I noted earlier, have the witness list in my office
21 by Wednesday.

22 Thank you.

23 *****END OF TRANSCRIPT OF RECORD*****
24
25

2509

CERTIFICATE OF REPORTER

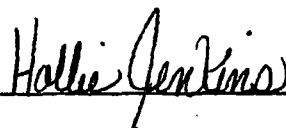
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, 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 the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 28th day of January, 2002.

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

March 8, 2002



Hollie Jenkins, Court Reporter

My Commission Expires: 11-17-10

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF GREENVILLE

4
5 STATE OF SOUTH CAROLINA :

6 :

7 -vs-

: TRANSCRIPT OF RECORD

8 :

9 JOHN RICHARD WOOD :

ORIGINAL

10
11 December 7, 2001

12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE JOHN W. KITTREDGE, Judge.

16
17 A P P E A R A N C E S:

18 ROBERT ARIAIL, ESQ.

19 BETTY STROM, ESQ.

20 Attorneys for the Plaintiff

21 JOHN MAULDIN, ESQ.

22 JAMES BANNISTER, ESQ.

23 Attorneys for the Defendant

24 MARY E. SPRAGUE

25 Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E XWITNESSESDIRECTCROSSREDIRECTRECROSS

N/A

EXHIBITSMARKEDFILED

N/A

Charge of the Court

N/A

1 THE COURT: This is a hearing in the case of State
2 versus John Richard Wood. There are a number of motions
3 which have been filed. We will first deal with those
4 motions. We will also deal with a request that's been made
5 about a consolidation of charges, part of which will have
6 to be done in an in camera setting. Also, we'll see if
7 there's any remaining issues on the questionnaire, the
8 letter to be sent to potential jurors. And Mr. Mauldin,
9 you've been kind enough to provide a listing of the
10 motions, and if you want to address them in that order it
11 suits me fine. If you want to deviate and address them in
12 another order that you and the State agree upon, I'm
13 amenable.

14 MR. MAULDIN: Yes, sir.

15 THE COURT: I have reviewed the motions which are
16 detailed. I have reviewed the State's responses. I am
17 familiar with both motions and the State's responses. It's
18 not necessary to simply repeat each motion verbatim. I
19 recognize the importance of the motions, however some of
20 the responses, in my judgment, are rather obvious, or are
21 dictated by precedent, and I may simply ask the State at
22 various points if they have anything in addition to what
23 has been submitted, because we do have a good bit to get
24 through. I may rule on some of the motions, or most of
25 them, and I will, either today or next week, issue a short

1 order in some fashion reflecting the decision on these
2 various motions. With that, Mr. Mauldin, you may proceed.

3 MR. MAULDIN: Thank you, Your Honor. Your Honor, the
4 list provided to you, the first motion is a motion for a
5 continuance. This motion, Your Honor, is responded by the
6 State, and by the way we received the responses between
7 4:30 and 5:00 yesterday afternoon. So I may have to take
8 just 15 seconds. I've read them, but I may have to take
9 just a second to look back on the responses very quickly.

10 THE COURT: Take your time. And I do want to thank
11 the State for responding. To be able to have a hearing
12 today, you had to respond quicker than you're required to,
13 and I appreciate your diligence in that regard.

14 MR. MAULDIN: The motion is made, Your Honor, in
15 the -- with the idea, not that we resist the encouragement
16 of our leaders to get on with business as usual. We do not
17 deny that that is appropriate to the extent possible. The
18 interesting analysis could be that what we're getting ready
19 to get into here is not business as usual. Capital cases
20 are very unusual. It's not -- we're not asking -- we're
21 not getting ready to proceed into something that a person,
22 a normal citizen of our country would participate in on a
23 normal basis, a sporting event, or a night out at a
24 restaurant, or going to school, or going to work, which we
25 all should do in the difficult times we're in.

1 What we are asking jurors to do is to participate in a
2 very unusual experience, and that is to come in and be
3 sequestered in a capital trial where the juror, and it's
4 the juror that we're conscious of here, placed in a --
5 essentially a controlled environment, sequestration,
6 separated from their family, with even their communications
7 being monitored for appropriate -- and it's appropriate to
8 do that, but the problem is, is that there's a great bit
9 being said that a juror's or a person's level of anxiety,
10 their level of comfort, their level of security, their
11 level of concern for family or other things in their life
12 is very heightened by what the county is going through, not
13 only as the immediate reaction to the September 11th
14 incident, but the ongoing activities of our country, and
15 it's security.

16 Just -- I think it was either yesterday morning, or
17 the day before, the headlines on our local Greenville News
18 said, alert once again, highest alert necessary, and those
19 kind of things affect a person's capabilities of
20 participating in the type of experience which I classify as
21 not normal of a capital case, and so I ask that the Court
22 take into consideration whether or not John Wood's right to
23 have a fair and impartial jury might be significantly
24 impaired by the individual juror's level of anxiety, or
25 distress, or concern because of the sequestration process

1 and the separation from their families. That's really the
2 essence of that motion, Your Honor.

3 THE COURT: The State have anything in addition to
4 what it's submitted in its written response?

5 MR. ARIAIL: Just to add to this motion was made in
6 the previous death penalty trial that we just started on
7 October the 4th. It was denied in that case, and the judge
8 handled the matter with the jury. There was absolutely no
9 response to that from the jury. And I would submit that
10 there's just no basis for it.

11 THE COURT: Motion is denied. These concerns, which I
12 appreciate, are best addressed by voir dire, specifically
13 each juror can, during the voir dire process, indicate his
14 or her level of concern, not only with these events which
15 are of a public nature, but the voir dire process is also
16 geared to determine if there are events within that
17 particular juror's life which at that time would make
18 sequestration inappropriate and thus impact on the ability
19 of the defendant to receive a fair and impartial trial. So
20 it will be pursued in that manner. Next motion, please.

21 MR. MAULDIN: Your Honor, the second motion is the
22 motion for change of venue. Let me say, and I hope I was
23 looking on the face of my motion to make sure -- yeah, I
24 think our paragraph number 6 in our motion identifies the
25 fact that to the extent that this motion could be

1 considered offhand, is just simply premature. We
2 acknowledge that it -- what we're doing is we want the
3 Court to be aware that we intend to have the Court address
4 in significant detail the issues related to whether a
5 change of venue is appropriate in this case. So this is
6 more of a -- we're trying to kind of sent up a flare, if
7 you will, we're not going to present testimony today in
8 support of this. We're not going to submit affidavits
9 regarding pre-trial publicity, but we do believe that
10 extensive questioning of the jurors at -- at the time of
11 individual -- their individual appearance, and by the Court
12 should be done.

13 That is as opposed to the Court saying, well, Mr.
14 Mauldin, if you're concerned about it you can question the
15 jurors on voir dire. We don't believe that's a sufficient
16 remedy. We believe that because it will appear defense
17 orientated, when in fact the question of whether a person
18 is entitled to venue is in fact a Court decision as to both
19 parties, as to whether or not either or the other is
20 entitled to a change of venue. So it's a -- it's somewhat
21 of an independent inquiry as opposed to inquiry relating to
22 one party in a lawsuit, or the other. So we are asking that
23 the Court make, in terms of its plans and in terms of
24 preparation, make significant inquiry of each of the
25 individual jurors on voir dire regarding the possible need

1 for a change of venue, Your Honor.

2 THE COURT: Very good. I'll proceed in that fashion.
3 I'm simply not permitted to change venue at this time based
4 on the showing, but those concerns are noted and will be
5 explored during voir dire.

6 MR. MAULDIN: Your Honor, the next motion is the
7 motion to bar electronic broadcasting. Our motion is
8 extensive in its -- in text. The motion is being, I guess,
9 contested to the extent their response speaks for itself.
10 I will only make this point, and I make this point whenever
11 this motion comes up. The most glaring example of a
12 comparison with regard to the -- California's handling of
13 the O. J. Simpson case, and South Carolina's handling of
14 the Susan Smith case, that is -- and that I think is the
15 point we ask that the Court take that into consideration
16 and bar electronic broadcasting of this case.

17 THE COURT: State have anything in addition to its
18 written response?

19 MR. ARIAIL: No, Your Honor, except just to note that
20 we've had -- unfortunately this is the third death penalty
21 trial that I've had in the last four years involving a
22 police officer, and all of those cases we've had electronic
23 broadcasting, or -- and several others. And I think the
24 way it's been handed by the Court has been appropriate and
25 has not interfered with any presentation or operation of

1 the -- of the case, and I do concur with Mr. Mauldin's
2 request as to voir dire and the restrictions relating to
3 the jury.

4 THE COURT: I'm inclined to deny the motion to bar the
5 press or the electronic media. I will follow the
6 guidelines as prescribed in rule 605. There will be, if it
7 plays out, a pool camera, and there will be one camera. I
8 will carefully coordinate that, and it will be done in a
9 way that is not disruptive to the trial or to the jury's
10 ability to proceed as the jury should. Obviously it's
11 always a work in progress, and while I'm inclined to permit
12 the media, it will be done with appropriate safeguards to
13 ensure that both sides receive a fair trial, but I do
14 believe that there is a measure of accountability that's
15 achieved if the public has such access, if it's done in a
16 careful and monitored way. So those are my thoughts and
17 that's the manner in which I will proceed. Next motion,
18 please.

19 MR. MAULDIN: Your Honor, the next motion is made with
20 the regard to the position of the defendant that our
21 statute is a violation of the 8th Amendment regarding cruel
22 and unusual punishment.

23 THE COURT: Anything further from the State?

24 MR. ARIAIL: No.

25 THE COURT: The motion is respectfully denied. Next

1 motion.

2 MR. MAULDIN: Your Honor, the next motion is a motion
3 to quash the notice, and this particular motion goes into a
4 little different angle, I guess you will, regarding the
5 Constitutional fabric of our statute. As this Court is
6 intimately familiar, the -- the defendant in a case
7 involving our statute must enter a plea of not guilty in
8 order to have the -- at any subsequent sentencing hearing
9 if necessary, be before a jury. The way the -- and if the
10 Court will indulge me for the record, the -- the guilt or
11 innocence issue is decided first in our bifurcated system.
12 And in order to get -- to get to a sentencing proceeding
13 and have a jury be the sentencing instrument, then the
14 defendant must enter a plea of not guilty even if in fact
15 that defendant may wish to enter a different plea, or a
16 plea of some other type. Any other plea essentially is
17 a -- ultimately works as a prohibition of a -- the
18 selection of a jury for sentencing, resulting in the Court
19 -- or a non-jury proceeding for sentencing. We believe
20 that the statute is therefore fundamentally unfair and
21 results in -- in undue pressure requiring a defendant to
22 enter a plea of not guilty.

23 Now, the response of the State includes the language
24 that the way this statute is set up forces the defendant to
25 make a difficult choice. Well, that is an understatement.

1 It does force a defendant to make an undue or difficult
2 choice, but what we have to deal with in cases like this is
3 jurors aren't lawyers. They are just regular people, and
4 they come into the courtroom looking for a certain level of
5 legitimacy and credibility from litigants.

6 What happens at the very beginning of a capital case,
7 is the defendant, in what the State quotes as having to
8 make a difficult choice, addresses the jury with what turns
9 out to be an obvious untruth, if you will. It becomes --
10 there's a blatant inconsistency with regard to what
11 position a defendant is forced to take and then the jury
12 says, why would a defendant -- and this -- and I'm talking
13 about a hypothetical. I'm not talking about Mr. Woods'
14 case. Why would a defendant, any defendant enter a plea
15 and say, I'm not guilty. By the time the trial of the case
16 is over the defendant's credibility is also over for all
17 intense and purposes.

18 The jury doesn't understand that he has to do it. The
19 jury doesn't understand that he is forced to do that by our
20 statute. The jury believes that when a person says I'm not
21 guilty, they mean it. It's supposed to mean something.
22 And so what our statute does is it essentially takes away
23 the defendant's credibility to the subsequent sentencing
24 panel by requiring him to enter a plea that in many
25 occasions is wholly inconsistent with the facts that the

1 jury will hear.

2 And then the second thing it does is it removes from a
3 defendant the natural benefit of acceptance of
4 responsibility as far as that jury is concerned. In other
5 words you, flip it over and you've got exactly -- you've
6 got a bad effect on the head of the coin but you've also
7 got a bad effect on the tail of the coin too. Not only is
8 he penalized for non-credibility, or lack of credibility,
9 but he is penalized for lack of acceptance and
10 responsibility, or at least the appearance of lack of
11 responsibility. So it's a double whammy for a capital
12 defendant under our statutes.

13 We believe that that process essentially constitutes
14 denial of due process. Thank you, Judge.

15 THE COURT: Thank you.

16 MS. STROM: Nothing further than our written
17 responses, Your Honor.

18 THE COURT: All right. I do appreciate the concern
19 that you've expressed, Mr. Mauldin, but I do not believe it
20 rises to the level of being a Constitutional violation, and
21 I believe the Legislature in fashioning the death penalty
22 statute and procedure in this manner did not run afoul of
23 the Constitution as it is presently interpreted. So that
24 motion is respectfully denied. Next motion, please.

25 MR. MAULDIN: Your Honor, the next motion relates to

1 the process of -- of execution by electrocution. I believe
2 that -- and going directly to the -- I let my motion speak
3 for itself. Going directly to the response of the
4 government, it appears that the simple fact that the
5 defendant in our statute is given an alternative to how he
6 is to die is a -- is an answer to the problem. I guess
7 somehow in some way that -- that makes sense. You know,
8 being somewhat of a purist as I am, I have a hard time with
9 the Court being asked to endorse the process simply because
10 a convicted defendant has his choice of poisons, and so I
11 don't think that solves the problem contained in my motion,
12 and I reaffirm the text of the motion here today.

13 THE COURT: Very good, sir. Anything further from the
14 State?

15 MR. ARIAIL: No, Your Honor.

16 THE COURT: The motion is respectfully denied. Next
17 motion.

18 MR. MAULDIN: Your Honor, the motion number 7 is a
19 motion to prohibit the introduction of photographs of the
20 victim and the scene of the crime. There is no question
21 that until we see the photographs we are being asked to
22 make a ruling in a vacuum. I acknowledge that. The
23 concern I have is to try to plead with this Court, both as
24 to motion number 7 on the photographs of the victim and the
25 crime scene, as well as motion number 8 as to the autopsy

1 photographs. I'll join those two motions together. The --
2 we ask the Court to at least require the government to
3 identify photographs that they propose to use at either
4 phase of this proceeding.

5 So that the -- because it may very well be, if there
6 are a 100 photographs that are going to be proposed to be
7 used, it may very well be that the defense doesn't even
8 enter an objection to 95 of them, or 99 of them, and so the
9 process of doing what we're trying to do here can be very
10 simplified by simply -- and I understand that we've been
11 given the opportunity to view evidence. We don't know, or
12 we would assume that that would involve photographs, and we
13 take that as being the case, that at such time we view the
14 evidence we would also have the opportunity to view
15 photographic evidence. So we're not claiming that they're
16 not providing us with that opportunity.

17 What we are asking the Court to do is to require an
18 identification of photos that would be proposed to be
19 submitted as exhibits in the case at either phase, so that
20 if we are going to have a fight, we can have it long before
21 the jury even comes to the courthouse. As this Court is
22 aware in cases that are complicated like this, sometimes a
23 slip up in the courtroom can be a real nightmare. And if
24 we can do these things in advance, it means that you will
25 have had an opportunity to rule on the 403 or whatever

1 issues the defendant -- we wouldn't have to object. We
2 wouldn't have to even enter a position. I'm a little
3 reluctant to say that because of the default -- procedural
4 default requirements in these kind of cases, but it really
5 would clean up the case.

6 So we're asking that the Court issue an order that
7 does set a parameter regarding photographic evidence.

8 THE COURT: I'll be glad to hear from the State and
9 you can go into your response. What I'm specifically
10 concerned about is this twist that you come forward and
11 identify your exhibits beforehand.

12 MR. ARIAIL: Well, Your Honor, first, he hasn't
13 raised -- that's not a motion here today. And so I would
14 move -- just at this point, I don't want to respond to
15 something that's not a motion. I would respond as we did
16 to 7 and 8, that those are premature at this time, and if
17 we get to the issue of photographs, victim's at the scene
18 of the crime, and photographs of autopsy, at the time of
19 trial then obviously it becomes -- if we elect to present
20 those pictures then it becomes an issue.

21 Now, going to the issue raised which was not raised,
22 but the one he's raised in his argument, it has always been
23 our practice in every case that we will -- first, let me
24 step back. He's got all the photographs. That's -- they
25 were given to him as part of the file. So as -- you know,

1 contact sheet that -- he's got everything in it that he's
2 reviewed. It's not like we've got photographs holding them
3 from him. He's got copies of them. Same as I have copies.
4 I just haven't told them which ones.

5 When we get to that point as -- you know, we're really
6 getting a little bit into my trial strategy. We're kind of
7 crossing the line a little bit. And I don't mind showing
8 the Court ahead of time, and showing them to the defense
9 ahead of time, but my definition of ahead of time is not
10 weeks and weeks ahead of time, it's maybe an hour ahead of
11 time. So that my trial strategy is not -- I mean we've
12 given them the whole file in this case. We continue to
13 give them every piece of information we've got, just to
14 eliminate discovery problems and other issues. I don't
15 want to also have to give them my order of presentation,
16 along with my questions in direct examination and
17 photographs of everything else, and I think that's going
18 too far.

19 I'll show them to the Court and I'll show them to Mr.
20 Mauldin before we put them up so that he can look at them,
21 and that's what we did in the last one. There wasn't any
22 delay and we went right ahead. About an hour ahead of time
23 just what I propose.

24 THE COURT: I'll let you respond if you'd like to.

25 MR. MAULDIN: Yeah, very briefly. We do have a

1 voluminous file that was provided, and not to, you know,
2 split hairs, we did not in this matter get a contact sheet
3 showing the photographs. I'm assuming that that would be
4 made available to us, and I think I mentioned that, that we
5 could see the -- you know, if there were 500 photographs
6 taken, that we would see all 500, and we would want to do
7 that, and that's good. But that really begs the point.
8 The point is, if there are 25 going to be used at trial,
9 shouldn't we know what 25 so we can enter objections to
10 them. And if that's done 15 minutes while the jury is at
11 lunch or something, we don't like that method of trial in a
12 capital case, but you know, that's obviously why you're the
13 judge and I'm the defense lawyer.

14 THE COURT: All right. Well, number one, you just
15 need to insure that those photos have been made available,
16 and I know that's not pursuant to any order, but the State
17 in this case has simply made its file available and the
18 Solicitor has made a representation that it was given, and
19 I'm hearing something else from the other side. We need to
20 follow up and see if that's been done. Number ---

21 MR. MAULDIN: We have spoken, Your Honor, this morning
22 about a date to view the physical evidence, and so if that
23 contact sheet or whatever process is what we'll see then,
24 that's -- we understand that.

25 THE COURT: Very good. Secondly, I'm neither going to

1 grant or deny your motion. I do believe it's premature at
2 this point. I'm going to hold it in abeyance and not
3 require the State at this time to specifically identify
4 what evidence it intends to introduce. We will pursue it
5 in a manner sufficiently before the actual presentation of
6 the evidence that in my judgment will assure that both the
7 strategy of the State is protected as well as the
8 significant and fundamental right of the defendant to a
9 fair and impartial trial. Obviously it will deal with
10 concepts of relevancy under 402, issues of prejudice
11 encompassed in rule 403. That hinges in part on what the
12 aggravating circumstances are but that must be dealt with
13 at that time. That's how I'll handle those two motions,
14 both number 7 and number 8 on your list.

15 MR. MAULDIN: Your Honor, the next motion is the
16 motion of requesting the production of statements of any
17 co-defendants, co-conspirators. There is a co-defendant in
18 the case and the State has, as has been brought out this
19 morning, provided what they have identified as their entire
20 file. So we -- and there was a statement contained in that
21 file identified as the statement of the co-defendant. We
22 acknowledge receipt of that.

23 However, this -- the question then becomes are there
24 subsequent efforts to interview that person, resulting in
25 either supplementals, or additional statements, or other

1 information that that co-defendant may be providing to the
2 government that we now would be entitled to. Keeping in
3 mind, Your Honor, and as we have clearly indicated, we did
4 not file a rule 5 in toto. We've -- the State chose of its
5 own -- took its own position that they would provide us
6 with their file, and that -- that was their position. This
7 request is not tied to any right under rule 5 in my view.
8 We cite in our motion the ---

9 THE COURT: 801?

10 MR. MAULDIN: Pardon me?

11 THE COURT: 801 is what you're relying on?

12 MR. MAULDIN: Yes, sir. And so it is not a -- we're
13 not relying on a rule 5 or reciprocal type of discovery
14 process, and we're also acknowledging receipt of a
15 statement, but would want to be entitled to any subsequent
16 statement given by that co-defendant, either orally or in
17 writing, in anticipation of the trial of the case.

18 And finally, Your Honor, it does bring me back, and I
19 don't have the exact date we made the motion, I could give
20 it to you real quickly for the record, but we did make a
21 motion back on January 30th, which was resolved on February
22 28th by the Court, regarding the revealing of any deals to
23 co-defendants or other witnesses. We remind the State
24 that -- of that obligation as well, with regard to the
25 dealing of the co-defendant between now and trial, or

1 anything that's come up so far.

2 THE COURT: The State in its response provides --
3 provides that, quote, it will continue to provide materials
4 to the defendant despite the fact that the defendant has
5 chosen not to file for full discovery, close quote. Is
6 that not a sufficient response?

7 MR. ARIAIL: Your Honor, could I clarify one thing? I
8 don't know what his definition of a statement is. My
9 definition of a statement is that the individual has given
10 a written statement to law enforcement. Work product,
11 notes, and interviews, and that sort of stuff as part of my
12 trial preparation, my meeting with witnesses, I trust would
13 not be so broad as to be construed as a statement under any
14 definition, but -- and if he's asking for statements under
15 801(D)(2), we're talking about some statement and
16 components of a conspiracy. I assume this conspiracy ended
17 on the date of their arrest, so I don't know how subsequent
18 statements by one of the -- how that rule would be
19 applicable.

20 I can assure the Court this, if any co-conspirator has
21 given an additional written statement to law enforcement
22 then under the rules of being advised of their rights and
23 having a statement written down by law enforcement, or even
24 an oral statement to law enforcement, but not something as
25 a result of interviews that a person has with me. I hope

1 that's not discoverable and that's my constructive -- we've
2 given him everything but where we're talking, trial
3 preparation.

4 THE COURT: All right, sir. Be glad for you to
5 respond.

6 MR. ARIAIL: Of course we'd provide Brady. If in
7 trial preparation I learn something I would of course
8 disclose that also, if it was Brady material.

9 MR. MAULDIN: And finally, Your Honor, with regard to
10 the response now the -- in furtherance of the conspiracy,
11 we're talking about the incident, circumstances involving
12 the incident, and we say a statement given about the
13 incident, even if given six months after the incident,
14 is still contained. So you know -- so to the -- and
15 maybe I was misunderstanding what he was saying. But let
16 me give you the other example of what I mean about this
17 statement.

18 If a defendant, in a hypothetical case, if a
19 co-defendant, under my motion, gave a statement, and a week
20 before -- and that statement was then provided to the
21 defendant who was going to go to trial, and then a week
22 before the trial that co-defendant said to either the
23 solicitor, or an officer, or something, that statement
24 isn't true, I'm going to give you statement B, completely
25 different statement, I don't care if that's told to the

1 prosecution, or to the prosecutor himself, and he then
2 therefore claims it somehow work product, or if it's given
3 to a police officer in writing, or if it's given to an
4 investigator on an audio tape, it's not the form of it I
5 don't think is really the issue, the issue is whether or
6 not there is a statement in addition to the one we already
7 have been provided. And that's what we would want.

8 If it's in the form of a -- say, in this hypothetical
9 case I've given you, the co-defendant says to an
10 investigator, whatever he said, whether it's Brady or not,
11 let's say it's not Brady, it's inculpatory as to the
12 defendant who's going to trial, incriminating to him, but
13 it is not contained in the first statement that's been
14 provided to the defendant, co-defendant says to an officer,
15 just any set of circumstances, and the officer writes it
16 up, not as a written statement to be signed under oath, but
17 just as a summary of that statement, we believe that should
18 be provided to the defendant, if it's a statement of the
19 co- -- of a co-defendant under that rule.

20 THE COURT: And what's the legal authority for the
21 production of that?

22 MR. MAULDIN: Your Honor, I don't -- could I borrow
23 that just a moment? Thank you, Judge.

24 THE COURT: Are you talking about 801(D)?

25 MR. MAULDIN: Hang on just a minute, Your Honor.

1 801(D)(2)(E) says a statement by a co-conspirator of the
2 party during the course and in furtherance of the
3 conspiracy. Now, if -- I don't think that the -- I don't
4 think that the moment of the giving of that statement is
5 the fact. I think that you can talk about something that
6 was in furtherance of the criminal act. You can talk about
7 it six months after, and it would still fall under that
8 requirement. Now, I don't know if I'm answering the
9 Court's question.

10 THE COURT: You'll just have to be patient with me.

11 MR. MAULDIN: Well, me too. I mean, I'm not -- when I
12 start grabbing law books, my office ducks, because it's no
13 telling what's going to get swung. So I am ---

14 THE COURT: Well, let me tell you where I'm coming
15 from and maybe that will narrow the focus and how you can
16 assist me here. When I think of rule 801, and I'm thinking
17 of hearsay, I'm thinking about a trial setting when I'm
18 called upon to rule whether certain evidence given at trial
19 is admissible for the fact finder to consider. I don't
20 view 801 as a tool that I can employ outside of testimony
21 to require one party to produce something to another. Now,
22 there maybe a mechanism to do that, but I view 801 as a
23 rule of evidence dealing with hearsay, generally not
24 admissible but here are some exceptions, one of which is
25 the co-conspirator exception, but not as a tool or

1 discovery device outside of the question of admissibility.
2 Does that make any sense?

3 MR. MAULDIN: Yes, sir. I appreciate you clarifying
4 my thoughts on that, and perhaps I have misapplied that.
5 The -- there is no question that the common application
6 would be a determination of whether it was an exception to
7 hearsay, based upon the presentation in front of -- at the
8 trial of the case. So I think that's the common
9 application of that rule without any doubt. The -- I would
10 hope that notwithstanding that the legitimacy of the
11 position of the defendant is just as sound, and that is,
12 you have -- and again I'm going to go into a hypothetical
13 situation, you have defendant A and defendant B. Defendant
14 A is going to go to trial. Defendant B has given
15 information to the prosecutor and the defendant -- and the
16 question is whether defendant A would be entitled to
17 disclosure of that information.

18 What we have now is we have -- we've already been
19 produced a statement given just subsequent to the incident,
20 during the immediate investigation. We have no idea
21 whether or not there have been additional statements or
22 information provided to the investigators consistent or
23 inconsistent with that. And we ask that the government be
24 required to provide that -- those statements, if they in
25 fact exist.

1 I take the State's word that if a -- an additional
2 written statement were produced by an investigator in this
3 case, that it would be provided, just like they have said
4 their entire file has been provided. So that -- so that
5 solves that problem.

6 The question is whether or not it is in the form --
7 and I guess we deal with this work product idea. If it is
8 in the form that the State, under the graciousness of their
9 production of their entire file would believe, hey, that
10 ain't included, we don't have to give them that, we didn't
11 have to give them anything, we certainly don't have to give
12 them that, because it's work product. I'd like a little
13 definition of what that means. If it's co-defendant B
14 said, I told them in my first statement such and such,
15 well, what really happened is so and so. So defendant A
16 goes to trial thinking this statement which he's been given
17 is what this person says, and it turns out this isn't what
18 the person says, and it is too late at that point to do
19 anything about the contradiction, other than impeach the
20 witness by a prior inconsistent statement, which usually --
21 sometimes a value and sometimes it isn't. So I take the
22 position that, Your Honor, you are correct that that rule,
23 the common application of 801 is a trial admissibility
24 general hearsay exception issue. Last point, Your Honor,
25 any inconsistency of that prior statement is Brady.

1 THE COURT: Right.

2 MR. MAULDIN: Right. That's all I have to say on
3 that, Your Honor.

4 MR. ARIAIL: Can we have our rule book back?

5 THE COURT: Brady is a law that requires disclosure,
6 if it's exculpatory, if it deals with impeachment, that's
7 as provided by law. Rule five, and I understand you
8 haven't filed, from what I'm told, a formal rule five
9 motion, but if rule five were invoked, and it were -- and
10 if was complied with, when would the State be obligated to
11 furnish you the statement of witnesses?

12 MR. MAULDIN: It wouldn't. The statement of a witness
13 would not -- now -- and I will admit to the government that
14 we generally in our rule five add a paragraph, statement of
15 witnesses. We can't bind them on that. So rule five does
16 not require the government to produce statements of
17 witnesses, co-defendants, witnesses or anything, other
18 than by some other application of the law, for example,
19 Brady.

20 THE COURT: We've gone to some detail on this motion
21 but I appreciate your comments, and I am sensitive to the
22 concern that you've expressed, however, I'm not going to
23 order the State to do anything further than what it has
24 agreed to do in its response, and which the State operates
25 under in any event pursuant to Brady, irrespective of its

1 response. I believe to adopt -- and I certainly appreciate
2 your wanting the information, but I believe to acquiesce in
3 your request would be improper on my part, and practically
4 speaking would punish the State for agreeing in the first
5 instance to produce the entire file which its not obligated
6 to do. It would be no good deed goes unpunished and I
7 don't want to adopt that legal principle. Let's move to
8 the next motion, please.

9 MR. ARIAIL: Could I just point one thing out also.
10 I -- in delivering that file, and I don't remember the
11 motions in this case or the motions in the previous case,
12 but there was a big discussion about all of the caveats
13 that I put in the transmittal letter aimed directly at this
14 point, that somehow by me giving that file I created some
15 legal right of entitlement, and I want to make sure the
16 Court's aware that -- that -- and I understand the ruling,
17 and I agree that that's what I intended, but I want to make
18 sure the Court is also aware that I put all that in the
19 transmittal letter and disclosure, and I wouldn't want us
20 to get punished for trying to ease the whole process.

21 THE COURT: All right. Let's move on. Thank you.

22 MR. MAULDIN: Your Honor, the next motion relates to
23 the sequestration of witnesses. This case -- my
24 investigation indicates that this case does involved a
25 number of different interpretations of an incident, a

1 number of different presentations regarding an incident,
2 both -- for the most part by civilian witnesses, to some
3 extent by law enforcement, but in particular by civilian
4 witnesses.

5 Another matter to take into account, Your Honor, with
6 regard to consideration of this motion, is you had -- you
7 did mention at the beginning this morning that we would be
8 taking up the matter of possible consolidation. That
9 certainly is a major -- that would really significantly
10 impact this rule. Perhaps it would be appropriate that you
11 hold this motion in abeyance and rule in light of, but I
12 don't know. I just simply believe that -- that it seems to
13 me like the State is taking the position that unless we can
14 actually show that something in fact is getting ready to
15 happen, or is happening, that sequestration be improper.
16 Well, I don't think that's right. I think that what you do
17 is kind of like an ounce of prevention is worth an ounce of
18 cure, you know. It's better to ask -- or it's easier to
19 ask forgiveness than permission. You know, we can make up
20 all kinds of little words about that, but I believe we do
21 it up front, instead of waiting until something obviously
22 has gone awry, trying to figure out how to fix a broken
23 wheel.

24 THE COURT: Would the State like to respond to that
25 beyond what's in their written response?

1 MR. ARIAIL: No, no, Your Honor.

2 THE COURT: Let me take that under advisement. I'm
3 familiar with both sides. Let's move to the next issue,
4 please, this number 11, motion for production, which I
5 believe is what you sort of captioned, expressions of the
6 public.

7 MR. MAULDIN: Yes, sir. And I would add, Your Honor,
8 that if it makes this issue any easier, we're not
9 interested in invasions of personal views, or privacy, or
10 anything like that. We simply -- what we might add to the
11 motion to make it more cohesive would be the identification
12 based upon the jury draw, so we would add that. You know,
13 what Mr. Jones or Ms. Smith might have told the solicitor,
14 if Mr. Jones or Ms. Smith are not on the jury venire we
15 really don't believe we're entitled to what they think, but
16 we are entitled to what the jury venire might think.

17 THE COURT: Any response to that?

18 MS. STROM: Your Honor, it would apply to both sides.
19 If a potential juror were to respond to Mr. Mauldin, then I
20 think both parties have an obligation to the Court to make
21 the Court aware of any comments such as that, especially if
22 they do not come forward on voir dire.

23 THE COURT: Any objection to making that mutual?

24 MR. MAULDIN: No, sir.

25 THE COURT: Require both sides to inform and disclose

1 to the other, to the extent it comes from a juror, do you
2 want it to go any further than that?

3 MR. MAULDIN: To -- to the extent that either comes
4 directly from a juror, or has direct -- or would -- would
5 have natural, or reasonable connection or effect with the
6 jurors. For example, that might be -- and let me just --
7 not to stretch the point, but let me give you an obvious
8 and somewhat ridiculous example. Hypothetical case, let's
9 say the Daughter's of the American Revolution wrote a
10 letter to Mr. Ariail stating that they wanted a particular
11 person executed, and a juror came in who said she was the
12 president of the Daughter's of the American Revolution, so
13 it's a slight -- it didn't come from her, but it either
14 came from her or had a direct, reasonable connection with
15 that juror, and I would think either one would be required
16 to be disclosed.

17 MS. STROM: Your Honor, there again, not to belabor
18 the point, those matters can be addressed during voir dire.
19 Did you write this letter? Do you hold this position? As
20 opposed to, you know, we get in a letter, we may not know
21 if that juror is a member of the Daughter's of Revolution.
22 We may not learn that until the time that juror --
23 potential juror is actually on the witness stand during
24 voir dire. I think those matters can be handled during
25 void dire. If either party sees that a potential juror is

1 not -- not by any malicious act, but not being forthcoming
2 with certain items, then of course we would bring that to
3 the Court's attention.

4 MR. MAULDIN: And again -- you know, we're stretching
5 it I know, but we just have to deal with the -- we would
6 not know that a letter of that nature had ever been
7 written. We wouldn't know to ask the questions. You know,
8 you can't -- you know, if the person is on the witness
9 stand, if we don't know of the existence of such an
10 expression, then -- and the government perhaps wouldn't
11 know to ask the question either, you know, they got a --
12 let's say they got a letter from an organization, and that
13 organization took a position, and this person who is a
14 juror, unknown to us, we don't even know he's a member of
15 that organization, we don't know what it came directly from
16 him, but we also don't know to ask the question unless we
17 know the letter was written, and I don't know if the
18 Court's following me, but there's got to be a level of
19 disclosure by both sides regarding that type of
20 information.

21 MR. ARIAIL: I'll consent.

22 THE COURT: Yeah, I agree, the question is the
23 terminology that's fair, and even though we're searching
24 the mind and heart of a potential juror, the triggering
25 mechanism for production has to come from the mind of those

1 involved in this case, so it must be from that perspective,
2 and objective knowing that the party, being the State or
3 defense counsel, who has in its possession a public
4 expression, as you have phrased it, who you reasonably
5 believe is from a juror or some one or entity connected
6 with that juror, whose service or partiality may be
7 affected by that public expression.

8 MR. MAULDIN: One final point, then -- is there -- and
9 let me give you this example, Your Honor. Let's assume
10 that the government or us -- let's say we got a statement
11 from an organization, and during the voir dire of a juror,
12 the juror doesn't put on his questionnaire that he belongs
13 to the organization, it's never questioned by either of us,
14 so it goes literally unknown by everyone, even though we
15 really need -- we would have been obligated to bring it to
16 the Court's attention had we been able to connect it, but
17 there was no connection made. What I'm going to suggestion
18 is a solution to that. I think that -- that expressions
19 from an organization, or a group, or some identifiable
20 entity, it just be swapped. If we have an expression
21 regarding this case from a group, or entity, or
22 organization, we would let them know that we had it.

23 MR. ARIAIL: I consent. I'll give him every written
24 explanation from a group, if it's mutual.

25 MR. MAULDIN: Right, and I think that at least --

1 whether we -- neither one of us discovered that a
2 particular juror is connected, at least we would be
3 operating on the same plane.

4 THE COURT: All right.

5 MR. MAULDIN: Your Honor, the next motion ---

6 THE COURT: Let me see if I can resolve this next one,
7 because I've read both sides very carefully.

8 MR. MAULDIN: Yes, sir.

9 THE COURT: Does the State want to take exception to
10 my inclination with regard to NCIC is to order the State to
11 produce such information to the Court, I will then respond?

12 MR. ARIAIL: Yes, sir.

13 THE COURT: And my order will reflect the State to
14 produce that information to my office.

15 MR. ARIAIL: Let's make sure we -- I don't have a
16 problem with that, but we don't want to run NCIC until they
17 respond. We're not going to run NCIC on every
18 potential ---

19 THE COURT: Right. I understand.

20 MR. ARIAIL: Okay.

21 MR. MAULDIN: Once a juror -- once we get an idea, a
22 week or so ahead of time, as to the 120, or 150, whatever,
23 that are actually going to be here, those are the people
24 we're talking about?

25 THE COURT: Right.

1 MR. MAULDIN: All right, sir.

2 THE COURT: Now, let's look at 13 and 14. I believe
3 we can address that. I believe we're in agreement. The
4 motion to produce the names of the jurors is really not
5 something of the purview of the solicitor's officer.
6 That's a Court clerk function. I'd like to grant that, but
7 not direct the State to do, but the clerk to do it and make
8 it mutual to both side so both of you would be kept abreast
9 of what's going on. Ms. Plumley and Ms. Morris will be
10 working with these various jury issues, and I believe both
11 of you desire, number 14, is to make a diligent effort to
12 serve those who do not file their returns, and I believe we
13 can use, unless there's some objection, the civil division
14 of the Sheriff's Office, and I would order them to try to
15 personally serve those who do not respond, and then we'll
16 just take them individually at some point at subsequent
17 hearings.

18 MR. MAULDIN: Yes, sir. And 15, Your Honor, I
19 understand they -- I don't know whether they consent to it,
20 they do not object.

21 THE COURT: Right. It will be the letter which has
22 been submitted to you and revisions are being made, it will
23 be acceptable to both sides, the questionnaire, which we
24 will address, and the map regarding parking, but there will
25 be no pamphlet as to jury service. They would not be

1 exposed to the video. There is an issue regarding the
2 questionnaire, there was a question, I believe it was
3 number 52 or 53, that dealt with the racial makeup of
4 neighbors.

5 MR. MAULDIN: Yes, sir.

6 THE COURT: And if you want to pursue that, I would be
7 glad to hear from you.

8 MR. MAULDIN: All right, sir. Your Honor, the
9 question, for the record, that has been objected to is
10 number 52 on the original proposed questionnaire, quote,
11 growing up were most of your neighbors white, or black, or
12 about even. Secondary question, currently, comma, are most
13 of your neighbors white, or black, or about even. And with
14 the exception of that question, the rest of the
15 questionnaire has been agreed to.

16 We believe that question 52 should be contained in the
17 questionnaire. It appears that the objection relates to
18 the race of the defendant and the victim as part of the
19 objection, and therefore it's not relevant. We don't take
20 that view. We believe that to the extent that that tends
21 to refer to some sort of Batson consideration, the race of
22 the juror is going to be obvious when they're in the
23 courtroom. So we'll know -- we'll know that. The question
24 is at least what is to me the purpose of this
25 questionnaire, the purpose is to reduce to the extent

1 reasonably possible the amount of questioning that goes on
2 in the courtroom with the jurors.

3 Now, we understand that some of the jurors in past
4 cases have felt like questionnaires were personal and dealt
5 with matters of personal information, and my -- and I have
6 been approached by people who were among jury panel members
7 who would have known me and then subsequent to the trial
8 case they would contact me and say, John, you know, what in
9 the heck is all that stuff that came in the mail, tell me
10 what that's all about, and -- and my view is that that's
11 somewhat of a -- while we don't want to get unduly
12 personal, this is a personal process. We're going to be
13 asking these people personal opinions and views on the
14 certain subjects.

15 So what we are asking there is not an opinion or a
16 view that should make a person uncomfortable about the
17 expression of it, it is a fact. We're asking them a
18 factual matter, 50 percent, none, 35. In other words, it's
19 not like my opinion on my neighborhood is so and so. So we
20 don't believe it's unduly personal. We don't believe it's
21 an invasion of any type of privacy to that juror who has
22 been summoned as a citizen of our country to serve on a
23 capital case. We believe that it is relevant, because
24 there are -- there are interpretations that are within
25 reasonable analysis based upon the answers to those two

1 questions. They may be rather subtle. They may be
2 subjective, and they certainly are subjective, but there
3 is analysis just the same. So we ask that the Court
4 retain that question and submit the questionnaire as
5 proposed.

6 THE COURT: Be glad to hear from the State if the
7 State wishes to take a position.

8 MR. ARIAIL: The only reason I can see that would be
9 relevant if you had an inter-racial crime. And the purpose
10 of that questionnaire is to provide to the Court and the
11 two litigants some relevant information to help in the
12 proper seating or seating of a fair and impartial jury, and
13 to divert, or obliterate the need to question jurors to the
14 extensive -- and to that point I agree, but it's just not
15 relevant to anything.

16 Now, we agreed to it -- the one I agreed to was in the
17 Sorrow matter. It was an inter-racial issue, and from that
18 standpoint it was put in there, and this is not. So I
19 submit it's just a -- it's just an unnecessary prying into
20 these people's life that is absolutely of no benefit to the
21 State, and I don't think it's any benefit to the Court.
22 Maybe he can say there's some benefit subtle to him, but to
23 me his need for subtle benefit is outweighed by just
24 sticking the racial issue into a case, and that's all he's
25 doing, is just injecting race right into this case for

1 whatever point.

2 MR. MAULDIN: Finally, Your Honor, there is no race.
3 Let me think. I'm trying to figure out the word. My
4 client is white, and Trooper Nicholson was white. So there
5 is no race per se issue up front. It may not mean a thing
6 to Mr. Ariail where -- what the type of neighborhood or --
7 that a person grew up in, or where they live now. It may
8 not mean anything to the Court personally or as the judge
9 in this case, but it means something to me, and I want the
10 question in there. That -- I got to pick a jury. I'm
11 putting things in this questionnaire that do mean
12 something to me. That's the reason I'm fighting so hard
13 for it, because it in fact does mean something to me.
14 Thank you.

15 THE COURT: The next issue that I want to deal with
16 concerns possible consolidation. The matter in which it
17 has been presented to me requires that it initially be
18 addressed in camera. In other words, on the record in
19 court, but only with the defendant, Mr. Wood, and his
20 counsel and the court reporter. We'll do that. Once we
21 accomplish that part of hearing, we'll go back on the record
22 to the extent necessary. We've been going a little more
23 than an hour. We'll take a break. So we'll gear back up
24 in 5 to 10 minutes, and we'll be in that posture.

25 MR. ARIAIL: Could I just interpose my objection? I

1 didn't do this the last time, but I'm not sure that I can
2 sit by again and allow this Court to meet ex parte with
3 this defendant and this defendant's lawyers. I understand
4 there's sensitive matters possibly, but he's raised them,
5 and if he wants to raise these issues by filing documents
6 with the Court, I think the State has a right to be in here
7 and hear what he is saying and the reasons for it.

8 And if -- now, it may be appropriate that the matters
9 are sensitive and the press ought to leave and the public
10 ought to leave, but I think in terms of trial preparation,
11 I would like to interpose an objection to the Court being
12 placed in a position of an ex parte situation, not only
13 with defense counsel but with the defendant himself, and I
14 raise that just from the standpoint that I think we have,
15 as lawyers of the State, have a right to be in on it.

16 THE COURT: All right. Your exception is noted. It's
17 respectfully overruled. The in camera proceeding which
18 will be on the record may well involve discussions between
19 counsel and client, and I want to protect, to the extent
20 possible, that privilege, and this is consistent with
21 case law which has addressed the manner in which this
22 issue should be pursued, but I appreciate your position
23 and ---

24 MR. ARIAIL: Well, and I don't mean to interpose that.
25 I'm -- I don't want to get into that, but if it gets beyond

1 that, when it gets beyond counsel -- client/counsel
2 privilege and other matters are discussed, I would like to
3 be a part of that.

4 THE COURT: I can tell you that the merit of a motion
5 to consolidate will be in open court on the record.

6 MR. ARIAIL: Okay.

7 THE COURT: All right.

8 MR. ARIAIL: Do you want us to ---

9 THE COURT: Well, we're all going to take a break, but
10 when we gear up, let's say in 10 minutes, it's going to be
11 me, the court reporter, Mr. Mauldin, Mr. Bannister and Mr.
12 Wood.

13 (A short recess was taken, after which, the hearing
14 continued as follows:)

15 (Present in the courtroom were the Court, Mr.
16 Mauldin, Mr. Bannister, Mr. Wood and the court
17 reporter.)

18 THE COURT: All right. We're back on the record. We
19 are now in an in camera proceeding in court with myself,
20 the court reporter, defense counsel as well as the
21 defendant. This is as a result of a motion which I believe
22 was filed by Mr. Wood himself seeking to consolidate the
23 charges in Greenville County with charges that are pending
24 in Anderson County. Let me give some background. I'll try
25 my best to be succinct.

1 Mr. Wood has made a request in the Anderson County
2 charges to have new counsel appointed for reasons that
3 weren't put on the record in Anderson County at that time.
4 I granted that request and appointed new counsel for Mr.
5 Wood on the Anderson County charges. Mr. Wood then filed a
6 motion to relieve Mr. Mauldin and Mr. Bannister from the
7 Greenville County charges and have new counsel appointed.
8 That was discussed in an in camera proceeding. That motion
9 was denied, but in the context of that, beyond the primary
10 basis stated by Mr. Wood that he simply didn't trust his
11 lawyers, there was reference made to the what I will call,
12 and perhaps it's not the correct description, but a
13 disagreement or dispute as to whether the Greenville case
14 should go forward and include the Anderson charges as well.
15 And now we are faced with that specific issue.

16 Now, I've have had more time to research what happens
17 when counsel wishes one course of action and the defendant
18 wishes another course of action. And unfortunately there
19 is no litanence (phonetically) test that makes resolution
20 of this matter easy. I want to reference what I found to
21 be the best analysis of the issue. It doesn't answer
22 anything with absolute certainty, or finality, but it does
23 give a good description of the issue and the various
24 factors and policy reason on both sides of the argument.
25 And this is a law review article from the University of

1 Kansas in 1998. It's cited at 47 U. Kan., K-a-n. Law
2 Review, page one. And I would refer this to those
3 present.

4 In that regard this article cites a Supreme Court case
5 of Jones versus Barnes from the United States Supreme
6 Court. That touched upon this issue, that who has the
7 decision making authority over certain issues. That case
8 held that whether to plead guilty, whether to waive a jury
9 trial, whether to testify in one's behalf, whether to take
10 an appeal, fell within the purview of the client's
11 decision. And those are matters I think which we're all
12 well acquainted and don't present any delima.

13 There have been other cases which have addressed other
14 issues such as the existence of a dispositive defense, and
15 the matter which I'm going to treat this comes in part from
16 my review of the case law, but there are model rules which
17 I know do not dictate the result, but still I feel it would
18 be appropriate to look at these model rules from the
19 A. B. A. as some assistance in how best to approach this
20 issue. This is A. B. A. model rule 4-5.2. It is set forth
21 in this extensive law review article I referred to.

22 It incorporates the holding of John versus Barnes on
23 what decisions clearly are to be made by client. This
24 model rule further suggests the following, quote, strategic
25 and tactical decisions should be made by defense counsel

1 after consultation with the client, where feasible and
2 appropriate. Such decisions include what witnesses to
3 call, whether or not to conduct cross-examination, what
4 jurors to accept or strike, what trial motions should be
5 made and what evidence should be introduced. If a
6 disagreement on significant matters of tactics or strategy
7 arises between defense counsel and the client, defense
8 counsel should make a record of the circumstances,
9 counsel's advice and reasons, and the conclusion reached.
10 The record should be made in a manner which protects the
11 confidentiality of the lawyer/client relationship, close
12 quote.

13 This is a motion which has been filed by Mr. Wood. And
14 Mr. Wood, I want to give you an opportunity to tell me
15 about this motion and anything you think is important for
16 me to know in addressing this motion. And I'm going to
17 give Mr. Bannister and Mr. Mauldin an opportunity to
18 respond. And if during this process, sir, you wish to
19 consult with them privately outside my hearing and off the
20 record, I'm going to allow you to do that. So at any point
21 during this process you want to confer with them, you have
22 that right, do you understand that?

23 MR. WOOD: Yes, sir.

24 THE COURT: All right. So are you prepared to tell me
25 about this motion you filed?

1 MR. WOOD: Yes, sir. Basically, they want to keep the
2 cases separate at this point because of my understanding
3 aggravating circumstances, or I believe that's what it's
4 called. But initially they were willing to try the
5 Anderson case first, which would have brought in the
6 aggravating circumstances. Basically I just want to get it
7 over with. I mean, it's pointless to have two trials. It
8 is all part of the same thing, I think, as far as what
9 happened in the events and all that. It all happened the
10 same day. And that's why I want to go ahead and just get
11 it done with. That's it.

12 THE COURT: All right, sir. Mr. Mauldin, I'll give
13 you and Mr. Bannister a chance to respond if you would
14 like.

15 MR. MAULDIN: Your Honor, and I want to couch my
16 response with the greatest amount of respect for my
17 client's position and input. It's been a very difficult
18 process. John expressed concern about trusting us and
19 we're making tough decisions in this case, some of which he
20 just doesn't like, and I know that, and I feel for him,
21 because he's the one whose neck is on the line here. So --
22 so I want him to once again realize that my comments are
23 not directed to him. It's just I have a -- we have a job
24 to do and that is to attempt to save his life.

25 The idea of consolidation of the cases relates to a

1 strategy, and in the event consolidation were pursued, we
2 believe that is a strategy that is detrimental to the best
3 interest of our client. We believe that in the event -- in
4 the initial stages of the case when there were warrants
5 existing in both counties, Jim Bannister and I made effort
6 at that time to contest any efforts made by either of the
7 solicitors in this case, Anderson or Greenville, to form
8 some sort of merger or consolidation of the charges. And
9 we were very prepared to fight any effort to do that.

10 When the cases were then indicted, and I think the
11 Anderson County folks indicted first, we actually believed
12 that we had been put in a great position in terms of our
13 strength at being able to fight any merger or consolidation
14 post-indictment. John, frankly, Your Honor, was not an
15 active participant in those early strategy decisions, and
16 I admit that for the record, because we didn't believe
17 there was really any question. We thought it was pretty
18 obvious that they needed to be prevented from being
19 consolidated if a jury in a death case with going to be
20 able to fairly and impartially determine penalty in a case
21 like this.

22 We believed at that time, and we believe today, that
23 if consolidation were in fact granted, where you have two
24 charges against our client now in Greenville, that is
25 murder of a law enforcement officer in the line of duty,

1 and possession of a weapon during a violent crime, that
2 would go to about 20, and I don't have the number right in
3 front of me, but it would be a significant number of felony
4 level violent type offenses. I, in my opinion, and based
5 upon my experience, believe that any jury would be
6 essentially overwhelmed by the just mere weight and volume
7 of evidence of violence, that the -- the -- the ability of
8 us as counsel to manage, if you will, the passions of the
9 jury during the presentation of the case would be
10 significantly impaired by just the volume of -- of
11 testimony relating to the numerous charges that arose out
12 of Anderson County.

13 Another point, Your Honor, that was taken into
14 consideration is the sequence. This issue would not be
15 nearly as clear to me as John's counsel if the shooting
16 death had been at the what you might call end of sequence
17 of events, because you could say if you were the
18 prosecutor, or to the jury that the point of having it all
19 tried together was that this was the culmination of a
20 course of conduct. That's exactly the opposite of what
21 we have here. What we have here is an incident occurring
22 in our county, a break in contact of a couple of hours
23 and then the -- the sighting, if you will, of alleged
24 suspects in another county, resulting in a lot of chaotic
25 evidence.

1 So it was not the culmination of, but it was the
2 commencement of, and therefore we believe that it is
3 appropriate in fact that it -- even if the government were
4 pushing for consolidation, we believe we would prevail,
5 that it would not be consolidated even if the government
6 wanted it to be. We don't know what their position is
7 quite frankly, but -- but -- so the fact that the offenses
8 for which the defendant is facing the death penalty were
9 the beginning of the case, factually supports not bringing
10 in all of this other stuff that could overwhelm the fact
11 finder and ultimate sentencer in the case.

12 Next point, Your Honor, I would make is the Court has
13 a responsibility to administer its courtroom, and to
14 procedurally administer justice in a fair a way as it can.
15 So even if we were all in agreement, if Mr. -- if John
16 wanted it consolidated, and I said, hey, I think that would
17 be great, and the prosecutor said, hey, I think -- we're
18 all for it, and Anderson came over here and said they were
19 all for it, you could simply say, I find that that would be
20 a -- would amount to procedural unfairness, that I think
21 you have that power. So I believe that simply because one
22 party or the other might request something that this Court
23 would interpret as potentially resulting in unfair and in
24 an unfair proceeding, you could -- you could essentially
25 sua sponte say, I'm not going there, we're going to do it

1 this way. And -- you know, so I believe you do have the
2 power to do that.

3 Finally, Your Honor, the -- the issue involves why --
4 and this is an attorney/client matter, Your Honor, very
5 sensitive attorney/client matter, but I do believe in this
6 form it can be taken up. I have looked straight into my
7 client's eyes, and essentially just wanted to grab him and
8 say, why are you wanting to do this, you know, come on,
9 and -- and I am as satisfied now as I've ever been in the
10 process of this case, that he wants to do it for the
11 exoneration of the co-defendant. He -- this is -- he has
12 from the moment of the processing of this case said that
13 this woman essentially is innocent. And what he believes
14 is -- when the Anderson County case would have been tried
15 first, you will recall our ex-parte in camera proceeding
16 dealt with his wanting to testify, and we were just simply
17 saying, we're not going let you go there, we're not going
18 to let you do that. He wanted to do that, because he
19 wanted to get up there and say what he did and what she did
20 not do.

21 Now, what has happened it's flipped now, Anderson is
22 now second in line. He -- but she's not even going to be
23 on trial here. So he -- now essentially he's saying, I
24 can't help her because they're not trying her. Now, I
25 can -- I have told him that if they consolidate the case,

1 they still don't have to try her, and they won't in fact.
2 I don't believe that -- that there would be a joinder of
3 the trials of both defendants just because of the
4 consolidation. I think that that would be a very dangerous
5 area to go into, trying one defendant on a capital case
6 and another defendant on a non-capital case would be the
7 same -- it's too tricky for me to think about, but his
8 motivation is his concern for the co-defendant, and how
9 best to try to solve her legal problems. And I'm getting
10 in his way, because I just can't let him self-destruct for
11 the purposes of trying to procedurally help her out.

12 He -- and in his comments -- and again I say to my
13 client, I want him to know that is this being done with the
14 utmost respect, I'm sorry he doesn't trust us to some
15 extent, or has some problem with that area, but I got to
16 say these things to -- I got to say them in this area -- I
17 want to get it over with and it's pointless to have two
18 trials, it really isn't pointless from a strategic point of
19 view.

20 Now, if Anderson had been tried first, he -- with
21 record to the aggravating circumstance comment he made, the
22 government perhaps could have moved to use convictions of
23 violent crimes toward another person as potentially an
24 additional aggravating circumstance. We would have fought
25 that as being acts subsequent to the offense and all kinds

1 of legal issues, but we knew we would have to fight that if
2 Anderson were tried first, but we really didn't have a
3 choice. We couldn't say, Greenville first and Anderson
4 second. Well, somehow or another, just through almost
5 magic dust, we ended up kind of getting what we wanted. We
6 wanted our Greenville charges tried first, separate from
7 Anderson, and we have a disagreement on that strategy with
8 our client. One moment, Your Honor.

9 Finally -- finally, Your Honor, we've had
10 conversations with -- with our client within the
11 attorney/client environment regarding -- you know, he
12 mentioned this aggravating circumstance situation. We've
13 discussed with him efforts that will be made, authorities
14 that will be submitted, positions that will be taken in an
15 attempt to prevent the introduction of certain information
16 in Anderson from being brought into a Greenville trial.
17 There would be procedural issues that a Court at some point
18 would have to rule on. These have been discussions between
19 us.

20 Now, there perhaps is some confusion about what is or
21 isn't an aggravating circumstance, and so you know, we have
22 ensured John that -- that the presentations regarding
23 admissibility of certain information would be heard, ruled
24 upon, and that's the way those things would go, but there
25 would be an aggressive effort to, I guess you could say,

1 keep the case as clean and specific as to Greenville as
2 possible.

3 THE COURT: Okay.

4 MR. BANNISTER: Judge, just so we're clear on the
5 record, I would add that it's our position that under
6 citations of authority that you've given us that this is
7 our call, and it is our decision that we do not want to
8 consolidate these cases. And the circumstances that Mr.
9 Mauldin has put on the record are what we believe, and of
10 course what you cited is what we are supposed to do and
11 tell you why we've reached that conclusion, and we both
12 feel like we are on sound legal strategy in reaching our
13 conclusion. There are some other matters that probably are
14 more procedural and do not involve attorney/client
15 privilege, and as I understand our brief discussion with
16 the solicitor that you want to have those on the record
17 with him present. I just would tell you from simply a
18 timing standpoint we think there's going to be a problem
19 with making the February 7th date, and from the standpoint
20 of we got relieved and then ultimately we'd be back into it
21 may create some sort of problem, and without going into any
22 detail on those, when the solicitor is back in here, those
23 are the arguments we're going to present in addition to
24 what we've stated on the record that is attorney/client
25 privilege.

1 THE COURT: All right. Mr. Wood, have you heard what
2 both Mr. Mauldin and Mr. Bannister have said regarding this
3 issue?

4 MR. WOOD: (Nodded his head.)

5 THE COURT: Since you filed the -- he indicates yes.
6 Since you filed the document, or the paper that's brought
7 this to our attention, that has caused us to be here, I
8 want to give you a chance to respond to what they've said.

9 MR. WOOD: Basically, I'd say the jury, I feel has --
10 already knows about Anderson. They'll be in here on the
11 Greenville case, but they know from the media coverage of
12 what happened in Anderson too. So I mean that argument is
13 sort of -- I mean, it's almost like we're trying to hide
14 something from them. So I just feel to go ahead and get it
15 done with, present the evidence and let the jury make the
16 decision.

17 THE COURT: I'm going to ask a question, and it may
18 not be appropriate for you to respond, if you just want to
19 throw it the back at me, it won't hurt my feelings. And
20 I'm basically thinking out loud here because this is new
21 territory for me. Mr. Wood has filed what is captioned a
22 motion, that he moves to have the charges consolidated, a
23 determination as to what evidence to present and the
24 compelling strategy reasons that have been given by
25 counsel. This appears to me very clearly to be one of

1 those matters that falls within the ambit (phonetically) of
2 a counsel driven decision. There has been, pursuant to
3 order, counsel appointed in this case. I respond to
4 motions and resolve motions filed by the parties
5 representatives, i.e., the attorneys. I don't know whether
6 we should even have a hearing on this motion, because to do
7 so is to force you to argue against the compelling strategy
8 reasons which led to your initial decision. I am not going
9 to require Mr. Wood to argue his motion then have you stand
10 up and argue against it.

11 MR. MAULDIN: I do have a view, Your Honor. Because
12 this matter is thoroughly protected and preserved on this
13 record and this -- this particular proceeding would be
14 sealed, so that if any request ---

15 THE COURT: Yes, except for the appellate record.

16 MR. MAULDIN: Right. Right. That any request would
17 be only managed by the Court's release of the seal. I
18 believe the Court and -- if the Court determines in this
19 ex-parte proceeding that the issue that's been raised by
20 the client, thoroughly considered, is in fact a counsel
21 decision, then I do believe that the appropriate
22 disposition would be that that position has been heard and
23 withdrawn, because then it presents nothing to be
24 subsequently heard by the Court.

25 Now, if the government of either Anderson or

1 Greenville then wanted to affirmatively make their own
2 motion, a position would have to be made regarding
3 procedural matters. But I'm thinking that John has made a
4 request in the form loosely termed a motion. You have
5 heard the process we've gone through. You have made -- or
6 if in fact you have had made a ruling that that is a
7 procedural matter that counsel would have the
8 responsibility of pursuing after consultation with the
9 client, then I think the proper disposition would be either
10 to grant it, hear the State and do whatever you're going to
11 do, or mark it -- or rule that it has been withdrawn by
12 defense counsel.

13 THE COURT: All right.

14 MR. MAULDIN: I guess that's about the best way I can
15 address that.

16 MR. BANNISTER: Judge, could I have a moment to ---

17 THE COURT: Yes, take your time, sir.

18 (A discussion was held off the record.)

19 MR. MAULDIN: I'm believing that -- or I'm of the
20 impression that what you do with this would have an ongoing
21 effect on any future matters of this type. We're going of
22 course to encourage our client to communicate with us, and
23 directly to us of any concerns or questions he has, whether
24 they deal with the fundamental issues that the Court began
25 with, and I won't refer to them at this point, but

1 fundamental matters that deal with the client's authority,
2 or strategic matters that deal with the counsel's
3 authority, that those would come through us first and that
4 perhaps we would be responsible to communicate them to the
5 Court if the Court so directed us to, so that you could
6 then determine whether a proceeding of this nature is
7 necessary or not. I don't know, does that make any sense
8 to you?

9 THE COURT: It does, and it's a difficult process to
10 do properly. What I would like to tell Mr. Wood, and I
11 want y'all three to listen to this, I don't want anything I
12 say to you, Mr. Wood, in any way for you to think that when
13 you leave this courtroom that you can't file anymore
14 motions. I don't want you to ever think that you're not
15 permitted to file motions with the Court. You have
16 attorneys. That's their duty. I'm not going to share with
17 you my opinion of whether I think it's advisable for you to
18 file motions without the review and approval of your
19 attorneys. I will not tell you that, but I'm not, and I
20 want the record to be very clear, I'm not foreclosing you
21 from filing motions again with the Court, and if you do,
22 we'll address them. And if they involve these matters
23 that impact attorney/client privilege, we'll have to
24 re-assemble in a similar manner on the record, but
25 privately, without anyone else present. Do you understand

1 that, sir?

2 MR. WOOD: Yes, sir.

3 THE COURT: Is there anything else you would like to
4 say today, sir?

5 MR. WOOD: That's it.

6 THE COURT: I'm sorry?

7 MR. WOOD: That's all.

8 THE COURT: Have you understood what we've done
9 today?

10 MR. WOOD: Yes, sir.

11 THE COURT: And have you understood my comments, that
12 based on my research, there are certain decisions in an
13 attorney/client relationship which the client must make, do
14 you understand that?

15 MR. WOOD: Yes, sir.

16 THE COURT: Whether to waive a jury trial, whether to
17 testify at trial, and other matters of a similar nature, do
18 you understand that?

19 MR. WOOD: Yes, sir.

20 THE COURT: There are other matters which come under
21 the broad category of strategy, and based on what I have
22 reviewed, matters involving strategy are to be made by
23 defense counsel. I'm not asking if you disagree with that,
24 but have heard what I have said in that regard?

25 MR. WOOD: Yes, sir.

1 THE COURT: And I don't believe that I had been
2 appointed this case when the original order of appointment
3 for counsel. I can't remember whether Judge Pyle signed
4 that order, or Judge Patterson perhaps. I cannot recall.

5 MR. MAULDIN: I can't remember, Your Honor. Let me
6 see. I can -- I tell you what, I can look at one document
7 that I've got for our subsequent ex-parte proceedings on
8 funding that might be able to lead us to -- let me see who
9 issued the first order for funding, Your Honor. Well, this
10 Court did issue the first order of funds, December the
11 21st, which was 15 days after the incident.

12 THE COURT: Okay.

13 MR. MAULDIN: So my guess would be that it is just as
14 likely that you did sign that original order as not, but I
15 can't say -- I think you were the administrative judge that
16 six months.

17 THE COURT: I was last year.

18 MR. MAULDIN: All right. So I believe you would have
19 signed it, Your Honor.

20 THE COURT: All right. And Mr. Wood, we may have been
21 down this road before, and I just want you to stand --
22 understand, overall the options available as far as
23 representation goes in a capital case there is specific
24 state law that deals with appointment of counsel. An order
25 has been signed appointing counsel. You have previously

1 requested, and I think we just did this I think last month,
2 seeking to replace Mr. Mauldin and Mr. Bannister with new
3 attorneys. Do you remember that?

4 MR. WOOD: Yes, sir.

5 THE COURT: And I found that you really didn't make a
6 sufficient showing that would entitle you to have these
7 gentlemen discharged and have new attorneys appointed.
8 Under the law there are basically three options, and if we
9 had an initial hearing I would have already addressed this
10 to you. I can't recall so, I'll do it again, just to make
11 sure you understand.

12 You can retain an attorney of your own choosing, or
13 attorneys, if you're able to afford an attorney. If you're
14 not able to afford an attorney, then counsel will be
15 appointed. That's the situation we're in, and have been
16 for some time. And under the law, when counsel is
17 appointed, they must meet certain requirements in terms of
18 experience and qualifications. And at least one of the
19 appointed attorneys must be a representative of the public
20 defenders office. So the appointment made in this case was
21 pursuant and meets that statutory requirement. Any
22 individual, regardless of the crime, always has the right
23 to represent himself or herself.

24 And I just want you to understand those options. And
25 I don't want to make any comment to you that indicates, you

1 know, what your decision should be on various strategy.
2 That's not my role. My role as the judge is to apply the
3 law fairly, and if you think that you need to file
4 something with the Court, if you do, I'll consider it. And
5 I'll handle it in this fashion again, and allow you to have
6 your peace and tell me anything you think is important
7 about that motion.

8 MR. WOOD: Okay.

9 THE COURT: But matters involving strategy, as I have
10 determined from the law, are matters to be made by counsel,
11 after full and careful consultation with you.

12 MR. WOOD: Yes, sir..

13 THE COURT: Do you have any question about that, sir?

14 MR. WOOD: No, sir, I understand.

15 THE COURT: Now, before I issue an order, or deal with
16 this paper that you filed with the Court, since it did
17 involve these Anderson charges and since you do have an
18 attorney that's been appointed to represent you on the
19 Anderson charges, would you like to discuss this matter
20 with your Anderson attorney?

21 MR. WOOD: Before a decision is made?

22 THE COURT: Before I issue a ruling.

23 MR. WOOD: Yes, I would.

24 THE COURT: Okay. Well, in light of that, I'm going
25 to have the State come back in and tell them that there is

1 no motion to address at this time. And I'm going to go
2 back to thinking out loud with you, gentlemen, on how the
3 three of you think we should resolve this. I'm going to
4 contact Mr. Byrholdt. I'm going to require that he meet
5 with Mr. Wood. All right?

6 MR. WOOD: Yes, sir.

7 THE COURT: So you can meet with your Anderson County
8 counsel. At the conclusion of that, I would like something
9 that can be under seal, if necessary, and please understand
10 I'm thinking out loud on how to resolve this. If Mr. Wood
11 wishes to pursue his motion, then that needs to be
12 indicated to me. At that point I'll issue an order that
13 most probably that does fall within the issue of strategy,
14 that he's been fully advised, and the Court withdraws the
15 motion.

16 If Mr. Wood, after consultation with Mr. Byrholdt
17 wishes to withdraw the so called motion, if that could be
18 brought to my attention by way of a document under seal,
19 then I'll just issue an order that it's been withdrawn. If
20 there is another way to approach this -- I just don't want
21 any communication to be filed with the Clerk's office that
22 becomes a public record that somehow can be interpreted
23 and read between the lines as to strategy, because I
24 don't think that's fair, and anything that's going to
25 violate the attorney/client privilege, because there may

1 not be anything that directly hits the bullseye, but
2 anyone with any ability to discern can put pieces together
3 and see what's going on. And I want to protect that
4 zealously.

5 MR. MAULDIN: Your Honor, we would offer -- of course,
6 then -- that John may wish the Court to make this contact
7 with Anderson counsel, we would be more than happy to offer
8 to be at your service to communicate with Mr. Byrholdt,
9 give him a time frame, tell him essentially the postures,
10 ask him to meet with John and submit something
11 confidentiality, either to you or to -- through us to you,
12 however you want to do it.

13 THE COURT: Yeah, that suits me fine.

14 MR. MAULDIN: Does that suit you, John?

15 MR. WOOD: Yeah.

16 MR. MAULDIN: All right. We will take -- can you give
17 us a time frame, Your Honor?

18 THE COURT: I would like for him to meet with Mr. Wood
19 within a week.

20 MR. MAULDIN: Why don't we -- today is Friday, why
21 don't we ask no later than -- to meet with him and to be
22 prepared to either submit a report to the Court or however
23 you want it done, by next Wednesday. That would allow a
24 couple days for you to formulate a sealed order, if that's
25 the -- what ---

1 THE COURT: Can he do it within that time frame? If
2 he could, that's terrific.

3 MR. MAULDIN: I'll advise the Court if that time frame
4 creates an undue problem for him.

5 THE COURT: Okay. And is that an acceptable way to
6 proceed so that Mr. Byrholdt will speak with you about this
7 issue?

8 MR. WOOD: Yes, sir.

9 THE COURT: Okay. I know this motion is not involving
10 the Anderson County at this point, we're in Greenville
11 County talking about the Anderson charges, but you do --
12 but I understand your desire to speak with him?

13 MR. WOOD: Yes, sir.

14 THE COURT: Very good, sir. We'll proceed in that
15 manner, and I appreciate y'all's patience and working
16 through this. And thank you, Mr. Wood. All right. I'm
17 going to inform -- and y'all just jump in. I'm going to
18 inform the State there's nothing to address at this time.
19 Any objection to that?

20 MR. MAULDIN: No.

21 MR. BANNISTER: No, Your Honor.

22 THE COURT: We're ready to go back on the record, and
23 the in camera proceeding is now concluded. See if the
24 State is ready to come back on the record.

25 THE COURT: And I'm also going to address the cover

1 letter in terms of when the jury is to arrive on that
2 Monday.

3 (The hearing was re-opened to the public.)

4 THE COURT: We're back on the record. I want to thank
5 those who waited outside. I appreciate your patience.
6 There is no other matter to address at this time by way of
7 motion. The only remaining issue was the reporting time of
8 jurors on February the 4th I believe, and it would be my
9 preference to start early in the morning. I don't think we
10 can do that. There are two other terms of court, I think
11 Common Pleas, and that's already been designated for the
12 jury to come in at their normal time of 9:00. I'm not
13 sure how to avoid that with other terms of court going on
14 that week. So with that logistical problem, I think we're
15 left with a 2 o'clock or 2:30 start time. Anything
16 further?

17 MS. STROM: Just one moment, Judge?

18 MR. ARIAIL: What we were talking about is maybe
19 starting at 11:00, and -- I mean at the 2 o'clock, what
20 were going to impact, as far as I'm concerned, would be the
21 trial -- beginning of trials for the court of General
22 Sessions would be one, and I assume the other would be the
23 trials for Common Pleas, and I can handle the General
24 Sessions if we can get consent from the Common Pleas to go
25 ahead, but if we can't do that I would think 11:00. The

1 problem is we just lose -- we end up dragging the thing out
2 just even further, and I'm thinking if we could get
3 started, because generally we're through by 10:30 with the
4 jury panel anyway, having picked what juries we need, but I
5 just throw that out.

6 THE COURT: All right. Thank you very much. That
7 concludes this hearing.

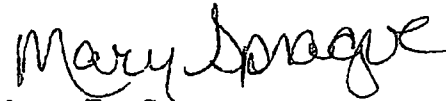
8 - - -END OF TRANSCRIPT OF RECORD- - -
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned Mary E. Sprague, Official Court Reporter for the Thirteenth 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 Court of General Sessions for Greenville County, South Carolina, on the 7th day of December, 2001.

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

June 15, 2002



Mary E. Sprague

Official Court Reporter

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State,

Respondent,

v.

John Richard Wood,

Appellant.

Appeal From Greenville County
John W. Kittredge, Circuit Court Judge

Opinion No. 25907
Heard October 5, 2004 – Filed December 6, 2004

AFFIRMED

Assistant Appellate Defender Robert M. Dudek, of
S.C. Office of Appellate Defense, of Columbia, for
appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Donald J.
Zelenka, Assistant Attorney General S. Creighton
Waters, of Columbia, and Robert M. Ariail, of
Greenville, for respondent.

JUSTICE MOORE: Appellant was charged with the murder of
a Highway Patrol officer and the possession of a weapon during the

commission of a violent crime. The jury found appellant guilty as charged and he was sentenced to death. We affirm.

FACTS

Trooper Eric Nicholson, while patrolling I-85 in the Greenville area, called to inform the dispatcher that he was going to stop a moped. After Nicholson activated his lights and siren, appellant, who was riding the moped, did not immediately stop. Two other troopers subsequently heard ~~Nicholson scream on the radio and they rushed to the scene whereupon they~~ found Nicholson had been shot five times. The driver's side window of Nicholson's car was completely shattered. Both of his pistols were secured in their holsters. Eight shell casings were found at the scene.

There were several eyewitnesses to Nicholson's murder. Witnesses recalled seeing a moped being followed by a trooper with activated lights and siren. The moped took the off-ramp to leave I-85 and then took a right down a frontage road. As the two vehicles got on the frontage road, the trooper sped up to get beside the moped and then veered to the left to stop at an angle against a raised median in order to block the moped's progress. The moped came to a stop close to the driver's side window.

Immediately upon stopping, appellant stood up over the moped and raised his arm towards the driver's side window of Trooper Nicholson's car. Some witnesses saw a weapon in appellant's hand and heard gunshots. After firing several shots in the driver's side window of Nicholson's car, appellant backed the moped up, turned it around, and fled at a high rate of speed.

After the shooting, some concerned citizens (the Wheelers) chased appellant. Appellant entered a parking lot and then jumped into the passenger's seat of a Jeep, driven by a woman. The Wheelers subsequently called in the tag number to police.

Once law enforcement officers began chasing the Jeep, appellant opened fire on the pursuing officers. One officer was struck in the face by a bullet fragment. He survived the injury. After subsequently hijacking a truck, appellant was eventually stopped and taken into custody.

The jury convicted appellant of murder and possession of a weapon during the commission of a violent crime and sentenced him to death.

ISSUES

- I. Did the trial court err by excusing a juror for cause?
- II. Did the trial court err by refusing to instruct the jury on the law of voluntary manslaughter?
- III. Did the trial court err by finding S.C. Code Ann. § 16-3-20 (2003) constitutional although it mandates that a defendant has to waive jury sentencing if he pleads guilty?
- IV. Was the trial court without subject matter jurisdiction to sentence appellant to death where the murder indictment did not allege an aggravating circumstance?

DISCUSSION

I. Juror Qualification

Appellant argues the trial court erred by excusing potential juror Smith, a black female, for cause.

During voir dire by the trial court, Smith stated she could carefully consider the law and find appellant either guilty or not guilty. However, she stated she could not, under any circumstances, impose the death penalty. Further, she stated that her firm view on the death penalty was that there is not any crime or situation where the death penalty would be appropriate. She classified herself as someone who would always vote for life imprisonment.

Defense counsel then conducted voir dire of Smith. The following occurred:

Defense counsel: And you agree with me, I would suspect, that the jury in a case . . . should be made up of a cross section of the community?

Smith: Yes, sir.

Defense counsel: You should have young people, old people, black people and white people, rich people, poor people, protestants, catholics. In other words, the jury should be a cross section of everyone. Do you agree with that?

Smith: Yes, sir.

...

Defense counsel: If you were on a jury and you had participated in the conviction of this person and then you had heard evidence from the prosecution where he is requesting that you impose the death penalty, and you have heard . . . information from the defendant, when he says, "I would prefer that you give me a life sentence," would you take into consideration the request of the prosecution and give meaningful consideration to the imposition of the death penalty in any case?

Smith: Yes, sir.

Defense counsel: You would?

Smith: I will.

...

Defense counsel: Could you vote for the death penalty if you thought it was the proper penalty under those circumstances?

Smith: Yes, sir.

The trial court then questioned Smith:

Court: Ms. Smith, what happened – five, ten minutes ago before [defense counsel] got up, why did you tell me that you would never give the death penalty and all of a sudden we're ready to give it? What happened?

Smith: Well, in different situations. It, to me, just all depends. I don't know.

Court: Well, earlier you were so adamant to me. . . . I asked you if there was any situation, anything that would warrant the death penalty, and you cut me off. No way. And now I'm talking to a different person. What happened?

Smith: I have no idea.

The State then questioned Smith:

The State: . . . based on [defense counsel's] appeal to you to serve on this jury to make it demographically and racially balanced and all of that, is that what led you to change your statement as to you felt that you could impose the death penalty?

Smith: Yes, sir.

The trial court then found Smith was not qualified to be a juror. The court stated that Smith acknowledged the only reason she changed her testimony was because she felt a duty to be on the jury. The court further stated, "To suggest that she can come in here and take that type of pandering examination and the light bulb goes off that she as a black must serve on this jury so she can vote for life imprisonment, I'm not going to permit something so utterly transparent."

Appellant argues the trial court erred by disqualifying Smith as a prospective juror.

In a capital case, the proper standard in determining the qualification of a prospective juror is whether the juror's views on capital punishment would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath. State v. Council, 335 S.C. 1, 515 S.E.2d 508, *cert. denied*, 528 U.S. 1050 (1999). *See also State v. Longworth*, 313 S.C. 360, 438 S.E.2d 219 (1993), *cert. denied*, 513 U.S. 831 (1994) (citing S.C. Code Ann. § 16-3-20(E) (2003)) (in capital case, juror may not be excluded for her attitude against capital punishment unless it would render juror unable to return a verdict according to law).

When reviewing the trial court's qualification or disqualification of prospective jurors, the responses of the challenged jurors must be examined in light of the entire voir dire. *Id.* The ultimate consideration is that the juror be unbiased, impartial, and able to carry out the law as explained to him. *Id.* On review, the trial court's disqualification of a prospective juror will not be disturbed where there is a reasonable basis from which the trial court could have concluded that the juror would not have been able to faithfully discharge his responsibilities as a juror under the law. State v. Green, 301 S.C. 347, 392 S.E.2d 157, *cert. denied*, 498 U.S. 881 (1990).

When reviewing the entire voir dire of Smith, it is apparent the trial court did not err by disqualifying Smith as a prospective juror. Initially, Smith was adamant she could not vote for the death penalty in any situation. However, after questioning from defense counsel, Smith changed her mind and stated she could consider the death penalty and could vote for that punishment. When the trial court asked Smith what changed her mind, she said she had no idea. However, when the State asked Smith if defense counsel's appeal to her to serve on the jury to make it demographically and racially balanced led her to change her statement so that she could impose the death penalty, Smith answered yes.

From the trial court's comments, it is clear the trial court felt Smith should be excluded for her views on capital punishment because they would prevent or substantially impair the performance of her duties as a juror. *See State v. Council, supra.* The court, when determining Smith to be disqualified, was in the best position to view Smith's demeanor. *See Wainwright v. Witt*, 469 U.S. 412 (1985) (there will be situations where trial

court is left with definite impression that prospective juror would be unable to faithfully and impartially apply the law and this is why deference must be paid to trial court who sees and hears the juror). The trial court had a reasonable basis to conclude that Smith could not faithfully carry out her duty under the law. We hold the evidence supports the trial court's decision finding Smith disqualified from jury service. *See State v. Council, supra* (determination of whether juror is qualified to serve on death penalty case is within sole discretion of trial court and is not reviewable on appeal unless wholly unsupported by the evidence).

II. Voluntary Manslaughter Charge

Appellant argues the trial court erred by refusing to charge voluntary manslaughter to the jury. Appellant requested a voluntary manslaughter charge based on the fact that Trooper Nicholson conducted an aggressive stop whereby the moped had no other direction to go than to hit the patrol vehicle, the curb, or the bushes. Counsel argued appellant could reasonably have feared for his safety. The trial court denied the request on the basis there was no legal provocation.

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon a sufficient legal provocation. *State v. Ivey*, 325 S.C. 137, 481 S.E.2d 125 (1997). Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. *Id.* Where there are no actions by the deceased to constitute legal provocation, a charge on voluntary manslaughter is not required. *Id.* The exercise of a legal right, no matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence. *Id.*

In *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335 (1981), Linder fled from an officer. Linder alleged that the officer bumped his motorcycle with his patrol car, thereby knocking him to the ground. Linder alleged the officer then began to fire on him and that he reached for his weapon and returned the fire. We held that, based on Linder's version of events, he was entitled to a voluntary manslaughter charge.

In Linder, we stated that a lawful arrest or detention in a lawful manner by an officer will not constitute an adequate provocation for heat of passion reducing the grade of the homicide to manslaughter. This is precisely the situation in the present case. There is no evidence that Trooper Nicholson acted in an unlawful manner in discharging his duties. There is no evidence, as there was in Linder, that Trooper Nicholson bumped appellant's moped or that he fired upon appellant before appellant shot him multiple times.

Accordingly, because there was no evidence of sufficient legal provocation, appellant was not entitled to a voluntary manslaughter charge.

III. Constitutionality of S.C. Code Ann. § 16-3-20 (2003)

Appellant asserts Ring v. Arizona, 536 U.S. 584 (2002), renders unconstitutional the requirement in S.C. Code Ann. § 16-3-20(B) (2003) that the sentencing proceeding be held before the judge when a defendant pleads guilty to murder.

As we recently stated in State v. Downs, S.C. Op. No. 25884 (Sup. Ct. filed October 25, 2004) (Shearouse Adv. Sh. No. 42 at 54), the capital-sentencing procedure invalidated in Ring does not exist in South Carolina. Arizona's statute required the judge to factually determine whether there existed an aggravating circumstance supporting the death penalty regardless whether the judge or a jury had determined guilt. Ariz. Rev. Stat. § 13-703(C) (2001) (amended 2002); Ring, 536 U.S. at 597. In South Carolina, conversely, a defendant convicted by a jury can be sentenced to death only if the jury also finds an aggravating circumstance and recommends the death penalty. S.C. Code Ann. § 16-3-20(B) (2003); Sheppard v. State, 357 S.C. 646, 652, 594 S.E.2d 462, 466 (2004). As we noted in Downs, Ring did not involve jury-trial waivers and is not implicated when a defendant pleads guilty. Other courts have also reached this conclusion. *See, e.g., Leone v. Indiana*, 797 N.E.2d 743, 749-50 (Ind. 2003); Colwell v. Nevada, 59 P.3d 463, 473-74 (Nev. 2003); Illinois v. Altom, 788 N.E.2d 55, 61 (Ill. App. 2003), *app. denied*, 792 N.E.2d 308 (Ill. 2003). Therefore, appellant's argument is without merit.

IV. Subject Matter Jurisdiction

Appellant argues the trial court lacked subject matter jurisdiction to sentence him to death because the murder indictment did not allege an aggravating circumstance.¹ He argues that Ring v. Arizona, 536 U.S. 584 (2002), holds that aggravating factors are elements of the offense of capital murder that must be charged in the indictment.

We recently addressed this issue in State v. Downs, S.C. Op. No. 25884 (Sup. Ct. filed October 25, 2004) (Shearouse Adv. Sh. No. 42 at 54). In Downs, we held that South Carolina law, rather than federal law, governs indictments for state law crimes. Under South Carolina law, aggravating circumstances need not be alleged in an indictment for murder. S.C. Code Ann. § 17-19-30 (2003); State v. Butler, 277 S.C. 452, 290 S.E.2d 1, *cert. denied*, 459 U.S. 932 (1982).² The aggravating circumstances listed in S.C. Code Ann. § 16-3-20(C)(a) (2003) are sentencing factors, not elements of murder. See Butler, 277 S.C. at 456-67, 290 S.E.2d at 3-4. Therefore, the indictment in the instant case is valid.

PROPORTIONALITY REVIEW

Under State law, S.C. Code Ann. § 16-3-25(C)(3) (1985) requires this Court to determine in a death case “[w]hether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases,

¹The indictment charging appellant with murder states:

That JOHN RICHARD WOOD did in Greenville County, on or about the 6th day of December, 2000, unlawfully and with malice aforethought kill Eric Nicholson by means of shooting him, and that Eric Nicholson died as a proximate result thereof. This is in violation of § 16-3-10 of the South Carolina Code of Laws (1976) as amended.

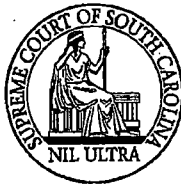
²*Overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

considering both the crime and the defendant.” There is no requirement the sentence be proportional to any particular case; however, death sentences have been imposed in similar cases. See State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999), *cert. denied*, 529 U.S. 1025 (2000); State v. Johnson, 306 S.C. 119, 410 S.E.2d 547 (1991), *cert. denied*, 503 U.S. 993 (1992); State v. South, 285 S.C. 529, 331 S.E.2d 775, *cert. denied*, 474 U.S. 888 (1985). Further, after reviewing the entire record, we conclude the death sentence was not the result of passion, prejudice, or any other arbitrary factor, and the jury’s finding of a statutory aggravating circumstance is supported by the evidence. See S.C. Code Ann. § 16-3-25 (2003). Accordingly, appellant’s sentence is not disproportionate under State law.

AFFIRMED.

TOAL, C.J., WALLER, BURNETT and PLEICONES, JJ., concur.

2585



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 20, 2005

✓ Assistant Appellate Defender Robert M. Dudek
Office of Appellate Defense
1205 Pendleton Street, Rm. 306
Columbia, SC 29201

Re: The State v. Wood, John Richard

Dear Counsel:

The Court has issued the following Order on your Petition for Rehearing in the above matter:

“Petition for Rehearing is denied.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ E.C. Burnett, III J.

s/ Costa M. Pleicones J.

January 20, 2005.”

The remittitur is today being forwarded to the lower court.

2586

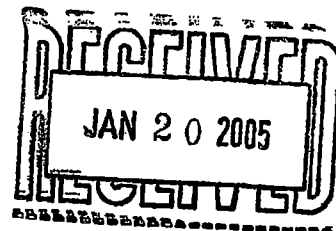
Assistant Appellate Defender Robert M. Dudek
Page Two
January 20, 2005

Very truly yours,

Daniel E. Shearouse
CLERK _{LS}

DES/dmh

cc: Assistant Attorney General S. Creighton Waters



A12

The Supreme Court of South Carolina

The State,

Respondent,

v.

John Richard Wood,

Appellant.

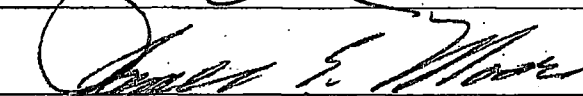
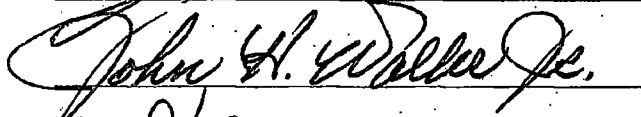
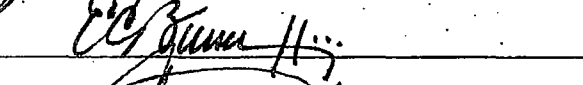
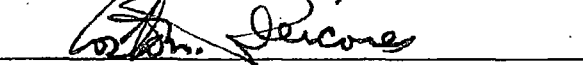
ORDER

This Court recently affirmed appellant's conviction and death sentence. State v. Wood, Op. No. 25907 (S.C. Sup. Ct. filed December 6, 2004). Appellant's petition for rehearing was denied and the remittitur was sent on January 20, 2005. An execution notice was issued on January 21, 2005.

Appellant now requests a ninety day stay of execution, from the date the petition for rehearing was denied and the remittitur was sent, in which to file a petition for a writ of certiorari in the United States Supreme Court. Because appellant intends to raise to the United States Supreme Court a federal question that is preserved for review, we grant the petition for a stay of execution. In re Stays of Execution in Capital Cases, 321 S.C. 544, 471 S.E.2d 140 (1996). The stay shall remain in effect to the extent provided by

this Court in In re Stays of Execution in Capital Cases, supra.

IT IS SO ORDERED.


C.J.

J.

J.

J.

J.

Columbia, South Carolina

February 2, 2005

COPY

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Greenville)

2005-CP-23- 4/737

John Richard Wood #6005)

Full name and prison number, if any, of applicant.)

v.)

The State of South Carolina)

Name of Respondent)

APPLICATION FOR
POST-CONVICTION RELIEFFILED IN COURT
GREENVILLE S.C.
JUL 28 2005

2005 JUL 28 P 12:17

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention: Lieber Correctional Institution
2. Name and location of Court which imposed sentence Greenville County Court of General Sessions
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 01-GS-23-3106
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) February 16, 2002 - Death Sentence
 - (b) _____
 - (c) _____

RECEIVED

AUG - 4 2005

Referred to Ratner
Answered 0

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes _____
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. Supreme Court _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed conviction and sentence _____
- ii. _____
- (c) the date of each such result:
- i. December 6, 2004 _____
- ii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004) _____
- ii. John Richard Wood v. South Carolina, 125 S.Ct. 2942 (June 20, 2005) _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A _____
- (b) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel _____
- (b) _____
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) See Attached Grounds

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

None other than the mandatory appeal to the State Supreme Court

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) This is the first PCR
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Robert M. Dudek, Esquire, S.C. Office of Appellate Defense, 1205 Pendleton Street,
Room 306, Columbia, SC 29201
- ii. James Bannister, Equire, PO Box 10007, Greenville, SC 29603; John Mauldin, PO Box
10264, Greenville, SC 29603; Rodney Richey, PO Box 10916, Greenville, SC 29603
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial and Direct Appeal
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

New Trial 2 New Sentencing trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)

VERIFICATION

I, John R. Wood, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

John R. Wood

Sworn to and subscribed before me

This 27 day of July, 2005.

Walter J. Ferguson L.S.

Notary Public for South Carolina

My Commission Expires Sept. 22, 2008.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 28 2005

2005 JUL 28 P 12:17

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, John R. Wood, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

John R. Wood
Applicant

Sworn to and subscribed before me

This 27 day of July, 2005

Walter J. Ferguson L.S.

Notary Public for South Carolina

My Commission Expires: Sept. 22, 2008.

(1) Defense counsel was ineffective for initially denying psychiatric expert Dr. Pratap Narayan access to petitioner and not presenting available relevant evidence about petitioner's mental status to Dr. Narayan and others since this prejudiced petitioner's chance of being found incompetent or not criminally responsible where his mental status clearly was at issue throughout the trial. Further, Dr. Narayan later testified during the penalty stage, based on limited information that petitioner was not bi-polar, that he had an anti-social personality disorder, and that he was malingering; (2) Defense counsel was ineffective for not taking full advantage of the trial judge's offer to fully instruct the jury that petitioner had to plead not guilty when the judge rejected counsel's argument that it violated Due Process to force a defendant to plead not guilty in order to receive jury sentencing; (3) Defense counsel was ineffective for failing to effectively cross-examine petitioner's girlfriend, Karen McCall, where she presented herself as the victim of petitioner's threats, and claimed she was acting under his duress, where a fair reading of the evidence reveals she was actually assisting petitioner; (4) Defense counsel was ineffective for failing to procure and present available and credible guilt phase and mitigation evidence regarding petitioner's extreme fear of the police since this evidence went to petitioner's perception of what was occurring when the trooper made the aggressive traffic stop, and it was therefore relevant; (5) Defense counsel was ineffective for failing to object to evidence, during the guilt phase of the trial, that petitioner had been on federal probation since this other bad acts evidence was irrelevant during that stage of the trial; (6) Defense counsel was ineffective for failing to articulate his request for a voluntary manslaughter instruction based upon the fact there was not any reasonable suspicion to stop petitioner on the interstate merely because he was on a motorcycle, and where the aggressive traffic stop put petitioner at very real risk of serious bodily harm or death, since the instruction as requested allowed

the trial judge not to charge voluntary manslaughter or preserve this as a viable appellate issue without changing the argument on appeal.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

John Richard Wood, #6005)

C/A No. 2005-CP-23-4737

Applicant,)

v.)

RETURN, MOTION TO DISMISS AND
MOTION FOR SUMMARY JUDGMENT

The State of South Carolina,)

Respondent.)

Respondent, above-named, hereby make a Return to the application for post-conviction relief ("APCR"), filed by John Richard Wood ("Applicant") on July 28th, 2005. This matter is before the Court pursuant to an Order of the South Carolina Supreme Court dated July 21, 2005, which stayed the execution of Applicant to allow him to pursue post-conviction relief. The Order assigned the Honorable Larry R. Patterson continuing jurisdiction over the case regardless of assignment.

Pursuant to South Carolina Code of Laws, Section 17-27-160(C), Respondents respectfully request this Court to set a scheduling hearing with the parties within thirty (30) days to set any evidentiary hearing that may be necessary within one-hundred and eighty (180) days from that date. Respondents would also request that a hearing regarding Applicant's desires regarding counsel be held as soon as possible. Respondents also would request a hearing on the motions to dismiss and for summary judgment in the instant action.

Respondents would respectfully show this Court the following:

I. Procedural History

At the May 2001 term, the Greenville County Grand Jury indicted Applicant, John

Richard Wood, for murder and possession of a weapon during the commission of a violent crime (01-GS-23-3106). {R. 2516-17}. The state gave notice of intent to seek the death penalty, and served its notice of evidence in aggravation.

Vior dire in the case began before the Honorable John W. Kittredge on February 4th, 2002. Public Defender John I. Mauldin, Attorney James Bannister, and Attorney Rodney Richey represented Applicant at his jury trial. Solicitor Robert M. Arial, Deputy Solicitor Betty C. Strom, and Assistant Solicitor Mindy Hervey were the prosecutors at trial. On February 11th, 2002, Applicant's jury convicted him of both charges.

Applicant exercised his right to the 24-hour cooling-off period in subsection 16-3-20(B) of the Code of Laws for South Carolina. The sentencing phase of his trial began on February 13th, 2002. Judge Kittredge submitted the following aggravating factors to the jury:

The murder of a federal, state, or local law enforcement officer, peace officer or former peace officer, corrections employee or former corrections employee, or fireman or former fireman during or because of the performance of his official duties.

{R. 2221-22}. The following mitigating factors were submitted to the jury:

(1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

(2) The murder was committed while the defendant was under the influence of mental or emotional disturbance.

(3) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law was substantially impaired.

(4) The age or mentality of the defendant at the time of the crime.

{R. 2223-24}.

On February 16th, 2002, Applicant's jury found the existence of the aggravating factors and recommended a sentence of death on the murder count. That same day, Judge Kittredge sentenced Applicant to death for murder. {R. 2259}.

A timely Notice of Appeal was filed and served with the South Carolina Supreme Court. Assistant Appellate Defender Robert M. Dudek, of the South Carolina Office of Appellate Defense, was appointed to represent Applicant during his direct appeal. On July 22nd, 2004, Dudek filed with the state supreme court a Final Brief of Applicant, in which he asserted the following issues on behalf of Applicant:

(1) Whether the judge erred by excusing Juror Smith for cause, where she testified she could vote for the death penalty, and sign the form imposing the death sentence, since Smith was a qualified juror?

(2) Whether the court erred by refusing to instruct the jury on the law of voluntary manslaughter where there was evidence the trooper engaged in an "aggressive" traffic stop which endangered appellant, who was on a motorcycle, while the trooper was in a patrol car, since this created the heat of passion and legal provocation necessary for an instruction on voluntary manslaughter?

(3) Whether the judge erred by ruling South Carolina's death penalty statute was constitutional where it mandated that appellant, seeking the mitigating evidence attendant to pleading guilty, and accepting responsibility, must waive jury sentencing, since this procedure denied appellant his right to present mitigating evidence to a sentencing jury?

(4) Was the court without subject matter jurisdiction to sentence appellant to death, pursuant to Jones v. United States, Apprendi v. New Jersey, and Ring v. Arizona where the indictment issued by the Greenville County Grand Jury did not allege an aggravating circumstance?

The State, through Assistant Attorney General S. Creighton Waters, filed its Final Brief of Respondent on July 22nd, 2004. Dudek followed with a Final Reply Brief of Applicant also dated July 22nd, 2004.

Oral argument in the case was held before the state supreme court on October 5th,

2004. The South Carolina Supreme Court issued an opinion affirming the convictions and death sentence on December 6th, 2004. State v. Wood, 607 S.E.2d 57 (S.C. 2004). A petition for rehearing was denied by that court on January 20th, 2005, and a death warrant issued on January 21st, 2005.

Applicant filed a stay request with the state supreme court on January 25th, 2005, to pursue review by the United States Supreme Court. The State filed a Return to the stay request on February 1st, 2005. The South Carolina Supreme Court granted a stay by Order dated February 2nd, 2005.

Applicant through counsel Dudek filed a Petition for Writ of Certiorari with the United States Supreme Court on April 15th, 2005, in which he raised the following issue:

Whether the South Carolina Supreme Court erred by holding that the trial judge's disqualification of a black juror who stated she could impose the death penalty was justified under Wainwright v. Witt, 469 U.S. 412 (1985), since an appeal for a cross-section of the community was not condemned in Wainwright v. Witt, and the trial court did not rule the potential juror was not credible?

The State, through Assistant Attorney General Waters, filed a Brief in Opposition to the Petition for Writ of Certiorari on May 19th, 2005. The United States Supreme Court denied the Petition for Writ of Certiorari on June 20th, 2005.

Applicant then filed with the South Carolina Supreme Court a second Petition for Stay of Execution on July 1st, 2005, so he could seek his state post-conviction relief (PCR) remedies. The State filed a Return to the Petition for a Stay of Execution on July 11th, 2005. By Order dated July 21st, 2005, the South Carolina Supreme Court granted a stay and appointed the Honorable Larry R. Patterson to preside over the case. As of the date of this Return, a hearing on appointment of PCR counsel for Applicant has not been filed.

Applicant filed a *pro se* Application for Post-Conviction Relief on July 28th, 2005.

This Return follows.

Attached herewith and incorporated herein by reference are the following documents:¹

- (1) Record on Appeal, containing six (6) volumes;
- (2) Final Brief of Appellant;
- (3) Final Brief of Respondent;
- (4) Final Reply Brief of Appellant;
- (5) State v. John Richard Wood, SC S.Ct. Opinion No. 25907, filed December 6, 2004;
- (6) Petition for Writ of Certiorari to the South Carolina Supreme Court;
- (7) Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of South Carolina;
- (8) Order Denying the Petition for Writ of Certiorari.

II.

Statement of Facts

Although the defense unsuccessfully requested a voluntary manslaughter charge and made arguments against intent, it was undisputed at trial that Applicant repeatedly shot and killed State Highway Patrolman Eric Nicholson with a Glock 9mm semiautomatic pistol.

A. The traffic stop

¹ As of the date of this Return, Applicant does not have counsel appointed. Respondent is only sending the attachments to the Court until counsel is appointed. Of course, Applicant's present appellate defender Robert Dudek is in possession of the attachments.

Around noon on December 6th, 2000, Trooper Nicholson was patrolling I-85. Trooper Harry Crafts, Jr., Nicholson's shiftmate, was in the patrol office when Nicholson radioed and asked Crafts if a moped was allowed on the freeway. Crafts said no. {R. 1076-77}.

Nicholson then called in a traffic stop of a moped. As he talked with the dispatcher, Nicholson said, "Greenville, I'm not sure. I don't really want to call this in", or "I hate to call this in". After a hesitation, Nicholson said "I think he's going to make the right decision", or "never mind, he's had a change of heart". Crafts could hear Nicholson's siren going, which indicated to him the subject was not stopping immediately. {R. 1077-78; 1087; 1090; 1104-05}.

Officers suddenly heard Nicholson scream on the radio. Crafts and Trooper William McCauley, Jr. headed at full speed to the Nicholson's reported location in their respective cruisers. {R. 1078-79; 1105-06}.

B. Witnesses to a murder

Witnesses in nearby traffic and businesses recalled seeing what they described as a "moped" or "scooter" being followed by a trooper with activated lights and siren. {R. 1272-73; 1287-88; 1301-02; 1311; 1319; 1337-38; 1353-54}. The scooter took the off ramp and headed down a frontage road to the highway. The trooper evidently sped up to get along the right side of the moped, and then turned over to the left to stop at an angle in order to block the scooter's progress. The scooter came to a stop close to the driver's side window. {R. 1262-66; 1285-89; 1299-1301; 1309-10; 1315-17; 1324-27; 1336-38; 1351-53}.

Immediately upon stopping, the rider stood up with the scooter still between his legs, and raised his arm towards the driver's side window of the trooper's cruiser. The culprit without warning pumped a rapid series of multiple bullets into the trooper through the driver's side window. The rider then backed the scooter up a few steps, lifted it up to flip it around in the opposite direction, and headed away at a high rate of speed. {R. 1266-69; 1289-92; 1302-03; 1311-12; 1317-18; 1327-29; 1338-39; 1353}.

C. The Wheelers give chase

The rider narrowly missed other vehicles and wove in and out of the heavy traffic as he tried to escape. Of course, a number of witnesses either saw or realized something was wrong when the trooper's car did not give chase, and a flood of calls to 911 started. {R. 1269; 1278; 1290; 1304; 1311; 1318; 1338-39; 1354}.

Debra Wheeler was one of the ones who witnessed the shooting as she and her husband Terry were sitting in traffic. {R. 1331; 1339; 1354}. Other witnesses saw a faded navy blue Jeep with wood grain panelling suddenly take a sharp right turn to follow the scooter. {R. 1319-20; 1331-32}.

Debra called 911 as Terry did his best to catch up to the scooter. The Wheelers saw it dart into the parking lot behind a gym. There, they saw a woman in the driver's seat of a faded blue Jeep. The scooter was parked nearby, and a man wearing a tan coat jumped into the passenger's side of the Jeep, which took off. {R. 1340-43; 1354-56}. Terry quickly turned around in pursuit. Finally, the Wheelers managed to get the tag number of the Jeep, which they called into 911. {R. 1343-44; 1356-57}.

E. Crime scene on the frontage road

Meanwhile, witnesses back at the frontage road location approached Trooper Nicholson's car. Michael Walsh leaned into the car and was going to let the 911 operator talk him through CPR, but at that point officers arrived. {R. 1278-81; 1297-99; 1304}.

Officers from the State Highway Patrol, the Greenville County Sheriff's Office, and the Greenville City Police arrived almost simultaneously. Troopers Crafts and McCauley found Nicholson slumped over towards the passenger side, with his right arm on the seat and the radio microphone on the floor board. As McCauley screamed Nicholson's nickname "Tigger", Crafts checked the victim for a pulse and signs of breathing. Seeing none, the troopers pulled Nicholson onto the ground by his armpits and tried resuscitation. EMS arrived shortly thereafter and took over. {R. 1079-81; 1097-98; 1106-08; 1111-14; 1119-21; 1127-29; 1250}.

But there was nothing that could be done, as Trooper Eric Nicholson had been fatally wounded by five bullets. {R. 1222-34}. The driver's side window of Nicholson's patrol cruiser was completely shattered, as was the passenger's side rear "triangle" window. His gear shift lever was found in neutral, probably indicating that Trooper Nicholson was shot before he could even finish putting the car from drive to park. His two pistols were both found fully loaded and secured in their holsters. {R. 1082; 1098-1101; 1113; 1121; 1134-37; 1153}. Eight 9mm shell casings were found on the ground at the scene. {R. 1138}.

F. Chasing the Jeep in Anderson

News of Trooper Nicholson's shooting flashed through police stations throughout the region, and the tag number that the Wheelers reported was found to be registered to

a Karen McCall in Anderson. Anderson Sheriff's Deputies Robert Appell and Mike Jones staked out an interstate exit that they reasoned the Jeep might take if headed to that address. {R. 1500-1503; 1516-17; 1536-37}.

Around 2:00 to 2:15 that afternoon, Appell saw the blue Jeep heading down 24 towards Anderson. He got in behind it with lights and siren activated, but the Jeep sped up as it headed over the Seneca River. Deputy Jones joined the chase behind Appell. {R. 1503-05; 1517-18}.

Suddenly, the rear window of the Jeep came down as the passenger opened fire on the pursuing deputies. {R. 1505-06; 1518}. Appell and Jones took evasive action from the repeated firing. {R. 1506-07; 1518-19}.

Deputy Mike Grant took over as the lead car in the chase. Suddenly, Grant's car veered to the right as the back window shattered. Grant was slumped over in the driver's seat, and Appell stopped to assist as Jones took over as lead car. Deputy Mike Grant was struck in the face by a bullet fragment, but fortunately survived his injury. {R. 1508-09; 1519-21}.

At the intersection of 24 and 187 south, the tractor trailer kept going straight while the Jeep and its pursuers turned south on 187. The gunman continued to fire wildly at the officers, striking the windshield and hood of Jones's cruiser as he peered over the dashboard. {R. 1521-23}.

G. Hijack of the Blue Ridge Electric truck

As the chase proceeded, the front right tire of the Jeep started to flame, and the Jeep tried to pull out in the opposite lane in a clear attempt to stop another vehicle. {R.

1521-22}. Finally, the Jeep stopped at an angle in front of a Blue Ridge Electric service truck. The shooter got out of the Jeep, ran to the truck, and got the door open after firing off a number of rounds at the patrol cars. After the Blue Ridge employee escaped, the female driver of the Jeep came running out to jump in the truck's passenger side. {R. 1521-24}. The truck then took off at speeds of 100 mph or more. 9mm casings were found inside the Jeep and on the ground around where it stopped. {R. 1524-25; 1539; 1594-97; 1601-02}.

H. The capture

As the truck continued south, the suspect took a quick right onto a country road to avoid a police roadblock. After about 30 or 40 yards, the truck went into a field being plowed by a farmer. The chase proceeded around in the field until the truck went down a dead end road. As he left the field, the shooter traded fire with pursuing officers. {R. 1524-26; 1539-42}.

The air unit advised Jones that the truck was headed down a dead end. Jones pulled to the side of the road, jumped out of his car with a shotgun, and stood in the middle of the road. {R. 1526-28}. The truck came at Deputy Jones, who fired seven blasts with the shotgun before diving into his patrol car and shutting the door. Sgt. Hamby and Anderson Chief Deputy Vick Wooten also parked their cars and fired at the oncoming truck. Suddenly, the truck's speed checked up and it coasted to a stop before Wooten's car. Wooten could see that the driver had blood on his face. {R. 1526-28; 1542-43; 1545}. After a SWAT team arrived, Applicant finally raised his hands and was taken into custody. {R. 1543-44; 1560-63}.

The female in the car proved to be Applicant's girlfriend, Karen McCall. The man who killed Trooper Nicholson, shot Deputy Grant, took multiple shots at many other officers, ran civilians off of the road, commandeered a utility pickup truck, and led police on a high speed chase into a farmer's field, was John Richard Wood.

I. The forensic evidence

In the utility truck, police found a Glock 9mm pistol, a spare magazine, and six 9mm casings. {R. 1605-08}. Of course, this weapon was conclusively matched to casings and bullets found at the frontage road scene, the Jeep scene, the country road scene, and in Trooper Nicholson and his kevlar vest. {R. 1641-49}. Applicant had gunshot residue on his hands, as did Nicholson on his palms only – indicative of a defensive posture. {R. 1419-21; 1621-22}. The scooter had gunshot residue on its right handlebar, and glass particles found on it were identical in composition to the glass from Trooper Nicholson's driver's side window. {R. 1373-74; 1394-95; 1418}.

K. The sentencing phase case

The state presented Trooper McCauley and widow Misty Nicholson to testify about their relationship with Eric Nicholson. {R. 1864-77; 1950-58}. Deputy Charles Blackburn testified that during his stay in the hospital, Appellant described being shot as "the coolest feeling in the world. It's like being turned off like a light." {R. 1931-32}. Gene Sheriff, the utility truck driver, testified about having his truck commandeered at gunpoint by Applicant, and Deputy Mike Grant described being shot by Applicant during the pursuit in Anderson. {R. 1935-46}. Jimmy Sligh from the state Department of Corrections described conditions of confinement in both general population and death row. {R. 1878-1922}.

The defense first called social worker Jeff Youngman to testify about Applicant's strict but inconsistent upbringing. {R. 1964-2025}. Greenville County Detention Officer Ted Kinsler introduced videotapes of Applicant's interaction with guards at the county jail. {R. 2026-27}. Former warden James Aiken theorized that Applicant would have not trouble adapting and could be easily contained by the Department of Corrections. {R. 2030-49}. Finally, psychiatrist Dr. Donna Schwartz-Watts diagnosed Applicant with bipolar disorder not otherwise specified, and paranoid personality disorder. {R. 2054-2101}.

The state called Dr. Pratap Narayan, who disputed Dr. Schwarz-Watts's testimony and discussed his diagnosis of antisocial personality disorder. {R. 2136-62}.

III.

Allegations in Initial Application

Applicant makes six (6) allegations in his APCR. All of these involve ineffective assistance of counsel. As will be seen, all of the allegations should be dismissed or denied as a matter of law, and the petition dismissed with prejudice.

A. General Law on Ineffective Assistance Of Counsel.

Pursuant to the familiar doctrine in Strickland v. Washington, Petitioner must first demonstrate that his trial counsel's performance fell below an objective standard of reasonableness. 466 U.S. 668 (1984). Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight, and counsel may reasonably choose from a wide range of acceptable strategies. Strickland, 466 U.S. at 689; Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000).

Competency is measured against what an objectively reasonable attorney would

have done under circumstances existing at the time of the representation. Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996). The Court should "decline to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial." Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996).

As the Supreme Court made clear in Strickland:

. . . the reasonableness of counsel's actions may be determined or substantially influenced by the defendants own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigations are reasonable depends upon such information . . . [W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable.

Strickland, 466 U.S. at 691. Barnes v. Thompson, 58 F.3d 971, 978 (4th Cir. 1995); Matthews v. Evatt, 105 F.3d 907, 919-920 (4th Cir. 1997). The mere fact that trial counsel's strategy was unsuccessful does not render counsel's assistance unconstitutionally ineffective. Strickland, 466 U.S. at 689. Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).

Next, Petitioner must also establish prejudice by showing "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. 668, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. It is insufficient to show only that the errors had some conceivable effect on the outcome of the proceeding, because virtually every act or omission of counsel would meet that test. Id. at 693. "The Petitioner bears the 'highly demanding' and 'heavy burden' in establishing actual prejudice. Williams

v. Taylor, 120 S.Ct. 1495, 1513-14 (2000).

Recently in Jones v. State, 332 S.C. 329, 504 S.E.2d.822 (1998) , the South Carolina Supreme Court restated the "prejudice" prong in a capital sentencing proceeding as being established when "there is a reasonable probability that, absent [counsel's] errors, the sentencer – including an appellate court, to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death," citing Strickland. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Jones, 504 S.E.2d at 823-824. Accord, Plath v. Moore, 130 F.3d 595 (4th Cir. 1997) ("given the overwhelming aggravating factors, there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the mitigating circumstances and hence, the sentence imposed." Thus, in weighing the omitted evidence against that actually used to convict and sentence Plath, the mitigating evidence seems insufficient to shift the balance in Plath's favor.").

Finally, the Supreme Court of South Carolina has held that a hearing on an allegation is only required when factual allegations that lead to a Sixth Amendment deprivation are not conclusively refuted by the record. Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981).

As a general matter, Respondent submits that the Record on Appeal from Applicant's trial and sentencing hearing conclusively demonstrate that appointed counsel were not deficient in their performance nor was Applicant prejudiced in any way by their performance. To the contrary, the Record from each proceeding demonstrates that Applicant's attorneys were diligent in their representation of Applicant, performed well

within the wide range of competence and reasonable professional assistance demanded of attorneys in criminal matters. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Marzullo v. Maryland, *supra*; Butler v. State, 286 S.C. 441, 34 S.E.2d 813 (1985); Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

B. Ground One

Applicant's first ground for relief is as follows:

Defense counsel was ineffective for initially denying psychiatric expert Dr. Pratap Narayan access to petitioner and not presenting available relevant evidence about petitioner's mental status to Dr. Narayan and others since this prejudiced petitioner's chance of being found incompetent or not criminally responsible where his mental status clearly was at issue throughout the trial. Further, Dr. Narayan later testified during the penalty stage, based on limited information that petitioner was not bi-polar, that he had an anti-social personality disorder, and that he was malingering.

Due process prevents the conviction of a mentally incompetent person who lacks the capability to consult with his lawyer with a reasonable degree of rational understanding, as well as lacks a rational and factual understanding of the proceedings against him. Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992). In a PCR action, the applicant bears the burden of proof to show by a preponderance of the evidence that he was incompetent at the time of the plea. Id. In the context of alleged ineffective assistance of counsel for failing to request a mental examination that might have formed the basis of an insanity defense or determination of incompetency, the applicant must demonstrate not only deficient performance by counsel but also a reasonable probability of insanity at the time of the crime or incompetence at the time of trial. Id. A trial lawyer is entitled to reasonably rely on his own perceptions of the defendant when making his decisions regarding

competency and an insanity defense. Id.

Applicant's claim here fails as a matter of law and should be dismissed. As an initial matter, this allegation lacks sufficient specificity for a response because it fails to set forth any "facts" to support the claim. The "relevant evidence" that supposedly could have been presented is not even as much as identified. Moreover, no factual allegation is made that Applicant was actually incompetent to stand trial or is not criminally responsible; thus, counsel's alleged failures in this regard could not have been prejudicial. Cf. Matthews v. State, 358 S.C. 456, 596 S.E.2d 49 (2004) (PCR applicant clearly showed he was incompetent at the time of his plea; thus, counsel was ineffective for failing to request a competency hearing); Jeter v. State, 308 S.C. 230, 417 S.E.2d 594 (1992) (PCR applicant must show a reasonable probability that he was insane at the time of the crime or was incompetent at the time of trial). This matter must be dismissed pursuant to S.C. Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion. Alternatively, this allegation is subject to dismissal pursuant to S.C. Rules of Civil Procedure, Rule 12(b)(6) ("failure to state facts to constitute a cause of action").

In any event, the allegations are without merit on the face of the record. The record reflects that the court's psychiatrist tasked with determining Applicant's criminal responsibility and competence to stand trial called the judge prior to trial to express his frustration that the defense refused to respond to his request for consent to get Applicant's updated medical records from the jail. The defense responded to this by telling the trial court they have been objecting to the process since the beginning, and did not want to give their file information to the doctor. The court noted it would find out from Dr. Narayan what he needed to complete his evaluation. {Tr. 720-23}.

After a break, the trial court noted that he had talked to the doctor, who was concerned that he would be unable to give an opinion as to competency because he could not get any information or cooperation from the defendant. The judge noted he simply told the doctor he would have to do the best he could, as the judge did not feel like he could order family members to talk to the doctor, or blood tests of the defendant. {Tr. 723-24}.

At the competency hearing, Dr. Narayan was examined by the trial court. Dr. Narayan testified that he had interviewed Applicant on two prior occasions, and believed Applicant understood his rights and was competent to stand trial at that time. However, Dr. Narayan was unable to give an opinion as to competency at the time of the hearing because he was not allowed access to the defendant or information about him since those initial interviews. {Tr. 954-62}.

Under examination by the solicitor, Dr. Narayan noted that during their earlier meetings Applicant told him he was not on nor had he ever been on any psychiatric medications. Dr. Narayan said he could not render an opinion as to the present time because they had received information that Applicant's psychiatric situation may have changed – detention staff had told Dr. Narayan that a doctor hired by Applicant had placed him on medication. Dr. Narayan requested further information about that but were denied access by Applicant. {Tr. 963-66}.

On cross by the defense, Dr. Narayan reiterated that in light of information that the situation may have changed, they were simply unable to give an opinion at the present time. {Tr. 980-81}.

During reexamination by the trial court, Dr. Narayan noted that no one from the

defense team had called him and offered to assist in the evaluation, although that has happened in the past. Dr. Narayan noted that he felt he had plenty of information to find Applicant competent at the prior time, and described Applicant's waiver of rights prior to the interviews. {Tr. 981-86}.

A psychologist named Dr. Tezza also testified about Applicant's decision to execute the waiver of rights at the prior interviews. {Tr. 986-89}.

The trial court then found Applicant competent to stand trial. The court noted that Applicant had the burden, and there was no real effort to challenge competence. {Tr. 994}.

At the close of the state's guilt phase case, the defense stated it had no intention of calling any psychiatric witnesses. Accordingly, the trial court ordered the state's mental health expert to leave the courtroom pursuant to the sequestration order, and also denied the State's renewed request for an independent mental health examination. {Tr. 1662-65}.

During the trial, the trial court engaged in a number of colloquies with Applicant about his rights to testify and give argument during his trial. Applicant gave appropriate answers throughout these colloquies, and indicated his understanding of his various rights and obligations. {Tr. 1664-67; 1675-78; 1682-83}. During the colloquy on the right to testify in the guilt phase, Applicant and his lawyer went into a side room to confer and discuss Applicant's decision. {Tr. 1674-78}.

During the sentencing phase case, Applicant called his mental health expert, Dr. Schwartz-Watts. Dr. Schwartz-Watts testified that the results of Applicant's neurological exam were completely normal. {Tr. 2066}. Dr. Schwartz-Watts diagnosed Applicant with

"bipolar disorder not otherwise specified" and "paranoid personality disorder". {Tr. 2070}. She noted that bipolar disorder is only "a problem with the way you feel", although she claimed Applicant has had hallucinations. {Tr. 2071; 2077}. Also, Dr. Schwartz-Watts testified that since Applicant had been on medication she prescribed, he was more stable, less grandiose, and "able to process things" in a slower more deliberate fashion. {Tr. 2087}. Most importantly, Dr. Schwartz-Watts – the defense expert – testified that she absolutely agreed that Applicant was not only competent to stand trial but also criminally responsible for the murder. {Tr. 2118-21}.

Finally, Dr. Narayan, who had since received further information, also testified to a reasonable degree of medical certainty that Applicant was not only competent to stand trial but also criminally responsible. {Tr. 2146-48}. Dr. Narayan disagreed with the defense doctor's diagnosis, though, and said Applicant only had antisocial personality disorder. {Tr. 2148-51}. Dr. Narayan also noted that there was no evidence of Applicant displaying any abnormal behavior. {Tr. 2152-53}. Dr. Narayan stated that his diagnostic impression, confirmed by psychological testing, was that Petitioner began to malingering his supposed symptoms. {Tr. 2157-58}.

Thus, there is no evidence of trial counsel's deficiency on the patent face of the record, as there is nothing to suggest that a reasonable lawyer would have been put on notice that more needed to be done to raise competency or insanity. Trial counsel here had Applicant examined by Dr. Schwartz-Watts, a faculty member at USC who testifies in many capital trials. Dr. Schwartz-Watts also had Applicant tested by a neurologist, and the test came back normal. And, trial counsel's expert Dr. Schwartz-Watts agreed herself on

the stand that Applicant was competent to stand trial and criminally responsible. Counsel is not required to second guess his expert or to "expert shop" until he can find an expert who will testify more favorably. See, e.g., Poyner v. Murray, 964 F.2d 1404, 1419 (4th Cir. 1992).

Further, Applicant answered all questions appropriately during colloquies with the trial court, and the record reflects conferences taking place between counsel and Applicant. Moreover, the court's examiner, Dr. Narayan, had data supporting his belief that Applicant was malingering any symptoms, and Applicant here has not even identified anything of consequence that would have affected this conclusion. See generally McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003) (PCR applicant did not meet his burden of proving that he was incompetent to stand trial; supposed effects of his anti-seizure medication did not affect his ability to consult with counsel or understand the proceedings, applicant answered questions appropriately at trial, and a forensic psychiatrist found him competent prior to trial).

Since trial counsel had no information that his client was insane or incompetent, it was not unreasonable strategically to refuse to cooperate with the court's examiner and perhaps give the prosecution additional information to aid it in its case against Applicant, in return for no ultimate gain. The face of the record is clear that counsel was not deficient as a matter of law, and this issue should be dismissed. See Sexton v. French, 163 F.3d 874, 887 (4th Cir. 1998) (tactical decision can not be second-guessed by court reviewing a collateral attack); Fitzgerald v. Thompson, 943 F.2d 463 (4th Cir. 1991) (tactical decision sustainable unless it is both incompetent and prejudicial).

Second, there is absolutely no evidence of prejudice for many of the same reasons.

Both the court's examiner and the defense's own expert found Applicant was neither insane nor incompetent to stand trial. Applicant answered the trial court's questions appropriately and consulted with his lawyer throughout the trial. The facts of this case show that Applicant led police on an extended chase in an attempt to escape the consequences of his crimes, which surely shows an awareness of right versus wrong. There is simply no evidence of a reasonable probability of insanity at the time of the shooting or incompetence at the time of trial; in fact, the evidence is absolutely overwhelming to the contrary.

Accordingly, this allegation should be dismissed as a matter of law or summary judgment granted, as the face of the record disproves Applicant's contention that counsel was deficient in raising these issues or that Applicant is in fact incompetent or insane. Applicant offers nothing specific to call the record into question. See, e.g. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law); Rule 12(b)(6), SCRCP (dismissal for failure to state facts sufficient to state a cause of action); S.C. Code Ann. §§ 17-27-40 & -50 (2003) (requiring that a PCR application specifically set forth the grounds for relief, stating that allegations of facts within the applicant's knowledge be verified, and requiring that affidavits, records, or other evidence of the allegations be attached or the application shall recite why they are not attached); S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief).

In the event this Court disagrees the issue should be dismissed as a matter of law,

Respondents request an evidentiary hearing to resolve any questions of fact. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

C. Ground Two

Applicant's second ground for relief is as follows:

Defense counsel was ineffective for not taking full advantage of the trial judge's offer to fully instruct the jury that petitioner had to plead not guilty when the judge rejected counsel's argument that it violated Due Process to force a defendant to plead not guilty in order to receive jury sentencing.

This issue is without merit and should be dismissed as a matter of law.

In a pretrial motion, Appellant moved to quash the state's death penalty notice on the basis that he could not plead guilty and receive jury sentencing. Petitioner argued that this denied him equal protection and due process inasmuch as it was "fundamentally unjust and results in undue pressure on the Defendant to seek a trial". {R. 2510}. The State filed a response, in which it generally asserted that this Court had previously rejected jury sentencing after a guilty plea, and that the United States Supreme Court had upheld judge-sentencing capital schemes. {R. 2511-12}.

At a pretrial hearing, Appellant argued that pleading not guilty to get jury sentencing forces the defendant into an "obvious untruth", which destroys the defendant's credibility. The defense also complained that Appellant would be penalized for his lack of acceptance of responsibility. The judge ruled that the statute was constitutional. {Supp. R. 11-12}.

The judge subsequently issued a written order in which he "appreciate[d] the practical considerations", but noted that the defense cited no authority supporting a

constitutional violation. The court noted that it was willing "to address these concerns during jury *voir dire* if Defendant so requests". {R. p. 2513-14}.

At trial, the trial court reiterated that it had made an offer to help the defense address the issue before the jury, and defense responded that it just did not like the statute. {R. 1005-06}.

On direct appeal, Applicant asserted, *inter alia*, that South Carolina's death statute was unconstitutional inasmuch as jury sentencing was required under Ring v. Arizona, 536 U.S. 584 (2002), even if a capital defendant pled guilty, and inasmuch as the statute denied the defendant the mitigating evidence of legally admitting guilt if he also wanted jury sentencing. The South Carolina Supreme Court only ruled on the Sixth Amendment issue of whether Ring required jury sentencing even where a capital defendant pleads guilty, and did not expressly address a claim that the requirement of a not guilty plea to get jury sentencing denied the defendant the mitigating evidence of an admission of guilt. State v. Wood, 362 S.C. 135, 143, 607 S.E.2d 57, 61 (2004).

Applicant now contends that his counsel was ineffective for failing to take the judge up on his offer that the defendant was forced to plead not guilty to get jury sentencing. This issue is specious because the defense challenged the charges during the guilt phase of the trial. Applicant did not plead guilty, nor did he concede guilt. We do not know if he would have ultimately pled guilty or would have conceded guilt of murder, because he did not – he requested voluntary manslaughter and denied the existence of malice throughout the trial.

Perhaps Applicant could have pled guilty and asserted the issue during the

contested bench sentencing proceeding, or could have admitted guilt of murder through his counsel, at which point as issue as to the viability of such a charge might have been presented. There is nothing to stop him or his counsel from conceding guilt during argument in the first phase. Indeed, such concessions often have been made as a strategic matter in South Carolina cases. See, e.g. Young v. Catoe, 205 F.3d 750 (4th Cir. 2000) (discussing Kevin Young's counsel's admission of guilt in the first phase).

But Applicant did none of these things, and instead chose an entirely different strategic method of actually challenging his guilt of murder as opposed to voluntary manslaughter. The strategy utilized is not unreasonable simply because Applicant was ultimately convicted of murder. Strickland, 466 U.S. at 689. Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).

Counsel could not have been deficient nor Applicant prejudiced by the fact that counsel did not get the trial court to instruct the jury that Applicant admitted his guilt of murder but had to plead not guilty to get jury sentencing. Applicant did not admit his guilt of murder at his trial. Thus, the issue should be dismissed as a matter of law or summary judgment granted. See, e.g. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law); Rule 12(b)(6), SCRCP (dismissal for failure to state facts sufficient to state a cause of action); S.C. Code Ann. §§ 17-27-40 & -50 (2003) (requiring that a PCR application specifically set forth the grounds for relief, stating that allegations of facts within the applicant's knowledge be verified, and requiring that affidavits, records, or other evidence of the allegations be attached or the application shall recite why they are not attached); S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that

after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief).

In the event this Court disagrees the issue should be dismissed as a matter of law, Respondent requests an evidentiary hearing to resolve any questions of fact. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

D. Ground Three

Applicant's third ground for relief is as follows:

Defense counsel was ineffective for failing to effectively cross-examine petitioner's girlfriend, Karen McCall, where she presented herself as the victim of petitioner's threats, and claimed she was acting under his duress, where a fair reading of the evidence reveals she was actually assisting petitioner.

Applicant's girlfriend Karen McCall gave a statement to police the night of the shooting. At trial, she testified that she had been in the Jeep following Applicant on I-85 as they were going to Greenville for lunch. When the trooper got in between them and blue lighted the scooter, she thought that Applicant would try to elude the police, because he had always said he could. She got off at the Woodruff exit when she saw Applicant come by on the scooter. She quickly followed him to the gymnastics center parking lot, where he parked the scooter, jumped in the Jeep, and told her to "drive, now". Karen claimed she only thought Applicant had escaped from the trooper, not that he had killed him. {R. 1424-25; 1430-34; 1452-53}.

Applicant directed Karen to make certain turns, but did not seem hostile or upset. He talked to her about vacationing for Christmas in Mexico or Alabama. They stopped at a gas station, where Applicant took their Glock 9mm and put it on the console. As they

continued on, Applicant received a call from his sister and made dinner plans. {R. 1435-40}.

Once Deputy Jones got on their tail, though, Applicant's demeanor changed to "cold", "hard", and "possessed". Applicant put his foot on Karen's to mash the gas pedal to the floor, and he told her, "Drive, bitch, drive, I shot the son of a bitch!". Applicant waved the gun at her and forced her to drive. He then reached over and flipped the switch to lower the rear glass window, and began shooting at police. Throughout the drive, he would occasionally reach over and snatch the wheel, and he continued to say "we're going to die today". {R. 1441-46}.

Eventually the Jeep simply would not go anymore, so Applicant said: "I'm going to get us another vehicle. When I tell you to, get your ass up here and bring that bag." After commandeering the utility truck, Applicant called for Karen, who ran into the passenger seat and doubled over into the floorboard. Eventually, Karen heard Applicant inhale and slump over, and the police ordering her out of the car. {R. 1447-52}.

Applicant's present claim before this Court – that his counsel was ineffective for not doing a "better" job cross-examining Karen on whether she was assisting him rather than under his dominion at the time of the crime – is specious and fails as a matter of law. "In hindsight, there are few, if any, cross-examinations that could not be improved upon. If that were the standard of constitutional effectiveness, few would be the counsel whose performance would pass muster." Willis v. United States, 87 F.3d 1004, 1006 (8th Cir. 1996). The extent of examination and cross-examination of witnesses is an area of trial tactics left to the discretion of counsel. Yarrington v. Davies, 779 F.Supp. 1304, 1308 (D.

Kan. 1991). Counsel is not required to raise every conceivable issue or pursue every avenue of inquiry, but is required only to exercise normal skill, judgment, and diligence.

Dyer v. Crisp, 613 F.2d 275 (10th Cir. 1980).

Here, as an initial matter, even if trial counsel had shown that Karen was more of a willing partner in Applicant's crimes rather than person acting under duress, this would do nothing to diminish or remove Applicant's own personal guilt for killing the trooper, during which Karen was not even present. Moreover, even when Karen was driving the jeep during the police chase, it was Applicant who fired all of the shots at police, and indeed by the end of the chase Karen was huddling in the floorboard of the cab while Applicant continued to drive aggressively and fire at police. {Tr. 1541-43}. Whether Karen was behaving voluntarily or under duress from Applicant during the police chase does nothing to preclude Applicant's legal or moral guilt for personally killing the trooper, wounding another officer, stealing a truck, and firing countless other rounds at pursuing police officers. As such, counsel could not have been deficient nor Applicant prejudiced with regard to such a legally insignificant issue. See generally Reed v. Norris, 195 F.3d 1004 (8th Cir. 1999) (failure to raise Batson issue not prejudicial under Strickland given overwhelming evidence); Simmons v. Taylor, 195 F.3d 346 (8th Cir. 1999) (failure to object to jail clothing not prejudicial under Strickland given the state's overwhelming evidence).

Further, it is obvious that counsel's strategy was to make use of Karen as a favorable witness rather than attack her as a hostile one, to support an underlying defense theory that Applicant's extreme fear of police and belief that he could outrun the officer on his motorbike led to a situation of voluntary manslaughter – or at least lack of malice –

when the officer pulled his cruiser in front of Applicant's motorbike. {Tr. 1749-56}. Counsel elicited from Karen not only Applicant's extreme fear of police and belief that he could outrun the police, but also that he behaved that day in an extremely uncharacteristic behavior, entirely different from the sweet non-violent man he normally was. {Tr. 1456-57; 1467-68; 1474; 1478-80}. This very cleverly allowed the defense to use a prosecution witness in the guilt phase to set the stage for its mitigation case in the very likely event of conviction.

Especially in such a highly deferential area such as the style and subjects of cross-examination, the record clearly belies as a matter of law that counsel was deficient or Applicant prejudiced. The issue should be should be dismissed as a matter of law or summary judgment granted. See, e.g. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law); Rule 12(b)(6), SCRCP (dismissal for failure to state facts sufficient to state a cause of action); S.C. Code Ann. §§ 17-27-40 & -50 (2003) (requiring that a PCR application specifically set forth the grounds for relief, stating that allegations of facts within the applicant's knowledge be verified, and requiring that affidavits, records, or other evidence of the allegations be attached or the application shall recite why they are not attached); S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief).

In the event this Court disagrees the issue should be dismissed as a matter of law,

Respondents request an evidentiary hearing to resolve any questions of fact. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

E. Ground Four

Applicant's next ground for relief is as follows:

Defense counsel was ineffective for failing to procure and present available and credible guilt phase and mitigation evidence regarding petitioner's extreme fear of the police since this evidence went to petitioner's perception of what was occurring when the trooper made the aggressive traffic stop, and it was therefore relevant.

This issue fails as a matter of law for a number of reasons.

First, this allegation lacks sufficient specificity for a response because it fails to set forth any facts to support the claim. The "credible guilt phase and mitigation evidence" that supposedly could have been presented is not even as much as identified. This matter must be dismissed pursuant to S.C. Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion. Alternatively, this allegation is subject to dismissal pursuant to S.C. Rules of Civil Procedure, Rule 12(b)(6) ("failure to state facts to constitute a cause of action").

Second, the issue fails as a matter of law because similar evidence was presented. Defense counsel elicited from Applicant's girlfriend Karen McCall during the guilt phase that Applicant was so afraid of police that he would not even come inside a store with her. {Tr. 1466-68}. The defense expert Dr. Schwartz-Watts used this information to support her diagnosis of paranoid personality disorder, noting that Applicant changed hotels every night because he thought he was being watched, and avoided any contact with law

enforcement. {Tr. 2078-80}. Thus, this information was in fact presented to the jury both in the guilt and sentencing phases, and there could be no prejudice to Applicant. See generally Kavanaugh v. Berge, 73 F.3d 733 (7th Cir. 1996) (finding no deficiency in the failure to exhaustively cross-examine expert on his use of leading questions, where counsel presented an expert to testify generally on the subject, and argued the issue extensively in closing).

Further, this evidence is irrelevant to any issue of legal consequence in the guilt phase. Despite defense counsel's valiant attempts at trial, the trial court refused to charge voluntary manslaughter and the South Carolina Supreme Court affirmed. No self-defense charge was requested, and indeed none could be under the facts of this case. Therefore, Applicant's supposed "extreme fear of police" would not be relevant to any issue in the guilt phase.

Indeed, even if voluntary manslaughter was charged at trial, this evidence would be inadmissible. South Carolina has no diminished capacity defense. In State v. Gill, 346 S.C. 209, 552 S.E.2d 26 (2001), a psychiatrist opined at trial that the defendant's borderline intellect and antisocial personality prevented him from being able to formulate malice aforethought. The defense offered the testimony as evidence of his lack of capacity to achieve the required *mens rea*, despite the fact that he was legally sane, and accordingly requested a charge on diminished capacity. The Court flatly rejected that request, by simply stating that the defense was not recognized in South Carolina. Id.

Of course, voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation. State v. Cole, 338 S.C. 97, 525 S.E.2d

511 (2000). The heat of passion test has both a subjective and an objective portion of the test – not only must the defendant's passions be inflamed, but the provocation must be such that it would have inflamed the passions of an objectively reasonable person. See, e.g. State v. Davis, 50 S.C. 405, 423, 27 S.E. 905, 911 (1897); McAninch & Falrey, The Criminal Law of South Carolina, 156 (3d ed. 1996). Thus, this rule against diminished capacity clearly makes sense in the context of South Carolina's test for voluntary manslaughter – as obviously a defendant's subjective diminished capacity would be insufficient alone to justify such a verdict if an objectively reasonable person would not also have been inflamed.

Since Appellant was attempting to offer evidence that he was more easily inflamed, stressed, or threatened by police than a person without his supposed condition – indeed, that he essentially lacked the capacity to achieve malice aforethought in the factual scenario presented – then the evidence was irrelevant to any proper legal issue.

The issue should be dismissed as a matter of law or summary judgment granted. See, e.g. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law); Rule 12(b)(6), SCRCP (dismissal for failure to state facts sufficient to state a cause of action); S.C. Code Ann. §§ 17-27-40 & -50 (2003) (requiring that a PCR application specifically set forth the grounds for relief, stating that allegations of facts within the applicant's knowledge be verified, and requiring that affidavits, records, or other evidence of the allegations be attached or the application shall recite why they are not attached); S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis

of the pleadings and the record that the applicant is not entitled to relief).

In the event this Court disagrees the issue should be dismissed as a matter of law, Respondents request an evidentiary hearing to resolve any questions of fact. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

F. Ground Five

Applicant's fifth ground for relief is as follows:

Defense counsel was ineffective for failing to object to evidence, during the guilt phase of the trial, that petitioner had been on federal probation since this other bad acts evidence was irrelevant during that stage of the trial.

This issue is without merit and should be dismissed as a matter of law.

As noted before in the preceding ground, defense counsel on cross examination elicited from Applicant's girlfriend Karen McCall that Applicant had an extreme fear of police. {Tr. 1466-68}. On redirect, the prosecution wished to bring out the source of McCall's information about Applicant's supposed fear. The defense objected when the prosecution asked whether McCall had a conversation with Applicant's mother about whether Applicant's fear of police was a "realistic concern". After some *in camera* testimony, the defense withdrew its objection, noting that its questioning about Applicant's fear of police had put the issue into play. {Tr. 1484-89}. When the jury returned, the prosecutor elicited that Applicant's mother told Karen that Applicant was afraid of police because he was on federal probation "about some checks". The defense then elicited on recross that Applicant had been put on probation for some "financial matter", and that he was sending restitution checks. {Tr. 1498-99}.

First, counsel was not deficient as a matter of law in eliciting from Karen Appellant's

extreme fear of police. Such a fact was helpful in counsel's ultimately failed attempt to get a voluntary manslaughter charge, and helpful in counsel's guilt phase argument that Applicant did not act with malice. {Tr. 1749}. Counsel's strategy was not unreasonable given the overwhelming evidence facing the defense, nor is it unreasonable simply because counsel's strategy proved unsuccessful. Cf. Bunch v. Thompson, 949 F.2d 1354 (4th Cir. 1991) (reviewing court should filter from its analysis the distorting effects of hindsight); See generally Bell v. Evatt, 72 F.3d 421 (4th Cir. 1995) (standing alone, unsuccessful trial tactics neither constitute prejudice nor definitively prove ineffective assistance of counsel).

Second, elicitation of such testimony allowed counsel to cleverly use a state's witness to set in motion the mitigation presentation, which was likely to be inevitable given the overwhelming evidence in this case. As noted before, the defense expert Dr. Schwartz-Watts used this information to support her diagnosis of paranoid personality disorder, noting that Applicant changed hotels every night because he thought he was being watched, and avoided any contact with law enforcement. {Tr. 2078-80}. Counsel were not deficient in doing the best they could with what little they had.

Third, that Applicant was on probation for some checks is simply not prejudicial in view of the extremely violent course of conduct at issue in this case. Obviously, Applicant's prior record would be admissible in the capital sentencing phase, so that portion of the trial is not even a consideration. See State v. Plath, 281 S.C. 1, 313 S.E.2d 619 (record of prior criminal convictions has always been deemed relevant to the process of imposing sentence). Given the absolute overwhelming evidence of guilt in this case, where

Applicant was apprehended with the murder weapon in his possession after a protracted car chase and gun battle with police, as well as the fact that the state supreme court has already rejected application of voluntary manslaughter to these facts during the direct appeal, it simply cannot be said that the brief mention of Applicant's probationary sentence for a prior nonviolent crime would create a reasonable probability of that the jury would acquit Applicant in the guilt phase. See generally State v. Keenon, 356 S.C. 457, 590 S.E.2d 34 (2003) (any error in admitting more than two prior convictions was harmless error due to overwhelming evidence); State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993) (error in admission of similar fight involving defendant was harmless, as evidence was overwhelming without reference to the prior bad act).

Therefore, the issue should be should be dismissed as a matter of law or summary judgment granted. See, e.g. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law); Rule 12(b)(6), SCRCP (dismissal for failure to state facts sufficient to state a cause of action); S.C. Code Ann. §§ 17-27-40 & -50 (2003) (requiring that a PCR application specifically set forth the grounds for relief, stating that allegations of facts within the applicant's knowledge be verified, and requiring that affidavits, records, or other evidence of the allegations be attached or the application shall recite why they are not attached); S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief).

In the event this Court disagrees the issue should be dismissed as a matter of law, Respondents request an evidentiary hearing to resolve any questions of fact. See Sharper

v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

G. Ground Six

Applicant's last ground for relief is as follows:

Defense counsel was ineffective for failing to articulate his request for a voluntary manslaughter instruction based upon the fact there was not any reasonable suspicion to stop petitioner on the interstate merely because he was on a motorcycle, and where the aggressive traffic stop put petitioner at very real risk of serious bodily harm or death, since the instruction as requested allowed the trial judge not to charge voluntary manslaughter or preserve this as a viable appellate issue without changing the argument on appeal.

This issue fails as a matter of law and should be dismissed. First, defense counsel was not deficient in the manner in which he "articulated" the request. Applicant contends counsel failed to argue in support of his manslaughter request that there was no reasonable suspicion to stop the motorcycle, and that the victim's traffic stop put the Applicant in fear of serious bodily harm or death. However, that is precisely what counsel argued. {Tr. 1712-15} ("you have a defendant on a motorcycle that is legally on the freeway"; "there is no evidence he was conducting himself in an illegal manner"; "there was no reason to pull the scooter over other than the trooper was mistaken"; "what you've got is an aggressive stop").

Indeed, in its opinion the state supreme court did not find any argument or allegation of error was not preserved. State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004). Thus, counsel preserved the request, and could not have been deficient.

Moreover, the state supreme court has already found that voluntary manslaughter did not apply to the facts of this case. State v. Wood, 362 S.C. 135, 607 S.E.2d 57 (2004).

Applicant does not argue that there are any new unpresented facts which counsel failed to uncover but would change this legal conclusion. Since a voluntary manslaughter charge was not warranted at all, counsel could not have been deficient even if he made no request at all, and Applicant certainly cannot have been prejudiced by the request that counsel did make. See generally Hough v. Anderson, 272 F.3d 878 (7th Cir. 2001) (ineffective assistance claims based on failure to object is tied to the admissibility of the underlying evidence; if evidence admitted without objection was admissible, then the complaint fails both prongs of the Strickland test, as it was neither deficient nor prejudicial).

Indeed, even if a voluntary manslaughter charge was warranted, the issue could not have been prejudicial as a matter of law given the absolutely overwhelming evidence of guilt in this case. Reed v. Norris, 195 F.3d 1004 (8th Cir. 1999) (failure to raise Batson issue not prejudicial under Strickland given overwhelming evidence); Simmons v. Taylor, 195 F.3d 346 (8th Cir. 1999) (failure to object to jail clothing not prejudicial under Strickland given the state's overwhelming evidence).

Therefore, the issue should be dismissed as a matter of law or summary judgment granted. See, e.g. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law); Rule 12(b)(6), SCRCP (dismissal for failure to state facts sufficient to state a cause of action); S.C. Code Ann. §§ 17-27-40 & -50 (2003) (requiring that a PCR application specifically set forth the grounds for relief, stating that allegations of facts within the applicant's knowledge be verified, and requiring that affidavits, records, or other evidence of the allegations be attached or the application shall recite why they are not attached); S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that

after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief).

In the event this Court disagrees the issue should be dismissed as a matter of law. Respondents request an evidentiary hearing to resolve any questions of fact. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

CONCLUSION

Each and every allegation in the Application not hereinabove either expressly admitted, denied, qualified or explained is hereby denied.

WHEREFORE, Respondent submits that the Application for Post-Conviction Relief should be dismissed as a matter of law or summary judgment granted. Pursuant to Section 17-27-160, Respondent also requests that this Court to hold a hearing to determine Applicant's desires regarding counsel as soon as possible, as well as a status hearing within thirty (30) days to establish the necessity of any final hearing date, as well as to resolve the instant motions to dismiss and for summary judgment.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

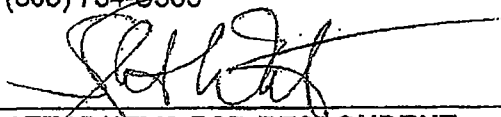
DONALD J. ZELENKA
Assistant Deputy Attorney General

S. CREIGHTON WATERS
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia, South Carolina 29211

2634

(803) 734-6305

By: 

ATTORNEYS FOR RESPONDENT

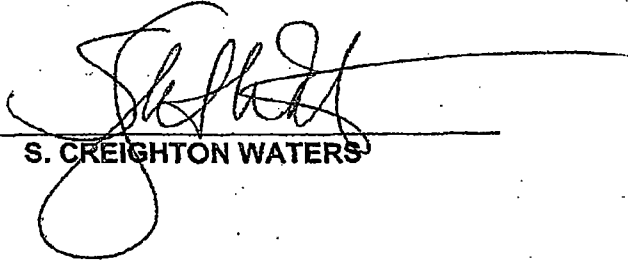
August 29, 2005

CERTIFICATE OF SERVICE

I, S. Creighton Waters, counsel for the Respondent, certify that I have served the *Return, Motion to Dismiss and Motion for Summary Judgment*, by depositing one (1) copy of same in the United States mail, postage prepaid, addressed to:

John Richard Wood, #6005
Lieber Correctional Institution
Post Office Box 205
Ridgeville, South Carolina 29472

This 29th day of August, 2005.



S. CREIGHTON WATERS

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF GREENVILLE

4
5 JOHN RICHARD WOOD :

6 :

7 -vs-

8 :

TRANSCRIPT OF RECORD

9 :

10 STATE OF SOUTH CAROLINA :

11 September 30, 2005

12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE LARRY R. PATTERSON, Judge.

16
17 A P P E A R A N C E S:

18 JIM BROWN, ESQ.

19 SYMMES CULBERTSON, ESQ.

20 Attorneys for the Plaintiff

21 S. CREIGHTON WATERS, ESQ.

22 Attorney for the Defendant

23
24 MARY E. SPRAGUE

25 Court Reporter

	<u>I N D E X</u>
	<u>WITNESSES</u> <u>DIRECT</u> <u>CROSS</u> <u>REDIRECT</u> <u>RE CROSS</u>
1	
2	
3	N/A
4	
5	
6	
7	
8	
9	
10	<u>EXHIBITS</u> <u>MARKED</u> <u>FILED</u>
11	N/A
12	
13	
14	
15	
16	
17	
18	
19	
20	CHARGE OF THE COURT N/A
21	
22	
23	
24	
25	

1 THE COURT: Okay. We're here in the matter of the
2 State and John Richard Wood. And Mr. Wood has --
3 apparently Mr. Wood has filed a post conviction relief
4 pro se, is that correct?

5 MR. WOOD: Yes.

6 THE COURT: You filed one, is that ---

7 MR. WOOD: Yes, my attorney did.

8 THE COURT: Your attorney did?

9 MR. WOOD: Yes, sir.

10 THE COURT: And you are John Richard Wood?

11 MR. WOOD: Yes, sir.

12 THE COURT: Who filed the post conviction relief for
13 you?

14 MR. WATERS: Your Honor, I believe it was Bob Dudek
15 from the Office of Appellate Defense, who was his direct
16 appeal lawyer, who drafted it for him.

17 THE COURT: Oh, the direct appeal lawyer drafted
18 this for him?

19 MR. WATERS: Yes, sir.

20 THE COURT: By having filed that with the Supreme
21 Court, then we need to proceed with counsel, whether
22 you're going to retain counsel, do you want appointed
23 counsel or ---

24 MR. WOOD: Appointed counsel.

25 THE COURT: Do you want to retain counsel?

1 MR. WOOD: I have no money to retain counsel, sir.
2 I need counsel appointed.

3 THE COURT: Okay. Since you're incarcerated and --
4 I'll take judicial notice of the fact that you're not
5 working, have been incarcerated, I'm not sure of what the
6 date is, but for some time. And you want appointed
7 counsel, Mr. Wood?

8 MR. WOOD: Yes, sir.

9 THE COURT: Okay. Now, to put everything on the
10 record in this matter, I did receive a fax from Mr.
11 Dudek, is that the way you pronounce it?

12 MR. WATERS: Dudek.

13 THE COURT: Dudek?

14 MR. WATERS: Yes, sir.

15 THE COURT: Okay. I received a fax from Mr. Dudek
16 and he recommended Mr. Brown, I believe.

17 MR. BROWN: Yes, sir.

18 THE COURT: Okay. And I'm informed that Mr. Brown
19 was representing another individual on PCR, is that
20 correct?

21 MR. BROWN: I have two currently. One I've been on
22 for about four and a half years and one for about two
23 years, yes, sir.

24 THE COURT: Okay. And then when you were speaking
25 to one of those individuals you did speak to Mr. Wood?

1 MR. BROWN: I did, that's correct.

2 THE COURT: Okay.

3 MR. BROWN: And that was about the same time Mr.
4 Dudek's office contacted me. My name had come up in a
5 discussion he had had with another lawyer, yes, sir.

6 THE COURT: Okay. And Mr. Brown has been
7 recommended to the Court. And then Mr. Brown conveyed to
8 my office through my law clerk that Mr. Culbertson was --
9 had been a friend of his for a number of years and had --
10 y'all had some relationship in criminal law.

11 MR. CULBERTSON: Yes, sir. Yes, sir, that's
12 correct. That's correct. My only concern, and I was
13 unaware of this until Mr. Brown and I were talking about
14 it the last day or so, is there are certain requirements
15 on a death penalty PCR that the attorneys be qualified at
16 a certain level. While I've done death penalty cases
17 before, been qualified to handle death penalty, in fact
18 have two of them going right now, I'm not sure -- the
19 Court is aware that I have certainly been up here long
20 enough to at least pretend to know what I'm doing, I'm
21 not sure that I actually meet the qualifications to be
22 appointed on a death penalty PCR case. Mr. Brown has
23 informed me that the way he reads the statute as long as
24 one of the attorneys is qualified then the second chair
25 does not have to meet the specific qualifications.

1 THE COURT: That's my understanding. Is that the
2 attorney general's understanding?

3 MR. WATERS: Yes, sir, Your Honor.

4 THE COURT: Okay.

5 MR. WATERS: And you know, if he's been death
6 penalty qualified at the trial level, I think -- and
7 obviously I'm sure you've had 12 hours of CLE recently, I
8 think he probably independently qualifies as well under
9 the statute.

10 THE COURT: Mr. Culbertson practices criminal law
11 extensively up here, so I would find Mr. Culbertson would
12 be qualified to be appointed, even though he might not
13 technically meet everything. Mr. Brown does meet all
14 qualifications is my understanding?

15 MR. BROWN: Yes, sir, I believe so.

16 THE COURT: Mr. Wood, I would appoint Mr. Brown and
17 Mr. Culbertson to represent you, as they are competent
18 lawyers, to proceed with your case and -- unless you have
19 some reason or ---

20 MR. WOOD: It works for me, Judge.

21 THE COURT: It works for you, so you're -- you seem
22 to be well satisfied with Mr. Brown and Mr. Culbertson?

23 MR. WOOD: Yes, sir.

24 THE COURT: Is that correct?

25 MR. WOOD: Yes, sir.

1 MR. CULBERTSON: Your Honor, if I could just real
2 briefly, and while I'm not ---

3 THE COURT: I could not appoint anyone from the
4 public defender's office here, which may not have to pay,
5 because the public defender defended Mr. Wood, as I
6 understand it, in the underlying case.

7 MR. BROWN: That's correct, Your Honor.

8 THE COURT: Okay.

9 MR. CULBERTSON: Yes, sir. As long as you're on
10 that issue of paying people, while I'm not opposed to
11 being appointed to represent Mr. Wood, I do have some
12 economic concerns about the funding, specifically funding
13 for my salary, to be able to represent Mr. Wood. I'm
14 sure Mr. Brown has a similar concern. And I think that's
15 been heightened by the fact that there is an
16 understanding amongst the defense bar, criminal defense
17 bar now that the Chief Justice placed certain limits on
18 funding levels. I have a concern about being appointed
19 on this or any other case if those funding levels are
20 going to be in effect throughout this case, because it's
21 just not economically feasible for me to take time away
22 from my private practice to dedicate to Mr. Wood if I'm
23 losing money.

24 So my concern -- my question to the Court would be,
25 do you even know yet, or does the Court have an idea yet

1 at what level funding might be available?

2 THE COURT: I think something did come down from the
3 Chief Justice. I didn't read it that closely. Are you
4 familiar with it?

5 MR. WATERS: No, sir, this is the first I've heard
6 of it. Obviously we don't really have a dog in that
7 fight. I know my paycheck is coming. So whatever the
8 Court's discretion in the matter, whatever you can do, we
9 have no problem with it.

10 THE COURT: Okay. Is -- as I see it we have been
11 given some guidelines in regard to post conviction relief
12 cases. I cannot cite and I would hesitate not -- I mean,
13 we can refer to that order and whatever it says is what
14 it says, but Mr. Wood has got to have some lawyers to
15 represent him. The public defender can't do it, we've
16 got to appoint somebody.

17 MR. CULBERTSON: I understand that, Your Honor,
18 which is why I'm here.

19 THE COURT: It might be Jack Swerling, and it might
20 be Symmes Culbertson, or it may be ---

21 MR. CULBERTSON: And I'll -- and I'll be happy to
22 take the difference between my hourly rate and Mr.
23 Swerling's hourly rate as compensation in this case.

24 THE COURT: Well, I will pay you whatever the
25 statute would permit and ---

1 MR. CULBERTSON: My understanding ---

2 THE COURT: Or whatever the ---

3 MR. CULBERTSON: My understanding, Your Honor, is
4 that the rate has been set at fifty dollars an hour.
5 That's an untenable rate for me to be involved in the
6 case. It costs me more than that on an hourly basis to
7 run my office. So I'm -- in effect I'm losing money to
8 be appointed to a case that's only going to pay me fifty
9 dollars an hour.

10 MR. BROWN: Your Honor ---

11 THE COURT: My clerk informs me, and I believe the
12 same may be true, that -- that death penalty PCRs pay
13 more than the average PCR rate.

14 MR. BROWN: I think the statute is different on the
15 rate charge, Your Honor. The two I've been involved in,
16 in both cases the judge authorized a rate in excess of
17 the statutory rate. And that rate has been \$100, is what
18 I've been given in the other cases. And since I'm doing
19 capital PCRs, I also have the opportunity to look at the
20 underlying trials, and in both of those underlying trials
21 the attorneys received \$100 an hour. And I think that's
22 just kind of custom. And certain Your Honor's ruling is
23 ultimately what we're going to get.

24 THE COURT: Oh, I've handled two or three or more --
25 several death penalty PCRs and I've never had any

1 problems with the fees and whatnot for defense lawyers.

2 MR. CULBERTSON: And I appreciate that, and I'm -- I
3 have complete confidence in your ability to do the right
4 thing. I just -- I have a death penalty case with
5 another judge here in Greenville County. There has been
6 some issues concerning some funding on that death penalty
7 case. So I'm a little skittish on accepting new
8 appointments on cases, especially death penalty cases,
9 but I'm not sure that we're going to get paid.

10 THE COURT: Okay. Well as of today we will -- we
11 will appoint you. And if we have to make the
12 substitution, we'll do it later on, but I don't think we
13 will.

14 MR. BROWN: Thank you, Your Honor.

15 MR. CULBERTSON: Thank you, Your Honor.

16 THE COURT: Do you have anything problem with that,
17 Mr. Wood?

18 MR. WOOD: No, sir.

19 THE COURT: Anything from the State?

20 MR. WATERS: Yes, Your Honor. I do want to do two
21 quick little housekeeping things. Number one would
22 be ---

23 THE COURT: If they're going to amend the PCR?

24 MR. WATERS: Yeah, we need an amended application.
25 Obviously with the application that has been filed I

1 filed a return which I've actually moved to summarize
2 (sic) the whole thing. So procedurally the thing is set
3 up to go away right now. Obviously I'm sure they're
4 going to raise some other claims. But what's happened in
5 the past, and we're trying to get away from that, is that
6 in the past we've seen the -- people on the other side
7 they will do, you know, discovery for three or four
8 years, or for a long time, and then the week before the
9 hearing file an amended application. And that's kind of
10 backwards. You know, the way it should be is we have
11 claims and then do discovery about those claims. And
12 then, you know, that other way it gets down to us and the
13 application shows up a week before trial, and they're
14 like, well, you were there for discovery. Well, we
15 didn't know what these issues were, you know, other than
16 what we could guess. And so we'd like to have some sort
17 of deadline for an amended application to come in so that
18 then we could focus the issues to get ready for an
19 evidentiary hearing.

20 The second thing is is there has been a practice
21 that we think is improper in which PCR attorneys will
22 treat this kind of like a capital trial, will ex parte
23 funding requests for experts and investigatory services
24 and the like to the judge. And while that is permissible
25 in a capital trial, there's nothing that authorizes it in

1 a PCR. So we would just move as well that there not be
2 any ex parte funding requests for investigation, experts,
3 and the like, and that we be privy to those as well.

4 So those are just two issues that I wanted to put on
5 the record. We could, you know, litigate those at a
6 later time if you'd like, but I wanted to throw those out
7 there.

8 THE COURT: It has been practice in the past in a
9 lot of the death penalty PCRs that I've had that they
10 have had made ex parte communications for funding
11 requests, for investigators and things of that nature.

12 MR. WATERS: And you know, I don't want to ambush
13 them because they just got here, but there's actually a
14 case, and you know, in fairness to them I don't know if
15 they want to research it and file a motion or whatever.
16 But in this case, and I'll hand it up to the Court, it's
17 Timms v. State, 478 SE2nd 682, in which in the footnote
18 there, footnote one, if you see down at the bottom of the
19 page, it goes over to the next side, they clearly state
20 that the ex parte provisions are inapplicable to post
21 conviction relief applications. It may be in dictum but
22 it's a pretty clear statement. And not only that, it's
23 pretty clear from the statute that it does not authorize
24 ex parte contacts for funding in the PCR context.

25 So you know, I don't know in fairness to them if

1 they want to research this or if they don't have a
2 problem with it or whatever, I'm sure it's a little -- I
3 feel like I'm ambushing them, but you know, that is our
4 position. I think we will have to resolve that at some
5 point it seems.

6 MR. CULBERTSON: I don't know if you want to hear
7 from us or not on that issue.

8 THE COURT: Okay.

9 MR. CULBERTSON: I mean, my initial ---

10 THE COURT: I would never -- I mean, this is a 1996
11 case. And I've had death penalty PCRs since then. This
12 is the first time that -- the State has now just decided
13 to raise this issue.

14 MR. WATERS: Well, I think -- yeah, we've kind of
15 determined that some practices that were just going on
16 are inappropriate, and that, you know, we need to start
17 raising these issues and doing it the right way. So
18 that's -- that is true. It's true in practice. Some
19 cases have allowed that but it's never been brought up.
20 So I think that's why we're -- that's why I'm doing this
21 now, so if it comes out we can resolve it one way or the
22 other before it actually happens.

23 So I mean, I think in the past, you know, we've had
24 the appointment of counsel and then everybody just sits
25 back and we would be in reactive mode waiting for them to

1 finish preparing their case. And I think we're trying to
2 be a little more proactive, not only with this but also
3 with the amended application thing as well, so that, you
4 know, we don't feel like we get -- you know, these --
5 what's been typical in the past we get an amended
6 application sometimes five o'clock on Friday before the
7 hearing is suppose to start. And you know, it forces us
8 into a scramble mode. And we just want to do things the
9 way it's suppose to be done in a civil trial, in a little
10 bit more of an -- a more -- more like the process should
11 be.

12 THE COURT: Okay. I would give the defense
13 attorneys a chance to review the case and any other cases
14 they might want to look at. And if they desire to have
15 ex parte communications with the Court in regard to
16 funding that -- and they -- and you feel like you do not
17 need to -- that you can do that then maybe we'll have to
18 have a hearing on it later. I wouldn't expect y'all to
19 be prepared today to maybe challenge this, not knowing it
20 was going to come up.

21 MR. CULBERTSON: And we're not.

22 MR. WATERS: And clearly I wouldn't expect them to
23 either. I just wanted to put this out there so that we
24 could resolve it before it starts happening.

25 THE COURT: Okay.

1 MR. WATERS: Clearly they need a chance to look over
2 and have a chance to think about it. I would agree with
3 that.

4 THE COURT: Okay. All right. Anything else?

5 MR. WATERS: As far as, though, the amended
6 application issue we need ---

7 THE COURT: Yeah, it seems to me only fair that you
8 do an amended application, review the transcript, and
9 maybe you've already started doing that. And ---

10 MR. BROWN: We assume the State is going to provide
11 us a copy of the transcript?

12 MR. WATERS: Yes, we will. I didn't know if you got
13 one or not, but we can get you one.

14 MR. BROWN: I usually have gotten it from the
15 attorney general's office.

16 MR. WATERS: We'll provide that as soon as possible,
17 at the beginning of next week. It takes a little time to
18 copy it.

19 MR. BROWN: They prefer that, because it's cheaper
20 for them to make a copy at their office than it was for
21 us to make copies.

22 MR. WATERS: Sometimes, you know, people get
23 involved, they get it from the appellate defense. But
24 we'll be glad to provide a copy of that.

25 THE COURT: Yeah, we need a copy too.

1 MR. WATERS: Okay. I'll get those right out then.

2 THE COURT: At least I'm sure we'll need one at
3 least during the trial.

4 MR. WATERS: No, I'll get those out to your office
5 and to them as well, hopefully next week, although making
6 three it might be mid week to make, you know ---

7 THE COURT: How long will it take you to file an
8 amended application?

9 MR. BROWN: It's hard for me to say.

10 MR. CULBERTSON: We don't know what the issues are
11 yet. It's difficult -- and I don't mean to jump on
12 anybody. But it's a difficult question to answer. I
13 mean, I hadn't even seen -- I don't think either one of
14 us have seen a transcript yet, so it's kind of difficult
15 to answer that until we've had a chance to go through and
16 see what's there.

17 MR. BROWN: Your Honor, the only thing I know about
18 this case is I've read the direct appeal. That's -- I
19 talked to Mr. Dudek maybe 15 minutes. I talked to Mr.
20 Wood probably about the same amount of time.

21 MR. CULBERTSON: I would -- I would be -- I think
22 it's fair to say that once we've gotten the transcript,
23 I'm assuming it's rather voluminous, obviously we need
24 some time to read through the transcript, and then we
25 need to kind of process that and then some time to

1 actually amend the application. So if you ask me for a
2 specific date, I'm not sure I can give that to you today.

3 MR. BROWN: But maybe in the future we have a status
4 conference and we could provide you some timeline of when
5 we could it.

6 MR. WATERS: If I recall it's about 2500 pages. So
7 it's pretty long, as death penalty trials often times
8 are.

9 THE COURT: Okay. What -- what's been your
10 experience that they've been -- what's a judge been
11 giving them, six months?

12 MR. WATERS: Well, I would said that might be a
13 little bit on the long side. You know, I was thinking no
14 more than 60, 90 days. But again, that's the thing, the
15 practice has kind of been a little bit on our part just
16 kind of reactive, sit back and let it happen. So -- and
17 we're trying not to do that anymore.

18 THE COURT: All right. Let's give them 120 days
19 from the date they receive the transcript.

20 MR. WATERS: Okay.

21 THE COURT: If they need more time then they could
22 make an application to the Court.

23 MR. BROWN: Thank you.

24 MR. WATERS: So then we'll do 120 days. And 30 days
25 after that I'll file an amended return. And then I think

1 30 days after that we're supposed to have a status
2 hearing, and so then an evidentiary hearing date. So I
3 guess that's how it will line up.

4 THE COURT: Okay. We'll do that. Do you want to
5 just prepare me a short order and send them a copy of it?

6 MR. WATERS: I'll be glad to.

7 THE COURT: And also just include in there that Mr.
8 Wood was present throughout all the proceedings, that he
9 asked for appointed counsel, and that he has talked with
10 Mr. Brown before today, and today, and he is satisfied
11 with Mr. Brown, and asks that he be appointed as his
12 counsel, and also that Mr. Culbertson be appointed as
13 the -- as his counsel also. I believe that's all we need
14 to do.

15 MR. WATERS: Then 120 days after ---

16 THE COURT: 120 days.

17 MR. WATERS: Then I guess I'll put in there as well
18 no ex parte contact until we have a hearing or something
19 of that nature.

20 THE COURT: If the -- if the -- if the petitioner's
21 attorneys declare to have an ex parte communication with
22 the Court in regard to funding or any other matters, that
23 we would have a hearing in that regard prior to any ex
24 parte communications.

25 MR. WATERS: Okay.

1 THE COURT: Okay.

2 MR. CULBERTSON: Well, I'm assuming if we're
3 going -- and I don't want to get overly draw a line in
4 the sand quite this early, but if we're going to put in
5 there that defense counsel cannot have any ex parte
6 communications, I think it's only fair that the attorney
7 general's office cannot have any ex parte communication.
8 That should be in the order also.

9 MR. WATERS: I'll clearly put in neither party can
10 have an ex parte.

11 MR. CULBERTSON: But I think both parties are fully
12 aware of the ethical rules that prohibit us from doing
13 that anyway.

14 MR. WATERS: Yeah, and I'm not saying that they
15 would do anything unethical. I'm just saying the
16 practice has been to kind of morph the trial rules into
17 PCR. And we're just saying that I don't think that's
18 proper.

19 THE COURT: I've had at least three death penalty
20 PCRs that I can think of with Mr. Zelenka, and I've never
21 got any kind of ex parte communications with him. I'm
22 sure this gentleman will probably act accordingly. But
23 Mr. McMasters is the new attorney general. I don't know.
24 Okay.

25 MR. CULBERTSON: Thank you.

1 THE COURT: Mr. Zelenka is still in charge of the
2 department, I think.

3 MR. WATERS: The murder unit, yes, sir.

4 THE COURT: Okay. Thank you very much.

5 MR. CULBERTSON: Thank you, sir.

6 MR. WATERS: Thank you, Your Honor.

7 MR. BROWN: Thank you, Your Honor.

8 - - -END OF TRANSCRIPT OF RECORD- - -
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, the undersigned Mary E. DiGirolamo, Official Court Reporter for the Thirteenth 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 Court of Common Pleas for Greenville County, South Carolina, on the 28th day of September, 2006.

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

August 8, 2009

Mary DiGirolamo

Mary E. DiGirolamo

Official Court Reporter

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF GREENVILLE

4
5 JOHN RICHARD WOOD :

6 :

7 -vs-

8 :

TRANSCRIPT OF RECORD

9 STATE OF SOUTH CAROLINA :

10
11 January 8, 2007

12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE LARRY R. PATTERSON, Judge.

16
17 A P P E A R A N C E S:

18 WILLIAM GODFREY, ESQ.

19 JIM BROWN, ESQ.

20 Attorneys for the Plaintiff

21 S. CREIGHTON WATERS, ESQ.

22 Attorney for the Defendant

23
24 MARY E. DIGIROLAMO

25 Court Reporter

I N D E XWITNESSESDIRECTCROSSREDIRECTRECROSS

N/A

EXHIBITSMARKEDFILED

P1 - Affidavit

31

N/A

P2 - Letter

31

31

CHARGE OF THE COURT N/A

1 THE COURT: Okay. John Richard Wood and the State
2 of South Carolina -- versus the State of South Carolina
3 in a post conviction relief application. All right. You
4 ready to proceed, Mr. Brown?

5 MR. BROWN: We are, Your Honor. There are a few
6 things I'd like to put on the record, I guess at the
7 question (sic). We are ready to proceed today. There
8 are some things that are I guess loose ends that we'd
9 like to tie up that we don't know can be done today. We
10 had previously filed a motion for a continuance but, you
11 know, to show you how diligently we have worked we are
12 ready to proceed. We believe we can go through Wednesday
13 with matters to present to Your Honor. There are some
14 specific things that I can tell Your Honor that we'd like
15 to do that are still open that we would ask the Court to
16 keep open. Of course I think the Attorney General is
17 going to ask you to keep the record open too. But yes,
18 sir, long answer short, we are ready to proceed.

19 MR. WATERS: Your Honor, if I could raise a few
20 points. I think obviously as Your Honor is aware the way
21 this thing has come about, and I just about 10 minutes
22 ago received a written amended application. I was told
23 it was faxed to my office on Friday. And I don't deny
24 that's the case. I was there to close to 6:00, but it
25 didn't get to me before I went home. So I'm just now

1 getting that. And obviously there's a number of issues
2 in there that I have not had a chance to talk to trial
3 counsel to, or anything like that, other than my general
4 discussions with them.

5 And then again, as I think I expressed in my letter
6 to you, and I certainly understand and respect's Mr.
7 Mauldin's opposition to the death penalty and his loyalty
8 to John Wood his client, but obviously he was very
9 careful about what he was willing to disclose to me at
10 the time we had our discussions in preparation. And so
11 now I have a bunch of new issues that I could show him
12 through the amended application and say these are the
13 grounds being raised, I think the statute requires you to
14 answer. So I think that obviously I want to get started.
15 I think we should get started, but I do have a number of
16 concerns.

17 We are well past the original order to the Court on
18 amendment, but I think everybody -- I'm starting to
19 worry, I don't want us to do a bunch of work and then
20 have it get flipped. I think that everybody is starting
21 to get concerned about that, but it does put me on --
22 exactly the main thing I wanted to try to avoid has
23 happened and here I am walking into court on Monday
24 morning and getting the amended application. So I
25 just -- I think we're going to have to do something to

1 address that, and obviously leave that up Your Honor's
2 discretion.

3 MR. BROWN: Your Honor, I don't know if I'm invited
4 to reply to that. There was an application. It was
5 amended after the order was received on Friday. Your
6 Honor issued an order in October and I've got it before
7 me here. And of course the order in October, or the
8 order related to the hearing in October dealt with more
9 specifically a motion for summary judgment, but it did
10 at the end of that order actually come in and foreclose
11 future amendments. And I'd like to read that portion
12 even though the order itself is already in the file. I
13 apologize, I hate to fumble through it, but as far as
14 housekeeping. Okay. And it's an order that Your Honor
15 signed -- I think it was drafted by the attorney
16 general's office. It was signed October 12 of 2006. And
17 it says, the last two sentences, moreover the time for
18 amendment of application is long past, and no further
19 amendments will be accepted. This evidentiary hearing
20 will be limited to the allegations set forth in the
21 original petition.

22 Then on Friday we had a preconference on the
23 telephone. And after that an order was issued related to
24 the motion for a continuance that was filed and heard on
25 Thursday of last week. And in that order it says,

1 request to amend the application is not foreclosed. And
2 of course I received that -- it was foxed into my office
3 on January 5th at 2:49.

4 And then, Your Honor, to come back to the
5 application amendment that has been filed, it was in fact
6 filed today. I think Your Honor has a copy or the
7 original file that was filed like an hour ago. I have
8 the correspondence with my fax cover sheet and the
9 transmission report that indicates it went to a fax
10 number of phone number which is the number we have for
11 Mr. Waters.

12 MR. WATERS: Let me see which number. I'm sorry,
13 Your Honor.

14 MR. BROWN: And it's at 5:33 p.m. on January 5th.

15 MR. WATERS: That number is not an attorney
16 general's number. I don't know where that number came
17 from. That's not an attorney general number. That might
18 have been my father's number whose name is Samuel C.
19 Waters.

20 MR. BROWN: And I can't answer that question. All I
21 know is ---

22 MR. WATERS: That's not my fax number.

23 MR. BROWN: I do all the transmissions out of my
24 office but we did attempt to send that to him.

25 MR. WATERS: But I think the point would still be

1 the same, that it came in, you know, Friday afternoon
2 before a Monday hearing. I also have two other pretrial
3 matters I'd like to address. I don't know if you want to
4 address this first or get to those.

5 MR. BROWN: And Your Honor, just to kind of get back
6 to that. Again, I didn't get until two o'clock the order
7 that said that timely -- or that other request to amend
8 the application would be considered. And so we have
9 revised it now. Just briefly, Your Honor, some of these
10 are the exact same grounds. There are nine grounds that
11 we have alleged now. There were six original grounds.
12 Some of these are nearly identical. They have been
13 restated. Those -- if you'll recall those six grounds
14 were drafted by the direct appeal counsel. And of course
15 they were drafted. Then he was released and then the
16 return was filed. Just to keep this all straight, the
17 return was filed actually to Mr. Wood pro se. And so
18 that's how there's some confusion at the summary
19 judgement hearing because that same return had the
20 summary judgement motion in it and that's why my then
21 co-counsel, Mr. Culbertson, and I had not ever received a
22 copy of the return.

23 But just to let Your Honor know, these are not all
24 new grounds. In fact, there's even -- ground A is nearly
25 identical to the ground in the original petition. Ground

1 B is nearly identical to a ground that was in the
2 original petition. Ground C, Your Honor, is an alternate
3 ground. It deals with the same issues that are dealt
4 with in ground B. It's alleged as an alternate ground.
5 If B is not correct then we allege that C would be
6 correct. And so it's a matter that certainly we've been
7 litigating this whole time.

8 THE COURT: Well, I don't know the trial strategy of
9 any attorneys in a death penalty. The strategy is to
10 represent their clients to the best of their ability.
11 And that's true in post conviction -- even the post
12 conviction relief proceedings. Because of course the
13 thrust of these matters are to -- for their clients to
14 get the best result that they possibly can in regard to
15 their client. In this case it's a death sentence for Mr.
16 Wood.

17 Of course we've all had -- and the one undeniable
18 thing is we've all had the transcripts for over a year
19 and a half now. And as I explained to Mr. Godfrey, when
20 he made his motion for a continuance, that there has been
21 a lot of talking about amending the application, and it
22 came to the Court's attention that it hadn't been done.
23 In July of this year, and I gave the parties clearly in
24 an order served on everybody an additional period of
25 time.

1 Now, the parties had to know that there was a
2 petition filed and that there was a response to that,
3 because we did -- I did issue an order appointing the
4 lawyers in this case, Mr. Brown and Mr. Culbertson. So
5 then we did have a hearing in October. Mr. Wood was
6 present. And Mr. Wood and Mr. Culbertson informed the
7 Court they didn't know we were there for a summary
8 judgment motion. Well, everybody was aware of everything
9 in October. And this Court set the hearing date for
10 January the 8th. So it's been pending all this time.
11 There was never an application made to the Court by
12 anyone to amend the application.

13 There was never an amended application submitted to
14 see if -- what would need to be done. I have briefly
15 reviewed the amended application of post conviction
16 relief, if that's what the attorneys want to do. I do
17 not know what the attorneys have investigated and what
18 their strategy is. And the Court is aware of the
19 personal feelings in regard to the death penalty of many
20 attorneys who practice in this court. And -- but the
21 Court expects everyone to testify truthfully, regardless
22 of what their personal feelings are. And I would
23 proceed on that basis.

24 I'm not sure there is anything -- I do not know and
25 I tried not to look behind the strategies for the trial

1 counsel at the -- before Judge Kittredge, or what the
2 strategy is in this particular case, because I do not
3 know. But I think we should go forward with the
4 testimony. And if I see that either side may be
5 prejudiced in some way or the other by what comes out in
6 the testimony in these proceedings, we will recess the
7 trial and continue on further.

8 MR. WATERS: Your Honor, and I guess I would --
9 that's a nice segue into the second point, which I was
10 also given this morning a notice of intent to use
11 affidavits. And in the affidavit of a woman in Maryland
12 named Connie Jants (phonetically), and I would certainly
13 object to consideration of any affidavits at this time.
14 It is in fact true that the PCR statute states that the
15 judge can consider affidavits and the like. But our
16 position is is that you know, particularly in a capital
17 matter, which is essentially a full fledged civil trial,
18 and that it would be inappropriate as in any other civil
19 trial to consider an affidavit, particularly when it's
20 handed to counsel on the day of the hearing.

21 Moreover, it's small consolation to the State to
22 say, well, you can call her if you want to when she lives
23 in Maryland, and we're here in a civil action. So I
24 think that's one example right there. And further
25 obviously I haven't had a chance to try to speak to this

1 woman. I haven't had a chance to investigate anything
2 else about this woman, or what she has to say. And I
3 think that's a prime example of some of the issues that
4 we're facing.

5 Also, if you look at the allegations in the amended
6 application, Mr. Wood -- there's a number of medical
7 records and records related to Mr. Wood's evaluation from
8 DMH and the like, which due to HIPPA concerns have not
9 been in my possession. They're right there. I think
10 that defense counsel is now willing to show them to me,
11 or applicant's counsel. But again, we're talking about a
12 bunch of medical records that I'm getting right now.

13 Moreover, in the Court's file, if you look at some
14 of the new allegations in here, some of which deal with
15 trial counsel's, both in Anderson and in Greenville,
16 handling of the evaluation of Mr. Wood, a number of those
17 are addressed in the still sealed competence report,
18 which is in the Court's file that I had brought up here,
19 which I don't have as well.

20 Apparently Mr. Wood engaged in a number of
21 communications with the clerk's office in Anderson and
22 the clerk's office in Greenville which ultimately lead
23 Judge Kittredge, and this is on page 2251 of the record,
24 to state that because of these communications he would
25 have felt duty bound under his statutory obligation to

1 order an evaluation even if the attorneys hadn't
2 requested it. And I haven't seen any of these
3 communications either because they still are under seal.
4 And I think this new amended application that I've gotten
5 today puts that in play.

6 So those are other things that I haven't had a
7 chance to explore that might be necessary to review to
8 respond to the allegations. And I would also move to
9 unseal those at this time and allow me to -- to -- or
10 maybe not at this moment but some time today to review
11 those.

12 THE COURT: Why was the -- the evaluation that Judge
13 Kittredge ordered under seal?

14 MR. WATERS: Well, Mr. Mauldin -- and this I think
15 is going to come out in the testimony, Mr. Mauldin and
16 the Greenville defense team was very much opposed to Mr.
17 Wood being evaluated at all. And once he was evaluated
18 they were very much opposed to anything from that
19 evaluation coming in to the trial.

20 And so after the Blair hearing, you know, nothing
21 more was done. They expressly did not raise any kind of
22 mental defense during the guilt phase. When it moved
23 into the sentencing though, they called Donna
24 Schwartz-Watts and a social worker and the like, and
25 ultimately then it was debated what from that report

1 could come in. But Judge Kittredge throughout most of
2 the trial in sentencing tightly constrained that and
3 indeed didn't even disclose aspects of that report to the
4 solicitor until late in the sentencing phase.

5 So I think that's why it was under seal and it still
6 remains under seal, that he did not -- based on the
7 defense objections did not want that information given to
8 the solicitor. I believe that's a correct statement of
9 the record.

10 MR. BROWN: That's fair. I mean, most of that is
11 going to come out. We've got some of the documents that
12 are the exact documents he's talking about that we're
13 going to enter.

14 Your Honor, our position is that we are willing to
15 provide this attorney general with some of the medical
16 records. We're going to ask you that seal these records
17 and place a gag on him so he can't discuss them with any
18 other prosecuting attorney in case the case came back.

19 One of our arguments is that these records should
20 have been sealed and not provided to the State. It was
21 an issue that was litigated below. You'll hear the
22 testimony of trial counsel. And we're afraid if we open
23 this up to get our client a new trial, and we've given up
24 the secrecy of the records, but he gets a new trial,
25 where we're trying to keep the same records a secret,

1 then it's too late (sic).

2 So we certainly would allow the attorney general to
3 have access to it for purpose of arguing the merits of
4 our issues, but we don't think anybody else should have
5 access to it. Obviously counsel for Mr. Wood already
6 have access to the records because they are his
7 attorneys. We just ask that everybody else be bound to
8 some gag order.

9 MR. WATERS: And Your Honor, I'm not sure the
10 appropriateness of that. I'm just -- you know, this is
11 just all coming to me right now. I'm shooting from the
12 hip. I wish I had a chance to research that issue. I
13 don't know, but I mean obviously I think I need to see
14 them for this hearing, maybe we could ---

15 MR. BROWN: And we're in agreement.

16 MR. WATERS: --- address at a later time the extent
17 of that disclosure but ---

18 MR. BROWN: And we're agreeing with that. That
19 he's -- obviously I can't make an argument regarding the
20 records and not look at them.

21 MR. WATER: The question is is when am I going to
22 have a chance to see these and digest them, and then use
23 them appropriately in the trial of this case? And that's
24 my biggest concern. And all I ever wanted, Your Honor,
25 from day one, was just to have the specific allegations

1 well in advance of the hearing. And that's why this is
2 such a big concern to the State.

3 MR. BROWN: Your Honor, by the way, there was
4 another ground. Ground D is also an identical ground to
5 a ground in our original petition. That's three grounds
6 out of our nine that are -- three of the six in the
7 original. So we want your -- Your Honor to understand
8 that this is not a greatly different application than
9 what was originally presented. It's been cleaned up and
10 modified after, again direct appeal counsel did not have
11 the opportunity to investigate the case like a PCR lawyer
12 would do that, and that was the only original one out
13 there.

14 As far as the affidavit, just briefly, we did file
15 that, that notice of intent to rely on the affidavit.
16 Unfortunately it was faxed to a number which may have
17 been Mr. Waters' father's number. I'll call my support
18 staff in my office to find out if that was the case,
19 where it got faxed on Friday.

20 Ms. Jants and I spoke for the first time on the
21 phone Friday morning. She originally lived at an address
22 which was contained in the materials that were in
23 discovery at the trial. She doesn't reside there
24 anymore. She resides at an unlisted address and
25 location. We had to employ services of an investigator,

1 and we located her Friday morning. This affidavit was
2 completed Friday morning. It was provided on Friday
3 after she -- because we had to fax it to her and she
4 signed it and faxed it back. The original has been over
5 nighted and is in Mr. Godfrey's office.

6 Now, Your Honor, that is one of the things that we
7 were going to ask you to allow us to keep the record open
8 to present later. We don't want to present this
9 affidavit. We want her testimony. There was no family
10 member of our client that testified in the penalty phase.
11 Not one plea of mercy came from any family member to that
12 jury. This is my client's sister. I think you're going
13 to find the affidavit -- in fact at this time I think
14 we'd go ahead and offer it. We provided a copy to Mr.
15 Waters.

16 And Your Honor, we've talked to Ms. Jants, and she
17 is the mother of several children. And the reason why I
18 bring that up, her husband flies to Europe for some work
19 he does with NATO, and that's what I was told on the
20 telephone. So she has I think her three children and two
21 other children in her custody, including Mr. Woods'
22 child, his son John Wood. And so she has five children.
23 She said she'd fly down here but she'd have to have her
24 five kids with her.

25 So one option is we could fly her and the five

1 children down here, hire a baby-sitter to keep the five
2 kids. We can depose her at a later point in time. Or
3 one thing that we've discussed is I understand this
4 courthouse has video conferencing capabilities and I was
5 hoping we might be able to arrange to have her examined
6 while she's in Maryland, and we do this by video
7 conferencing. And then they can ask her every question.
8 And we don't even have to -- we can proffer the
9 affidavit, which I would like to mark as petitioner's
10 one, Your Honor. This is a fax copy. The original like
11 I said is at Mr. Godfrey's office right now.

12 Your Honor, at this point I would -- may I bring up
13 something? There are several witnesses in the courtroom.
14 It's no problem with me if they all sit in here, but I
15 did want to just mention that.

16 MR. WATERS: I have no motion for sequestration. I
17 think trial counsel needs to.

18 MR. BROWN: I think it's better to, that's fine with
19 me.

20 MR. WATERS: And Your Honor, I guess at this point I
21 just want to go ahead, and I'll make the motion that
22 because of all these issues we've been discussing that we
23 go forward today, and tomorrow, and Wednesday, whatever
24 is necessary to complete the applicant's case, and then
25 we recess for a reasonable period of time, and come back

1 at another time to pick up the State's case. I think
2 that's the fairest way to resolve this, and I would move
3 at this time for that to be the procedure we follow.

4 THE COURT: All right. We'll do that.

5 MR. WATERS: Thank you, Your Honor.

6 MR. BROWN: No objection.

7 THE COURT: All right. Mr. Waters.

8 MR. WATERS: And I guess, Your Honor, the only other
9 thing would be the sealed records. I don't know if you
10 want to address those now, or get into the testimony and
11 see what comes, or what, but I think Mr. Byrholdt is
12 going to start right off with the issue. I believe
13 that's who you're calling first.

14 MR. BROWN: I am calling Mr. Byrholdt. I don't
15 believe the questions I'm going to ask him are going to
16 involve any confidential information.

17 THE COURT: Well, let's just see how it goes.

18 MR. BROWN: That's what I would suggest, Your Honor.

19 MR. WATERS: And Your Honor, just -- and I'll --
20 just real briefly. I know we want to get started, but I
21 wanted to show you the basis for my concern, while this
22 is important. And it's on 2251 of the record. And I
23 believe that Mr. Mauldin at that time stated to the
24 judge, and this was after the arguments in the penalty
25 phase, and they were just doing the standard post

1 argument, waiting for the jury thing. And Mr. Mauldin
2 said, I think it was ineffective assistance per se for
3 that competency evaluation to be ordered. And went on
4 and further stated that, at which point Judge Kittredge
5 said, well, first of all, I don't think what you stated
6 about the procedural history is correct. And I can't go
7 into it because there are a number of sealed items and ex
8 parte items, and a number of letters from the defendant
9 to the clerk's office in Anderson and Greenville County,
10 a number of communications with his attorneys, and that
11 would have led me to order an evaluation sua sponte,
12 whether or not Mr. Byrholdt or Mr. Mauldin, or who over
13 else would have ordered an evaluation.

14 And that's why I think that given the allegations
15 made those go right to the heart of the matter. And I
16 guess we can proceed with the testimony but I think that
17 maybe will be something I can recall Mr. Byrholdt when we
18 return for the State's case. But that's why I think
19 that's important for me to have those documents. And
20 again, that would be on -- that discussion starts at 2251
21 of the record.

22 THE COURT: Okay. All right.

23 MR. BROWN: Your Honor, at this time we call Mr.
24 Byrholdt to the stand.

25 THE CLERK: Step up here to the Bible. Place your

1 left hand on the Bible and raise your right hand.

2 BRUCE BYRHOLDT

3 Having been first duly sworn, testified as follows:

4 THE CLERK: Thank you. You may be seated.

5 MR. WATERS: Your Honor, I'm sorry one last thing.
6 I just wanted to say I'm not calling Mr. Mauldin a liar.
7 I hope he doesn't -- he knows that. I mean, I was just
8 saying I understand his viewpoints on the thing, and he
9 was very straight forward because of that. I think when
10 you said everybody is expected to testify truthfully, I'm
11 not saying ---

12 THE COURT: Right, I understand.

13 MR. WATERS: He's just a party line interest with
14 the other side was all I was saying.

15 THE CLERK: State your full name for the record,
16 please, and spell your last name.

17 THE WITNESS: Bruce, middle initial A, Byrholdt,
18 B-y-r-h-o-l-d-t.

19 THE CLERK: Thank you.

20 MR. WOOD: Your Honor, everybody is talking. Can I
21 say something?

22 THE COURT: You need to talk to your lawyers first.

23 MR. WOOD: I've talked to my lawyers. I have
24 something I want to state. I would like to waive my PCR
25 and all of my appeals. That's what I want to say.

1 MR. WATERS: Your Honor, I think we have to take
2 that up, Your Honor.

3 MR. BROWN: I think I need to present my case, Your
4 Honor, and I'd ask the attorney general to wait until ---

5 MR. WATERS: Your Honor, I object to that. We have
6 waivers all the time. There is no reason to proceed with
7 this matter if that is his desire. We have to take that
8 up, Your Honor. We have to take that up.

9 THE COURT: All right.

10 MR. BROWN: And we'd like an ex parte funding issue
11 with you.

12 THE COURT: All right. Do you want to let him
13 testify?

14 MR. WATERS: Mr. Wood? I think we need that
15 colloquy on the record.

16 MR. BROWN: Your Honor, before that we've got
17 another concern we'd like to take up, actually outside
18 the presence of anybody else in the courtroom.

19 MR. WATERS: This wavier happens all the time and it
20 moots the need for the process.

21 THE COURT: All right. I'll let everybody step
22 outside the courtroom.

23 MR. BROWN: And regardless, Your Honor, we still
24 wish to proffer the information while we're here.

25 (Everyone exited the courtroom except Mr. Godfrey,

1 Mr. Brown, Mr. Woods, Mr. Waters, and Ms. Wofford.)

2 MR. BROWN: One thing that was discussed, and this
3 gets into a little bit of attorney/client privilege and
4 work product, but because of the tortured last month and
5 a half of this case, I think I have to divulge the
6 information. Prior counsel and I -- not prior counsel,
7 the applicant and I had discussed the need for an
8 examination related to competency to waive or not.
9 Nothing to do with the underlying trial issues.

10 Now, it puts us straight back into whether or not we
11 get funding, and whether we can discuss funding ex parte,
12 and so we would ask we be allowed to consult with Your
13 Honor regarding an ex parte funding request and.
14 Subsequent co-counsel and I have even discussed a similar
15 issue. And so we're right back to saying that we would
16 like to have this issue examined from our end. And of
17 course we don't want to do it by providing them with the
18 other information regarding it. And I don't think that
19 my client can take the stand without that information.

20 MR. WATERS: I'm -- I don't know if I'm quite sure
21 what -- what he's asking.

22 MR. BROWN: I'm asking for an ex parte conference
23 regarding funding with the judge. And I'm not going to
24 tell you anymore detail about ---

25 MR. WATERS: That's fine, if it will move matters

1 along. Obviously though, my concern has always been, you
2 know, the imparting of substantive information and the
3 like, but anything else like that is discussed with me
4 ultimately I will leave the room.

5 MR. BROWN: I think the basis is already evident to
6 everybody that's in the courtroom.

7 THE COURT: All right. Let me hear what he's got to
8 say.

9 MR. WATERS: All right, Your Honor.

10 THE COURT: All right. We're going to make a record
11 of it.

12 MR. BROWN: And that's fine, Your Honor. Yes, sir.

13 MR. WATERS: Your Honor, I guess Ms. Wofford our
14 victim assistant probably needs to come with me too?

15 THE COURT: Yeah.

16 (Mr. Waters and Ms. Wofford left the courtroom.)

17 MR. BROWN: Your Honor, Mr. Culbertson and I had
18 raised the issue of competency for our client to proceed
19 PCR matter (sic). Mr. Godfrey and I discussed it and at
20 the time we had decided, well, maybe there's no other
21 issue. Mr. Godfrey visited Mr. Wood a couple times, more
22 recently than I have. After this, Your Honor, and in
23 spite of the evidence that we believe is very strong in
24 support of our client's claim for relief, I think the
25 fact that somebody would wish to waive what could be a

1 successful PCR, that raises issues of competency,
2 somebody asking to be put to death.

3 THE COURT: What you want -- you want funding for
4 him to -- well, I don't know. Competency, under the law
5 as I understand it, unless it's different in PCR, which
6 I'm not -- but competency is a question for the Court.

7 MR. BROWN: And I think the standard is whether he
8 can assist counsel.

9 THE COURT: Yeah.

10 MR. BROWN: And obviously what you have seen has not
11 been assistance with counsel.

12 THE COURT: I don't know.

13 MR. BROWN: I understand we've worked up -- we've
14 worked up nine grounds ---

15 THE COURT: We've had waivers in South Carolina.

16 MR. BROWN: I understand that, Your Honor.

17 THE COURT: I'm going to let him testify, but I'm
18 not saying I will not give you the funding at this time
19 because I haven't looked at it. I didn't know that issue
20 was coming up.

21 MR. BROWN: And we didn't know it was either, Your
22 Honor. But we would ask that we be allowed to present
23 our case in our style. He's trying to present his case.
24 And we go first. And we ask that we be able to present
25 our case.

1 THE COURT: I'm going to hear Mr. Wood's request to
2 waive his rights first.

3 MR. BROWN: And we ask that he not be questioned
4 regarding a waiver of his Fifth Amendments rights, but
5 that has to be directed towards counsel because he's
6 represented by counsel.

7 THE COURT: Well, we're not talking about funding
8 now. Bring Mr. Waters in.

9 MR. BROWN: No, no, and I understand.

10 THE COURT: Ask Mr. Waters to come back in.

11 (Mr. Waters entered the courtroom.)

12 THE COURT: Mister -- well, I was not ---

13 MR. BROWN: And Your Honor, this had come up
14 earlier, just as a matter of housekeeping. There was
15 discussion about Mr. Waters discussion with you, or
16 letter to you about Mr. Mauldin. I can enter that as
17 Petitioner's 2.

18 THE COURT: I don't know what this is, but I'm not
19 familiar with the procedure if a person wants to
20 waive ---

21 MR. WATERS: Your Honor, what we would have to do at
22 this time is have an evaluation conducted by the
23 Department of Mental Health, after which we would have to
24 have an evidentiary hearing. And we would at that point
25 determine, number one, whether he was competent to waive,

1 and number two, if he maintained that desire to so waive.
2 Following that it would then be reviewed by the State's
3 Supreme Court to ultimately agree with that decision.
4 And that's how it's done.

5 THE COURT: Okay. I'm sorry, I just wasn't prepared
6 for that, but ---

7 MR. BROWN: And we object for the record.

8 THE COURT: All right. Mr. Wood, is it your
9 statement to the Court that you want to waive your right
10 to proceed with PCR and all your appeals?

11 MR. WOOD: Yes, sir.

12 THE COURT: Okay. Pursuant to the statement by the
13 Attorney General I believe it would be appropriate to
14 have him evaluated by the Department of Mental Health to
15 determine that. And then reconvene for his testimony?

16 MR. WATERS: That's correct, Your Honor. And we'd
17 draft an order and obviously expedite that. But it's
18 going to be, you know, obviously a period of time before
19 they can do that.

20 THE COURT: Of course the Court would have to --
21 would determine the competency initially, as we do.

22 MR. BROWN: Your Honor ---

23 MR. WATERS: It's like a Blair hearing. I mean,
24 you'll have testimony and then ---

25 THE COURT: That's right. That's what I was

1 thinking.

2 MR. WATERS: And then the Supreme Court reviews
3 that. And if they agree with your decision and the free,
4 voluntary and competent nature of his decision, then at
5 that point the matter could be concluded.

6 THE COURT: I have been involved in four of these,
7 and so -- as I said two of them were appealed and two of
8 them were not. But based on Mr. Wood's statement, we
9 will follow that procedure and have him evaluated and
10 then have a hearing in regard to the free and voluntary
11 relinquishment of those appellate rights. So that's the
12 first thing we would -- we would address.

13 And Mr. Wood, we're taking your statements to the
14 Court as serious. You've had sufficient opportunity to
15 think about this, is that correct.

16 MR. BROWN: Your Honor, he's never discussed that
17 with me.

18 MR. WATERS: Your Honor, if they want ---

19 MR. BROWN: I'm sorry. I would ask to be able to
20 put this on the record. He has never ever discussed that
21 with me.

22 THE COURT: Well, I'm not getting into y'all's
23 conversations.

24 MR. BROWN: I am willing to put that the record.

25 THE COURT: I have been -- all right.

1 MR. WATERS: Your Honor, and maybe I can suggest if
2 we want to take a moment before we all leave, or do
3 whatever we're going to do and talk with him, then I
4 think maybe we should explain to him that -- as I think
5 he does understand that if he does waive this proceeding,
6 then he's going to waive his remedies and that will mean
7 that he will be, you know ---

8 MR. BROWN: You'll be put to death.

9 MR. WATERS: Be moved to a death sentence, to
10 execution of judgment. And I just want to make sure that
11 he understands that that's the result. I think he does
12 but I think we need to make sure of that.

13 THE COURT: I -- he stood up and insisted he speak.
14 He's been incarcerated now for some period of time. He's
15 had a long time to think about this personally. But I am
16 going to break and let the attorneys discuss it with him.

17 MR. BROWN: Thank you, Your Honor. But -- and can
18 we at this time, can we put this in as Applicant's or
19 Petitioner's 2.

20 THE COURT: I have no idea what that is.

21 MR. BROWN: It's a letter that references the
22 conversation that Mr. Waters mentioned regarding Mr.
23 Mauldin, and it should be a letter. I'd just like it
24 marked as Petitioner's 2.

25 MR. WATERS: Is that my letter from ---

1 MR. BROWN: That's your letter.

2 MR. WATERS: Okay. What's the purpose?

3 MR. BROWN: You talked on the record about ---

4 MR. WATERS: Oh.

5 MR. BROWN: --- that you weren't calling Mr.

6 Mauldin a liar, but that he's aligned with Mr. Wood. I

7 thought -- the letter speaks for itself.

8 MR. WATERS: Sure.

9 THE COURT: I've had some outstanding lawyers,
10 Kermit King took the witness stand and testified that if
11 there's anything he can do to help his client he would,
12 but he would have to tell the truth.

13 MR. BROWN: Yes, sir.

14 MR. WATERS: And that's precisely what Mr. Mauldin
15 told me as well.

16 THE COURT: And I know that -- that David Brook and
17 many of these people's that I've discussed these things
18 with are opposed to the death penalty. We do have the
19 death penalty in South Carolina. We all have to abide by
20 that. That's the law. Just ---

21 MR. WATERS: My only point with raising that is ---

22 THE COURT: I understand.

23 MR. WATERS: --- he was very restrictive about what
24 he answered me. And he said, I want to wait for the
25 judge to tell me to answer that question. And that's the

1 only context that I brought that up.

2 THE COURT: That's fine.

3 MR. BROWN: I just wanted to ---

4 THE COURT: Let's take a 15 minute recess and ---

5 MR. BROWN: And that's Applicant or Petitioner's 2?

6 THE COURT: Yeah, I'll do that.

7 MR. WATERS: No objection, Your Honor.

8 MR. BROWN: Okay. No objection. And now, just for
9 my records, petitioner's 1 is just proffered at this
10 time?

11 MR. WATERS: Is that the affidavit?

12 MR. BROWN: That's the affidavit.

13 MR. WATERS: Yeah, I do object to the affidavit at
14 this time.

15 MR. BROWN: Okay.

16 MR. WATERS: I know that if we have to resolve that
17 if ---

18 MR. BROWN: Sure, fine. I just want to make my
19 record as clear as to the two exhibits.

20 THE COURT: Okay. Well, you know, right now I don't
21 even know if Mr. Mauldin talked to this lady or not. I'm
22 kind of in the dark as to what they actually did in
23 searching for mitigation factors.

24 MR. BROWN: And that's what we would have developed
25 here today and will if we go forward.

1 THE COURT: Okay.

2 MR. BROWN: Thank you, Your Honor.

3 THE COURT: What they did outside the courtroom I do
4 not know.

5 MR. BROWN: And Your Honor, that's one reason we
6 think we should amend because neither did the appellate
7 counsel who wrote the original petition. He didn't know
8 anything outside of the record either. And we have
9 investigated that.

10 THE COURT: Okay, all right.

11 MR. BROWN: Thank you, Your Honor.

12 (Petitioner's 1 was marked for identification.)

13 (Petitioner's 2 was marked and filed.)

14 (A short recess was taken, after which, the trial
15 continued as follows:)

16 THE COURT: Okay. Y'all have a seat. Thank you.
17 I'm -- the Court is informed by the attorneys that they
18 have discussed this matter with Mr. Wood. We've been in
19 recess for some 45 minutes probably. And Mr. Wood on his
20 own motion to the Court this morning has indicated that
21 he wants to waive his post conviction relief hearing and
22 any appeals -- appellate rights in this court or any
23 other court, and proceed with execution. Based on that
24 and in looking at the cases, the Court is convinced under
25 the Singleton standard that Mr. Wood must be evaluated

1 and then the Court will hold a competency hearing to
2 submit the decision of this Court to the Supreme Court.
3 I believe it would be under the jurisdiction of the
4 Supreme Court to determine the issue finally. Is that --
5 do you agree with that, Mr. Attorney General?

6 MR. WATERS: Yes, yes, sir, Your Honor, that's my
7 understanding.

8 THE COURT: Okay. All right. Mr. Wood, as of this
9 proceeding today you've fully discussed this with your
10 attorneys and you stand by the motion you made to the
11 Court?

12 MR. WOOD: Yes, sir.

13 THE COURT: I'm sorry?

14 MR. WOOD: Yes, sir.

15 THE COURT: All right. He indicates that he does.
16 Anything else, Mr. Waters?

17 MR. WATERS: Yes, sir, I just want to make it clear
18 as the Court's agreement, as we discussed earlier, that
19 we do have the amendments that were filed today, and that
20 I think we have a hard freeze on any amendments as of
21 today. So that Mr. Wood understands that this decision
22 to waive cannot be used as a strategic device for delay.
23 If we do in fact -- if he does change his mind and we do
24 in fact go forward that it's not going to expand the
25 hearing and be used to do so.

1 THE COURT: Mr. Brown, you got any problem with
2 that?

3 MR. BROWN: No. In fact I think it would be used to
4 their advantage more than mine. We're ready to go.

5 THE COURT: Mr. Godfrey, you got any problem with
6 that?

7 MR. GODFREY: No, Your Honor.

8 THE COURT: Okay. All right. We will -- if you'll
9 prepare the order, Mr. Waters, and send me -- send the
10 original to me with copies to the other attorneys and --
11 stating that that had been Mr. Wood's pro se motion
12 today, and the Court has heard that and finds that there
13 is reason to have him evaluated and then return for a
14 competency hearing to make sure that he is competent to
15 waive his rights and he's doing it freely, voluntarily,
16 knowingly and intelligently.

17 MR. WATERS: Okay. Your Honor, am I -- I suggest
18 that -- or with the Court's permission that we maybe give
19 DMH a time limit, 30 days, 45 days to expedite this. I
20 have found that that results -- if we give them a time
21 limit it will kind of move it to the head of the line. I
22 don't know if you want to do that or not.

23 THE COURT: Let's -- yeah, I think we should do a
24 time limit of 45 days.

25 MR. BROWN: Only thing I'd say, I don't know what

1 the rush is, but -- because if it's waived it will
2 certainly cut out quite a bit of my client's life. But
3 I -- I guess the attorney general has other matters to
4 get to. There are a couple of things I'd like to put on
5 the record. One, I would ask that all results of the
6 evaluation be sealed. Certainly for the purpose of our
7 arguing this issue the attorney general needs a copy of
8 it. I'm not going to try to go in and say he doesn't get
9 it, but I'd like that nobody else gets a copy of it
10 except for the Court and the parties, or counsel for the
11 parties.

12 THE COURT: I see no reason why, as long as the
13 Courts, the attorneys and Mr. Wood has access to the
14 evaluation. That's the only people that need to see it.

15 MR. BROWN: And likewise, with any derivative
16 material, because I know under our rules an expert can
17 testify and they can rely on other information that might
18 otherwise be privileged, or confidential, and somehow
19 though they got it, but it's a basis that the attorney
20 general -- again, I think they would get it, but I think
21 it should be again restricted for the dissemination.

22 THE COURT: Mr. Wood, you fully understand that if
23 you're found to be mentally competent to do this, that
24 you can freely and voluntarily waive these rights? Do
25 you fully understand that?

1 MR. WOOD: Yes, sir.

2 THE COURT: Okay. He indicated yes. All right.

3 MR. BROWN: The last thing, Your Honor. In our
4 discussions and Mr. Wood -- and we've discussed with him,
5 and he's agreed he doesn't want to take the stand, but I
6 did want to put on the record that there's some concern
7 that there has not been any medication since ---

8 THE COURT: The Department of Mental Health and the
9 psychiatrists will determine how the medication affects
10 him, whether he's taking it or not, whether he's -- and
11 how he makes this decision.

12 MR. BROWN: Yes, sir.

13 THE COURT: We'll leave that to them and ---

14 MR. BROWN: Yes, sir.

15 THE COURT: --- then we'll reconvene at a time when
16 we receive the reports.

17 MR. WATERS: Yes, sir, Your Honor.

18 THE COURT: Thank you very much.

19 MR. WATERS: Thank you, Your Honor.

20 MR. BROWN: Thank you, Your Honor. Your Honor, may
21 I approach regarding a different funding issue and
22 attorney fees?

23 (A discussion was held off the record.)

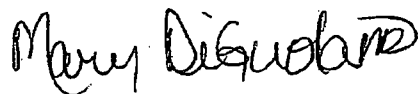
24 - - -END OF TRANSCRIPT OF RECORD- - -

25 C E R T I F I C A T E

1 I, the undersigned Mary E. DiGirolamo, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate and complete Transcript of
5 Record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal,
7 in the Court of Common Pleas for Greenville County, South
8 Carolina, on the 8th day of January, 2007.

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

11
12 August 7, 2009

13
14 

15 Mary E. DiGirolamo

16 Official Court Reporter
17
18
19
20
21
22
23
24
25

Jan 17 2010 03:38P

2693

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

JOHN RICHARD WOOD, # 6005)

Petitioner,

v.

STATE OF SOUTH CAROLINA)

Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. No. 05-CP-23-4737

AFFIDAVIT OF CONNIE JANTZ

I, Connie Lynn Wood Jantz, being duly sworn, do state:

1. My name is Connie Jantz and my date of birth is August 22, 1964.
2. I reside in Knoxville, Maryland with my husband and children.
3. Also residing with us are my sister's, Elizabeth "Beasy" Martinez, child and the son of my brother, John Richard Wood.
4. I was first informed of my brother's legal difficulties the day after his arrest in December, 2000.
5. I was first contacted by a reporter from a newspaper in Anderson County, South Carolina one day after John's arrest.
6. However, I was never contacted by any of John's attorneys or any members of John's legal team.
7. Further, I was never contacted by any representatives from the South Carolina Department of Mental Health.
8. Had I been contacted by any of these persons, I would have provided information regarding John's childhood and our relationship.
9. Our mother was not a positive influence on John's life. She "taught John how to be a criminal."
10. However, John only committed one criminal act prior to the age of 15 years old. While shopping in K-Mart, John was asked to return a cap gun he attempted to steal. He was





HENRY McMASTER
ATTORNEY GENERAL

January 6, 2007

Via Facsimile

The Honorable Larry R. Patterson
Judge, Thirteenth Judicial Circuit
305 East North Street, Suite 315
Greenville, South Carolina 29601



Re: The State v. John Richard Wood

Dear Judge Patterson:

I am writing with a "heads up" on a few updates and concerns that have developed after our hearing of yesterday.

First, after the hearing yesterday Bill Godfrey told me three specific issues that Applicant would like to raise:

- (1) That DMH examiner Dr. Narayan was mistaken in concluding that Applicant had been in trouble as a youth prior to age 15, when in fact the trouble occurred at age 19, and this would affect an opinion of antisocial personality disorder;
- (2) That John Mauldin apparently has no mitigation records in the file, and
- (3) That counsel were ineffective in their decision to go forward with a "defense" of voluntary manslaughter.

Moreover, when I returned to the office yesterday after driving back from Greenville, I received a fax from Jim Brown supplementing his response to my interrogatories in this case, in which he lists two additional expert witnesses, but no summary of their potential testimony is provided. I should also point out that I did not receive the overdue response to my interrogatories until Friday, December 29th, 2006 – a day that I was out of the office on scheduled annual leave, and of course which was followed by the holiday weekend during which I was out of town on a long scheduled trip. A number of expert witnesses are set forth in those interrogatories, but no summary of their testimony is provided other than the general statement that they will testify about their involvement in the evaluation of John Wood.

The Honorable Larry R. Patterson
Page Two
January 5, 2007

These new issues involve investigation that I just do not see how I can complete in one day. For example, the issue as to the conduct as a youth necessarily would involve finding school records or juvenile delinquency records to determine whether Mr. Wood engaged in other misconduct as a youth. John Mauldin told me it would be extremely inconsistent with his practice not to have obtained mitigation records, and that while at the end of the case he asks his experts to return documents for him to store, they do not always do so. Thus, contacting the social worker and the mitigation investigator and the psychiatrist would be necessary to see if they obtained or retained records, and all of them are far from aligned in interest with the State.

Further, I had an extensive meeting in John Mauldin's office yesterday to finalize trial preparation. I should point out that Mr. Mauldin takes an extremely restricted view about what he is authorized to disclose about the representation to me. Mr. Mauldin did not feel it was appropriate to disclose any client communications or allow me to peruse the file - even though this file was perused by Mr. Godfrey the day before. Indeed, I don't know if there are mitigation records in there or not because I cannot see the file. Moreover, Mr. Mauldin's position complicated my preparation even more than usual because at the present time the only allegations specifically raised in the case are the six in the original application - so Mr. Mauldin took the position that he could only respond or disclose information as to those allegations, and to a limited extent the allegations I told him Mr. Godfrey had given to me just minutes before.

Thus, there were a number of times where Mr. Mauldin felt he could not answer my questions or disclose file documents unless he heard Mr. Wood testify to something he thought was not true, or heard a specific allegation that necessitated such disclosure. Given that Mr. Mauldin freely disclosed to me that his interest remains with Mr. Wood and he hopes Mr. Wood succeeds in his application, this would raise concerns of the "fox guarding the henhouse". Please understand I say this not at all to question Mr. Mauldin's honesty; only instead to point out that what he may think is relevant and responsive may differ from mine given his freely admitted contrary interest and bias against the State. And, there may be responsive documents or notes in the file that he does not remember at this time which may in my opinion refute specific contentions.

Were we only going forward on the issues as specifically set forth and limited in the original application, the State would have no problem, as the State expressed in its Response. If we were specifically limited to those issues I was of the opinion that any recalcitrance of Mr. Mauldin could be resolved during his testimony. However, inasmuch as amendment may be allowed at trial, as was discussed yesterday at the hearing, to include expanded issues involving expert witnesses, this is of great concern to the State.

Ultimately, that would mean Applicant would have violated the amendment deadline orders to his strategic advantage, and I will be forced to do exactly what I have tried my utmost to avoid by asking for amendment deadlines - wing it on the fly because I was given insufficient notice and insufficient time to prepare, because of the last minute

The Honorable Larry R. Patterson

Page Three

January 5, 2007

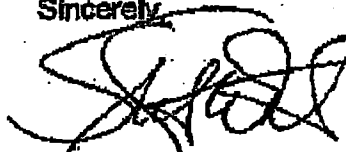
activity by Applicant.

I still think we could begin the hearing on Monday and, as the Court expressed yesterday, "get started" as best we can, but only with the caveat that due to these issues we may have to hold the record open, finish the evidentiary hearing at a later time, or have extended recesses for review of information.

As a final addition, I just received a call about the request I received this morning for Applicant to copy a hard drive in the possession of law enforcement. While I do not have an objection to Applicant copying the hard drive, I do have a concern about any issues raised out of the hard drive, as obviously today I will have no opportunity to come to Greenville and peruse through an entire computer looking for anything of value.

I apologize for any inconvenience but I felt I should express the concerns that have arisen as soon as possible.

Sincerely,



St. Creighton Waters
Assistant Attorney General

SCW/lb

cc: James A. Brown, Esquire (Via Facsimile)
E. P. "Bill" Godfrey, Esquire (Via Facsimile)

1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF COMMON PLEAS

3 COUNTY OF GREENVILLE

4
5 JOHN RICHARD WOOD :

6 :

7 -vs-

:

TRANSCRIPT OF RECORD

8 :

9 STATE OF SOUTH CAROLINA :

10
11 March 6-8, 2007

12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE LARRY R. PATTERSON, Judge.

16
17 A P P E A R A N C E S:

18 JIM BROWN, ESQ.

19 WILLIAM GODFREY, ESQ.

20 Attorneys for the Plaintiff

21 S. CREIGHTON WATERS, ESQ.

22 MELODY BROWN, ESQ.

23 Attorneys for the Defendant

24 MARY E. DIGIROLAMO

25 Court Reporter

1		<u>I N D E X</u>			
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	THOMAS COBB				
4	Mr. Brown	15		52	
5	Mr. Waters		37		
6	CONNIE JANTZ				
7	Mr. Brown	59		106	
8	Mr. Waters		100		109
9	JEFF NAYLOR				
10	Mr. Brown	111			
11	Mr. Waters		N/A		
12	DONNA SCHWARTZ-WATTS				
13	Mr. Brown	120		168	
14	Mr. Waters		160		
15	JOHN MAULDIN				
16	Mr. Brown	171		443	
17	Mr. Waters		355		
18	BRUCE BYRHOLDT				
19	Mr. Brown	434			
20	Mr. Waters		436		
21	JOHN STEEDMAN				
22	Mr. Brown	438			
23	Mr. Waters		N/A		
24					
25					

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2	CAMILLA TEZZA				
3	Mr. Brown	445		463	
4	Mr. Waters		455		
5	CARLOS TORRES				
6	Mr. Brown	465			
7	Mr. Waters		N/A		
8	TIMOTHY JONES				
9	Mr. Brown	469			
10	Mr. Waters		472		
11	PAUL SILVAGGIO				
12	Mr. Brown	481			
13	Mr. Waters		N/A		
14	BRIAN BOWEN				
15	Mr. Brown	488		494	
16	Mr. Waters		493		
17	PRAPAP NARAYAN				
18	Mr. Brown	499		551	
19	Mr. Waters		528		
20	JAMES BANNISTER				
21	Mr. Brown	560		647	
22	Mr. Waters		614		661
23	RODNEY RICHEY				
24	Mr. Brown	663			
25	Mr. Waters		675		

	EXHIBITS	<u>MARKED</u>	<u>FILED</u>
1			
2	P1 - Medical Records	22	22
3	P2 - Deposit Sheet	91	N/A
4	P2A- Copy of P2	697	N/A
5	D3 - SLED Report	206	206
6	D4 - Police Report	223	223
7	D5 - Police Report	225	228
8	D6 - Transcript	273	273
9	D7 - Transcript	284	284
10	D8 - Letter	287	287
11	D9 - Letter	288	288
12	D10- Letter	289	289
13	D11- Memo	289	289
14	D12- Order	290	290
15	D13- Order	290	290
16	D14- School Records	688	688
17	D15- Tabernacle Records	688	688
18			
19			
20			
21			
22			
23	CHARGE OF THE COURT	N/A	
24			
25			

1 THE COURT: Okay. This is the case of John Richard
2 Wood versus the State of South Carolina. It's a post
3 conviction relief action, is what it's normally called.

4 And Mr. Wood, if you would stand up, please. The
5 last time we were here we were ready to start this
6 proceeding and you informed the Court that you desired to
7 waive your right to have a post conviction relief
8 proceeding and you instead waived all appellate rights.
9 Now, it's my understanding that maybe you changed your
10 mind, is that correct.

11 MR. WOOD: Somewhat.

12 THE COURT: What do you mean somewhat?

13 MR. WOOD: Well, as I stated in some of the earlier
14 motions, my lawyers ain't doing their job. And if my
15 lawyers ain't doing their job, then appoint new attorneys
16 that will do their job and -- or I'll waive it. Because
17 if the truth ain't going to come out then what's going
18 on.

19 THE COURT: Well, I don't know what you're talking
20 about, or what you're addressing. You're going to have
21 to be a lot more specific than that. You've had almost
22 two sets of lawyers. And Mr. Brown has been representing
23 you from the very beginning. So I have no reason to
24 believe that your lawyers aren't representing you
25 properly. You did make that statement to the Court the

1 last time we were here.

2 MR. WOOD: Right.

3 THE COURT: You simply stated you wanted to waive.
4 You didn't say anything about representation or wanting
5 me to appoint you any new lawyers.

6 MR. WOOD: Right.

7 THE COURT: So what -- we're going to go forward
8 with this hearing. I don't know what you mean.

9 MR. WOOD: If we're going to go forward with these
10 attorneys present then I'll just waive it and we'll get
11 done with it. That's ---

12 THE COURT: Say that again, Mr. Wood.

13 MR. WOOD: If we go forward with what these
14 attorneys have prepared, then we'll just waive it and
15 I'll just waive it.

16 THE COURT: What do you mean waive?

17 MR. WOOD: Waiving the appellate process, because I
18 don't want these people to represent me.

19 THE COURT: Why not, Mr. Wood? You got to be more
20 specific than that.

21 MR. WOOD: Well, there is what is called, from what
22 I understand, the freedom of information act to get all
23 the evidence in the case to look at, which they have not
24 done, and some other things they've not done.

25 THE COURT: Mr. Wood, the -- what we are here about

1 is what happened at your previous trial.

2 MR. WOOD: Um-hm.

3 THE COURT: Mainly, and whether or not you had
4 ineffective representation of counsel at that time, and
5 if you did whether or not that prejudiced the outcome of
6 the proceedings. Now, I really -- I mean, unless you can
7 be a little more specific to the Court ---

8 MR. WOOD: Undiscovered evidence, as well as the
9 Court and prosecutor had evidence, hid evidence in the
10 case. There's evidence that might help me in my case,
11 and until that evidence is looked at, to go forward is
12 ludicrous.

13 THE COURT: Well, if you know about any evidence
14 that was hidden or whatever, you need to communicate that
15 with your attorneys and we'll just have to hear the
16 underlying facts of the case. We all have copies of the
17 transcript. And whether or not there was any evidence
18 that was not uncovered or not identified, I guess maybe
19 we'll just have to see. But we're going to go through
20 with this proceeding today. And I'm prepared for the
21 petitioner to call their first witness. Thank you, Mr.
22 Wood.

23 Anything you want to put on the record, Mr. Waters?

24 MR. WOOD: I'd just as soon waive it right now. I
25 don't want them representing me, period.

1 MR. WATERS: We've already done it once. I think we
2 need to go forward at this point. But as far as a couple
3 housekeeping matters, when I mentioned here last time the
4 competency evaluation was sealed at the trial, I believe
5 it is still sealed. We have raised a number of issues
6 regarding the accuracy of that competency evaluation,
7 specifically with Dr. Narayan's diagnosis of anti-social
8 personality disorder. We would like to unseal that so I
9 can have it to use as we proceed with the case. As I
10 understand it, the clerk is not up here with the file,
11 but I just want to go ahead and have that.

12 THE COURT: Well, we -- me and my law clerk, he was
13 doing it pursuant to my direction, tried to schedule this
14 thing for 12 o'clock. And I didn't notify everybody that
15 we should have notified. We did not notify the clerk.
16 It's my fault. We'll get her up here.

17 THE BAILLIFF: We're going to bring it up here.

18 MR. WATERS: There is also -- I understand there was
19 some -- Mr. Wood wrote a number of communications to the
20 clerk's office, both here in Greenville as well as in
21 Anderson. Some of those related to his desire for an
22 evaluation. And I think that is also relevant. And I
23 would like to be privy to those as well. I believe that
24 those were sealed as well.

25 THE COURT: You mean in the first trial or this

1 trial?

2 MR. WATERS: Well, I think a lot will come out in
3 the testimony. There was some communication and an
4 agreement between the lawyers here in Greenville and the
5 lawyer appointed in Anderson, and Mr. Wood, about whether
6 or not he should be evaluated. And apparently as I
7 understand it, Mr. Wood wrote some communications to the
8 clerk's office. And I think that I'll need to have
9 access to those to properly present the entire course of
10 events of what happened. And we could obviously get
11 those here over the next couple days. But I just wanted
12 to have permission to have access to those.

13 THE COURT: What's the petitioner have to say about
14 that?

15 MR. BROWN: As we expressed at the last hearing, we
16 do not believe in fairness that some of these issues
17 would require the respondents to have access to the
18 materials. We do believe, however, it should be a
19 blanket opening of those materials from their sealed
20 status right now. So what I'm suggesting is we allow Mr.
21 Waters and his medical staff to have access to them. My
22 fear is if they were sealed in fact some -- we're talking
23 about some of the claims that we raised is that these
24 matters should not have been allowed into the court
25 proceeding at all. There's some Department of Health

1 records that came in during the State's reply in the
2 penalty phase. And if we object today and Mr. Wood gets
3 a new penalty proceeding then the ability to keep them
4 out at a later proceeding -- in this new proceeding would
5 be gone. And so what we're suggesting is there be
6 limited disclosure that serves the purpose of letting him
7 prepare his case and it serves the purpose of protection
8 to Mr. Wood.

9 MR. WATERS: I just want them limited for purpose of
10 this hearing.

11 MR. BROWN: My only concern ---

12 MR. WATERS: I'll just say that I'll -- obviously if
13 it comes up at a later time, it obviously would be
14 subject to being litigated at that point, whether or not
15 they were appropriate. But I just want to see them for
16 purposes of this hearing.

17 THE COURT: Who evaluated him before and are sealed?
18 I'm sure the Court looked at it probably.

19 MR. WATERS: The competency evaluation?

20 THE COURT: Yeah.

21 MR. WATERS: Yes, sir. It was Dr. Narayan, and
22 obviously other staff with DMH that evaluated him. As I
23 think the testimony will develop, Mr. Mauldin throughout
24 the trial did his best to keep that from being privy to
25 the State, other than obviously just competent criminal

1 propensity.

2 THE COURT: Was that a defense witness?

3 MR. WATERS: Dr. Narayan? No, he was a State's
4 expert.

5 THE COURT: The State did not get a copy of his
6 report?

7 MR. WATERS: Well, they had the report but it was
8 sealed inasmuch as he went in to other things, apparently
9 the diagnosis of anti-social personality disorder and
10 some other things. And my understanding -- unless I'm
11 wrong, my understanding is that the report is still
12 sealed. Ultimately Dr. Narayan testified in rebuttal
13 after the trial, after the defense called Dr. Donna
14 Schwratz-Watts and a social worker to testify as to Mr.
15 Wood's mental condition. But I personally do not have a
16 copy of that competency report. We deposed Dr. Narayan.
17 At that time I requested it but, because of HIPPA, were
18 not able to get all his medical reports. I requested at
19 that time for me to get a copy, but I don't think they
20 were comfortable with that. So I don't have a copy of
21 the competency report at this time. I'd just like to see
22 it. I don't have to see it right this minute, but I
23 would like to see it, particularly by the time Dr.
24 Narayan testifies.

25 THE COURT: Okay.

1 MR. WATERS: And the last matter is, Your Honor, as
2 you recall when we were here in January and we were about
3 to proceed, Mr. Wood stated that he wanted to waive. At
4 that time I requested that, you know, Mr. Wood be
5 informed that that could not be used as a strategic
6 matter, or a delaying matter, that any motion to delay
7 the case not be allowed. I expressed that in subsequent
8 motions and in letters after this was -- after his change
9 of heart came to light. Since then of course we've
10 gotten a second amended application with a number of new
11 allegations in it. I just want to put on the record my
12 objection to those new allegations.

13 THE COURT: The only amendment that will be
14 permitted from the last hearing to the present time would
15 be any new case law that's come out that may -- or change
16 that may cause us to change the proceedings, otherwise it
17 will be not amended for any purpose, except maybe new
18 cases that have come out since the last hearing.

19 MR. WATERS: Yes, sir. Thank you very much.

20 THE COURT: My conversation with Mr. Wood in the
21 courtroom, I have no reason at all to believe he's not
22 competent. He appears to me to be perfectly competent in
23 response to my questions and our conversation. And of
24 course I don't know how the last evaluation went, but be
25 that as it may we're ready to proceed.

1 MR. WATERS: Thank you.

2 MR. BROWN: May I be heard briefly, Your Honor, just
3 to clarify for the record? Although the applicant's
4 second amended application he refers -- it should be in
5 the court file, there are two grounds added. One ground
6 is specifically related to a case that came out the day
7 our last proceeding was to start. Secondly -- and by
8 saying that we do not believe that necessarily there is a
9 new rule out of that case, just a new case that
10 eliminates a previously existing rule. We also would
11 indicate there is a ---

12 THE COURT: I don't know of anything that came out
13 in regard to our rules.

14 MR. BROWN: Right. I'm just reiterating the issues.
15 There is -- the last ground in the second amended
16 application, ground K, when speaking with my client, to
17 kind of put this in context, some comment that he made
18 when I spoke with him about the withdrawal of his wavier,
19 and on that note there was a motion to withdraw his
20 wavier with an attached affidavit that was sent in after
21 the January 8th hearing. When I spoke with him regarding
22 that he had expressed the desire to assert a ground which
23 is listed in the second amended application as ground K,
24 and that's why that was put there.

25 THE COURT: What is it? I don't have it.

1 MR. BROWN: Well, briefly it says there's an equal
2 protection violation that went to the sole aggravating
3 circumstance of the capital proceeding, that the death of
4 a law enforcement officer places a higher value upon the
5 life of one human being over another. And the full note
6 in the application, ground K, indicates one that ground
7 was put in the footnote it was put there to question
8 specifically ---

9 THE COURT: That is covered in the death penalty
10 statute passed by the legislature.

11 MR. BROWN: We are raising the fact that that's a
12 Constitutional violation.

13 THE COURT: Wouldn't that be a matter for direct
14 appeal?

15 MR. BROWN: Not if it's not objected to. In other
16 words, we've raised ineffective assistance not to raise
17 that issue at trial.

18 MR. WATERS: Your Honor, since that's a legal issue,
19 I don't have a problem with that one being added.

20 MR. BROWN: It's a major legal issue.

21 THE COURT: That is a legal issue that wouldn't
22 require any testimony.

23 MR. BROWN: The only other -- I'm sorry. The only
24 other thing I would like to say is we'd ask to be able to
25 amend the application based on any facts that come out

1 here, or issues.

2 THE COURT: I'm not going to make a motion -- a
3 ruling in limine on that. I just have to hear the facts
4 and see what they are and hear your motion at the time.

5 MR. BROWN: Yes, sir. Thank you. That's all. I
6 just wanted to clarify that.

7 THE COURT: Call your first witnesses.

8 MR. BROWN: Dr. Cobb, Thomas Cobb, please.

9 THE CLERK: Place your left hand on the Bible and
10 please raise your right hand.

11 THOMAS COBB

12 Having been first duly sworn, testified as follows:

13 THE CLERK: Thank you. You may be seated. State
14 your full name for the record, please.

15 THE WITNESS: My name is Dr. Thomas Cobb. Last name
16 is C-o-b-b.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. BROWN:

20 Q Dr. Cobb, would you give the Court a little bit of
21 information about your educational background?

22 A Sure. I'm a licensed psychiatrist in the State of
23 South Carolina. I did medical school at the Medical
24 University of South Carolina, residency at the University
25 of Michigan, and forensic psychiatry at Western

1 University in Cleveland, and then returned to start a
2 fellowship training program in forensic psychiatry at the
3 Medical University of South Carolina.

4 Q And what do you practice currently?

5 A Forensic psychiatry.

6 Q And at some point in time did you serve as the
7 director of a certain department regarding forensic
8 psychiatry?

9 A Yes, that's true. Teaching -- I also -- although
10 I'm officially the director, I pretty much do I would say
11 90 percent of the teaching of forensic psychiatry there.

12 MR. BROWN: And now -- and Your Honor, at this point
13 we get into a little bit of information that I'll
14 consider to be privileged under some of the medical
15 status. We would ask that it be kept sealed. I don't
16 know how we would have to seal the proceeding. I know
17 Mr. Mauldin is here at the request of the Attorney
18 General. We have other witnesses. Obviously we have
19 some security. I would ask that he leave, but we're
20 asking that all the information that come out regarding
21 his treatment ---

22 THE COURT: What are you arguing?

23 MR. BROWN: Regarding the treatment of Mr. Wood,
24 that has all been sealed. Obviously Mr. Waters is going
25 to have access to it, but were asking that otherwise this

1 testimony be closed or sealed.

2 THE COURT: That motion is denied. The Constitution
3 requires trials in South Carolina to be open to the
4 public. And this is a very serious matter.

5 MR. BROWN: Yes, sir.

6 THE COURT: It's a matter of public interest. And
7 if anything is relevant to Mr. Wood in this case then it
8 comes out in this trial. I don't want anything sealed
9 from the Court or anyone else. I want everything out in
10 the open. All right. Go ahead.

11 BY MR. BROWN:

12 Q Do you treat Mr. Wood?

13 A Yes, sir. As part of my duties as forensic
14 psychiatrist I provide care to mental disorder offenders
15 at Lieber Correctional Institute, general population,
16 death row and maximum security.

17 Q And Mr. Wood is one of those inmates that you treat?

18 A Yes, that's correct.

19 Q When did you first start treating him?

20 A I believe I started treating him in 2002, 2003.
21 Maybe the end of 2002, start of 2003.

22 Q Do you know Dr. Cusack?

23 A Yes, I do.

24 Q How do you know him?

25 A He also worked at Lieber Correctional Institution,

1 that, and is on the faculty at the Medical University.

2 Q And did he also treat Mr. Wood?

3 A Yes, he did.

4 Q And have you had occasion to review any of the
5 records that Dr. Cusack compiled regarding the treatment
6 of Mr. Wood?

7 A Yes, I have.

8 Q Would you rely upon those records to form an opinion
9 regarding your own diagnosis and treatment of Mr. Wood?

10 A Yes, I would.

11 Q And did you actually have an occasion to speak to
12 Dr. Cusack yesterday?

13 A Yes, I did.

14 Q And did you also have the opportunity to review any
15 other records besides the records of Dr. Cusack?

16 A I did review some court documents from the original
17 trial, the competency, criminal responsibility
18 evaluation, social work evaluation and some other mental
19 health records from the jail I believe.

20 Q Did you ever have an opportunity to review the
21 Department of Mental Health records?

22 A Can you specify which in particular?

23 Q Any records that were compiled from interviews
24 conducted by Dr. Narayan or any of the testing done by
25 Dr. Tezza, and Dr. Steven?

1 A I believe I only had the actual report itself. I
2 did have some of the sources of information that Dr.
3 Narayan relied upon, the social work evaluation that he
4 used to prepare his report.

5 MR. BROWN: Okay. And let me back up. Your Honor,
6 based on his training and education we would offer Dr.
7 Cobb as an expert in the field of forensic psychiatry.

8 THE COURT: I don't think the State has any
9 objection. He's testified -- you testified in the
10 Freddie Owens trial? He's testified in this court. He
11 can express his opinion.

12 MR. BROWN: Thank you. And Your Honor, also we
13 would like to hand up at this time a copy of the
14 Department of Corrections' records with the caveat that
15 we would ask that those be -- the dissemination be
16 limited as we talked about earlier. We obviously
17 understand that Mr. Waters needs a copy. But I would ask
18 that these be made a public record in they have an
19 exhibit for the doctor to examine, to give an opinion
20 based upon, but again we are faced with the fact that
21 some of this information is ---

22 THE COURT: He can review medical records and
23 testify he reviewed them. I don't know what ---

24 MR. BROWN: Well, maybe we can just proffer them
25 under seal.

1 THE COURT: If you're going to leave them with the
2 Court then I'll rule on whether we can seal the file or
3 not.

4 MR. BROWN: Yes, sir.

5 THE COURT: But we've got some pretty strong
6 guidance about sealing files from the Chief Justice.

7 MR. BROWN: Yes, sir, I certainly understand that.

8 THE COURT: I haven't looked at it recently, but I'm
9 not going to commit to the Court keeping anything that's
10 put into evidence in this trial confidential, but I'll
11 look at them.

12 MR. BROWN: Well ----

13 THE COURT: If it's possible ---

14 MR. BROWN: We'll offer them up under seal. If the
15 Court declines to do that maybe we'll withdraw that.

16 THE COURT: Just proffer them and ---

17 MR. BROWN: Sure. Yes, sir. We'll then ---

18 THE COURT: Nobody is going to look at them today.
19 But I'm not going to say that they cannot be reviewed by
20 anyone that wants to, I mean anybody that can have access
21 to the Court's file.

22 MR. BROWN: At this time -- let me back up and ask
23 about two exhibits, or at least one affidavit that was
24 entered at the first proceeding. It's about a matter of
25 housekeeping, but I don't know if they've been brought

1 over to say which exhibit number we are at, but I believe
2 it's exhibit -- they will be here in just a minute.

3 THE COURT: What are you looking for? What kind of
4 affidavit?

5 MR. BROWN: Well, that's exhibit A for the
6 plaintiff.

7 THE COURT: Oh, okay. Whose affidavit was it?

8 MR. BROWN: Connie Jantz.

9 THE COURT: Is it in evidence or did you have an
10 objection?

11 MR. WATERS: Right, this was a sister. And I
12 certainly object to any introduction of any affidavit
13 because she's going to be here to testify anyway.

14 MR. BROWN: She's here in the courtroom. She was
15 not at the time we offered her affidavit. We provided
16 notice ---

17 THE COURT: Make a good faith proffer to the Court
18 of what she's going to testify to, what's in that
19 affidavit then he can review it.

20 MR. BROWN: Well, I'm just trying to get the next
21 number off the list.

22 COURT REPORTER: Exhibit A is not an exhibit at this
23 time.

24 MR. BROWN: I would offer a set of Lieber medical
25 records.

THOMAS COBB - Direct by Mr. Brown

1 THE WITNESS: Counsel, I have my own copy that I
2 have reviewed and have just made some highlights as to
3 important points. If it's okay for me to use that it
4 might make the proceedings go faster.

5 BY MR. BROWN:

6 Q From the medical records or the ---

7 A Medical reports.

8 Q Yeah, you can.

9 MR. BROWN: If I may pass these up to the Court and
10 have them marked.

11 MR. WATERS: Your Honor, I have no objection to the
12 admission for the purposes of this.

13 THE COURT: Okay. Without objection the medical
14 records are.

15 (Plaintiff's Exhibit Number 1 was marked and filed.)

16 THE COURT: And the doctor says he's highlighted
17 some portions which he can ---

18 MR. BROWN: Well, Your Honor ---

19 THE COURT: He's getting a copy and he can refer to
20 it more quickly.

21 MR. BROWN: Your Honor, at this time with the caveat
22 about that question of whether they're sealed or not,
23 still understand that we're asking them to be marked as
24 an exhibit. If I may go ahead briefly?

25 BY MR. BROWN:

1 Q But you are aware of the diagnosis that was given by
2 Dr. Narayan from the Department of Mental Health?

3 A Yes. Dr. Narayan diagnosed Mr. Wood with alcohol,
4 cocaine, hallucinogen abuse, by history cannabis abuse,
5 as well as anti-social personality disorder.

6 Q And anti-social personality disorder, is that a true
7 diagnosis?

8 A Yes, that's correct.

9 Q And of significance in a penal proceeding, is there
10 any treatment for anti-social personality disorder?

11 A There have been attempts at treatment. But
12 frankly, there are no treatments that are able to
13 change the long standing appearance of somebody's
14 personality. So there -- basically there are no
15 effective treatments.

16 Q And that gives rise to an inference that a person
17 who suffers from anti-social personality disorder might
18 pose a future danger?

19 A Yes, that would be fair to say.

20 Q But one of the things that anti-social personality
21 disorder is comprised of is disregarding the rights of
22 others?

23 A Yes, correct.

24 THE COURT: I believe he's going to object to you
25 leading. Be careful about testifying, Mr. Brown. Let

1 the doctor testify.

2 MR. BROWN: Certainly, Your Honor.

3 THE COURT: You ask the questions.

4 MR. BROWN: Just trying to move the proceedings
5 along.

6 BY MR. BROWN:

7 Q Now, are you aware of some of the diagnosis that
8 have been -- or impressions that have been given by
9 doctors within the Department of Corrections?

10 A Yes, I am.

11 Q And can you provide the Court some of those?

12 A Yes. Mr. Wood has been diagnosed with the diagnosis
13 I mentioned, as well as bipolar disorder, depression,
14 psychotic effective disorder, mood disorder not otherwise
15 specified, which is basically saying there is something
16 going on with his mood and I'm not sure what it is, it
17 doesn't fit into a particular category, substance
18 dependence. And let me just double check here,
19 intermittent explosive disorder, and as well as substance
20 induced psychosis.

21 Q Now, if we can go through some of these that are
22 treatable?

23 A Yes, correct.

24 Q Okay. Would you go through and explain to the Court
25 which ones of those are treatable conditions?

1 A Basically I would say all of those disorders are
2 treatable disorders in some way or another.

3 Q How does that contrast to anti-social personality
4 disorder?

5 A There is no effective treatment other than
6 incarceration basically for anti-social personality
7 disorder.

8 Q And so unlike anti-social personality disorder, some
9 of the treatable conditions, then the issue of future
10 dangerousness would be limited by proper treatment?

11 A Yes.

12 Q Or at least that argument could be made?

13 A Yes.

14 Q Now, let's just start with some of the medication.
15 Do you -- can you give me some of the medications that
16 he's been prescribed?

17 A Sure. He has been on Depakote, a mood stabilizer;
18 Risperdal, which is a medication for -- an anti-psychotic
19 medication for somebody hearing voices, is delusional;
20 Vistaril, which aids in anxiety as well as side effects
21 from the anti-psychotic medicine; Prozac, which is an
22 anti-depressant; and an older anti-psychotic medicine. I
23 can't remember the name right now but it's an older
24 anti-psychotic. We have one new medication that we have
25 and also a public trial which could be used as medication

1 for side effects from the anti-psychotic, as well as help
2 with sleep.

3 Q Now, let me go back to the Depakote. Now, let me
4 stop and withdraw that. Do you recall what medications
5 he was taking prior to going into the Department of
6 Corrections' system?

7 A I don't recall at the time. I believe he was on --
8 let me double check before I say anything. Yeah, he was
9 not taking any medication at the time.

10 Q Do you recall whether he had been prescribed at some
11 point Depakote?

12 A I believe in the records it said he had been
13 prescribed Depakote on the street, after reviewing the
14 medical records.

15 Q Let me ask if you would, do you have a copy of the
16 notes of Mary Sprouse of 2/16/06?

17 A Is that contained in this -- in the exhibit that was
18 given to me, because I can't readily find it right now?

19 Q I apologize. Do you know what happened right before
20 those notes were taken 2/16/02? Do you know?

21 A Well, as a matter of fact that was shortly after the
22 end of the trial.

23 Q Is that common for a nurse to take an oral history
24 from an inmate entering into the Department of
25 Corrections' system?

1 A Yes.

2 Q One of the things they asked is what -- and what --
3 one of the things I'm going to ask you is if those -- as
4 she takes and conducts an interview of an inmate as he's
5 being taken into the Department of Corrections, one of
6 the things he's asked is what medication he's taking?

7 A Yes, correct.

8 Q Okay. And in fact have you got -- I don't have a
9 Court copy of those materials? Thank you, Your Honor.
10 It starts with the medical screen and question two on
11 there.

12 A Yes, question two says are you on any medication.
13 Answer was yes, Depakote, 500 milligrams, extended
14 release, pink pill question mark.

15 Q Would pink pill be consistent with Risperdal?

16 A It actually states Depakote. And it's very
17 difficult for me at times to tell medication by their
18 color, so I couldn't tell you with certainty.

19 Q Sure. Now, if he had been prescribed Depakote and
20 Risperdal before would that sound consistent?

21 A I'm sorry, can you clarify your question?

22 Q Bear with me one second. I'm going to pull the
23 testimony.

24 THE COURT: Let him testify, Mr. Brown. Ask him
25 what Mr. Wood was taking before he went into the

THOMAS COBB - Direct by Mr. Brown

1 Department of Corrections. You can ask if it was
2 Depakote, how he knew, so he could testify to it. So I
3 don't know. You can ask him if he was taking Risperdal.

4 MR. BROWN: I'm going to.

5 THE COURT: Well, just ask him.

6 BY MR. BROWN:

7 Q Okay. And one medication that you -- I don't know
8 if you've had an opportunity to review any trial
9 proceedings, but would it surprise you if Dr.
10 Schwartz-Watts indicated at the trial during her
11 testimony that he was taking Risperdal, Prednisone and
12 Depakote?

13 A Would it surprise me? No, nothing Dr.
14 Schwartz-Watts said would surprise me.

15 MR. BROWN: Your Honor, all relevance would be laid
16 when Dr. Schwartz-Watts will be here shortly. I'm trying
17 to indicate what he was taking as he was coming --

18 THE COURT: I don't know where you're going, but I
19 can recognize the fact that the only way anybody is going
20 to know that is either somebody has got to tell them what
21 he was taking before he went into the Department of
22 Corrections.

23 BY MR. BROWN:

24 Q Do you know if he was taking Depakote?

25 A Yes, that's correct.

1 Q That's what I was getting to in those notes. Please
2 the Court? Okay. And Depakote is something he was also
3 given while in the Department of Corrections?

4 A Yes, that's correct.

5 Q Okay. And Depakote is a mood stabilizer?

6 A Yes, it is a mood stabilizer as well as an
7 anti-seizure medication. Typically it's used as a mood
8 stabilizer.

9 Q And in this case with Mr. Wood it was given to him
10 for the bipolar disorder?

11 A Yes, Your Honor.

12 MR. WATERS: I object to the leading at this point.

13 THE COURT: I sustain the objection.

14 BY MR. BROWN:

15 Q Was Depakote given -- prescribed for him within the
16 Department of Corrections?

17 A At that time he was given a diagnosis of bipolar
18 disorder as well as having paranoid features.

19 Q Okay. And so that's consistent with the -- that
20 would be -- would that be consistent with the diagnosis
21 of bipolar being diagnosed in the Department of
22 Corrections?

23 A Depakote would be an appropriate treatment as well
24 as many other regiments for somebody with bipolar
25 disorder, yes.

1 Q Now, previously -- to get into some of more recent
2 events. Do you recall when if ever he was taken off
3 medication?

4 A He's actually -- after looking through the records,
5 he has been on and off medication several times during
6 his stay at the SCDC on death row. And it's been a
7 number of times basically over the last couple of years.
8 And typically when he has gone off his medication he has
9 been noted to decompensate to some point where he then
10 requests to be back on his medication. At one point he
11 was also hospitalized involuntary at William Psychiatric
12 Hospital in Columbia.

13 Q And when have you come back to see him recently?

14 A The last time I saw him was I believe Thursday or
15 Friday of last week.

16 Q Was there a period of time when nobody went to see
17 him for a number of months in the last 12 months?

18 A Unfortunately the coverage out at Lieber at times is
19 sporadic and there are different doctors working out
20 there. Typically when I work there, I have recently
21 started up again, I typically handle most maximum
22 treatment so ---

23 Q And the last notes in there before the beginning of
24 2005 would have been November of 2004?

25 A Yes, correct.

1 Q He wasn't taking medication?

2 A Right, the notes are that he requested to have his
3 medication stopped.

4 Q And did you notice a deterioration in his behavior
5 between the time that the medicine stopped and you went
6 to see him later in the year?

7 A I noticed since I was there too -- at the time I did
8 not know what his state was when he stopped his
9 medication because I wasn't working out there. But when
10 I did see him again he did appear to me to need to be on
11 medication.

12 Q Did you start him back on medication?

13 A Yes, I did.

14 Q Does it appear to be -- does his behavior appear to
15 be better now that he's back on it?

16 A Yes, it does.

17 Q Now, what does it tell a doctor when a person is
18 behaving one way without medication but behaves
19 differently with medication? What does that tell you?

20 A He's being responsive to the medication. And when
21 you have a psychiatric disorder as he may have, and he's
22 responding to that, he's improving.

23 Q And how does that correspond to the accurateness to
24 having that diagnosis?

25 A Clarify your question.

THOMAS COBB - Direct by Mr. Brown

1 Q In other words, because when -- there was a
2 discussion yesterday, Dr. Cusak and one of the things he
3 mentioned was that ---

4 MR. WATERS: Your Honor, I object.

5 THE COURT: I sustain the objection.

6 BY MR. BROWN:

7 Q How do you consider the terms preventative practice
8 as opposed to a more scientific practice?

9 A Basically a lot of times what we do is go on a
10 working diagnosis, and we'll have what's called basically
11 a differential diagnosis. And for instance, I diagnosed
12 Mr. Wood with the disorder of bipolar. That was after
13 looking back through the records and seeing everything
14 that I had as far as different mood competent mania, like
15 behavior, psychosis, sort of assuming that you had a
16 particular diagnosis. However, another psychiatrist may
17 come along and reasonably differ, as Dr. Cusak diagnosed
18 him at one point with substance induced psychosis. Mr.
19 Wood had long a history of using various substances. And
20 Dr. Cusak's impression was the psychosis was caused by
21 the illicit substance abuse. Regardless of what his
22 diagnosis is, he still has the psychosis and manic
23 symptoms. If you treat it, and he's responding it's --
24 it's kind of -- what you call it doesn't really matter to
25 a certain degree because it all fits in a certain

1 category. So two reasonable psychiatrists could disagree
2 on that.

3 Q But if there was a diagnosis given, and his medicine
4 that was prescribed was also given, and the response was
5 not appropriate, how would you consider that as a
6 physician?

7 A A lot of times you may give a medication that's
8 appropriate for the disorder -- say in an instance of
9 bipolar disorder, they might prescribe Depakote.
10 However, they may respond to a different mood stabilizer
11 like lithium. So a non-response is not as specific as a
12 response.

13 Q And again, a response to the medication that's
14 proper for the certain diagnosis, what does that mean?

15 A That whatever underlying diagnosis, whatever the
16 underlying disorder is, the dysfunction is responding to
17 the medication.

18 Q Would you consider that corroborative?

19 A Yes, I would.

20 Q Next thing I want to ask actually doesn't have to do
21 with Mr. Wood's case, but it has to do with the position
22 of the psychiatrist about testifying in a penalty
23 proceeding after being ordered to do so.

24 MR. WATERS: Your Honor, I object to the relevance
25 of this. I'm not quite sure, if he's not testifying

THOMAS COBB - Direct by Mr. Brown

1 anything about Mr. Wood's case then perhaps we need more
2 of a ---

3 MR. BROWN: I'm going to lead up to it. I'll give
4 it a more concrete factual background, Your Honor, if
5 Your Honor desires.

6 THE COURT: I just need your question.

7 MR. BROWN: Yes, sir.

8 THE COURT: I sustain the objection. I'm not going
9 to let him answer that.

10 BY MR. BROWN:

11 Q First, did you have occasion -- have you had an
12 occasion to conduct some competent and criminal
13 responsibility examinations?

14 A Yes, I have.

15 Q Okay. And those were pursuant to a Court order?

16 A Yes, correct.

17 Q Okay. And have you ever had concerns that the
18 American Academy of Psychiatry, the law might place
19 ethical constraints upon the use of your testimony
20 outside of those orders?

21 MR. WATERS: Your Honor, I'm going to object. I
22 don't see the relevance. I mean, obviously I don't know
23 where -- to what allegation this would go, number one.
24 The allegations that there are -- I guess I need an
25 explanation for that.

1 THE COURT: I don't know. That it seems would be
2 whether or not there may be ethical concerns -- I would
3 sustain the objection.

4 MR. WATERS: Thank you.

5 MR. BROWN: And Your Honor, if I may respond to his
6 objection and respectfully to your ruling?

7 THE COURT: I heard the question, Mr. Brown.

8 MR. BROWN: Yes, sir.

9 THE COURT: I sustain the objection. That's the end
10 of it.

11 MR. BROWN: Judge, if I can proffer his testimony
12 for the record?

13 THE COURT: All right. Proffer his testimony for
14 the record.

15 MR. BROWN: Thank you. And Your Honor, if I may
16 point out, ground E in our complaint alleges trial
17 counsel failed to object to the testimony of medical
18 providers, cites a series of case law, including Still
19 versus Smith, Buchanan versus Connecticut, which is using
20 examinations for competency and criminal responsibility
21 at sentencing.

22 MR. WATERS: Again, that seems like a legal issue.
23 I'm not sure ---

24 THE COURT: Testimony from the doctor about that?

25 MR. BROWN: I'm trying to set the context for what

THOMAS COBB - Direct by Mr. Brown

1 I'm asking and the relevance too. I believe that the AG
2 has said -- so I'm trying to put this into context. I
3 understand this is just a proffer.

4 THE COURT: I don't know what you're trying to do
5 but let me hear it.

6 MR. BROWN: Yes, sir. I wouldn't -- since we are
7 kind of running short on time on witnesses, I would
8 recall him after everybody else was gone, but he's got to
9 go back to Charleston.

10 THE COURT: Make any proffers that need to be made.

11 MR. BROWN: This is the last subject I've got with
12 this witness, Your Honor.

13 THE COURT: What are you trying to prove with this
14 line of questioning, Mr. Brown?

15 MR. BROWN: Well, Dr. Cobb himself has declined to
16 testify during sentencing proceedings in a case where he
17 conducted the State forensic criminal responsibility
18 evaluation because he believes it's unethical and
19 violated the law.

20 MR. WATERS: Again, I don't see ---

21 THE COURT: What Mr. -- if what you're going to
22 whatever -- why Dr. Cobb did that, why he did it doesn't
23 have anything to do with this case. I sustain the
24 objection and will not let you proffer that.

25 MR. BROWN: My only concern, I don't want to get

1 that on the appeal without the evidence.

2 THE COURT: Well, you stated exactly what you wanted
3 to prove for the record, and I have ruled that it's not
4 relevant to this proceeding, and I think it's clearly in
5 the record.

6 MR. BROWN: Okay. Then at this time I have no
7 further testimony of this witness. I would ask that he
8 be -- and with all due respect to the doctor, that he be
9 kept on standby until the end of proceeding for possible
10 reply.

11 THE COURT: We may not be through with you so I
12 can't excuse you. But go ahead, Mr. Waters.

13 MR. WATERS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WATERS:

16 Q Dr. Cobb, how you doing today?

17 A Good, sir. Thank you.

18 Q Now, is it true with the number of diagnosis that
19 Mr. Wood has, and as I reviewed the medical report it
20 seems like depending on a particular period of time there
21 are different diagnosis being made, some of which is a
22 new one coming in, is that correct?

23 A Yes, that's correct.

24 Q Is it true it's a fluid type thing, a mental
25 condition?

1 A It is, yes. Somebody with a medical condition is
2 fluid. He may show signs of depression one time, or
3 mania at another time. It depends. You know, a
4 clinician comes in, perhaps didn't see that person for
5 very long or doesn't -- hadn't looked over the records,
6 trying treatment as blankly as possible, working and
7 diagnosing from there.

8 Q All right. And it's true, you know, problems can
9 develop as a person just goes through life, true?

10 A Yes, that's true.

11 Q That might not have existed before, correct?

12 A Yes.

13 Q Did you review any Greenville jail records,
14 psychiatric records, or has the treatment of him been
15 limited to the time at SCDC?

16 A Any treatment has been limited to the time at SCDC.

17 Q You haven't reviewed any Greenville records?

18 A No, I haven't.

19 Q And did you review any medical reports of Mr. Wood
20 that existed prior to this incident of murder in this
21 case?

22 A No, I haven't.

23 Q Okay. And it's true that if someone were say to be
24 arrested, convicted, sentenced to death, placed on death
25 row, in that particular environment that could have a

1 significant impact on his mentality, is that correct?

2 A Certainly. I have seen individuals who have -- in a
3 particular instance a gentleman who returned from super
4 max without a psychiatric history, and went to the next
5 security unit, Lieber, and basically became psychotic,
6 sensory deprivation. So, yes, conditions do have an
7 effect on the individual.

8 Q So -- all right. Just the passage of time, how an
9 individual may age or change, and also the environment
10 they are in, this could make their present mentality far
11 different than it would have been five, 10 years ago,
12 particularly before they entered the institution,
13 correct?

14 A Yes, that's correct.

15 Q Okay. Now, you mentioned a couple and I wanted to
16 ask a little bit about intermittent explosive disorder.
17 What exactly is that?

18 A Intermittent explosive disorder is basically when
19 they cannot control their temper and repeatedly may
20 strike out when provoked by something that would not
21 cause somebody with normal sensibility to strike out.

22 Q And Mr. Wood made, during the course of your
23 interactions with him, or the records reflect at SCDC,
24 the records reflect that he was diagnosed with that?

25 A Upon my review of the records I did not see the

1 basis for that diagnosis.

2 Q Could actions as a result of intermittent explosive
3 disorder, could they also tie in with things like maybe
4 border line personality disorder or anti-social
5 personality disorder?

6 A Yes, it certainly can.

7 Q I mean, it wouldn't be unusual to see those types of
8 things co-existing, correct?

9 A Correct.

10 Q And what about substance induced psychosis?

11 A Substance induced psychosis can be basically
12 somebody is taking so much drugs that they have residual
13 effects of those drugs. For instance, if they've taken a
14 lot of LSD, they may have flashbacks, and have visual
15 hallucinations, and things of that nature.

16 Q And that was diagnosed for Mr. Wood as well?

17 A Yes, it was.

18 Q What was the substance that was at issue?

19 A He had used many substances. I believe there was
20 cocaine, marijuana, LSD, mushrooms to name some of them.

21 Q Okay. That was -- the usage was prior to him
22 getting to the institution?

23 A Yes, that's correct.

24 Q Okay. But these anger facts from that usage that
25 y'all diagnosed or was this a historical diagnosis (sic)?

1 A It was a diagnosis made by Dr. Cusak.

2 Q So I mean, there is still continuing effects from
3 those substance abuse what he was -- from your
4 understanding, from him doing it and reviewing the
5 records?

6 A Yes, yes.

7 Q Did you agree with that diagnosis?

8 A I will certainly say that it's not different at all.
9 However, with Mr. Wood being incarcerated for an extended
10 period of time, just under my own paradigm and thinking,
11 that it's not often that you see that happen more
12 frequently. The more common diagnosis would be psycho
13 effective disorder. Somebody that has been basically
14 clear of substances for an extend period of time, even
15 with residual symptoms, if they respond to -- even if
16 they have developed for instance mood symptoms to other
17 than hallucinations, their mania as well as depression
18 and those sorts of things. So I conceptualized a more
19 broader category basically.

20 Q Okay. Now you mentioned psychotic effective
21 disorder. Just very briefly, he's been -- that diagnosis
22 that has actually seemed the most consistent one through
23 the records, is that correct?

24 A Yes, sir.

25 Q And just briefly describe what that is, the short

1 version?

2 A Psychotic effective disorder is basically a mixture
3 of psychosis and bipolar disorder. What you have is
4 somebody who has psychosis separate from other mood
5 symptoms. So at one point they could have
6 hallucinations, but not manic or not be depressed. Then
7 you may have other periods when they are only depressed
8 or only manic. And then the two can also co-exist
9 through discreet periods of either depression, psychosis,
10 mania, and then they may also co-exist.

11 Q All right. Let me ask you this. What exactly is a
12 treatment team? And again, looking just for the short
13 version, but in the context of treatment at SCDC?

14 A A treatment team in the context of SCDC is the
15 social workers working with them, as well as physicians.

16 Q Okay. And what they do is get together and discuss
17 who the patient is and what the best course of action is?

18 A Yes, that's correct.

19 Q Okay. And let me ask you to turn to page two of the
20 medical summary, it's the computer printout, Your Honor.
21 May I approach the witness? It's here, page two.

22 A Thank you.

23 Q Okay. I'm looking specifically at the narrative for
24 February 2nd of 2007. And to me it states that this is
25 just the kind of the synopsis of what the treatment team

1 discussed, is that accurate?

2 A I'm trying to find that particular date on this.

3 Q It's at the very top of page two. It's the first
4 entry.

5 A I've got 8/26/06?

6 MR. WATERS: I'm sorry. Your Honor, apparently
7 their summary ends before the latest one. If I may, I'm
8 going to show him my copy, and if I could substitute the
9 missing pages to make a clean copy. Would there be an
10 objection, it just further notes ---

11 MR. BROWN: I'm a little unclear how you got a copy
12 of my client's medical records.

13 MR. WATERS: I got it them from SCDC.

14 THE COURT: I'm sorry?

15 MR. BROWN: What order of release?

16 MR. WATER: I got them through SCDC. They take
17 the position I'm a covered entity so he released them to
18 me.

19 THE COURT: If those are the medical records, I'm
20 going to let him put them in evidence.

21 MR. BROWN: Your Honor, I think to ask -- the
22 provisions that apply are 42(C)(R) F, part two. And I
23 don't know how exactly they apply but I would assume
24 South Carolina, Department of Corrections received some
25 type of federal funding for some purpose at all. And if

1 they do treat for any medical conditions that are related
2 to substance abuse, which we've heard about, it's a
3 criminal offense to release to people without a Court
4 order, whether it's a Court officer, or prosecutor, or
5 defense attorney.

6 MR. WATERS: I obtained these records through
7 communications with SCDC's general counsel.

8 THE COURT: Introduction of Mr. Wood's medical
9 records, you put -- you've already put them in and
10 they're not complete. I'm going to overrule the
11 objection. He can put that in. Go ahead.

12 MR. BROWN: Well ---

13 THE COURT: I'm overruling the objection, Mr. Brown,
14 that's coming in.

15 MR. BROWN: Your Honor, I have a question about how
16 we didn't get a complete copy in response to our request
17 earlier this year?

18 THE COURT: I don't know about that. You'll have to
19 take that up. You should have probably gotten a complete
20 copy if you requested it.

21 MR. WATERS: I think what it is is these are entries
22 that happened since he got his copy. Mine just came last
23 week. There is like a few incidents dated later than the
24 ones that have already been introduced. So I think
25 that's the only difference.

1 MR. BROWN: He says it came from -- from David
2 Terry's office.

3 MR. WATERS: No, I contacted SCDC's general counsel,
4 asked if it would be appropriate for me to get medical
5 records. I'm not an expert in HIPPA. And I was informed
6 by SCDC general counsel under their interpretation of the
7 status they saw no impediment to me getting those. He
8 provided them to me.

9 THE COURT: Okay. I certainly make no
10 representation of being an expert in HIPPA. Doctor, you
11 have access to those records, don't you?

12 THE WITNESS: Yes, I do, sir.

13 THE COURT: Okay. He has access to the records.
14 You can show it to him.

15 MR. BROWN: I'd like to have a chance to look at
16 that copy, Your Honor.

17 MR. WATERS: Well, I'll make those -- I think it's
18 just about two or three pages that are different.

19 MR. BROWN: I would ask for a recess so I can review
20 them.

21 THE COURT: We'll provide you with a copy, and if
22 you need to recess to review them, but I'm going to
23 proceed right now. Go ahead.

24 MR. WATERS: It's only one and a half pages, Your
25 Honor, that are different. I would also point out, Your

1 Honor, he has already introduced these medical records
2 into his proceeding as it is.

3 BY MR. WATERS:

4 Q I'm going to show you -- I'll -- I believe these are
5 a couple of events that have taken place just in the past
6 few months. And I'm looking right here at February 2,
7 2007, and would you explain what that reference is?

8 A Well, February 2, 2007, this is an entry that says
9 continuum of care done for court. I'm unaware what that
10 actually means in ---

11 Q Well, then specifically here with the treatment team
12 update, can you explain what that is? Let me ask, are
13 you a member of the treatment team?

14 A No, I was not at the time.

15 Q Okay. And do you recognize the names of the people
16 who are member of the treatment team?

17 A Yes, I do.

18 Q Can you explain who they are?

19 A Sure. Mr. Random, Ms. McCants, Ms. Compton and Ms.
20 Bynes are all social workers out at Lieber.

21 Q Okay. Are those people that you work with during
22 the course of your treatment out there?

23 A Yes.

24 Q Okay. And does that reference there reflect a
25 diagnosis of psychotic effective disorder as well as

1 anti-social personality disorder?

2 A Yes, it does.

3 Q Okay. Now, obviously workers don't make diagnosis,
4 correct, or how does that work?

5 A They can certainly make a diagnosis or suggestions,
6 but they are subject to review by the physicians working
7 with them, right.

8 Q Where would they gain that from since you have been
9 part of Mr. Wood's treatment?

10 A It would have mostly been in the record, and I
11 myself have put a diagnosis down at times.

12 Q Okay. And that includes the anti-social personality
13 disorder, correct?

14 A Yes, that's correct.

15 Q Okay. Now I'm going to move to this encounter of
16 January 20th of 2006. I don't know if that's included in
17 these records or not. If you can take a look. You can
18 just review -- it's already in the exhibit that's been
19 introduced.

20 A Okay.

21 Q All right. And again, is that a -- this under
22 history right here, what does that reflect?

23 A At that time Mr. Compton was currently the social
24 worker working with death row. And this encounter
25 reflects his visit with Mr. Wood. And at that time he

1 noted that Mr. Wood had a history of hallucinations, poor
2 hygiene, self injury. And he reported compliance with
3 his medication and made a diagnosis of schizoaffective
4 disorder, anti-social personality disorder, appears to be
5 stable, medication compliant.

6 Q Okay. Mr. Compton, again, is one of the social
7 workers. Is it fair that social workers often are the
8 first line of defense in mental health treatment,
9 typically what they are?

10 A That's certainly true. Certainly within SCDC that
11 is.

12 Q Okay. It's often true lately in -- just in the
13 general public as well, is that not the case?

14 A Yes, yes, I would agree with that.

15 Q Okay. I want to show you -- and this is a treatment
16 plan dated February 2 -- or February 16, 2002. Okay.
17 Caroline Bynes, one of the social workers again?

18 A Yes, that's correct. She started working death
19 row after Mr. Compton. She took over that particular
20 role.

21 Q This, again, is just a summary of the meeting on
22 the treatment team, what course of action they have
23 decided?

24 A Yes, that's correct.

25 Q This -- okay. It also reflects schizoaffective and

1 anti-social personality disorder, is that correct?

2 A Yes, it does.

3 Q Okay. All right. Now, I just wanted to ask just a
4 couple questions about anti-social personality disorder.

5 I have the DSM-IV if you need it, but my understanding is
6 when you're looking at anti-social personality disorder,
7 there has to be some sort of history of conduct disorder
8 prior to the age of 18, is that correct?

9 A Yes, that's correct.

10 Q Okay. And I see number 15, and to be honest when I
11 read the DSM-IV it seems to imply we're talking about 15
12 or 18, or before 15, would that be ---

13 A My reading that would be before the age of 15, being
14 that since it's a personality disorder these behaviors
15 would have been exhibited throughout a long standing
16 period of their childhood and development. And then when
17 start getting -- even though it's an arbitrary number,
18 the mindset is at 15 you're looking at teenage years
19 where somebody may start taking drugs, doing other things
20 that may compound the diagnosis of anti-social
21 personality disorder.

22 Q So if the evidence of, say -- some conduct of the
23 disorder say occurred during the year that he was 15 as
24 opposed to 14 and his -- his 11th month, how would that
25 cause you -- if he had all those other -- sufficient

1 other criteria for anti-social disorder, would you then
2 judge that diagnosis?

3 A I'm sorry clarify your question. You said --

4 Q Sure. If an individual expressed sufficient other
5 traits of anti-social personality disorder, conduct, that
6 sort of thing occurred when he was 15 years old and one
7 week to, you know, at age 15 as opposed to 14 and 11
8 months, or 13 and 11 months, would you -- that affect
9 your diagnosis?

10 A It would certainly lead me to believe that most
11 likely reasonable -- the only instance you would take
12 that into consideration is with the diagnosis of
13 anti-social personality disorder.

14 Q Okay. Now, let's say though you had an individual
15 that met all the other criteria sufficient to the use of
16 anti-social personality disorder but did not have -- at
17 least you couldn't find sufficient proof of any sort of
18 conduct disorder prior to the age of 15, what sort of
19 diagnosis would that lead you to in that instance?

20 A Well, there -- it's no typical diagnosis, but I
21 guess in kind of clarifying the diagnosis, looking at
22 personality disorders, there is a difference of somebody
23 who is bad and somebody who has anti-social personality
24 disorder, as best I can put it.

25 Q There is not a diagnosis particular criteria for

1 adult anti-social behavior?

2 A Yes, there is.

3 Q Okay. And so not even -- you'll see a certain
4 diagnosis of so and so with anti-social traits or
5 something like that?

6 A Yes, correct.

7 Q Those diagnosis would exist if in fact there was not
8 the whole young age thing to get into ASPD itself,
9 correct?

10 A Correct.

11 MR. WATERS: I believe that's it. Thank you.

12 MR. BROWN: Thank you, Dr. Cobb. May it please the
13 Court? With the taking into consideration the records
14 introduced that I don't have a copy of, I would still
15 like to get to cross-examine him at this time and ask the
16 Court to allow me to review those records, to consult
17 with the folks we have and then also examine him.

18 MR. WATERS: And Your Honor ---

19 THE COURT: It's a page he doesn't have. He asked
20 him off that page. I'll let him review it.

21 MR. WATERS: Your Honor, it's a page and a half that
22 wasn't introduced to start with.

23 MR. BROWN: 11/20/06, I think is one. I think
24 they've expressed that they were later than that date so
25 this one and that one.

REDIRECT-EXAMINATION

BY MR. BROWN:

Q Dr. Cobb, just to start, again, because I haven't had a chance to review these -- but is this my copy?

MR. WATERS: No, I'm -- I'll have to make you one.

THE COURT: Okay.

MR. WATERS: I didn't expect to have to introduce it because I figured you would have them.

BY MR. BROWN:

Q Let me start with this, Dr. Cobb. You eventually treated him. Who sent you out to see him recently? Who contracted, or asked, or requested that you go out there?

A I'm independently contracted by the Medical University to provide care for SCDC.

Q And were you -- when you went to see him last week, were you aware that he had been -- or that his records had been reviewed by the treatment team members mentioned of 2/2/07?

A No, I was not.

Q Do you find that unusual?

A I'm sorry?

Q I mean, you treated him before 2/2/07?

A Correct.

Q And there was a lapse in treatment between November and February of '07?

1 A Correct.

2 Q Okay. Talking about four months. And would you
3 have cared to have seen him sometime in the interim
4 there?

5 A Certainly. I'm providing a continuum of care, yes.

6 Q Then you mentioned on direct earlier that he went
7 off his medication during that time, intermittent time
8 period and his behavior fell?

9 A Yes, that's correct.

10 Q And you started him back on it recently and his
11 behavior improved?

12 A Yes, that's correct.

13 Q So certainly as the treating physician, now, you
14 would like to see him as much as you could?

15 A Certainly. Typically when I'm working death row I
16 try to make it a point to see the inmates there at least
17 every other week, sometimes it may be three weeks or so,
18 but I make general rounds because there's I believe about
19 20 patients to my rotation.

20 Q So it is usual to have a treating doctor have his
21 patient also reviewed by another treating team of
22 doctors?

23 A Within the same agency.

24 Q And are you aware that they are also reviewing it?

25 A And just to be frank, at SCDC we've -- our treatment

1 meetings -- or they have had treatment meetings on
2 Thursday, and of late there was no doctor there on
3 Thursday, so there was no doctor present at the treatment
4 team meetings.

5 Q Which of these members of the treatment team is a
6 doctor, which particular individuals? I haven't reviewed
7 the records because I don't have a copy but ---

8 THE COURT: I'm going to give you plenty of time to
9 review those records. It's a page and a half.

10 MR. BROWN: Yes, sir.

11 THE COURT: He asked one question off that. Did he
12 know the treatment team members and what was their
13 diagnosis. That's all he was asked off that sheet of
14 paper.. I was listening.

15 MR. BROWN: Yes, sir.

16 THE COURT: And he did make a long review of that.

17 MR. BROWN: Well, I can go ---

18 THE COURT: He said he knew them and none of them
19 were doctors. I heard that. So we've repeated it again.
20 Go ahead. But that's clear. Okay. Now, he also
21 testified he saw him in the last two weeks, right?

22 THE WITNESS: Yes, that's correct, sir.

23 BY MR. BROWN:

24 Q Would you still believe your diagnosis of bipolar is
25 correct?

1 A Actually my diagnosis of schizoaffective disorder
2 without bipolar -- bipolar type, yes.

3 Q Bipolar type?

4 A Yes, sir.

5 Q And would you believe anti-social personality
6 disorder is not a correct diagnosis, or that you have not
7 found that as your diagnosis?

8 A Many times there are diagnosis that are made by
9 folks throughout the record that, you know, it may be
10 particularly in the record, somebody may have had more
11 information at the time, and with our changing all the
12 time, frankly 95 percent of the folks at -- within SCDC
13 would be diagnosed with anti-social personality disorder.
14 And it's not treatable. So even though it may go on
15 line -- you know, access two, what basically I'm working
16 with is access one, something that I can treat. So while
17 I wouldn't disagree, if I went back up to this other
18 information, that -- that I would have no problem putting
19 that diagnosis down based on the context, actual
20 information that other treaters at SCDC have (sic).

21 Q In other words, it's something you found yourself?

22 A Correct.

23 Q All right. And other doctors have made such a
24 finding as well?

25 A Correct.

1 Q Okay. And from the records that you have available
2 for your review, which I assume would be similar to the
3 records they would have available for their review, where
4 else did anti-social personality disorder, prior to his
5 being into SCDC, any records existed prior to SCDC where
6 else the anti-social personality disorder diagnosis came
7 from? Where else did you see it?

8 A Department of Corrections. Well, meaning jail,
9 prison.

10 Q What I'm saying, at the time he entered in February
11 of '02, where did that diagnosis appear? Where all
12 places did that diagnosis appear? Was it on the initial
13 evaluation, competency to stand trial in an evaluation
14 conducted by Dr. Narayan?

15 A Correct.

16 Q Okay. And could it be members of this treatment
17 team made findings based on his finding?

18 A Correct, absolutely.

19 Q Okay. And again, we talked about fact that Dr.
20 Cusak was here yesterday and as I spoke to him he said
21 that he relied upon his findings. What if anything did I
22 say about his opinion of Mr. Wood and the diagnosis of
23 anti-social personality disorder?

24 MR. WATERS: I'm going to object.

25 THE COURT: I would sustain the objection.

1 MR. BROWN: Your Honor, may I proffer, he says he
2 relied ---

3 THE COURT: No, that's hearsay. I mean that doctor
4 has got to be here subject to cross-examination.

5 MR. BROWN: Well, these people ---

6 THE COURT: Mr. Brown, that's my ruling. Don't
7 argue with me anymore when I rule on evidentiary
8 objections. We're going to move on.

9 MR. BROWN: I'm just ---

10 THE COURT: The answer is no. I said no.

11 MR. BROWN: Your Honor, I don't understand how I
12 might get ---

13 THE COURT: Mr. Brown.

14 MR. BROWN: Yes, sir.

15 THE COURT: I'm going to impose a penalty if you
16 keep arguing with me.

17 MR. BROWN: I apologize, Your Honor.

18 THE COURT: All right. Thank you, Doctor. If
19 you're -- is that all you're going to ask?

20 MR. BROWN: I would like to redirect these two
21 pages -- I'm sorry, I would just like to read them
22 myself.

23 THE COURT: You can read them. Okay. Doctor, if we
24 need you back we'll call you, or else we'll reconvene
25 this for a half day. Okay. I'm going to let him go back

1 to Charleston if you need to. I'm more than happy if you
2 want to stay in Greenville. We got a beautiful downtown,
3 restaurants, got a lot of parks, places, and Camelot
4 might still be going on. If you want to stay here that's
5 fine with me.

6 THE WITNESS: Well, I do have patients and work I do
7 need to get back to.

8 THE COURT: I'll let you get back. If there's some
9 issue that comes up that we need to have your testimony
10 on, I'm not going to -- this is a very serious matter
11 with the lawyers who originally tried this case, the
12 State, defense, but to the most important person, Mr.
13 Wood. I know how serious this is. If we need your
14 testimony again we certainly will take time to take it.
15 Okay.

16 THE WITNESS: Yes, sir..

17 THE COURT: Thank you.

18 MR. BROWN: And Your Honor, I don't mean to release
19 him obviously. And I assume that takes care of my
20 concerns about having him available in reply.

21 THE COURT: Why else would I tell him you're to
22 going use it wasn't for you ad Mr. Wood.

23 MR. BROWN: Your Honor, I'm just looking out for my
24 client. He's dissatisfied with my services. I don't
25 know what else to say.

1 MR. WATERS: I have two copies of your -- the copies
2 of the reports.

3 MR. BROWN: Okay. Thank you, sir.

4 THE COURT: Okay. Next witness.

5 MR. BROWN: Thank you. At this time we would call
6 Connie Jantz.

7 THE COURT: All right.

8 THE CLERK: Ms. Jantz, step up here. Place your
9 left hand on the Bible, raise your right hand.

10 CONNIE JANTZ

11 Having been first duly sworn, testified as follows:

12 THE CLERK: Thank you. You may be seated. State
13 your full name for the record and spell your last name.

14 THE WITNESS: Connie Lynn Jantz, J-a-n-t-z.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. BROWN:

18 Q Ms. Jantz, how are you today?

19 A Fine, thank you.

20 Q It's been a long day I understand for you?

21 A Yes.

22 Q Would you tell the Court, first off, how you're
23 related to Mr. Wood?

24 A I'm his sister.

25 Q Okay. And is there another sister also?

CONNIE JANTZ - Direct by Mr. Brown

1 A Yes, I have an older sister.

2 Q Okay.

3 A Elizabeth Wood Martinez.

4 MR. BROWN: Okay. Beg the Court's indulgence while
5 I look at the affidavit that was entered or proffered.

6 THE COURT: Okay.

7 MR. BROWN: Beg the Court's indulgence? I've got --
8 that's not marked. If I can refer to it.

9 THE WITNESS: Okay.

10 MR. BROWN: Place before you what has already
11 been ---

12 MR. WATERS: I'm not sure I understand. I mean,
13 she's testifying ---

14 THE COURT: I sustain the objection as to the
15 affidavit. She is under oath and in this courtroom.

16 MR. BROWN: Yes, sir.

17 THE COURT: She can testify.

18 MR. BROWN: Yes, sir.

19 THE COURT: I have no idea who drafted that
20 affidavit. You ask her the questions and let her answer
21 under oath, Mr. Brown.

22 MR. BROWN: I sure will.

23 BY MR. BROWN:

24 Q And you had mentioned that you reside -- excuse me.
25 You came from out of state today to testify?

1 A Yes, I did.

2 Q Okay. You reside out of state. Who do you reside
3 there with?

4 A My husband Mark. My oldest daughter Anastasia. My
5 second daughter Katherine. My third son Alvin Mark. And
6 I also have custody of Luke by John Wood, John's son and
7 Karen McCall's son.

8 Q Okay.

9 A And I have legal custody of my niece as well, my
10 mother's -- my sister's child.

11 Q Speak up just a little bit.

12 A I'm sorry, custody also of Penny Martinez, my
13 sister's child. She's in college, so she's not in the
14 house at the moment.

15 Q Okay. And where does your husband work?

16 A He's a safety warehouse advisor in Maryland.

17 Q Does he do some part time military work?

18 A Yes, he does.

19 Q Okay.

20 A He does government contracts.

21 Q Okay. And at some point in time did he also work in
22 the military?

23 A He was in the US Army.

24 Q Okay. And when he went into it, did he also apply
25 for national security clearance?

1 A No, it was an Army security clearance then, yes.

2 Q Okay. And did they clear you?

3 A Yes, they did.

4 Q Okay. And let me first start with, you're older
5 than John?

6 A Three years and a half, or three and a few months.

7 Q Okay. Your Honor, I anticipate there maybe some
8 objections on ahead. I'm trying to develop the testimony
9 to get to it, but I can get some factual background. And
10 you were born in 1964?

11 A Yes.

12 Q Okay. And your parents were Ruby Wood, was your
13 mother?

14 A Yes.

15 Q Gary Wood?

16 A Yes, my father.

17 Q Your father. Okay. And when he was born, where did
18 y'all live?

19 A This is difficult. Let me think. Indiana, it was
20 near Indianapolis.

21 Q Okay. And did y'all live with your paternal
22 grandparents or maternal grandparents?

23 A Maternal grandparents, we did.

24 Q Okay. And can you tell us what kind of living
25 arrangements -- what was the living arrangements? Were

1 you living with them physically where you lived with them
2 at the time he was born?

3 A I'm sorry, I don't understand.

4 Q Well, you mentioned maternal grandparents were
5 there?

6 A Right. They lived next door, I believe.

7 Q Okay. Next door was actually their property?

8 A It was a farm and they had split the property.

9 Q Okay. And who did y'all move there with?

10 A My parents moved very frequently. I'm not sure
11 about that particular move.

12 Q Okay. And then at some point in time did you ever
13 move to Greenwood?

14 A Yes, we did.

15 Q Okay. And that would be about -- what grade in
16 school would you have been?

17 A I believe first and second, maybe second grade.

18 Q Okay.

19 A John was three and a half years younger, so ---

20 Q Okay.

21 A And then there was a place near Greenwood, and my
22 second and first grade was in Greenwood.

23 Q And then at some point did y'all later go back to
24 the maternal grandparents?

25 A We stayed here in third grade, beginning of my third

CONNIE JANTZ - Direct by Mr. Brown

1 grade. I was in school for four, five, eight weeks, and
2 then we moved again to Florida.

3 Q Okay. That would be what year that you were in the
4 third grade? You would have been about eight?

5 A Yes, I believe so.

6 Q Okay. You would be how old?

7 A Eight, yes.

8 Q So like 1972?

9 A '64 plus eight, yes ---

10 Q Okay.

11 A --- '72.

12 Q Good. I apologize. There is a prohibition of me
13 asking questions when you say yes.

14 A It's hard to remember all the places and all the
15 years and times.

16 Q I understand. I apologize. So now, you said you
17 only went to school briefly there. So you were back
18 living with your maternal grandparents?

19 A I believe so, yes.

20 Q You moved away and then moved to -- or near
21 Greenwood?

22 A Right.

23 Q Okay.

24 A To a trailer. And then moved back to another
25 trailer near Greenwood and we changed schools again.

1 Q Okay. And then at some point in time did you move
2 back with your maternal grandparents?

3 A Yes.

4 Q Okay. Then where did you briefly move to?

5 A Briefly moved in with my grandparents.

6 Q Okay. Where did you go after that?

7 A To Florida. We moved to Florida.

8 Q Can you tell the Court a little bit about that?

9 A Went to one school and finished the third grade. We
10 moved to McFreckler (phonetically), went to Thomas Edison.
11 We then moved again, and I went to a different school for
12 fourth grade. It was a private school I remember. I
13 believe John would have started school there. And then
14 we moved ---

15 Q If I can stop you. Can you tell us a little about
16 the type of school you went to?

17 A Began public school until the fourth grade.

18 Q Okay. And did you attend school at Ft. Myers?

19 A For a couple months before the first part of my
20 fifth grade, I did, yes.

21 Q Okay.

22 A Maybe for a year. No, I'm sorry, I attended for a
23 year and a couple months. So he had to start school
24 there I believe.

25 THE COURT: Okay. And what type -- excuse me.

CONNIE JANTZ - Direct by Mr. Brown

1 What's the difference -- I missed -- I know you said what
2 the difference between your age and his age?

3 THE WITNESS: Three and a half years.

4 THE COURT: Three years, okay. Okay. Go ahead.

5 MR. BROWN: Thank you, Your Honor.

6 THE COURT: I apologize.

7 BY MR. BROWN:

8 Q What type of school was it that John attended?

9 A I believe it was called Ft. Myers Christian Academy.
10 Maybe it had a church name. It's been a long time, I'm
11 sorry. I can't exactly remember the name. It was a
12 private christian school.

13 Q On this note let me ask you. It's a reoccurring
14 theme I have found through christian schools. Is that
15 something that your mother wanted him to attend or ---

16 A My father.

17 Q Your father did so?

18 A Yes.

19 Q Would you describe for the Court your relationship
20 between your mother and father?

21 A That's a difficult question. My mom has a history
22 of shoplifting. I don't know how long she's been
23 incarcerated. I've never seen her record. I do know
24 from my experience she did some time through my
25 childhood. My dad, I love him dearly, but he just

1 enabled her. He didn't believe in divorce. That's
2 against his religious beliefs. I haven't spoken with
3 them in six years, I believe.

4 Q I'm sorry, what we would like to know is anything
5 significant about you about ---

6 A It's hard to describe because our childhood was a
7 study of contradictions, to go to church and then
8 shoplifting. You know, it's not a normal thing but you
9 grew up thinking it was normal. But that's what my
10 parents did, getting away from. I understand that wasn't
11 normal.

12 Q What I want you to do is just describe a little bit
13 about how John -- what he was exposed to? Because what I
14 see in my review is that your mother was ---

15 MR. WATERS: Your Honor ---

16 THE COURT: Sustain the objection. What you see in
17 your review is not -- cannot come into evidence.

18 MR. BROWN: I can tell ---

19 THE COURT: Just ask the questions, Mr. Brown.

20 Okay.

21 THE WITNESS: I can tell you my mother moved
22 frequently. We never were able to maintain friendships.
23 My parents moved frequently. In retrospect those things
24 didn't help us as children. I see now they probably were
25 doing things that weren't legal and that's why we moved.

CONNIE JANTZ - Direct by Mr. Brown

1 That's why we were unable to have normal, normal periods
2 of time in school. In my mind it was kind of comical.
3 As long I could -- we lived in two houses, that's not a
4 normal thing. You don't take your kids and uproot them
5 ever. Maybe in the military, at least there's a support
6 group there. So it was very, very difficult.

7 BY MR. BROWN:

8 Q And then you attended Bob Jones University?

9 A So you know I was getting one message on one side
10 and one message on the other so ---

11 Q And to clarify that, from one parent to another
12 parent?

13 A Yes.

14 Q Would you describe -- so you would -- how would you
15 describe your father's behavior as far as law abiding or
16 not?

17 A I don't know. My dad never committed a crime at
18 all. I can't think of anything that ---

19 Q And so again, you don't believe he's the reason ---

20 A I believe he's law abiding, yes.

21 Q So he's the person that encouraged the Christian
22 schools?

23 A Yes.

24 Q Okay. And that's something you attended throughout
25 your life as well?

1 A Yes. Well, until I left home, you know, left there,
2 yes.

3 Q When you left home with your parents, you went to
4 school?

5 A Got a job.

6 Q John was also still at Christian school?

7 A Yes.

8 Q Okay. To kind of get back to some more of the
9 details. You lived in Ft. Myers. After you left Ft.
10 Myers, do you know where you moved to?

11 A Greenville, South Carolina.

12 Q Can you tell us about your living arrangements here?

13 A We moved into a house on White Horse Lane, I
14 believe. I went to public school for really -- really
15 maybe a week, two weeks, then went to Bob Jones Academy,
16 Bob Jones Elementary School for the rest of 6th grade.
17 We moved into two other houses during that time, I
18 believe. So there was more moves in that year and a
19 half.

20 Q Two moves in one year or ---

21 A Yeah, basically, yes.

22 Q Okay. And would John have also attended Bob Jones
23 School, that's elementary school?

24 A He did. He attended.

25 Q Okay. Now, the previous year he went to the

1 Christian school you had mentioned?

2 A I believe so. You might want to clarify with him
3 about it, because my memory is not that great about it.

4 Q Do you know what the grade was, as far as the grade
5 he achieved?

6 A I know he repeated the first -- I believe first
7 grade.

8 Q Okay. Tell me ---

9 A The records of Bob Jones, they would tell you. They
10 would have them.

11 Q Yes, ma'am. Okay. And actually, Your Honor, that's
12 an issue we have to bring up at some later point as far
13 as this hearing. Do you know what happened the next
14 calendar year?

15 A After sixth grade we moved back to Indiana and lived
16 in a house on State Street for a shorter period of time.
17 I attended the school on County Line Road for seventh
18 grade I believe. I'm sorry, I hope -- this is kind of
19 far to go back, so I'll do my best. I made a mistake. I
20 went to sixth grade.

21 Q Okay. The sixth grade.

22 A I attended to -- I'm sorry, I attended two schools
23 in the sixth grade, a Christian school, and my dad kind
24 of decided that was a very cold like school, so he
25 changed schools. It was a very unusual school. It was

1 kind of self-paced learning school. I believe my brother
2 was in academic trouble, was in trouble with math at that
3 point, and flunking academically.

4 Q Okay.

5 A At the school on County Line Road.

6 Q What relation does that have to the Baptist church?

7 A It was a Baptist church.

8 Q A Baptist school. Was there a church school?

9 A Yeah, elementary.

10 Q Do you remember the name?

11 A I don't remember the name of the church, but it was
12 right there. I suspect it is still around, but you might
13 be able to find it.

14 Q And then you also mentioned at some point near State
15 Street?

16 A The first address we lived at. The second address
17 was half of my grandmother's duplex. We rented it from
18 her.

19 Q Okay.

20 A I think at that point I was home-schooled for a
21 year.

22 Q How about John?

23 A I don't remember but I think he was home-schooled.
24 You would have to double check with him if he can
25 remember. It's been a long time.

CONNIE JANTZ - Direct by Mr. Brown

1 Q Would you tell the Court a little about
2 home-schooling?

3 A Home-schooling? The home-schooling courses I took
4 that year was from Pennsylvania Christian Academy, and my
5 mother was home-schooling me. It was a self-paced
6 program. I remember doing the work. I had no parental
7 input at all or assistance in it. I believe John was
8 taking the same correspondence course at the time. And I
9 don't remember him ever having any parental help,
10 guidance. He was nine years going -- or three and a half
11 years younger. That would have been approximately 1976.

12 Q Would make him about nine years old?

13 A I believe so.

14 Q And is it fair to say in essence he wasn't getting
15 any schooling?

16 A Yes.

17 Q Okay. Except whatever he could read as a nine year
18 old who repeated a grade year out of Ft. Myers?

19 A Yes.

20 Q And again, that in was Indiana or near Indianapolis,
21 Indiana?

22 A Well, actually was near -- in the -- near Fountain
23 Square.

24 Q Okay. And for the Court, for the record, that's in
25 downtown?

1 A Yes.

2 Q Okay. And what happened next? Where did go y'all
3 go next?

4 A I'm sorry. I believe we moved back to South
5 Carolina for -- I went to Bob Jones Academy. I believe I
6 may have missed something. I'm sorry, I did. I know I
7 went to Bob Jones Academy. I think I attended there
8 almost a year, I believe by 11th grade.

9 Q Okay. Did John go back and attend Bob Jones
10 Academy?

11 A He went after they tested him for beginning middle
12 school and they wouldn't admit him.

13 Q He couldn't pass the testing to get ---

14 A He couldn't spell his middle name, which was kind of
15 weird, because I know my brother could verbally answer
16 but ---

17 Q Okay. Let me stop you. So you were, you said, in
18 what grade?

19 A I believe 11th. I skipped a year, because I did two
20 years correspondence.

21 Q So you were four grades ahead of him?

22 A Yeah.

23 Q So he would have been in the seventh grade?

24 A Yes.

25 Q He was unable to spell his name?

CONNIE JANTZ - Direct by Mr. Brown

- 1 A His middle name.
- 2 Q His middle name at that time?
- 3 A Yes.
- 4 Q But he knew his middle name?
- 5 A Yes, yes.
- 6 Q But now let me ask you. How -- what kind of
- 7 relationship did you have with him?
- 8 A I knew his academic ability. I mean, I tried to
- 9 help my brother. I would go through and quiz him when he
- 10 was in class. As I said, I would try to get through,
- 11 quiz him, then he would give the answers back verbally.
- 12 Later when we went to Tabernacle I would sit there and
- 13 try to study with him. He would answer me. He would
- 14 know the answers, and then go and take the test and get a
- 15 D or F. So I tried to help him. But you know, I didn't
- 16 have the skills at that point in my life to teach
- 17 somebody who was having difficulty.
- 18 Q Who was giving John more time, you or your mother?
- 19 A Wow, I don't know, because when I had children I
- 20 didn't know how to play with my kids. I've had to learn.
- 21 I was never played with as a child. So my mom's
- 22 parenting skills were abysmal.
- 23 Q You didn't know how to pick up and play with your
- 24 child?
- 25 A I tried to do a good job with my children, but,

1 sure, for lack of education and -- I'm sorry. I'm sorry.

2 Q You're fine. Take your time.

3 A Go ahead. Go ahead.

4 Q But you did spend time trying to get him through?

5 A Yes, I did. I loved him.

6 Q Did your mother -- do you recall you mother
7 expressing some concern -- what concerns do you recall
8 her expressing about John's academic performance?

9 A She was mad that Bob Jones hadn't accepted him. She
10 I think decided to do it on her own at that point.

11 Incorrectly. That's when he stopped any formal
12 schooling. She used a correspondence course that I
13 remember my mother doing for him. I don't remember him
14 doing it.

15 Q Some of that would -- would include like a person
16 would get ---

17 A Mail correspondence from Missionary Accelerated
18 Christian Education.

19 Q One out of New Bern, North Carolina?

20 A That was the second one she used.

21 Q Okay. Do you think he would have done well in
22 school without your help?

23 A I had a lot of teachers who helped me along and gave
24 me some encouragement.

25 Q Let me ask you about your conversation you've had

CONNIE JANTZ - Direct by Mr. Brown

1 where you mentioned things that you were getting away
2 from. Were you able to get away?

3 A Yes.

4 Q What were you getting away from?

5 A Shoplifting. They approached me when I was working
6 at a grocery store the evening before I enlisted in the
7 military. And my mother came in when I was on duty, and
8 when she left the store I realized she left with food
9 that hadn't been paid for, which would have gotten me
10 fired. Of course I discovered -- although I wasn't aware
11 that this happened until after the fact. That kind of
12 behavior is not what I believe is right and I feel --
13 excuse me. I have a cold. And I know my voice is rough.

14 Q Now, when John tried to go back to Bob Jones you had
15 mentioned he couldn't get in, you were about in the 11th
16 grade, you had skipped a grade?

17 A Yes.

18 Q Do you know where your family went after that?

19 A We moved again to West Virginia. Lived there a very
20 short period in Beckley and then moved to Hinton with --
21 I would say a short time, maybe four to eight weeks, then
22 moved again. And we finished out -- I believe I finished
23 11th grade there, my 11th grade. And my brother's -- I
24 think my brother maybe, maybe attended school there some
25 minimum -- a short period of time, and then used the same

1 curriculum, the Accelerated Christian Academy
2 correspondence type of curriculum.

3 Q And let me ask you, you had mentioned this was back
4 in West Virginia. Was there -- where did y'all live in
5 Hinton, when you lived in Hinton?

6 A Near Pippstem School -- Pippstem Christian Academy.

7 Q Did John attend Pippstem Christian Academy?

8 A I don't remember honestly. I have an initial memory
9 of him in the car with me, but I can't quite connect that
10 dot there.

11 Q Okay. But you attended there so I assume he did.
12 Is that spelled P-i-p-p-s-t-e-m, like stem?

13 A Yes.

14 Q And where did you go after that? What happened?

15 A I finished 11th grade through correspondence over
16 the summer. We lived in Hinton that summer and lived in
17 a house probably within 2 miles of our previous house. I
18 don't remember the street name. My mother would have it
19 on file somewhere, but I don't remember the name. My
20 parents bought that house I believe. They maybe lived
21 with my grandparents some period of time, but I'm not
22 positive. We were in the process of moving, I don't
23 remember, so it might have been two moves before the end
24 of summer. Then we came up and attended Bob Jones at
25 that point -- came down here I should say, down here, not

CONNIE JANTZ - Direct by Mr. Brown

1 up.

2 Q Just to make sure I understand this. When y'all
3 moved back to Indiana, you had finished school or had not
4 finished at that time?

5 A After that summer I started in Bob Jones University
6 in the fall.

7 Q Okay. After attending Pippstem, do you know where
8 John attended?

9 A I don't remember him attending any school after
10 that, other than correspondence.

11 Q Okay. Then where did you move?

12 A Moved back to Greenville.

13 Q Okay.

14 A My parents moved back to Greenville at the end of my
15 first year, which would have been May. We moved into a
16 house where we house sat, and then they moved into a
17 house in Kampus Kourt after that. I think we house sat
18 and then moved again.

19 Q Was your mom employed?

20 A Yes, she was, at the Gospel Hour in Greenville.

21 Q Okay. Did she stay employed there?

22 A My dad worked at Bob Jones for a while and then
23 he -- then he went back and worked -- he also worked at
24 the Gospel Hour as well. We moved into a house on the
25 Gospel Hour property during that period. I'm not sure

1 exactly the date.

2 Q Was that during your college?

3 A Before my senior year.

4 Q And do you know what your mom's employment was at
5 the Gospel Hour?

6 A I don't know what she did to be honest. When I
7 moved into the dorms my senior year my parents had left.
8 They were to go missionary fields. And I know there was
9 something missing from the Gospel Hour, but I believe my
10 mom stole money. I don't have evidence of that, but I
11 believe my mom stole money from the Mission Hour (sic)
12 because David Green kept calling. Mr. Green, an attorney
13 here in Greenville, I believe he kept calling trying to
14 get ahold of her. My mother kept avoiding him. She had
15 no respect. My mother kind of practices lying to me.
16 She would practice her lies before she tried them on
17 somebody else. And I know she was being deceitful and
18 deceptive in not calling Mr. Green back. She had stolen
19 money from the Gospel Hour or something of that nature.

20 Q Now, you had mentioned your father was employed.
21 Where was he employed at that time?

22 A He was employed at Bob Jones, I believe in
23 maintenance. Then I believed he worked at the Gospel
24 Hour after that.

25 Q Okay.

1 A I know he did actually.

2 Q Okay.

3 A Exact dates I just don't remember.

4 Q Did you finish school with Bob Jones?

5 A Not quite. I would have finished in March if I had
6 completed a summer school class. I got a D in it. I
7 still have three credits to finish. I was supposed to
8 get two years of education, and I went into the military
9 and never got a chance to finish later on.

10 Q Let me back up just a moment. You're familiar with
11 the school Calvary Baptist?

12 A In New Bern, North Carolina?

13 Q Well, out of New Bern?

14 A Yes.

15 Q Okay.

16 A It was for children of missionaries. They did
17 correspondence courses.

18 Q Okay.

19 A My brother I believe received his high school
20 diploma. My mom was actually doing the work by filling
21 in the boxes for him.

22 Q Explain to us why your mother was filling in the
23 boxes for him?

24 A She would do the work and they were self-paced. You
25 would do a unit of study and then you would take a test,

1 and then you would do another unit, take another test,
2 then you will take a test on the whole booklet.

3 Q And she would fill in the information?

4 A I don't remember seeing John ever do it.

5 MR. BROWN: Beg the Court's indulgence?

6 THE WITNESS: I didn't explain. Maybe I can
7 explain. My mother -- my mother is -- if you met her
8 you would not realize she's done these kind of things.
9 She can be very charming and she is well spoken. So she
10 can be very convincing. People don't see it. Oh, she's
11 not -- you don't look like you're vulnerable when you
12 talk to her, you don't see it. So my childhood I guess
13 is kind of hard to explain. But in the affidavit it was
14 something I didn't mentioned, that I didn't want to talk
15 about, so I wanted to mention it and thought this was the
16 proper time.

17 BY MR. BROWN:

18 Q Anything else you would like to tell the Court?

19 A My mom was adopted. My mom was adopted when she was
20 about a year old, and she had not been held. And my
21 grandmother said she couldn't sit up. She was weak. She
22 had -- was born with -- when she was adopted she had
23 venereal disease. She was adopted in poor health. My
24 family situation is a little unique in that respect. My
25 grandparents are not typical grandparents.

1 MR. WATERS: Your Honor, I have to object. He can't
2 introduce anything -- I think anything -- Your Honor, I
3 apologize. He can't introduce it. She can't answer --
4 there is nothing that's been proposed to her for her to
5 answer anything.

6 MR. BROWN: I'm going to introduce some school
7 records that we received which we're offering to provide
8 to the Court as one of our ---

9 THE COURT: I don't know how she can authenticate
10 any school records.

11 MR. BROWN: No, sir, some of them they have a seal
12 on them that they are ----

13 THE COURT: Are they her reports?

14 MR. BROWN: No, sir, they are Mr. Wood's.

15 THE COURT: How are we going to know if she's never
16 seen them before? I don't know.

17 MR. BROWN: They're sealed and signed by the school
18 as their official records.

19 THE COURT: Well, she can't get them in.

20 MR. BROWN: They're here -- under the rules of
21 evidence there's no -- you don't have to authenticate the
22 records under the rules. I assume there's an objection
23 now that we're going to hear.

24 MR. WATERS: I don't really know whether it's an
25 objection or not, but I just want to know what the

1 question is, why we're waiting for minutes for this
2 witness ---

3 THE WITNESS: I can tell you my brother did not
4 receive any education during the time he was
5 home-schooled if that's what you're asking.

6 BY MR. BROWN:

7 Q Well, let me ask you, would you believe your brother
8 was valedictorian?

9 A No.

10 Q Would you believe he received an A in Greek?

11 A No.

12 Q Would you believe he received -- he received Fs or
13 received school scores that indicated that he could read
14 at a 10th grade level and spell at the fourth grade
15 level?

16 A I don't believe that, no, I'm sorry. I would
17 believe he can read. I don't know at what level but not
18 where he should have been with a high school diploma.

19 Q And certainly not as a valedictorian?

20 A No.

21 Q Okay. That's based on your knowledge?

22 A Yes.

23 Q That you have?

24 A Yes.

25 Q Okay. Through every time period, you're unaware of

1 a fixed address for Mr. Wood at his parents or your
2 parents?

3 A I don't know what you mean by that.

4 Q They didn't have a fixed location?

5 A Yes, it was after my senior year when I was -- 1983
6 to '84, fall of 1983. After that they didn't have a
7 fixed address. They were traveling in a travel trailer
8 to different locations.

9 Q Transient?

10 A Churches to deputation.

11 Q Okay. And you mentioned they also moved to a
12 mission?

13 A They moved the family.

14 Q Did they live in a retirement resort there?

15 A No, they went to -- my dad pastored a church there.

16 Q John also went there?

17 A Within their mission it's said when a child turns 18
18 and he's not in school he has to go home. That's what he
19 told me -- I have to say my mother told me that. I don't
20 know if he came home at age 18. I believe it was April
21 when he was 18. He came home and he stayed in the little
22 trailer was summer. He lived in Greenville that summer.

23 Q Now, let me ask you about a few things regarding
24 your family history and end with a little bit about your
25 mother.

1 A Okay.

2 Q And -- and Mr. Waters and the General Attorney's
3 office may not have heard some of that, but if you would
4 repeat a little bit of that information.

5 A My mom was adopted. She was -- she was an orphan.
6 She was ill. She couldn't eat solid food according to my
7 grandmother. She was adopted at I believe about a year.
8 And one time when I was visiting my grandmother in the
9 hospital my mother had stolen money from my grandmother.
10 My grandfather was an alcoholic. He was crying and said
11 the doctor at the orphanage knew my great grandmother.
12 That was the last baby in the orphanage that he could
13 recommend adopting. So I assume from that my grandmother
14 must have had some criminal and mental health issues.
15 That's what he was saying to me.

16 Q Speaking of that, let me ask you about your father's
17 side. You said Lester Wood. Who is Lester Wood?

18 A Lester was my paternal grandmother's dad. He was an
19 alcoholic. And he died when my grandmother was five.
20 And I never heard anything positive about him at all. He
21 was an alcoholic until he died.

22 Q You got that family history from who?

23 A That was from my grandmother directly.

24 Q Okay. And was there also a great uncle, a great
25 uncle that committed suicide?

CONNIE JANTZ - Direct by Mr. Brown

1 A They didn't give me the details.

2 Q Did your father?

3 A My brother suffers from -- I'm not a doctor, but
4 when he calls somebody and says you're going to kill
5 yourself, and you suffer from depression, you can ask the
6 doctors expert opinion on that, but he's said over the
7 phone I'm going kill myself to me.

8 Q Let me ask you, he told you that?

9 A Yes.

10 Q Tell me when he told you that?

11 A When John and Betsy and my mother ---

12 MR. WATERS: Your Honor, I'm going to object at this
13 point.

14 THE COURT: I would sustain the objection.

15 MR. BROWN: I'm sorry, I don't know what the basis
16 of the objection was.

17 MR. WATERS: Hearsay. Hearsay, somebody told her
18 something.

19 THE WITNESS: I said actually my brother ---

20 THE COURT: I sustain the objection. Let's move on,
21 Mr. Brown.

22 BY MR. BROWN:

23 Q Without asking what he said. You had a phone call
24 from your father. Where was your mother when John said
25 this?

1 A Incarcerated.

2 Q Okay.

3 A My four -- three of my nieces were staying with him
4 and he was overwhelmed. I had them come -- we came dawn
5 and got them and they stayed the summer with us. We had
6 six children that summer. It was great, and the children
7 were real good, and it was -- it was a good and bad
8 summer.

9 Q Now, we've heard a lot about how your mother served
10 as the educator for John. One thing you mentioned was
11 that she didn't really provide a reading, writing,
12 arithmetic type education?

13 MR. WATERS: Your Honor, I object to the form of
14 question.

15 THE COURT: I've heard how she thinks her mother was
16 a bad parent and didn't let him do those correctly. I
17 heard that, Mr. Brown.

18 MR. BROWN: Yes, sir.

19 THE COURT: Okay. Go ahead.

20 BY MR. BROWN:

21 Q My question is, what did she teach John?

22 A I'm sorry what was the question?

23 Q What did your mother teach John?

24 A Well, when my -- the only criminal activity I know
25 about with my brother, when he was a child he was in

CONNIE JANTZ - Direct by Mr. Brown

1 K-mart and he put a cap gun in his pocket. And the
2 security guard took John back to the security room.

3 Q What happened? What were you going to do about it?

4 A John apologized. I think my mother paid for the
5 gun. And then obviously he learned shoplifting from my
6 mother. I mean, when I saw my mom shoplifting I
7 confronted her. She'd scream at me, and I stopped
8 confronting her.

9 Q Now, let me -- how old was John when that happened?

10 A He was young. I'm trying to remember that. I'm
11 having -- it was during the time frame after we moved
12 back from Indiana, after 6th grade, before we moved back
13 to Greenville.

14 Q Your 6th grade?

15 A My 6th grade, so he was -- he was young. I cannot
16 remember the exact date.

17 Q You were younger then?

18 A I believe so. No, it's just one of those -- I
19 remember the store. I can drive to the store, but the
20 exact date, I was very young.

21 Q Are you aware of any other acts that he -- criminal
22 acts he committed before he turned 15?

23 A No.

24 Q You lived with him the entire time?

25 A I was 16 when I moved to Bob Jones. There was one

1 year which I was not -- my parents weren't there. But I
2 wasn't aware of any activity that happened during that
3 time.

4 Q That one year time period?

5 A No, I didn't hear about any.

6 Q Okay. And otherwise were you with him?

7 A The rest of the time, yes.

8 Q Okay. Now, back in December of 2000, when John was
9 arrested, how did you find out about that?

10 A From the newspaper, from Anderson News. He called
11 me.

12 Q A reporter?

13 A Yes.

14 Q From Anderson News?

15 A Yes.

16 Q He called to speak to you. Was he able to reach
17 you?

18 A He was able to reach me.

19 Q Let me ask you a little bit that address, 2625 Old
20 Dobbins Bridge Road?

21 A We owned that after the summer that the kids spent
22 with us. My sister was incarcerated. That summer we
23 came down here and looked for a house because the kids
24 were very important to me. I wanted to give them some
25 stability they hadn't had. We bought a house that was in

CONNIE JANTZ - Direct by Mr. Brown

1 foreclosure. The plan was to come down for holidays and
2 vacation time, and maybe retiring some day. We moved
3 Betsy in with the agreement that she pay us rent for \$300
4 and take care of the house. And she did not do that.
5 And eventually we had to ask her to move out because they
6 were destroying the house. And I wanted to protect my
7 niece and nephews. They were going to Oakwood Christian
8 Academy. They had to get a good education. I wanted to
9 protect them from criminal behavior and do all that we
10 could. I tried. My sister just kept doing things that
11 weren't appropriate.

12 Q And do you recall whether or not you were ever
13 listed as an -- or appeared as a reference for Betsy's
14 rental agreement?

15 A We didn't have a formal rental agreement.

16 Q Okay.

17 A She used us as a reference, yes. We came down here
18 before the reporter called me that fall. I don't
19 remember the exact date.

20 Q The reporter called you the day after the incident
21 we're here for?

22 A Right. Which would have been 2000, earlier that
23 year. I had to put my sister out. We were going to put
24 the house up for sale. I told her would I find her a
25 place if she would help sell the house so that we

1 wouldn't end up losing the house and losing all of our
2 money. She couldn't move. So I went to her rental agent
3 and found her a place and moved her into it. We rented a
4 truck and took all my garbage to the dump, cleaned up the
5 house, moved. We put it up for sale. The realtor
6 started showing it at that point. It was empty at that
7 point.

8 Q Okay. And so you did give your information to the
9 person also?

10 A Probably, I would imagine that.

11 Q Okay. And did you have a West Virginia's driver's
12 license?

13 A I lived in Harpers Ferry, West Virginia. I had a
14 house there since we were in the military, and then we
15 sold it in 2000.

16 Q Okay. You joined the military?

17 A I think we bought the house in 1990, sold it in
18 about 2000. Exact dates I would -- I would have to look
19 at the paper work.

20 MR. BROWN: Beg the Court's indulgence.

21 (Plaintiff's Exhibit Number 2 was marked for
22 identification.)

23 MR. BROWN: At this time, I would like to have
24 marked which would be exhibit B for the plaintiff to this
25 hearing, which would be Anderson City Title at the top,

CONNIE JANTZ - Direct by Mr. Brown

1 property management rental application, and it's -- the
2 second page is Anderson property management rental
3 application and a driver's license photo, and ---

4 MR. WATERS: Your Honor, I object at this time. We
5 don't know what it says about -- of course this drivers's
6 license is all by itself. I don't know how that was
7 attached, if it was attached, where it was attached.

8 MR. BROWN: Your Honor ---

9 THE COURT: I don't know that. I mean, I don't see
10 her name, Ms. Jantz' name on this application at all. So
11 I don't know how she could authenticate it.

12 THE WITNESS: I can speak to that. I remember going
13 to the property manager's office ---

14 MR. BROWN: Just one second.

15 THE WITNESS: I'm sorry.

16 MR. WATERS: I believe it's hearsay as well. It
17 wouldn't come under the business record.

18 THE COURT: She can testify that she's Connie Jantz
19 and -- and this is her driver's license. But as far as
20 the rental application goes, I would sustain the
21 objection.

22 MR. BROWN: And Your Honor, we are only admitting it
23 for a limited purpose.

24 THE COURT: It's not going to be submitted for that
25 purpose right now. I'm sustaining his objection.

1 MR. BROWN: Yes, sir.

2 THE COURT: Well, just mark -- it's marked for
3 proffer, but go on.

4 MR. BROWN: Thank you. I just want to her ask
5 questions ---

6 THE COURT: You cannot ask her any questions about
7 it.

8 MR. BROWN: Do I just question about ---

9 THE COURT: You're going -- what are you going to
10 ask her? If she ever filled out a property management
11 application? Did you fill this out?

12 THE WITNESS: I don't remember.

13 THE COURT: Okay. You cannot ask about one -- any
14 other property agreement. It's not relevant.

15 MR. BROWN: Well, I understand that, Your Honor.

16 THE COURT: I don't know why you're asking her the
17 questions.

18 MR. BROWN: It will become relevant when we get to
19 other witnesses. I'll wait until we get -- we'll see. I
20 will just follow up.

21 THE COURT: There was -- at some point she moved to
22 West Virginia and she testified to that already. I heard
23 it, Mr. Brown.

24 BY MR. BROWN:

25 Q To Harpers Ferry?

1 A That's where we lived for 10 years and then we
2 moved. Then we moved to our current address.

3 Q You moved to your current address. Let me follow up
4 on that. So that was fall of 2000, you were dealing with
5 Betsy and her rental?

6 A Yes.

7 Q Okay. And then in December of 2000 is when you
8 received the phone call from the newspaper reporter?

9 A Right. After that my sister said there had been
10 several warrants laying on the counter of the house. So
11 the house apparently was ---

12 MR. WATERS: I object to hearsay.

13 THE COURT: I would sustain the objection.

14 BY MR. BROWN:

15 Q And if I may? Then did you thereafter hear -- or
16 when did you hear from any of the attorneys for Mr. Wood?

17 A I never heard from any of them.

18 Q And how about from their mitigation team?

19 A No, you're the first one to ever call me about it.
20 The only news I ever heard was through the news after
21 that, via my sister.

22 Q When I called what did you think? What thoughts
23 were going through your head?

24 A I was shocked. I thought you were calling and going
25 to tell me my brother was being executed.

1 MR. WATERS: Your Honor, with all due respect, I
2 have to object to this examination at this point.

3 THE COURT: Okay. Well, he's made the point that
4 none of the lawyers ever contacted her. So where are ---

5 MR. BROWN: That's all I was asking. Okay. Thank
6 you, Your Honor.

7 BY MR. BROWN:

8 Q Now, let me go back to, first thing, who you lived
9 with. You also mentioned that you lived with some
10 children, your children, and you also lived with a child
11 who's known as John Raymond Wood?

12 A Yes.

13 Q Okay. And that's John's child?

14 A Yes.

15 Q And the mother of that child is Karen McCall?

16 A Yes.

17 Q Okay. And how did you come into custody of that
18 child?

19 A My sister had custody of him after his birth. My
20 sister, her criminal record, I'm sure -- obviously you
21 can look it up, sir. I was kind of overwhelmed. I did
22 not ask for custody of him, but as anybody, when I heard
23 from the reporter, the newspaper reporter, I did. My
24 niece came to live with me when my son was born in August
25 of 2001, my oldest niece, Laura Martinez, and she said

CONNIE JANTZ - Direct by Mr. Brown

1 that her mother was letting ---

2 MR. WATERS: Your Honor, I'm sorry. I have to
3 object to the hearsay.

4 THE COURT: I would sustain the objection.
5 Essentially she got custody of the child.

6 MR. BROWN: Yes, sir, I'm going to follow up.

7 THE COURT: I don't know. I mean ---

8 BY MR. BROWN:

9 Q I'm trying to ask, you had custody because the
10 sister wasn't carrying adequately?

11 A He was small in stature, had teeth rotting.

12 Q From your sister?

13 A Yes, my sister.

14 Q Not John, you got custody from your sister because
15 she wasn't looking after the child?

16 THE COURT: The child was born after John ---

17 MR. WATERS: The child was born after he was
18 incarcerated, five months after I believe. So -- or he
19 was born in April of 2002.

20 THE COURT: I don't know the relevance to this, Mr.
21 Brown.

22 MR. BROWN: I'm going to tie this in right now, Your
23 Honor, if I may?

24 BY MR. BROWN:

25 Q Now, if you had been called before the jury, would

1 you have informed them that if they spared John's life
2 you would have encouraged a relationship between John and
3 his child?

4 A Yes.

5 Q Would you have done so?

6 A At a later time when his son, I don't know, is
7 older.

8 Q Would you have done so because you believe your
9 brother John has redeeming qualities which he could
10 convey to his own son?

11 A I believe so.

12 Q On that basis would you have asked ---

13 A I would have limited that, sure, as any parent who's
14 looking out for the welfare of this child. But he would
15 have -- I would let him know. My psychologist has said
16 it's almost worse not to know than to know about ---

17 MR. WATERS: Your Honor, I object to that.

18 THE COURT: I would strike what her psychologist
19 told her. Okay.

20 THE WITNESS: Sorry.

21 BY MR. BROWN:

22 Q But you would done so because you believe that John,
23 your brother, had something beneficial to provide?

24 A Yes.

25 MR. WATERS: Your Honor, object to leading.

CONNIE JANTZ - Direct by Mr. Brown

1 THE COURT: You're leading the witness, Mr. Brown.

2 MR. BROWN: All right. I apologize.

3 BY MR. BROWN:

4 Q If John is executed, what impact do you believe that
5 would have on his son?

6 MR. WATERS: I ---

7 THE COURT: I sustain the objection.

8 MR. BROWN: Your Honor ---

9 THE COURT: I sustain the objection, Mr. Brown. Go
10 ahead. Move on.

11 BY MR. BROWN:

12 Q Do you believe that there will be suffering for his
13 son if he's executed?

14 THE COURT: I sustain the objection.

15 MR. WATERS: Your Honor, same thing.

16 BY MR. BROWN:

17 Q What impact does John's pending execution have upon
18 you?

19 MR. WATERS: Your Honor, object.

20 THE COURT: I would sustain the objection.

21 BY MR. BROWN:

22 Q Would you have asked the jury to spare your brother?

23 A Yes.

24 Q Why would you have done so?

25 MR. WATERS: Your Honor, I object to that. I

1 believe that case law allows just a general plea for
2 mercy but nothing more than that. They've gone beyond
3 that.

4 MR. BROWN: I just disagree with that. We believe
5 the case law is clear that while there is some
6 limitations on what is called third party impact
7 evidence, that as long as it's tied to characteristics --
8 in other words, if she says, I would have asked him to be
9 spared because deep down he's a loving individual, if
10 that's by chance what her answer is ---

11 THE COURT: Why would you have asked the Court to
12 have mercy in the case?

13 THE WITNESS: Because I believe that we all do
14 things that are bad and that we shouldn't, as a society,
15 take away the right, the ability of that person to come
16 to a point where he seeks forgiveness.

17 MR. BROWN: Your Honor, obviously that last
18 statement would be objectionable, but I think it's plain
19 that she would have asked for mercy. I don't know how
20 much further we need to go.

21 THE COURT: That statement of how society punishes
22 people is not for her to decide.

23 MR. BROWN: I agree. I understand that.

24 THE COURT: Okay.

25 MR. BROWN: All I'm trying ---

1 THE COURT: You -- she's already answered the
2 question.

3 MR. BROWN: Thank you, Your Honor.

4 BY MR. BROWN:

5 Q I guess the last question is, do you condone the --
6 condone the conduct of which John has been charged?

7 A No, I do not.

8 Q But clearly you love him?

9 A He's my baby brother, I totally loved him with -- of
10 course I loved him. Who doesn't love their sibling? We
11 had less than a normal bit of childhood. We needed to --
12 we loved each other.

13 Q What does the term tagalong mean?

14 A My brother was my little tagalong for years. He
15 followed me around. I loved him.

16 MR. BROWN: Ms. Jantz, if you'll answer any
17 questions that the Attorney General may have.

18 CROSS-EXAMINATION

19 BY MR. WATERS:

20 Q Ms. Jantz, I have to ask a few questions too. I'll
21 try to make it as short as possible, okay?

22 A Okay.

23 Q Where were you living when Trooper Nicholson was
24 murdered?

25 A In Harpers Ferry, Virginia.

1 Q Okay. I believe you said y'all sold that house
2 in -- somewhere in 2000?

3 A We sold it after we sold the house in town.

4 Q Okay. Do you know the date?

5 A I would have to look at my records.

6 Q All right. How ---

7 A We sold that house -- the house in Harpers Ferry was
8 sold in -- my son was born in 2000. After he was born we
9 sold it in the summer or fall of 2001.

10 Q Okay. And where did you move from there?

11 A To the house we currently live in.

12 Q Which is with?

13 MR. BROWN: Your Honor, at this point in time I ask
14 to approach? There is a matter of the mother. Since --
15 I don't know how else to say it, but it's a matter I'd
16 like to approach about. She has expressed some security
17 concerns. I did raise them at the last hearing.

18 MR. WATERS: Okay. Your Honor, I'll withdraw that
19 question.

20 THE COURT: I don't know what kind of concerns she's
21 got. You're supposed to answer the questions you're
22 asked. She's appeared under oath. He is entitled to
23 full cross-examination.

24 MR. BROWN: It's trying to not answer the ---

25 THE COURT: Mr. Brown, tell me what you want to ---

CONNIE JANTZ - Cross by Mr. Waters

1 MR. BROWN: Thank you. So you're ---

2 THE COURT: Explain this -- approach.

3 (A bench conference was held.)

4 THE COURT: The concerns Mr. Brown has expressed to
5 me are not -- there is no reason to not be able to ask
6 questions about the issue. We'll put it on the record as
7 soon as we take a break.

8 THE WITNESS: Do you need a street address?

9 THE COURT: There was no street address in the
10 question. You need to answer the question he asked,
11 ma'am.

12 THE WITNESS: Okay.

13 MR. WATERS: Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: Go ahead.

16 MR. WATERS: Thank you, Your Honor.

17 BY MR. WATERS:

18 Q Just right now, in what city are you living?

19 A Knoxville, Maryland.

20 Q Knoxville, Maryland. Is that where you lived right
21 after you sold the house in Harpers Ferry?

22 A Yes.

23 Q Okay. And apparently though you're very concerned
24 about that address being well known, correct?

25 A Yes.

1 Q Okay. So you do not like to give that out, right?

2 A My mother I feel is a threat, and a dangerous
3 person. I don't want her near my children, nor John's
4 child, or my nieces.

5 Q You're not listed in the phone book?

6 A We have an unlisted number. We did not until we
7 moved which was ---

8 Q When you moved you were trying -- you did not want
9 your mother to know where you moved to?

10 A Right.

11 Q Okay. All right. And now you stated that the
12 attorneys never called you about this case?

13 A Right.

14 Q Did you talk to the family, to your family at all
15 about the case?

16 A No.

17 Q Never talked to Betsy about the case coming up, your
18 sister?

19 A Talked to her the day after it occurred. Her
20 children knew it upset me. I didn't want to talk to
21 Betsy very much, but she told me about the baby and --
22 they told me Betsy wasn't caring for the baby. So I know
23 very little about the case.

24 Q You did not get custody of Mr. Wood's son until
25 after he was convicted, correct?

1 A Right. Well, I don't know when he was convicted. I
2 never seen any -- I don't know. I never seen any
3 paperwork. I have only read about it in the newspaper
4 and on the web.

5 Q Okay. So you were aware that the trial was going on
6 when it was going on, or did you not find out afterward?

7 A I think it was after the trial was over. It was
8 like on the web news. Also, I didn't want to know the
9 exact date.

10 Q You didn't attempt to contact Mr. Wood in prison and
11 talk to him about the case?

12 A No, no. Not until I was sent custody documents,
13 that was the first time I attempted that I can remember.

14 Q Did you -- did Mr. Wood attempt to contact you from
15 prison?

16 A I don't believe so, other than about the custody. I
17 read a letter about custody. It was probably a couple
18 years later.

19 Q When did you get -- did you go to court for custody?

20 A John was two when we went to court for custody. So
21 I don't know, the child was two.

22 Q Right. Now, if -- so when you moved from Harpers
23 Ferry to your present address, now if the attorneys for
24 Mr. Wood had contact with his mother, she would have been
25 unable to tell them where you were, correct? If -- she

1 would not have known the physical address, but if she had
2 made any indication to them she wanted to talk to you,
3 would she be able to ---

4 A One of the kids could call. I would have talked to
5 them.

6 Q Okay. Betsy knew where you were?

7 A Betsy knew I lived in Maryland.

8 Q Did she have a phone number for you?

9 A My niece moved up there I would say in 2001, so ---

10 Q If Betsy was in contact with the Mr. Wood and his
11 attorneys, Mr. Wood's defense team, was there any reason
12 why Betsy couldn't have given them ---

13 A I was real angry at my sister. After we moved her
14 out of the house we did not have any conversations. Then
15 after that my sister stole from my oldest niece. She had
16 a credit card in her name. We have been paying the bill
17 off. Of course I was very furious with my sister..

18 Q Okay. So were you trying to get away from your
19 mother, you didn't want ---

20 A I did not want her to know.

21 Q You and your sister were not on speaking terms,
22 correct?

23 A Correct.

24 Q Okay. Did you ever give your sister the phone
25 number for you?

1 A I believe she did. She wrote me a letter with a
2 picture of the baby. She knew how to contact me. She
3 had the P.O. Box.

4 Q A P.O. Box in Maryland?

5 A Right. That was my mailing for this purpose. I did
6 get a letter with a picture of the baby.

7 Q Okay.

8 A At the -- it didn't say anything but, you know,
9 Merry Christmas.

10 Q Had you had any -- have you had any communications
11 with Mr. Wood after his conviction, until this point
12 today?

13 A Yes, I talked to him during the last hearing.

14 Q That was it?

15 A I -- I'm trying to remember. I wrote him a letter.

16 Q Okay.

17 A I believe just one time.

18 MR. WATERS: All right. Thank you very much.

19 THE COURT: Thank you. You can come down.

20 MR. BROWN: Briefly, Your Honor?

21 REDIRECT-EXAMINATION

22 BY MR. BROWN:

23 Q As far as contact information, your listings for
24 like utilities, and all of those things, they're still
25 under your name?

1 A Yes.

2 Q Okay.

3 A My husband and I both usually.

4 Q Okay. Your name does appear on the public utility?

5 A Yes.

6 Q Okay. And again you have a P.O. Box listed in
7 Harpers Ferry?

8 A In Harpers Ferry, we did not have mail service to
9 our address. They did not deliver. So even in that
10 development we had a P.O. Box. But my parents knew that
11 address, street. They actually -- they only visited once
12 because my mother stole some Social Security during that
13 visit.

14 Q Without going into that briefly. But you -- after
15 your move, which was around the time of John's arrest?

16 A This was after. A little after.

17 Q Your move was after. You forwarded your mail?

18 A Yes.

19 Q From the address that was listed on the driver's
20 license?

21 A Yes.

22 Q It was forwarded to the address in Maryland?

23 A Yes.

24 Q That would be done for about a year?

25 MR. WATERS: Your Honor, object to the leading.

CONNIE JANTZ - Redirect by Mr. Brown

1 THE WITNESS: I think it was six months.

2 THE COURT: I would sustain the objection.

3 BY MR. BROWN:

4 Q How long would that have been done?

5 A Six months.

6 Q Okay. And your sudden move -- about when was the
7 move again?

8 A I believe it was September of 2001.

9 Q Okay.

10 A But it might have been August, but in that three
11 month period.

12 Q Okay. Six months, put it at the beginning of '02?

13 A No -- yes, yes.

14 Q And lastly, your concern about your mother that you
15 mentioned to -- I think she came up -- she came to visit
16 you at some point?

17 A When I was first married they came to visit. They
18 stole from us. So that was the last time they were ever
19 invited in our house.

20 Q Is that the only thing she's done bad to you?

21 A No, but the Court doesn't want to be here all
22 afternoon.

23 Q Okay. There was another incident you specifically
24 mentioned that ---

25 A She had shoplifted from a store I was working at.

1 Q What about your husband?

2 A She stole his class ring. He didn't eat anything
3 she cooked. She had been cooking. And after one
4 incident where he was sick for two days.

5 Q You suspect she had something to do with that?

6 A Yes, I know she did. She was out talking about
7 poison and everything.

8 THE COURT: I have no further questions. Answer any
9 questions the Attorney General may have.

10 RECROSS-EXAMINATION

11 BY MR. WATERS:

12 Q I just have one final question. Why didn't you
13 contact -- if you wanted to express a plea for mercy for
14 Mr. Wood, why didn't you contact his attorneys?

15 A I was in shock when I found out what had happened.

16 Q Okay. But the trial was two ---

17 A I didn't know anything else about the trial. I
18 was -- my sister was never concerned about what was going
19 on with us.

20 MR. BROWN: Redirect, Your Honor?

21 THE COURT: Okay.

22 MR. BROWN: I'll stop there, Your Honor.

23 THE COURT: All right. Thank you. You can come
24 down.

25 MR. BROWN: Your Honor, we've two witnesses that

1 won't be here until three o'clock. I would ask -- they
2 are both coming from Columbia. But almost all of the
3 witnesses are from out of town. I would ask that we give
4 them time ---

5 THE COURT: All right. I got no problem working
6 around the witnesses. We'll do whatever we need to do,
7 but within reason, I'll put it that way.

8 MR. BROWN: And again, Your Honor, I've got Dr.
9 Schwartz-Watts. I asked her to be here at three o'clock
10 so we could put her right up. She is coming from
11 Columbia. The other witnesses may be riding with her,
12 I'm not sure.

13 THE COURT: We don't have any witnesses we can take
14 until three o'clock?

15 MR. BROWN: There is a local probation officer,
16 federal probation officer. I believe we told him to be
17 here tomorrow morning, Thursday morning. I apologize,
18 but everything has been changed.

19 THE COURT: My question is, are there any witnesses
20 we can take before three o'clock?

21 MR. BROWN: Not that I'm aware of right now, but we
22 had been told different times twice.

23 THE COURT: Okay. We'll work -- I'm going to work
24 with you within reason. We'll work with the State within
25 reason on his ---

1 MR. BROWN: I appreciate that.

2 THE COURT: And as I say, it's a very important
3 proceeding. We're going to make sure everything gets
4 done. All right. We'll start back at 3:00. If they get
5 here before then we'll start before then.

6 MR. BROWN: Thank you, Your Honor.

7 THE COURT: All right.

8 (A short recess was taken, after which, the trial
9 continued as follows:)

10 THE COURT: Okay. Mr. Brown, your next witness.

11 MR. BROWN: May it please the Court? I would call
12 Jeff Naylor.

13 THE CLERK: Mr. Naylor, if you'll step up here
14 please and raise your right hand.

15 JEFF NAYLOR

16 Having been first duly sworn, testified as follows:

17 THE CLERK: Thank you. You may be seated. State
18 your full name for the record please.

19 THE WITNESS: Jeffrey Craig Naylor.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. BROWN:

23 Q Mr. Naylor, would you give the Court a little bit of
24 your education and work background as it relates to
25 forensic computer analysis?

1 A Sure. I've got a four year degree. I've been doing
2 computer work since 1985. I started in the United States
3 Army, where I was a special agent with the United States,
4 State Criminal Investigation Division. I did computer
5 work as one of my specialities while I was in the
6 military. After leaving the military I have been doing
7 computer work, computer forensic work at the Richland
8 County Sheriff's department with my own company.

9 Q And as part of that work, does that deal with
10 doing -- retrieving data off of computers?

11 A Yes, sir, it does.

12 Q And I guess examples of that would be if an item --
13 if a computer was found without the rest of its
14 functioning parts?

15 A Yes, sir. One of the main things is analyzing the
16 computer and the hardware prior to trying to retrieve
17 that data.

18 Q And you mentioned you have a service now that deals
19 with that. Are you employed sometimes in the legal
20 setting?

21 A Yes, sir, a great deal.

22 Q And sometimes a lawyer, or somebody on behalf of a
23 lawyer will contact you to get information off of a
24 computer?

25 A Right. Generally it is. I do work for some

1 corporations, the government sometimes. I still go back
2 and do some teaching for the United States Army, and I do
3 some for attorneys also.

4 Q Okay. And I guess the data that comes off the
5 computer is what, akin to like if somebody carried a
6 notebook in the olden days?

7 A Yes, sir.

8 Q And have you found in your experience that you will
9 find the ability to trace a person's thought patterns
10 through where they go on a computer, or where they
11 access?

12 MR. WATERS: Your Honor, I would object to that.
13 Number one, he's not been qualified. Number two, he's
14 qualified in forensic computer. How can he testify as to
15 someone's thought pattern?

16 THE COURT: All right. I sustain the objection.

17 MR. BROWN: Let me first offer Mr. Naylor as an
18 expert in forensic computer analysis.

19 MR. WATERS: I have no objection to that.

20 THE COURT: Okay.

21 BY MR. BROWN:

22 Q And subsequent to that, have you ever been employed
23 with the government in a situation where you're trying to
24 obtain information about a person by accessing their
25 computer?

JEFF NAYLOR - Direct by Mr. Brown

1 A Yes, sir. On several occasions I have been employed
2 to -- where I have been asked to look at the data. And
3 based on different types of tests that you can do, one,
4 with the computer's forensics you can get a very good
5 idea of where the person has been, what type of
6 information they've looked at, how much time they spent
7 on it, and you could get a good idea of what the
8 personalities are of these people.

9 Q When you have -- you don't mean physical?

10 A Not physical, no, sir, through the internet and with
11 the use of the computer.

12 Q Okay. And then you turn the information that's on
13 it and everything to somebody else who analyzes it in --
14 like let's say an investigation that would be conducted
15 or whatever it might be?

16 A Correct. I mean, I have over 18 years experience as
17 an investigator. Some of my experience, some of my
18 specialized training deals with personality profiling.

19 Q Okay. Maybe you can, as an example for the Court,
20 tell us how computer data would be used to profile a
21 person?

22 A One quick example would be if you run a time line on
23 a computer. One of the programs we run, which is called
24 Incase, it allows us to run a time line. You follow the
25 person from one web site to another web site, look at the

1 type of data it has there, web accesses, and the type of
2 information they looked at. Sometimes you get
3 information from chat rooms. You actually get to read
4 what they've written. That's just a small part of the
5 information that you can acquire and start learning what
6 that person is interested in and what they are searching
7 for.

8 Q And so if you've got somebody looking at or typing
9 in something that says that, you know, I feel -- I'm
10 interested in whatever the topic may be, like you know,
11 green eggs and ham, then that would be a concrete example
12 that he's interested in green eggs and ham?

13 A He would have some type of interest in it. He's
14 searching for it.

15 Q And then on the other hand, if somebody just was
16 searching for food or something like that, he may still
17 indicate an interest in green eggs and ham?

18 A I don't know whether you would actually be able to
19 get something that specific, but you know they do have an
20 interest some in the food category.

21 Q And how accurate is the ability of a computer for
22 searching a person -- how sensitive is the equipment that
23 you have to pull this data off?

24 A The Incase program which I run has been certified.
25 They have what's called the White papers which shows

JEFF NAYLOR - Direct by Mr. Brown

1 numerous court cases and at the federal level that have
2 been accepted. That Incase program has been accepted as
3 being valid. The exact percentage I couldn't tell you
4 right now.

5 Q But that program is -- use of that program in the
6 procurement of data has been accepted?

7 A Has been certified at the federal level.

8 Q Okay. Did -- at the request of myself or Mr.
9 Godfrey, at some point were you asked to come down and
10 review some evidence?

11 A Yes, sir, I was.

12 Q And would you tell the Court a little bit about your
13 efforts to try to get, or retrieve any electronic data
14 that was evidence obtained ---

15 A Sure.

16 Q --- in the investigation of this case?

17 A Two computers, Your Honor. One of the computers, I
18 took the hard drive out of the computer. After I did my
19 brief analysis, I checked out the outside part of the
20 computer. The outside of the computer showed no damage
21 whatsoever. When I got to the hard drive, I took the
22 hard drive out of the computer. I looked -- there's a
23 little pin, just the easiest way to refer to it, because
24 they do have several different names, but there is a
25 little pin that requires you to connect up to it. And

1 there are six pins generally. There was one pin missing.
2 And if there is a pin missing your ability to get
3 information is curtailed. The second computer had no
4 hard drive with it at all.

5 Q Okay. And you had to -- when you went down to this
6 evidence room, were you looking for specific items that
7 you had identified off some investigatory report?

8 A There was -- initially I was just going there to --
9 when I got the computer I wanted to start out with a
10 general analysis. And there are anywhere between 20 to
11 30 different tests with this program that you can run.
12 And depending on the type of case, depending on the type
13 of tests that you run, I generally go the first day just
14 to get an overall view of what's on it.

15 Q Now, what you found on the hard drive without a pin
16 on it, was that something that indicates you may still
17 have the ability to get data off of that hard drive?

18 A We can reconstruct the hard drive. What it requires
19 you to do is put another shell on it basically. There
20 are several arguments out there previously that says that
21 you're changing the hard drive. Technically you're not
22 changing the information, but you're changing the hard
23 drive itself, but there is -- now, when you rebuild a
24 hard drive, replace the pins, the data is still intact.
25 It's not altered.

1 Q Okay. And so have you had the opportunity to
2 reverse -- would that at least be something you could try
3 to pull off?

4 A Right. We do have the resources generally. I did
5 not attempt to do that because again I just -- that was
6 something that I waited for permission to do.

7 Q And so basically you cannot go and -- it has to be
8 done with the Court authority ---

9 A That's correct. That's right.

10 Q --- to actually modify the evidence?

11 A That's correct.

12 Q Okay. But otherwise you could do it?

13 A Yes, sir, I can. It will take a couple hours, but
14 yes, sir, we could do that.

15 Q Okay. And retrieving data, after you reconstruct
16 the hard drive, is that just as easy as it would be if
17 the hard drive would be damaged?

18 A Exactly. It takes the exact amount of time and
19 effort, and there would be -- there would be no change.
20 It would not show that the outside shell of that hard
21 drive has been altered.

22 MR. BROWN: Okay. All right. Beg the Court's
23 indulgence. No further questions at this time, Mr.
24 Naylor.

25 At some point, Your Honor, I say this because, this

1 is co-counsel's, he had made a request for authorization,
2 funding (sic). And of course I would like to make a
3 request for the authority on the record from Your Honor
4 for Mr. Naylor to be able to actually extract or
5 reconstruct the hard drive and extract that data? And I
6 just say this at this time. It may not be -- maybe his
7 cross-examination should come first.

8 MR. WATERS: I don't know what cross-examination I
9 could have based on what has been presented so far. In
10 fact, I have none.

11 THE COURT: Okay. You can come down.

12 MR. BROWN: Thank you, Your Honor.

13 THE COURT: As far as the motion to reconstruct just
14 made, that's denied. Next witness, Mr. Brown.

15 MR. BROWN: Thank you, Your Honor. We call Donna
16 Schwartz-Watts.

17 THE COURT: I don't know what in the world you could
18 find on his -- or what was put on there, and a lot of
19 that stuff. But I heard him testify. I don't know what
20 kind of -- what would come out so that just is kind of
21 speculation.

22 MR. BROWN: It would ---

23 THE COURT: If you can tie it in with some other
24 witnesses you can renew your motion.

25 MR. BROWN: Thank you, Your Honor. At this time,

1 Your Honor, I call Dr. Schwartz-Watts.

2 THE COURT: You better get Mauldin up here.

3 MR. BROWN: Okay. Yes, sir.

4 THE COURT: Doctor, place your left hand on the
5 Bible, raise your right hand.

6 DONNA SCHWARTZ-WATTS

7 Having been first duly sworn, testified as follows:

8 THE CLERK: Thank you. You may be seated. State
9 your full name for the record, please.

10 THE WITNESS: Donna Mayer Schwartz, S-c-h-w-a-r-t-z,
11 hyphen, Watts, W-a-t-t-s.

12 THE CLERK: Thank you.

13 THE COURT: Do you need all these papers, or is this
14 for another case you're working on?

15 THE WITNESS: Unfortunately, Your Honor, that's with
16 this case.

17 THE COURT: Okay. Very good. Go ahead.

18 MR. BROWN: May it please the Court, Your Honor?

19 DIRECT EXAMINATION

20 BY MR. BROWN:

21 Q Dr. Schwartz-Watts, let me start with something that
22 I neglected to ask Mr. Naylor. What is your relationship
23 to Mr. Naylor?

24 A He's my husband.

25 Q Okay. And would that relationship distort, or

1 change any of the testimony you're here to give today?

2 A No. We haven't -- just for the record, I'm not even
3 real sure what Jeff has testified to. He's a computer
4 forensic analyst, does computer work and analyzes
5 computers. I know there was a computer in this case.
6 But in terms of my opinion, my evaluation of Mr. Wood, he
7 knows nothing about anything I would testify about.

8 THE COURT: Has he analyzed your computer?

9 THE WITNESS: Probably so. Probably so, Your Honor.

10 MR. BROWN: While we're on the subject, why don't we
11 start with that. Tell me your experience?

12 THE COURT: Is that privileged information that he
13 could have access to it?

14 THE WITNESS: You know what, it's an open book. I
15 don't think there's anything on there I would be too
16 worried about.

17 THE COURT: Okay.

18 BY MR. BROWN:

19 Q If I may, Dr. Schwartz-Watts, can you tell us and
20 the Court a little bit about the times that you have had
21 access to a person's computer and what you have been able
22 to use that information for, as far as evaluation,
23 diagnosis or treatment?

24 A Sure, sure, sure. That's -- it's more enlightening
25 certainly than earlier. There has been times when

1 forensic psychiatrists, when there is diagnostic issues
2 where looking at a computer may or -- may be helpful. In
3 Mr. Wood's case, I -- specifically in this case we were
4 very interested in his computer because he had told me
5 during the course of my evaluation of him he had ordered
6 something specifically for him. He had ordered some form
7 of diet fuel off of the computer. It was called DNP.

8 MR. WATERS: Your Honor, I hate to interject, but I
9 have a relevance objection. Looking at the first and
10 second amended application, there is no allegation,
11 unless I'm mistaken, that counsel was ineffective for
12 failing to provide Dr. Schwartz-Watts with information
13 off of the computer. And so I don't see the relevance of
14 the testimony based on that.

15 MR. BROWN: There are two grounds, Your Honor, that
16 I believe this is relevant to at least. The first ground
17 would be the fact that there was not enough mitigating
18 information presented in court. And now that goes to the
19 general fact that Dr. Schwartz-Watts testified as a
20 mitigation witness and she wanted access to his computer.
21 And so this ties in directly with getting the mitigating
22 information off the computer to the doctor to the jury.
23 Secondly ---

24 THE COURT: I'm going to overrule that objection at
25 this time. We'll go a little ways and see what happens.

1 Go ahead.

2 BY MR. BROWN:

3 Q And you were testifying about the substances that
4 Mr. Wood had ordered, or had researched on the computer.
5 What did you say it was?

6 A Yes, sir, it was a substance called DNP. It -- what
7 it was -- what happened, I tried to look it up and I
8 actually had to call GNP. I looked it up on the internet
9 myself, and it was a substance that was manufactured as a
10 diet fuel. It was a weight loss fuel. And it actually
11 is a derivative of TNT. Mr. Wood told me about that, and
12 told me that it was a diet fuel he had ordered off the
13 internet and had used it to lose weight. And prior to
14 his offense he had lost some 50 pounds taking this. It
15 was in the form of pills. And I done some internet
16 research on it, and sure enough, his account to me was
17 correct from the research I had done at the time of his
18 trial. And it actually is -- it was marketed as a
19 derivative of TNT. And so at that time when Mr. Wood had
20 told me those things, I had asked counsel at the time
21 that perhaps we should look at the computer, that he had
22 a history -- Mr. Wood had a history of being very
23 familiar with the computers. Him and his sister both.
24 They had evidently at some point ran some kind of
25 computer company.

1 Q May I stop you briefly? Which sister is that?

2 A Betsy Martinez.

3 Q Okay. He has two sisters and I just wanted to
4 clarify. I apologize.

5 A Yes. I also knew that he had also had a history
6 of -- he had had a prior criminal conviction for
7 counterfeiting, so he was very familiar with the
8 computers. He also had told me that prior to his crime
9 that he was delivering computers. He was planning to go
10 to Alabama or Louisiana to deliver computers to some of
11 his nieces and nephews, he and his girlfriend's family.
12 So I knew he was very familiar with the computers. And
13 because of the DNP issue, I had asked that the computer
14 be evaluated. But also because of some of his diagnostic
15 issues, sometimes it's helpful to see if we can learn
16 about what people think by some of the things they look
17 at on the computer.

18 Q Sites they visit and that sort of thing?

19 A I had just requested it. I don't know what had
20 happened at that point, but I was very interested in his
21 case because I knew he was on the internet ordering some
22 diet fuel. I had never heard of it before.

23 Q There are other times -- let me rephrase. You also
24 treat or at least serve in a capacity with the sexually
25 violent predator program, things like that, and I ask

1 that -- do you also try to get an indication of what a
2 person reviews for other reasons related to diagnosis,
3 just what he's taking and getting ---

4 A Oh, yes, much more commonly now with the Dateline
5 cases and internet predator cases that are being
6 prosecuted presently. That's much more -- it's much more
7 needed now. The reason being if that you know of cases
8 where the gentleman is soliciting sex on the internet
9 with teenage girls, the only scientific data we have
10 about pedophiles, we know if they download child
11 pornography that's a valid indicator he may or may not be
12 a pedophile. So now when the Attorney General has cases
13 where they're prosecuting people for soliciting sex on
14 the internet that -- I ask that the computer be evaluated
15 to see if there is -- is any evidence they're visiting
16 sites of children and that sort of thing. We can learn a
17 little bit about their behaviors and maybe some clues
18 about diagnosis by looking on the computer.

19 Q So you would have liked to see it as well?

20 A Oh, sure. Not just directly what he was looking at
21 as far as substances that he was ingesting, but also for
22 where his thoughts were going on the computer would be
23 helpful. It certainly would be more information about
24 him. For example, very specifically from Mr. Wood, some
25 of the things I would have been interested in is Mr. Wood

1 had a history -- he reported he had many phone skills.
2 They were learned working with his mother's cell phones.
3 He described himself as a self-made engineer. I would
4 have been very interested to see if he had been going to
5 these kind of sites to teach himself about these things,
6 or were these perhaps fabrications. So it would have
7 been helpful to see if in fact he really did know about
8 some of these things or not.

9 Q Let me also ask you this. One of the things he was
10 diagnosed as bipolar, at least on his second diagnosis
11 you would have given him, correct?

12 A Correct.

13 Q One of things on there is that he didn't get a lot
14 of sleep, always awake?

15 A That's correct.

16 Q Is that not something also you can get off the
17 computer, is how active a person is over the course of a
18 period of time, like a 24 hour time period?

19 A Certainly. You can tell what times they're being on
20 the computer, or certain times or whatnot, certainly. If
21 a person is on the computer 20 hours a day, you know
22 they're not sleeping on the computer 20 hours a day, they
23 sleep after that. But it certainly will let you know
24 what their patterns are.

25 Q Okay. So that's something you would have liked to

1 have seen?

2 A Certainly would be helpful.

3 Q Okay. Now, to kind of go through a few things. You
4 testified at trial that -- you testified at trial only
5 during the sentencing phase of the proceedings?

6 A Correct.

7 Q Okay. And you were not his treating physician?

8 A That's correct.

9 Q Okay. And one of the things, you had an opportunity
10 to review the Department of Mental Health records?

11 A Yes.

12 Q Okay. Before you gave your testimony?

13 A Yes.

14 Q Did you have an opportunity to review any notes of
15 an interview that was conducted by Dr. Tezza as she was
16 interviewing Karen McCall?

17 A Yes.

18 Q Okay. You had the opportunity to review those even
19 though the interview was conducted right at the eve of
20 trial?

21 A I believe that I was. I believe that I had seen
22 those notes.

23 Q Okay. Okay. Did you find those notes to
24 corroborate their diagnostic -- or corroborate your
25 diagnosis?

1 A If I remember correctly at the time, I think the
2 notes were inconsistent with my notes. I don't remember
3 anything in those notes that was consistent with the
4 information I had retrieved from Ms. McCall.

5 Q Okay. And in fact, didn't you also speak to Ms.
6 McCall?

7 A I had evaluated her. I had actually gone in to the
8 Anderson County Detention Center. We had tried a few
9 times. We were finally successful. We had to get
10 information from her attorney. So Mr. Mauldin and I had
11 tried on a number of occasions and then we were finally
12 successful. So I saw -- it was very shortly before the
13 trial, maybe two weeks or so before, but we were able to
14 see her.

15 Q Okay. And did you -- have you since then had an
16 opportunity to review any Department of Corrections'
17 records?

18 A Yes, I did briefly yesterday.

19 Q Okay. And I'm going to go kind of back through --
20 through a few of the records. Now, I must tell you our
21 records probably only go through -- well, I would have to
22 say they are as recent as some of the records the
23 Attorney General has on this. If I may hand these two
24 pages up? Your Honor, if I may approach the witness? Be
25 sure and look at page five ---

1 THE COURT: She's entitled to everything we got.

2 MR. BROWN: Yes, sir.

3 THE COURT: These are two pages?

4 MR. BROWN: Just page and a half I think, yes, sir.

5 THE COURT: Okay.

6 BY MR. BROWN:

7 Q Okay. And you also had the opportunity to get some
8 family history?

9 A Yes.

10 Q Okay. And the family history it was through the
11 social worker Jeffrey Youngman?

12 A Correct.

13 Q And through a mitigation specialist?

14 A Paige Tarr.

15 Q Yes. And you actually spoke to Betsy Martinez?

16 A Correct.

17 Q Was there any other family history you garnered
18 through Mr. Wood, I guess?

19 A Yes. I met with Mr. Wood about five times and he
20 was able to provide some family history. Then I also got
21 some family history through Karen McCall as well.

22 Q Okay. Did you ever have the opportunity to speak
23 with Connie Jantz?

24 A Not until just a few minutes ago.

25 Q Okay. And did anybody ever suggest that you speak

1 to Connie Jantz?

2 A Not that I recall, but I believe, if I can
3 recollect, I think the team -- I think Mr. Mauldin, they
4 had tried but just weren't able to locate -- I'm not sure
5 why she wasn't called.

6 Q And let me ask you, I mean did there come a point in
7 your testimony when you do talk about Connie Jantz, a
8 sister named Connie suffering from depression?

9 A That's correct. I knew from one sister, Betsy
10 Martinez, who I talked with, she knew that Ms. Jantz had
11 a history of treatment for depression. Yeah, I do not
12 know why Ms. Jantz wasn't evaluated, or talked with,
13 interviewed. I'm not sure. I can't recall.

14 Q That's something you would be interested in?

15 A Oh certainly, especially after just having talked
16 with her. She gave me some personal history I wasn't
17 aware of. Absolutely.

18 Q Let's go back to the fact that Ms. Jantz suffers
19 from depression. Why is that important when you're
20 forming an opinion regarding ---

21 A Well, it just -- again, a lot of things have just
22 bolstered my opinion. Any time you have a death penalty
23 case and you have somebody with no prior history of
24 mental treatment, you're coming to a jury and telling
25 them somebody is mental ill, the more evidence that you

1 have that can support that, other than your interviews
2 with the patient, is certainly more convincing. It's
3 more credible the more family members you have that have
4 a history of treatment for depression, have those records
5 of treatment, that certainly aren't facing legal charges.
6 I think that adds credibility to my opinion and the
7 diagnosis, and also there were many things Ms. Jantz just
8 told me that -- that certainly would have added
9 credibility to my opinion.

10 Q And let me ask you about that. Did you potentially
11 bolster -- I feel like that the prosecutor scored a few
12 points in his cross-examination, and I'm going ---

13 THE COURT: I would sustain the objection to that
14 question. She cannot express an opinion about whether
15 the prosecutor scored points. She's a very qualified
16 expert.

17 MR. BROWN: Yes, sir.

18 BY MR. BROWN:

19 Q Regarding the cross-examination, one of the things
20 that was discussed was the fact that you never met with
21 the parents, and met with Betsy Martinez one time. I
22 guess this may go back to something I've asked earlier.
23 Would you liked to have met all of his family members?

24 A Yes, and you know, it is certainly important if --
25 it would be important for somebody to have met with the

1 family members. If I couldn't have, if a social worker
2 was able to, somebody would have had a lengthy interview
3 that I could rely upon. A social history is where a
4 qualified social worker would meet with family members,
5 or if the social worker wasn't available a health
6 substitute would be able to meet with the family, the
7 parents, and take a kind of history. Somewhere there
8 would be a family history that would be adequately taken
9 and documented that I could have relied upon. So if
10 somebody would have done that at some point this would be
11 very helpful.

12 Q Okay. And I understand Ms. Tarr did speak with the
13 mother at some point in time, does that sound correct?

14 A Yes, I was familiar with that, but again, it would
15 have had to have been in a manner that was comprehensive,
16 thorough and reliable. For example, there's -- to talk
17 to just the mother and not the father, there is going to
18 be -- there's no way to asses how credible the mother's
19 report would have been.

20 Q Okay. And let me ask in fact on that, you would not
21 consider that contact extensive enough?

22 A That's correct.

23 Q Okay. And isn't that one of the things the
24 prosecutor questioned you about?

25 A If I recall correctly, yes.

1 Q And of course the record speaks for itself. And
2 there was also a question about Pittman, David Pittman, I
3 believe a family member in Alabama that was related to
4 Ms. McCall. And evidently Mr. Wood had seen them
5 probably about two weeks or so before this crime and ---

6 A I was not aware that he had spent time. They had
7 given statements and had some observations about Mr.
8 Wood's behavior.

9 Q And in fact, were you aware he may have held some of
10 the personal items of Mr. Wood, such as some computer
11 items?

12 A I don't recall.

13 Q And that's ---

14 A When Mr. Ariail cross-examined me he did not show me
15 the statement, he just asked if I knew it existed. I was
16 not able to see those statements. I still haven't seen
17 them.

18 Q Okay. And would you have felt more confident if you
19 had known what they were when you were testifying?

20 A Sure.

21 Q Okay.

22 A But I would also say I felt -- also felt that if it
23 would be something that would have changed my opinion I
24 think Mr. Ariail would have shown it to me.

25 Q Okay. True. Now, let's go back to the diagnosis

1 because that's an issue in this case. You came up with a
2 different diagnosis than the one that Dr. Narayan came up
3 with. He came up with an access two diagnosis of
4 anti-social personality disorder. And I mention that, do
5 you have any concerns with the diagnosis of anti-social
6 personality disorder with Mr. Wood?

7 A Yes.

8 Q Tell me what those are?

9 A Well, obviously he did not meet the full diagnostic
10 criteria. Your Honor, I certainly think Mr. Wood has
11 anti-social traits. I had no difficulty with that. And
12 just based on his adult history, run-ins with the law,
13 and that sort of thing, I certainly think he's qualified
14 on that. But just to meet the criteria on that
15 diagnosis, you had to be in trouble since -- have a
16 childhood history to qualify for a personality disorder.
17 You have to have some childhood component of that. If
18 you look at Mr. Wood's childhood, he did not have a
19 history of being the kind of child who was in trouble in
20 school, got in fights, that stole from other children.
21 He did not have that kind of history. He got into
22 trouble more as he became grown up. And even more
23 convincing, after talking with his sister today, he was
24 home schooled. I did not know this. After 8th grade he
25 was home schooled by his mother. And so he was

1 influenced very greatly by his mother who had numerous
2 run-ins with the law. She probably much more has the
3 features of anti-social personality disorder. So he did
4 not have the history that would be consistent with that
5 diagnosis. In my opinion that's very prejudicial
6 information to present to a jury.

7 MR. WATERS: Your Honor, I would object to that last
8 statement and ask that it be stricken.

9 THE COURT: I would strike that last statement about
10 it being prejudicial. I heard it anyway, but go ahead.

11 MR. BROWN: Just ---

12 THE COURT: It's hard to strike it from my mind
13 after she said it ---

14 MR. BROWN: Your Honor ---

15 THE COURT: I can't do that. Go ahead, Mr. Brown.

16 MR. BROWN: Yes, sir, not arguing with the striking
17 of the prejudicial.

18 THE COURT: I would overrule the objection on that.

19 MR. BROWN: I'm sorry, Your Honor. Yes, sir. Thank
20 you.

21 BY MR. BROWN:

22 Q And let me ask you one thing, you said what it
23 requires is some conduct disorder, I'm paraphrasing, but
24 he had to get in trouble before a certain age, or youth
25 to meet all of the criteria for anti-social personality

1 disorder?

2 A Or a pattern of behavior before the age of 15 that
3 shows you're developing what's called a conduct disorder
4 behavior, skipping school, getting in fights, not
5 following rules, stealing from others, like the children
6 at the Department of Juvenile Justice. He did not have
7 those kinds of behaviors. I'd have to have some of that
8 history prior to my testimony. We knew from his sister
9 that the only fight he had ever been in at school she had
10 to fight for him. He was being picked on by a bully, and
11 he wouldn't even fight the bully. She had to fight for
12 him because he wouldn't confront the person that was
13 picking on him. That is just not consistent with the
14 history that I had obtained.

15 Q And let me suggest this to you, if you found out
16 prior to the age of 10 that he had shoplifted a toy in a
17 store, does that in itself constitute a conduct disorder?

18 A No, an isolated will not -- a person has to have a
19 behavior -- it has to occur over a six month period of
20 time to look for patterns of behavior. He just did not
21 meet that criteria.

22 Q Let me ask you about that, it's either got to be not
23 only one -- more than one incident, but it's got to be
24 constrained to a certain time period?

25 A That's correct.

1 Q Okay. And you mentioned six months?

2 A Correct.

3 Q And what kind of proof would a doctor need to feel
4 comfortable finding that? And I say that, but obviously
5 if it's a video tape of him committing three acts in
6 three days that may be the best proof, but I mean is
7 there -- you don't assume that somebody has done that
8 just because you look bad or dress bad, do you?

9 A Well, you would certainly would want proof. For
10 example, if you had school records, sometimes you can
11 even tell if somebody is in trouble if they're fighting,
12 or have been truant off and on. The school records are
13 helpful with those. And sometimes a person can report
14 themselves in the absence of proof. You may have a
15 juvenile record. You can have family court records, or
16 those sorts of things. Sometimes there is proof
17 available and sometimes there is not. You will rely upon
18 the client or maybe family members that know of these
19 things in their school records or family court records.

20 Q Okay. And in this case in fact, he may not have
21 been attending school because his mother was home
22 schooling him. And if he was stuck actually in a home
23 school environment there's no truancy according to that
24 exhibit, is it?

25 A No, in fact the school records that I just saw a few

1 moments ago I'm not certain if he had attendance records
2 on them.

3 Q And at this point, Your Honor, there were some
4 school records earlier and they have been provided to Dr.
5 Schwartz-Watts and I'd like to provide a copy to the
6 State. And she has the -- I'm going to -- the original
7 was provided to my office. And Dr. Schwartz-Watts, those
8 are the types of records, the reports that you would rely
9 upon to render an opinion in your expertise?

10 A An opinion about?

11 Q About a person's proper diagnosis, would a review
12 of school records be something that you would consider?

13 A Certainly they will be helpful in a determination
14 of -- again, looking at intellectual functioning, again
15 they have disciplinary reports about the behaviors and
16 those things, and they are certainly relied upon.

17 MR. BROWN: Okay. And at this time -- well, Your
18 Honor, again, I don't have any issue, but first I want
19 to -- I would like to have her recognized as an expert in
20 forensic psychiatry.

21 MR. WATERS: I certainly have no objection to that.

22 MR. BROWN: Secondly, I would like to introduce
23 these records as items she would rely upon.

24 MR. WATERS: To be -- just identify them, but as an
25 independent basis for admission, I would object on

1 authenticity, hearsay. Now, she can -- if she said she
2 relied upon them he can certainly I think introduce them,
3 but I don't think that supports an independent basis for
4 admission into evidence, I would object.

5 MR. BROWN: I didn't mean for them to be admitted in
6 evidence, I agree with that.

7 THE COURT: Under the rules of evidence they would
8 not be admissible.

9 MR. BROWN: At this point then, Your Honor ---

10 THE COURT: The question is did she have them at the
11 time of trial, or if she didn't have them, or -- did she
12 ask for them. I assume what you're trying to do is make
13 a point that there's something there that she didn't
14 review when she testified earlier?

15 MR. BROWN: Yes, sir. That's one.

16 THE COURT: I've read her testimony but ---

17 MR. BROWN: Yes, sir.

18 THE COURT: --- you did not review the school
19 records at the first trial?

20 THE WITNESS: That's correct, Your Honor. They were
21 not available.

22 THE COURT: Well, I mean, do you normally ask for
23 the attorneys to provide them to you?

24 THE WITNESS: Absolutely. I always ask for them.
25 They're necessary.

1 THE COURT: Okay. So she's reviewed them now so she
2 testify to what ---

3 MR. BROWN: Okay. I'm sorry ---

4 THE COURT: You know Mr. Wood is going to be able
5 to say they're his school records, Mr. Waters, but we'll
6 get -- cross that bridge when we get there. But she's
7 reviewed them for this hearing so I would let her testify
8 about what's important about the school records. Okay.
9 Go ahead.

10 BY MR. BROWN:

11 Q And we can take one set of records at a time. And I
12 think they're in chronological order. The first record
13 that we need to look at is the one from Tabernacle
14 Christian Schools. And just as an initial question, does
15 the record show the school is right here in Greenville?

16 MR. WATERS: Your Honor, I think that the school is
17 near Greenville.

18 THE COURT: I don't know. I'll almost take judicial
19 notice I know where it is on White Horse Road, or so it
20 was. I'm not sure it is still there, but go ahead. I'm
21 sure she knows.

22 THE WITNESS: I wouldn't -- I'm trying to find the
23 record that you're talking about. I'm going to need your
24 help.

25 MR. BROWN: Yes, ma'am. If I may approach, Your

1 Honor?

2 THE COURT: Okay.

3 BY MR. BROWN:

4 Q She's got a copy of them. But -- and that page is
5 actually the records page with the grades. If you'll
6 notice on that one thing it mentions he had previously
7 attended the school, it says Missionary, A. C. E.?

8 A Yes.

9 Q And it lists Mobile, Alabama?

10 A Correct.

11 Q Okay. Now, did Mr. Wood ever indicate he's lived in
12 Mobile, Alabama, as a child?

13 A Not that I remember.

14 Q Okay. And at the time these records that --
15 actually lists he lived at Kampus Kourt?

16 A Correct.

17 Q Okay. And if you would, how would you describe the
18 grades?

19 A All of them were failing.

20 MR. WATERS: Your Honor, I'll object. This is just
21 simply recounting into evidence the records.

22 THE COURT: I don't know.

23 MR. WATERS: I mean, she testified as to how it
24 might impact her opinion, that is one thing, but just to
25 backdoor hearsay, I would object to it on that basis.

1 THE COURT: If you want to set a preface you can ask
2 her that one question, but the records aren't in
3 evidence. Technically she can testify as to how it would
4 impact her opinion after she looked at them. Has she
5 reviewed these reports before today, Mr. Brown?

6 MR. BROWN: I'm sorry. No, sir.

7 THE COURT: Jeepers. Okay. You're just putting her
8 on spot asking her while she's on the stand. Okay. Go
9 ahead.

10 BY MR. BROWN:

11 Q And the records, how do his grades compare between
12 the school Calvary Baptist Church School and the grades
13 from Tabernacle Christian School?

14 A They're all failing grades.

15 Q How did that affect your opinion in this case about
16 Mr. Wood after you reviewed them and everything you know
17 about him?

18 A The failing grades would -- I'm not sure, Your
19 Honor, his intelligence -- his intellectual functioning
20 wasn't really an issue. It could be helpful if I would
21 have had an opportunity had I had this information to
22 probably have gone back in life and looked at what was
23 going on this year. I would have compared it to the
24 other grades, if he had years where he had been passing,
25 to see if this was a particularly bad year for him. I

1 would have confronted him, found out what was going on in
2 his life. But he was of average intelligence. The
3 failing grades in the 8th grade caused me concern, given
4 that -- so I probably during interviews would have
5 confronted him to find out if there was family problems,
6 maybe it was the onset of his mood disorder. It may have
7 been a clue that perhaps something tragic was going on.

8 Q And I believe -- but then in context, if you look at
9 some of the other records you've been provided, it looks
10 like once he was home schooled his grades were all A
11 pluses. It looks like once he was withdrawn from this
12 school where he's failing, and then he's home schooled by
13 his mother. That all his grades are in the 90s. He's
14 taking Literature, Greek, Algebra II, Physical Science,
15 World History, and he's got -- it looks like his lowest
16 grade is 93 in Literature. Basically what you see, you
17 cannot rely on all that information?

18 A That's correct. That would have caused me concern.
19 Basically I think it's fair to say his -- that I would
20 have had more concerns about his home schooling and how
21 his grades would have gone from so poor to so high, and
22 probably concerned he was probably being overrated by his
23 mother and perhaps what the quality of his education
24 would have been.

25 Q Thank you, Your Honor.

1 A And also if you look at his grades, it mentions he
2 had high grades on -- it mentions he's number one in a
3 class range of six.

4 Q Do you know how that compares to other grades?

5 MR. WATERS: Your Honor, I would object to this. I
6 mean, we're just discussing these records. I think she's
7 expressed ---

8 MR. BROWN: I would -- she's said that he was of
9 average intelligence, too intelligent and no future
10 (sic).

11 MR. WATERS: But I do object ---

12 MR. BROWN: I'm simply trying to get through the
13 testimony.

14 MR. WATERS: I would object, Your Honor.

15 MR. BROWN: All I'm trying ---

16 THE COURT: I would sustain the objection. She
17 hadn't seen them before today. Next question, Mr. Brown.

18 MR. BROWN: Thank you, Your Honor.

19 BY MR. BROWN:

20 Q And did you also notice some standardized testing?

21 A Yes.

22 Q And tell us what concerns that standardized testing
23 grades raised?

24 A I have to find them. But balanced along with a
25 learning disability, Your Honor, he's carried pretty much

1 average and below grade level in most of areas, except he
2 was very low in spelling. So that certainly would have
3 been an indication that perhaps he had a learning
4 disorder.

5 Q Do you recall any information coming out about this
6 at the trial?

7 A No.

8 Q Does that make it more difficult, somebody who is --
9 are already raised in an environment where he's not
10 provided few social skills?

11 A I believe that's going to limit what jobs he has.
12 It would certainly explain why he probably chose to work
13 on his mother's things, like this was probably easier for
14 him to work on machines and equipment. It probably
15 explained a lot of choices he made in terms of a lot of
16 interest in the things that he had.

17 Q Let me turn to the issue of some psychological
18 testing that was conducted. You have read the SIRS test?

19 A Yes.

20 Q Can you tell us a little bit about the SIRS test?

21 A Well, just keeping in mind I'm not a psychologist.
22 The SIRS is a psychological test and it was designed -- I
23 actually know the psychologist who designed it. I have
24 spoken to him a number of times, his name is Richard
25 Rogers. And it's a test that's designed to see if people

1 are exaggerating or malingering of symptoms of psychosis,
2 and it's a schedule of symptoms. People endorse them or
3 deny them. And then a scale is developed to determine
4 whether or not they are exaggerating symptoms, whether or
5 not the symptoms are consistent with others, were
6 reported symptoms of psychosis.

7 Q Is that something that a psychiatrist would rely on?

8 A There is -- yes, I have certainly relied upon it. I
9 have ordered it when I have suspected some malingering in
10 some of the people I assess. I have certainly asked and
11 requested psychological consultation if -- and have used
12 that in conjunction with other tests.

13 Q And in this case was SIRS testing done, and -- by
14 the Department of Mental Health?

15 A Yes.

16 Q And they did that, and you used that to render an
17 opinion that Mr. Wood was a malingerer, or there was some
18 tendency of malingering.

19 A I think -- I recall -- I believe that's what Dr.
20 Narayan testified to, yes.

21 Q Okay. Let me ask you, you may not know, have -- are
22 there issues regarding the scoring of SIRS test by the
23 Department of Mental Health?

24 MR. WATERS: Your Honor, at this point I would have
25 to object. I have the utmost respect for her

1 qualifications, but she's said she's a psychiatrist not a
2 psychologist. She would call for a psychological consult
3 to administer -- interpret those tests. I respectfully
4 would say she's not qualified to testify on the accuracy
5 or problems with this particular test. That would be my
6 first objection.

7 My second objection, I guess would be to the extent
8 of problems with DMH and scoring tests. They are opening
9 a whole can of worms, I think, which might be beyond the
10 relevance of this particular proceeding.

11 THE COURT: I did not hear -- hear the question.

12 MR. BROWN: Okay, I'm sorry.

13 THE COURT: What is the question?

14 MR. BROWN: The question is whether or not she is
15 aware of problems with the SIRS testing within the
16 Department of Mental Health, the scoring on the SIRS
17 test?

18 THE COURT: I sustain the objection to the question.

19 MR. BROWN: Then, Your Honor, may I proffer the
20 relevance to the ---

21 THE COURT: No, sir. You're not going to proffer
22 the evidence.

23 MR. BROWN: Or a summary ---

24 THE COURT: I mean, if she has an opinion about this
25 particular test that he had maybe -- I don't know whether

1 she can express it or not, but not generally about
2 testing procedures down there.

3 BY MR. BROWN:

4 Q Have you -- you've reviewed the actual test scores,
5 have you?

6 A No.

7 Q And tell me about the procedure on the SIRS raw
8 data?

9 A Right. I'm not allowed to look at that raw data.
10 I'm not a licensed psychologist. But in this case I
11 consulted Dr. Rogers who actually developed the test and
12 he looked at the raw data.

13 Q Okay. And to -- before we get to the next question,
14 Doctor, that's a psychologist that was involved in the
15 Department of Mental Health in this case?

16 A Yes.

17 Q A doctor that administered the SIRS testing?

18 A Yes.

19 Q Okay. And then you called -- after you reviewed the
20 DMH, you consulted with Dr. Rogers?

21 A Correct.

22 Q Okay. And can you tell the Court what effect that
23 may have on your opinion?

24 A Well, I actually don't know. I believe what I did,
25 I consulted with Dr. Rogers, I had him consult with Mr.

1 Mauldin. So what discussions they had, I wasn't privy
2 to. I do know that Dr. Rogers told me that there was
3 some scoring errors. What errors, I don't know. Again,
4 I was not privy to the actual test results. I did not
5 see that actual test data.

6 Q You did not find Mr. Wood malingering?

7 A No, in fact the problem we have with Mr. Wood in
8 this case is that usually he wouldn't listen to us. We
9 would try to get him to work and it seemed like at every
10 juncture we had great difficulty getting him to cooperate
11 with us. For example, on one occasion I made a trip to
12 Greenville to video tape Mr. Wood, because I wanted to
13 show during the trial examples of the symptoms of his
14 mental illness displayed. And I went through great
15 pains, Mr. Mauldin and I, to video tape Mr. Wood. We got
16 here and he wouldn't let us video tape him. And at very
17 many junctures we were attempting to get him to cooperate
18 so we could illicit an adequate interview, and he just
19 wouldn't cooperate with us. And I remember very
20 specifically after his trip to mental health, that he
21 told me that he deliberately did endorse symptoms of
22 mental illness because he believed Jesus had told him to
23 fake that he was ill. So we never had believable
24 evidence he was ill. When I tried to get symptoms, we
25 never believed he was mentally ill, then he reported to

1 me when he went to the Hall Institute he faked symptoms
2 of mental illness. And so it was very difficult to get
3 him to cooperate with us and to get an adequate history
4 from him.

5 Q Okay. And when he had mentioned -- let me back up a
6 little bit. You had mentioned that Dr. Rogers, he
7 mentioned some scoring errors, was he speaking of this
8 case? You think he had told Mr. Mauldin that?

9 A Right. The conversation I had -- I remember I
10 tried -- I'm sorry, it's been so long. I tried to look
11 for notes, but the best is that I talked with Dr. Rogers
12 on the phone. I met him. We were arguing in an elevator
13 about the test questions. I thought some of them weren't
14 very fair. He agreed with me. So we had -- we had a
15 discussion some years ago and I directly told him of the
16 concerns I had. I asked him to look at this test data
17 that Mr. Mauldin had sent to him. He did tell me that he
18 had looked -- previously looked on other cases of data
19 and there were some scoring errors there. On this test,
20 I do not know.

21 Q Okay. Let me ask you, did you have the opportunity
22 to review the Department of Corrections' records?

23 A Yes.

24 Q Okay. And when you reviewed those records, did you
25 find in the Department of Corrections' records and prior

1 records that I gave you, what evidence did you find of
2 the other diagnosis of anti-social personality disorder?

3 A I believe that he had been -- been diagnosed with
4 anti-social personality disorder. A psychiatrist would
5 have done that.

6 Q Can you tell which ones are -- when -- besides
7 what's referenced in the two pages I handed ---

8 THE COURT: Don't repeat what Dr. Cobb testified to.
9 I heard it. But he testified three or four times about
10 how many people had diagnosed him with that. So the
11 Court is aware of how many times he's been diagnosed with
12 anti-social personality disorder. You asked Dr. Cobb
13 about that three times. So don't -- she doesn't need to
14 tell me again.

15 MR. BROWN: Thank you, Your Honor. If she's got new
16 instances I can ask her about that?

17 THE COURT: Well, are you going to ask her if she
18 had -- was aware of whether that diagnosis was made by
19 history or whether was made independently. She may not
20 know the answer, I don't know. I don't know. Do you
21 know how that diagnosis was made?

22 THE WITNESS: I don't know.

23 THE COURT: I don't think she would know how to
24 answer that. I'm trying to pay attention, Mr. Brown,
25 honestly.

DONNA SCHWARTZ-WATTS - Direct by Mr. Brown

1 MR. BROWN: Your Honor, I apologize. I'm trying to
2 represent my client and do the best I can for him.

3 THE COURT: You can represent your client asking --
4 without asking the same question three or four times. It
5 doesn't really matter. I just don't want to have to hear
6 the same thing over and over again.

7 MR. BROWN: I apologize.

8 BY MR. BROWN:

9 Q And let me ask you this. You're familiar with Dr.
10 Cobb?

11 A Yes.

12 Q Okay. And Dr. Cobb has been treating -- you have
13 reviewed the records and know he's treated Mr. Wood while
14 he's been in the Department of Corrections?

15 A Yes.

16 Q And some of the medications he's been provided are
17 Depakote and things like that?

18 A Yes.

19 Q Is that one of the medications you gave him?

20 A No, I did not treat Mr. Wood.

21 Q Excuse me. Is that one of the medications he was
22 taking when you diagnosed him?

23 A Correct.

24 Q Okay. And it was actually Dr. Compton who
25 prescribed Depakote?

1 A Correct.

2 Q Okay. And if -- let me ask you, are you aware of
3 times when the Department of Corrections will have a
4 treatment team that will see an inmate while a treating
5 physician is not aware of it?

6 A I don't work but one day a week. I know that
7 because I'm a contract doctor, the treatment meets
8 without me just because I'm not there the days they meet,
9 so it's possible.

10 Q Okay. I'm curious. I don't know the answer to
11 that. Do you know what days Dr. Cobb goes out there and
12 what day the treatment team meets?

13 THE COURT: You think he testified they meet without
14 him being there? That's what you heard?

15 MR. BROWN: I do.

16 THE COURT: Well, I can -- they had this -- I got
17 his testimony.

18 MR. BROWN: All I'm asking is whether it was normal,
19 you know, whether or not it was normal at the DOC.

20 THE COURT: If it's normal, if you can actually
21 establish that they meet whether or not he's there?

22 MR. BROWN: And before I can ask her -- I didn't
23 know the answer. And I apologize, Your Honor.

24 BY MR. BROWN:

25 Q Now, let me ask one other thing. Weren't you

1 involved in a case similar to this case, a case in
2 Beaufort?

3 A Yes.

4 Q And Dr. Cobb also assisted in that case?

5 MR. WATERS: Your Honor ---

6 THE COURT: I sustain the objection to another case.
7 We're just going to try this case. We can't be trying
8 any others.

9 BY MR. BROWN:

10 Q Are you aware of any prohibitions within the ethical
11 confines of psychiatrists ---

12 THE COURT: I sustain the objection to that.

13 BY MR. BROWN:

14 Q Have you ever conducted a competency, criminal
15 responsibility, capacity to conform conduct evaluations
16 on behalf of a Court order from the State?

17 A Sure.

18 Q Okay. And those -- hence are those limited to those
19 areas? What -- do you have concerns regarding use of
20 that information in sentencing?

21 MR. WATERS: Your Honor, I would object.

22 THE COURT: I would sustain the objection to the
23 form of the question.

24 BY MR. BROWN:

25 Q Thank you. What concerns would you have as a doctor

1 if you were being called to testify at sentencing
2 proceedings where those issues were not raised?

3 MR. WATERS: I'll object.

4 THE COURT: I would sustain the objection.

5 MR. BROWN: Your Honor, I would ask the Court to
6 proffer her answer.

7 THE COURT: I sustain the objection.

8 MR. BROWN: Is that to my proffer?

9 BY MR. BROWN:

10 Q Let me ask you about the conversation you had with
11 Connie Jantz. Now, she provided you some information,
12 one of which was the fact that Mr. Wood was home
13 schooled?

14 A I'm sorry?

15 Q One of which Mr. Wood was home schooled extensively?

16 A Yes.

17 Q Okay. And you otherwise were aware of the moves
18 that he had, some moves as far as homes he had moved? I
19 think you were aware of that, I'm not certain?

20 A To a degree, yes.

21 Q Okay. She provided you with a fairly extensive list
22 of times that he had moved?

23 A Yes.

24 Q Okay. And did she also provide you with the
25 information regarding his family history of mental

1 illness?

2 A Yes.

3 Q Can you provide that information to the Court?

4 A Yes. This was a little bit more than what I knew at
5 the time, Your Honor, at the time of the trial. I know
6 that the sister -- certainly two of the sisters had
7 treatment for mood disorders. They had a history of
8 depression. According to Ms. Jantz, on the father's side
9 of the family that there was a family history, that of
10 paternal, a history of alcoholism of the great
11 grandfather. This I did know. There was a great uncle
12 who committed suicide on the father's side. I did not
13 know that. I also did not know that Mr. Wood's father
14 suffered from depression. And Ms. Jantz states that
15 the -- Mr. Wood's father was suicidal at one time. And
16 then on the mother's side -- and I maybe I was aware of
17 this and I just didn't remember, she was actually adopted
18 and that she was born with untreated venereal disease.
19 That once she was adopted she had to be given
20 antibiotics. I questioned Ms. Jantz about this, whether
21 or not it was syphilis or gonorrhea, what the actual
22 nature of that venereal disease was, and what
23 implications -- if those records were still around or
24 still available at this point. And then in my own
25 questioning of Ms. Jantz, there certainly was some

1 history that Mr. Wood's own mother may have an illness
2 similar to Mr. Wood. Ms. Jantz gave me a history that it
3 wasn't uncommon during childhood that Mr. Wood's mother
4 would wake up at 2:00 in the morning and have her up all
5 night cleaning the house, making the children get up and
6 clean their closets, straighten things up, organize the
7 skirts from the longest skirts to the shortest skirts.
8 It was not uncommon for her to be up all hours and then
9 wake the children up and have them clean. That there
10 were certainly periods where she had high levels of
11 energy. So there may very well be some periods of high
12 energy in his mother as well.

13 Q And did she provide you any other information that
14 you found that would be useful to confirm or corroborate
15 the diagnosis, or testimony provided?

16 A Just again, just a very personal history of her own
17 depression, other treatment as well.

18 Q Did you find Ms. Jantz to be credible as far as a
19 life history?

20 A Yes. Probably out of all the family members, given
21 the fact she did not have a criminal history, that's the
22 one child -- she has actually taken care of most of the
23 other sibling's children, that sort of thing. She seems
24 the most stable. She is educated. She does not have a
25 criminal history. She is raising the other children.

1 She has a stable marriage. A very big history she gives
2 is that the family -- she doesn't even know where the
3 parents are to this date. She thinks they probably are
4 in Mexico. At some point she knows they all lived in
5 Belize for a period of time. She believes her mother is
6 still running afoul of the law.

7 Q And I mention that to you, is that something as far
8 as a psychiatrist, or a doctor, when you looked through
9 the family history, you feel more comfortable with your
10 opinion with a person who's credible, than obviously the
11 history you had going -- that came from Mr. Wood, that at
12 least the parents were not -- would not make contact a
13 second time, and then Ms. Martinez -- I guess I'm
14 following up on the fact that Ms. Jantz was credible, not
15 just because she had done something ---

16 MR. BROWN: Object to the form of the question.

17 THE COURT: All right.

18 BY MR. BROWN:

19 Q Maybe I'll ask it differently. How do you feel
20 about the history that Ms. Jantz gave you?

21 A I think it was very helpful in a number of ways. It
22 confirmed a family history, and gave me a little more
23 certainly than I had at the time of trial. It explained
24 why the parents were difficult to get in touch with, if
25 the mother had some pending legal charges. And it was

1 very difficult to find her at the time of trial to get
2 some history that we would have needed as well. It
3 certainly explains some of her behaviors and certainly
4 explains Mr. Wood's behaviors as he became under her
5 influence, if he's home schooled by her and she certainly
6 has history of a lot of legal run-ins.

7 Q In reviewing all the information that you have been
8 provided, school records, and the Department of
9 Corrections' records, do you believe that your diagnosis
10 back at that time was still accurate?

11 A We'll, it's in -- looking at them, they diagnosed
12 him with mood disorder, psychotic features. Psychotic
13 features is somewhat consistent. It's not the same as
14 psycho-effective disorder, it's a little bit different.
15 I diagnosed him with a mood disorder. Then I thought Mr.
16 Wood's personality structure was one that could be prone
17 to periods of psychosis. And it looks as if in the
18 Department of Corrections they see him having actually a
19 more serious form of mental disorder. Psycho-effective
20 disorder is actually a period mood disorder, psychosis,
21 but they are similar.

22 Q Are they all treatable?

23 A Oh, yes, they are treatable.

24 Q They're manageable mental illnesses as oppose to
25 anti-social personality disorder?

1 A Yes.

2 MR. BROWN: No further questions.

3 THE COURT: Mr. Waters.

4 MR. WATERS: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. WATERS:

7 Q How are you doing, Dr. Schwartz-Watts?

8 A Fine. Good to see you, Mr. Waters.

9 Q Good to see you. How did you become involved -- let
10 me ask you. You've worked with Mr. Mauldin before, is
11 that correct?

12 A Yes. Prior to this case there would have been one
13 other case I believe.

14 Q Okay. How did you become involved in this
15 particular case?

16 A Mr. Mauldin I believe would have contacted me.

17 Q Okay. And how did you go with getting what
18 background information you could get on Mr. Wood?

19 A Mr. Mauldin, first of all, is very organized. If
20 you've ever worked with him he has regular meetings. He
21 had a mitigation specialist, Paige Tarr. He also had a
22 social worker. And so what he had done in this case is
23 we would have meetings periodically where Ms. Tarr would
24 meet. He would be updated on what information she had,
25 what history she had obtained at that point. I would ask

1 for whatever information I needed. I would have met with
2 Mr. Wood on various occasions. If there was information
3 I needed, I would have let Mr. Mauldin know and asked him
4 for specific things.

5 Q So it was a very organized process as far as
6 gathering information?

7 A Oh, yes. And he's one of the most organized
8 attorneys I have worked with.

9 Q Okay. And did you have plenty of notice when you
10 got involved in this case?

11 A Yes, I felt -- I did not feel rushed at all.

12 Q You had plenty of time to prepare when you got
13 involved in this case?

14 A Yes. Again, the only issue I felt that was in this
15 case, it just difficult to find some of the family
16 members.

17 Q So let me ask about that. As y'all were preparing
18 this case, were you going through meetings where there
19 were discussions about the difficulty that the mitigation
20 specialist and the investigators were having getting the
21 information about Mr. Wood's background?

22 A Unfortunately I would not sit in on those kinds of
23 meetings. But I remember saying, where are the parents,
24 I need to speak with them. I would -- I remember them
25 saying they were trying to find them. They're not

1 answering. The phones -- or numbers are changed. I
2 remember kind of harassing the people, saying, I really
3 need to speak to the parents, what efforts were made to
4 find them.

5 Q Do you remember testifying at trial that the
6 mitigation specialist had spoken with them briefly but
7 that y'all tried to get in touch with them and the phone
8 was disconnected?

9 A That would certainly be consistent. I remember the
10 only thin pressure I felt during that trial, again, was
11 just trying to find some corroborating witnesses that
12 could confirm some of the history Mr. Wood had given.
13 That, again, was very difficult because he was presenting
14 a mental illness he did not have. Records -- so this was
15 where you would need family members, or people who knew
16 him to confirm those. Symptoms and family members we
17 needed. Certainly the person would be helpful, but they
18 just weren't available.

19 Q But y'all were making efforts to get in touch with
20 them?

21 A Yes.

22 Q And they weren't being cooperative with those, I
23 guess would be fair to say?

24 A Yes.

25 MR. BROWN: Your Honor, I'll object to that.

1 That's -- that question itself is nebulous. To give an
2 answer that the family members didn't live together, I
3 would ask that that be (sic) ---

4 MR. WATERS: I'll rephrase it, Your Honor.

5 MR. BROWN: Thank you.

6 THE COURT: Okay.

7 BY MR. BROWN:

8 Q Was Mr. Wood's mother cooperative with the attempts
9 you made to try to contact her?

10 A Again, the only family member that I was able to
11 speak with was the sister, Betsy Martinez. Now, I
12 certainly asked, and I do feel that the mitigation
13 specialist, she tried to find these people for me. I
14 asked to call, wanted to speak to family members. I knew
15 efforts were made.

16 Q Okay. And so was every time that you asked for a
17 particular piece of information, they just blew it off or
18 they didn't pay attention to it?

19 A No, the only thing I recall that I asked for
20 probably was the computer. I don't know -- I think Mr.
21 Mauldin -- the reason I don't remember. I remember that
22 I asked for the computer so we could get it analyzed. We
23 were down in the basement. We had just attempted to try
24 to video tape Mr. Wood and he wouldn't let us. And I
25 think at that point I had asked maybe if we could get his

1 computer analyzed, but I don't remember anything else.

2 Anything I asked Mr. Mauldin to do he tried.

3 Q Right. Was it concerning that he had expressed that
4 it was because the prosecution hadn't look at it yet, is
5 that what you recall?

6 A That -- I believe that's consistent with my memory.

7 Q All right. Now, you were asked a little bit about
8 the DNP, Valium, and other substances Mr. Wood was
9 taking?

10 A Yes.

11 Q You actually did some research on those, correct?

12 A Yeah, I did, because I didn't know a lot about them.

13 Q All right. He had expressed that he had been using
14 these things, and you were aware of that information
15 irrespective of anything on the computer, right?

16 A Correct.

17 Q If fact, you did testify at trial about it, you even
18 said it exacerbated his mental condition?

19 A Correct. DNP and Valium actually probably helped.

20 Q Okay. You did in fact cover that ground at trial?

21 A I tried, yes.

22 Q Okay. Now, you were asked a little bit about these
23 school records that have come to light, and I believe
24 that you stated -- let me ask you, has any of that
25 changed your diagnosis?

1 A The school records, no. Actually probably just
2 strengthened it. They certainly address some credibility
3 in the sense that the main thing that the school records
4 do tell me, that if indeed he was home schooled and had
5 more access to his mother who runs afoul of the law, that
6 would explain how as a child he followed the rules then
7 as an adult suddenly began not following the rules.
8 Usually when you have this kind of history you will
9 expect someone to have more conduct disorder behaviors
10 during childhood. If we look at Mr. Wood's history he
11 had -- did pretty well all the way up until, you know,
12 his later teenage years. That explains some of his later
13 behaviors to me.

14 Q But being home schooled, he was not in school, there
15 would not be that source of records there as far as
16 misbehaving in school?

17 A That's true. True.

18 Q That could also be true, if you're in an organized
19 school structure misbehaving, then there would be
20 documentation of that. That's not going to be the case
21 in the home schooling, correct?

22 A That could also be true, correct.

23 Q Okay. And if in fact he was being unduly influenced
24 by his mother who was engaging in criminal behavior,
25 would that not increase the chances that he'll start

1 mimicking that behavior at an earlier age?

2 A Yes, but again, if you look at those records, it
3 would be about the ninth grade for him if he had repeated
4 some grade, so he would have been about 16 or so around
5 that period of time, so ---

6 Q Okay. You were asked about anti-social personality
7 disorder which I believe Dr. Narayan had diagnosed and
8 you had disagreed with, correct?

9 A Correct.

10 Q I believe at trial though you testified that you
11 disagreed with the diagnosis of anti-social personality
12 disorder because there was no history of a conduct
13 disorder at the required early age, correct?

14 A That's correct.

15 Q You did cover that at trial, correct?

16 A Absolutely, yes, I believe I did.

17 Q Okay. All right. As far as Mr. Wood himself, how
18 cooperative was he with you on providing a family history
19 to you?

20 A Mr. Wood was not very cooperative. He was pleasant
21 to me. I believe he looked at me. But he wasn't very
22 forthcoming. Mr. Wood did not think he was mentally ill
23 at the time so he did not give me a family history of
24 anybody being mentally ill.

25 Q You were asked about Mr. Wood, I believe you

1 testified that he had admitted to malingering when he was
2 at Hall, is that correct?

3 A Yes, but not in those terms. The actual terms were,
4 Jesus told him to play crazy.

5 Q Um-hm. Okay. But you said he did that while he was
6 at Hall, correct?

7 A Correct.

8 Q Hall was where the SIRS test was given, correct?

9 A Correct.

10 Q Now, you were asked a little bit about when you were
11 testifying at trial and the solicitor inquired about the
12 aunt and uncle, do you recall that?

13 A Yes.

14 Q And have you ever been provided with the statements
15 of the aunt and uncle?

16 A No, at this time I haven't seen them.

17 MR. BROWN: Your Honor, I object. There was no aunt
18 and uncle.

19 THE COURT: I'm sorry?

20 MR. BROWN: I object, it mischaracterizes ---

21 MR. WATERS: Well, I thought they were an aunt and
22 uncle, the Pittmans?

23 MR. BROWN: In-laws.

24 BY MR. WATERS:

25 Q Excuse me, the in-laws. Have you ever been provided

1 with their statements?

2 A No.

3 Q Okay. So you did not know whether they were good or
4 bad?

5 A Still don't.

6 Q I guess my final question is, here today though,
7 you're still happy with the diagnosis that you gave at
8 trial, correct?

9 A Well, it's apparently -- yes. I don't see anything
10 that would change. I certainly see things that would
11 embellish a little bit, you know, certainly they add
12 credibility to it. The Department of Corrections'
13 records certainly lend a lot of credibility to that as
14 well.

15 Q The Department of Corrections' records?

16 A Yes.

17 Q Have you interviewed him since his conviction?

18 A Yes.

19 MR. WATERS: All right. Nothing further, Your
20 Honor. Thank you.

21 MR. BROWN: Very briefly.

22 REDIRECT-EXAMINATION

23 BY MR. BROWN:

24 Q There was discussion on cross-examination about the
25 lack of school behavior records and whether or not that

1 would hide evidence of a conduct disorder. And would the
2 lack of records be proof of a conduct disorder?

3 A No, no.

4 MR. BROWN: Thank you.

5 THE COURT: Thank you.

6 THE WITNESS: Thank you, Your Honor. May I be
7 excused?

8 THE COURT: Yes, ma'am. Thank you.

9 MR. BROWN: Your Honor, may I just gather a couple
10 of items. She's got one -- those sets of the two
11 reports, I believe those are yours.

12 THE COURT: Okay. Thank you.

13 MR. BROWN: Your Honor, it appears as a matter of
14 housekeeping, maybe it would better with a followup phone
15 call, I'm not certain, it appears there is some concern
16 by the folks here from the Department of Corrections, and
17 I understand that they need an idea of how many days this
18 is going to go.

19 THE COURT: This is -- well, I can't tell you that,
20 but we're going to finish this week for sure.

21 SCDC GUARD: We just wanted to know where to
22 transfer him to.

23 THE COURT: Perry called. I have issued an order
24 that he be transferred to Perry.

25 SCDC GUARD: Yeah. That's what we wanted to know.

1 THE COURT: He needs to be back here at nine o'clock
2 in the morning. I want you to drop him off there at
3 Perry.

4 SCDC GUARD: Well, do you know who the individual
5 was that you gave that order to?

6 THE COURT: Melinda faxed it to whoever is in charge
7 that he should be housed at Perry.

8 SCDC GUARD: Thank you.

9 THE COURT: Instead of being driven from Charleston
10 every day.

11 SCDC GUARD: Yes.

12 THE COURT: That's what we're going to do. Okay.
13 Somebody has got to be there to bring him up here at 9:00
14 in the morning. Okay. Y'all are -- they said they
15 needed it before 5:00. Okay.

16 MR. BROWN: I think somebody ---

17 THE COURT: He had an order before 5:00. Okay.
18 They got it. Okay. He called us earlier. Okay. Thank
19 you. He's supposed to have it. We faxed it.

20 LAW CLERK: I was advised by an e-mail. I just left
21 a message and said if there was any problem to call me
22 back. And I could listen to my messages in another
23 courtroom if you want but ---

24 THE COURT: It's okay. If y'all can't -- he should
25 have it, but if they don't, y'all make sure he's here at

1 nine o'clock in the morning. Okay.

2 MR. BROWN: Okay. May it please the Court? John
3 Mauldin.

4 THE COURT: We're going 'til six o'clock.

5 MR. BROWN: Yes, sir.

6 THE CLERK: Mr. Mauldin, place your left hand on the
7 Bible.

8 JOHN MAULDIN

9 Having been first duly sworn, testified as follows:

10 THE CLERK: Thank you. You may be seated. State
11 your full name for the record, please.

12 THE WITNESS: John Mauldin.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. BROWN:

16 Q Mr. Mauldin, good afternoon. You have been present
17 for some of this testimony so I'm going to kind of start
18 with this. Have you had an opportunity to review the
19 allegations made in the application?

20 A I don't remember. Some time at the beginning I was
21 provided with a copy. I did look through that but -- so
22 I did look through it, yes.

23 Q Okay. And I apologize if I shift gears here. Okay.
24 I'm going to kind of go through in detail with these --
25 each of the issues that we have put forth. I think

JOHN MAULDIN - Direct by Mr. Brown

1 that's best way to do it. First thing I want to go
2 through is regarding the cross-examination of Ms. McCall.
3 And if you recall, Ms. McCall was a witness in the
4 State's -- for the State in the guilt phase of the
5 proceeding here at Greenville?

6 A Yes.

7 Q Okay. And I tell you that because she took the
8 stand and she provided information ---

9 THE COURT: Wait a minute, Mr. Brown. You cannot
10 put anything on the record. You cannot make statements.
11 You have to ask questions.

12 MR. BROWN: I'll -- I'm trying to get the context,
13 but I understand that.

14 BY MR. BROWN:

15 Q Do you recall cross-examining Ms. McCall about her
16 being a victim of activity by Mr. Wood on that day?

17 A About a victim? I assume you mean some sort of
18 duress type arrangement?

19 Q Yes, sir.

20 A Is that what you mean? I'll tell you that it has
21 been some time since this case was tried, so I'm -- I may
22 stand to be corrected on some of this. I'm just going to
23 testify as best I can. I remember the handling of Ms.
24 McCall as a witness was of great concern to us, and I
25 believe I did the cross-examination. There were other

1 lawyers involved. And if I remember -- I may be
2 mistaken. I have not read the transcript, by the way,
3 that was provided to me. I did not go back and read that
4 transcript in preparation for this hearing. But my
5 recollection is that we were not going to try to make Ms.
6 McCall out to be a liar. We weren't going to, quote,
7 trash her. The impression from the evidence was that the
8 person who had committed the offense on Trooper Nicholson
9 acted alone at the scene. It was a homicide by a person
10 riding a moped. There was clearly evidence of only one
11 person. And there was pretty clear evidence that that
12 person was not Karen McCall. So I determined that it
13 really didn't make a lot of sense to try to, you know,
14 take every little thing about her testimony and try to
15 impeach her. It just didn't make good strategic sense to
16 me.

17 Q And on that night -- to back up, there appeared to
18 be some -- from the record some division of labor as far
19 as trial proceedings went?

20 A You mean division of labor among the lawyers?

21 Q Yes.

22 A Yes.

23 Q And I say that, the focus seems the mentor handled
24 the majority of the argument, at least if not
25 cross-examinations in the guilt phase?

1 A Well, you're the one who's got the transcript so
2 you're going to do a whole better. We would have divided
3 the tasks among counsel. And whatever the record
4 reflects, you know, in terms of who did what that's the
5 way it turned out.

6 Q You focused on the -- I say this, but it appears you
7 focused on the penalty phase?

8 A Without looking back in the actual testimony, that
9 certainly would have made sense.

10 Q Okay. And why do you say that would have made
11 sense?

12 A Well, the -- I was lead counsel for Mr. Wood, and I
13 felt that it was my responsibility to focus on what I
14 could do to save him. I felt like the saving of Mr. Wood
15 was going to occur during the penalty phase.

16 Q And now one thing, did you feel like that the State,
17 because of Ms. McCall, was able to show her as a hired
18 victim of some duress?

19 A I don't know about the shooting itself, but
20 obviously we tried to stop the introduction of that as
21 much as you can.

22 Q Do you feel like that State was able to score some
23 points, so to speak, on -- by portraying her as a victim
24 of Mr. Wood, that he would victimize his obviously
25 pregnant wife?

1 A All right. Let me see if I understand that
2 question. You're asking me if I believe that the State
3 was successful in showing Ms. McCall was a victim of
4 John's forcing her to act?

5 Q Or they attempted to do so indirectly or -- as they
6 attempted to profile ---

7 A I don't know whether they would have been successful
8 at that or not. Now, you could -- I guess you could ask
9 the jurors how they felt about Ms. McCall's role or
10 whatever, but I'll answer the question this way. I
11 believe that the jury to the extent -- this is
12 speculation to some extent, but I believe that the jury
13 would have thought that Karen McCall was surprised at the
14 shooting of the patrolman, and what she then did after in
15 terms of escape and it really -- I don't know what their
16 thoughts were, but I think the jury certainly was
17 satisfied that he did not come over looking for a
18 patrolman to shoot, if that makes sense to you.

19 Q Sure. Okay. And I guess what I'm trying to do, you
20 recall that there was testimony at trial that was
21 admitted about the conduct after the shooting and about
22 the conduct in another county?

23 A Yeah, I remember there was. If I'm -- like I say,
24 it's been a long time. I think there was an over one
25 year legal battle about trying to keep these cases

1 separated and what the State was going to be allowed
2 bring into the testimony relating to the efforts of John
3 and Karen to escape. And Judge Kittredge made his
4 rulings, and we -- I remember that there -- some of the
5 Anderson County people came in and testified. So I
6 think, if I'm not mistaken, he ruled that some of it was
7 admissible as evidence of an effort to escape, but that
8 he was not going to allow the trial of the Anderson
9 County charges to take place in the Greenville County
10 courtroom. So he kind of hit somewhere in the middle
11 there.

12 Q Now, let me ask you about, you mentioned that Ms.
13 McCall and Mr. Wood tried to escape, and I say that
14 because it almost implies that she was involved in some
15 wrongdoing?

16 A She was involved in what?

17 Q Some wrongdoing, you know. All right. That's a
18 loaded question. I'm trying to get up to another point.
19 But there is obviously that implication that either she
20 was a victim by duress or she was a participant?

21 A Well, I don't really know exactly whether I'm even
22 qualified to answer that. I believe she did end up
23 receiving a prison sentence for something, and maybe she
24 did not. I don't know. Maybe she is free right now.
25 But I was of the impression that there were a number of

1 charges against her. That's where my thoughts were that
2 they were going to end up prosecuting her. So apparently
3 there was some impression she had participated in
4 wrongdoing, at least after the fact in the Anderson
5 County offenses.

6 Q And were you aware that there was a SLED trace
7 report done, TSR, trace report that also included Ms.
8 McCall?

9 A I'll be glad to look at it.

10 Q Did you have that in your file?

11 A I don't know. I'll have to look and tell you.

12 Q And in the report, it's got two examinations, one
13 regarding Mr. Wood's hands and one regarding Ms. McCall's
14 hands?

15 A Right.

16 Q And from Mr. Wood it indicates there were round lead
17 particles from both palms and the back of right hand? It
18 says both palms and the back of right hand, then both
19 palms and the backs of both hands of Ms. McCall?

20 A Right.

21 Q It says actually they got as much or more gunshot
22 residue on her hands?

23 A That's true. That's what this ---

24 Q That's coming from this report?

25 A That's what it does indicate.

JOHN MAULDIN - Direct by Mr. Brown

1 Q Okay. And do you recall questioning Ms. McCall
2 about that?

3 A About this? No, I do not, but whatever the
4 transcript says I -- would be the truth of the matter.

5 Q And I ask that, not necessarily dealing with the
6 shooting in Greenville County, but there obviously were
7 some shots fired -- according to the transcript in this
8 trial, there were some shots fired in Anderson County
9 too?

10 A Right. And -- yes, that's true.

11 Q Okay. And the Anderson County trial did not occur
12 until after this trial, did it?

13 A It did not what?

14 Q It did not occur until after this trial occurred,
15 did it?

16 A Actually the Anderson County trial, which Judge
17 Kittredge also had been -- I believe he had been ordered
18 by court administration to handle, was actually called
19 before this case, but it was at that time continued. And
20 the judge I believe issued an order saying it would not
21 be tried until after the Greenville County case was over.

22 Q And I ask that because in this case Karen McCall
23 testified regarding the pursuit into Anderson, just to
24 bring us up -- or I better hand you a copy of the
25 transcript itself. On page 1443, it might be a little

1 easier than -- and beg the Court's indulgence? If you'll
2 look at the top of the page. The question, line two
3 says, did he tell you or show you, talking about how to
4 get the window open to shoot at the car. And the
5 response would be, he reached over me and pushed the
6 button himself.

7 A Yes, I see that.

8 Q The implication there being that she is not doing
9 the bad acts, that he's doing them?

10 A That's right.

11 Q Okay.

12 A That -- I think, unless I'm again mistaken, I
13 believe pretty much her testimony was -- was generally
14 self-serving about acts that she -- the things that she
15 did and the things that he did. In fact, I believe she
16 said he stepped over with his foot and pressed on the gas
17 and that really -- that did not -- I did not feel, as the
18 person responsible for her cross-examination, that was
19 something that really needed to be dealt with in great
20 detail. It was a person who was involved in a very
21 serious offense and was trying to make the jury think
22 that she did not have much to do with it. And whether or
23 not they believed her really was not the point, as far as
24 I was concerned.

25 Q And let me follow up on that. Whether the

JOHN MAULDIN - Direct by Mr. Brown

1 Greenville jury believed her really wasn't your concern?

2 A Going back to my initial response?

3 Q Right, yes, sir.

4 A The shooting of Officer Nicholson had been committed
5 by one person.

6 Q Yes, sir.

7 A The witnesses, if I recall, followed that person
8 around behind a gymnasium or something, and the person
9 jumped off of the moped and left it there and got into
10 this Jeep being driven, I believe and this -- I may be
11 mistaken, but I believe they actually said it was driven
12 by a female. Maybe that's not right. So the point was,
13 I just did not feel like what she then said she did later
14 on was going to have a significant effect on what this
15 jury decided were the critical issues on the guilt or
16 innocence against from Mr. Wood.

17 Q Okay. And I don't want to belabor the point. There
18 are some other things I think that will actually support
19 what Mr. Mauldin is saying. I would like to present
20 those to him a little bit. I would like to present some
21 contradictory testimony, or contrary argument from the
22 Anderson County trial transcript. The way the State
23 handled the biggest contradiction, where I'm going with
24 this and I would ---

25 MR. WATERS: I don't really see any issue. I don't

1 see the relevance because that was based on his testimony
2 that was subsequent to what he did.

3 MR. BROWN: Your Honor, exactly right.

4 THE COURT: There is no way he could have known
5 about it.

6 MR. BROWN: I agree with that. Here's ---

7 THE COURT: I don't know what was testified to. I
8 don't know what testimony you want to put in from the
9 other trial or what you're offering, but I don't know how
10 it would ---

11 MR. BROWN: Here's where it plays out, Your Honor.

12 THE COURT: I don't know. Go ahead.

13 MR. BROWN: Ground A, which was a ground that was
14 raised originally in the application that was filed by
15 the appellate defense lawyer, was that there wasn't
16 sufficient cross-examination of Ms. McCall. And we've
17 left that ground in our current application as ground C
18 that we've raised in the amended application as an
19 alternative ground, in the alternative that the defense
20 should have conceded guilt. Mr. Mauldin has given me
21 that part of it. There is no question -- I guess what
22 I'm trying to say is that evidence from -- and it may
23 support the fact that Ms. McCall could have been
24 impeached but there was a strategic decision not to
25 impeach her. Okay. That's fine. But what they did not

1 do is concede guilt and that's when I think it is
2 relevant.

3 MR. WATERS: I think he's already said he decided
4 that he did not need to impeach her because he didn't
5 think it was going to do him any good when the evidence
6 was trying -- that he was there when Trooper Nicholson
7 was murdered. So I don't see how subsequent testimony at
8 a later trial supports the point at all or relevance.

9 THE COURT: I can't see how the testimony at a
10 subsequent trial would have ---

11 MR. BROWN: It's very succinct. It's just pages.
12 It's to compare the contrast between the argument that
13 alternatively either trial counsel should have impeached
14 Ms. McCall or it was clear Ms. McCall was not the
15 shooter. We know the gun was found in the car with only
16 two bullets in it and Ms. McCall is not the shooter, then
17 Mr. Wood was the shooter and they should have conceded
18 guilt, which they did not do. Those are the grounds
19 raised between A and C here.

20 THE COURT: I'm having trouble with whether he
21 should have conceded guilt or not. He ---

22 MR. BROWN: Well, as he's the only lawyer ---

23 THE COURT: What he's testified to, he's pretty much
24 conceding that a male on the moped did the shooting. It
25 seems to me that he testified there was some independent

1 witness there that followed him or saw him. So it
2 appears to me that he knew all of that. Mrs. McCall was
3 not there when the trooper was killed. I don't think
4 there is any question about that.

5 MR. BROWN: Yes, sir.

6 THE COURT: Mr. Mauldin has testified he was lead
7 counsel. He thought that the best way that he could have
8 input into saving Mr. Wood was in that part of -- in the
9 sentencing proceeding. And I haven't heard any question
10 of why he did not concede guilt.

11 MR. BROWN: And Your Honor ---

12 THE COURT: Now ---

13 MR. BROWN: I'll -- the only thing I can tell Your
14 Honor is he didn't make the closing in the guilt phase.

15 THE WITNESS: No, the sentencing phase.

16 MR. BROWN: I understand that. So he's not the
17 lawyer who did not concede guilt. And I'm not trying to
18 pit lawyers, when there's a lawyer who's going to tell
19 me. I don't mind saving the other information, but the
20 next lawyer could say, well, maybe we had a great guilt
21 phase case and he should have done everything he could
22 have to fight for acquittal or voluntary manslaughter.

23 THE COURT: Well, I don't know. We've heard some
24 testimony that they had regular meetings. Maybe he was
25 not the most organized person in the world, you know. I

1 will not take judicial notice of that I can assure you.

2 THE WITNESS: Me neither, Your Honor.

3 MR. BROWN: He would concede that. But ---

4 THE COURT: Even though he's not a Clemson graduate,
5 but be that as it may.

6 MR. BROWN: Wofford.

7 THE COURT: You can ask him if he consulted with
8 other lawyers, all of that, what the strategy was. He
9 was lead counsel I expect him to know. He's the man
10 here.

11 MR. BROWN: Yes, sir. And that's fine.

12 THE COURT: You can go ahead and ask him all that,
13 but I don't know how the stuff is going to help us one
14 way or the other.

15 MR. BROWN: Well -- and you know ---

16 THE COURT: Be -- go ahead.

17 MR. BROWN: I just put -- I'm taking out a page,
18 117, 117 of the trial transcript, and ---

19 THE COURT: What is it, Mr. Brown?

20 MR. BROWN: I'm sorry?

21 THE COURT: Just tell me what it is.

22 MR. BROWN: I'll have to get it back from you.

23 THE COURT: Just tell me the straight language.

24 MR. BROWN: He was just involved in a chase,
25 basically not a victim. It does not necessarily say that

1 he was the shooter with Trooper Nicholson, but impeaches
2 her testimony because she testified he was not the
3 shooter with Trooper Nicholson. I mean, she is put up to
4 say she cannot come out and say he's put -- to say Mr.
5 Wood was the guy who jumped off the scooter, jumped into
6 her Jeep. And she did not get impeached about that. On
7 this page they asked what happened. He walked up to the
8 door, pointed a gun at the guy, snatched the guy out of
9 the car. He got in the vehicle with his gun -- excuse
10 me, I'm on the wrong page. I apologize. The one I just
11 handed up was 119 on that page.

12 THE COURT: 117 is what I've got in my hand.

13 MR. BROWN: I'm sorry, Judge, two pages.

14 THE COURT: What did he ---

15 MR. BROWN: She -- well, this case produced over in
16 the Anderson argument regarding Ms. McCall never once
17 says Mr. Wood reached over her. In other words, she
18 testified over in Greenville that he reached over and
19 rolled the back window down, but in Anderson the officer
20 never testified that Mr. Wood -- he saw Mr. Wood reach
21 over and roll the window down.

22 MR. WATERS: Your Honor, I may -- I don't know that
23 he needs this.

24 THE COURT: Just ask him, why didn't you
25 cross-examine her on whether or not he reached over

JOHN MAULDIN - Direct by Mr. Brown

1 and -- or whether or not he reached over and ---

2 MR. BROWN: We're not arguing collateral estoppel.
3 We're just trying to show that there was evidence that
4 was presented, credible enough evidence presented by the
5 State in another proceeding that showed Ms. McCall was
6 involved and that was subject to being used in
7 cross-examining Ms. McCall. Now, it's not
8 cross-examining her to establish evidence of her guilt as
9 the shooter, but it's to impeach her testimony that Mr.
10 Wood was the one on the scooter. This gets to the very
11 heart of our first three claims. And Your Honor, we are
12 talking about just the transcript. It's just a number of
13 pages and can be -- the trial transcript is 1,000 plus
14 pages. I don't intend to introduce all of that.
15 Otherwise it's not in the record.

16 THE COURT: You're telling me there are police
17 officers that say they didn't see her reach over (sic).
18 She testified to the same thing in Greenville, that he
19 reached over and did the shooting out of the window?

20 MR. BROWN: Yes, sir.

21 THE COURT: I'm going to let the pages in if she
22 testified to that. Just assume she testified to that.
23 Go ahead and ask him the question.

24 MR. BROWN: Okay. And then if -- otherwise we
25 assume that they would have testified the same truthful

1 way that they did in Anderson as they would have done
2 here in Greenville if you had called them. She would
3 have done here like she testified he reached over to do
4 the shooting. Had you called the Anderson police over
5 they say he never did it, that would be something you
6 could have used to cross-examine her?

7 THE COURT: He said he never saw her do it?

8 MR. BROWN: Yes, sir, that's right. I mean, again
9 I'm --

10 THE WITNESS: And I'm trying to make sure I
11 understand the question and the limits of the question.
12 If I'm being informed right now that the State of South
13 Carolina took one strategy with a key State's witness in
14 Greenville County, and then in Anderson County the
15 State's attorney argued that he was lying, then I think
16 that's a real problem. I mean, I think that's a
17 distinction. For them to put her up in one county and
18 she says he's reaching over me, and of course the State
19 by putting herself -- they're arguing to -- the argument
20 is endorsing or bolstering that testimony. If they then
21 prosecute her in a county -- this is the first time I've
22 ever seen this paper. They're saying she was lying, then
23 I think that just really is a distinction, and I mean, I
24 don't know what else I need to say about that.

25 BY MR. BROWN:

JOHN MAULDIN - Direct by Mr. Brown

1 Q And the fact is, is the officers in this case, in
2 the investigation of this case by the defense -- and let
3 me say this with all due respect, the officers were not
4 cooperative with me. And that's okay. I mean, it was an
5 officer who was killed, and I have all of the
6 understanding in the world why law enforcement would not
7 want to just sit down and have coffee with me and tell me
8 everything. That's just the way it is sometimes with law
9 enforcement officers.

10 THE COURT: Wait a minute. How you feel about law
11 enforcement officers -- let's stick to the facts if we
12 can.

13 THE WITNESS: I'm trying to read this.

14 THE COURT: All right. The first sentence says is
15 these officers never would have saw Defendant Wood reach
16 over her. I don't know if he's talking about letting the
17 window down or what. I can't find anything in here where
18 there is any indication that she did any shooting.

19 MR. BROWN: No, you got -- it all has to be in
20 context. We're not done, Your Honor. You're exactly
21 right. Like I've got the entire transcript. It's
22 lengthy. I think the trial -- I would love to introduce
23 the entire transcript, that's fine with me. It's 1100
24 pages. It's probably more appropriate that I do so, but
25 I would like to hand these up as excerpts because it's

1 better than just trying to go through 1100 pages sitting
2 here. Let me tell you -- I'll put it in context. That
3 if the State had gotten -- if the State had this
4 information available to prove beyond a reasonable doubt
5 Ms. McCall guilty in Anderson, then Mr. Mauldin had as
6 much information available to impeach Ms. McCall here.

7 THE COURT: I can't see anything in anything you've
8 given me that -- where she -- they did not say that the
9 defendant did the shooting. I guess -- I assume they are
10 being tried together?

11 MR. BROWN: She said in this trial that she picked
12 up Mr. Wood at the gas station when he got off the
13 scooter. That's very a general statement. That's not
14 verbatim from anything. That's the thrust of her
15 testimony. The State used that to say, look, she's in
16 the Jeep, he's on the scooter.

17 THE COURT: Well, that supported their case of
18 identity, element of identity in this case.

19 MR. WATERS: Your Honor, if I can point out? Ms.
20 McCall on her direct appeal did in fact raise an -- or a
21 judicial estoppel issue and the State's Court of Appeals
22 I believe rejected that based on everything. The State
23 took her testimony in Mr. Wood's case and then still
24 prosecuted here even though she kind of gave a duress
25 type of argument. They have already rejected that. But

1 even this was different. Even if Mr. Mauldin believes it
2 would stick, that's beside the point in this case,
3 because it would be an issue for Ms. McCall. He's
4 already raised it and was ruled against. It has nothing
5 to do with this case. The only issue I would submit
6 that is here is, Mr. Mauldin, why didn't you
7 cross-examine Karen McCall about whether or not she
8 reached -- whether or not Mr. Wood reached over her and
9 put down the window -- or pressed the pedal and grabbed
10 it, or whatever. That seems to be the only question that
11 needs to be asked. I don't see that ---

12 THE COURT: The only question here is what Mr.
13 Mauldin did or did not do, if he was a reasonably
14 effective lawyer or not by cross-examining this lady, and
15 if he was not was the defendant prejudiced in some way,
16 and the reasonable probability the result would have been
17 different. So I -- right now -- in the subsequent trial
18 in Anderson and her testimony there, it's different in
19 Greenville, that's the reason we're here.

20 MR. BROWN: Yes, sir.

21 THE COURT: But you've got to approach it some way
22 to show Mr. Mauldin was not reasonably effective.

23 MR. BROWN: And all ---

24 THE COURT: All right. You just need to approach it
25 from that way based on what he knew at the time. What he

1 should have or should not have done. That's pretty much
2 the approach.

3 MR. BROWN: Yes, sir. All -- again, we were talking
4 very previously -- all I'm trying to show here is the
5 information that would have been available. Again, we
6 assume -- and I mean this very respectfully, if the State
7 offers testimony -- or if the State's case in Anderson is
8 true, and I'm not making a collateral -- some kind of
9 collateral estoppel argument on behalf of Mr. Wood at
10 all.

11 THE COURT: I haven't seen another -- enough of the
12 testimony.

13 MR. BROWN: I could just hand -- keep handing these
14 up, Your Honor. And then I think at some point in
15 time ---

16 THE COURT: I don't know how many there are.

17 MR. BROWN: They're not very many pages. Our
18 transcript here is 1448, Your Honor.

19 THE COURT: Seems like the only question here is
20 what should Mr. Mauldin have done in investigating the
21 Anderson case, and talked to these police officers to
22 determine if there is -- what should he have done
23 this ---

24 MR. BROWN: He's giving him ---

25 THE COURT: Did he ask to talk to them about what

JOHN MAULDIN - Direct by Mr. Brown

1 they were going to say? Did you know -- did you talk to
2 the police officers in this case?

3 THE WITNESS: I made an effort to talk to the law
4 enforcement in Greenville County and Anderson County.

5 THE COURT: And they provided you with the
6 statements that Ms. McCall and the defendant gave?

7 THE WITNESS: No.

8 THE COURT: Did you ask for them?

9 THE WITNESS: The -- the disclosure of discovery
10 from the solicitor's office in Greenville had a good bit
11 of information regarding statements from law enforcement.
12 But aside from that we were able to get in the discovery
13 who we couldn't obtain cooperation from.

14 THE COURT: Have you taken statements from Ms.
15 McCall?

16 THE WITNESS: In Greenville? Yes, I believe Ms.
17 McCall did give a statement and we had that statement.

18 THE COURT: You had it?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay.

21 BY MR. BROWN:

22 Q Could you have called law enforcement officers who
23 worked in Anderson County and testified in the Anderson
24 trial?

25 A I could have. I could have called them. I had

1 subpoena powers. I could -- are you talking about
2 calling them as witnesses or calling them on the phone?

3 Q Called them as witnesses. If they wouldn't have
4 been cooperative, I understand that traditionally the
5 rule is you don't call witnesses and ask them question
6 without knowing what the answer is?

7 A Right.

8 Q But again, assuming if they're prosecuting Ms.
9 McCall, they're going to have information -- let me break
10 that down. If they're going to prosecute Ms. McCall, I
11 would assume Anderson County law enforcement would have
12 evidence against her?

13 A We could have called law enforcement officers as
14 witnesses in our case if we had felt like the distinction
15 regarding what they were saying Ms. McCall did and what
16 she was saying she did would benefit our client.

17 Q Basically back to the fact that you did not think
18 there was any question of that not being an issue (sic)?

19 A I did not think that calling law enforcement
20 officers to ask them whether they had seen inside that
21 Jeep was really going to help John Wood in his Greenville
22 County capital case involving Eric Nicholson. That's all
23 I recall. I can say there was -- it would have been
24 great risk. It -- there would have been a great risk in
25 my opinion calling a law enforcement officer to testify

1 for John Wood in this case.

2 Q And let me follow up. Is part of the fact that you
3 weren't interested in impeaching her because that wasn't
4 your defense -- defense?

5 A I -- yeah, I mean, we just didn't -- from an
6 approach point of view, or from a theory point of view, I
7 simply did not, one, believe that that was consistent
8 impeaching her and trying to show every different little
9 line and lie ---

10 Q Sure.

11 A --- was really going to wind up -- was that the
12 rewards for doing that were in our view outweighed by the
13 damages that we could do to ourselves.

14 Q And let me try to get more a concrete answer to my
15 question. Was identity one theory or -- of your defense?

16 A Was identity a theory?

17 Q Mistaken identity?

18 A And to some extent, yes. But in the final analysis,
19 no, if that makes sense to you. I'll be glad to explain.
20 That's pretty much the best I can answer.

21 Q Okay. Well let -- I can kind of break that down.

22 A All right.

23 Q You would agree with me that the gun found in
24 Anderson County in the presence of Ms. McCall and Mr.
25 Wood was conclusively linked to the shooting of Trooper

1 Nicholson?

2 A Yes, there was no dispute. That's -- if I recall
3 correctly that was not really disputed.

4 Q Okay. And the time frame between the shooting and
5 the arrest of Ms. McCall and Mr. Wood in Anderson was
6 fairly short? I mean, that we're talking about within a
7 one day period?

8 A Oh, yeah.

9 Q A 24 hour period?

10 A Yeah, it was -- it was like maybe late -- mid to
11 late morning and then an arrest mid to late afternoon.
12 So it was all like within maybe a four to six hour
13 period, if I recall correctly.

14 Q So the State has this argument that circumstantially
15 the gun being in the presence of these two people makes
16 at least one of these two the shooter? In other words,
17 just like the argument of possession of stolen property?

18 A Yes, I think that's fair.

19 Q There's some evidence there was a burglary?

20 A I think that's fair.

21 Q Okay. And then we have also coupled with that is
22 part of the chase out of Greenville, part of the time the
23 escape from Greenville by Ms. McCall and Mr. Wood that
24 was -- they were followed, and then part of the chase
25 into Anderson they were followed? In other words, they

1 were not apprehended immediately in Anderson and so ---

2 A That's true, they were not apprehended immediately.

3 Q So there was several hours, but some in there they
4 were actually being followed? I mean ---

5 A They were followed by citizens immediately following
6 the shooting in Greenville. Then there was a gap of
7 somewhere I'd say maybe an hour or less when their
8 whereabouts were unknown because there was a bulletin
9 looking for a particular vehicle. That -- then all of a
10 sudden that vehicle appeared in Anderson County and then
11 they were followed after that until the arrest.

12 Q Now, Ms. McCall testifies at trial -- to come back
13 here, but she testifies at the Greenville trial that she
14 picks Mr. Wood up and she testifies about the events from
15 the time she picks him up, into Anderson County, through
16 their arrest, doesn't she?

17 A I don't know. I don't recall exactly how much of
18 the Anderson County information came out during the trial
19 in Greenville. We were attempting to limit that as much
20 as we could.

21 Q Sure.

22 A I would think that common sense would tell she
23 certainly testified about picking him up behind the
24 gymnasium over off of the road over there near Mauldin
25 Mill area or something like that. And then she testified

1 that they were subsequently arrested in Anderson County.
2 Now, the transcript speaks to what she said in between
3 there.

4 Q Yes, sir. Do you recall any testimony -- well, let
5 me, wouldn't it have helped the defense on the issue of
6 identity if she had said, meanwhile I stopped with the
7 crowd of people, and in between that time -- or there was
8 somebody else putting items into the Jeep?

9 A Oh, yeah. I mean, I guess if there had been
10 intervening causes or intervening persons, I mean, I
11 could have claimed that the real person by the way, this
12 guy John Wood just happened to be a hitchhiker, but that
13 really wasn't what she testified to.

14 Q And so part of what I'm getting to, again I hate to
15 belabor the point, identity really was an issue in this
16 case? I mean, again, coming back to all these things.

17 A The issue of identity was that the eye witnesses in
18 Greenville couldn't identify Mr. Wood.

19 Q Certainly. And part of the clothing?

20 A The person who committed the shooting had a helmet
21 on on the moped. They had on clothing.

22 Q There was some question even about what
23 circumstance -- initially there was a question about
24 whether it was a male or female, black or white. It was
25 just unknown, the identity of the shooter. The -- then

JOHN MAULDIN - Direct by Mr. Brown

1 when the chase resumed in Anderson County, it was the
2 two people in the car with the gun. So the identity was
3 if -- they would have had a hard time proving identity if
4 the chase had not resumed in Anderson County with the
5 subsequent arrest of Mr. Wood and the finding of the gun?

6 A Right.

7 Q Okay.

8 A I think they found the gun and then the taking of
9 statements from Karen McCall and so forth.

10 Q Actually let's deal with statements. Obviously it
11 wouldn't have come in without her testifying?

12 A Well, yeah, in his trial, that's true.

13 Q Okay, that's -- but ---

14 A In his trial they could not have used her statement
15 without her testimony.

16 Q Okay. So she does come in and testifies, and she
17 ties up for the State the issue of identity?

18 MR. WATERS: Your Honor, I'm going to object to the
19 leading. There's been a lot of it going on. I'm going
20 to object at this point.

21 THE COURT: You can't lead.

22 MR. BROWN: And yes, I apologize. I'm trying to
23 further the testimony. There's -- just trying to get the
24 facts out for the evidentiary hearing.

25 THE WITNESS: All right. Would you repeat the

1 question.

2 BY MR. BROWN:

3 Q How would you describe the issue of identity with
4 Ms. McCall's testimony?

5 A I think that Karen McCall's testimony, if you take
6 it in conjunction with the -- what I would describe
7 essentially as the shootout in Anderson, where he was
8 ultimately arrested, his identity at least became known
9 at that point. And the item to me -- if I recall
10 correctly, the critical connection from Karen McCall's
11 testimony, the person who was the shooter in Anderson was
12 the same person that got off the moped in Greenville. So
13 I believe from an identity link point of view that was
14 critical.

15 Q And -- and subsequent to that, y'all chose not --
16 whether -- excuse me. In light of that how did you --
17 how would you describe your impeachment of her
18 credibility?

19 A The credibility about whether or not that was really
20 him?

21 Q Or credibility of her as a witness related to that
22 evidence?

23 A I just simply -- and again, I'll let the record
24 speak for itself, but -- but I believe that it would have
25 been very difficult to expect a level of credibility with

1 this jury in the penalty phase if I had tried to make it
2 appear that Karen McCall was not being truthful about who
3 got into the Jeep behind the gymnasium and that it was a
4 different person than the person who was shot in
5 Anderson. That to me would have been -- the jury would
6 have not only rejected that but wouldn't have listened to
7 too much of what I had to say the rest of the trial.

8 MR. BROWN: And Your Honor, on that note if I can
9 just pass these other excerpts up?

10 THE COURT: Let's take a 10 minute recess, and I'll
11 look at these. And he wants ---

12 THE BROWN: Thank you, Your Honor.

13 (A short recess was taken, after which, the trial
14 continued as follows:)

15 THE COURT: Where are you going with what you gave
16 me to start with?

17 MR. BROWN: Yes, sir. Opening statements by Ms.
18 White.

19 THE COURT: That's not evidence. It cannot come in.
20 It's not evidence in the case. It couldn't come in as
21 evidence in this case because Ms. White doesn't know
22 anything about it anymore than I do, Mr. Brown.

23 MR. BROWN: Your Honor, you're exactly right. I
24 have other ---

25 THE COURT: The second thing is, I don't see

1 anything in here where Karen McCall says that anybody did
2 any shooting other than Mr. Wood. She said that, and
3 what Ms. White is saying here is the defendant Mr. Wood
4 did everything he could to kill officers over there.
5 Those are the same people you're saying that Mr. Mauldin
6 should have called as witnesses?

7 MR. BROWN: What I'm trying -- my understanding --
8 what I am suggesting this -- if identity was an issue,
9 which again, I did not put that claim in. I kept this
10 claim in the application. I'll put that I did -- I did
11 not draft that claim as an original claim in this
12 application for post conviction relief. If identity was
13 an issue they could have impeached Ms. McCall with her
14 involvement, came over here and testified she didn't have
15 anything to do with it at all, not the shooting of
16 Trooper Nicholson. I did not have anything to do with
17 the Anderson shootout, I was under duress.

18 THE COURT: Well, they were trying in Anderson
19 nobody -- saying she did not have anything to do with it
20 because he was on trial.

21 MR. BROWN: She testified here though.

22 THE COURT: Yeah, she testified here because the
23 judge said they couldn't have the Anderson trial before
24 this one. And I can understand that for some reasons,
25 for that -- this was a death penalty trial, that was not.

1 MR. BROWN: Yes, sir.

2 THE COURT: And what I'm saying, all of the proof of
3 guilt they used in Anderson, I agree with you, the State
4 prosecutor couldn't ignore evidence, but all of the proof
5 of guilt in Anderson County is equally impeaching of Ms.
6 McCall.

7 MR. BROWN: Well, we got Mr. Mauldin up here
8 saying -- which he shouldn't be able to express the
9 opinion that they might be using statement -- be using
10 something of a different theory over there than over
11 here.

12 THE COURT: I just don't see it. Because the only
13 thing that he says in what you have given me is that the
14 defendant shoot -- fired all the shots, attempted to kill
15 the officers. I don't see anything Ms. McCall did --
16 where are you going?

17 MR. BROWN: We'll give other experts ---

18 THE COURT: Just give them and let the clerk bring
19 them and we'll read them.

20 MR. BROWN: Yes, sir.

21 THE COURT: Let's take no more than 15 minutes.

22 MR. BROWN: Thank you so much, Your Honor.

23 (A short recess was taken, after which, the trial
24 continued as follows:)

25 THE COURT: Well, from what you gave me it appears

1 that Druanne White in opening statement -- and I don't
2 want to keep that -- anything out that Mr. Mauldin was
3 ineffective, but the question is his cross-examination of
4 Karen McCall.

5 MR. BROWN: Yes, sir.

6 THE COURT: And apparently from everything that I
7 have seen or heard, it was known that someone assisted
8 him in trying to get away in a high speed chase in
9 Anderson. I understand that some of that -- some of that
10 testimony came out. It could be Karen McCall. It was
11 the position of the State, they were trying both of them
12 together and I assume thereby indicted. And the defense
13 knew both of them had been indicted, what Mr. Wood and
14 Karen McCall were indicted for. I don't know anything
15 about the trial, but based on what I have read, the
16 position of Druanne White in her opening statement, she
17 was trying to convict both of them under the theory of
18 the hand of one is the hand of all and convict both of
19 them. What I do not know is would it entitle --
20 justifies that it would be assault on an officer with
21 intent to kill -- assault and battery because one of them
22 was shot.

23 MR. BROWN: Yes, sir.

24 THE COURT: And I don't know whether he was
25 successful or not. I don't know that it really makes any

JOHN MAULDIN - Direct by Mr. Brown

1 difference. But the question is, why didn't Mr. Mauldin
2 cross-examine her. And I'm not sure there is anything in
3 here that you gave me that's inconsistent. She testified
4 under oath that it was her gun, that he did the majority
5 of the shooting, she had no clue as to whether or not the
6 third one was put -- I don't how much time passed. But
7 the issue here, had he cross-examined Ms. McCall in
8 Greenville. And what is it that we're having difficulty
9 with here, Mr. Brown?

10 MR. BROWN: We are -- Your Honor, those pages I gave
11 you, if it may please the Court?

12 THE COURT: I want to know what the issue is here.
13 His -- he knows somebody drove him away, participated in
14 this thing, or ---

15 MR. BROWN: May it please the Court? I can fin- --
16 summarize this a little bit. On 1448, which, Your Honor,
17 I did not copy that one.

18 THE COURT: That's in Greenville?

19 MR. BROWN: Greenville. And that may be -- there it
20 is. She said, get your ass up here now, and I grabbed
21 the bag and ran up there and got in.

22 THE COURT: All right.

23 MR. BROWN: That's right after he pointed the gun.

24 THE COURT: That's right.

25 MR. BROWN: Waiving the gun around. He waived the

1 gun and said, which I'm paraphrasing, that Mr. Wood is
2 coercing Ms. McCall under duress in getting her ass in
3 the car.

4 THE COURT: Okay. All right.

5 MR. BROWN: And then in contrast you've got -- over
6 there in Anderson you've got your gun came with
7 magazines, two magazines. You did not -- do you want to
8 tell us who reloaded the third magazine while shooting at
9 the police, driving, during part of the driving, was --
10 would it be possible to load a magazine while driving 100
11 miles an hour, going through fields, shooting at the
12 police. And then coupled with that is the GSR on her
13 hands.

14 THE COURT: He knew there was evidence that it was
15 on the outside of her two hands, based on what I've
16 heard.

17 MR. BROWN: Yes, sir.

18 THE COURT: You introduced evidence here today that
19 there was no evidence of it being on the inside of her
20 hand.

21 MR. BROWN: Was ---

22 THE COURT: Knowing all of that should he have
23 cross-examined her as to her part in the participation in
24 the escape and chase in Anderson, which I feel certain he
25 knew about, he knew about the trial over there.

1 MR. BROWN: Your Honor, just if -- the GSR, they
2 found it on her palms and the back of both of her hands
3 which is even more ---

4 THE COURT: I thought he testified it was just on
5 the backs of her hands.

6 MR. BROWN: Mr. Waters already said he has no
7 objection to this evidence.

8 MR. WATERS: I have no objection to the SLED report.

9 MR. BROWN: Which I thought I remember reading up
10 there. They were read. I can just enter it in -- I
11 think it would be petitioner's 3. I offer petitioner's
12 number 3 for today's hearing -- for this week's hearing.

13 THE COURT: Okay.

14 (Plaintiff's Exhibit Number 3 was marked and filed.)

15 MR. BROWN: That concludes this part of the evidence
16 from this ground.

17 THE COURT: This is what you asked him if he had --
18 I didn't see what you were asking, if he had this in his
19 file, is that right?

20 MR. BROWN: That document is what I asked if he had
21 been provided, but he never did answer that.

22 THE COURT: I thought you had it.

23 THE WITNESS: I don't know. I believe my file
24 probably did have that in it.

25 THE COURT: Well I thought you said you could be

1 mistaken about that.

2 THE WITNESS: Right. And -- but I'll be glad to go
3 through six boxes looking for it, but actually that
4 document would not have changed my position.

5 MR. BROWN: And we are of the position that he was
6 provided that document. We do not dispute that. And
7 again, you have to realize, Your Honor, I'm making an
8 alternative argument. I've got a ground I didn't want to
9 drop, that was a ground that was raised by appellate
10 defense counsel, which is Karen McCall should have been
11 impeached and ---

12 THE COURT: That he was ineffective for not
13 impeaching her?

14 MR. BROWN: Yes, sir.

15 THE COURT: What are you going to ask him about
16 that?

17 MR. BROWN: I've asked him if he -- given a reason,
18 he did not think it was worth beating up on her, and to
19 paraphrase a little bit, that he thought ID was not hotly
20 contested. And then we were going to come -- I mean, I'm
21 going to ask about conceding guilt.

22 THE COURT: About what?

23 MR. BROWN: Why he did not concede guilt.

24 THE COURT: Okay.

25 MR. BROWN: Be -- and that's -- I mean ---

1 THE COURT: I understand what you're doing.

2 MR. BROWN: Yes, sir.

3 THE COURT: All right. If he had this you did
4 not -- he says even if he had it he wouldn't have changed
5 it.

6 MR. BROWN: Yes, sir.

7 THE COURT: Okay.

8 MR. BROWN: And I would just ask that those pages of
9 the transcript ---

10 THE COURT: But these -- those from Anderson would
11 be just a couple of pages getting into this. I mean,
12 introducing stuff from another trial, Karen McCall is not
13 here to testify. I've never seen her statement. But be
14 that as it may, she never admitted participating in the
15 shooting or anything in her cross-examination, the
16 cross-examination questions asked by Ms. White and her
17 opening statement. It's just not proof to impeach Karen
18 McCall. But go ahead. I mean, until I see something
19 that -- I can read. She picked him up. There is no
20 question about that. She was involved in the drive away.
21 But part of this time he was driving too, but she was
22 driving at one time in this shoot out.

23 MR. BROWN: That's correct, yes, sir.

24 THE COURT: Okay. Go ahead.

25 MR. BROWN: Okay. And I would ask that those five

1 pages of the transcript be entered. I know there's an
2 relevance objection I think is what it is, and of course
3 I think it's relevant because this shows what Mr. Mauldin
4 could have done but -- in the cross-examination of Ms.
5 McCall by Ms. White about, look you were involved, and
6 she's into it with me, this is the same cross-examination
7 that Mr. Mauldin so could have done.

8 MR. WATERS: I don't mind him asking the questions.
9 He can ask, you have not asked Ms. McCall these
10 questions, but I'll ---

11 THE COURT: You can ask the questions but the
12 question is should he have done it to be effective.

13 MR. BROWN: And I agree with that, Your Honor.

14 THE COURT: Well, ask him that.

15 MR. WATERS: I'll let him ask that.

16 BY MR. BROWN:

17 Q Did you read these things?

18 A No, sir. I don't have what y'all are referring to.

19 MR. BROWN: I handed them up to Your Honor first. I
20 didn't want the witness ---

21 THE COURT: Ask a hypothetical question.

22 MR. BROWN: I don't mind doing that. If you chose
23 not to cross-examine Ms. McCall based on the evidence, do
24 you think you could have asked something along the lines
25 of, regarding the number of bullets fired in Anderson

1 County, the fact that there were two magazines with the
2 gun ---

3 THE COURT: Now, he chose not to ask her that. He
4 could have asked her that. I'll concede that. Rephrase
5 your question.

6 BY MR. BROWN:

7 Q Would you concede that the number of bullets fired
8 out numbered the number of bullets that fit into two
9 magazines in Anderson County?

10 MR. WATERS: See, that's why I think this is ---

11 THE WITNESS: Well, I'm not really sure I can
12 actually answer that question. If you could -- you know,
13 I don't think I have enough information about the
14 magazines and the number of bullets that were shown to
15 have been fired. Does that -- so I mean -- so I'm really
16 reluctant to say. Have I answered that question you just
17 asked me?

18 BY MR. BROWN:

19 Q Let me go back to the end of it. Is it clear that
20 Mr. Wood was driving the car at the end of the chase, and
21 it was not even the same car, it's not the Jeep?

22 A If I recall -- you're talking about when he was
23 shot?

24 Q Yes, sir.

25 A If I recall correctly, and again this has been some

1 time, I believe she was not in the driver's position when
2 he got shot in the face. Okay. And the only way -- I
3 think the car, you know, kind of careened around or
4 whatever.

5 Q Yes, sir. And -- and I guess to follow up on that,
6 if the number of bullets shot out numbered the number of
7 bullets that fit into two magazines, could you not have
8 cross-examined Ms. McCall about how Mr. Wood could have
9 been driving so fast and shooting, which is what she says
10 he does, and reloading the magazine?

11 A Now, you're asking me on ---

12 Q You could have cross-examined her about that?

13 A I could have. I could have.

14 Q It's fairly effective -- I don't mean -- that's not
15 the case, but fairly impeaching of her as far as not
16 being involved?

17 A All right. Our investigation indicated that what
18 you have just described to me is correct in terms of
19 number of shots. I don't remember numbers, but I do
20 remember that being a matter of that supported by the
21 file, that he was driving at the time he was actually
22 shot in the face and apprehended. I knew that.

23 Q Yes, sir.

24 A Now, the question is did I think about asking Ms.
25 McCall about that during the trial in Greenville? Now, I

JOHN MAULDIN - Direct by Mr. Brown

1 guess I did not give it much thought. I will tell you
2 that I didn't think it was a good idea.

3 Q It wasn't a good used to impeach her?

4 A Well, I actually had the intention of trying to
5 reduce the testimony and evidence and so forth from the
6 Anderson gun fight.

7 Q You didn't think that was consistent with talking
8 about how many shots were fired and there were more shots
9 fired then were held in two cartridges?

10 A That's inconsistent to me. So -- and plus the fact
11 that my general attitude was that trashing her, making
12 her out to be what I might call a significant active
13 participant really was not part of what we were trying to
14 do.

15 Q And let me ask you if identity would have been a
16 substantial question and not just a marginal issue, would
17 you not have thought it would be important to impeach Ms.
18 McCall?

19 A If the question to be answered by that jury in
20 Greenville was one of these two people killed Eric
21 Nicholson, if that was the question, then absolutely we
22 would have impeached her with everything we could
23 possibly have impeached her with. That was not the
24 question. In my view, looking back on the case, that
25 simply was not the point. So I did not cross-examine her

1 to try to show that maybe she was the one who killed the
2 patrolman.

3 Q You relied that Mr. Wood was the shooter?

4 A On what?

5 Q You relied that Mr. Wood was the shooter?

6 A Right.

7 Q Okay. You had no reason to really impeach her on
8 that?

9 A No, I did not.

10 Q Because you didn't have the material to impeach her
11 with?

12 A All right -- I'm sorry?

13 Q Because you didn't have some material to impeach her
14 with?

15 A Well, I mean, we've just been talking about what I
16 knew about.

17 Q Sure. And that's -- you probably should leave the
18 intent out there?

19 A I mean, impeachment in a vacuum, yes, I could have.

20 Q That's not what I'm asking.

21 A But impeachment within the -- within the frame work
22 of the case that we were trying to bring to the jury, I
23 did not and I consciously did not.

24 Q Sure. You made a decision to not impeach her
25 because that was not the issue you were pursuing?

JOHN MAULDIN - Direct by Mr. Brown

1 A Right.

2 Q Okay.

3 A Yeah, I think that would be fair to describe it that
4 way.

5 Q Identity was not the issue you were pursuing?

6 A That identity between the two of them was not really
7 an issue in terms of who had committed the offense in
8 Greenville and who was -- who in Anderson. It just --
9 that really was not much of an issue, I did not think.

10 MR. BROWN: Your Honor, at this time we would be
11 going to move just contextually to ground B with this
12 witness. Just to tell you that that was all I've got.
13 Obviously now that I've got that information out there
14 we're ready to move from that one section from Anderson
15 County to the ---

16 THE COURT: And he just said he knew all of that.

17 MR. BROWN: That's right.

18 THE COURT: All right. Go ahead.

19 BY MR. BROWN:

20 Q The next point I'm going to go to is in regards to
21 the articulation for a request for an instruction for
22 voluntary manslaughter. And if you recall there was a
23 request made to the trial judge. Mr. Bannister is the
24 one who made the request that says he would like an
25 instruction of voluntary manslaughter. And there was

1 some argument in there about that, and I want to ask you
2 a few things. One is about what I would refer to as an
3 aggressive stop. And does that mean anything to you?

4 A Does that mean anything to me in the context of this
5 case?

6 Q Of this case.

7 A Yeah, I recall that being a consideration.

8 Q Okay. And at some point y'all received information
9 about a skid mark?

10 A And let me say one thing, I have -- I take complete
11 responsibility for this case. I was the lead lawyer.

12 Q Yes, sir.

13 A And nothing occurred in this case that I can recall
14 that I did not have some connection with in terms of
15 deciding what approach we would take. With regard to the
16 evidence of a skid mark, if that related to whether or
17 not it was an aggressive stop then that's probably
18 something Jim Bannister would have actually a better
19 recollection specifically about. But on the other hand,
20 we were -- we were looking at whether or not there was a
21 way we could claim that the stop by the patrolman in this
22 case was somehow either aggressive, or against the
23 highway department's policy, or something that would
24 support a claim that it was an unlawful, or illegal, or
25 improper stopping of a vehicle. We certainly would have

JOHN MAULDIN - Direct by Mr. Brown

1 done that.

2 Q And in fact, it's in the record, but do you recall
3 Mr. Bannister saying in closing, y'all as a defense found
4 out yesterday that there was actually measurements taken
5 of the skid mark and that Officer Greenway had done an
6 accident reconstruction?

7 A And you know to the extent my recollection is
8 somewhat secondhand there, I mean I'm remembering what
9 somebody else said or did.

10 Q Yes, sir.

11 A I do remember an analysis going from the time of the
12 incident until the time of trial of -- about the nature
13 of the acts of both the defendant and the victim. We --
14 that certainly would have been very critical, and we
15 would have been neglectful of our responsibilities not to
16 have looked at the conduct of both the defendant and the
17 victim, in terms of the actual stopping of the moped.

18 Q And let me ask you this, do you recall there being a
19 question about -- I mean, obviously one question was
20 about whether the moped was a moped?

21 THE COURT: Whether what?

22 MR. BROWN: It was a moped or whether it was an
23 illegal vehicle on the interstate.

24 THE WITNESS: There was some question about whether
25 it technically qualified to be a moped, or whether it

1 actually needed to have a license plate on the back, or
2 whether it needed to have a moped plate on the back.

3 BY MR. BROWN:

4 Q Yes, sir.

5 A There was some question about that. And actually
6 some testimony I think in the trial from people, but I
7 may be mistaken.

8 Q And I'm going through -- and this is kind of the
9 best way I know. This is a copy of some of the -- I
10 apologize. If I can try and give you a copy of some of
11 the excerpts out of the proceedings. And that's page
12 1459. This is actually the cross-examination -- this is
13 your -- actually your cross-examination of Ms. McCall.
14 Do you recall that part?

15 A I do recall cross-examining her.

16 Q Okay. And you asked her a question about the
17 registration on the motorcycle.

18 A What -- where are we?

19 Q I'm sorry. Line three.

20 A All right. Let me take one moment.

21 Q Yes, sir.

22 A All right.

23 Q And actually goes through line 10, whether I put
24 that in there, but you asked about whether it was
25 properly registered and she says no?

JOHN MAULDIN - Direct by Mr. Brown

1 A She said they had problems with it, yeah.

2 Q Okay. And -- and she said it's fair to say that it
3 was not properly registered. And then let me show you
4 the redirect-examination of page 1483 and it would be
5 lines -- I apologize. Be lines 10 through 20. And this
6 is not your examination but your witness again. And
7 actually Solicitor Ariail asked, has it been your
8 testimony -- and your testimony was it had not been
9 registered. Yes, sir. Is that your tag? No, sir. Do
10 you know whose tag that is? No, sir. And then my
11 question in follow up with that would be, that's some
12 indication that the operation of that vehicle was
13 illegal?

14 A The operation was illegal?

15 Q Yes, sir.

16 A The operation of -- the licensing or the tag
17 apparently was illegal.

18 Q And therefore -- I got to set the context. This is
19 his lawyer, so I don't know how else to do it, but it
20 appears the motorcycle was being operated on the roadway
21 illegally?

22 A Yeah.

23 Q Given that testimony?

24 A Yes. The answer to that question I believe is yes.

25 Q Can I -- so you're saying it was legal or illegal?

1 A Illegal.

2 Q Illegally. I'm sorry. Okay. So -- and then what
3 I'm going to follow up with is that then the question of
4 some kind of self-defense claim for the improper stop is
5 kind of hindered by this -- since I know that's directly
6 on ground B -- --

7 MR. WATERS: Your Honor, I would object to the
8 relevant ground. The second amended application, the
9 allegation in ground B is that he failed to present
10 testimony that the traffic stop was conducted properly.
11 He essentially failed to present sufficient evidence to
12 support voluntary manslaughter claims. Now the
13 allegation being put forth is that counsel messed up by
14 eliciting from Karen McCall that the tag was -- on the
15 scooter was illegal. I would therefore object to the
16 relevance issue that's been plead.

17 MR. BROWN: Actually I'm trying to get to that
18 question, Your Honor. It may sound strange enough here,
19 but I concede the improper tag on the motorcycle is not
20 allowed on the road. And I guess what I'm first saying,
21 there is not a right to defend yourself from a stop
22 that's based on a reasonable suspicion. I know what's --
23 there's a case that was made which says that what one
24 member of law enforcement knows is imputed to all law
25 enforcement. That's ---

JOHN MAULDIN - Direct by Mr. Brown

1 THE COURT: I don't know what you're saying.

2 Apparently he made a legal stop on -- it was a legal
3 stop.

4 MR. BROWN: Yes, sir.

5 THE COURT: Whatever it was.

6 MR. BROWN: Yes, sir. And I'm agreeing with what
7 you're saying. What he did was wrong. Well, I'm saying
8 there was a legal reason to make the stop, and I'm
9 getting to the ultimate question I'm going to ask this
10 witness.

11 BY MR. BROWN:

12 Q And I guess, are you aware of evidence that supports
13 the fact that beside a reason to conduct the stop, it was
14 done -- are you aware of evidence that it was done overly
15 aggressively, or in an illegal manner, there was legality
16 for the stop but it was done illegally, like by jerking
17 the person off the moped or something? I'm just trying
18 to think of something you might have ---

19 A And I'll preface my answer by saying, Mr. Bannister
20 was working on the issue of the aggressiveness or nature
21 of the stop. But that being said, we attempted to obtain
22 information regarding the policies of the highway patrol
23 regarding the technical -- what you're supposed to do to
24 pull over a car, a motorcycle, a moped. It would be --
25 may be in a manual that we got that information. We had

1 another source of information and that was our client in
2 terms of the description. So that's all I can say about
3 it. I mean, we took the policy information, the only --
4 we dealt with what we were receiving in terms of our own
5 investigation and made -- try -- made a determination
6 about whether we could show -- claim that the conduct of
7 the law enforcement officer had been excessive, or overly
8 aggressive. That's what we were attempting to try to
9 make sure that every stone was turned in the process of
10 trying to make -- make that determination. And so does
11 that answer your question?

12 Q It does. It does. I guess, did you find anything
13 that supported that that was admissible in your case, or
14 that you could use and were able to put into your case?

15 A Did we find information that was ---

16 Q You were able to either introduce into evidence
17 through cross-examination or through a witness that you
18 were willing to offer?

19 A Well -- well -- and I would say without trying to --
20 I'll be glad to review the actual questioning of Mr.
21 Bannister's cross-examination. I guess then, Mr.
22 Bannister, about whether or not he was -- but the fact
23 is, that was at least in -- kind of when the rubber meets
24 the road on that. We really couldn't prove that the stop
25 was ultimately improper. Now, does that answer your

1 question.

2 Q It does. And the question I've got, without there
3 being anything improper done by law enforcement, and with
4 there being a reason -- a legal reason to stop this
5 vehicle, was there a basis for manslaughter where there
6 was sufficient provocation?

7 A Well, there's two ways of looking at it, Mr. Brown.
8 I believe one is our way.

9 Q Yes, sir.

10 A And that's as an advocate for our client. We were
11 trying to get into the record something that would
12 support such a jury instruction. And the other way to
13 look at it, the way Judge Kittredge looked at that, he
14 said we had failed, so he did not give us the
15 instruction, notwithstanding the fact that it appeared we
16 had been unable to show a technical or actual illegality
17 to the stop, or excessive beyond the policy manual. We
18 had to then hope that the jury, even though they -- it
19 was not technically an illegal stop, or technically
20 against any policy, we had to hope that the jury would
21 wonder if perhaps it might have been factually overly
22 aggressive. And if they did then we thought perhaps at
23 the penalty case phase that might help John Wood get a
24 life sentence. That was kind of our long range idea.

25 Q So y'all were looking towards the penalty phase not

1 necessarily toward the guilt phase, if you weren't
2 successful in the guilt phase on that issue?

3 A Well, if I can just be basically realistic?

4 Q How imperfect was voluntary manslaughter?

5 A It was clearly imperfect, no doubt about it.
6 Imperfect part of it.

7 Q And let me at this point ask if you're familiar with
8 this. I'm handing over the police report dated 4/10/01.
9 It is one of four. I believe it would be exhibit 4. And
10 I believe that's without objection, Your Honor?

11 MR. WATERS: Without objection, Your Honor.

12 THE COURT: Okay.

13 (Plaintiff's Exhibit Number 4 was marked and filed.)

14 BY MR. BROWN:

15 Q If you look at the page -- I apologize. If you
16 look at page two. I just handed you mine. Let me get
17 the one I have in my notebook. Page two of the police
18 report lists that the car was registered to Michael
19 James Hooper. It was reported stolen by Mr. Hooper --
20 excuse me, by Mr. Hooper November 30, 2000. So -- I'm
21 sorry. So in essence -- well, are you familiar with
22 that report?

23 A You -- my memory is being refreshed as I read it.

24 Q Sure.

25 A So I would venture to say that a copy of this is

JOHN MAULDIN - Direct by Mr. Brown

1 likely to be in my case file.

2 Q And Your Honor, we make no claim that he did not
3 have this. We do not say that trial counsel had this.
4 At the time you entered it into the proceeding you were
5 relying that the license plate was not correct?

6 A That's right.

7 MR. BROWN: Okay. And Your Honor, that ends the
8 information I have regarding ground B. What ground
9 we're moving to next is Ground C. It's right at six
10 o'clock.

11 THE COURT: All right. We'll start with that ground
12 in the morning. All right. Are y'all driving back and
13 forth, or are you staying here?

14 MR. WATERS: We're driving back and forth, but we'll
15 start at 9:00 if that's what Your Honor ---

16 THE COURT: We'll start at 9:30. All right.

17 MR. WATERS: Thank you, Your Honor.

18 THE COURT: I don't think Mr. Brown would have any
19 objection.

20 MR. BROWN: Without objection, Your Honor.

21 THE COURT: All right. I'll see y'all at 9:30,
22 SCDC. Okay.

23 SCDC OFFICER: Yes, sir.

24 THE COURT: All right. Thank you. 9:30, Mr.
25 Mauldin.

1 THE WITNESS: Yes, sir.

2 (Court adjourned for the evening.)

3 (The following proceedings were held on March 7,
4 2007, as follows:)

5 THE COURT: Have a seat, Mr. Mauldin, and we'll
6 bring the jury in (sic). Okay. Mr. Brown?

7 MR. BROWN: May it please the Court? Your Honor, I
8 guess we're going to start where we ended yesterday
9 with -- at the end of ground B, which was the issue about
10 the manslaughter charge. I want to briefly go back to
11 that issue. And I just tell the Court that as a matter
12 of context. We all know where we're going with the
13 questioning.

14 BY MR. BROWN:

15 Q Now, Mr. Mauldin, I shown you yesterday some
16 documents that were Greenville County sheriff's office
17 reports from Detective Silvaggio. And that report had to
18 do with the license plate registration, if you recall?

19 A Right.

20 Q Actually entered it into evidence as a plaintiff's
21 exhibit, or petitioner's exhibit, and I'm going to show
22 you to today what is going to be petitioner's five. And
23 it's a two different pages. It's page 16 and page 17 of
24 a 19 page report.

25 (Plaintiff's Exhibit Number 5 was marked for

JOHN MAULDIN - Direct by Mr. Brown

1 identification.)

2 BY MR. BROWN:

3 Q And the two things I want to point out in this
4 report, in the first -- well, I guess it's the second
5 paragraph, they are not indented, on page 16 there is
6 reference to a witness named Carol Martin. Do you need
7 to review that a second?

8 A Yes.

9 Q And a reference to Richard Beveridge?

10 A I see those entries.

11 Q And the record speaks for itself. But you don't
12 recall them testifying at trial do you?

13 A I'll have to let the record speak for itself. I
14 don't recall whether they did or not.

15 Q Okay. And to kind of follow up, you have kind of
16 answered that. Do you recall either of those witnesses
17 offering testimony to support a defense theory of
18 manslaughter?

19 A Can I take a moment to look at the report?

20 Q Please, yes, sir.

21 A The question is whether or not what they had to say
22 would have supported manslaughter, is that your question?

23 Q If you recall them offering that -- or the defense
24 offered that?

25 A Do I recall either one of those witnesses at trial?

1 Q Yes, sir.

2 A I do not.

3 MR. BROWN: Okay. And the report speaks for itself.
4 I enter it I assume without objection.

5 MR. WATERS: I have no objection to that being
6 considered for the affect it had on his investigation,
7 but I would object to the truth of the matter asserted.
8 Anything in the report -- I think the witnesses testified
9 and their testimony would be the record of the case. But
10 as far as this report and anything he might have done in
11 his investigation, I certainly have no objection to it.

12 THE COURT: It comes in just solely for what he may
13 or may not have had in his investigation, and not for the
14 truth of the matter asserted. Okay.

15 MR. BROWN: We certainly understand that, Your
16 Honor. Actually what I'm going at is whether or not he
17 was still -- again, in presenting manslaughter evidence,
18 if that was available and if they had evidence to
19 subject -- to cross-examine either of the two witnesses
20 referenced.

21 THE COURT: I guess the SLED agent, or the
22 witnesses, or ever how they found out about this. But go
23 ahead. We're just only admitting it for the purposes of
24 his investigation.

25 MR. BROWN: Yes, sir. Detective Silvaggio will be

JOHN MAULDIN - Direct by Mr. Brown

1 here this morning.

2 THE COURT: Okay. I didn't know you were going to
3 call the detective. Go ahead.

4 (Plaintiff's Exhibit Number 5 was filed.)

5 BY MR. BROWN:

6 Q Yes, sir. Previously -- and -- I mean, this brief
7 point would be they both do offer some evidence as they
8 mentioned the term of aggressive stop. I had mentioned
9 that. Certainly we talked about that yesterday. And
10 does that phrase not appear on page 17?

11 A One moment. Let me look at them.

12 Q Yes, sir.

13 A Yes, sir. Ms. Martin on the page 16 of this
14 document does say that the highway patrolman cut the
15 person off on the moped and then she turned her attention
16 away. So she does say that he cut the person off. On
17 the paragraph regarding Mr. Beveridge, he does make -- he
18 does make reference to what is in quotes as an aggressive
19 stop on the frontage road. Those ---

20 Q Yes, sir. And you would have had those materials in
21 your file?

22 A Yes, sir.

23 Q And I mention that, Your Honor, we made no claim
24 that he did not have these reports. So we do believe he
25 had them. And I guess what I'm saying is again, that was

1 not presented evidence, the record speaks for itself
2 but ---

3 A I don't recall whether or not the State called
4 either of these two witnesses, and I would rest on the
5 record. I do not recall that. The defense did not call
6 either of those witnesses.

7 Q Yes, sir. And as far as offering some evidence to
8 support voluntary manslaughter, this may have been some
9 evidence?

10 A I guess arguably it could have, yes.

11 MR. BROWN: Okay. That's my point. And Your Honor,
12 that would conclude -- I'm going to hand this back up.
13 That would conclude the questions we would have regarding
14 plaintiff's 5. We now move to ground C, Your Honor.
15 That deals with the decision to not concede guilt.

16 THE COURT: Okay.

17 BY MR. BROWN:

18 Q You would agree, Mr. Mauldin, you could have used a
19 defense characterized as a he did not do defense?

20 A I don't think that I would. I don't think I would
21 use that term, he did not do it. The -- if you claim if
22 it's he didn't do it, quote, unquote, that would tend to
23 mean he was like elsewhere, it was an alibi, or somebody
24 else did it, he didn't do it. I do think there is a
25 difference between he did not do it and he's not guilty

1 of murder.

2 Q Okay. And would you characterize for the Court what
3 your theory was of not guilty?

4 A With regard to our effort that the jury return a
5 verdict of something less than guilty of murder, which it
6 was manslaughter or whether it was not guilty, that we
7 wanted to at least make that option available to the
8 jury. And while it might have been weak if we could get
9 the jury to consider -- deliberate, if you will, on the
10 guilt issue of murder, then my idea was that those jurors
11 who felt like he might not have been guilty of the crime
12 of murder would be more likely to help us in any
13 subsequent penalty phase. And I'll offer my explanation
14 to that, I can -- but that's kind of -- the thought was
15 that while it certainly was a long shot, we wanted to
16 have the jury have to work during the deliberations on
17 the murder charge. We wanted to put on the information
18 that would require them to actually deliberate, so that
19 then the second time they deliberated we might be able to
20 have some supporters on the jury.

21 Q Would you characterize that type of defense as one
22 arguing residual?

23 A Yeah, that's fair. The kind of -- the -- the idea
24 that if -- and I don't think I need to offer any further
25 explanation for that. Whatever your questions are I'll

1 try to answer them.

2 Q Sure. Okay. Okay. And we again have talked about
3 the fact that the main thrust of the defense wasn't an
4 identity question between Ms. McCall and Mr. Wood, and
5 I'm not trying to rehash, I apologize, Your Honor. This
6 is the question to kind of go through -- but to say
7 that's the one you were going after?

8 A If your question is were we going after the fact
9 that maybe she did it instead of him? No, no.

10 Q Yes, sir.

11 A I never had that as part of our plan at all.

12 Q Okay. And if -- and just to put it in context, this
13 is included in the transcript, but when Mr. Bannister
14 offered his closing he did tell the jury, we are not
15 making any argument that Trooper Nicholson did anything
16 wrong?

17 A Are you asking if he said that? Yes, sir, during
18 the closing.

19 MR. BROWN: Yes, the record speaks for itself, Your
20 Honor. I can offer a page cite on that.

21 THE COURT: Yeah, there is a difference, I believe,
22 in whether or not Officer Nicholson, if the quote in the
23 transcript is did anything wrong.

24 BY MR. BROWN:

25 Q Yes, sir.

1 A If that's what the quote is there, we felt there was
2 a clear difference between trying to make it look like
3 somehow Officer Nicholson was at fault, that was the
4 farthest thing from our mind.

5 Q Sure.

6 A On the other hand, we did want to have the jury
7 question the nature of the -- of the way the stop
8 occurred, and particularly in light of what we felt like
9 was issues involving the mental health of the defendant,
10 how he could possibly have responded to an aggressive
11 stop. In other words, it's more of an explanation.

12 Q Yes, sir.

13 A Than a defense, quote.

14 Q Yes, sir. And on this note let me go to -- to back
15 up, on your opening statement. And if I may, I've got it
16 appears lines 18 through 19 of page 1053, Your Honor. If
17 I -- I'll just pass this copy up. It's a copy since the
18 transcript is a little easier for us to go through. And
19 that lists the theory to the jury that we think basically
20 there are three options, to either convict him of murder,
21 acquit him of murder, or convict him of something lesser
22 than murder. If you look at lines 18 through 19.

23 A If you're referring to the page that I'm looking at
24 here, 1058?

25 Q Yes, sir. Yes, sir.

1 A And where are you?

2 Q Lines 18 through 19.

3 A 18 and 19?

4 Q Yes, sir.

5 A All right. Now, what is the question?

6 Q Doesn't that lay out in the opening what you're
7 hoping the jury will consider is one of those three
8 options?

9 A Yes.

10 Q Okay. Now, let me ask you this. Dealing with
11 opening statements, is there any risk by laying out the
12 theory which includes a lesser included offense in an
13 opening if you don't eventually get in evidence that
14 supports that lesser charge?

15 A There is obviously a risk. And I'll use this as an
16 example. If an attorney in a hypothetical case of a
17 murder went through the elements of murder, the elements
18 perhaps of manslaughter, of involuntary manslaughter, and
19 talked to the jury about that in his opening, then he's
20 making a strong assumption that the judge is going to
21 actually give to the jury those alternatives. That's the
22 hypothetical.

23 Q Is that kind -- with the statement, that line that I
24 read to you, is that not kind of an assumption made here
25 too?

JOHN MAULDIN - Direct by Mr. Brown

1 A The line 18 and 19 that I read does state that the
2 jury could possibly convict him of something less than
3 murder, that's what it says on the paper.

4 Q Yes, sir.

5 A And that -- obviously there is some risk of saying
6 that if you have no basis upon which to believe you're
7 going to get a lesser included instruction. That is a
8 risk, yes.

9 Q And this may ask too much from you, but would you
10 consider a lay juror to be familiar with a lesser
11 included offense to murder?

12 A The juror lay person, excuse me?

13 Q A juror, when they come in, I believe ---

14 A I believe it's fair to say that a juror is not going
15 to be familiar with what his options would be, or what
16 they would be called.

17 Q Yes, sir.

18 A For example, the name of the charge manslaughter,
19 murder, assault and battery, in other words, a juror is
20 not going to be familiar with the terminology.

21 Q Yes, sir.

22 A Whether a juror coming in off the street is going to
23 have some preconceived notion that they are going to have
24 some alternatives, I think it's probably fair to believe
25 some of them would think they might have some

1 alternatives, but I don't know.

2 Q Okay. Then let's bring that full circle and go to
3 the end of the case. At this stage if given a verdict
4 form that has two options on it, would that not dispel
5 any of those?

6 A Yeah.

7 Q I mean ---

8 A If the judge tells them your choices are A or B.

9 Q Yes, sir.

10 A I just think that the juror might -- it's just a
11 hypothetical again, the jury might go back to the jury
12 room and wonder why they don't have addition options, but
13 it's really -- that's to some extent irrelevant. Their
14 choices have been narrowed, and I don't think they are
15 going to go back there and think that was incorrect.

16 MR. BROWN: Let me also run through some of the
17 other arguments. And I mentioned a closing argument
18 about where Mr. Bannister says that Trooper Nicholson
19 did nothing wrong, and I'm going to hand you a few pages,
20 17 -- and bear with me one second, 1747, 1748, with --
21 that's 1747. If I may do the same thing I've done
22 previously?

23 THE COURT: Was your understanding that Trooper
24 Nicholson with his blue lights on was trying to bring the
25 moped to a stop?

1 THE WITNESS: Yes.

2 THE COURT: Okay.

3 BY MR. BROWN:

4 Q And if you'll look at those pages, 1748, lines 18
5 through 25, that's the part I've referenced earlier,
6 where it says, let me assure you that if I have suggested
7 or if I suggest in any way that Trooper Nicholson did
8 anything wrong, that's not what I'm trying to tell you.

9 A Um-hm.

10 Q And what I'm going to do at some point is ask about
11 how that compares to what the law regarding voluntary
12 manslaughter is because I want to go through those.

13 A Okay.

14 Q You don't see where that -- again, I want you to
15 look at 18 through 25?

16 A Yes, I read that.

17 Q Yes, sir. Then if you'll look at 1747, and we've
18 got line 23 then it runs through line 3 on the previous
19 page.

20 A Okay.

21 Q 1748 again.

22 A All right.

23 Q Okay. And then he says -- I want to show you 1752,
24 and I'm going to have you focus on lines 24 to run
25 through 1753 line 1. I apologize, I did not make a copy

1 of that. I'll give you this right here. I only have a
2 copy of 1752, but I can finish that line out for you.
3 And if you will notice on that, starting at line -- at
4 line 24, focus on that nanosecond, that split second,
5 that little bit of time where the person on the scooter
6 is up, and then it continues over -- I apologize, Your
7 Honor, I don't have but it finishes, against the patrol
8 car. And so what you're trying to focus on is the fact
9 this may have been, I think the word you used, intent was
10 what ended up being referenced in the closing, does that
11 sound familiar?

12 A Yeah.

13 Q Now, let me go from there. What was actually given
14 as a charge in the case? And I'm going to refer you to
15 page 1765, which is the jury charge. I'm going to ask
16 you to focus on the lines 18 through 20. And I can just
17 take all of those up. And in this case there is no
18 question that a firearm was used. I hate to kind of go
19 elementary, but a firearm was used, and that would be
20 considered a deadly weapon. I don't think that was in
21 question. And the judge actually charges, the law
22 further says if one intentionally kills another with a
23 deadly weapon, an inference of malice may arise?

24 A Yes.

25 Q And I know dealing with intents and malice we're not

1 exactly dealing with the same concept?

2 A Well, we -- we certainly had hoped that the jury
3 would have some difficulty with the concept of malice in
4 this case. We certainly hoped that there would be some
5 lack of satisfaction with the proof of malice.

6 Q Certainly inference can be rebutted, it doesn't have
7 to be accepted?

8 A And you know, this instruction clearly hurt -- would
9 hurt.

10 Q Yes, sir.

11 A And it would hurt my case involving use of a deadly
12 weapon.

13 Q Okay. I'm going to turn over a page. Let me stop
14 you. Now, one thing, are you aware that -- of any
15 challenges to the inference of malice when you used with
16 a deadly weapon?

17 A I'm aware of in ---

18 Q Any challenge as reasonable to that?

19 A I'm aware that there -- that ---

20 Q The US Supreme Court actually recently took one up,
21 right?

22 A Right, there is consistent ongoing battle about
23 inferences and presumptions, and so forth regarding
24 proof, so ---

25 Q And so you know, although it wasn't at the time of

1 the trial, recently the US Supreme Court has said that's
2 okay, or they have actually failed to take that question?

3 A I can't say that I have necessarily read recent
4 cases, so I'm going to have to just say that -- I mean,
5 I'm aware of that as an ongoing issue.

6 Q Okay. But right now, as far as the law in South
7 Carolina, it's still -- that's still the law?

8 A As far as I know. I believe that. Also as I'm
9 reading lines 18 through 20 on page 1765, I do not
10 believe that's an incorrect statement of the law, I guess
11 is the best way to say that.

12 Q As currently, yes, sir.

13 A Unfortunately as I wish I may, I don't think it is
14 incorrect.

15 Q Okay. And next focus on jury charges appearing on
16 1766, lines 6 through 12, and I'm going to read out of my
17 notes. It says, under the law malice need not exist for
18 any appreciable period of time before the commission of
19 act. While the law does not require that malice shall
20 exist for any appreciable period of time before the
21 commission of the act, it must be aforethought. There
22 must be a combination of the malice and the act which
23 produces a fatal result.

24 A Right.

25 Q Now, in contrast to the closing where Mr. Bannister

JOHN MAULDIN - Direct by Mr. Brown

1 urges the jury to focus on that nanosecond, that split
2 second, that little bit of time where the person on the
3 scooter is up against the patrol vehicle?

4 A Right.

5 Q Now, those -- is there any conflict of the
6 contention between urging them to look at that and the
7 charge that says things that occurred at the same time,
8 the nanosecond difference doesn't matter, I mean as long
9 as they are at the same time, a split second?

10 A I do believe that the instruction that you have
11 referred me to by Judge Kittredge is actually an
12 incorrect statement of the law.

13 Q Yes, sir.

14 A I do believe it's appropriate where possible for the
15 defense counsel to at least attempt to differentiate what
16 I might describe as a lying in wait intended consequence
17 type act and an act that occurs in that very short period
18 of time. I think the jurors while given the instruction
19 they were furnished in this case, they would certainly
20 attempt to follow the instructions. They also separate a
21 lying in wait murder from -- from a murder that occurs in
22 a very, very short and almost spontaneous circumstance.
23 So -- so while I don't know that what Mr. Bannister was
24 pointing out to the jury -- well, and obviously with
25 their verdict they believed that even if a nanosecond was

1 the way to describe it, it still existed sufficiently to
2 write a verdict of murder. That -- that's demonstrated
3 by their verdict. But I still think that the correct
4 argument would be to differentiate between the -- and the
5 example I might give would be if a defendant got up one
6 morning and decided that he was going to go out and
7 attempt to kill a law enforcement officer, I think that
8 is much different from what the evidence in this case
9 showed.

10 Q Sure.

11 A And I think that a difference needed to be
12 established to the jury, whether it ultimately resulted
13 in an acquittal, or guilty, or what, just let the jury
14 write the verdict. I feel like the jury had to be given
15 that information.

16 Q Let me ask you, on that note, considering that there
17 was not a voluntary manslaughter option given or charge
18 given?

19 A It was not.

20 Q Right.

21 A Assuming that, which is the case, right.

22 Q Cannot you still concede guilt and establish that
23 this is not a lying in wait murder? In other words,
24 couldn't that still be made to the jury? Could not --
25 could not that have been done, is what I'm saying?

1 A All right. We in this case did not concede guilt.

2 Q Yes, sir, right.

3 A And your question?

4 Q You stood up in closing -- in other words, there is
5 a not guilty plea, but there is a trial where there was
6 not a concession of guilt. Could you not stand up in the
7 closing and say, while we concede that the defendant is
8 guilty of murder we urge you to understand that it was
9 not a lying in wait? Could that not have happened?

10 A If you're asking me could we have done that? Is
11 that your question? Could we have done that?

12 Q Yes, sir.

13 A We theoretically I guess could have and -- but we
14 chose not to.

15 Q And I understand. And what I'm trying to find out
16 is y'all chose not to, you actually chose to invite the
17 jury to consider maybe he was not guilty?

18 A Yeah, I think that the -- that the closing by Mr.
19 Bannister does place some challenge to that jury to
20 actually decide if they were unanimously in agreement
21 that the elements of murder had been proven beyond a
22 reasonable doubt. I do think that that challenge was
23 presented to the jury and -- and I think that that was by
24 design.

25 Q Yes, sir. And fair enough. Let me ask you this,

1 and this is obvious I guess by law, but we don't have
2 more than one level of murder in this state?

3 A Right, there was not. We -- well, I guess in kind
4 of a vacuum I guess second -- we have capital murder and
5 non-capital murder. So to the extent that is a degree of
6 murder, I guess perhaps somehow we do. But we do not in
7 fact technically have a first degree, second degree,
8 third degree type that some other jurisdictions have.

9 Q Which would be able to possible diminish the lying
10 in wait murder and the malice murder, but without
11 prolonged premeditation?

12 A I don't know how the other jurisdictions make their
13 distinction. That would seem to be a logical type of
14 distinction between degrees of murder.

15 Q There is no legal provocation making it
16 manslaughter, but there is something that did not make it
17 premeditated. The next thing I'm going to ask you to
18 consider would be what Judge Kittredge responded -- or
19 his responses to the closing arguments. And that
20 appears on page 1773, lines 23 to 25. And this is --
21 I'll read -- this was his response to Mr. Bannister's
22 closing. Again, the jury was invited to apply a standard
23 specific intent to kill far beyond what the law requires.

24 A I'm not sure of the context of that statement. It
25 looks like something he was sustaining. I don't know.

JOHN MAULDIN - Direct by Mr. Brown

1 Let's see.

2 Q It's -- to be put in the context here, this is when
3 there's any objections to the charges that were given.

4 A Oh, okay. Closing -- the closings were made. The
5 charges were given, and he asked if there were any
6 objections. All right.

7 Q Let me look at ---

8 A Yes, sir. Apparently there are lines before that
9 where I'm ---

10 Q Please do.

11 A --- making some argument the judge. Give me an
12 opportunity.

13 MR. BROWN: I've got the entire transcript. I'm ---

14 MR. WATERS: I would -- I think that the page before
15 that and the page after is what are necessary for the
16 context on this.

17 MR. BROWN: The only thing I can tell you, I have
18 some of them from the transcript. I did not make copies
19 of them.

20 MR. WATERS: I would note, I have provided Mr.
21 Mauldin the transcript. Perhaps it can be brought up to
22 the stand with him and he be allowed to see the pages.

23 THE COURT: Okay. You can look at it.

24 MR. BROWN: Your Honor, I just made copies of the
25 isolated pages. I figured he'd be fumbling through the

1 books.

2 THE COURT: Okay.

3 THE WITNESS: I've got my transcript now. So any
4 pages you want me to look at I'll be glad to.

5 MR. BROWN: Well, I just wanted you to look at one
6 portion, but certainly put it in the context.

7 MR. WATERS: I believe we need to start at page
8 1772, at line 18.

9 MR. BROWN: I have no problems looking at those
10 proceeding pages.

11 THE COURT: I remember we were talking about the
12 charges. He's gone to get your transcript. While we're
13 doing that you can explain to me some of where you're
14 going, Mr. Brown. I'm the person that needs to
15 understand this.

16 MR. BROWN: Yes, sir, I apologize.

17 THE COURT: Murder is the unlawful killing of
18 another person with malice aforethought.

19 MR. BROWN: Yes, sir.

20 THE COURT: I don't know what they're -- what the
21 judge and Mr. Mauldin are talking about here, but maybe
22 putting it in the context I'll understand it. What error
23 did they commit?

24 MR. BROWN: Well, this goes ---

25 THE COURT: Where are you going to go, to the fact

1 that you think they should have conceded guilt?

2 MR. BROWN: What I'm trying to argue is they
3 unreasonably argued a theory that is not consistent with
4 the state law, and the judge charged the state law, which
5 contradicted what they are arguing, and that was
6 unreasonable. They should have conceded guilt.

7 THE COURT: In opening statement by Mr. Bannister
8 which at that time I think they were going on voluntary
9 manslaughter or not?

10 MR. BROWN: Also aggressive stop or whatnot, but
11 then somewhere during the trial they learned that the
12 judge was not going to charge -- or he did not charge it.

13 THE COURT: If he refused to charge it that's a
14 matter of law, wouldn't that be a direct appeal?

15 MR. BROWN: That was denied on the direct appeal.

16 THE COURT: Okay.

17 MR. BROWN: The conviction was affirmed.

18 THE COURT: They objected to him not charging that?

19 MR. BROWN: But also -- yes, sir, but then also ---

20 THE COURT: In opening statement there wouldn't be
21 anything wrong in -- opening statement is not evidence.
22 What is wrong with him, if that was their theory -- the
23 question would be if they're pursuing voluntary
24 manslaughter was that an error? That eliminates your
25 argument B.

1 MR. BROWN: They pursued in -- if you'll notice I
2 plead these alternate claims.

3 THE COURT: Okay.

4 MR. BROWN: I did that -- I'll be honest, the
5 manslaughter claim and the impeachment of Karen McCall
6 were claims that were not originally drafted by me. They
7 were drafted by the appellate defense attorney who did
8 the original PCR application.

9 THE COURT: Okay.

10 MR. BROWN: I have not taken them out. Once they
11 were made as claims in the PCR they were forwarded. I
12 thought what was a safer course to protect my client's
13 rights I would add what I thought was to be in this. I
14 don't believe it's a rule 11 type good faith basis to
15 say, well, maybe he should have responded to
16 manslaughter, so I'm presenting them alternatively. I
17 mean, I don't think that the defenses we have is the best
18 way. It's my feeling that -- that either they should
19 have impeached Ms. McCall about her testimony if identity
20 was an issue, or they should have introduced testimony to
21 support a voluntary manslaughter charge if that was the
22 defense. But if none of those defenses -- I don't see
23 what defenses are out there, because the other defense
24 they argued is this specific intent which was in the
25 closing by Mr. Bannister, Your Honor. And then we see

JOHN MAULDIN - Direct by Mr. Brown

1 Judge Kittredge comes in and says that's not the law. He
2 says that what was just argued is not the law. And I
3 just point that out because we've got a defense attorney
4 arguing to a jury a standard which is then undercut by
5 the charge from the judge. And to me, when a defense
6 attorney argues something and then the judge says the law
7 is something else, that's a pretty big failure for the
8 defense.

9 MR. WATERS: Judge, in context -- he's given a lot
10 of argument. I think I might want to get to the context
11 of what was going on here. Closing arguments had already
12 happened. The judge had denied the voluntary
13 manslaughter charge. Then after he did that he went into
14 his closing. What Mr. Bannister did was essentially make
15 an argument you technically cannot make. He kind of
16 danced around it, but he did artfully make the intent
17 argument, the specific intent to kill argument, that he
18 did not specifically intend to kill. There was an
19 objection to that. So after the jury retired they sent
20 out a note requesting a further charge on malice
21 aforethought.

22 What the judge was saying, you know, I think you --
23 I've never seen this before, Solicitor. You did not
24 object to him making this argument, now the jury is going
25 down this path, might go down to acquittal, actually they

1 are having questions about malice aforethought. But the
2 defense made this argument, Solicitor. You did not
3 object. I've never seen that happen before. In
4 actuality it was a benefit for the defense. He got away
5 with something, that very artful argument.

6 I would note later too, Mr. Mauldin did put on the
7 record that he was proud of that argument. Also Judge
8 Kittredge put on the record that he thought Mr.
9 Bannister's argument was excellent, even went so far as
10 to say, guys, you better watch out when you got Jim, he's
11 going to be on top of things, or words to that effect.

12 Just out of context, since some argument was being
13 made, I wanted to say that this is exactly what was going
14 on. The judge was not saying this was fatal. In fact,
15 you got away with something and now the jury is asking
16 questions in notes to the judge, that's what was going
17 on.

18 MR. BROWN: Brief reply? The judge recharges the
19 jury, and it's still a charge that's an accurate charge
20 that conflicts with the argument of the attorneys and of
21 course, you know, they came back guilty.

22 THE COURT: Okay.

23 MR. BROWN: So I think now if a defense attorney
24 theoretically argued, well, having drugs in your pocket
25 is not possession, and then the judge says, well, actual

1 possession would be if you have items in your pocket, I
2 mean, I can tell you that that comes across to me as
3 being an unreasonable strategy to take by an attorney.

4 THE COURT: Well, once -- I guess Mr. Bannister will
5 speak for himself.

6 MR. BROWN: Yes, sir.

7 THE COURT: And Judge Kittredge, I know what the
8 attorney general said, but he has a tendency to brag
9 about all lawyers regardless of who they are, but be that
10 as it may.

11 MR. BROWN: Yes, sir.

12 THE COURT: Probably like me, but be that as it may.
13 Mr. Bannister found out apparently, from what I gather,
14 he -- they were -- wanted a voluntary manslaughter charge
15 and thought there may should be one, and then he finds
16 out the judge will not charge it and he's put in the
17 situation that he's got to make some kind of argument.

18 MR. BROWN: My argument -- sure he does. My client
19 is facing a death penalty. We got another ground.
20 We've got a ground C, and my client in this argument he
21 could have -- my client is facing the death penalty, he
22 could -- if he had plead guilty couldn't get to sentence
23 my client on the penalty provision. So we're going to
24 have a trial, we're going to concede guilt, we want you
25 to understand this was not a lying in wait murder, but

1 this may technically fit murder under our law, you're
2 going to insult the jurors and come in here and make some
3 argument that fire ---

4 THE COURT: I understand your position on it. They
5 should have conceded guilt. But if they had done that
6 they should have done it initially ---

7 MR. BROWN: I agree with that.

8 THE COURT: --- at the very opening, in the opening
9 statement.

10 MR. BROWN: I agree with that.

11 THE COURT: And it was a technical decision on their
12 part not to do it. Mr. Mauldin admits that.

13 MR. BROWN: I think it was -- has been reasonably
14 technical.

15 THE COURT: Well, let's stick to the questions and
16 answers. Now, I understand where you're going.

17 MR. BROWN: Yes, sir. Thank you so much.

18 THE COURT: All right.

19 BY MR. BROWN:

20 Q Do you know the context of this, this part of ground
21 C?

22 A Right.

23 Q I mean, I see that the -- apparently the jury has
24 come in with a question about being instructed on the
25 malice?

JOHN MAULDIN - Direct by Mr. Brown

1 A Yes, sir.

2 Q Okay. Judge Kittredge says he did not think
3 y'all's, the defense's closing was consistent with
4 his ---

5 MR. WATERS: Objection to the leading, Your Honor.

6 THE COURT: All right. I sustain the objection.

7 BY MR. BROWN:

8 Q And then of course what Judge Kittredge said, the
9 record speaks for itself.

10 A Right.

11 Q So we move to the second part of this. How would
12 you characterize the mitigation theory, or the penalty
13 theory?

14 A How would I summarize it?

15 Q Yes, sir.

16 A The mitigation essentially was going to be that --
17 that John certainly had issues regarding his mental
18 health and his developmental background, if you will,
19 that should be considered by the jury in deciding how to
20 impose the penalty. And I mean, I don't know if that's
21 responsive.

22 Q Sure.

23 A But that's kind a very broad brush.

24 Q Then you wanted a little clearer instruction on
25 that. One of the things that was in issue, you were

1 aware at least, the Department of Mental Health issued an
2 opinion that he suffered from anti-social personality
3 disorder?

4 A I was aware of that.

5 Q They diagnosed him with that?

6 A Right.

7 Q Okay. Not conceding that's what he has, okay, and
8 then of course you had procured an expert who rendered an
9 opinion that differed?

10 A Right.

11 Q That was Dr. Schwartz-Watts?

12 A Right.

13 Q And she says that he suffers from bipolar?

14 A That's my recollection.

15 Q Just as a matter, I tell you that one of the things
16 that is different between the two, one is treatable --
17 one is a treatable mental illness.

18 MR. WATERS: Your Honor ---

19 THE COURT: You're testifying a lot and you're
20 making a whole lot of statements and arguments. At this
21 juncture the only thing you can do, as I understand it,
22 is ask questions and get answers, and you're going to
23 stick to that.

24 MR. BROWN: Yes, sir.

25 THE COURT: Okay.

JOHN MAULDIN - Direct by Mr. Brown

1 MR. BROWN: Thank you for your direction.

2 BY MR. BROWN:

3 Q One thing then I want to ask you about is what
4 concerns do you have about the paranoia, that evidence
5 that had come out about John Wood? I can try to get it
6 into context.

7 A Rephrase your -- could you rephrase that?

8 Q Okay. One thing that -- you've heard about future
9 dangerousness?

10 A I have.

11 Q Okay. How does that come into play in a capital
12 sentencing?

13 A Well, it's -- it comes into play in that jurors are
14 generally I think reasonably apprehensive about the issue
15 of future dangerousness of a defendant on trial for a
16 particular offense. My experience has been that they
17 take into consideration the appropriate penalty for what
18 the defendant has been convicted of. And in addition
19 they take into consideration whether or not killing him
20 would -- would eliminate any potential future
21 dangerousness problems with him. I mean, that's just ---

22 Q Sure.

23 A --- the best way I can think to describe that. You
24 know that going into every case. It's just the way
25 jurors generally approach their consideration.

1 Q Okay. And have you brought up that future
2 dangerousness concern in every capital sentencing?

3 A It's a concern in every capital case I have ever
4 been involved in.

5 Q Okay. And how did the Department of Mental
6 Health's diagnosis of Mr. Wood play into the future
7 dangerousness equation?

8 A Well, it's the medical -- if I can use this term,
9 it's the medical gateway that allows the prosecutor to
10 argue to the jury that the defendant is going to be a
11 future danger from a mental health context.

12 Q What is it that makes that gateway?

13 A It's -- if a medical expert testifies to anti-social
14 personality disorder, then it's my impression as a
15 lawyer, I'm not a doctor, so I can't get into his --
16 really into some of this stuff of what it means, but I'm
17 just telling you that from a practical point of view the
18 offering of anti-social personality disorder in -- as an
19 aggravator basically creating a legitimate connection
20 with the argument that the defendant would constitute a
21 future danger is a very strong tool for the prosecution
22 in persuading a jury to sentence a defendant to death.
23 It is a very strong tool.

24 Q If hypothetically a witness testifies that
25 anti-social personality disorder, one of the things that

1 characterizes that disorder is a disregard for the safety
2 and rights of others, how does that play into the future
3 dangerousness?

4 A Well, I mean that -- it's pretty much on all fours
5 as I can tell.

6 Q What other factors also fit into the State's theory
7 of future dangerousness of this case?

8 A I'm ---

9 Q How about the issue of paranoia?

10 A Well -- well, if an -- and let me -- let me say that
11 paranoia kind of applies to what we had in John's case.

12 Q Yes, sir.

13 A How the paranoia issue would relate in favor of the
14 defendant in a strategic way is to offer some legitimate
15 explanation for this explosive act of violence that
16 resulted in the death of Trooper Nicholson. Now, the
17 paranoia would be -- also be a negative in that it would
18 allow the State to reasonably argue that the defendant --
19 it could happen again with a prison guard, or some person
20 who would be in charge of the defendant's custody. So it
21 actually -- the paranoia part of the case actually was a
22 double-edged sword. It could be argued by the defendant
23 in one capacity and then by the State in another.

24 Q And to go on with that, the paranoia in this case,
25 you mentioned going from paranoia related to the shooting

1 of Trooper Nicholson, the paranoia related to the future
2 incidents there in incarceration, who -- was that the
3 common thread there that the State tried to -- you had
4 mentioned it a little bit, did the presence of a uniform
5 have anything to do with it?

6 A Yeah, there was -- the investigation had led to the
7 facts, and I'll use that term. I mean ---

8 Q Yes, sir.

9 A At least the information was that John had a fear of
10 uniformed police officers, law enforcement authority,
11 uniformed authority, and that was certainly in our
12 investigation.

13 Q And let me ask you this. Coupled with the nature of
14 this crime, this was a traffic stop that led to the
15 shooting of a trooper, the five shots, and the manner
16 this was done, later on when the jury find out about the
17 paranoia and the paranoia of law enforcement, you
18 mentioned a double-edged sword, did that -- in your
19 opinion did that not affirm the State's theory of the
20 guilt phase that, A, John was the shooter?

21 A Well ---

22 Q And that he also actually had some premedication
23 to -- to use deadly force?

24 THE COURT: I'm not sure I understand your question.

25 MR. WATERS: I object to the form of the question.

1 BY MR. BROWN:

2 Q I'll break it down.

3 A Yeah.

4 Q We talked about the fact that paranoia was related
5 to uniforms?

6 A Right.

7 Q And of course that did not come until the penalty
8 phase?

9 A Yeah, that's true. And of course I can be corrected
10 by the record. I can't recall every single thing, but it
11 would be my expectation that the paranoia regarding law
12 enforcement, police, and so forth was penalty phase
13 offered. At least expert-wise.

14 Q But no expert -- well -- well, I'm not so sure that
15 Karen McCall or someone may have mentioned it during the
16 guilt phase. But you wanted to go to the experts to talk
17 about paranoia but only in the penalty phase?

18 A I think that's probably true.

19 Q And again, Karen McCall got up, and one thing she
20 talked about, do you recall her discussing how Mr. Wood
21 was uncomfortable around law enforcement or activity ---

22 A All right. Let me give you my recollection. My
23 recollection ---

24 Q Yes, sir.

25 A --- is that we knew of his paranoid feelings, that

1 we knew it from at least two different sources, the
2 psychiatric evaluation, and also, if I'm not mistaken,
3 Karen McCall confirmed that. But I'll say at this point
4 I'm -- there were three times in which she could have
5 confirmed it, her written statement to the police, her
6 testimony during the trial, and on an occasion when I
7 went to Anderson and interviewed her while she was in
8 custody. I'm not sure whether or not it actually ended
9 up being testified to in her examination or not, but I
10 know that she confirmed that he was very nervous, scared,
11 paranoid, whatever you want to say, around law
12 enforcement.

13 Q Okay. And so we get to the penalty phase of the
14 case, paranoia comes out through the experts. Isn't
15 there some almost reference to guilt?

16 A I think that is fair to -- for the jury to have
17 looked back on what had happened during the penalty
18 phase. They would look back at what happened when
19 Officer Nicholson was killed and have said that makes
20 sense, that reaffirms their -- their thought that John --
21 John's conduct was clearly over reactive, and that the
22 psychiatrists were saying how he was paranoid about law
23 enforcement. They could have said, well, you know that
24 makes sense as far as what happened out on Woodruff Road.

25 Q Okay. And you mentioned a double-edge aspect?

1 A Right. Right. It clearly had a -- clearly had a
2 double-edged sword because the psychiatrist was convinced
3 that that was very relevant. His paranoid impairment was
4 very relevant.

5 Q And let me move to another issue. Now, there is a
6 case that came out of the US Supreme Court, Florida
7 versus Nixon.

8 A I don't know if I'm familiar with that, certainly
9 not by case name.

10 Q Okay. And there was a question about whether --
11 I'll back up. Are you familiar with an attorney named
12 Andrea Lion (phonetically)?

13 A I am.

14 Q Okay. And she does death penalty work?

15 A Yes.

16 Q Okay. And have you ever heard any -- at least in
17 theory of, or in the education of lawyers regarding death
18 penalty work the idea that it's beneficial to concede
19 guilt, with regard to the education of capital
20 litigators?

21 A As to the subject of conceding guilt, there is I
22 believe a very healthy debate on the pros and cons, if
23 you will, of that. And I have certain views about it.
24 But I'm familiar with Professor Lion.

25 Q Sure, yes.

1 A And I'm certainly to some extent familiar with the
2 debate.

3 Q And let me back up, just -- now, you also teach CLEs
4 on capital litigation?

5 A I do.

6 Q Just to put it in perspective, part of the thing
7 about conceding guilt, and I'm quoting out of the law
8 review article, which I don't have a copy of, Your Honor,
9 I apologize, because I don't have that high dollar of
10 research engine to get it. I don't live in Columbia. I
11 can get the citation to it right now. And quote, I want
12 to ask him about the citation, would be 42 Mercers Law
13 Review, 635, at page 708 (phonetically). It's a 1991 law
14 review article. Are you familiar with that article?

15 A I'm not -- I'm not by cite.

16 Q Yes, sir.

17 A C.I.T., I may very well be after you ---

18 MR. WATERS: I'll object.

19 THE COURT: I sustain the objection. I don't know.
20 There's a lot of professors out there with different
21 ideas about a lot of things. Just because they are
22 teaching and write law review articles doesn't make
23 it ---

24 MR. BROWN: I'm trying ---

25 THE COURT: --- any authority. Why don't -- you can

1 rephrase the question in regard to whatever the terms
2 are, but don't refer to the article.

3 MR. BROWN: Yes, sir. I was only referring to the
4 article to explain and just give it to the Court in case
5 it's something you would like to look it up.

6 BY MR. BROWN:

7 Q Are you familiar with a quote that Ms. Lion may have
8 given ---

9 THE COURT: I sustain the objection to that. You
10 can ask a question but not quote from whoever. I don't
11 know who this person is. But go ahead and ask him
12 questions.

13 MR. BROWN: Yes, sir, I sure will.

14 THE COURT: I mean, I may know more than she does.
15 Just get Mr. Mauldin's opinion.

16 MR. BROWN: I'll ask, what is your opinion ---

17 THE COURT: I don't care about Ms. Lions. She did
18 not try this case.

19 BY MR. BROWN:

20 Q What is your opinion on putting the he did not do it
21 defense, and he's sorry he did it as mitigation?

22 A I think that's very ill advised.

23 Q To do that?

24 A Yes.

25 Q Okay. And how about presenting a case where he did

1 not commit murder, but he can act better and not be
2 violent to others?

3 A I think that's -- that that's pretty common, that
4 putting that I'll use the term defense on, that he did
5 not commit the offense as defined by the term murder, and
6 then following a conviction of murder saying that he can
7 be controlled or incarcerated without posing a danger,
8 is a very common challenge to capital litigators. And I
9 am -- to the extent it's proper to say it this way, I'm a
10 supporter of that concept.

11 Q And let me ask you, one of the problems that comes
12 up, if an attorney presents inconsistent theories ---

13 THE COURT: You can ask him if it's a problem. You
14 cannot state into the record that it is a problem.

15 BY MR. BROWN:

16 Q Is one of the problems -- I'm trying to get our
17 arguments out at this particular time. Is one of the
18 problems that the jury not only will give death to the
19 client but also to the attorney so to speak?

20 A Well, I think that's a bad way of describing it. I
21 think that if you create an inconsistency in your guilt
22 phase, when coupled with a penalty phase ---

23 Q Yes, sir.

24 A --- you have a real serious credibility problem.
25 The most glaring example would be the following, if I

1 may?

2 Q Yes, sir.

3 A The most glaring example would be if a person is on
4 trial for murder and has an alibi where they say not only
5 did they not do it legally, but they weren't even
6 present, and are just literally innocent by reason of
7 alibi. The jury decides that that alibi defense is not
8 worthy of belief and they convict a defendant. Then the
9 sentencing is that he's sorry. Now, obviously that is
10 the extreme example of a credibility problem. You
11 couldn't be sorry for something you did not do. I mean,
12 you're just lying. And that would be a worse possible
13 scenario. Now, that is not what we were dealing with in
14 this case, but for the purposes of clarity that would be
15 the credibility problem about the he did not do it, but
16 now you have said he did do it, he's real sorry and won't
17 do it again. That just doesn't make any sense.

18 Q You at least did this, did you not in this case, he
19 can act better mitigation?

20 A In the penalty phase?

21 Q John's penalty theory?

22 A All right. I'm not real sure I understood that.

23 Q Okay. Was your penalty theory not akin to he can
24 act better?

25 A Well, I certainly would have hoped that the jury

1 would have thought he could be better than out there on
2 Woodruff Road, if that's what you mean by the question.

3 Q Exactly, yes, sir.

4 A Sure. Okay, that he was a person who could be
5 managed and controlled by the Department of Corrections,
6 so yes, absolutely, that would have been one of the
7 ideas.

8 Q One of the witnesses that supported that was Jim
9 Aiken?

10 A Jim Aiken was offered to testify to John Wood's
11 prison adaptability and the ability of the Department to
12 Corrections to manage John Wood.

13 Q Again, a management issue?

14 A Yes, sir.

15 Q Now, to briefly -- briefly, the two issues on -- or
16 reference I want to ask you on -- about this issue would
17 be on page 1005. This is matters and motions. And this
18 is Judge Kittredge. And there it gets -- it starts, and
19 it says from a practical standpoint, excuse me, from page
20 11 (sic), I can understand the benefit a party would seek
21 to obtain by that initial admission on the front end in
22 the inability to plead guilty to a judge and then submit
23 sentencing to a jury.

24 A Yes.

25 Q Okay. And then goes down there a little bit more in

1 there where he talks about that, what he's offered ---

2 A Yes.

3 Q --- to explain to the jury and address that issue
4 during jury selection?

5 A Yes.

6 Q I'm willing to -- he says he's willing to tell the
7 jury an individual wishes to plead guilty but in order to
8 submit the sentencing issue to them they need to go
9 through a trial first?

10 A Yes.

11 Q Okay. And I ask you that, do you remember the
12 context of how that came up?

13 A Well, I'll preface my answer with a couple things.
14 Number one, it's been some length of time since this case
15 was tried. Number two, I'm assuming this Court is going
16 to have the entire record to review, so ---

17 Q Yes, sir.

18 A I just very well could be corrected by what's in the
19 record. Now, that having been said, I would have I
20 believe filed a motion prior to trial, a pretrial motion
21 that argued that the statute in South Carolina was
22 unconstitutional in that it provided for a jury
23 sentencing only in the case where a defendant entered a
24 plea of not guilty and was convicted by a jury of the
25 offense in question prior to sentencing. The inverse of

1 that is if a defendant wishes to admit guilt and plead
2 guilty, and receive some benefit of that acceptance of
3 responsibility, he would have to then be sentenced by the
4 judge alone without a jury. I have for years argued the
5 unconstitutionality of that distinction. The Supreme
6 Court has respectfully disagreed with me, but I continue
7 to put that forth to the trial judge in any capital case.
8 That simply is an unreasonable situation to place a
9 capital defendant in. I would suspect almost certainly
10 that in the John Wood trial. In pretrial -- I don't know
11 if this answers your question, I probably made a motion
12 that it's unconstitutional, that's how it came out to
13 start with.

14 Q Yes, sir.

15 A Does that answer your question?

16 Q Yes, sir. Next ---

17 THE COURT: That's in the record. I'm sure that --
18 I don't know if it is either. Maybe Mr. Waters knows
19 that. So let's go on to the next question.

20 MR. BROWN: I don't mind waiting on his answer.

21 THE WITNESS: I apologize.

22 THE COURT: He made the motion. Go ahead.

23 BY MR. BROWN:

24 Q Thank you. And my question to you, which I don't
25 know the answer, I mean, obviously it's in your head, did

1 you make that with an eye to the fact that there are some
2 considerations by conceding guilt or entering a plea?

3 A To get a life sentence? At the time of the motion?

4 Q Yes, sir, which would be ---

5 A At pretrial the motion was not made with an eye that
6 John Wood individually would actually enter a plea. The
7 motion was to challenge and contest the statutory scheme
8 in South Carolina as being on its face unconstitutional.

9 Q How were you going to proceed if he wasn't going to
10 enter a plea?

11 A Well, if the judge denied our motion, which he
12 did ---

13 Q Yes, sir.

14 A --- we would have been stuck with what we went
15 forward with.

16 Q Yes, sir.

17 A If the judge had granted our motion, then he
18 wouldn't be facing the death penalty. I mean, it is so
19 very -- as far as I'm concerned therein lies his
20 standing. He was the defendant, and what we were
21 claiming was he or any other like defendant was faced
22 with the same statutory problem.

23 Q I'm sorry, and Your Honor, this is going to get into
24 our next ground. I'm now going into it a little bit.
25 But since your wanting -- one of the ways that a statute

1 is made constitutional is to, A, if it's constitutional
2 by its application to the specific cases, no problem, and
3 otherwise the judge can limit the way that it is applied.
4 So in other words, if Mr. Wood wished to plead guilty ---

5 MR. WATERS: Your Honor, object to the form of the
6 question.

7 THE COURT: I sustain the objection to the form of
8 question.

9 BY MR. BROWN:

10 Q To repeat, if the judge had granted your motion,
11 what would you have done? That was what -- I think he
12 answered that question, but I did not understand the
13 answer.

14 A There would have been two I think possibilities --
15 well, three possibilities, for the judge in the pretrial
16 motion to deny it ---

17 THE COURT: Or grant it.

18 THE WITNESS: To grant it and therefore say that the
19 statute was constitutional.

20 THE COURT: Or wait to rule on it until you ---

21 THE WITNESS: No, or to grant it and allow the
22 client to plead guilty and have a jury sentencing.

23 BY MR. BROWN:

24 Q Yes, sir, I think that is what you meant by -- then
25 the other thing in this case -- I'm sorry.

1 THE COURT: Okay.

2 MR. BROWN: I'm sorry.

3 THE COURT: Ask a question.

4 BY MR. BROWN:

5 Q In this case he also offered -- he actually
6 offered -- Judge Kittredge offered another option, did he
7 not, of letting your client concede guilt but having an
8 instruction ---

9 MR. WATERS: Object to the leading.

10 THE COURT: Okay.

11 BY MR. BROWN:

12 Q What other option did Judge Kittredge give?

13 THE COURT: Well, it's stated right here at 1773.

14 MR. BROWN: Yes, sir, which is directly in the next
15 claim I want to talk about on claim C, ground C, which is
16 found in page 10 through 12 of a hearing conducted
17 pretrial motion hearing on December 7 -- December 7,
18 2001.

19 MR. WATERS: Your Honor, I believe this is in the
20 record at page 2511, if y'all would prefer to use the
21 transcript.

22 THE COURT: I'm sorry, it's in the ---

23 MR. WATERS: I think it's in volume 6.

24 MR. BROWN: I apologize, Your Honor. The actual
25 response is -- it's a notice of motion and the responses

1 are at 2511. It's not actually the hearing itself but
2 the motion and the State's responses are at that site.

3 BY MR. BROWN:

4 Q And specifically I'm going to ask Mr. Mauldin if you
5 will take a look at page 11 of the handout I gave you and
6 it's line 14, starting at line 14.

7 A Um-hm.

8 Q All right. And it runs to where it talks about --
9 17, then it also -- if you look over to page 12, line 7,
10 it goes through line 12. And I guess the first thing I'm
11 going to ask you ---

12 A All right. I've read that.

13 Q What concerns did you have -- I know it begins, what
14 concerns did you have about arguing that Mr. Wood was not
15 guilty of murder based on that type argument given your
16 obvious awareness of the predicament?

17 A The -- it would reaffirm this argument today. I
18 think what I said to Judge Kittredge in this pretrial
19 motion I think is exactly in fact the case in these
20 capital trials, the same thing was in effect, and the
21 consequences, or the challenges of it applied to John
22 Wood's case individually. Now, how did I feel about our
23 presenting an argument of failure to prove the malice?
24 It was obviously a very difficult choice but I felt like
25 it was one we really didn't have a lot of option, and I

1 did not feel that the concession of guilt for a number of
2 reasons was the right thing to do.

3 MR. BROWN: And that's my last question on this
4 ground. Now, as a matter of housekeeping, now Mr.
5 Waters, I don't know if he wants to enter this section.
6 It is not in this transcript.

7 THE COURT: Is it in the entire transcript maybe?

8 MR. WATERS: The -- I don't believe it's included,
9 Your Honor.

10 MR. BROWN: And I think it may be in the
11 supplemental record, if you'll give me one second to
12 verify that and ---

13 THE COURT: I don't know.

14 MR. BROWN: Your Honor, I'm aware that the
15 supplemental record has been provided.

16 THE COURT: The only reason you're offering it is to
17 show that Mr. Mauldin should have conceded guilt?

18 MR. BROWN: About -- um-hm, yes. Yes, sir, but I do
19 not want ---

20 THE COURT: Obviously he felt like he should --
21 you're trying to ask how Mr. Mauldin felt by this
22 argument that he made?

23 MR. BROWN: That he wanted to concede guilt, that
24 was conveyed in terms of riding two horses, or having
25 inconsistent theories before a jury. I want to show he

1 was aware of it.

2 MR. WATERS: I have no objection to it.

3 THE COURT: He says it's part of the record.

4 MR. BROWN: You said you were aware of the
5 inconsistent theory argument. But I want those pages --
6 if I may, I actually have a copy of that proceeding. I'm
7 not aware if everybody else has it or not. I got it
8 elsewhere. I did not get an objection.

9 MR. WATERS: That's fine if he enters the entire
10 proceeding.

11 THE COURT: He said he did not object to it coming
12 in for that purpose. All right.

13 MR. WATERS: Thank you, Your Honor.

14 THE COURT: The matter it comes in for.

15 MR. BROWN: Okay. The only thing I would like -- I
16 have not made a copy. It's a ground item -- I assume the
17 attorney general may wish to have a copy as well.

18 MR. WATERS: I believe I do have a copy. I have no
19 objection if he wants to copy it and replace it at a
20 later time.

21 MR. BROWN: I'm -- if I can, just go ahead and offer
22 it as exhibit F or 6.

23 THE COURT: Okay.

24 MR. WATERS: That's fine, Your Honor.

25 (Plaintiff's Exhibit Number 6 was marked and filed.)

JOHN MAULDIN - Direct by Mr. Brown

1 MR. BROWN: This is ground D. It's very brief. But
2 if you will bear with me one second. I do want to pull
3 out some notes.

4 BY MR. BROWN:

5 Q Mr. Mauldin, do you recall the judge offering
6 maybe -- obviously offering an instruction regarding jury
7 sentencing and the way the defendant can get that
8 sentencing?

9 A That offer?

10 Q Yes, sir.

11 A It was brought to my attention during the pendency
12 of this post conviction proceeding. Not in the last few
13 days, but I don't know, probably two or three months ago
14 that was brought to my attention when I looked at the
15 application. I then went back and looked at the
16 transcript. So I'm aware that the judge apparently did
17 offer to instruct the jury on that statutory issue about
18 having to enter a plea of not guilty in order to have a
19 jury sentencing.

20 THE COURT: I just read it. He offered to do it
21 during jury qualification. With all that in mind you
22 consciously made the decision not to go ahead and admit
23 guilt in the ---

24 THE WITNESS: The answer to that question, Your
25 Honor, is yes, that did not change the approach we would

1 take in the evidentiary presentation in the case. His
2 offer to do that did not change our decision about how we
3 would offer the testimony. That is what I would argue.

4 THE COURT: He offered to do that during voir dire
5 also?

6 THE WITNESS: And I don't know. I don't recall
7 where the offers were made. I just know that was what he
8 says he did in the transcript he just gave me but ---

9 MR. BROWN: That's right.

10 THE COURT: If that's true you knew that during jury
11 voir dire and you made a conscious decision not to do
12 that?

13 THE WITNESS: I'll answer that question, Your Honor,
14 in two ways. Number one, we made a conscious decision
15 not to change our approach to the testimony and what our
16 arguments to the jury were going to be. What was of
17 shock to me, looking back on it, is that I did not ask
18 him to make that instruction to the jury when they were
19 deliberating, during their deliberation. That is what
20 shocked me.

21 MR. BROWN: And if I may, Your Honor, ask him about
22 that?

23 BY MR. BROWN:

24 Q Whose responsibility would it be to make a request
25 for that charge during the jury charge conference?

JOHN MAULDIN - Direct by Mr. Brown

1 A Oh, it would have been mine.

2 Q Or the defense team, one of the members of the
3 defense team?

4 A Yeah. In other words, the defense, quote unquote,
5 would have been responsible for making sure the judge
6 knew that I wanted him to instruct that.

7 Q Do you consider it error that you -- one of the
8 members of the team did not make that request?

9 A I do. I mean, it was clearly, in my view, looking
10 back and reading what I have been shown, I really have --
11 I was very surprised that I would have made that error.
12 And I think that was a very important thing.

13 MR. BROWN: No further questions of this ground,
14 Your Honor. Your Honor, may I proceed to ground E?

15 THE COURT: You have --- I don't know. Are you
16 saying that Judge Kittredge offered to do this during
17 deliberations? I don't see that in the -- is that in the
18 record?

19 MR. WATERS: Your Honor, I think in his written
20 order, if I could refer to that, give me just one second
21 to find the page and cite it, page 2514, that's volume 6
22 of the record. And Judge Kittredge, December 11, 2001,
23 issued a written order denying the defendant's motion.
24 In there that he stated, while I appreciate the practical
25 consideration raised, defendant cites no which elevate

1 these concerns to a constitutional violation. This
2 Court, however, is willing to address these concerns
3 during jury voir dire if the defendant so requests. That
4 was in the written order. Subsequently on page 1005, the
5 record that was in matters and motions following voir
6 dire, the Court stated -- I think you have read page
7 1005. He offered to charge the jury that this defendant
8 wished to plead guilty, but you have the statute -- I
9 mean, you can read it yourself. You have it because I
10 offered this. I think it's very significant that
11 statement he was willing to tell the jury the defendant
12 wished to plead guilty, that was his offer at that time.
13 So that's what the record reflects.

14 THE COURT: Okay. I don't understand what his
15 statement was about requesting that the judge charge
16 in -- during deliberations. What we have is a
17 statement -- I don't know how that could be -- that could
18 be done.

19 THE WITNESS: The -- the way it would have been
20 done, I'll tell the Court, that I have had it done before
21 during the sentencing phase. The jury would be -- or I
22 would ask the judge to instruct the jury that ---

23 THE COURT: At the time he made his remarks in the
24 sentencing phase?

25 THE WITNESS: That's right. After the conviction

JOHN MAULDIN - Direct by Mr. Brown

1 you go into the sentencing phase. I've asked a judge to
2 instruct the jury that in order to have a sentencing by a
3 jury the defendant must enter a plea of not guilty and go
4 through the first trial.

5 THE COURT: Your statement is that you should have
6 asked for it at that time?

7 THE WITNESS: Well, and you know -- I mean,
8 generally I would. And I'm looking at this record. I
9 see where Judge Kittredge had, to the extent reflected in
10 the record, offered to do that. I somehow either forgot
11 about it, or wasn't listening, or did not pay attention,
12 or something. Somehow that did not -- it sounded to me
13 like Judge Kittredge offered to, I just did not take him
14 up on the offer, which I think would be a very serious
15 failure on my part to ask for something that I -- I think
16 could very well have benefited my client. So if that
17 answers your question, Your Honor.

18 THE COURT: Well, I don't know. On 1005 and 1006, I
19 don't know how judge -- okay. This is on 1005 and 1006,
20 it appears to me to be before opening statement in the
21 penalty phase?

22 MR. WATERS: It was, Your Honor.

23 MR. BROWN: It was.

24 THE COURT: They were talking about the sentencing?

25 MR. BROWN: It was.

1 MR. WATERS: Well, they were talking ---

2 THE COURT: He brought up to the judge -- he did
3 bring it up to the judge before sentencing.

4 MR. WATERS: Right. As I read it the judge said, I
5 would offer to tell this jury ---

6 THE COURT: He offered to tell but he's going to do
7 it now.

8 MR. WATERS: Right.

9 THE COURT: It seems like Mr. Mauldin did bring it
10 up, according to the transcript. Is that not true, Mr.
11 Brown?

12 MR. BROWN: No, and what I'm suggesting is that he
13 didn't ask the judge to charge it later.

14 THE COURT: When could he have asked, other than
15 before the penalty phase? When could he have asked for
16 it?

17 MR. BROWN: No, no, which -- I'm sorry, you've lost
18 me. I apologize.

19 THE COURT: I'm at 1005 and 1006, matters and
20 motions before they went into the penalty phase.

21 MR. WATERS: Before they start the trial, Your
22 Honor. This was before they started the guilt phase.

23 THE COURT: Oh, it's before the guilt phase?

24 MR. WATERS: Yeah, it was after the voir dire, the
25 matters and motions at the beginning of the case in chief

JOHN MAULDIN - Direct by Mr. Brown

1 of the guilt phase. And Mr. Mauldin didn't want to
2 rehash it. Some motions and things like that had already
3 been decided and the judge at that point stated, I
4 offered to do this. And then if you had desired that
5 when we would have had a long discussion about how we
6 could approach that with the jury and things of that
7 nature. And then Mr. Mauldin says, yes, sir. The Court
8 said, I specifically remember that one. It struck a cord
9 with me. Mr. Mauldin, well, the way our statement is set
10 up is just the way it's set up, but I'm not going to go
11 through and rehash the argument. So I mean, obviously
12 the record is going to speak for itself, but I think that
13 that issue had been flushed out before with Judge
14 Kittredge. That would be the State's position.

15 THE COURT: Mr. Mauldin made an argument, and I
16 don't how it could be -- generally if he made an argument
17 it's got to be specifically in the Wood case, it's got to
18 be for the Wood case.

19 MR. BROWN: I'm agreeing. I'm saying at the
20 appropriate point which he mentioned this would have been
21 after -- after the guilt verdict before sentencing takes
22 place, this will be an issue to be instructed. He's made
23 it another case and it's been granted. I think I would
24 point out that Judge Kittredge's instruction was that,
25 I'm willing to tell the jury that this individual here

1 wished to plead guilty, and I think Mr. Mauldin testified
2 and it's the State's position that there was no desire,
3 or wish to plead guilty in this case, and therefore the
4 instruction would not be applicable in this particular
5 case.

6 THE COURT: Okay. Well, I just have what I had been
7 handed. I don't know what the transcript shows about
8 what happened in the penalty phase and in the guilt
9 phase, but it appears to me that Judge Kittredge ruled it
10 out at the guilt phase. So it just was not renewed at
11 the penalty phase.

12 MR. WATERS: Right. I think Judge Kittredge offered
13 to take that up in voir dire if you desired that, and you
14 didn't so here we are starting the guilt phase and we're
15 just going through the motions, meaning go through the
16 motions by the written motions. Mr. Mauldin was not
17 going to argue that any more, so ---

18 THE COURT: The question is it appears to me that
19 based on his argument Judge Kittredge really didn't know
20 what his position was by what was offered.

21 MR. BROWN: Yeah, and what Judge Kittredge -- I
22 apologize.

23 THE COURT: It suggests an -- that's the answer to
24 that.

25 MR. WATERS: The State's position is what the

JOHN MAULDIN - Direct by Mr. Brown

1 transcript reflects, Your Honor. I would also point out
2 that in the direct appeal the issue of -- this issue of
3 the refusal to allow the defendant to plead guilty then
4 was raised before the Appellate Court which of course is
5 reflected in the context.

6 MR. BROWN: I would enter that in my argument.
7 That's not the issue I'm raising.

8 MR. WATERS: I understand that. I was just giving
9 context.

10 THE COURT: Okay. We're ready to go forward. I
11 understand where you stand.

12 MR. BROWN: Yes, sir. Okay. With that context,
13 Your Honor, we would move just beyond that.

14 THE COURT: Okay.

15 MR. BROWN: Okay. And what we've got next is what
16 I've got as ground E, which is trial counsel failed to
17 object to testimony from the South Carolina Department of
18 Mental Health at sentencing.

19 BY MR. BROWN:

20 Q I'm going to ask you if you recall a series of
21 events -- do you recall there being a hearing held in
22 Greenville County regarding a request from the State for
23 a psychological evaluation of Mr. Wood?

24 A I'll say that I -- I'm going to have difficulty with
25 the chronology.

1 Q Yes, sir.

2 A With which hearing was first. We had the Greenville
3 County charges and the Anderson County charges. We were
4 going back and forth. So I'm not going to be real --
5 you're going to have to help me because you've got the
6 facts there in front of you.

7 Q Yes, sir.

8 A I do recall a hearing in Greenville County involving
9 whether or not Mr. Wood would be evaluated by State
10 Hospital doctors.

11 Q And let me stop you. Maybe we can go through -- I
12 don't know how much of this may be objected to. And if I
13 may have a second I can go through a series of items
14 which may further this thing a little. The first thing I
15 want to know about, the chronology, I've got some
16 documents which I'm going to offer to the Court which
17 would explain the chronology of some of -- actually
18 they're Court's documents so they may already be in the
19 file.

20 THE COURT: What is your question going to be, Mr.
21 Brown?

22 MR. BROWN: Well ---

23 THE COURT: Just ask him.

24 BY MR. BROWN:

25 Q All right. Do you recall the September 21st hearing

1 regarding the issue of an order for competency?

2 MR. WATERS: Objection. He said he did not recall.

3 THE COURT: He says he doesn't recall. I'm going to
4 sustain the objection. He doesn't really know. What is
5 the next question?

6 MR. BROWN: Your Honor, at this time may I offer ---

7 THE COURT: You're trying to show there was a
8 hearing or what?

9 MR. BROWN: I'm going through some -- asking about
10 the hearing.

11 MR. WATERS: Your Honor, I have no objection to the
12 transcript of the September 21, 2001 hearing he just
13 gave ---

14 THE COURT: I've reviewed the transcript.

15 MR. BROWN: If I can hand it up?

16 THE COURT: The transcript of the hearing comes in.

17 MR. BROWN: Thank you, Your Honor.

18 (Plaintiff's Exhibit Number 7 was marked and filed.)

19 THE COURT: Mr. Mauldin was present with Mr.
20 Bannister and Mr. Ariail. Just ask him why they had the
21 hearing.

22 MR. BROWN: Yes, sir.

23 THE COURT: Whatever.

24 MR. BROWN: I apologize, Your Honor.

25 THE COURT: I mean, would -- I can understand that.

1 What is your question about this hearing?

2 MR. BROWN: I'm sorry. I think you have a copy of
3 my records. I don't want to lose the record of any
4 exhibits. Okay. And would you -- is it correct that
5 your position was one of objecting to that evaluation
6 request?

7 THE COURT: Did you oppose the State's evaluation
8 for him, that's the question I think?

9 THE WITNESS: Yeah. Very simply I would say yes
10 without even reading the transcript.

11 THE COURT: He doesn't have to read to answer that.
12 Go ahead, Mr. Brown.

13 BY MR. BROWN:

14 Q Yes, sir. And thereafter Mr. Wood was transported
15 to -- to Hall for some evaluations -- or to have an
16 evaluation conducted?

17 A Yes.

18 Q Okay. Did you attend any of those?

19 A No.

20 Q Okay. Did you attempt to attend?

21 A Did I attend the evaluation in Columbia? The answer
22 is no.

23 Q Okay. And were you notified of the dates of those
24 evaluations?

25 A I don't recall that. I'm certain that I would have

JOHN MAULDIN - Direct by Mr. Brown

1 been. I'm certain that I would have known the time
2 frame. Mr. Wood was an inmate at the Greenville County
3 Detention Center at the time, and so I'm certain I would
4 have been aware of when he was being transported to
5 Columbia and not.

6 Q Let me back up. Do you recall mentioning to the
7 Court that the State made a request for the Greenville
8 evaluation?

9 A Did they make a request for what?

10 Q The Greenville County evaluation? Well, at least
11 the request was generated by the State?

12 MR. WATERS: Your Honor, object to that question.

13 THE COURT: I would sustain the objection to that.
14 I think we just need to get to the point of why he
15 objected to it or did not object to it. Go ahead and ask
16 him those questions.

17 MR. BROWN: But -- yes, sir, and if I may, there are
18 documents I just think need to be entered in the record.
19 One of them, Your Honor, which I do -- do you have an
20 objection to this?

21 THE COURT: I don't know how many documents you can
22 put through with Mr. Mauldin, but whatever.

23 MR. WATERS: I'm not going to object to that, Your
24 Honor.

25 MR. BROWN: This would be item -- I apologize. This

1 would be item 8 which is ---

2 (Plaintiff's Exhibit Number 8 was marked and filed.)

3 MR. BROWN: --- which is a September 6, 2000 letter
4 from Solicitor Ariail.

5 THE COURT: Okay.

6 BY MR. BROWN:

7 Q And in that, Mr. Mauldin, you consider that a
8 request for an evaluation?

9 MR. WATERS: Your Honor, I object to that. I don't
10 see the relevance.

11 MR. BROWN: If I may, Your Honor?

12 THE COURT: It speaks for itself.

13 MR. BROWN: Yes, sir.

14 THE COURT: He's got a copy of the letter.

15 MR. BROWN: Okay. As far as the relevance, the case
16 law differs on a request made by the State where there's
17 a request made by the defense.

18 THE WITNESS: I can assure you as his counsel I
19 certainly was not making a request that he be evaluated
20 by the State Hospital. I know that much. Now -- and my
21 memory is being refreshed as you hand me documents. It
22 seems like -- and Your Honor, I may end up being
23 corrected again from a lapse of time, but it seems like
24 the lawyer in Anderson consented to an evaluation on the
25 Anderson County charges. And then the solicitor in

JOHN MAULDIN - Direct by Mr. Brown

1 Greenville said, hey, by the way, while he's down there,
2 why not just go ahead and evaluate him for Greenville
3 too. I think that was the sequence.

4 THE COURT: Okay.

5 THE WITNESS: I believe that's what the letter is
6 about. It's essentially a request by the Greenville
7 prosecutor to -- to go -- to have him evaluated relating
8 to the Greenville charges while he was there on the
9 Anderson charges.

10 THE COURT: Okay.

11 MR. BROWN: And if I may, Your Honor? Without
12 objection, the September 7th letter from Mr. Mauldin to
13 Judge Kittredge.

14 MR. WATERS: No objection, Your Honor.

15 THE COURT: A request for a hearing by Mr. Mauldin
16 on that?

17 THE WITNESS: Yes, I -- yeah. Yeah, I wrote that
18 letter.

19 MR. BROWN: I'm sorry, my numbering -- may the
20 Court ---

21 (Plaintiff's Exhibit Number 9 was marked and filed.)

22 THE COURT: Just -- let's move on to the next
23 question. That was -- he has responded that they
24 requested a hearing. So what is the next ---

25 BY MR. BROWN:

1 Q And then on September 13, 2001, do you recall Mr.
2 Wood making a pro se request?

3 A Again, chronology. I have a problem with the dates
4 and which came first. But I do recall that -- that John
5 made his own request pro se.

6 MR. BROWN: At this time I believe without
7 objection.

8 MR. WATERS: No objection.

9 (Plaintiff's Exhibit Number 10 was marked and
10 filed.)

11 MR. BROWN: Which is the pro se request of Mr. Wood
12 dated 9/13/2001.

13 THE COURT: Okay.

14 MR. BROWN: A memorandum setting up a hearing from
15 Judge Kittredge.

16 MR. WATERS: No objection, Your Honor.

17 (Plaintiff's Exhibit Number 11 was marked and
18 filed.)

19 MR. BROWN: Then we have the hearing on September
20 21st, the transcript, which has already been entered and
21 the order generated.

22 MR. WATERS: No objection. The order is in the
23 clerk's file which is part of this proceeding.

24 THE COURT: Okay.

25 (Plaintiff's Exhibit Number 12 was marked and

1 filed.)

2 MR. BROWN: Your Honor. This would be 12. Those
3 would be the documents at this time, Your Honor. I do
4 have a copy of the -- I'm sorry. At least one, Your
5 Honor, would be ---

6 MR. WATERS: I don't have the Anderson order either.

7 THE COURT: Okay.

8 MR. BROWN: That would be 13.

9 (Plaintiff's Exhibit Number 13 was marked and
10 filed.)

11 BY MR. BROWN:

12 Q Now, Mr. Mauldin, with that context, again having
13 these letters, did it not appear that the prosecutor made
14 the request for the evaluation in Greenville?

15 A He made the request for the evaluation in Greenville
16 by that letter, yes, sir.

17 Q And Mr. Wood in the interim makes some pro se
18 request?

19 A Yes, sir, I see a copy of that.

20 Q In response to that situation, what did you do?

21 A He asked for a hearing. Well, I asked for the
22 hearing before Mr. Wood filed his pro se request. I
23 mean, if you look at the chronology, the chronology was
24 that there was -- hang on a minute. On August the 4th,
25 2001, Judge Kittredge, ordered the competency evaluation

1 of Anderson. I don't know the number of the exhibit but
2 it's the last one you handed me.

3 Q Yes, sir. All right.

4 A That was in August. All right. Then the one on
5 September the 6th, Mr. Ariail requested that also apply
6 for Greenville. On September the 7th I wrote requesting
7 a hearing on that. On September the 13th Mr. Wood asked
8 for an evaluation from Greenville and asked that counsel
9 be -- be relieved. And then Judge Kittredge set the
10 hearing and held the hearing.

11 Q Now, at the hearing, the last words so to speak, or
12 what's the last word so to speak, the position of the
13 defense as a whole whether to consent or object?

14 A I hadn't looked at the transcript you've handed me
15 but my recollection would be that as counsel for Mr. Wood
16 I was objecting to an evaluation at the State Hospital
17 regarding what I was responsible for, and that was the
18 Greenville County charges.

19 Q And you did not represent Mr. Wood at this hearing
20 on a standby basis, did you?

21 A No, I was still his counsel.

22 Q So you actually were in charge of his -- of
23 decisions, some critical, whether to go to trial, whether
24 to take the stand?

25 A I was doing the best I could to serve as his lead

1 counsel.

2 Q Yes, sir. Okay. And again, thereafter I asked
3 whether or not you attended, or any of the defense team
4 attended any of the interviews by the Department of
5 Mental Health?

6 A Okay. I'll tell you that I did not attend any of
7 the evaluations but -- and I suspect that had one of the
8 other counsel attended I would have known about it, but I
9 can't actually as a matter of fact say nobody else was
10 there. So I would say I wasn't there and I'm not aware
11 of anybody else from our defense team in Greenville being
12 present for the evaluations.

13 Q And what I want to do now is ask about some argument
14 that was made, and these were motions, Your Honor, and
15 the best way I know to do it is to hand up isolated
16 portions of the transcript again. And what I'm going to
17 ask you is to look at is pages 2437, 2440 and 2505. And
18 if you will, take look at the page 2437, lines 3 through
19 6. Using that as a means to refresh your memory, did the
20 defense take a position regarding the Fifth Amendment
21 rights of Mr. Wood relevant to the evaluation?

22 A Could I ask who was speaking because it doesn't ---

23 Q I apologize. And I think it's suppose to have a
24 little bit more, but I have Jim Bannister.

25 MR. WATERS: It is Mr. Bannister, Your Honor.

1 THE COURT: Pardon me?

2 MR. WATERS: It was Mr. Bannister.

3 MR. BROWN: Yes, sir.

4 THE COURT: These are Mr. Bannister's words?

5 MR. BROWN: It is.

6 THE COURT: All right. All right. I read that, Mr.
7 Bannister's representation.

8 BY MR. BROWN:

9 Q Again, I'll assume that represents the team?

10 A Yeah, we were.

11 Q Defense as a whole is pointing out to the Court that
12 they did not believe that your client had been advised of
13 his Fifth Amendment rights with regard to the evaluation,
14 that they could use at sentencing?

15 A Yes.

16 Q Okay. It's not the idea that when he goes in for
17 the evaluation what he speaks could be used at trial?

18 MR. WATERS: Your Honor, I object to the leading.

19 THE WITNESS: Would I make it ---

20 THE COURT: All right. I would ---

21 MR. BROWN: I'll rephrase, Your Honor.

22 THE COURT: Rephrase your question.

23 BY MR. BROWN:

24 Q How -- is there a definition -- what is the
25 distinction?

1 A Well, he points out that it was both at trial -- he
2 says sentencing first and then at trial (sic). And in
3 the two following sentences he states that we don't know
4 for sure whether he was advised regarding the trial
5 phase. So it would appear at least to me he should be
6 advised separately as to the two phases. And you know it
7 very well could -- make not have been available to the
8 State time to use at the sentencing phase. It could very
9 well be -- lead to the finding of not being available to
10 the State, but that argument was being made by the other
11 attorney.

12 Q And I'll be honest, I'm asking because I don't want
13 the petition being called back later (sic).

14 A Right. I do know that that was raised. Okay. Now,
15 I think that the -- Mr. Bannister would be the one that
16 could actually ---

17 Q Yes, sir.

18 A --- explain and provide information regarding his
19 position on those objections.

20 Q Okay. 2439, I think line 2 through 6, is that not
21 also -- does that provide some -- or how would you
22 characterize part of your argument regarding the ---

23 THE COURT: Again this is Mr. Bannister?

24 MR. BROWN: It is.

25 THE WITNESS: All right.

1 THE COURT: All right. I have read that.

2 BY MR. BROWN:

3 Q Okay. And I'll assume that that's also your
4 position?

5 A Yeah. That would be speaking for the defense in
6 regard to our position. There was no claim of insanity,
7 or his lack of criminal responsibility. Actually there
8 was no claim he was not competent to stand trial either.
9 We weren't making either one of those claims.

10 Q Did y'all provide notice of the intent to raise
11 either?

12 A No, we didn't provide notice to either one because
13 that wasn't what we were intending to do in Greenville.

14 Q Were -- what were your reactions when you found the
15 Department of Mental Health employee was intending to
16 offer testimony at sentencing, despite the fact that
17 y'all had not raised these issues?

18 A Well, again, I'll have to let the record speak for
19 itself with -- regarding our official reaction, but I
20 would suspect we would have entered an objection to their
21 appearance.

22 Q Okay.

23 A You know, if we did not then we certainly should
24 have.

25 Q Okay. And the last thing, if you'll look the 2505,

1 line 8 through 12. And can you ---

2 THE COURT: Who is speaking in this?

3 MR. BROWN: This is Judge Kittredge.

4 THE COURT: This is Judge Kittredge?

5 MR. BROWN: Yes, sir.

6 THE WITNESS: Well, how do I react to that?

7 BY MR. BROWN:

8 Q And I guess I'm going to ask you, do you feel in
9 hindsight that maybe you should have told him in advance,
10 hey, we're going to raise it and did not disclose it?

11 A Well ---

12 Q But that makes your argument for non-disclosure?

13 A All right. My response is that if I did not raise
14 it it wasn't an issue. The -- what I believe is
15 happening here is that if -- that if it is -- it looks as
16 there is a concern about the Court not being informed
17 that I -- it's almost like information of a negative. I
18 wasn't planning on claiming that he wasn't competent, but
19 I did not think to let the Court know. I'm not going to
20 claim he wasn't competent. I'm going to claim -- in
21 other words, I can -- the notice is if you intend to
22 claim it, not if you don't intend to claim it.

23 Q Did you object -- if you did not object, do you wish
24 you would have objected?

25 A Oh, yeah.

1 Q Judge Kittredge said, what I'm doing is shifting the
2 burden to you to show you weren't going to raise it?

3 A If it's in the record it's in the record.

4 Q Yes, sir.

5 A I either objected or I did not. If I did not object
6 then I should have because we never claimed competency at
7 trial. We never claimed insanity as a defense regarding
8 criminal responsibility. We objected to the evaluation
9 at the State Hospital applying for Greenville.

10 Q And I guess what I'm leading to is, you must not
11 have said it at that time but certainly should have. I
12 guess without the disclosure of the reports to the State.
13 How would they have been able to present the evidence?

14 A Well, I guess if my argument had been made correctly
15 the Court may very well not have applied the evaluation
16 to Greenville in the first place. But -- but moving
17 forward, once the evaluation was done, since we did not
18 raise competency or criminal responsibility, how it would
19 intended to being offered, I really don't know.

20 Q I mean, did the judge say, here -- it speaks to
21 itself, if you had told me you weren't going to raise it
22 maybe I wouldn't have even disclosed the report to them?

23 A Well ---

24 Q This is after the evaluation.

25 A Yeah, I read it. That's what it says in the

JOHN MAULDIN - Direct by Mr. Brown

1 transcript.

2 THE COURT: I don't where in the case 2505 really
3 is. I don't know kind of what context that -- what --
4 where they were there, whether they were in sentencing or
5 in argument about ---

6 MR. WATERS: Your Honor, for context, that would be
7 a hearing on January the 28th of 2002.

8 MR. BROWN: Which would be a pretrial hearing.

9 THE COURT: All right.

10 THE WITNESS: If it's a pretrial hearing and the
11 judge is saying to me -- or to the defendant what is
12 reflected on lines 8 through 16, I would interpret that
13 that what I should have done there was entered an
14 objection to the production at all of any mental health
15 information regarding the State Hospital evaluation to
16 the State under any circumstance, based upon what the
17 judge said in that paragraph.

18 BY MR. BROWN:

19 Q Just to clarify for the record, the State mental
20 health evaluation to the prosecution is what you're
21 referring to?

22 A Yes.

23 Q You used the word State twice, and what you said
24 following the State mental health records to the State?

25 A Well ---

1 Q I know what you're saying but ---

2 A To clarify ---

3 THE COURT: The State Hospital is where he ended up
4 going?

5 MR. BROWN: Yes, sir.

6 THE WITNESS: The State is the prosecution.

7 BY MR. BROWN:

8 Q Okay. So I'm sorry, I ---

9 A I don't think it's inaccurate.

10 Q I apologize. Okay. And let me ask you, what is
11 your understanding of this standard Miranda warning, or
12 Fifth Amendment warnings?

13 A What is my understanding of it?

14 Q What it entails?

15 A Such like -- are you talking about what it contains
16 in it?

17 Q Yes, sir.

18 A He has a right to counsel. He has a right to remain
19 silent. Counsel will be provided. That if he --
20 anything he says can and will be used against him. That
21 counsel will be provided for him if he can't afford it.
22 And really I know I'm leaving some of them out.

23 Q But are you aware of any standard Miranda warning
24 that contains a provision that says if I'm found
25 competent to stand trial, and found guilty at trial, that

1 the report from this examination may be used by the judge
2 or jury to make a decision about my sentence?

3 A And I guess I'm confused about the term standard
4 Miranda warning that -- if I'm not mistaken that would be
5 a type of warning that would be given to a defendant
6 regarding an evaluation or prior to an evaluation. And I
7 don't know if that's what you mean or not. That's what
8 I'm interpreting that question.

9 Q But that's something that's standard outside of ---

10 A It's not what a law enforcement officer would give
11 to a defendant when they are arresting them for a
12 criminal charge. So to that extent it's somewhat
13 different from what I'll call a standard Miranda warning.

14 Q Now let me go back to 2437, Mr. Bannister's
15 argument.

16 A All right, sir.

17 Q If you'll refer to page -- or excuse me, line 3
18 through line 6. Now, he indicated that he felt the
19 provision about the use of the report, or examination
20 may be used at sentencing, he thought may be the
21 provision in the type of warnings given for an evaluation
22 (sic)?

23 A Right.

24 Q Okay. How does that how condone Mr. Bannister's
25 statements that -- that the defense takes the position he

1 was never advised of his rights regarding the sentencing
2 phase?

3 A And I think I'll tell you what my reaction to that
4 is, but you're going to have to ask Mr. Bannister ---

5 Q Yes, sir.

6 A --- as to specifically explain the statement.
7 When -- I know that John Mauldin did not tell John Wood
8 what his Fifth Amendment rights were regarding the use of
9 this type of information at sentencing. I know that I
10 did not do that. If what Mr. Bannister is saying is we
11 take the position that he was never advised of his Fifth
12 Amendment regarding sentencing for certain, what he
13 thinks he did not do, then I guess that's right. But if
14 he's saying that in a more proceeding context, or
15 referring it to somebody else, then you will have to ask
16 Mr. Bannister that.

17 Q Okay. Sure. I guess what I'm saying is, you seem
18 to have some awareness that -- that a statement, or a
19 report from Hall may be used at sentencing, or at least
20 that's an issue?

21 A Yes.

22 Q Okay.

23 A I do know that.

24 Q And you clarify you never advised Mr. Wood about how
25 that could be used?

JOHN MAULDIN - Direct by Mr. Brown

1 A You know, and I think it's -- there is some -- I
2 have had conversations with Mr. Wood regarding the issue
3 that's being raised here, about the State Hospital
4 evaluation, and the manner in which it was done, and how
5 it would be done, and so forth. I mean, I had
6 conversations with him about that. And I will tell you
7 that I was opposed un-categorically to him being
8 evaluated by the State Hospital. I just continued to
9 oppose it and continued to encourage Mr. Wood not to seek
10 it. So we had a clear difference of approach to his case
11 with regard to that issue.

12 Q But as far as Greenville goes, you ran the show
13 because you were still his counsel?

14 A Well, I was trying to run the show.

15 Q Yes, sir.

16 A But you know, I was -- I'll tell you that I was
17 unsuccessful in what I wanted to happen did not happen
18 with regard to the State Hospital issue in this case.

19 Q And on that note at that September 21st hearing, do
20 you recall Mr. Byrholdt being in attendance?

21 A Mr. ---

22 Q And of course the September 21st hearing has been
23 entered into the record there.

24 A Well, it does have the appearances on the front
25 page.

1 Q Do you recall him being outside of anything that's
2 listed on there?

3 A All right. The hearing where we were opposed to the
4 State's request that it be consolidated?

5 Q That there be an evaluation at all.

6 A Right.

7 Q In Greenville.

8 A I do not have a personal recollection of whether or
9 not Bruce was in the courtroom, or in the hallway, or in
10 Greenville. I just don't know. I mean, you can ask him.

11 Q Okay. Yes, sir. I certainly will.

12 A That could be correct. I just don't have any
13 recollection of it.

14 Q Now, were you provided a copy of that order for the
15 Greenville evaluation prior to it being signed?

16 A Okay. I apologize. I lost track of my exhibit.
17 This one is the exhibit that has the Greenville
18 competency order? This is the order that was signed
19 September the 21st?

20 Q That's it?

21 A Was I provided a copy of this before it was signed?

22 Q Yes, sir.

23 A I don't think I was. I may have been, but it was --
24 the hearing was right before it was signed. I think he
25 signed this at the end of the hearing.