

**STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

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**Appeal From Dorchester County
The Honorable Diane S. Goodstein, Circuit Court Judge**

S.C. Supreme Court

TIMOTHY DION ROGERS,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

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1 A I think so.

2 Q And, I'm -- I hate to sound like I'm picking at
3 you---

4 A Is that -- is that -- is that a public thing? I
5 mean, is there retribution then to a juror by family
6 members or whatever if you -- I mean, is that -- does
7 everybody in the whole world know that you signed this
8 thing and that you were a juror?

9 Q I'm not sure how far the judge will let me go in
10 answering questions as opposed to asking them.

11 THE COURT: I will tell you that if anybody bothers
12 you about that you're to let the clerk of court's office
13 know. Just like everybody knows -- it's public notice
14 that you're all on jury duty this week if somebody wants
15 to go down and look, yes.

16 BY MR. BAILEY:

17 Q Would that possibility of, you know, public
18 opinion or -- or somebody out in the public criticizing
19 you for a decision, one way or the other, would that---

20 A Oh, not -- not the criticism, I -- that wasn't a
21 concern. Because if it was my decision then I would stand
22 by it, but I wouldn't want anybody to harass me or this
23 person's family members to say, you know, I'm going to get
24 you because you did this to my person.

25 Q Okay.

1 A That would be my concern.

2 Q Would -- would that possibility, if it did exist,
3 would -- would that influence your deliberations?

4 A Oh, no. No. Because it would already be done
5 then.

6 Q Okay, all right. And lastly, I asked you about
7 the vote and I asked you about the signing of the death
8 verdict form and standing up in open court and announcing
9 that decision, if you'd already reached that decision with
10 the other jurors and had signed the verdict form, could
11 you then stand up when your name was called and affirm
12 that decision?

13 A Yes.

14 MR. BAILEY: Ms. Ellis, that's all I've got, thank you
15 very much.

16 THE COURT: Mr. Runyon or Mr. Leiendecker.

17 CROSS-EXAMINATION BY MR. LEIENDECKER:

18 Q Ms. Ellis, Mark Leiendecker.

19 A Yes, sir.

20 Q I have just a very few questions. I understand
21 that you operate the Waterfront Gallery; is that right?

22 A I don't operate, I'm a member there.

23 Q You're a member there, so you just show your
24 works there?

25 A Yes, uh-huh.

1 Q And -- so there's -- other than your business
2 being done on a purely personal basis at home and other
3 places, there's no place of business that you have to be
4 that you have to make arrangements for in this next week?

5 A I have to -- we're all assigned to a time to be
6 there as the clerk.

7 Q Yes.

8 A And I hire somebody to take---

9 Q It's kind of like a cooperative?

10 A Yes.

11 Q Yes, ma'am. And that's in Charleston?

12 A Yes, it is.

13 MR. LEIENDECKER: Right. Okay. I don't have any
14 further questions.

15 THE COURT: Anything further from the state?

16 MR. BAILEY: No, sir.

17 THE COURT: Okay, Ms. Ellis, to answer your question
18 I'll tell you just as I tell any other juror in any case
19 anybody who serves on a jury, nobody's to bother you about
20 serving on a jury. Whether it's the -- the least
21 significant to the most significant or most important type
22 case, nobody's to bother you. And if anybody bothers you,
23 you're to let the clerk's office know and let me know so
24 we can take care of that problem for you. So that's the
25 way we handle that in every kind of case. So, if that

1 will allay some of your fears I wanted to go ahead and
2 tell you that. Okay? That is told to every juror in
3 every trial regardless of the outcome.

4 JUROR: It feels like that this is -- this is
5 obviously a very serious case and it's not -- I think
6 somebody has to do this. Somebody has to serve, and
7 that's why I don't think I'm number one and I don't think
8 I'm number two, I think I'm closer to three, which I'd
9 like to have another choice.

10 THE COURT: All right, Ms. Ellis, I need to talk to
11 the lawyers just a minute, would you step back in the back
12 for just a second, please.

13 (Juror excused from courtroom.)

14 THE COURT: What says the state?

15 MR. BAILEY: Qualified, Your Honor.

16 THE COURT: Defense?

17 MR. LEIENDECKER: Agreed, Your Honor, qualified.

18 THE COURT: She is a qualified number three juror,
19 bring her back in.

20 (Juror brought into courtroom.)

21 THE COURT: Ms. Ellis, I find that you are qualified
22 to serve on this jury panel. That doesn't mean you're on
23 the jury, it means you're in the group from which the jury
24 will be selected.

25 You need to be back here at nine o'clock tomorrow

1 morning. Sit on the same side of the courtroom you did as
2 yesterday with the other jurors who were in the pool.
3 Have your bags packed and in your car and be prepared to
4 stay with us for up to five days while this case is being
5 tried if you are picked on this jury. So come prepared to
6 stay. If you aren't selected you'll be released for the
7 balance of the term.

8 Between now and then don't talk to anybody about this
9 case. Don't let anybody talk to you about the case.
10 Don't read the newspaper about this case and don't listen
11 to any radio or television about this case. You need to
12 be able to decide this case based on what you hear in the
13 courtroom and not something outside of here. Do you
14 understand?

15 JUROR: Yes, sir.

16 THE COURT: Okay. Thank you, ma'am, you are excused
17 until tomorrow morning at nine o'clock. Thank you.

18 (Juror excused.)

19 THE COURT: Evelyn Connolly.

20 (Juror brought into courtroom.)

21 EXAMINATION BY THE COURT:

22 Q Ms. Connolly, I'm going to ask you some
23 questions. There are no right or wrong answers to any of
24 the questions. We just want you to be completely honest
25 with us in your responses. You are under oath, you were

1 sworn in yesterday with the rest of the panel.

2 Q Since you received your summons to come here for jury
3 service, has anybody talked to you about this case?

4 A No, sir.

5 Q Have you talked to anybody about this case?

6 A No, sir.

7 Q Do you know anything about this case other than
8 what I told you yesterday?

9 A No, sir.

10 Q You've never read or heard anything about it from
11 any source?

12 A No, sir.

13 Q Yesterday we went through a list of names of
14 people who could be witnesses in this case. Did you know
15 any of those people?

16 A No, sir.

17 Q Have you formed or expressed any opinion about
18 this case?

19 A No, sir.

20 Q Do you have any bias or prejudice against the
21 prosecutors for bringing this case? Or against the
22 defendant just because he is the defendant in the case?

23 A No, sir.

24 Q Do you know of any reason why you could not be
25 fair and impartial to both the state of South Carolina and

1 the defendant, Mr. Rogers?

2 A No, sir.

3 Q Can you and will you follow the law that is
4 instructed to you by the court?

5 A Yes, sir.

6 Q Yesterday I instructed you and the rest of the
7 jurors that Mr. Rogers has already been convicted of
8 murder. The purpose of this proceeding is to determine
9 the punishment. Either life in prison without parole or
10 the death penalty.

11 The jury will make that decision. The jury will
12 consider all of the evidence that is presented, the
13 exhibits, the mitigating and aggravating circumstances.
14 In other words, whatever comes out during the trial, the
15 jury will use that and make its decision -- to make its
16 decision to decide between life and death.

17 You had the opportunity back in the jury room to look
18 over that form that has on it the three types of jurors.
19 Which one of those three do you think best describes you
20 as a potential juror?

21 A The third one.

22 Q That's a juror who will keep an open mind and
23 listen to everything before deciding on punishment?

24 A Yes, sir.

25 Q Will you keep an open mind and listen to

1 everything before you decide between a life sentence and
2 the death penalty?

3 A Yes, sir.

4 Q If you sat as a juror in a case like this, and
5 we're not talking about this case, but speaking in
6 general. If you sat in such a case and listened to
7 everything with an open mind. And after listening to
8 everything you and the other jurors unanimously decided
9 that the death penalty was the appropriate punishment. If
10 that was your choice, would you be able to sign your name
11 to a form, a verdict form, that said that was your choice,
12 if it was?

13 A Yes, sir.

14 Q Would you be able to come out here and stand up
15 in open court and say that was your verdict, if it was?

16 A Uh-huh. Yes, sir.

17 Q Would you be able to do those things knowing that
18 eventually that's going to result in the execution of a
19 defendant?

20 A Yes, sir.

21 Q Do you have any strong feelings or beliefs that
22 will interfere with your choice between a life sentence
23 and the death penalty?

24 A Will you repeat that again?

25 Q Do you have any strong feelings or beliefs, such

1 as a religious belief or anything like that--

2 A No. No, sir.

3 Q --that will interfere with your choice between a
4 life sentence and the death penalty?

5 A No, sir.

6 Q Do you understand and will you remember that it
7 is vitally important to this process that each juror keep
8 an open mind and listen to everything that is presented
9 before deciding on a punishment?

10 A Yes, sir.

11 Q It's also part of this process that each juror
12 who is selected has to stay with us and be sequestered
13 while the case is being tried. If you are picked on the
14 jury, can you make arrangements to stay with us for up to
15 five days while this case is being tried?

16 A Yes, sir.

17 Q And you've thought about that and you know you
18 can make those arrangements?

19 A Uh-huh.

20 THE COURT: Okay. Thank you, ma'am. Answer any
21 questions the solicitor might have. Ms. Bailey.

22 DIRECT EXAMINATION BY MR. BAILEY:

23 Q Ms. Connolly, I'm Walter Bailey, I need to ask
24 you just a few more questions. And first of all, I'm sure
25 you understand the process that we're going through here,

1 because the judge explained it. But just let me run over
2 that -- parts of it briefly. In South Carolina the jury
3 and not the judge makes the decision on life without
4 parole or the death penalty when the state seeks the death
5 penalty, the person's been convicted of murder as
6 Mr. Rogers has. Do you understand that?

7 A Uh-huh.

8 Q If you're on the jury you would make that
9 decision?

10 A Yes, sir.

11 Q And that decision would be carried out?

12 A (Nods head.)

13 Q And, nobody's going to ask you what you would do
14 in this case, because you haven't heard the facts. And
15 you've indicated that you wouldn't make up your mind 'til
16 you've heard all of the facts?

17 A Right.

18 Q But if those facts were bad enough, could you
19 vote for the death penalty, knowing that sentence is going
20 to be carried out based on your vote?

21 A Yes, sir.

22 Q Okay. And, if the other 11 jurors, hearing those
23 same facts, also felt the same way you did,
24 hypothetically, and voted for the death penalty. Then in
25 order for that sentence to be put into effect, for that

1 person to be executed, each person would have to sign
2 their name to a death verdict form. Could you -- could
3 you sign your name--

4 A Yes, sir.

5 Q --if you'd already done it -- voted with the rest
6 of the jurors?

7 A Yes, sir.

8 Q And could you then come into open court when your
9 name is announced, stand up, when your name is called and
10 affirm that verdict out loud?

11 A Yes, sir, if that's what I chose I would have to,
12 yes.

13 MR. BAILEY: All right. That's all I have,
14 Ms. Connolly. Thank you very much.

15 THE COURT: Mr. Runyon or Mr. Leiendecker?

16 MR. RUNYON: No questions, Your Honor.

17 THE COURT: Ms. Connolly, I need to talk to the
18 lawyers just a minute, would you please step back into the
19 back.

20 (Juror excused from courtroom.)

21 THE COURT: What says the state?

22 MR. BAILEY: Qualified, Your Honor.

23 THE COURT: Defense?

24 MR. RUNYON: Obviously qualified, Your Honor.

25 THE COURT: She is a qualified number three juror,

1 bring her back in.

2 (Juror brought into courtroom.)

3 THE COURT: Ms. Connolly, I find that you are
4 qualified to serve on this jury panel, that doesn't mean
5 you're on the jury, it means you're in the group from
6 which the jury will be selected.

7 You need to be back up here tomorrow morning at nine
8 o'clock. Come into the courtroom and sit on the same side
9 of the courtroom you sat on yesterday. Have your bags
10 packed and in your car and be prepared to stay with us for
11 up to five days while this case is being tried.

12 Between now and then don't talk to anybody about the
13 case. Don't let anybody talk to you about the case.
14 Don't read the newspaper about this case. And don't
15 listen to any radio or television reports. You have to be
16 able to decide this case based on what you hear in the
17 courtroom and not something outside of here. Do you
18 understand?

19 JUROR: Yes, sir.

20 THE COURT: Any questions about these instructions?

21 JUROR: No, sir, just be here at nine o'clock tomorrow
22 morning?

23 THE COURT: Be here at nine o'clock in the morning and
24 be prepared to stay in case you're picked. Thank you,
25 ma'am, you're excused until then.

1 (Juror excused.)

2 THE COURT: Joseph Mendrzycki.

3 EXAMINATION BY THE COURT:

4 Q Have a seat, please, sir. How are you?

5 A Fine, thank you.

6 Q Help me with the pronunciation of your name,
7 please, sir.

8 A Mendrzycki.

9 Q Mendrzycki, all right, sir. Mr. Mendrzycki, I'm
10 going to ask you some questions. If you don't understand
11 something, please don't answer it, let me explain it to
12 you. There are no right or wrong answers to any of the
13 questions, we just want you to be completely honest with
14 us in your responses.

15 Since you received your summons to come here for jury
16 service, has anybody talked to you about this case?

17 A No, sir.

18 Q Have you talked to anybody about this case?

19 A No, sir.

20 Q Have you read or heard anything about this case
21 other than what I told you yesterday?

22 A When you talked about it yesterday I thought I
23 might've heard something about it on the news. That's
24 about it.

25 Q You don't -- don't remember exactly what it was,

1 it just sounded familiar to you?

2 A Yes.

3 Q If you had heard about it before, will that have
4 any affect on your ability to be fair and impartial in
5 this case?

6 A I don't think so. I really don't know much about
7 it.

8 Q Okay. What I'm getting to is, can you decide
9 this case based on what you hear in the courtroom and not
10 something you might've heard outside of here?

11 A I think so.

12 Q All right, sir. Yesterday we went through a list
13 of names of people who could be witnesses in the case, did
14 you know any of those people?

15 A No, sir.

16 Q Have you formed or expressed any opinion about
17 this case?

18 A No, sir.

19 Q Do you have any bias or prejudice against the
20 prosecutors for bringing the case or against the defendant
21 just because he is the defendant in this case?

22 A No, sir.

23 Q Do you know of any reason why you could not be
24 fair and impartial to both the state of South Carolina and
25 the defendant, Mr. Rogers?

1 A No, sir.

2 Q Can you and will you follow the law that is
3 instructed to you by the court?

4 A Yes, sir.

5 Q Yesterday I told you and the rest of the panel
6 that Mr. Rogers has already been convicted of murder in a
7 prior proceeding. The purpose of this trial is to
8 determine the punishment. Life in prison without parole
9 or the death penalty.

10 The jury decides the punishment. After hearing all of
11 the mitigating and the aggravating circumstances, all the
12 evidence and testimony that might be presented, the jury
13 decides the punishment. Life in prison or the death
14 penalty.

15 Now you've had the opportunity back in the jury room
16 to look over the form that had on it the three types of
17 jurors. Which one of those three do you think best
18 describes you as a potential juror?

19 A I believe number three.

20 Q That's a juror who will keep an open mind and
21 listen to everything before deciding on a punishment?

22 A Yes.

23 Q If you sat as a juror in a case like this, and
24 I'm not talking about this case, but in general, because
25 you don't know anything about this case. In general, if

1 you sat on a case like this and listened to everything
2 with an open mind. And after listening and hearing
3 everything that was presented you and the other jurors
4 unanimously decided that the death penalty was the
5 appropriate punishment. If that was your choice, would
6 you be able to sign your name to a verdict form that said
7 that was your choice, if it was?

8 A Yes, sir.

9 Q Would you be able to come out here into open
10 court, and if I pointed to each of you individually and
11 said, is this your verdict and is it still your verdict,
12 would you be able to stand up in court and say it was your
13 verdict, if it was?

14 A Yes, sir.

15 Q Would you be able to do those things knowing that
16 eventually that's going to result in the execution of a
17 defendant?

18 A Yes, sir.

19 Q Do you have any strong feelings or beliefs that
20 will interfere with your choice between a life sentence
21 and the death penalty?

22 A No, sir.

23 Q Do you understand and will you remember that it
24 is vitally important to this process that each juror keep
25 an open mind and listen to everything before deciding on a

1 punishment?

2 A Yes, sir.

3 Q And will you do that?

4 A Yes, sir.

5 Q It's also a part of this process that each juror
6 who is selected on the jury has to stay with us and be
7 sequestered while the case is being tried. If you're
8 picked on this jury, can you make arrangements to stay
9 with us for up to five days while the case is being tried?

10 A I believe so, yes, sir.

11 Q And you've thought about that and you're
12 comfortable that you can make those arrangements?

13 A Well, I travel a good bit so I know what it's
14 like.

15 THE COURT: All right, sir. Answer any questions
16 Solicitor Bailey has for you, please.

17 MR. BAILEY: May it please the Court?

18 DIRECT EXAMINATION BY MR. BAILEY:

19 Q Mr. Mendrzycki, I'm Walter Bailey, I'll be
20 prosecuting Mr. Rogers here, I need to ask you a few more
21 questions. I notice from your questionnaire that you
22 attend the Catholic church?

23 A Yes, sir.

24 Q Okay. Would -- do you have any religious
25 convictions that you think might impact your decision in

1 this case?

2 A No, sir.

3 Q All right, sir. And, I think you've already told
4 Judge Whetstone you had no personal convictions in regard
5 to the death penalty that would impact your decision; is
6 that correct?

7 A Correct.

8 Q All right, sir. And you understand that the way
9 the system works in South Carolina, as opposed to possibly
10 some other states, when we have a situation where the
11 defendant is -- has been found guilty of murder and the
12 state's seeking the death penalty, it's the jury and not
13 the judge that decides what happens, life without parole
14 or the death penalty?

15 A Yes, sir.

16 Q And whatever decision the jury reaches will be
17 the order of the court and that decision -- order will be
18 carried out.

19 And I'm not going to ask you, and no one else is going
20 to ask you, to predict what you'd do in this case because
21 you haven't heard the facts. But if the facts, as you
22 hear them, are bad enough, can you vote to impose the
23 death penalty knowing that the sentence will be carried
24 out?

25 A Yes, sir.

1 Q And if the other 11 jurors vote the same way you
2 do, could you sign your name to a death verdict form,
3 along with those other jurors, that would ultimately
4 result in an execution taking place?

5 A Yes, sir.

6 Q And could you then stand up in open court when
7 your name is called out, announce that and affirm that as
8 being your decision?

9 A Yes, sir.

10 MR. BAILEY: Thank you, sir, that's all I have.

11 THE COURT: Mr. Runyon or Mr. Leiendecker?

12 MR. LEIENDECKER: Thank you, Your Honor.

13 CROSS-EXAMINATION BY MR. LEIENDECKER:

14 Q Mr. Mendrzycki, my name's Mark Leiendecker. Just
15 a couple brief questions. Your wife is an office manager
16 with Dr. Kearse; is that correct?

17 A Kearse.

18 Q And, what kind of practice does Dr. Kearse have
19 and where is it?

20 A It's in -- it's in Summerville and he's a
21 dermatologist.

22 Q Okay. All right. Is it -- you have a bachelors
23 of science in industrial engineering?

24 A Yes, sir.

25 Q Is that what BSIE is?

1 A Yes, sir.

2 Q And you've been working in -- in that field of
3 engineering since graduation?

4 A Yes, sir.

5 MR. LEIENDECKER: Okay. I don't think I have any
6 further questions for you. Thank you.

7 THE COURT: Anything further from the state?

8 MR. BAILEY: Nothing from the state.

9 THE COURT: Mr. Mendrzycki, I need to talk to these
10 lawyers just a minute, would you please step back into the
11 back for a few more minutes, please.

12 (Juror excused from courtroom.)

13 THE COURT: What says the state?

14 MR. BAILEY: Qualified, Your Honor.

15 THE COURT: Defense?

16 MR. LEIENDECKER: Qualified, Your Honor.

17 THE COURT: All right, he is a qualified number three
18 juror, bring him back in here.

19 (Juror brought into courtroom.)

20 THE COURT: Mr. Mendrzycki, I find that you are a
21 qualified juror. That means you're in the group from
22 which the jury will be selected.

23 You need to be back up here at nine o'clock tomorrow
24 morning. Be packed and prepared to stay with us for up to
25 five days while the case is being tried. You don't need

1 to drag your suitcase all the way up here to the
2 courtroom, just leave it in your car. If you're picked on
3 the jury you'll be transported to the motel and you'll be
4 staying with us while we try the case.

5 Between now and then don't talk to anybody about the
6 case. Don't let anybody talk to you about the case.
7 Don't read the newspaper about the case and don't listen
8 to any radio or television reports. You have to be able
9 to decide this case based on what you hear in the
10 courtroom and not something outside of here. Do you
11 understand?

12 JUROR: Yes, sir.

13 THE COURT: Any questions about these instructions?

14 JUROR: No, sir.

15 THE COURT: Please be back here at nine o'clock in the
16 morning and be prepared to stay with us, please, sir.
17 Thank you, sir.

18 (Juror excused.)

19 THE COURT: Okay, bring in Jolene Campbell, please.

20 (Juror brought into courtroom.)

21 EXAMINATION BY THE COURT:

22 Q Ms. Campbell, have a seat right here, please.

23 Ms. Campbell, I'm going to ask you some questions. There
24 are no right or wrong answers to any of the questions, we
25 just want you to be completely honest in your responses.

1 You are under oath, you were sworn in yesterday with the
2 rest of the panel.

3 Since you received your summons to come here for jury
4 service, has anybody talked to you about this case?

5 A No, sir.

6 Q Have you talked to anybody about this case?

7 A No, sir.

8 Q Do you know anything about this case other than
9 what I told you yesterday?

10 A No. I don't remember.

11 Q You haven't read or heard anything about it?

12 A No.

13 Q Or nothing that you can recall?

14 A Right.

15 Q Yesterday I called out a list of names of people
16 who could be witnesses in the case, did you know any of
17 those people?

18 A No, sir.

19 Q Have you formed or expressed any opinion about
20 this case?

21 A No, sir.

22 Q Do you have any bias or prejudice against the
23 prosecutors for bringing this case or against the
24 defendant just because he is accused in the case?

25 A No, sir.

1 Q Do you know of any reason why you could not be
2 fair and impartial to both the state of South Carolina and
3 the defendant, Mr. Rogers?

4 A No.

5 Q Can you and will you follow the law as instructed
6 to you by the court?

7 A Yes, I will.

8 Q Yesterday I told you and the rest of the jurors
9 that Mr. Rogers has already been convicted of murder in a
10 prior proceeding. The purpose of this trial is to
11 determine the punishment, life in prison without parole or
12 the death penalty.

13 The jury makes that decision. The jury will hear
14 everything that's presented in the trial, that is, the
15 testimony, the exhibits, the mitigating and aggravating
16 circumstances. And after considering all of that the jury
17 decides between a life sentence or the death penalty.

18 Now you've had the opportunity back in the jury room
19 to look over the form that has on it the three types of
20 jurors. Which one of those three do you think best
21 describes you as a potential juror?

22 A Number three.

23 Q That's a juror who will keep an open mind and
24 listen to everything before deciding on punishment?

25 A Uh-huh.

1 Q Will you keep an open mind and listen to
2 everything that is presented before you make up your mind
3 between a life sentence and the death penalty?

4 A Yes, sir.

5 Q If you sat as a juror in a case like this, and
6 I'm speaking in general now, not about this case, because
7 you haven't heard the facts in this case yet. But in
8 general. If you sat as a juror in such a case. And you
9 listened to everything that was presented with an open
10 mind. And after listening to all of that you and the
11 other jurors unanimously decided that the death penalty
12 was the appropriate punishment. If that is your choice,
13 would you be able to sign your name to a verdict form that
14 said that was your choice, if it was?

15 A Yes.

16 Q Would you be able to come in here into open court
17 and stand up and say that was your verdict, if it was?

18 A I'm pretty sure I would, uh-huh.

19 Q Will you be able to do those things knowing that
20 eventually that's going to result in the execution of a
21 defendant?

22 A Yes, I think I could, uh-huh.

23 Q Do you have any strong feelings or beliefs that
24 will interfere with your choice between a life sentence
25 and the death penalty?

1 A No.

2 Q Do you understand and will you remember that it
3 is a vitally important part of this process that each
4 juror keep an open mind and listen to everything that is
5 presented before deciding on a punishment?

6 A Yes, sir.

7 Q And will you do that?

8 A Yes, sir.

9 Q It's also part of this process that each juror
10 who is selected has to stay with us and be sequestered
11 while the case is being tried.

12 A Yes, sir.

13 Q I'm sure you're probably aware of that by now.
14 That will probably entail about a five day stay. If
15 that's part of the process can you make arrangements to
16 stay with us if you are picked on the jury?

17 A Yes, sir.

18 THE COURT: Answer any questions Mr. Bailey might have
19 for you. Thank you, ma'am. Solicitor.

20 DIRECT EXAMINATION BY MR. BAILEY:

21 Q Ms. Campbell, I'm Walter Bailey, I just have a
22 few questions I want to ask you to follow-up on what Judge
23 Whetstone asked you. And, do you understand, I'm sure,
24 that in South Carolina the jury and not the judge makes
25 the decision on life without parole or the death penalty?

1 A Yes, sir.

2 Q Okay. And what -- in other words, whatever the
3 jury votes on will be the sentence of the court, that
4 sentence will be carried out.

5 A Uh-huh.

6 Q All right. I'm not going to ask you to predict
7 what you would do in this case, because you haven't heard
8 the evidence yet. And you said you're the number three
9 juror that would not have your mind made up until you
10 heard everything.

11 A Right, uh-huh.

12 Q But just hypothetically, if the case is bad
13 enough, those facts that you hear are bad enough, can you
14 vote for the death penalty knowing that sentence is
15 actually going to be carried out?

16 A Yes, sir, I think I could.

17 Q And if the other 11 jurors feel the same way you
18 do and they -- all 12 jurors vote for the death penalty
19 can you then sign your name to a death verdict form that's
20 going to result in that execution taking place at some
21 point?

22 A I think I could, uh-huh.

23 Q Okay. And can you stand up and announce --
24 there's a process called polling the jury, where the jury
25 comes out and each juror's name is called, they stand up

1 and they're asked by the clerk of court or the judge if
2 that's your decision.

3 A Yes, sir.

4 Q Can you do that?

5 A Uh-huh.

6 MR. BAILEY: Ms. Campbell, that's all I have. Thank
7 you very much.

8 THE COURT: Mr. Runyon or Mr. Leiendecker.

9 CROSS-EXAMINATION BY MR. LEIENDECKER:

10 Q Ms. Campbell, your husband works at Briteline
11 Extrusions; is that correct?

12 A Yes, sir.

13 Q Y'all have been in -- in this area about five and
14 a half years?

15 A Going on six.

16 Q Where were y'all living before you moved to
17 Dorchester County?

18 A New York State.

19 Q Okay. And you were there that -- most of your
20 life before that time?

21 A Well, I'm originally from that area but, my
22 husband was Air Force so we moved around a lot. But we
23 went back home for about five years because of my mother's
24 illness, so.

25 Q Was he stationed at the air force base here in

1 Charleston?

2 A No, sir.

3 Q Okay. Never had done that? Are you not working
4 now, is that, I mean, I saw that it said vocationally you
5 had gone to cosmetology, but you're not -- you're not
6 working now?

7 A No, sir. I was in retail for a while and then
8 I've been home, staying home.

9 MR. LEIENDECKER: Okay. I don't have any further
10 questions.

11 THE COURT: Anything further from the state?

12 MR. BAILEY: No, sir.

13 THE COURT: Okay, Ms. Campbell, would you step back
14 into the back for just a few minutes, please, ma'am.

15 (Juror excused from courtroom.)

16 THE COURT: What says the state?

17 MR. BAILEY: Qualified, Your Honor.

18 THE COURT: Defense?

19 MR. LEIENDECKER: Qualified, Your Honor.

20 THE COURT: She is a qualified number three juror,
21 bring her back in, please.

22 (Juror brought into courtroom.)

23 THE COURT: Ms. Campbell, I find that you are
24 qualified to serve on this jury panel. That doesn't mean
25 you're on the jury, it means you're in the group from

1 which the jury will be selected.

2 You need to be back up here at nine o'clock tomorrow
3 morning. Have your bags packed and in your car and be
4 prepared to stay with us for up to five days while this
5 case is being tried.

6 Between now and then don't talk to anybody about this
7 case. Don't let anybody talk to you about the case.
8 Don't listen to the radio or television about this case
9 and don't read the newspaper about this case. You need to
10 be able to decide this case based on what you hear in the
11 courtroom and not something outside of here. Do you
12 understand?

13 JUROR: Yes, sir.

14 THE COURT: Okay, any questions about these
15 instructions?

16 JUROR: No, I don't think so.

17 THE COURT: Okay, be back up here at nine o'clock in
18 the morning and sit on the same side of the courtroom you
19 did as yesterday.

20 (Juror excused.)

21 MR. BAILEY: Your Honor, the next potential juror,
22 Mr. Shepard, has checked yes on his return as far as
23 criminal convictions, but the rap sheet doesn't disclose
24 anything. Would you ask him about that?

25 THE COURT: Yes, sir. Okay, bring in Earl L. Shepard,

1 please.

2 (Juror brought into courtroom.)

3 EXAMINATION BY THE COURT:

4 Q Mr. Shepard, have a seat, please. Mr. Shepard,
5 I'm going to ask you some questions. There are no right
6 or wrong answers to any of the questions, we just want you
7 to be completely honest with us in your responses. You
8 are under oath, you were sworn in yesterday with the rest
9 of the panel.

10 A Yes, sir.

11 Q One thing I want to ask you about first, you
12 checked on the jury return form, that sheet that you
13 filled out and sent back in.

14 A Yes, sir.

15 Q That you have -- had a -- have had a criminal
16 record?

17 A I had a DUI five years ago.

18 Q All right. DUI first?

19 A Yes, sir.

20 Q Okay. And nothing else besides that and that was
21 five years ago?

22 A Yes, sir.

23 Q All right. Since you received your summons to
24 come here for jury service, has anybody talked to you
25 about this case?

- 1 A No, sir.
- 2 Q Have you talked to anybody about this case?
- 3 A No, sir.
- 4 Q Do you know anything about this case other than
5 what I told you yesterday?
- 6 A No, sir, other -- the only thing that I know
7 about it is I read it in the paper. I don't know all of
8 the details about it other than just knowing about the
9 case is the only thing I know.
- 10 Q Okay. Well, will you be able to put aside or put
11 out of your mind what you read in the paper and decide
12 this case based on what you hear in the courtroom?
- 13 A Yes, sir.
- 14 Q Yesterday I called out a list of names of people
15 who could be witnesses in this case, did you know any of
16 those people?
- 17 A No, sir.
- 18 Q Have you formed or expressed any opinion about
19 this case?
- 20 A No, sir.
- 21 Q Do you have any bias or prejudice against the
22 prosecutors for bringing this case? Or against the
23 defendant just because he is the defendant in the case?
- 24 A No, sir.
- 25 Q Do you know of any reason why you could not be

1 fair and impartial to both the state of South Carolina and
2 the defendant, Mr. Rogers?

3 A No, sir, no reason.

4 Q Can you and will you follow the law that is
5 instructed to you by the court?

6 A Yes, sir, I will.

7 Q Yesterday you were instructed, along with the
8 other jurors, that the defendant in this case, Mr. Rogers,
9 has already been convicted of murder in a prior
10 proceeding. The purpose of this trial is to determine
11 punishment, life in prison without parole or the death
12 penalty.

13 The jury decides that punishment. The jury will hear
14 all the mitigating and the aggravating circumstances that
15 are presented. The jury will hear the testimony, the
16 evidence and see the exhibits. After considering all of
17 that, the jury decides on punishment, life in prison or
18 the death penalty.

19 Now you've had the opportunity back in the jury room
20 to look over the form that has on it the three types of
21 jurors. Which one of those three do you think best
22 describes you as a potential juror?

23 A I'm a type three juror.

24 Q That's a juror who'll keep an open mind and
25 listen to everything before deciding on punishment?

1 A Yes, sir.

2 Q Will you keep an open mind and listen to
3 everything that is presented in this case before you
4 decide between a life sentence or the death penalty?

5 A I will.

6 Q If you sat through such a case like this as a
7 juror, we're not talking about this case now, we're
8 talking in general, because you don't know anything about
9 this case yet. But if you sat through a case like this as
10 a juror, and listened to everything with an open mind.
11 And after considering everything that was presented, you
12 and the other jurors unanimously decided that the death
13 penalty was the appropriate punishment. If that is your
14 choice, would you be able to sign your name to a verdict
15 form that says that is your choice, if it is?

16 A Yes, sir, I could.

17 Q Would you be able to come out here into open
18 court and stand up and when asked by the court, was that
19 your verdict and is it still your verdict, be able to
20 announce your verdict here in court?

21 A Yes, sir, I could.

22 Q Would you be able to do those things knowing
23 that's going to eventually result in the execution of a
24 defendant?

25 A Yes, sir.

1 Q Do you have any strong feelings or beliefs that
2 will interfere with your choice between a life sentence or
3 the death penalty?

4 A No, sir, I do not.

5 Q Do you understand and will you remember that it
6 is a vitally important part of this process that each
7 juror keep an open mind and listen to everything that is
8 presented before deciding on a punishment?

9 A Yes, sir.

10 Q Now do you also understand that it is part of
11 this process that each juror who is selected on the case
12 has to stay with us and be sequestered while the case is
13 being tried?

14 A Yes, sir.

15 Q Understanding that that's a hardship on
16 everybody, if you are selected on the jury, can you stay
17 with us and be sequestered while this case is being tried
18 for up to five days?

19 A Yes, sir, I can.

20 THE COURT: All right. Answer any questions Mr.
21 Bailey might have for you. Solicitor.

22 DIRECT EXAMINATION BY MR. BAILEY:

23 Q Mr. Shepard, I'm Walter Bailey, I just have a
24 couple of questions to follow-up on what Judge Whetstone
25 asked you. And, he explained the process to you in South

1 Carolina, where the jury, not the judge, makes the
2 decision on life without parole or the death penalty. And
3 you understand that whatever the jury decides in this case
4 will be the order of the court and that order will be
5 carried out?

6 A Yes, sir.

7 Q All right, sir. And I'm not going to ask you to
8 predict what you would do in this case, because you
9 haven't heard any of the facts yet. But if those facts
10 are bad enough, could you vote for the death penalty,
11 knowing that sentence is going to be carried out?

12 A Yes, sir, I could.

13 Q And if the other 11 jurors felt the same way you
14 did and all 12 voted for the death penalty, could you then
15 sign your name to a form, a death verdict form, that would
16 eventually result in that person being executed?

17 A Yes, sir, I could.

18 Q And if you did those two things could you stand
19 up in open court when your name was called out and
20 announce your decision?

21 A Yes, sir.

22 MR. BAILEY: All right, sir. That's all I have, thank
23 you very much.

24 THE COURT: Mr. Runyon or Mr. Leiendecker.

25 CROSS-EXAMINATION BY MR. LEIENDECKER:

1 Q Mr. Shepard, before you were called for this jury
2 had you given any thought to the death penalty or your
3 opinion about it before?

4 A No, sir, not -- not anything particular, I --
5 I've never formed an opinion of the death penalty, I felt
6 that the circumstances would dictate that in any case.

7 Q The circumstances of the particular case would be
8 important to make that decision?

9 A Yes, sir.

10 Q And, I see here from reading the -- the
11 questionnaire you sent back that you're the manager at --
12 at the shipyard that you work at; is that correct?

13 A Yes, sir, I am.

14 Q And by manager, does that mean a -- a project
15 manager or manager of the entire yard?

16 A I'm the profit center manager of the entire yard.

17 Q Okay. And is that a -- an administrative type
18 position or do you do actual work at the yard?

19 A I -- my position is the manager of the yard, but
20 in some cases I do---

21 Q So you pound some metal and do some other work
22 from time to time, too?

23 A Well not really that, but I -- I supervise people
24 and direct people. And if I see a problem I direct them
25 in the right direction, the right procedure to use.

1 Q Let me -- because obviously we're concerned about
2 focus and attention when it comes to a case like this.
3 Would being away from the job for a period of five days or
4 more cause any undue hardship or concern on your part
5 regarding the operation there?

6 A No, sir, I have ship superintendents that run
7 each of my projects that report to me.

8 Q So it wouldn't be a real -- it wouldn't weigh on
9 your mind if you were gone for several days and unable to
10 communicate or stay in contact regarding those projects?

11 A No, sir.

12 MR. LEIENDECKER: That's all I'd have, Your Honor.

13 THE COURT: Anything further from the state?

14 MR. BAILEY: Nothing further, Your Honor.

15 THE COURT: Mr. Shepard, I have a matter I need to
16 take up with the attorneys, would you please step back
17 into the back for a few minutes.

18 (Juror excused from courtroom.)

19 THE COURT: What says the state?

20 MR. BAILEY: Qualified, Your Honor.

21 THE COURT: Defense?

22 MR. LEIENDECKER: Qualified.

23 THE COURT: Okay, he is a qualified number three
24 juror. All right, that is number 35, how much further you
25 want to go? What says the state?

1 MR. BAILEY: Your Honor, since we've got plenty of
2 time if we could get about three more I don't think it
3 would hurt.

4 THE COURT: What says the defendant?

5 MR. RUNYON: I -- I think we have sufficient number
6 with 35, even if -- even if we have problems -- I know one
7 juror called in with a job problem, but even if that --
8 she got excused I think we'd have plenty with 35.

9 THE COURT: All right, bring Mr. Shepard back in,
10 please.

11 (Juror brought into courtroom.)

12 THE COURT: Mr. Shepard, I find that you are qualified
13 to serve on this jury panel, that doesn't mean you're on
14 the jury, it means you're in the group from which the jury
15 will be selected.

16 You need to be back up here at nine o'clock in the
17 morning, be packed and have your bags in the car and be
18 prepared to stay with us for up to five days while this
19 case is being tried.

20 Between now and then don't talk to anybody about this
21 case. Don't let anybody talk to you about the case.
22 Don't listen to radio or television reports about the case
23 and don't read the newspaper about this case. You have to
24 be able to decide this case based on what you hear in the
25 courtroom and not something outside of here. Do you

1 understand?

2 JUROR: Yes, sir.

3 THE COURT: When you get here at nine o'clock in the
4 morning sit on the same side of the courtroom you did
5 yesterday and we'll strike this jury about nine o'clock in
6 the morning. Any questions about these instructions?

7 JUROR: No, sir.

8 THE COURT: All right. Thank you, sir, you're excused
9 for the day today.

10 (Juror excused.)

11 THE COURT: Okay, we haven't had any calls from any
12 other jurors other than -- Ms. Howard called my chambers
13 and said that she might have a problem at work, but I
14 instructed her to be here anyway.

15 CLERK OF COURT: That's the only one and we instructed
16 her to call you.

17 THE COURT: Do we have any other jurors that either
18 side remembers that has expressed any substantial
19 problem?

20 MR. BAILEY: I don't believe so.

21 MR. RUNYON: I don't believe so, I think a lot of
22 those have been excused. Most of those have been excused.

23 THE COURT: I think almost all of them, if not all of
24 them, have been excused. I think we've got enough.

25 CLERK OF COURT: Judge, I did have a lady call in, she

1 was hoarse talking and she said she was going to a doctor
2 this afternoon. I told her if she -- the doctor felt she
3 wasn't able to come, to get a doctor's excuse, but still,
4 if she could, come in in the morning.

5 THE COURT: She was a qualified juror?

6 CLERK OF COURT: She was a qualified one, yes, sir.

7 THE COURT: Okay, bring in Mr. Burcham, please.

8 MR. BAILIFF: He's not here.

9 THE COURT: Okay, he's not here. It's passed time for
10 him to be here. I'm inclined to stop, what says the
11 state?

12 MR. BAILEY: That's fine, Your Honor, I think we've
13 got enough for all---

14 THE COURT: I think we've got enough. You know how
15 many strikes you're going to use anyway and I think we've
16 probably got an abundance of jurors.

17 MR. RUNYON: I -- I -- I've figured it out, Judge,
18 even if we use our maximum number of strikes, both sides,
19 including alternates, we've still got -- we've still got
20 17 jurors to -- got 35 jurors, take away 18, you've still
21 got 17 is my count, that -- that will enable you to lose a
22 couple.

23 THE COURT: All right, if everybody uses all of their
24 strikes it will take all 35 jurors.

25 MR. RUNYON: Yes, sir, I'm sorry, yes, sir.

1 THE COURT: Okay. We'll stop here for the day, that's
2 all we need to pick. All right. Nine o'clock in the
3 morning.

4 MR. BAILEY: Your Honor, while we've got a little bit
5 of time before tomorrow, there are two things I -- I think
6 we could possibly address.

7 THE COURT: We're going to do that, I was going to get
8 to that.

9 MR. BAILEY: Okay.

10 THE COURT: Yes, sir. Go ahead.

11 MR. BAILEY: That was the -- the photographs and also
12 the Blair hearing, which I propose is under State versus
13 Franklin, I'd like to submit the report.

14 MR. RUNYON: Your Honor, as it relates to the Blair
15 hearing, we stipulate to the filing of the report, maybe a
16 part of the court's record, not necessarily for the jury,
17 obviously.

18 Your Honor, and also for the record, Mr. Rogers has
19 been the subject of a -- of an ordered physical
20 examination totally in the first trial, which we asked the
21 court for an order to do and it was performed by Medical
22 University physicians. He was evaluated at that point in
23 time, he was evaluated just recently.

24 In addition to that, Your Honor, we have, amongst the
25 reams of information that we've received, there have been

1 several comprehensive character and personality trait
2 reports, none of which would indicate any type of
3 personality disorder, mental illness or what have you.

4 We have never made an issue of mental illness, we've
5 never made an issue of his competence, in all the time
6 we've been representing Mr. Rogers and during all the
7 proceedings in this entire case.

8 So there is -- we have no issue of competence known to
9 anyone at this point in time. And I don't think there's
10 anything that, arguably, could be raised as to his
11 competence to stand trial.

12 THE COURT: Okay. The report then will be received
13 into evidence as a Court's Exhibit, with a finding that he
14 is competent to stand trial and is capable of
15 distinguishing right from wrong and is able to assist his
16 attorneys in the trial of the case, there being no
17 question whatsoever about his mental capacity or his
18 competence in this case. That is received as a Court's
19 Exhibit.

20 (Report of finding mental capacity marked as
21 Court's 1.)

22 MR. BAILEY: Your Honor, I've asked the court reporter
23 to premark the exhibits, the photographs, that I propose
24 to introduce. If I could have about ten minutes to kind
25 of put those in order, pull a couple of cases that I think

1 may be relevant.

2 THE COURT: All right, sir. That'll be fine. In the
3 meantime I'm going to have the clerk release these jurors
4 who are -- who are summoned. With -- with the instruction
5 that they are not -- that they are released from any
6 further obligation for today. If they are not called back
7 by 12 noon tomorrow their jury service for this term has
8 ended.

9 That way if for some reason half these people we have
10 selected don't show up or can't get back here we have some
11 means of calling these jurors back up who are already
12 drawn and established and qualified and we can pick up
13 jury selection again. So they'll be released for the day
14 but not excused until 12 noon tomorrow.

15 Any objection from the state?

16 MR. BAILEY: None from the state.

17 THE COURT: Any objection from the defendant?

18 MR. RUNYON: None from the defense, Your Honor.

19 (Court had discussions with Clerk of Court regarding
20 jurors.)

21 THE COURT: All right, we'll be at ease for a few
22 minutes. Solicitor, let me know when you're ready,
23 please.

24 (State's 1-27 were marked during previous trial.
25 State's 28-38 marked for identification.)

1 (Brief recess was taken.)

2 THE COURT: Okay, Solicitor, go ahead.

3 MR. BAILEY: Your Honor, if I could pass up to the
4 Court the photographs that were introduced in the first
5 trial. I discussed this with Mr. Runyon. And he advises
6 that he's going to have some objection to some of those
7 photographs.

8 My position, Your Honor, is that under the wording of
9 the statute on resentence, and I'm referring to
10 Section 16325, it states in part, in the resentencing
11 proceeding the new jury, if the defendant does not waive
12 the right of a trial jury, the resentencing proceeding,
13 shall hear evidence in extenuation, mitigation or
14 aggravation of punishment.

15 In addition to any evidence admitted in defendant's
16 first trial relating to guilt for the particular crime for
17 which the defendant has been found guilty.

18 So I think that says whatever came in in the first
19 trial automatically would be admissable in the second
20 trial.

21 Your Honor, the case construing that statute,
22 State versus Richard Stewart, it's a 1986 case. And I
23 quote from that case, it says in a resentencing hearing
24 each side has the right to put into evidence anything that
25 if properly put into evidence during the guilt or

1 sentencing phase of the previous trial end quote. So, I
2 think it's automatic that whatever came in the first time
3 comes in the second time.

4 THE COURT: Okay. What's your objection, please,
5 sir?

6 MR. RUNYON: Your Honor, as a -- as a practical matter
7 I think if we -- if we draw attention to the photographs
8 that -- that were handed up to the court, those were
9 admitted in the prior case and we have no objection to
10 those photographs being admitted in their case in chief
11 tomorrow. Now there's some other photographs I think
12 we're going to get to.

13 THE COURT: Okay, so these are in without objection?

14 MR. RUNYON: Now, Your Honor, as -- as, you know,
15 we -- never mind, strike that, please.

16 THE COURT: Okay, without objection these photographs
17 are in evidence.

18 (State's 1-27 admitted into evidence, with the
19 exception of S-17, S-19 and S-21.)

20 MR. BAILEY: Your Honor, I'd hand the Court up now,
21 these have been premarked for identification, State's 28
22 through 37, which are photographs of the deceased victim.

23 I've got two cases I'd like to cite on that when the
24 Court's ready.

25 (Court reviewed photographs.)

1 THE COURT: All right, sir, go ahead.

2 MR. BAILEY: Your Honor, the only two cases I know of
3 that deal with photographs of the victim in life as part
4 of the penalty phase, that's State versus Gaskins, in
5 which photographs of seven prior murder -- murder victims,
6 not even the murder victims of that particular time or
7 homicide, were introduced into evidence. And that was an
8 issue on appeal, our Supreme Court affirmed that, saying
9 that was okay in the penalty phase, to show the
10 circumstance of the crime and characteristic of the
11 defendant.

12 More recently in State versus James Neil Tucker,
13 that's the -- the Sumter Tucker case, is the only other
14 case I know that deals with that. I quote from that case,
15 it says the other photographs were admitted as victim
16 impact evidence, to show something of the victim's life.
17 They show the victim at different places on vacation,
18 Christmas decorations in the victim's yard, the victim
19 holding her godchild and the victim fishing.

20 Victim impact evidence is clearly admissible because
21 it shows the victim's uniqueness as an individual so long
22 as it does not render a trial fundamentally unfair. And
23 they cite State very Roscoe and State versus Johnson. And
24 to conclude, we find nothing in these photographs that
25 would've rendered defendant's trial unfair.

1 Your Honor, these merely show the uniqueness of -- of
2 this particular victim, which is what the victim impact
3 evidence is all about.

4 THE COURT: Mr. Runyon.

5 MR. RUNYON: Your Honor, number one, obviously, we
6 would object to photographs being admitted without the
7 proper foundation being -- being laid and they being --
8 and they being identified and what have you.

9 Secondly, Your Honor, there is a photograph, and I'm
10 not sure what number it is because I -- I haven't been
11 given the numbers. But there's a -- there's a photograph
12 of the headstone of the -- of the victim. I think
13 that's -- we would object to that, there's absolutely no
14 relevance. We would stipulate that she's dead, the -- the
15 jury knows she's dead, the man's been convicted of murder
16 and that -- that has absolutely no relevance to anything
17 other than to inflame the jury.

18 Insofar as showing the -- the victim in life.
19 Obviously, I think that under the law, and under Tucker,
20 the Supreme Court has said that some photos may be
21 admitted -- admitted. And certainly if the -- if the
22 solicitor wants to call, for example, the grandfather to
23 say that they took them on vacation and here's proof of
24 that, then I think that's -- that's admissible.

25 But, certainly not just pouring in a lot of

1 photographs of the child in life just for the purpose
2 of -- of pouring it in. I think it has to be made
3 relevant, it has to be relevant to somebody's testimony
4 and it has to be identified and what have you.

5 MR. BAILEY: Your Honor, I agree with that, I'm not
6 just going to stick them in. I'm going to have members of
7 the victim's family identify them, give the approximate
8 date and circumstances and identify the other people shown
9 in the photograph.

10 THE COURT: Okay. With that foundation these
11 photographs will be admissible, with the exception of the
12 photograph of the headstone, which is State's Exhibit 37,
13 and the prejudice outweighs the probative value of that
14 photograph, that's not admissible, the rest of them are
15 clearly admissible upon the presentation, by the state, of
16 a proper foundation.

17 (State's 28-36 admitted into evidence. State's 37 for
18 ID only.)

19 MR. BAILEY: Thank you, Your Honor. The remaining two
20 photographs are State's 26 and 27, which are color
21 photographs of the autopsy of the victim. And I would
22 like to be heard on that and cite what I think are
23 controlling cases on that, Your Honor.

24 THE COURT: All right, sir, be glad to hear you.

25 MR. BAILEY: Your Honor, the first case I'd like to

1 cite, State versus Luke Williams, which is a very recent
2 1996 state death penalty case. This -- that case held
3 that the trial judge did not err in allowing introduction
4 of five close up end of quote autopsy photos of victim
5 showing wounds to neck, face, forearms and shoulders.
6 They depicted the manner in which the homicides were
7 committed and corroborated penalty phase testimony.

8 But I also cite State versus Fred Kornahrens, which
9 dealt with both crime scene and autopsy photographs. In
10 that case the court states that while not pleasant to look
11 at, the photographs show what the defendant himself did to
12 the bodies and nothing more. Pointed out that they would
13 likely not have been admissible in the guilt phase but
14 under the facts of the case they're admissible in the
15 sentencing phase.

16 Those photographs, Your Honor, included a photograph
17 of the child's body, showing knife wounds to the child's
18 chest, back and thigh.

19 And State versus Ellis Franklin. One exhibit showed a
20 close-up of the victim's face, her eyes rolled back, her
21 teeth turned backwards and missing from premortem beating.
22 Another photograph showed the naked genital area of the
23 body with a portion of a broomstick allegedly used as an
24 instrument of torture underneath her buttocks.

25 Your Honor, finally I would cite again State versus

1 James Neil Tucker. The Tucker case, I quote from that, it
2 says two photographs introduced in the sentencing phase
3 depict the victim's body, one in color and one in black
4 and white. We find these were not unduly prejudicial.
5 Photographs of the victim's body are admissible in the
6 sentencing phase of a capital trial to show the
7 circumstances of the crime and the character of the
8 defendant.

9 The photographs were admitted to depict the shots to
10 the victim's head and that they were fired in close range
11 at the crime scene. The color photograph was introduced
12 to show the difference between the blood the victim
13 coughed up and the blood from her wound.

14 So, Your Honor, they aren't saying that these
15 photographs are admissible despite the fact that it shows
16 blood foaming out of her mouth, they're saying that's the
17 reason they are admissible.

18 In my reading of the cases, especially the Tucker
19 case, the Franklin case and Kornahrens case, it's been
20 shown that our court is taking an increasingly liberal
21 view of photographs of the victim.

22 The photographs I'm proposing to introduce, like these
23 photographs mentioned here, are autopsy photographs,
24 they're -- they're close-up photographs, but they show
25 nothing more than what the defendant did to the victim's

1 body.

2 One of the -- one of the photographs in one of these
3 cases did show some alteration, the portion of the scalp
4 had been shaved as it appears in the entrance wound in the
5 back of the child's head.

6 Your Honor, I have, if the Court wishes to view it,
7 the autopsy photographs from the Franklin case, the
8 close-up photographs, which are approximately the same
9 size and show far greater abuse to the victim than the
10 photographs in this case, if you'd like to use that for
11 comparison purposes.

12 THE COURT: Let me hear Mr. Runyon -- let me hear from
13 Mr. Runyon first. Be glad to hear you, sir.

14 MR. RUNYON: Your Honor, first of all we -- we
15 stipulate to the manner and method of death in this
16 matter. There's no question about the fact of where the
17 entry wound was and the -- and the wound to the -- to
18 the -- to the victim in this case. And -- and, therefore,
19 the photograph doesn't -- doesn't have anything to do --
20 does nothing more than show this young child in death.

21 Now, I wasn't in all those cases, but I know I was in
22 Kornahrens. And I read all those cases. And -- and the
23 solicitor's absolutely correct in the sense that the --
24 that the Supreme Court tends to let a lot of things in.
25 But in each and every one of those cases, each and every

1 one of those cases, it went to show something that was in
2 issue or something in dispute.

3 For example, in Kornahrens the question of the digging
4 of the grave and predigging the grave versus digging it
5 that night, things of that sort, that was an issue. The
6 method in which the defendant had testified that he
7 delivered the blows to the child, in Kornahrens, was at
8 issue when -- when that photograph of the autopsy was put
9 in to show the character of the accused. The broomstick
10 in the -- in the victim in the other case was shown to --
11 was put in to show the aberrant nature of the accused.

12 This -- these photographs don't show any of that.
13 These photographs simply show a young child with a wound
14 to the back of the head, admittedly they're cleaned up,
15 but the simple fact is, Your Honor, it's nothing more than
16 put in for the purpose of -- I mean that doesn't -- for
17 example, these are not close wounds, this is not an
18 execution style shooting or something which would reflect
19 on -- or tend to give rise to some argument about the
20 character of the defendant.

21 And, so, as a practical matter, Your Honor, we don't
22 think that they're admissible for any purpose other than
23 to inflame the jury, they have no probative value, we
24 don't disagree with the way the child was shot, it wasn't
25 a close-up wound, it was a distant wound. And the -- the

1 method of the shooting does not depict any aberrant or
2 deviant nature of the accrued as did one of these cases.

3 So all in all -- and there was also no -- no issue in
4 the case in chief nor in the sentencing phase in this case
5 as it relates to whether or not the -- the grave was
6 predug.

7 And on top of that, Your Honor, I would point out that
8 in Kornahrens the crime scene photo showing the victims in
9 the grave was relevant to the issues in dispute, number
10 one.

11 Number two, the one picture of the young child on the
12 autopsy table was for the specific purpose of
13 cross-examination and impeachment of Mr. Kornahrens,
14 insofar as where he delivered the blows and his testimony
15 as to what he did or didn't do.

16 So, therefore, we don't think that these -- that these
17 photos have any relevance in -- in the sentencing phase,
18 Your Honor, for any purpose other than to inflame the
19 jury. I mean, we're stipulating to the fact -- number
20 one, I think we're estopped from arguing that this child
21 was murdered.

22 But we also stipulate to the location, type of wound
23 and the manner of death by distant gunshot wound and what
24 have you. So, therefore, we -- we think there's just no
25 reason -- even under these cases. Frankly, if you read

1 all these cases, Judge, I don't think that Supreme Court
2 has gotten quote liberal, I think they've taken a very
3 pragmatic view of each and every case that goes up. And
4 they look at it and they say, what relevance does this
5 photograph have to any issues in controversy. If there's
6 an issue in controversy, then -- then they might be
7 admissible. But there's no issue in controversy as it
8 relates to these photographs.

9 THE COURT: Thank you, sir. Anything further?

10 MR. BAILEY: Your Honor, I have a memorandum on that
11 if I could hand that up to the Court.

12 THE COURT: Sure, that'd be fine. What about the
13 issue raised by Mr. Runyon, Mr. Bailey, about this being a
14 distant gunshot wound as opposed to a close-up gunshot
15 wound?

16 MR. BAILEY: Your Honor, I don't know -- that's a
17 distinction without a difference, I don't know, the child
18 is just as dead whether it's from a distant wound or a
19 close gunshot wound. And I have no way of anticipating
20 what the defense is going to say in this case.

21 I do know that one -- one case out of Spartanburg
22 where the -- our Supreme Court said it was okay and
23 permissible, in fact, reversible error for the judge not
24 to allow the defendant to get back into the facts of the
25 first murder case to prove an alibi defense. So I don't

1 think he's estopped.

2 In the first trial he contended this was an accident.
3 And in order to refute that we showed the smallness of the
4 parking lot, the amount of lighting there, the fact that
5 the gunshot was almost directly into the center of the
6 back window where these three people were.

7 And I think certainly the location of that entrance
8 wound, when you put that in conjunction with the -- the
9 bullet hole in the back window and the bullet hole going
10 through the front windshield, would -- would prove any
11 kind of lack of accident or of transferred intent to shoot
12 one of the other two occupants in the truck.

13 THE COURT: Anything further, Mr. Runyon?

14 MR. RUNYON: No, Your Honor, I think we -- I think
15 we've succinctly stated the legal issue. And, we -- we
16 would object to the admissability of those two
17 photographs.

18 MR. BAILEY: Your Honor, if I could add one -- one
19 other point. This child died a day after she was shot,
20 so there are no crime scene photographs. I don't believe
21 if we had a crime scene photograph taken at the scene
22 there'd be any real strong argument that wouldn't be
23 admissible.

24 And, you know, we're stuck with what we've got under
25 the facts of the case. We have the autopsy photographs

1 which show the specific nature of the harm done, the
2 specific location of the entry wound, the exit wound. I
3 think it's relevant, based on what they brought out in the
4 first trial, whether or not this -- this was any kind of
5 an accident or transferred intent situation.

6 It deals with the circumstances of the crime and
7 characteristics of the defendant, which is what the
8 penalty phase is all about.

9 MR. RUNYON: Yes, sir. And as -- as I said before,
10 all of the other photographs -- when -- when he starts
11 talking about the characteristics of the defendant, in --
12 in a couple of those cases it was almost deviant
13 characteristics of the defendant.

14 And one where there was a close-up gunshot wound that
15 went to the character of the defendant, that is, there was
16 no mistake, it was intentional, highly intentional on the
17 part of the -- of that defendant and dealt with his cold
18 heart, so to speak, his cold-bloodedness in the execution
19 of that -- of that -- that victim. So that was relevant
20 in that -- in that particular trial.

21 In these cases -- in these two photographs, as
22 Mr. Bailey has said, these are from the autopsy, child --
23 there's been some medical treatment, particularly the
24 frontal view of the child's face, there's no distinction
25 and you can't distinguish from that photograph what was

1 the result of the injury and what may have been resulting
2 from the -- from the -- for example, medical treatment.
3 And the child's discoloration in death.

4 THE COURT: Who's going to testify about these
5 photographs, Solicitor?

6 MR. BAILEY: Dr. Nichols who performed the autopsy.

7 THE COURT: Okay. All right, based on the arguments
8 presented I find that the photographs are admissible into
9 evidence, the probative value of the photographs outweighs
10 any prejudicial effects. While the photographs are not
11 pleasant to look at they are not outrageously gory or
12 particularly offensive in their manner of presentation,
13 they depict an entry and exit wound, they are close-up
14 shots of those particular wounds, they depict the manner
15 of death and corroborate the testimony and should be used
16 to corroborate the testimony of the doctor who actually
17 performed the autopsy.

18 In this type of case, and under the case law in this
19 state, particularly Kornahrens and the cases that have
20 followed that, Franklin, Williams, Middleton and Patrick,
21 it's clear to me that photographs such as these are
22 admissible, because the probative value outweighs the
23 prejudicial value. They are germane to the penalty phase
24 of this particular case and they are both admissible, so
25 they are in evidence or will be allowed into evidence upon

1 the proper foundation and presentation through the autopsy
2 physician.

3 MR. BAILEY: Thank you, Your Honor.

4 THE COURT: All right. Anything further?

5 MR. BAILEY: As far as I know that -- that would deal
6 with all of the evidentiary material that we---

7 MR. RUNYON: Yes, Your Honor.

8 MR. BAILEY: As long as Mr. Runyon doesn't object to
9 anything else that came in the first time, that's all the
10 new information.

11 MR. RUNYON: You know, Your Honor, we're not -- we're
12 not necessarily going to have -- we don't have a specific
13 objection in mind. Obviously, depending upon the -- the
14 way things go and if someone's testimony is altered
15 somewhat, we might object to some -- some of the other
16 evidence. But, as long as everything kind of goes the way
17 it did the first time we're probably going to make the
18 same objections and expect the same rulings from the
19 Court.

20 THE COURT: That's fine.

21 MR. RUNYON: And just subject to that, I mean, I want
22 to allow myself some room.

23 THE COURT: I'm not limiting you to objecting to
24 anything, I expect you to. So that is not a problem.

25 MR. RUNYON: But at the same time, I just want to make

1 it clear that we're just not going to be purely
2 obstructionists and object for the sake of objecting.

3 THE COURT: Oh, I understand, yes, sir. I expect you
4 to represent your client however you deem best
5 appropriate, without restriction from the Court.

6 All right, nine o'clock in the morning, please. Thank
7 you.

8 ***END OF VOLUME II OF REQUESTED TRANSCRIPT OF RECORD***

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BERKELEY)

CERTIFICATE OF REPORTER

3

4 I, the undersigned, Karen Mullins, Official Court
5 Reporter for the Ninth Judicial Circuit of the State of
6 South Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had an evidence introduced in the trial of
9 the captioned case, relative to appeal, in the General
10 Sessions Court for Dorchester County, South Carolina, on
11 the 3rd day of December, 1996.

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

14

15

16

17

June 20, 1997

18

Karen Mullins

19

Circuit Court Reporter

20

21

22

23

24

25

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM DORCHESTER COUNTY

Judge Charles William Whetstone, Jr.

THE STATE,

RESPONDENT,

V.

TIMOTHY D. ROGERS,

APPELLANT.

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) IN THE COURT OF
3) GENERAL SESSIONS
4 STATE OF SOUTH CAROLINA,)
5 Plaintiff)
6)
7 -vs-)
8)
9 TIMOTHY D. ROGERS,)
10 Defendant)

December 4, 1996
St. George, South Carolina

11 B E F O R E:

12 HONORABLE CHARLES WHETSTONE, Judge; and a jury.

13 A P P E A R A N C E S:

14
15 WALTER M. BAILEY, JR.
16 Solicitor
17 B. HARRISON BELL, JR.
18 Assistant Solicitor
19 Attorneys for the State.

20 MARK A. LEIENDECKER
21 Assistant Public Defender
22 WILLIAM L. RUNYON, JR.
23 Attorneys for the Defendant.

24 KAREN MULLINS
25 Circuit Court Reporter

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1 (WHEREUPON, the following takes place in chambers.)

2 THE COURT: For the record, everybody's present,
3 Mr. Rogers, both of his attorneys, Solicitor Bailey and
4 Solicitor Bell for the state. And also present is juror
5 Cynthia Howard, Juror No. 141.

6 You had called me yesterday and said you had a problem
7 at work.

8 JUROR: Yes.

9 THE COURT: Has that -- have you been able to work
10 that out or not?

11 JUROR: No, my coworker, I completely forgot that she
12 was taking off next week. And she's the only other person
13 that can do my job. And I'm---

14 THE COURT: How about this week?

15 JUROR: This week will be okay.

16 THE COURT: This week will be okay? So if we're going
17 to get through before Monday you'll be all right?

18 JUROR: Yes.

19 THE COURT: Okay. So your problem doesn't start until
20 Monday?

21 JUROR: Right.

22 THE COURT: Okay. All right. Given that then I'm not
23 going to excuse you because I think we will be through
24 before Monday.

25 JUROR: Okay.

1 THE COURT: But if we don't, I will tell you that if
2 you're picked on the jury we will excuse you before
3 Monday.

4 JUROR: Great.

5 THE COURT: All right. Is that acceptable?

6 JUROR: That's acceptable.

7 THE COURT: All right. If you can make things work
8 for this week we'll let you stay with us.

9 JUROR: Okay.

10 THE COURT: All right, thank you, ma'am. I appreciate
11 you letting me know that yesterday, too. All right, thank
12 you.

13 (Juror was excused from chambers.)

14 THE COURT: Anybody think we're going to be here past
15 Friday?

16 MR. BAILEY: I don't.

17 MR. RUNYON: I don't think we're going to be here past
18 Friday.

19 THE COURT: Unless something very unforeseen comes up
20 I think we're going to -- at least based on the way you
21 have represented to me the case will go, both from the
22 state and the defense, I think we'll be through either
23 Friday or Saturday.

24 MR. BAILEY: I expect to finish my case today.

25 MR. RUNYON: We expect to be finished tomorrow,

1 Judge. Arguing and charging tomorrow evening.

2 THE COURT: All right. Well, we can live with
3 Ms. Howard's schedule, then, with no problem. All right,
4 so that takes care of that problem. All right, we'll
5 adjourn and go out for the jury selection process as soon
6 as our court reporter can get set up.

7 (WHEREUPON, the following takes place in chambers.)

8 THE COURT: All right. This is juror Sarah Smith.

9 JUROR: 244 is what my number was.

10 THE COURT: 244, okay.

11 (Court reviewed letter.)

12 THE COURT: Okay, we have a letter from
13 Dr. David J. Baggett who says Ms. Smith is suffering from
14 bronchitis. And he says that she needs to be excused from
15 jury duty, that it would not be beneficial to her health
16 for her to serve on jury duty at this time.

17 MR. BAILEY: No objection from the state.

18 MR. LEIENDECKER: No objection.

19 MR. RUNYON: No objection from defense, Your Honor.

20 THE COURT: All right, you are excused.

21 JUROR: Thank you, sir.

22 THE COURT: I hope you feel better. I'm sorry you had
23 a problem.

24 JUROR: Okay. Me too.

25 THE COURT: I'm going to make this a Court's exhibit.

1 (Juror was excused from chambers.)

2 (Letter re: Juror from Dr. Baggett marked as
3 Court's 2.)

4 (WHEREUPON, the following takes place in open court.)

5 THE COURT: Okay, Madam Clerk, would you call the
6 roll, please.

7 (Roll was called and several jurors were missing.)

8 THE COURT: The juror who did not respond was
9 Kirk D. Williams?

10 MR. LEIENDECKER: Your Honor, Mr. Williams was the
11 gentleman that we told yesterday---

12 THE COURT: Supposed to have a ride.

13 MR. LEIENDECKER: Was supposed to be picked up by the
14 sheriff.

15 THE COURT: Well, we need to check on that, so we'll
16 be at ease while we check on that. Is Evelyn White here?

17 (No response.)

18 THE COURT: Okay, we'll be at ease while we check on
19 those two jurors, please. Thank you.

20 If you ladies and gentlemen want to leave the
21 courtroom, you can, just please be back in in about ten
22 minutes. Thank you.

23 (Brief recess was taken.)

24 THE COURT: I understand that both of the jurors who
25 have -- who have not shown up this morning have both been

1 contacted. Mr. Williams was supposed to be picked up and
2 whoever was supposed to pick him up didn't show up, but he
3 has now been picked up and he's on the way.

4 And Ms. White misunderstood the instructions and she
5 thought she was supposed to call back at nine o'clock
6 rather than be here at nine o'clock so she is on the way.
7 So they will be here probably within 30 to 45 minutes.

8 Is there any objection from the state with going ahead
9 and striking the jury at this time or do you want to wait
10 for those jurors to be present?

11 MR. BAILEY: No objection to striking now, Your Honor.

12 THE COURT: What says the defendant?

13 MR. RUNYON: None from defense, Your Honor.

14 THE COURT: Okay, let's go ahead with the jury
15 selection process. Madam Clerk.

16 (WHEREUPON, 14 jurors were duly selected.)

17 THE COURT: Okay, any matters in regard to jury
18 selection from the state?

19 MR. BAILEY: Could I have a moment, please?

20 THE COURT: Yes, sir.

21 (Counsel consulted cocounsel.)

22 MR. BAILEY: None from the state, Your Honor.

23 THE COURT: From the defendant?

24 MR. RUNYON: Nothing from defendant, Your Honor.

25 THE COURT: Excuse me, I didn't hear you.

1 MR. RUNYON: Nothing from defense, Your Honor.

2 THE COURT: Thank you, sir. All right, Madam Clerk,
3 you may call the jurors who will be seated now, please.

4 (WHEREUPON, 14 jurors were seated.)

5 THE COURT: Okay, Mr. Baldwin and Ms. Connolly, you
6 two are the alternates, so I'll ask you two to always sit
7 in those chairs, please. Nobody else has a reserved seat,
8 when you come back in file all the way to the end of the
9 row.

10 I have a matter of law I need to take up with the
11 attorneys, I'm going to ask you jurors at this time to
12 step into the jury room and please do not talk about the
13 case yet. You can get to know each other a little bit and
14 introduce yourselves to each other, but do not talk about
15 the case, that'll be the same admonition throughout this
16 entire trial, you can't talk about the case until I
17 authorize you to do so. And that'll be a while yet, so
18 don't talk about the case. Please step into the jury
19 room.

20 (WHEREUPON, the following takes place out of the
21 presence of the jury.)

22 THE COURT: Okay, I need for the attorneys to approach
23 for a minute, please.

24 (WHEREUPON, a bench conference was held off
25 the record.)

1 THE COURT: Okay, ladies and gentlemen of the jury
2 panel, those of you who remain with us right now, I'm
3 going to ask you to stay with us a little while longer, I
4 can't release you yet. So please -- we'll probably be at
5 ease for about 15 to 20 minutes, possibly as long as 30
6 minutes, so please be back in here in 15 minutes, and
7 we'll get back to you as soon after that as we can. Thank
8 you.

9 (Brief recess.)

10 (WHEREUPON, the following takes place in chambers.)

11 THE COURT: Okay, I think the juror that wants to talk
12 to us is Wanda F. Bradley, I don't know what the problem
13 is yet, but she talked to the bailiff and the deputy when
14 she was coming out of the room, she needed to talk to me,
15 so she'll talk on the record. Mr. Leiendecker, would you
16 mind having the bailiff bring her in here.

17 (Juror brought into chambers.)

18 THE COURT: Have a seat, please, ma'am. I understand
19 that you had some -- something you needed to talk to me
20 about and because of the kind of case this is I can't talk
21 to you without making a record of what it says, so that's
22 why everybody's in here and everybody's entitled to hear
23 it, I just can't do it in front of the rest of the jury
24 panel.

25 JUROR: It's just that since Monday my situation has

1 changed. My husband works for the federal government and
2 he's going to be traveling. I have two kids that are at
3 home. And, I've only been here a year so I have no one to
4 keep them.

5 THE COURT: And when does he start this traveling?

6 JUROR: Right now he's going to be working late for
7 the next couple of days. He starts Monday. And my kids
8 are 7 and 12.

9 THE COURT: 7 and 12?

10 JUROR: Uh-huh.

11 THE COURT: And how are you going to take care of
12 them, you work; don't you?

13 JUROR: I work part-time.

14 THE COURT: Part-time?

15 JUROR: I'm off at 12:30.

16 THE COURT: You're off at 12:30, so that's how you --
17 you pick the children up from school and you take care of
18 them?

19 JUROR: No, they ride the bus.

20 THE COURT: Ride the bus home?

21 JUROR: And my son gets home at 3:30. So I'm normally
22 there. And, like I say, we don't have family here, I
23 mean, we have family, but they work and I don't have
24 nobody else to take care of them.

25 THE COURT: Okay. So there's just no way you can get

1 anybody to take care of your children?

2 JUROR: Well, I've been thinking the last couple of
3 days, and with school and stuff and time, there's nobody,
4 you know, that I could ask without them taking off from
5 work. Or trying to rearrange their schedule.

6 THE COURT: And because of your husband's schedule
7 with him working late now and then having -- when does he
8 start traveling?

9 JUROR: Monday. Monday afternoon.

10 THE COURT: Well, we'll be through before Monday,
11 probably. Can you make arrangements with him working late
12 for somebody to keep the kids or you can't?

13 JUROR: Well, like I said, you know, I don't have
14 anybody, I mean, the thing is my children are there at
15 home by four o'clock. And I don't -- my sister-in-law,
16 she doesn't -- she works in Mount Pleasant. And I -- I
17 have no way of getting them -- someone to be there with
18 them until he gets home, which she doesn't know because
19 they're going through this budget crisis now. And like I
20 said, this all came up unexpectedly. We try to work our
21 schedules out. He knew I was doing this, but he assumed
22 that I'd be back and forth, it doesn't take me that long.
23 So, you know, arrangements for the last 12 years has
24 always been just the two of us. We never had a
25 baby-sitter and we always work around our schedule,

1 between the two of us.

2 THE COURT: Are you asking me to excuse you?

3 JUROR: Yes.

4 THE COURT: Okay. I'll have to take that up with the
5 attorneys, I'll ask you to step back into the jury room,
6 but don't talk to any of the other jurors about what we
7 talked about in here, in case I do need to excuse you, so
8 don't mention this to anybody, just go back in and
9 introduce yourself and don't talk about this. Okay?
10 Thank you, ma'am.

11 (Juror was excused from chambers.)

12 THE COURT: What says the state?

13 MR. BAILEY: Your Honor, I think she should be
14 excused, she's got the identical situation several other
15 jurors have had that have been excused. I noticed when
16 she was called up there she appeared to be distressed when
17 she got up there.

18 THE COURT: What says the defense?

19 MR. RUNYON: Obviously, Your Honor, the juror doesn't
20 want to be here, it's not in our best interest for sure
21 and she would be terribly distracted.

22 THE COURT: She's obviously very upset, you can tell
23 by her voice. Just -- just before crying.

24 MR. RUNYON: For the record, she's near tears, as you
25 said, she's very distraught about this matter and I think

1 it would be in the defendant's best interest if she be
2 excused.

3 THE COURT: Okay. All right, we will excuse her then
4 with the consent of both parties. We will -- since we
5 have not exhausted our list of jurors we can strike
6 another alternate if you want to do that and seat another
7 alternate. We'll choose the alternate in this case by
8 putting the two who are chosen back in the box and drawing
9 one out, that is the proper procedure under the statute.

10 MR. BAILEY: Judge, I've got no problems with any of
11 the last three on there that we haven't reached yet, I'll
12 waive any strikes if that'll help any.

13 MR. LEIENDECKER: That's okay, you're out of strikes
14 anyway.

15 THE COURT: Well not on the alternate, for another
16 alternate there'll still be one and two on another
17 alternate.

18 MR. LEIENDECKER: I don't have my list, but I don't --
19 there was---

20 MR. BAILEY: Mendrzycki, Campbell and Shepard.

21 MR. LEIENDECKER: Are the only ones left?

22 THE COURT: Yes.

23 MR. LEIENDECKER: The only one that we had an issue
24 with was 33.

25 MR. BAILEY: Mendrzycki.

1 MR. RUNYON: We would strike 33.

2 THE COURT: All right. Campbell would be the one
3 who'd be seated then if the solicitor doesn't strike him.

4 All right we'll go back, when we get these other two
5 jurors here, let's not jump the hurdle yet, let's get the
6 other two jurors here and in the box and be sure they
7 don't have any problems. Because if we run into that
8 problem we may just put them all back in and strike again
9 if it comes down to that. Or either go with one
10 alternate, it's a short trial, we could almost go with 12,
11 I really hesitate to do that. We could go with one.

12 MR. BAILEY: Somebody went with 12 before one time and
13 things didn't turn out too well.

14 THE COURT: The last one I did in Horry County we
15 started off with 14 and let everybody go and before they
16 hit the door good one of my jurors was out, we had to let
17 her go and we did the whole case with one alternate, but
18 we got through it.

19 Okay. Let's let those others get here. Bring Ms.
20 Bradley out and I'll excuse her.

21 (Juror brought into chambers.)

22 THE COURT: Ms. Bradley, you are excused.

23 JUROR: Okay, thank you very much.

24 THE COURT: Thank you for coming back up here today.

25 (Juror excused.)

1 THE COURT: All right, we'll be at ease until these
2 others arrive.

3 (Brief recess.)

4 (WHEREUPON, the following takes place in open court.)

5 THE COURT: Okay, we have had to excuse one juror from
6 the panel. So we need to put the two alternates names who
7 have been chosen back in capsules and draw between the two
8 of them as to which one of those two alternates will be
9 seated on the jury. Would you do that, please, Madam
10 Clerk.

11 CLERK OF COURT: Walter L. Baldwin.

12 THE COURT: Okay, Mr. Baldwin will be seated on the
13 jury, Ms. Connolly will continue as an alternate and we'll
14 continue down the strike list to get an additional
15 alternate, strikes are one and two. Start with number 33,
16 please, ma'am.

17 (Alternate juror chosen.)

18 THE COURT: Okay, Ms. Campbell, if you'll come on up
19 and come back into the jury room and join the other
20 jurors, please, back in the jury room.

21 (Alternate juror joined jury panel.)

22 THE COURT: Any matters in regard to jury selection
23 from the state?

24 MR. BAILEY: No, sir, Your Honor.

25 THE COURT: From the defendant?

1 MR. RUNYON: None from defense, Your Honor.

2 THE COURT: Okay.

3 (Remaining jurors excused.)

4 THE COURT: Okay, our alternates now are Ms. Campbell
5 and Ms. Connolly, Mr. Baldwin is on the jury. I'm going
6 to appoint Mr. Helwig as the foreman of the jury. And
7 that'll take place when they come back out. Anything
8 further at this time from the state?

9 MR. BAILEY: Not from the state, Your Honor.

10 THE COURT: From the defendant?

11 MR. RUNYON: Nothing from defendant, Your Honor.

12 THE COURT: Are you ready to proceed with the swearing
13 of the jury and opening statements?

14 MR. BAILEY: State's ready, Your Honor.

15 MR. RUNYON: Defense is ready, Your Honor.

16 THE COURT: Okay, bring the jury in, please, ma'am,
17 ask Mr. Helwig to come sit in the foreman's chair and
18 Mr. Baldwin will now be on the jury.

19 (WHEREUPON, the following takes place in the presence
20 of the jury.)

21 THE COURT: Okay, Mr. Helwig, if you'll take this
22 first chair right here and Mr. Williams you sit down
23 there, now we're right, okay.

24 Now, Mr. Helwig, I'm going to appoint you as foreman
25 of the jury, that'll always be your chair, please, sir.

1 Ms. Connolly and Ms. Campbell, you two are the
2 alternates and you are in the correct chairs, you need to
3 always sit in those two chairs.

4 Nobody else has a reserved seat, as I told you before,
5 come on in and file all the way to the end of the row,
6 leaving those three chairs for Mr. Helwig, Ms. Campbell
7 and Ms. Connolly.

8 Swear the jury, please, Madam Clerk.

9 (WHEREUPON, the jury was duly sworn.)

10 THE COURT: Ladies and gentlemen of the jury, as you
11 know by now from the instructions that you've already
12 gotten, the defendant, Mr. Rogers, has already been
13 convicted of murder. It becomes necessary for us to
14 engage in this proceeding, which concerns the punishment
15 that the Court is to impose upon the defendant.

16 Section 16-3-20 of the South Carolina Code of laws
17 reads in part as follows, a person who is convicted of or
18 pleads guilty to murder shall be punished by death or by
19 imprisonment for life.

20 That section further reads as follows, upon conviction
21 of a defendant of murder the Court shall conduct a
22 separate sentencing proceeding to determine whether the
23 defendant should be sentenced to death or life
24 imprisonment.

25 So our purpose in conducting the proceeding in which

1 we are now engaged is to determine whether the defendant,
2 Mr. Rogers, should be sentenced by the Court to death or
3 life in prison.

4 With respect to your particular role in this
5 proceeding, you will be asked to recommend to the Court
6 whether the Court should sentence the defendant,
7 Mr. Rogers, to death or to life imprisonment. Although I
8 use the word recommend, whatever you decide will be the
9 sentence that the defendant will receive.

10 During this proceeding testimony will be presented
11 relative to the question before you. Both sides will have
12 an opportunity to present arguments for and against the
13 imposition of the death penalty.

14 The only issue then that is left for you to determine
15 in this case is what sentence should the Court impose upon
16 the defendant. Should you recommend a sentence of life in
17 prison or should you recommend a sentence of death? That
18 is the only issue involved.

19 You are not concerned about the defendant's guilt or
20 innocence, because that has already been decided. The
21 defendant has been convicted of murder and you must now
22 consider what his punishment is to be.

23 After the last argument has been made to you
24 concerning the punishment that should be imposed upon the
25 defendant, the Court will give you certain instructions at

1 that point. You will then retire to determine whether a
2 death sentence or a life sentence is to be recommended.

3 At this point we will have opening statements from the
4 attorneys. Mr. Bailey.

5 MR. BAILEY: May it please the Court? Ladies and
6 gentlemen, I introduced myself to y'all during the jury
7 selection process, my name's Walter Bailey, I'm the
8 Solicitor for the 1st Circuit, it covers Dorchester,
9 Orangeburg and Calhoun Counties. I'll be representing the
10 State of South Carolina in this prosecution.

11 The other people at the counsel table are Harrison
12 Bell, who is an assistant solicitor in my office, who will
13 be helping me out here. Beside him is Earl Asbell with
14 the Dorchester County Sheriff's Office. Beside him is
15 Jody Horton, who's our victim advocate in our office in
16 Dorchester County. Beside her is Melinda B[REDACTED] and
17 beside her is Mike B[REDACTED]. And finally Darlene Simmons
18 who also works for me.

19 Now, as the judge told you, and as all of you know by
20 now, Timothy Rogers, seated here in the blue blazer, is a
21 convicted murderer. Murder is the killing of another
22 human being with malice aforethought. And y'all were read
23 the indictment yesterday. And you know that Mr. Rogers
24 was convicted of the November 25th, 1992 murder of
25 Stephanie B[REDACTED]. What y'all don't know, and what you'll

1 find out when we go through this case, is that Stephanie
2 B [REDACTED] was -- was a 9-year-old-child. And she was
3 murdered by Mr. Rogers.

4 As the judge pointed out, the sole purpose in y'all
5 being here is to determine the appropriate sentence or the
6 most appropriate sentence. Two choices, life without
7 parole and the death penalty.

8 And I know some of y'all might have had prior jury
9 service. Maybe a magistrate's court or a civil case or
10 maybe in general sessions court. But I can promise you
11 this is the most serious case any of y'all are ever going
12 to sit in service on, so please give it your utmost
13 attention.

14 The trial procedure is divided into five parts, what
15 I'm doing now is part number one, it's the opening
16 statement. And what I'm telling y'all is not evidence.
17 What I'm doing is just giving you a preview of what I
18 anticipate our case to be.

19 And once the opening statements are finished you will
20 hear the evidence from which you'll base your decision.
21 There'll be a series of witnesses called by the state.
22 They'll be subject to direct examination by me and then
23 they can be cross-examined by the defense.

24 Some of those witnesses will identify photographs or
25 different objects that we'll put into evidence. That's

1 the trial itself, those will be the facts upon which --
2 upon which y'all will base your decision. Your verdict.

3 After you've heard all of the testimony the lawyers
4 get up one other time to give a closing statement. And
5 like the opening statement the closing statement is not
6 evidence, it's just a summary, a wrap up, of what we think
7 the important points brought out in the case were.

8 Following that Judge Whetstone will charge you or
9 instruct you on the law that applies to this type of
10 trial. And it's your sworn duty to take the law as the
11 judge gives it to you, apply it to the true facts as you
12 find those facts to be and then you go into step five
13 which is your deliberations.

14 You go back in the jury room and you use your common
15 sense, you apply the law as the judge gives it to you, to
16 the facts as you find those facts to be and you come back
17 with a verdict, life without parole or the death penalty.

18 Now, everyone in this court, other than spectators,
19 has a specific, unique job that they have to do. The
20 court reporter here is going to take down everything
21 that's said by anybody throughout this entire trial.

22 The bailiffs are here to assist y'all and help
23 maintain order.

24 My job is solicitor. Solicitors are like district
25 attorneys in some other states, it's just a different name

1 for it.

2 My job is to present evidence concerning the murder of
3 Stephanie B [REDACTED] by Mr. Rogers. I'm going to talk about,
4 introduce evidence of the circumstances of the crime, some
5 of the details of that murder. We're going to talk about
6 the characteristics of Timothy Rogers, things like his
7 prior criminal record that y'all are going to need to
8 consider when you decide his punishment.

9 We're going to talk about and introduce evidence of
10 aggravating circumstances, and I'm going to talk to you
11 more, briefly about that later.

12 Mr. Runyon and Mr. Leiendecker represent the
13 defendant, Mr. Rogers.

14 Judge Whetstone, of course, is to preside over the
15 entire trial, he'll tell you what the law is.

16 From time to time we may break to take up matters of
17 law outside of your presence. But please rest assured,
18 the judge will tell you everything you need to know in
19 order to make your decision in this case at the end of the
20 trial.

21 Your job, ladies and gentlemen, is the most important
22 job of anybody in this courtroom. It's more important
23 than my job, the defense attorneys, even the judge,
24 because y'all are judges, too. You judge the facts, you
25 judge what those true facts are. And you make a

1 decision. And you do that using your common sense.

2 Now, as Judge Whetstone pointed out, what you decide
3 will be the order of the Court and it will happen, that's
4 why your function is so vitally important in the case.

5 Now, as I said, what I'm going to tell y'all is not
6 evidence, it's just a preview or a summary of what I
7 anticipate our case to be.

8 And what I'm going to tell y'all about is not pleasant
9 for me to talk about, it's not very pleasant for y'all to
10 listen to. There'll be photographs, there'll be
11 testimony, it's not going to be pleasant, but it's my job
12 to present to you the facts as they were created by
13 Timothy Rogers. And I will do that to the best of my
14 ability.

15 This murder occurred Thanksgiving weekend, 1992. And
16 it occurred on a Wednesday evening. And during that
17 Thanksgiving weekend the B [REDACTED] family had access to a
18 houseboat at a lake near here. And they were spending
19 that week at the lake with the family fishing, planned to
20 do some squirrel hunting, just generally taking a vacation
21 during Thanksgiving week.

22 Stephanie attended school in Summerville. Her father
23 Mike B [REDACTED] worked, and still does work at this time, as
24 a constable for Dorchester County.

25 And what they were doing was, since school wasn't out

1 yet, Mike would commute back and forth from the houseboat,
2 when Stephanie got out of school he would carry her to the
3 lake and carry her back to school the next day.

4 On Wednesday, November the 25th, 1992, Mike and
5 Stephanie left the houseboat, Mike came to Summerville and
6 took Stephanie to school. The plans were, after school,
7 she took the bus home, Mike would then carry her and a
8 friend of his, Jimmy Carver, back over to the lake.

9 So, school got out that day, Stephanie took the bus
10 home. They got up with Mr. Carver and headed out of
11 Summerville toward the lake to spend the rest of
12 Thanksgiving weekend.

13 There's a small store right outside of Summerville
14 town limits, Spell's store. It's on Richardson Avenue
15 Extension. If you leave Summerville to come to St. George
16 you're going to pass that store on the left-hand side of
17 the road. Pigeon Bay Road intersects, comes right beside
18 that store and runs into Richardson Avenue Extension.
19 And, of course, Spell's store is right at the corner.

20 Stephanie was hungry, she wanted something to eat.
21 So, Mike was driving his pickup truck, Stephanie was
22 sitting in the middle and Jimmy Carver was riding on the
23 passenger's side. They stopped at Spell's store. There's
24 a very small parking lot in front of Spell's. There's a
25 pay phone outside in the parking lot.

1 The testimony is going to be that Mike B[REDACTED] pulled
2 up parallel to the store in his pickup truck, in front of
3 the pay phone. And he got out and he and Stephanie went
4 inside the store. Stephanie got a sandwich, Mike bought a
5 beer and Stephanie came out and got in the car.

6 A guy named Anthony Wright, who was a friend of Mike
7 B[REDACTED]'s, happened to be outside the store on the pay
8 phone. So after Mike got his beer and Stephanie got the
9 sandwich, Stephanie got back inside the truck, Mr. Carver
10 was inside the truck and Mike B[REDACTED] and Anthony --
11 excuse me, I said Anthony Wright, Anthony Riley. Anthony
12 Riley and Mike B[REDACTED] started a conversation at the
13 corner of the store where Pigeon Bay Road comes up to
14 Richardson Avenue Extension. They were old friends and
15 they were just talking for a few minutes.

16 Now at that time the defendant, Timothy Rogers, and
17 two other people, a guy named Daxton Patterson and a
18 teenage girl named ^{assault victim} were walking up Pigeon
19 Bay Road toward Spell's store. And as they approached
20 where Anthony Riley and Mike B[REDACTED] were talking they
21 walked in between them and began to curse them.
22 Patterson, Rogers, ^{assault}_{victim} began to curse Anthony Riley
23 and Mike B[REDACTED] for no apparent reasons.

24 Rogers and ^{assault victim} went over to the pay phone,
25 Daxton Patterson stayed where Anthony Riley and Mike

1 B [REDACTED] were talking and began to antagonize, began to
2 curse them some more.

3 And at one point, you're going to hear that Patterson
4 flipped a lit cigarette onto Anthony Riley's shoe.
5 Mr. Riley didn't want any part of that, he lived right
6 down Pigeon Bay Road, a short walking distance, so he
7 left. He started basically jogging on home, he didn't
8 want to get involved in anything.

9 Mike B [REDACTED] wanted out of there. So he left the
10 corner of the store, went over to the truck, Carver and
11 Stephanie, of course, are already in the truck. Tried to
12 get in the truck to leave but Daxton Patterson didn't want
13 him to leave. He wanted to stay there and have a
14 confrontation.

15 So what happened was, Mike B [REDACTED]'s trying to get
16 into his pickup truck to leave, Patterson is there
17 grabbing the door, trying to keep him from leaving. So
18 they're struggling over the door, pushing and pulling,
19 Mike B [REDACTED] trying to leave, Patterson trying to get him
20 to stay.

21 At that time this man here, Timothy Rogers, was on the
22 pay phone. He dropped the pay phone, walked over to the
23 truck, pulled out a .380-caliber semiautomatic pistol, put
24 the gun to Mike B [REDACTED]'s head and said, I'm going to kill
25 you.

1 Stephanie, you'll hear from the testimony, is seated
2 in the middle of the truck, began to cry loudly, because
3 she feared that her father was going to be hurt by this
4 man.

5 Rogers then spit in Mr. B [REDACTED]'s face, dropped the
6 gun down and fired one shot toward the ground, which hit
7 the left rear wheel of Mike B [REDACTED]'s pickup truck. When
8 that happened Mike decided that that was the time to
9 leave. So he put the truck in gear and began to pull out.

10 As he did that, Timothy Rogers, stepped behind the
11 truck, fired a second shot into the back of Stephanie's
12 head through the back rear window of the truck. That shot
13 went entirely through her head, came out and broke the
14 front windshield of the truck.

15 When Mike B [REDACTED] figured out what had happened, when
16 he realized his daughter had been shot, she slumped over
17 against him, he pulled back around into the parking lot.
18 Patterson, assault victim and Rogers took off running. And Mike
19 went inside and called for help.

20 Stephanie died the next day of massive brain damage
21 from that gun -- that bullet passing through her brain.

22 Rogers escaped to Alabama, he was arrested there about
23 a week later and brought back to South Carolina.

24 That's basically the facts of the case that y'all will
25 hear from the witness stand.

1 Now, y'all are going to hear from several witnesses
2 from the state, you'll hear from some law enforcement
3 officers, you'll hear from a pathologist, Dr. Nicholson,
4 Nichols, excuse me, who conducted the autopsy. You're
5 going to hear from a SLED ballistics expert. And you're
6 going to hear from some private citizens who have some
7 knowledge of what occurred here.

8 This is going to be a fairly short trial, because as
9 y'all know, Rogers' guilt has been established, he is a
10 convicted murderer. We can kind of go lightly on some of
11 the details of the murder, but you're going to hear some
12 other stuff that you need to know to make your decision in
13 this case. I hope to finish my case possibly by the end
14 of the day or at the latest tomorrow morning.

15 Now, in addition to the specific facts of this murder,
16 y'all are going to hear testimony involving aggravating
17 circumstances. And aggravating circumstances are factors
18 or events that increase the seriousness of a murder. Not
19 any murder in South Carolina is eligible for the death
20 penalty. In order to have the death penalty imposed,
21 number one, you've got to have the murder. And, number
22 two, the jury has to find, beyond a reasonable doubt, that
23 at least one aggravating circumstance occurred.

24 And, the two aggravating circumstances that we have
25 alleged, the state has alleged in this case, are that the

1 defendant, by his act of murder of Stephanie B [REDACTED],
2 knowingly created a great risk of death to more than one
3 person in a public place, by means of a weapon or device
4 which normally would be hazardous to the lives of more
5 than one person.

6 The second aggravating circumstance is that Stephanie
7 B [REDACTED] was under the age of 11 when she was killed. She
8 was, in fact, 9 years old.

9 In addition to that, we're going to talk about the
10 circumstances of the crime that set the characteristics of
11 Timothy Rogers.

12 And we'll have victim impact evidence. That victim
13 impact evidence is going to allow you to know Stephanie
14 B [REDACTED], to the extent that you can know someone who's
15 dead. You're going to hear from her mother, her father
16 and her grandmother about the kind of child she was, what
17 her loss meant to them. There'll be photographs of her.
18 And they're going to tell you how her death has changed
19 their lives.

20 You're going to see tears from that witness stand,
21 from some of these witnesses. And when y'all see that I
22 want you to remember that Timothy Rogers is responsible
23 for every one of those tears you're going to see.

24 After you've heard all of the testimony, as I said,
25 I'll get a final opportunity to speak to you. The judge

1 will tell you what the law is. And then your sworn duty
2 will be to bring back a just verdict, based on the facts
3 you've heard in this case.

4 And I can only ask that you use your good everyday
5 common sense and listen to the testimony in deciding what
6 the appropriate punishment is, based on the facts you
7 hear.

8 When I make my closing statement to you, I'm going to
9 ask y'all, on behalf of the state of South Carolina, to
10 bring back the death penalty in this case. Because that's
11 what justice requires in this case. Thank you.

12 THE COURT: Mr. Runyon.

13 MR. RUNYON: Mr. Foreman, ladies and gentlemen of the
14 jury, my name is Bill Runyon, I practice law in
15 Charleston. And together with Mr. Leiendecker, who
16 practices in Summerville, we've been appointed to
17 represent Mr. Rogers.

18 This is an opening statement, you haven't heard the
19 evidence yet. And so, therefore, I'm going to make this
20 fairly brief, because what you really want to hear is you
21 want to hear the facts and circumstances of this case.

22 The solicitor has outlined briefly what he's going to
23 show you. And, he said one thing which I want you to --
24 to remember, he said that Timothy Rogers brought about
25 these circumstances. I think, based on his recitation of

1 the evidence you're going to hear, you're going to find
2 that it was a conduit of misjudgment by more than one
3 person, that Mr. Rogers ultimately got into.

4 Now the fact that Mr. Rogers is guilty of murder as he
5 sits here does not -- and we're not suggesting that you
6 have to decide you can decide anything but the fact that
7 this was a murder, because that's not your choice. Your
8 choice is purely the sentence.

9 But we're going to ask you to listen to the verdict --
10 listen to the evidence. And I think you're going to find
11 that the evidence will show that Stephanie B [REDACTED] was not
12 an intended victim of anybody. But listen to the
13 evidence.

14 At the close of all of the evidence we're going to be
15 able to talk to you, as the solicitor has indicated he
16 will be able to talk to you. And we're going to ask you
17 to find that the defendant should be sentenced to life
18 imprisonment. Which in his case is life imprisonment
19 without any possibility of parole. We're going to ask you
20 to consider all the facts and circumstances you hear.

21 No one's going to suggest to you that the death of
22 this young child should be -- should be approved of. No
23 one's going to suggest to you that the death of this young
24 child is nothing but a -- just a -- a waste of a young
25 life and she's a totally innocent victim.

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 But the simple fact of the matter is, we're going to
2 ask you to find that the defendant should be sentenced to
3 life imprisonment without the possibility of parole. His
4 Honor's going to charge you that that's the law.

5 We're going to hear tears, we're going to hear lots of
6 tears. But you the jury have an extremely difficult job,
7 you've got to decide the punishment of this gentleman.
8 And we're going to ask you, as the solicitor has said he's
9 going to ask you to bring back the death penalty, we're
10 going to ask you to bring back life without the
11 possibility of parole. Not out of sympathy for
12 Mr. Rogers, but because it's the right thing, it's the
13 just thing under all the circumstances of this case and
14 the circumstances of Mr. Rogers.

15 I'm going to sit down now, because you haven't heard
16 anything and we can talk forever and it's not going to get
17 us anywhere, because you have to hear the evidence. And
18 then we'll be able to talk with you more intelligently
19 later on. Thank you very much.

20 THE COURT: Solicitor, you may call your first
21 witness.

22 MR. BAILEY: State calls Mike B [REDACTED].

23 MICHAEL GEORGE B [REDACTED], being
24 first duly sworn, testified as follows;

25 DIRECT EXAMINATION BY MR. BAILEY:

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

- 1 Q So you're Mike B [REDACTED]?
- 2 A Michael George B [REDACTED].
- 3 Q Okay. Mike, where do you live now?
- 4 A Live at [REDACTED]. Summerville.
- 5 Q All right, sir. And how are you employed?
- 6 A Employed with Dorchester County Magistrate's
- 7 Court, I'm a constable.
- 8 Q Okay. And how long have you been a constable for
- 9 the Magistrate's Court?
- 10 A Over four years.
- 11 Q Okay. Now, back in -- in November 1992, were you
- 12 married?
- 13 A Yes, sir, I was.
- 14 Q And who were you married to?
- 15 A Melinda B [REDACTED].
- 16 Q Okay. And did you and Melinda B [REDACTED] have a
- 17 child?
- 18 A Yes, sir, we did.
- 19 Q Okay. And what was her name?
- 20 A Stephanie Denise B [REDACTED].
- 21 Q Did she live with you and your wife?
- 22 A Yes, sir, she did.
- 23 Q On November 25th, 1992, how old was Stephanie?
- 24 A She was 9 years old.
- 25 Q All right, sir. And, at that time did you have a

MICHAEL E [REDACTED] -DIRECT BY MR. BAILEY:

1 friend named Jimmy Carver?

2 A Yes, sir, I did.

3 Q And how long had you known Mr. Carver?

4 A I'd known Jimmy about 13 years.

5 Q Okay. And, I want to call your attention to
6 Wednesday, November 25th, 1992.

7 A Wednesday, November the 25th, 1992, me, Melinda,
8 her mom and dad and Stephanie and -- were at the
9 houseboat, Santee Resort.

10 Q Okay. And was Stephanie going to school that
11 week?

12 A Yes, sir, she was.

13 Q Okay. And how were y'all working it as far as
14 her going to school and y'all being at the houseboat?

15 A Well, we had went up that Friday before. And,
16 knew she had to be to school Monday, Tuesday and
17 Wednesday. Me and her had come back that Sunday and
18 stayed at the house and I got her off to school then.
19 Then we drove back up there and then Melinda's momma and
20 her brought her back Tuesday.

21 And Wednesday I brought -- got up at five o'clock that
22 morning and drove her back to school myself. We stopped
23 in Holly Hill because she wanted to get something to eat
24 for breakfast. She got -- we went into the store in Holly
25 Hill, she got rice pudding and a bologna sandwich and a

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 chocolate Yoo-Hoo. And then I brought her on to school.

2 And I stayed in Summerville that morning, but I went
3 back to the houseboat and stayed 'til about 12 that
4 afternoon. Come back to Summerville and waited for her to
5 come home on the school bus so we could leave after Jimmy
6 got off work.

7 Q Okay. And that was Jimmy Carver, your friend
8 that you've known for years?

9 A Yes, sir.

10 Q Okay. And, when she got home from school what
11 did y'all do?

12 A We went to Mr. K's Piggly Wiggly in Summerville.
13 And -- because she had wanted some doughnuts and cookies,
14 so I went there and bought them for her and I bought a
15 12-pack of Busch Lite. Then when we come out the store I
16 drank one then.

17 Q Was that the first beer you'd had that day?

18 A Yes, sir, it was.

19 Q Okay. And about what time was it?

20 A It was about four o'clock.

21 Q Okay. And, after you left Mr. K's Piggly Wiggly
22 what did you and Stephanie do?

23 A Well, we didn't go right out to where Jimmy
24 worked at the time, it was probably about 10, 20 after
25 four, and then we finally went out to where Jimmy worked

MICHAEL E [REDACTED] -DIRECT BY MR. BAILEY:

1 and found out he wasn't there yet. So, we ended up
2 staying where he worked at for a few hours. Because he
3 hadn't come in from driving a log truck that day yet.

4 Q Okay. And did he eventually come in?

5 A He eventually come in, it was probably around
6 five or after. Found out he had had a flat tire and he
7 had to change it before we could leave.

8 Q Okay. And while he was changing that flat tire
9 what were you and Stephanie doing?

10 A Well Stephanie was riding a golf cart that they
11 had back there where Jimmy worked. They also had a deer
12 that they had in a pin and she had been playing with the
13 deer and riding the golf cart.

14 Q Okay. Now, as far as what you and Jimmy Carver
15 planned on doing once you got back to the lake, what were
16 your plans?

17 A I'd planned on when we left -- well when we left
18 from where he worked at it was probably a quarter to six,
19 ten 'til. And Stephanie had said when we was on the way
20 that she was hungry.

21 Q Okay, before y'all left were y'all planning to do
22 some hunting when you got up to the lake?

23 A We had planned on going squirrel hunting and
24 fishing at this lake.

25 Q Okay. And did y'all get any kind of guns to take

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 to go squirrel hunting?

2 A Yes, sir, there was two guns.

3 Q Okay. Tell the jury about that, who had the guns
4 and what y'all did with them?

5 A Well, I didn't know nothing about the pistol at
6 the time. It was a 9mm pistol underneath Jimmy's clothes
7 in a clothes basket.

8 Q Where had y'all put that clothes basket when you
9 loaded up for the lake?

10 A The clothes basket was placed in the back of the
11 truck.

12 Q Okay.

13 A And then there was a 410 shotgun that we was
14 going to use to squirrel hunt with. And, we checked it
15 before we left to make sure it was unloaded and all, it's
16 in a big long -- like a metal case with foam in it for a
17 gun to be. And, we checked it before we carried it -- had
18 it carried out to the truck. Stephanie carried the
19 shotgun out to the truck, put it behind the seat of the
20 truck.

21 Q Okay. And that shotgun was unloaded?

22 A Yes, sir, it was.

23 Q All right. Okay, now you testified earlier that
24 you drunk a beer that you got from the -- a 12-pack at
25 Mr. K's right after you got it. Did you drink anything

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 else while you were out there?

2 A I drank two more when I was back there at Jimmy's
3 boss's shop.

4 Q Okay. And did Jimmy Carver drink anything in
5 your presence?

6 A No, sir, he didn't.

7 Q All right, sir. And when you left -- you and
8 Stephanie and Jimmy Carver left Jimmy Carver's place of
9 employment you had had what, three beers?

10 A Yes, sir.

11 Q Over a period of how many hours?

12 A Probably anywhere from two and a half to three
13 hours.

14 Q Okay. And what -- what kind of -- did you feel
15 any effect at all from the beer?

16 A No, sir, I didn't.

17 Q Okay. And did you drive the truck when y'all
18 left Carver's?

19 A Yes, sir, I did.

20 Q Okay. And where was Stephanie sitting?

21 A Stephanie was sitting in the middle in between me
22 and him.

23 Q Okay. And what about -- Mr. Carver was sitting
24 in the right-hand front passenger seat?

25 A He was sitting on the right-hand passenger side.

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 Q Okay. Do you recall about what time it was when
2 y'all left Carver's house?

3 A It was anywhere from 5:45 to 5:55.

4 Q Okay. And where did y'all go?

5 A We went from there and that's when she had said
6 she was hungry, she wanted something to eat. I knew
7 Spell's Grocery made sandwiches fresh every day. So when
8 she said that, then we had to come down from Central
9 Avenue from where the Racetrack is to get on 78 to go to
10 Santee. I figured I'd come down Parsons Road and just
11 come right there to Spell's, because I knew he made
12 sandwiches and so we was going that way, so that's what I
13 did, we went to Spell's Grocery. And I went in and asked
14 him would he make her a sandwich.

15 Q Okay, before we get to that point. When you got
16 to Spell's Grocery store was it daylight or dark or dusk
17 dark or what?

18 A It was getting dusk dark because I know it gets
19 dark around six o'clock in the wintertime. In November.

20 Q Is there any lighting outside of the store?

21 A There's lighting outside the store but it was
22 kind of poor.

23 Q Okay. Bear with me a second, please. I want to
24 show you a photograph and I'll put it on this -- put it on
25 this television monitor. While he's doing that I'll just

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 hand you what's been marked State's Exhibit 1 and ask you
2 to identify that.

3 A Yes, sir.

4 Q All right, sir. And is that a picture of the
5 truck that y'all were in that day?

6 A Yes, sir.

7 Q A front view of the truck?

8 A Yes, sir.

9 MR. BAILEY: Your Honor, I would offer this,
10 State's 1.

11 MR. RUNYON: No objection, Your Honor.

12 THE COURT: Without objection it's in evidence.

13 BY MR. BAILEY:

14 Q I want to show you another photograph and ask if
15 you can identify this.

16 A Yes, sir.

17 Q Is that another photograph of the rear of your
18 truck?

19 A Yes, sir.

20 MR. BAILEY: Offer this as State's 2.

21 MR. RUNYON: No objection to State's 2, Your Honor.

22 THE COURT: Without objection that's in evidence.

23 BY MR. BAILEY:

24 Q Mr. B [REDACTED], I show you a photograph and ask you
25 to identify that.

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 A Yes, sir, that's Spell's Grocery.

2 Q Okay. Other than the yellow tape in front of
3 that, does that appear to look like Spell's store looked
4 on Wednesday, November 25th, 1992?

5 A Yes, sir.

6 MR. RUNYON: No objection, Your Honor.

7 THE COURT: Without objection that is in evidence
8 also.

9 MR. BAILEY: That's 3. If we're set up here I'm going
10 to go ahead and have Mr. Bell put these on display, Your
11 Honor.

12 THE COURT: All right, sir.

13 BY MR. BAILEY:

14 Q State's 1. Okay, Mr. B [REDACTED], that's what you
15 identified as being the front view of the truck that y'all
16 were in that day?

17 A Yes, sir.

18 Q All right, sir. And State's 2.

19 THE COURT: Can all of you jurors see that monitor, if
20 you can't we'll adjust it, let us know if you can't see.

21 (Juror responded.)

22 THE COURT: Okay, you need to move the podium, please.
23 Can everybody see that? If you can't see or hear
24 something as we go along raise your hand and let us know
25 that, please.

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 BY MR. BAILEY:

2 Q Okay. And then State's 3. Okay, Mr. B [REDACTED],
3 could you tell the jury how you pulled your truck up to
4 the front of the parking lot there?

5 A I first pulled in when we first got there, see
6 the phone right there?

7 Q Okay.

8 A See there's not much of -- the height of that
9 right there where that ice machine and phone is, the front
10 of my truck was facing that way where that phone is.

11 Q Okay. Bear with me a second, please.
12 Mr. B [REDACTED], I'm going to hand you a blown up -- blowup of
13 a sketch not to scale. Does this appear to be a sketch of
14 the front of Spell's store and Pigeon Bay Road and
15 Richardson Avenue Extension as it appeared on
16 November 25th, 1992?

17 A Yes, sir.

18 MR. BAILEY: Your Honor, I would offer this.

19 MR. RUNYON: No objection, Your Honor.

20 THE COURT: Without objection that is in evidence.

21 MR. BAILEY: If you could mark that 3-A I think. It's
22 already marked 38. Your Honor, I would offer this as
23 State's 38 premarked.

24 THE COURT: That's in evidence without objection.

25 BY MR. BAILEY:

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 Q Mr. B [REDACTED], could you step around just for a
2 second. If you could, stand at the side where you don't
3 block it off. And what I'd like for you to do is just
4 to -- to draw the location of your truck when you pulled
5 into the front of Spell's store?

6 A The ice machine's here, telephone, front of my
7 truck was right in here. Pointing that way.

8 Q Draw an arrow in the direction your truck was
9 headed.

10 A (Witness complied.)

11 Q Okay, you can have a seat. All right, at the
12 time that you went to Spell's, was there any damage to the
13 glass in either the back window or the front windshield of
14 your truck?

15 A No, sir.

16 Q All right, sir. And, was there a tailgate on the
17 truck?

18 A No, sir.

19 Q Was there any damage to the left rear wheel?

20 A No, sir.

21 Q To your knowledge? All right. Mike, after you
22 pulled up parallel, basically in front of the telephone,
23 in front of Spell's store, what did you do then?

24 A That's when me and Stephanie had got out, went in
25 the store and that's when I asked Mr. Spell would he make

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 her a sandwich.

2 Q Okay. Now how about Jimmy Carver, did he go in
3 the store with you?

4 A Jimmy did not get out.

5 Q Okay, you went in the store and asked Mr. Spell
6 to make Stephanie a sandwich; is that right?

7 A Yes, sir. And I got -- I got a cold Busch Lite
8 then. I come out the store. A friend of mine, Anthony
9 Riley, was on the phone at the time.

10 Q Let me ask about Anthony Riley, can you describe
11 Anthony Riley as far as who he is and how long you'd known
12 him?

13 A He is a black male that I've known for about ten
14 years at that time.

15 Q Okay. And how did you know Anthony Riley?

16 A He had worked with us laying carpet and all, he
17 had worked with me and my ex-brother-in-law.

18 Q Was he a friend of yours?

19 A Yes, sir, he is.

20 Q Okay. Now, when you saw Anthony Riley, what --
21 what was he doing?

22 A He was on the phone.

23 Q Okay. That's the pay phone outside of the store?

24 A Yes, sir.

25 Q Okay. And, you went in the store and Stephanie

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 got the sandwich and you got the beer, what happened next?

2 A Stephanie stayed in the store. And I come out
3 and I -- Anthony was off the phone then. And -- which
4 Anthony had hailed me and her both before we went in the
5 store.

6 Q He hailed you?

7 A Yeah.

8 Q Said hello to you?

9 A Yeah.

10 Q Okay.

11 A And we both hailed him back.

12 Q Okay.

13 A And, I had come out and set the beer in the truck
14 when I seen he'd been off the phone then we went to the
15 corner of the store right there and was talking.

16 Q All right. What I want you to do, I've got a
17 blue pen now, if you'll go back up to that sketch,
18 State's 38. I want you to draw an X up there where you
19 and Anthony Riley were talking.

20 A It'd be right around in this sidewalk area right
21 here.

22 Q Okay. Go ahead and have a seat. Now, as you and
23 Anthony Riley were standing there on the corner by Pigeon
24 Bay Road, at the corner of the store talking, where was
25 Jimmy Carver at that point?

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

- 1 A Jimmy was still in the truck.
- 2 Q And where was Stephanie?
- 3 A Stephanie was still in the store.
- 4 Q Okay. Now, at some point did Stephanie come out
5 of the store?
- 6 A Yes, sir, she did. And she got in the truck.
- 7 Q Okay. And, as you and Anthony Riley were
8 standing there talking at the corner of the store, what
9 occurred next?
- 10 A Me and him was standing there at the side -- on
11 the sidewalk right in front of the store. She had come
12 out. And me and Anthony was standing there talking. And
13 that's when -- we were just standing there talking and a
14 few minutes after that there was three people walked in
15 behind us [sic].
- 16 Q Okay. What direction did they walk from?
- 17 A Walking from where we was standing, from Pigeon
18 Bay Road this way.
- 19 Q Okay. Go up there to the chart again and show --
20 show the jury what direction these people were coming
21 from.
- 22 A We were standing right here. Pigeon Bay runs
23 parallel to this. We was standing right on this corner.
- 24 Q Try to hold your voice up a little bit so this
25 lady down here can hear you, Mike.

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 A We was standing up here right at the edge of this
2 sidewalk here, Pigeon Bay runs parallel beside the store.
3 So they walked in behind us right here.

4 Q Okay.

5 A From off Pigeon Bay.

6 Q When y'all first saw them were they coming down
7 Pigeon Bay Road toward the store?

8 A Yes, sir.

9 Q Okay. Go ahead and have a seat. Now, Mike,
10 what, if anything, occurred when this group of three
11 people got to where you and Anthony Riley were standing
12 there talking?

13 A Me and Anthony was standing there talking to each
14 other. I didn't hear exactly the words or anything that
15 was said, but they were -- we were the only two standing
16 there and nobody else was around. And Timothy Rogers had
17 said something to me or him one, I don't know which one it
18 was directed at. And---

19 Q Do you recall what he said?

20 A From what I understand he said something in the
21 effect of don't fuck with these crack heads. And, then
22 they -- then they walked on and he got on the phone at
23 that time.

24 Q Before we go any further, can you identify the
25 person that you describe as Timothy Rogers, can you point

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 him out here?

2 A It's him right there.

3 Q Okay. And you're indicating the man on the left

4 in the glasses, blue blazer and light blue shirt?

5 A Yes, sir.

6 Q Back then did he look like he looks now?

7 A No, sir, he didn't.

8 Q What'd he look like then?

9 A He had dreadlocks and he was littler than he is

10 now [sic].

11 Q Okay. Had you ever seen him before?

12 A I had never seen him or the other two in my life.

13 Q Okay. Describe how the other two looked?

14 A Well the girl, she was a light skinned black

15 female. And then Daxton Patterson was a white male.

16 Q All right. What's the next thing that happened

17 after Timothy Rogers said what you just quoted him saying?

18 A He went on and got on the phone.

19 Q Who got on the phone?

20 A Timothy Rogers got on the phone.

21 Q Okay, and that's that outside pay phone that's

22 shown in the sketch?

23 A Yes, sir.

24 Q Okay. And when that happened what, if anything,

25 occurred between you and Anthony Riley and Daxton

1 Patterson?

2 A At the time Timothy was on the phone, Daxton
3 Patterson walked over there and started shoving on me and
4 saying -- saying all kind of words and then he would pace
5 back to the phone, then he would come back, start shoving
6 and -- I -- I can't remember what was said at that time,
7 it's been a while since this -- since it happened before.

8 Q Let me ask you this, did you do anything or did
9 Anthony do anything to antagonize any of these people?

10 A Me and Anthony Riley did not antagonize or
11 provoke nobody to do this.

12 Q Okay. And what occurred then? What occurred
13 next?

14 A He just kept pacing back and forth saying obscene
15 gestures and stuff like that.

16 Q Well go ahead and tell the jury, the best you can
17 remember, you know, if he used the word that you're
18 quoting him---

19 MR. RUNYON: Objection to what Daxton Patterson said.

20 THE COURT: That is sustained.

21 BY MR. BAILEY:

22 Q What did he do, not what did he say?

23 A Well he kept shoving and pushing around and
24 pacing back and forth to the phone. And then eventually
25 he ended up flipping a cigarette on Anthony Riley's shoe.

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 And Anthony finally said -- me and him was standing there,
2 just had our arms crossed, we never said a word to him at
3 all. Or to anybody. And, after the cigarette had got
4 flipped on his shoe he left and went home.

5 Q Okay. And you say he, you're talking about
6 Anthony; right?

7 A Yes, sir.

8 Q And where did he live at that time?

9 A He probably didn't live hardly half a block from
10 the store.

11 Q Okay. Was that down Pigeon Bay Road?

12 A Yes, sir, it was.

13 Q When he left how did he leave?

14 A On foot.

15 Q Okay. And, what did you do after Anthony left?

16 A That's when I went to try to get in the -- that's
17 when I went to get in and I got in the truck and tried to
18 close the truck---

19 Q Now at that time where was Jimmy Carver and where
20 was Stephanie?

21 A Jimmy Carver and Stephanie were in the truck.

22 Q Okay. And as you tried to get into your truck
23 where was Timothy Rogers?

24 A Timothy Rogers was on the phone.

25 Q Okay. And what, if anything, did

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 Daxton Patterson do?

2 A Daxton Patterson, when I went to get in the
3 truck, I got in the truck, sat down and got ready to try
4 to close the door and he kept pulling and snatching on it.
5 Wouldn't let me close the door. And all I wanted to do
6 was leave. Didn't want no problem. And, when I tried to,
7 he kept pulling on the door, I got out the truck one time,
8 threw my hands in the air and I said look, I don't---

9 Q Show the jury what you did when you got out.

10 A I threw my hands up like this, said, I don't want
11 no trouble between nobody. And told him at that time all
12 I wanted to do was leave. Well, I got back in the truck
13 and he pulled at the door a few other times.

14 Q When you say he, use a name.

15 A Daxton Patterson.

16 Q Okay.

17 A Then after that -- finally -- I was getting -- I
18 thought it was all over with and that's when Timothy
19 Rogers had put the phone receiver -- let it hang down from
20 whoever he was talking to. And he come where the door
21 opens on the truck, he stuck a pistol in between it and
22 pressed it to my forehead right there and said, I'll kill
23 you, mother fucker.

24 Q All right. Now up until that time had you
25 threatened anybody or said anything to Timothy Rogers?

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 A No, I hadn't said nothing.

2 Q Okay. Or to assault victim or Daxton Patterson?

3 A No, sir.

4 Q Okay. And when he put that gun to your head and
5 threatened to kill you and used that profanity, what, if
6 anything, did Stephanie say or do?

7 A Stephanie was in the truck seat pretty close to
8 me. She was sitting there, she looked at him in his eyes
9 and he looked down in her eyes and for some Godly reason,
10 I don't know why, that's when he dropped the gun down and
11 fired the first shot. And that's when it hit the hub on
12 the truck.

13 Q Okay. And when that occurred what, if anything,
14 did Stephanie do, what was her reaction?

15 A Stephanie was in a hard cry already.

16 Q Okay. When did she start crying?

17 A She started crying when she seen the gun stuck to
18 my head.

19 Q Okay, was that before or after you said that he
20 made eye contact with her, Rogers made eye contact?

21 A That was after eye contact was made.

22 Q Okay. After -- after the gun was pressed to your
23 head and the shot was fired did anything else happen?

24 A Yes, sir. After that he cleared his throat and
25 spit in my face and it was running down my face.

MICHAEL B. [REDACTED] DIRECT BY MR. BAILEY:

1 Q Okay. When you said he, you've got to use a
2 name.

3 A Timothy Rogers.

4 Q Okay. Spit in your face?

5 A Yes, sir, he did.

6 Q Okay. And then what happened?

7 A Finally I got the door closed on the truck.

8 After all this. I made a swing from where I was parked to
9 pull out the parking lot of the store. I had to make kind
10 of a wide swing like because I was going to go down
11 Richardson back into town so Jimmy Carver could cash his
12 paycheck.

13 Q Okay.

14 A And when I made that swing I could not see out
15 the back glass or I couldn't see because I was paying
16 attention to pulling out the store. And, Jimmy said he
17 looked back---

18 Q Don't say anything that Jimmy said. But go
19 ahead, just tell what you observed.

20 A But after that there was a second shot fired.

21 Q Okay. When the second shot was fired were you
22 still in the parking lot?

23 A I was still in the parking lot of
24 Spell's Grocery, yes, sir, I was.

25 Q And tell the jury about how big that parking lot

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 is.

2 A It's not a very big parking lot, but it was big
3 enough for me to do that swing.

4 Q Okay. All right. Now when you heard the second
5 shot what was your next observation? What were you aware
6 of next?

7 A Next observation that I found out after not even
8 getting out the parking lot, me and Jimmy both hollered,
9 Stephanie. No answer. That's when we realized she'd been
10 shot because she fell over on my right side, blood running
11 down my shirt.

12 And, that's when I pulled back in front of the plate
13 glass in front of the store where the front of the truck
14 was like this. And, I got out. Timothy Rogers and Daxton
15 Patterson were still standing there in front of the plate
16 glass. I'm not for sure if I seen it but, they were
17 standing there laughing like it was funny as hell. And
18 that's when I hollered at both of them and said you son of
19 a bitch you shot my daughter. And after that that's when
20 they took off.

21 Q How'd they take off?

22 A Took off running.

23 Q Okay. And after they left what did you do as far
24 as Stephanie's concerned?

25 A Me and Jimmy went into Spell's Grocery and asked

1 them if they'd call the ambulance. They wouldn't, so
2 Jimmy got on the pay phone and I went back to the truck
3 and put a jacket on the front bullet wound and on the back
4 bullet wound to try to keep the pressure from coming. At
5 that time she already had blood running out of her nose
6 and her mouth anyway.

7 Q Was she conscious?

8 A She was conscious enough when I talked to her one
9 time she said, daddy, I still love you---

10 MR. RUNYON: Your Honor, I'm going to object. That's
11 hearsay.

12 THE COURT: That's sustained.

13 MR. BAILEY: Your Honor, could I be heard on that?

14 THE COURT: Yes, you may. Ladies and gentlemen of the
15 jury panel, would you please step into the jury room, I
16 have a matter I need to take up with the attorneys.

17 (WHEREUPON, the following takes place out of the
18 presence of the jury.)

19 MR. BAILEY: Your Honor, our position is that would be
20 a spontaneous utterance, res gestae, it's not introduced
21 for the truth of what was said.

22 THE COURT: What say, Mr. Runyon?

23 MR. RUNYON: Your Honor, I think the prejudicial value
24 of that or the prejudicial impact of that far outweighs
25 any probative value, number one. It's clearly not --

MICHAEL B [REDACTED] DIRECT BY MR. BAILEY:

1 doesn't offer anything as it relates to the circumstances
2 of the case.

3 And, as a practical matter, I mean, it can't qualify
4 for example, as a dying declaration by any means. And,
5 while it may be a spontaneous utterance of the deceased,
6 they're just offering it for no purpose other than to
7 incite or inflame the jury. And I think that the
8 probative value is far outweighed by the prejudicial
9 value. And, it is, in fact, classic hearsay.

10 THE COURT: Excuse me, I didn't hear the last one.

11 MR. RUNYON: It's classic hearsay, even under the new
12 rules, Judge.

13 THE COURT: Anything further, Mr. Bailey?

14 MR. BAILEY: I just fail to see how it could possibly
15 be hearsay, it's not introduced, I mean, it's not in issue
16 whether the child loved him or not, that's not an element
17 of proof, it's part of the case. It's res gestae, it's
18 part of -- part of what occurred.

19 Your Honor, just for the record I think that
20 Section -- Rule 803 (1) present sense impression and (2)
21 excited utterance.

22 MR. RUNYON: But even under 803, Your Honor, it's
23 excited utterance if someone is not available to testify.

24 MR. BAILEY: She's not available, she's dead.

25 MR. RUNYON: I understand that.

MICHAEL E [REDACTED] -DIRECT BY MR. BAILEY:

1 THE COURT: Doesn't qualify under either rule, the
2 ruling stands. Objection is sustained. It doesn't
3 qualify under either one. Also, the prejudicial value
4 outweighs the probative. Bring the jury back in, please.

5 BAILIFF: We have one in the rest room.

6 THE COURT: Okay. All right, we'll take about a five
7 minute break while that juror is in the rest room if
8 anybody needs to get up and move around, you may do so.
9 We'll be at ease for five minutes.

10 (Brief recess was taken.)

11 THE COURT: State ready?

12 MR. BAILEY: State's ready, Your Honor.

13 THE COURT: Defendant ready?

14 MR. RUNYON: Yes, Your Honor.

15 THE COURT: Bring the jury in, please, ma'am.

16 (WHEREUPON, the following takes place in the presence
17 of the jury.)

18 THE COURT: Okay, Solicitor, you may continue.

19 BY MR. BAILEY:

20 Q Mike, do you recall Mr. Carver at any time
21 getting out of the pickup truck?

22 A I recall him getting out of the pickup truck one
23 time, on the right side of it and walking to the backside
24 or middle side of the right side of the truck, that's all
25 I remember him getting out.

1 Q Okay. And, Mike, during this entire sequence of
2 events, did either you or Mr. Carver threaten or curse or
3 do anything to antagonize any of these three people?

4 A No, sir.

5 Q assault victim, Patterson or Timothy Rogers?

6 A None whatsoever.

7 Q And did Stephanie die the next day?

8 A Stephanie died the next day, Thanksgiving Day.

9 MR. BAILEY: Thank you, sir. Please answer any
10 questions the defense may have for you.

11 THE COURT: Cross-examination, please.

12 MR. BAILEY: Your Honor, I would reserve the right to
13 recall Mr. B [REDACTED] at a later time.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION BY MR. RUNYON:

16 Q Mr. Burditt, on this particular day, 1992, by the
17 time you got to Spell's Grocery you'd had three beers by
18 that time?

19 A Yes, sir, I did.

20 Q And, you were going home and you weren't working,
21 I mean, you were going home, y'all were going to the lake,
22 that is where you were spending the weekend, I mean, the
23 week?

24 A I went to Spell's Grocery that day to do whatever
25 she wanted, she wanted something to eat. We was leaving

1 straight from Spell's to go back to Santee Resort.

2 Q And you'd gotten you another beer at Spell's?

3 A Yes, I did.

4 Q And, when you were outside talking to Mr. Riley
5 these three people came by?

6 A They came in behind us. Yes, sir.

7 Q Okay. And walked past you. And somebody, you
8 said Mr. Rogers said something, did he say it to you or
9 was he talking to somebody else?

10 A Well, I took it that it was at me or either
11 Anthony one because we were the only two standing there.

12 Q Okay. So this is something you basically
13 overheard him saying to somebody but not necessarily
14 saying it to you?

15 A I don't know if it was pointed at me or either
16 Anthony one, but we were the only two standing there.

17 Q Or not even pointed to either of you; correct?

18 A Could have been.

19 Q All right. And, Mr. Rogers went over to the
20 telephone. And was on the telephone.

21 A Yes, sir, he was.

22 Q And, then this dispute arose between you and
23 Mr. Patterson?

24 A Yes, sir.

25 Q And, Mr. Patterson was being obnoxious and loud

MICHAEL E [REDACTED] -CROSS BY MR. RUNYON:

1 with you?

2 A Yes, sir, he was.

3 Q And this was -- and antagonizing you for whatever
4 reason?

5 A Yes, sir.

6 Q And -- and so there was basically this
7 confrontational situation between you and Mr. Patterson,
8 Daxton Patterson; isn't that correct?

9 A Yes, sir, at that time.

10 Q Okay. And, it was only later, when you got into
11 the truck, tried to get in the truck, that Mr. Patterson
12 was trying to keep the door opened for whatever reason?

13 A Yes, sir, he kept pulling and snatching on the
14 door and wouldn't let me close it.

15 Q All right, were you hollering at each other?

16 A No, sir, I was not hollering at him.

17 Q Was he hollering at you?

18 A Yeah, he was hollering at me, he kept pulling on
19 the door, cutting karate stands like he wanted to fight.
20 And, I just kept telling him I didn't want no trouble.

21 Q All right. Now, at what point in time did
22 Mr. Carver get out of the truck, do you remember?

23 A I have no idea when Mr. Carver got out the truck.

24 Q All right. And his 9mm -- was it his or
25 your 9mm that was in the clothes basket?

MICHAEL E [REDACTED] -CROSS BY MR. RUNYON:

1 A It was his.

2 Q His 9mm was in the clothes basket?

3 A Yes, sir, underneath his clothes.

4 Q That were sitting in the bed of the truck?

5 A Yes, sir.

6 Q Okay. And, of course, you had the shotgun in the
7 back, behind the seat?

8 A It was in behind the seat.

9 Q All right, sir. And, as a practical matter
10 the -- the dispute between you and Mr. Patterson kept
11 getting worse; didn't it?

12 A Not with me, I didn't say nothing to him, he kept
13 doing it, yeah.

14 Q Well Mr. Patterson kept -- kept -- kept getting
15 worse for some reason?

16 A Yes, sir, he did.

17 Q And that was between you and Mr. Patterson?

18 A Yes, sir.

19 Q Okay. At some point in time Timothy Rogers
20 intervened?

21 A Yes, sir.

22 Q All right. And he pulled a gun out?

23 A Pulled a gun out of his pants right there and
24 stuck it to my head.

25 Q All right. And, essentially kind of stopped

MICHAEL E. [REDACTED] CROSS BY MR. RUNYON:

1 the -- stopped the proceeding, did he not?

2 A Yeah, he stopped it, yeah.

3 Q All right. Mr. Patterson shut up?

4 A Yeah, he shut up, he didn't say nothing else
5 after the gun was stuck to my forehead, no.

6 Q All right. Now, after the gun was stuck to your
7 forehead and -- did he say I'm going to kill you or did he
8 say stop this or I'm going to have to shoot somebody?
9 Did -- did he say something---

10 A No, sir, he didn't say that. What he said was he
11 said, I'll kill you, mother fucker [sic].

12 Q All right. And where was Mr. Carver at this
13 point in time?

14 A Jimmy was still in the truck at the time.

15 Q All right. Well, when did he -- when did
16 Mr. Carver get out the truck?

17 A I have no idea, I know he got out the truck but I
18 don't remember when it was. I know he had got out one
19 time and was on the side where he had been and was at the
20 back of the truck.

21 Q Where is -- where the clothes basket was?

22 A He never was at the clothes basket. He was at
23 the back right-hand corner of the truck where the
24 taillight was.

25 Q All right, that's when you and Mr. --

MICHAEL B [REDACTED] -CROSS BY MR. RUNYON:

1 Mr. Patterson were out -- out -- you were out of the truck
2 and you were having your confrontation with Mr. Patterson?

3 A I was never out that truck until when I stuck my
4 hands in the air and told him I didn't want no trouble,
5 and that was the only time I was out of the truck.

6 Q Well, let me back up a second so I can clarify
7 things for myself, okay. You were out of the truck when
8 talking to Mr. Riley when the three people walked by?

9 A Right.

10 Q Okay. And, you were out of the truck when, for
11 whatever reason, Mr. Patterson started this
12 confrontational situation with you?

13 A Yes, sir.

14 Q Okay. And you were out of the truck as the
15 confrontational situation continued on?

16 A When I was talking to Anthony.

17 Q Okay. Now Anthony left?

18 A Anthony left.

19 Q And then you went to get in the truck?

20 A I did get in the truck and set in the seat and I
21 tried to close the door and that's when he was steady
22 pulling.

23 Q All right. And that's when -- and -- and he'd
24 been -- he'd -- you and he'd been having words, he'd been
25 having words with you at least since---

MICHAEL B [REDACTED] -CROSS BY MR. RUNYON:

1 A He had been having words with me, I had none
2 whatsoever with him.

3 Q All right. And Mr. Carver stayed in the truck?

4 A He was in the truck then, yes.

5 Q Okay. And you have absolutely no idea when
6 Mr. Carver got out of the truck?

7 A I have no idea to that.

8 Q Okay. But there's no question about the fact
9 that y'all were armed in the sense that there was a
10 shotgun in the cab of the truck and there was a 9mm in the
11 clothes basket?

12 A Them guns -- I had no prior notice of that 9mm
13 being in the back of that clothes basket. I knew there
14 was a shotgun because Stephanie put it in behind the seat
15 of the truck.

16 Q Okay. Because the 9mm wasn't your gun, was it,
17 sir?

18 A No, sir, it wasn't.

19 Q The 9mm was Mr. Carver's gun?

20 A Yes, sir.

21 Q Okay. In your job are you authorized to carry a
22 weapon?

23 A Yes, sir, I can.

24 Q Okay. Did -- did you have your service weapon
25 with you that day?

MICHAEL B [REDACTED] -CROSS BY MR. RUNYON:

1 A I had -- no, my briefcase and pistol was on the
2 houseboat.

3 Q All right, sir. Now, you got in your truck and
4 you started to, as you say, pull off?

5 A Yes, sir.

6 Q All right. Drawing your attention to State's
7 Exhibit No. 38. This red arrow here, if you'd come over
8 here so -- just kind of -- step over there and maybe we
9 can -- and you started to pull off?

10 A The truck was straight like this here in between
11 here and the phone.

12 Q Right.

13 A And I pulled on a angle like this to leave.

14 Q All right. You just drove off?

15 A Finally got my door closed, then I pulled on that
16 angle to pull out.

17 Q All right. Have a seat, sir. Now, as we see
18 from the photographs the parking area of Spell's Grocery
19 is extremely small, isn't it?

20 A Yes, sir, it's very small.

21 Q I mean, you're talking about what, two or three
22 cars can park there comfortably?

23 A It'd be tight with four.

24 Q It'd be tight with four. And, you hadn't gotten
25 to the street--

- 1 A No, sir.
- 2 Q when---
- 3 A I didn't.
- 4 Q When this -- this shot -- shot rang out?
- 5 A No, sir.
- 6 Q So as a practical matter when -- as you started
- 7 to pull off where was Mr. Rogers standing?
- 8 A Mr. Rogers was on the phone at that time.
- 9 Q No, I'm talking about when you started to pull
- 10 off?
- 11 A When I started to pull off?
- 12 Q Yes, sir.
- 13 A He was beside the truck, getting ready to get
- 14 back on the phone when I pulled out.
- 15 Q All right. So he -- he was right beside the
- 16 truck, was he toward the front of your truck?
- 17 A I could not -- he was -- when he stuck the gun to
- 18 my head he was in between the crack of your door when it's
- 19 opened.
- 20 Q All right.
- 21 A Then he -- when I got my door closed he was still
- 22 at that part of the door like getting ready to get back on
- 23 the phone when I pulled out.
- 24 Q Okay. So he was basically standing back right
- 25 beside your door?

1 A (Nods head.)

2 Q Is that correct?

3 A Yes, sir.

4 Q All right. And, you didn't see him turn away to
5 the phone, did you?

6 A No, sir, I didn't.

7 Q And, do you recall where he was when you started
8 up your truck and started to move?

9 A When I started moving I know he was by my truck
10 somewhere, I wasn't really paying attention, all I wanted
11 to do was leave.

12 Q All right. And so you were leaving very, very
13 hurriedly?

14 A Yeah, I wanted to get out of that situation.

15 Q All right. And you hadn't gotten straightened
16 out to the road before the -- the gun was fired?

17 A No, sir, I didn't.

18 Q And so you're talking about a very small area.
19 And you pulled off rather rapidly. And Mr. Rogers was
20 near the front of your car -- truck?

21 A (Nods head.)

22 Q Correct?

23 A Yes, sir.

24 Q All right. And, then the gunshot went off?

25 A Yes, sir.

MICHAEL B [REDACTED] -CROSS BY MR. RUNYON:

1 Q All right. And -- and did you -- and then did
2 you complete the circle? Did you swing back heading into
3 the Spell's Grocery store?

4 A After the second shot was fired, when I realized
5 she was hit, I pulled on out and made a U right back in
6 front of the plate glass at Spell's Grocery store.

7 Q Yes, sir. All right. And, you got out of the
8 truck and you said something to Mr. Patterson and -- and
9 Mr. Rogers?

10 A Yes.

11 Q And, they left, they ran, they took off, what
12 have you?

13 A Yes, sir.

14 Q All right. Now -- and then, of course,
15 ultimately EMS was called, the authorities were called and
16 what have you?

17 A Yes, sir.

18 Q Okay. Now, Mr. B [REDACTED], by the way, when you sat
19 your fourth beer that you'd bought at Spell's---

20 A I threw it in the trash can, it never was opened.

21 Q Never was opened?

22 A No, sir.

23 Q You hadn't put it in the truck?

24 A No, it was not in the truck.

25 Q So, you came out of Spell's Grocery store and you

MICHAEL B. [REDACTED] CROSS BY MR. RUNYON:

1 threw your beer in the trash can?

2 A After Stephanie had been -- the beer was in the
3 truck. And after -- I never even opened it yet. After
4 she was shot and I seen that I -- it was still in the
5 brown bag that I had bought it in.

6 Q Right.

7 A I threw that whole beer in the trash can.

8 Q Why did you throw your legally purchased beer
9 that was unopened in the trash can?

10 A Because at that time I wasn't thinking about that
11 after what had happened to her.

12 Q You also had a 12-pack of beer in the truck?

13 A Yes, sir. They were hot.

14 Q You didn't throw that out?

15 A No, I didn't.

16 Q Okay. And, to this day you don't know why you
17 threw your beer in the trash can?

18 A I threw it in the trash can because I knew I
19 didn't want it after what had happened to my daughter.

20 Q Okay. Now, Mr. B. [REDACTED], at no time did you do
21 anything, your testimony is, to bring on the dispute with
22 Mr. Patterson?

23 A I brought on no dispute with nobody.

24 Q But Mr. Rogers didn't come over and bring on a
25 dispute with you, it was Mr. Patterson who started this

MICHAEL B [REDACTED] -CROSS BY MR. RUNYON:

1 dispute; correct?

2 A Daxton Patterson started it and then

3 Timothy Rogers finished it.

4 Q And, Timothy Rogers finished it by producing a
5 weapon and separating you two; didn't he?

6 A To me that's not separating. To me sticking a
7 gun to my forehead, that's not separating nothing.

8 Q And how -- how did you -- how'd you pull out of
9 that -- that parking lot when -- with Mr. Rogers standing
10 right there? Quickly or slowly?

11 A I pulled out as quick as I could pull out and get
12 away from the whole situation.

13 Q All right. You were upset and angry?

14 A Of course, having a gun stuck to my forehead,
15 yeah.

16 Q Well you were upset and angry with -- with just
17 the way Mr. Patterson was going on, weren't you, sir?

18 A No, sir, I wasn't.

19 Q You weren't upset about him carrying on like
20 that?

21 A I was scared for my life when I had a gun stuck
22 to my head.

23 Q Before Mr. Rogers ever came up, in the dispute
24 with Mr. Patterson, you weren't angry at all?

25 A No, I stood there with my arms crossed, I didn't

MICHAEL B [REDACTED] -CROSS BY MR. RUNYON:

1 want no trouble.

2 Q All right. Now, do you recall, if you can, when
3 Mr. Carver got out of the truck and stood by the bed of
4 the truck?

5 A I can't recall at all.

6 Q Okay. But he certainly was in the truck when you
7 pulled off?

8 A He was in the truck and Stephanie was.

9 Q All right. And Mr. Rogers -- permission to
10 approach, Your Honor?

11 THE COURT: Yes sir.

12 BY MR. RUNYON:

13 Q All right. Mr. B [REDACTED], assuming you're sitting
14 in your truck, how close was Mr. Rogers, you're sitting in
15 the -- the witness box right now, but how -- how close was
16 he to you, was he as close to your truck as I am to you
17 right now?

18 A No, he was probably about this far away.

19 Q Okay. So, he was about an arm's length away from
20 your truck?

21 A Yes, sir.

22 Q Of course he'd be on the other side since you
23 were on the---

24 A He would have been on the left side, the same
25 side I was on, the driver's side.

1 Q And stick out your arms. About how far, about --
2 about right here?

3 A About to the end of my fingertip.

4 Q All right. Did you tell him you were leaving?

5 A No, sir.

6 Q All right. Did you just pull off real fast?

7 A I put the truck in drive and pulled out like
8 somebody normal would pull out anywhere.

9 Q And, you hadn't gotten what, four or five, six
10 feet before a shot rang out?

11 A Right.

12 Q I mean, you hadn't really gotten a truck length
13 away from Mr. Rogers when the shot rang out?

14 A I was probably a truck length away from him.

15 MR. RUNYON: All right, sir. Excuse me.

16 (Counsel consulted cocounsel.)

17 BY MR. RUNYON:

18 Q Now, Mr. E [REDACTED], it's been some time, it's been
19 since 1992, has it not been, sir?

20 A Yes, sir.

21 Q And, of course, this was a tragic circumstance, I
22 mean, your daughter passed away and what have you?

23 A Very tragic.

24 Q And, you didn't tell the -- and do you recall
25 telling -- do you recall making a statement to anyone?

1 A I made my statement to Walter's office.

2 Q All right. And when did you make that statement?

3 A I have no idea when I made it.

4 Q Okay. I want to show you something. Don't say
5 anything, I just want to -- would you look at that, sir,
6 please?

7 A (Witness reviewed document.)

8 Q Take your time.

9 A (Witness reviewed document.) Yeah, when he stuck
10 the gun to my head, yeah, I remember him dropping it down
11 for some reason.

12 Q I'm not asking you that, sir. Do you recognize
13 that, that document, that copy of that document?

14 A (No response.)

15 Q Is that your -- let me ask you this, is that your
16 statement that you made?

17 A Some of the statements in the bottom were put in
18 there---

19 THE COURT: No, sir, answer his question, is that the
20 statement you made?

21 BY MR. RUNYON:

22 Q Is that the statement you made? It either is or
23 isn't. I mean, is it? Is that your statement?

24 A Yeah.

25 Q That's your statement. All right, calling your

1 attention to page two of the statement. More
2 specifically, do you recall making a statement indicating
3 you said something about you were going to call the
4 police, something to that effect, prior to Mr. Rogers
5 intervening?

6 A Yeah, I did tell him that.

7 Q Okay. You told Mr. Patterson that?

8 A When I got out the truck, stuck my hands up, I
9 had told him that I didn't want no trouble, I was going to
10 call the cops, that was to both. They were both right
11 there together.

12 Q When you say they were both right there together,
13 Mr. Rogers---

14 A Rogers was on the phone and Daxton was standing
15 there by him.

16 Q Okay. Mr. Rogers was on the phone and Dax -- Dax
17 Patterson, the man who was creating this problem, was --
18 was -- was there, but Mr. Rogers was on the telephone?

19 A (Nods head.)

20 Q Isn't that correct, sir?

21 A Yes, sir.

22 Q And, he hadn't done anything to you at that point
23 in time, had he?

24 A No, sir, he didn't.

25 Q Okay. And, the situation had gotten so upsetting

1 and so bad that you -- you told -- you made a statement
2 that you -- you were outside the truck when you said, I'm
3 going to call the police?

4 A That's when I stuck my hands in the air and told
5 him I didn't want no trouble and I was going to call the
6 police.

7 Q Okay. Now, not to belabor the point, but when
8 you say I told him, so I understand, were you talking
9 about them or Dax Patterson?

10 A I told that to Dax Patterson, yeah.

11 Q Okay. All right, sir. Now, drawing your
12 attention back to your statement made to the Solicitor's
13 Office. I want you to read your statement, you've already
14 previously identified that. And then I have a question
15 for you.

16 A (Witness reviewed document.)

17 Q Have you completed reading your statement, sir?
18 Is there anywhere in your statement where you told the
19 solicitor that Mr. Rogers said I will kill you?

20 A (No response.)

21 Q You've read your statement. That's your
22 statement, isn't it?

23 A Uh-huh.

24 Q And you never said in your statement that you
25 gave to the Solicitor's Office four years ago that

MICHAEL B [REDACTED] -REDIRECT BY MR. BAILEY:

1 Mr. Rogers ever said I'll kill you. Did you, sir?

2 A No, I didn't.

3 Q All right, sir. Thank you. But that's your
4 testimony today, sir?

5 A (Nods head.)

6 Q Correct?

7 THE COURT: Say your answer, please, sir. The court
8 reporter's taking down what you're saying and she can't
9 take down you nodding your head.

10 BY THE WITNESS:

11 A Yes, sir.

12 MR. RUNYON: No further questions, Your Honor.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION BY MR. BAILEY:

15 Q Mr. B [REDACTED], when you made that statement were
16 you making any effort to put in every single thing that
17 occurred during that entire sequence of events?

18 A When I wrote that statement I was trying to get
19 everything I could in it at that time. But after the
20 tragic thing that happened to Stephanie, it's hard to
21 remember everything. And I tried to do the best of my
22 ability.

23 Q All right, sir. Were you in a state of shock
24 when this thing happened?

25 A I've been in a state of shock and I'm still

assault victim -DIRECT BY MR. BAILEY:

1 seeing a counselor and all for this still today.

2 MR. BAILEY: Thank you. That's all I have.

3 MR. RUNYON: No further questions.

4 THE COURT: Recross. You may step down. Thank you,
5 sir.

6 MR. BAILEY: State calls assault victim .

7 assault victim , being first
8 duly sworn, testified as follows;

9 DIRECT EXAMINATION BY MR. BAILEY:

10 Q You're assault victim ?

11 A Yes, sir.

12 Q Okay. Ms. assault victim, you're here under subpoena
13 from the state; is that correct?

14 A Yes, sir.

15 Q Okay. And how old are you?

16 A Twenty years old.

17 Q Okay. And where do you live?

18 A [REDACTED].

19 Q Is that in Summerville?

20 A Ladson.

21 Q Ladson. Okay. And have you lived in the
22 Summerville Ladson area all your life?

23 A Yes, sir.

24 Q And are you working now?

25 A No, sir.

assault victim -DIRECT BY MR. BAILEY:

1 Q Okay. Now, back in 19 -- November 1992, did you
2 know a fellow named Daxton Patterson?

3 A Yes, sir.

4 Q How long had you known Daxton Patterson back
5 then?

6 A About a month and a half.

7 Q And how did you happen to meet Mr. Patterson?

8 A Through Tim Rogers.

9 Q Okay. And, in 1992, in November, '92, did you
10 know Timothy Rogers?

11 A Yes, sir.

12 Q Would you point him out here in court?

13 A (Witness complied.)

14 Q Okay. And you're pointing to the man in the
15 glasses, the blue blazer---

16 MR. RUNYON: Stipulate, Your Honor.

17 BY THE WITNESS:

18 A Yes, sir.

19 Q Okay. How long had you known Timothy Rogers in
20 November 1992?

21 A We were going together.

22 Q Okay. And, how long had you known him?

23 A A good while.

24 Q Okay. And, at that time how old were you?

25 A Fifteen.

assault victim -DIRECT BY MR. BAILEY:

- 1 Q Okay. And did you have a baby since then?
- 2 A Yes, sir.
- 3 Q Okay. Who's the father of that -- that baby?
- 4 A Tim Rogers.
- 5 Q Okay. Now, calling your attention to that
- 6 Wednesday afternoon, November the 25th, 1992. Were you
- 7 with Timothy Rogers and Daxton Patterson that afternoon?
- 8 A Yes, sir.
- 9 Q Okay. Where were y'all and what were you doing?
- 10 A We were -- we were on Pigeon Bay Road working on
- 11 a Charger.
- 12 Q Working on the Charger?
- 13 A A car.
- 14 Q Okay. And whose car was that?
- 15 A Alphonso Middleton's car.
- 16 Q Okay. And was there any drinking going on
- 17 between the three of you?
- 18 A Yes, sir.
- 19 Q Okay. And what were y'all drinking?
- 20 A Alcohol and beer.
- 21 Q Okay. Do you recall what kind of -- what kind of
- 22 liquor it was?
- 23 A No, sir.
- 24 Q Okay. How much did you have to drink that
- 25 afternoon, if you can remember?

assault victim -DIRECT BY MR. BAILEY:

- 1 A A good bit.
- 2 Q Okay. And how about Daxton Patterson, how much
3 did he have?
- 4 A A lot.
- 5 Q Timothy Rogers, how much did he have to drink?
- 6 A Sort of a lot.
- 7 Q Okay. And, towards the -- the evening when it
8 started getting about dusk dark, what did y'all do?
- 9 A We walked to the grocery store.
- 10 Q Okay. You're talking about Spell's store?
- 11 A Yes, sir.
- 12 Q Okay. When you say we, you're talking about you
13 and Daxton Patterson and Timothy Rogers?
- 14 A Yes, sir.
- 15 Q And what was the reason y'all were going to the
16 store?
- 17 A He had to make a phone call.
- 18 Q When you say he, you're talking about---
- 19 A Tim had to make a phone call.
- 20 Q Okay. All right. And, as y'all approached the
21 store did anything happen?
- 22 A Yes, sir.
- 23 Q Okay. What happened as y'all got to the corner
24 of the store on Pigeon Bay Road?
- 25 A Dax -- Dax started arguing with some people.

assault victim-DIRECT BY MR. BAILEY:

- 1 Q Okay. How many people was he arguing with?
- 2 A Two.
- 3 Q Okay. Can you describe the two people he was
- 4 arguing with?
- 5 A No, they were two white men.
- 6 Q Two white men?
- 7 A Uh-huh.
- 8 Q Okay. All right. And, did either one of the two
- 9 men do anything in your presence to provoke an argument
- 10 with Patterson?
- 11 A I wasn't paying attention.
- 12 Q Okay. Well, when Daxton Patterson argued with
- 13 these two people what did you do?
- 14 A I walked over to Tim.
- 15 Q Okay. And where was Tim then?
- 16 A On the phone.
- 17 Q Okay. And were you in a position -- take a look
- 18 at this drawing up here, I think it's State's Exhibit 38.
- 19 You can go ahead and stand up, assault victim. Does that
- 20 look familiar to you?
- 21 A Yes, sir.
- 22 Q Okay. And, there's a TC for -- that's trash can,
- 23 telephone here, you see that?
- 24 A Uh-huh.
- 25 Q Does that look like the location of the telephone

assault victim -DIRECT BY MR. BAILEY:

1 he was at?

2 A Yeah.

3 Q You can have a seat. Okay. So, Daxton
4 Patterson's talking to these two people and Timothy Rogers
5 is on the phone and where did you go now?

6 A I walked over to Tim.

7 Q Okay. And, what's the next thing that you
8 remember happening?

9 A Dax spit on them.

10 Q Dax spit on who?

11 A The two guys when they were arguing.

12 Q Okay. And where were the two guys when Dax spit
13 on them?

14 A On the sides of the trucks [sic].

15 Q Okay. And, at that time what was Timothy Rogers
16 doing when Dax spit at the two people?

17 A He was talking on the phone.

18 Q Okay. What's -- what's the next thing you
19 remember?

20 A He turned around and saw Dax arguing with them.

21 Q Okay, when you -- you've got-- when you say he---

22 A Tim turned around and saw Dax arguing with the
23 two guys.

24 Q All right. And when Tim turned around and saw
25 Dax arguing with these two people what, if anything, did

assault victim-DIRECT BY MR. BAILEY:

1 Tim do?

2 A He walked over and got into the argument with
3 them.

4 Q Okay. And when -- where were you standing when
5 you saw Tim walk over to them?

6 A I picked up the phone.

7 Q Okay. And when you picked up the phone and saw
8 Tim walk over there, what's the next thing you recall
9 happening?

10 A He got into the argument with them. With the two
11 guys.

12 Q Okay, Tim did?

13 A Yeah, with Dax.

14 Q Okay.

15 A All of them were arguing.

16 Q Did you hear anything that Timothy Rogers said?

17 A No, sir.

18 Q Okay. When y'all had walked up from Pigeon Bay
19 Road down to Spell's store, did anybody in your group have
20 a gun with them, to your knowledge?

21 A Yes, sir.

22 Q Who had the gun?

23 A Tim Rogers.

24 Q Okay. And where did he -- where did he have the
25 gun?

assault victim -DIRECT BY MR. BAILEY:

- 1 A On the side of him.
- 2 Q On the side of him how? Like in -- stuck in his
3 belt or pocket or how?
- 4 A Yeah. Stuck on the side of him.
- 5 Q Okay. All right. Now, when you picked up the
6 phone or when you got by the telephone and you heard
7 Timothy Rogers starting this -- joining in this arguing,
8 what's the next thing you recall happening?
- 9 A I heard a gunshot.
- 10 Q Okay. And when you heard the gunshot -- bear
11 with me a second. When you heard the gunshot what did you
12 do?
- 13 A Turned around.
- 14 Q Okay. And when you turned around what did you
15 see?
- 16 A He shot at the bottom of the truck.
- 17 Q Who did?
- 18 A Tim Rogers.
- 19 Q Okay. And when you saw the -- or when you turned
20 around and saw the gun being shot at the bottom of the
21 truck, who was holding the gun?
- 22 A Tim Rogers.
- 23 Q Okay. And after you saw that what's the next
24 thing that occurred, assault victim?
- 25 A I turned back around on the phone.

assault victim -DIRECT BY MR. BAILEY:

1 Q Okay. After you turned back around did you hear
2 anything?

3 A The gun shot again.

4 Q Okay. How much time do you think went by between
5 the first gunshot and the second gunshot?

6 A I don't remember.

7 Q After you heard the second gunshot did you turn
8 around again?

9 A Yes, sir.

10 Q What did you see then?

11 A Tim and Dax was gone.

12 Q How'd they leave?

13 A Run.

14 Q They ran off? Okay. Did you see the truck?

15 A Yes, sir.

16 Q And what was the truck doing?

17 A Rolling off.

18 Q Rolling off? Okay. At the time you saw the
19 truck pulling off, had Timothy Rogers already left?

20 A Yes, sir.

21 MR. BAILEY: Bear with me one second, please. Your
22 Honor, may I approach the witness?

23 THE COURT: Yes, you may.

24 BY MR. BAILEY:

25 Q Ms. assault victim, do you recall giving testimony in a

assault victim -DIRECT BY MR. BAILEY:

1 prior proceeding in this matter?

2 A Yes, sir.

3 Q Okay, let me hand you this piece of paper here
4 and direct your attention to page 834.

5 A Which one?

6 Q Page 834, at the top of that page. First
7 question there from -- from me to you, question, what
8 direction was the truck pulling off in? Your answer,
9 frontwards. Do you recall that?

10 A Yes, sir.

11 Q Okay. And the next question, frontwards, okay.
12 And where was Timothy Rogers at the time the truck pulled
13 off frontwards and that second shot was fired? Do you
14 recall that?

15 A Yeah.

16 Q What was your answer?

17 A Standing there.

18 Q Then the question, standing where? And what was
19 your answer?

20 A He was standing in the back of the truck.

21 Q Speak up so this lady---

22 THE COURT: Speak up, please, ma'am.

23 BY THE WITNESS:

24 A He was standing in the back of the truck.

25 Q Okay. And question, behind the truck?

assault victim-CROSS BY MR. RUNYON:

1 A Yes, sir.

2 Q And your answer's yes, sir?

3 A Uh-huh.

4 Q And next question, okay, and where was the gun?

5 A In his hand.

6 Q The answer was in his hand. So you saw Timothy
7 Rogers standing behind the truck with the gun in his hand
8 before they ran off?

9 A Yeah.

10 Q Okay. Ms. ^{assault victim}, at any point in time did
11 either one of these two men, these strangers that you'd
12 seen, threaten you or threaten Daxton Patterson or
13 threaten Timothy Rogers?

14 A No, sir.

15 MR. BAILEY: Ms. ^{assault victim}, answer any questions defense
16 may have for you.

17 THE COURT: Cross-examination, please.

18 CROSS-EXAMINATION BY MR. RUNYON:

19 Q Ms. ^{assault victim}, you didn't hear what was -- you just
20 heard some shouting and loud talk; isn't that correct?

21 A Yes, sir.

22 Q Did you hear anything of what was said between
23 anybody?

24 A No, sir.

25 Q All right. So, you didn't hear any threats, you

assault victim-CROSS BY MR. RUNYON:

1 didn't hear any -- you flat out just didn't hear the --
2 the conversation, did you?

3 A No, sir.

4 Q Okay. And you and Mr. Rogers and Mr. Patterson
5 had been drinking that day?

6 A Yes, sir.

7 Q And Mr. Rogers was intoxicated?

8 A Yes, sir.

9 Q Mr. Patterson was intoxicated?

10 A Yes, sir.

11 Q And you -- you were probably intoxicated?

12 A Yes, sir.

13 Q Okay. Now, after the shot was fired, when the
14 truck was rolling off, did Mr. Rogers and Mr. Patterson
15 stand there and wait for the truck to come back or
16 anything?

17 A No.

18 Q Okay, they left?

19 A Yes.

20 Q When did you see -- excuse me. Do you recognize
21 this gentleman sitting over here, Mr. B [REDACTED]?

22 A No.

23 Q You don't recognize him. All right. Did you
24 ever see any one get out of that truck before you left?

25 A No.

assault victim

-CROSS BY MR. RUNYON:

1 Q All right. Did you -- what -- what happened
2 after Daxton Patterson and Tim Rogers left?

3 A I got scared and ran.

4 Q Okay. So you didn't see the truck circle back or
5 anything of that sort?

6 A No.

7 MR. RUNYON: No further questions, Your Honor.

8 THE COURT: Redirect?

9 MR. BAILEY: No redirect, Your Honor.

10 THE COURT: You may step down. Thank you, ma'am. All
11 right, Solicitor, we'll stop here for lunch.

12 Okay, ladies and gentlemen of the jury panel, we will
13 stop here for lunch. You will be turned over to the
14 custody of a group of SLED agents who will be with you
15 through -- through the course of this trial. I need to
16 talk to them before I send you to lunch, so what I'm going
17 to do is send you to the jury room for a few minutes.

18 From now on, please, continue with the admonition that
19 you don't talk about the case among yourselves or with
20 anybody else. So you can't talk about the case yet with
21 anybody. You can't certainly talk to the SLED agents
22 about the case, they're there to help you, but they can't
23 talk about the case and they know better than to do that.

24 They will take you to lunch. They will then take
25 you -- while we're doing this, let you transport all of

1 your cars over to the Holiday Inn and get you situated in
2 your rooms before you come back up here after lunch. So
3 this will be a long lunch break so we can get all of that
4 done and get everybody situated.

5 Your motel rooms will be available after two o'clock.
6 So you'll eat lunch first then you'll be able to move your
7 things into your room and get situated there and then
8 they'll bring you back up here after lunch for a
9 continuation of testimony in the trial.

10 So please follow those instructions, the SLED agents
11 know what to do and if you need any assistance let them
12 know.

13 Mr. Helwig, as the foreman of the jury, all
14 correspondence with me comes through you. So if you have
15 a question about anything or anybody else does, give the
16 notes to Mr. Helwig, you give it to the SLED agent and
17 they'll get it to me. So no conversations or questions,
18 unless it's an emergency you can talk to a SLED agent
19 about something like that. Any conversations, anything
20 you need of me or this court let us know, write it down
21 and send it to me and we'll take care of it for you. All
22 right? Thank you.

23 Please step into the jury room, don't talk about the
24 case, please.

25 (WHEREUPON, the following takes place out of the

assault victim-CROSS BY MR. RUNYON:

1 presence of the jury.)

2 THE COURT: I need for all of y'all to come around
3 here and be sworn, please.

4 (WHEREUPON, the SLED agents were duly sworn.)

5 THE COURT: Okay, I've already given you the order,
6 you know how to handle this, I'll turn them over to you.
7 Let them take their cars to the Holiday Inn and get
8 situated. Try to eat lunch before the rooms will be
9 available, then get them situated in their rooms before
10 you bring them back up here. So, hopefully we can
11 accomplish all that by 2:30, but you aren't on a time
12 schedule, just get it done comfortably and bring them back
13 up here whenever things are completed.

14 Anything further from the state?

15 MR. BAILEY: No, sir.

16 THE COURT: From the defendant?

17 MR. RUNYON: No, Your Honor.

18 THE COURT: Let's stay in here a few minutes until
19 they can get the jury down the stairs and to their cars
20 and then we'll adjourn for lunch. We'll aim at starting
21 back at 2:30, that should give everybody time to have
22 lunch and give the SLED agents time to get everybody
23 situated.

24 (Lunch recess was taken.)

25 THE COURT: Is the state ready?

assault victim -CROSS BY MR. RUNYON:

1 MR. BAILEY: State's ready, Your Honor.

2 THE COURT: Defendant ready?

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

4 THE COURT: All right, we have the request to charge
5 you brought me into chambers just a few minutes ago, we'll
6 take those up sometime this afternoon at the next break.

7 MR. RUNYON: Yes, Your Honor, I just wanted to get a
8 copy to you as soon as possible.

9 THE COURT: Yes, sir. Bring the jury in, please.

10 (WHEREUPON, the following takes place in the presence
11 of the jury.)

12 THE COURT: All right. Okay, ladies and gentlemen,
13 since you left here for lunch has anybody talked to you
14 about the case or have you talked to anybody about the
15 case, if so, please raise your hand.

16 (No response.)

17 THE COURT: You may call your next witness, please,
18 Solicitor.

19 MR. BAILEY: State calls Isaiah Jennings.

20 ISAIAH JENNINGS, being first
21 duly sworn, testified as follows;

22 THE COURT: Before you start, Solicitor. Ladies and
23 gentlemen of the jury, you cannot take notes during the
24 course of the trial. That may take your attention away
25 from what's going on, so you need to pay close attention

1 to the witnesses as they testify. Let me know if you
2 can't hear or see anything.

3 Also, if you need a break at anytime raise your hand
4 and tell me that, whether it's in the middle of somebody's
5 testimony or not. If you become uncomfortable and need to
6 get up and move around, again, if you need a break let us
7 know that, we want you to have a good understanding of
8 what's going on here.

9 All right. You may continue, Solicitor.

10 DIRECT EXAMINATION BY MR. BAILEY:

11 Q You're Isaiah Jennings?

12 A Yes, sir.

13 Q Mr. Jennings, how old are you?

14 A Forty-five.

15 Q Okay. And where do you live?

16 A Summerville.

17 Q And what type work do you do?

18 A Brick mason.

19 Q Okay. Now, do you often go to Spell's store
20 outside of town?

21 A Yes, sir.

22 Q Okay. And why do you go to Spell's?

23 A Pick up little things, little package or
24 something like that.

25 Q Okay. I want to call your attention to Wednesday

1 evening, November 25th, 1992, Thanksgiving weekend. Did
2 you go to Spell's store?

3 A Yes, sir.

4 Q That evening. Do you recall about what time you
5 got to the store?

6 A Almost about closing time, I don't know the exact
7 time.

8 Q Okay. Getting about dark?

9 A Yes.

10 Q Okay. Now, when you went inside Spell's store
11 did anything unusual happen?

12 A Yes, sir. Well, the beginning, when I went to
13 Spell's, when I pulled up, I got out of my car, there was
14 a white boy and he started picking at me. So, I just kept
15 my eyes on him and walk on inside. When I went inside I
16 see my cousin. So I said---

17 Q What's your -- what's your cousin's name?

18 A Herthenia Lincoln.

19 Q Okay. Now, when you were outside the store and
20 the white boy was picking at you, did you see anybody else
21 out there at that time?

22 A No, sir.

23 Q Okay. And when you got in the store you saw your
24 cousin, Herthenia Lincoln?

25 A Yes, sir.

ISAIAH JENNINGS-CROSS BY MR. RUNYON:

1 Q Okay. And, while you were in the store did you
2 hear anything from outside the store?

3 A Yeah, I heard two shots.

4 Q Okay. You say two shots, two gunshots?

5 A Yes, sir.

6 Q Okay. How -- how much time went by between the
7 time you went inside the store and the time you heard the
8 first shot?

9 A I'd say about five minutes.

10 Q Okay. And after you heard the second shot did
11 somebody come inside the store?

12 A Yes, sir, the man -- a white man ran in the store
13 and asked Mr. Spell to call the policeman because a fellow
14 had shot his daughter in the head.

15 MR. BAILEY: All right. Mr. Jennings, please answer
16 any questions the defense might have for you.

17 THE COURT: Cross-examination, please.

18 CROSS-EXAMINATION BY MR. RUNYON:

19 Q Mr. Jennings, you didn't see this gentleman out
20 there that night, did you?

21 A No, sir.

22 MR. RUNYON: No further questions.

23 THE COURT: Redirect?

24 MR. BAILEY: No redirect, Your Honor.

25 THE COURT: You may step down, Mr. Jennings, thank

HERTHENIA LINCOLN-DIRECT BY MR. BAILEY:

1 you.

2 MR. BAILEY: May he be excused?

3 THE COURT: Any objection?

4 MR. RUNYON: No objection, Your Honor.

5 THE COURT: Mr. Jennings, you are excused. Thank you,
6 sir.

7 MR. BAILEY: Herthenia Lincoln.

8 HERTHENIA LINCOLN, being first
9 duly sworn, testified as follows;

10 DIRECT EXAMINATION BY MR. BAILEY:

11 Q Ms. Lincoln, you're related to Isaiah Jennings
12 that just testified?

13 A Yes.

14 Q Okay. How -- how are y'all related?

15 A He's my cousin.

16 Q Okay. Now calling your attention to
17 November 25th, 1992, did you go to Spell's store that
18 evening?

19 A Yes.

20 Q Do you recall seeing Mr.---

21 THE COURT: Wait a minute, hold it. Yes, ma'am.

22 JUROR: I am acquainted with the witness, I know her
23 sister.

24 THE COURT: Okay. That's okay.

25 JUROR: Okay, I just wanted to let you know.

1 THE COURT: Thank you, ma'am.

2 BY MR. BAILEY:

3 Q Okay. Ms. Lincoln, do you recall seeing Isaiah
4 Jennings when you went to Spell's store that night?

5 A Yes.

6 Q Okay. And after you went to the store and saw
7 Mr. Jennings did you hear anything unusual out in the
8 parking lot?

9 A I heard some kind of noise outside.

10 Q Okay. And, what kind of noise was it?

11 A It sound like gun shot.

12 Q Okay. And how many times did you hear the noise?

13 A Two, two times.

14 Q Okay. And, did you see what happened outside?

15 A No.

16 Q Or did you stay inside?

17 A I stayed inside the store.

18 MR. BAILEY: That's all I have. Please answer any
19 questions defense counsel has for you.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION BY MR. RUNYON:

22 Q Ms. Lincoln, were these noises relatively close
23 together?

24 A Yes.

25 Q Okay. I mean, pretty close together; weren't

HERTHENIA LINCOLN-CROSS BY MR. RUNYON:

1 they?

2 A Yes.

3 Q Would you describe them as very close together?

4 A Right after each other, bang, bang.

5 MR. RUNYON: Thank you.

6 MR. BAILEY: No redirect, Your Honor.

7 THE COURT: All right, you may step down. Thank you,
8 ma'am.

9 MR. BAILEY: Call James Robinson.

10 THE COURT: Wait a minute. Ladies and gentlemen of
11 the jury panel, I have a matter I need to take up with the
12 attorneys, would you please step into the jury room and
13 don't talk about the case.

14 (WHEREUPON, the following takes place out of the
15 presence of the jury.

16 THE COURT: Excuse this witness, Ms. Lincoln?

17 MR. RUNYON: No objection, Your Honor.

18 MR. BAILEY: No objection, Your Honor.

19 THE COURT: Okay, you're excused. Thank you, ma'am.

20 Okay, the juror, Ms. Miller, raised her hand during
21 that witnesses' testimony and said she knew the witnesses'
22 sister. Would you like for me to inquire of the witness
23 as to whether that would have -- or the juror as to
24 whether that would have any affect on her ability to be
25 fair and impartial? What says the state?

1 MR. BAILEY: Your Honor, if I'm not mistaken during
2 the voir dire of the entire group yesterday she disclosed
3 a relationship to her sister and said it wouldn't make any
4 difference.

5 MR. RUNYON: That's my recollection also, Your Honor.
6 That this matter was -- was raised by the juror. We were
7 aware of it during voir dire, we were aware of it during
8 selection. And we have absolutely no request to make
9 inquiry of the juror at this point in time or at any point
10 in time in the future as it relates to this witness.

11 THE COURT: Since the juror raised it during the
12 testimony I thought it appropriate to inquire of both
13 sides as to whether there was any objection at this point.
14 Is there any objection from the state?

15 MR. BAILEY: Not the state, Your Honor.

16 THE COURT: From defendant?

17 MR. RUNYON: None from the defendant.

18 THE COURT: I find hearing no objection there will be
19 no inquiry made of the juror and we will continue with the
20 jury as it is now constituted. Bring the jury back in,
21 please.

22 (WHEREUPON, the following takes place in the presence
23 of the jury.)

24 JAMES ROBINSON, being first duly
25 sworn, testified as follows;

JAMES ROBINSON-DIRECT BY MR. BAILEY:

- 1 DIRECT EXAMINATION BY MR. BAILEY:
- 2 Q All right, sir, you're James Robinson?
- 3 A Yes, I am.
- 4 Q Okay, Mr. Robinson, do you live in Summerville?
- 5 A I do.
- 6 Q And how long have you lived there?
- 7 A Practically all my life.
- 8 Q Okay, and how old are you?
- 9 A Fifty-three.
- 10 Q Where do you work now?
- 11 A I'm still -- still at Spell's Grocery.
- 12 Q Okay. And how long have you worked at Spell's
- 13 Grocery?
- 14 A Right now thirty-six years, right now.
- 15 Q Okay. And, were you working at Spell's in
- 16 November of 1992?
- 17 A Yes, I was.
- 18 Q And back then what time did Spell's close during
- 19 the weekdays?
- 20 A 6:30.
- 21 Q Okay. And, do you know Mike -- did you know
- 22 Mike B [REDACTED] and his daughter Stephanie B [REDACTED]?
- 23 A I've -- I've seen him come in the store many a
- 24 times.
- 25 Q Okay. And had you seen his daughter come in the

JAMES ROBINSON-DIRECT BY MR. BAILEY:

1 store also?

2 A Yeah, I've seen her many too [sic].

3 Q Now calling your attention to

4 November 25th, 1992, were you working that day?

5 A Yes, I was.

6 Q Did you see the child, Stephanie H [REDACTED], that
7 evening?

8 A Yes, I did.

9 Q Okay. And, where did you see her?

10 A She came into the store to get a few knickknacks.

11 Q Okay. And did you have any conversation or what
12 transpired with her when she was at the store?

13 A Well I saw her, but I didn't serve her, my boss
14 lady served her.

15 Q Okay. And do you recall about what time it was
16 when she came in in relation to when y'all closed up?

17 A Just before -- just before we was getting ready
18 to close, about 6:15, 6:20, somewhere along in there.

19 Q Okay. And, do you recall her leaving the store?

20 A Yes, I do.

21 Q Okay. After she left do you recall anything
22 unusual happening?

23 A Yes, after she left she went -- she went out of
24 the door and shortly after that her father came back in
25 and said -- he was all bloodied up and said call---

JAMES ROBINSON-CROSS BY MR. RUNYON:

1 Q He was all what?

2 A Her father came back in the store all bloodied up
3 and asked her -- my boss lady to call the -- call the
4 ambulance.

5 Q Okay. Well, between the time Stephanie left the
6 store and the time her father came back in all bloodied
7 up, did you hear anything outside?

8 A I heard a couple of shots.

9 MR. BAILEY: Okay. Mr. Robinson, that's all I have,
10 please answer any questions defense may have for you.

11 THE COURT: Cross-examination, please.

12 CROSS-EXAMINATION BY MR. RUNYON:

13 Q Mr. Robinson, these shots that you heard were
14 like bang, bang, very rapid succession; right? Very close
15 together?

16 A They were close, but not bang, bang, but they
17 were close.

18 Q Right, but they were close. That didn't -- you
19 didn't see what happened outside, did you?

20 A No, I didn't.

21 MR. RUNYON: No further questions.

22 THE COURT: Redirect?

23 MR. BAILEY: No redirect.

24 THE COURT: Any objection to excusing the witness?

25 MR. RUNYON: No objection.

GEORGE SCHARFF-DIRECT BY MR. BAILEY:

1 THE COURT: You are excused. Thank you, sir.

2 MR. BAILEY: George Scharff.

3 GEORGE HERMAN SCHARFF, being
4 first duly sworn, testified as follows;

5 DIRECT EXAMINATION BY MR. BAILEY:

6 Q All right, sir, you're George Scharff?

7 A Yes, sir.

8 Q All right, sir. Where are you employed now?

9 A Presently I'm employed with Charleston
10 County EMS.

11 Q Okay, in what capacity?

12 A As a paramedic.

13 Q Okay. And in order to be a paramedic what type
14 training do you have to have?

15 A First of all you have to be a basic EMT within
16 the state of South Carolina. And have at least six months
17 on service on board a active EMS unit.

18 Q Okay.

19 A And you have to go to paramedic school, which
20 takes about eight months.

21 MR. RUNYON: Excuse me, Your Honor, I don't mean to
22 interrupt, but we offer to stipulate that Mr. Scharff is a
23 duly certified paramedic.

24 MR. BAILEY: I appreciate the stipulation but for the
25 edification of the jury I would like to ask him a few

1 other questions.

2 THE COURT: You may continue, yes, sir.

3 BY MR. BAILEY:

4 Q All right, sir. But prior to working for, I
5 think you're with Charleston County EMS now?

6 A Yes, sir.

7 Q Where did you work?

8 A I was employed by Summerville Ambulance Service
9 under contract for Dorchester County for EMS services.

10 Q All right, sir. How many total years experience
11 do you have combined as an EMT and paramedic?

12 A I originally was first certified in 1974 and have
13 been certified continuously from that time.

14 Q All right, certified as an EMT and a paramedic?

15 A EMT -- yes, sir.

16 Q All right, sir. And does the state do that
17 certification?

18 A Yes, sir.

19 Q All right, sir. And as a -- were you a paramedic
20 in November of 1992?

21 A Yes, sir, I was the crew chief on board medic one
22 out of Summerville at that time.

23 Q Okay. And medic one would be the -- the name of
24 the ambulance?

25 A Yes, sir, each unit in the county's numbered

1 according to where they work out of, the district they
2 work out of.

3 Q And how many paramedics or EMTs would be assigned
4 to one ambulance?

5 A On that particular night I was working and I was
6 the crew chief on the truck and we had an intermediate EMT
7 on board as my crew member.

8 Q Who would be in charge?

9 A I was in charge of the truck at that time.

10 Q All right, sir. And, do both those positions,
11 EMT and paramedic, require a test for your license by the
12 state?

13 A Yes, sir, state certification.

14 MR. BAILEY: All right, sir. Your Honor, I would
15 offer Mr. Scharff as an expert in the field of
16 emergency -- EMT and as a paramedic.

17 THE COURT: Questions in regard to the witnesses'
18 qualifications?

19 MR. RUNYON: No, Your Honor, as I said, we stipulate.

20 THE COURT: Okay. The witness is qualified in both
21 those fields without objection.

22 MR. BAILEY: Thank you, Your Honor.

23 BY MR. BAILEY:

24 Q Calling your attention, Mr. Scharff, to
25 November 1992, specifically November the 25th. You

1 testified you were working for Summerville Ambulance
2 Service; is that correct?

3 A Yes, sir. Yes, sir.

4 Q All right, sir. Did you have occasion to go to
5 Spell's store to respond to a call that evening?

6 A Yes, sir, we were called for a possible gunshot
7 wound at that time. In route, while we were responding,
8 we had asked our dispatcher to alert the Med U Care
9 Helicopter, to get them ready for possible evacuation. In
10 route we found out that the helicopter was not available.
11 So we then asked to have North Trident Hospital notified
12 so that they could call a team in to be ready for a trauma
13 patient.

14 Q All right, sir. When you arrived at Spell's
15 store what did you observe?

16 A A pickup truck with both doors open. There was a
17 first responder on the passenger side attending to
18 somebody---

19 Q Tell the jury what a first responder is.

20 A It's a person qualified to some level in first
21 aid training. At this particular time that particular
22 night it happened to be another paramedic. Who I knew and
23 recognized when I drove up.

24 Q All right, sir.

25 A I went around to the driver's side door and

GEORGE SCHARFF-DIRECT BY MR. BAILEY:

1 noticed that it was a -- a little girl who had been shot.
2 There was blood all over the inside of the truck. And all
3 over the girl.

4 The other paramedic told me what the situation was
5 with the girl, that she had been shot through the back of
6 the head. There was a large swelling over the left eye.
7 The left eye was completely swollen shut. The right eye
8 was open, there was some -- the eye did react to light,
9 which is one of the tests that we do to see what kind of
10 viability the patient has. As far as whether they're
11 alive or not.

12 Q All right, sir. Was this child identified,
13 according to your records, as Stephanie B [REDACTED], nine
14 years old?

15 A Yes, sir.

16 Q All right, sir. And you testified that there was
17 a gunshot wound to her head?

18 A Yes, sir.

19 Q Could you determine the point of entry and the
20 point of exit?

21 A It was in the back portion, the occipital portion
22 of the -- the skull. And, we did not see an exit point at
23 that time, but there was the large swelling over the left
24 eye.

25 Q All right, sir. And was the child conscious when

GEORGE SCHARFF-DIRECT BY MR. BAILEY:

1 you attended to her at -- at Spell's store?

2 A From time to time she was, sometimes she was,
3 sometimes she wasn't. When we initially got there and
4 knew that the helicopter wasn't available we decided we're
5 going to do what we call a load and go. And that's to get
6 the patient loaded up in the ambulance and get in route to
7 the hospital as quick as we could.

8 We put her in a C collar around the neck and put her
9 on a long spine board to make sure we didn't do any damage
10 to the -- to the cervical spine. And got her in the unit
11 and started working on her at that time.

12 Like I say, the -- the right eye was reacting to
13 light, which was a good sign for her.

14 Q What is the significance of the eye reacting to
15 light?

16 A It lets us know that the -- the brain is
17 functioning and allowing that to happen. If it wasn't
18 reacting to light then the -- the possibilities of life
19 would have been much slimmer.

20 Q All right, sir. And was the child conscious at
21 all when you were attending to her?

22 A A couple of times she was. Initially she was
23 not. We tried to put a tube down through her mouth into
24 her lungs to breathe for her. And, because she had her
25 teeth clenched -- she was in sort of a seizure like

GEORGE SCHARFF-DIRECT BY MR. BAILEY:

1 state -- she had her teeth clenched and was kind of rigid,
2 we were unable to do that.

3 The next procedure would have been to go down through
4 her nasal passage, but due to the fact that it was a head
5 injury that was contraindicated to us that -- that we
6 would not be able to do that.

7 We did put in a soft rubber tube into the nasal
8 passages, which allowed us to get oxygen down into her
9 airway.

10 Q Did -- would you state whether or not she
11 responded to stimulus of any type?

12 A While the other medic was taking care of an
13 airway on her and everything I was attempting to get an IV
14 started on her, was working on her left hand trying to
15 start an IV. Initially there was not much response to it,
16 but on my second attempt she opened her eye and became
17 somewhat alert and I did get the IV started. But, she
18 pulled away from it before I could get it secured down
19 and -- and the IV was pulled out of her hand. I was never
20 able to get another one started on her.

21 And shortly after that she then went into the seizure
22 like state again and went rigid on us. And she kept
23 coming and going like that all the way down to Trident
24 Hospital.

25 Q All right, sir. Did she make any audible sounds

GEORGE SCHARFF-CROSS BY MR. RUNYON:

1 of consciousness?

2 A When she became conscious she would react to pain
3 verbally and make noises for us and all. She would, you
4 know, we'd be able to tell her what was going on and she'd
5 calm down a little bit. But then when she would -- went
6 into the seizure like activity and what not there was not
7 much we could do with her.

8 Q All right, sir. Where did y'all take her,
9 what -- what facility did you take her to?

10 A We took her into North Trident Hospital.

11 Q All right, sir. Did you turn her over to medical
12 personal there at Trident?

13 A Yes, sir, we turned her over to the doctors
14 there, they had a team -- because of the fact that they
15 were alerted with enough time, they were able to get a
16 team there to -- to work on her and get her stabilized.

17 Q All right, sir. Was she alive when you turned
18 her over to those people?

19 A Yes, sir.

20 MR. BAILEY: All right. Mr. Scharff, that's all I
21 have at this time, please answer any questions defense may
22 have for you.

23 THE COURT: Cross-examination, please.

24 CROSS-EXAMINATION BY MR. RUNYON:

25 Q Mr. Scharff, essentially other than what was

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 reported to you, all you know about is treating this young
2 lady and getting her to the hospital; isn't that correct,
3 sir?

4 A Yes, sir.

5 MR. RUNYON: No further questions, Your Honor.

6 THE COURT: Redirect?

7 MR. BAILEY: No redirect, Your Honor.

8 THE COURT: Excuse this witness?

9 MR. RUNYON: No objection, Your Honor.

10 THE COURT: Without objection you are excused. Thank
11 you, sir.

12 MR. BAILEY: Your Honor, I'd like to call Dr. Nichols
13 out of order.

14 MR. RUNYON: No objection, Your Honor.

15 THE COURT: Without objection you may call him.

16 DR. CLAY NICHOLS, being first
17 duly sworn, testified as follows;

18 DIRECT EXAMINATION BY MR. BAILEY:

19 Q All right, sir, your full name is
20 Dr. Clay Nichols?

21 A Yes, it is.

22 Q All right, sir. And, Dr. Nichols, what type of
23 medicine are you involved in?

24 A I'm a forensic pathologist.

25 Q All right, sir. And, where do you work at this

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 time?

2 A Medical University of South Carolina.

3 Q All right, sir. Tell the jury, in layman's
4 terms, what a forensic pathologist is.

5 A All right, to begin with a pathologist is a
6 physician, as you're familiar with, like any other
7 physician. But rather than having patients as part of our
8 practice we have parts of patients as our practice. We
9 essentially apply laboratory methods to the diagnosis of
10 disease.

11 And, anytime blood or other liquid tissues are removed
12 in an office they're sent to the laboratory for
13 interpretation by a pathologist. Anytime tissues are
14 removed by a doctor they're also sent to a laboratory for
15 interpretation by a pathologist.

16 Another thing that a pathologist does is that they
17 perform autopsies, which is the postmortem examination of
18 an individual.

19 And there are two basic types of autopsies, the first
20 is a hospital based autopsy, where a person has a natural
21 disease process and they pass away and an autopsy's
22 requested in order to find whether or not the disease was
23 the correct disease, the extended disease, or whether the
24 treatment was appropriate for the type of disease.

25 The other type of autopsy is a forensic autopsy. In

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 which case a person dies of a violent or a suspicious
2 death and an autopsy's requested to determine the manner
3 and cause of death. And I have specific training in
4 forensic autopsies.

5 Q All right, sir. And, just go briefly into your
6 educational background, where did you get your---

7 MR. RUNYON: Your Honor, I -- I don't mean to
8 interrupt, I'm willing to stipulate to Dr. Nichols'
9 qualifications as a forensic pathologist, he's testified
10 before and very qualified to testify in this matter.

11 THE COURT: All right, let's let the train pass and
12 then I'll qualify him.

13 (Pause.)

14 THE COURT: Do you accept his stipulation, Solicitor?

15 MR. BAILEY: Yes, sir, Your Honor, but I would like to
16 ask a couple additional questions.

17 THE COURT: All right, go ahead then.

18 BY MR. BAILEY:

19 Q Dr. Nichols, approximately how many autopsies
20 have you performed in your career?

21 A Well over a thousand.

22 Q All right, sir. And approximately how many times
23 have you testified as an expert in the field of forensic
24 pathology?

25 A Several hundred.

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 Q All right, sir. And what are your duties at this
2 time? Do you do autopsies on a routine basis at this
3 time?

4 A I do do autopsies, but my primary
5 responsibilities are in teaching and administration.
6 Currently I'm the director of undergraduate education for
7 the department of pathology. I'm also director of the
8 pathology residency and training program.

9 Q All right, sir. Calling your attention to
10 November the 27th, 1992---

11 THE COURT: Okay, do you want me to qualify him at
12 some point?

13 MR. BAILEY: Yes, sir.

14 THE COURT: All right. Ladies and gentlemen, this
15 witness is qualified as an expert in the field of forensic
16 pathology by agreement, that is by stipulation between the
17 parties.

18 MR. BAILEY: Thank you, Your Honor.

19 BY MR. BAILEY:

20 Q Doctor, calling your attention to
21 November 27th, 1992, did you have occasion to conduct an
22 autopsy on the body of a 9-year-old female child
23 identified to you as Stephanie B[REDACTED]?

24 A Yes, I did.

25 Q All right, sir. And, based on your autopsy did

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 you determine the cause of death of Stephanie B [REDACTED]?

2 A Yes, I did.

3 Q All right, sir. And, when you conduct an autopsy
4 do you routinely take photographs of things of
5 significance as far as trauma to the body?

6 A Yes, we do.

7 Q Did you do that in this case?

8 A Yes, sir.

9 MR. BAILEY: Bear with me one second, please,
10 Your Honor.

11 (Pause.)

12 BY MR. BAILEY:

13 Q Doctor, I'm going to hand you two photographs
14 that have been marked State's 26 and 27 and ask if you
15 recognize those?

16 A Yes, I do.

17 Q All right, sir. Would you state whether or not
18 you took those photographs in the course of the autopsy?

19 A Yes, I did.

20 Q All right, sir. And do they accurately depict
21 the entrance wound and the exit wound on
22 Stephanie B [REDACTED]?

23 A Yes, they do.

24 MR. BAILEY: Your Honor, I would offer these.

25 MR. RUNYON: Subject to prior objection, of course.

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 THE COURT: Prior objection is noted for the record
2 and denied, the photographs are in evidence.

3 MR. BAILEY: Your Honor, I'd like to publish State's
4 27 to the jury.

5 THE COURT: Yes, sir.

6 BY MR. BAILEY:

7 Q Doctor, referring to the monitor, would you tell
8 the jury what that photograph depicts?

9 A This exhibit shows the entrance wound to the back
10 of Stephanie B [REDACTED]'s head. Specifically the entrance
11 wound was located on the back of the head two inches from
12 the top of the head and one inch to the left of the
13 midline, approximately in this location. Right here.

14 Q All right, sir. And how can you tell that's an
15 entrance wound as opposed to an exit wound?

16 A By the characteristics of the wound itself. In
17 addition, on external -- internal examination there was
18 appropriate beveling of the skull, much like if a BB gun
19 hit a piece of plate glass, on one side where the BB
20 struck there'd be a small little divot, but on the other
21 side there'd be a wedge shaped or cone shaped piece of
22 glass that falls out.

23 The same thing happens when a bullet goes through a
24 skull, there's a defect on the outside which is smaller
25 than the defect on the inside. And by examining that we

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 can determine the entrance wound.

2 Q All right, sir. And I'll show you State's 27 and
3 ask if you'll describe that to the jury.

4 A Yes, this is the exit wound for the entrance
5 wound on the back of the head. In this particular
6 photograph the exit wound is sutured.

7 But specifically the wound was located on the forehead
8 three inches from the top of the head and 1.5 inches to
9 the left of the midline.

10 Once the sutures were removed the wound was found to
11 be stellate, which means it's irregular with star shaped
12 edges. And it measured 1.1 by 0.6 inch.

13 Q All right, sir. The left eyelid appears to be
14 discolored?

15 A Yes, sir.

16 Q Do you know the reason for that?

17 A Yes, as the bullet passed through the skull over
18 that area the base of the skull was fractured causing a
19 leakage of blood into the upper eyelid.

20 Q All right, sir. And would you state whether or
21 not you also prepared sketches showing the point of entry
22 and point of exit?

23 A Yes, I did.

24 Q Doctor, is this an enlargement -- this is
25 State's 4. Is that an enlargement of the sketch you

DR. CLAY NICHOLS-DIRECT BY MR. BAILEY:

1 prepared?

2 A Yes, it is.

3 MR. BAILEY: All right, sir. Your Honor, I would
4 offer this as State's 4 without objection.

5 MR. RUNYON: Yes, that's correct, Your Honor, without
6 objection.

7 THE COURT: Without objection that is in evidence.
8 BY MR. BAILEY:

9 Q So, Doctor, if you could, just stand in front of
10 the jury and show what that depicts to the jury.

11 A This is an enlargement of our standard diagram
12 that we make with gunshot wounds. See the entrance wound
13 to the left back head, in this location. And the
14 subsequent exit wound right over the left eye. Entrance
15 wound back here. Exit wound here.

16 Q Doctor, did you compare the point where the wound
17 entered -- where the bullet entered the back of the head
18 to the point where it exited the front of the head?

19 A Yes, I did.

20 Q What is the -- the path of the bullet?

21 A The bullet entered the back of the left side of
22 the head, traveled down and to the left, approximately ten
23 degrees down and 15 degrees to the left and exited the
24 forehead above the left eyebrow.

25 Q All right, sir. And what organs and what

DR. CLAY NICHOLS-CROSS BY MR. RUNYON:

1 portions of the brain did that bullet traverse?

2 A Mainly the temporal lobe, which is part of the
3 left side of the brain, in this area.

4 Q And the cause of death, I think you agree, was,
5 obviously, the gunshot wound to the head?

6 A Yes, sir, specifically the cause of death was
7 listed as cerebral laceration and skull fracture due to a
8 distant gunshot wound to the head.

9 Q All right, sir. And did the records available to
10 you indicate how long this child survived between the time
11 the gunshot wound was inflicted to the time that she
12 ultimately died?

13 A My record indicates that she was admitted to the
14 hospital on the 25th and died at 8:20 p.m. on the 26th,
15 so a matter of hours.

16 MR. BAILEY: Doctor, please answer any questions
17 defense may have for you.

18 THE COURT: Cross-examination, please.

19 CROSS-EXAMINATION BY MR. RUNYON:

20 Q Dr. Nichols, you indicated that the cause of
21 death was a distant gunshot wound?

22 A Yes, sir.

23 Q Now, as a forensic pathologist, could you explain
24 what the terminology of a distant gunshot wound is?

25 A Yes, sir, I will. As far as examining a body and

DR. CLAY NICHOLS-CROSS BY MR. RUNYON:

1 trying to determine a range of fire, there are four basic
2 categories that forensic pathologists use.

3 The first is a hard contact gunshot wound, where the
4 gun is placed tight against the skin and the trigger's
5 pulled. When this occurs the -- the bullet exits the gun,
6 enters the body, in addition, any unburned gun powder or
7 soot produced by firing the cartridge, any rust in the
8 barrel, anything else that might be there, also enters the
9 wound tract and that can be observed. Also the gun barrel
10 itself will leave a mark or abrasion around the gunshot
11 wound.

12 Backing up just a fraction of an inch we have a loose
13 contact gunshot wound, where the trigger's pulled, once
14 again, the bullet enters the victim, the soot, unburned
15 gun powder go in there, but the lighter smoke that is --
16 is too light to actually enter the wound tract now
17 dissipates in a rather circular fashion around the wound.

18 Backing up a matter of inches, the trigger's pulled
19 again and we have a intermediate range gunshot wound. In
20 this particular case the bullet enters the victim, the
21 soot and powder and smoke is too light to -- to -- to
22 enter the wound tract and that's dissipated and the
23 heavier unburned gun powder is deposited in a stippling
24 like fashion around the wound.

25 Backing up even further we have a distant gunshot

DR. CLAY NICHOLS-REDIRECT BY MR. BAILEY:

1 wound, where the trigger's pulled, the bullet enters the
2 victim, but everything else is dissipated before it
3 actually enters into the particular person.

4 And in this particular case no powder stippling was
5 identified, no soot, no other indication of a close range
6 was identified, so it was a distant gunshot wound by our
7 examination.

8 Q Now, by distant gunshot wound, do you mean half a
9 mile, a mile, a quarter of a mile?

10 A It can be as far as a range -- whatever the
11 minimum range is of that weapon firing that particular
12 type of ammunition, back to the maximum firing range of
13 that weapon. And what that range is I don't know.

14 Q Okay. So when you say a distant gunshot wound,
15 there's -- there's nothing you can testify to from the --
16 from the distant wound itself to -- to show how far away
17 this weapon was?

18 A Essentially several feet to several hundred
19 yards.

20 Q To wherever?

21 A Yes, sir.

22 MR. RUNYON: No further questions.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION BY MR. BAILEY:

25 Q Doctor, if you assumed that the bullet passed

DR. CLAY NICHOLS-REDIRECT BY MR. BAILEY:

1 through a piece of glass prior to striking the back of the
2 child's head?

3 A Yes, sir.

4 Q Would that glass filter out the soot and gun
5 powder residue?

6 A Yes, it would.

7 Q Okay. So would you then be able to make any
8 determination at all as far as the distance?

9 A From my examination and what I had to work with,
10 the soot wasn't there so that's why it was called a
11 distant gunshot wound.

12 Q All right, sir. But could you give any estimate
13 other than -- assuming it went -- the bullet went through
14 a piece of glass, any other estimate other than the fact
15 that the gun was on the other side of the glass when it
16 was fired?

17 A No, sir.

18 MR. BAILEY: Thank you, sir, that's all I have.

19 THE COURT: Recross?

20 MR. RUNYON: No further questions, Your Honor.

21 THE COURT: You may step down.

22 MR. BAILEY: May he be excused, Your Honor?

23 MR. RUNYON: No objection, Your Honor.

24 THE COURT: Without objection you are excused,

25 Dr. Nichols, thank you.

JEFFREY ROGERS-DIRECT BY MR. BAILEY:

1 MR. BAILEY: We call Jeff Rogers.

2 JEFFREY ALLEN ROGERS, being
3 first duly sworn, testified as follows;

4 DIRECT EXAMINATION BY MR. BAILEY:

5 Q All right, sir. Mr. Rogers, you're presently the
6 coroner of Dorchester County; is that correct?

7 A Yes, sir.

8 Q And how long have you served as coroner?

9 A Eight years.

10 Q And were you actively engaged as coroner in
11 November of 1992?

12 A Yes, sir.

13 Q And do you have any knowledge of the death of
14 Stephanie B [REDACTED] in November of 1992?

15 A Yes, sir, I do.

16 Q All right, sir. Are you familiar with Spell's
17 store and the parking lot in front of Spell's store?

18 A Yes.

19 Q And do you know whether that's located within
20 Dorchester County?

21 A It is in Dorchester County.

22 Q Did you go to the scene of this shooting?

23 A The following day, not that night.

24 Q All right, sir. And will you state whether or
25 not you contacted the Medical University to authorize an

EARL ASBELL-DIRECT BY MR. BAILEY:

1 autopsy?

2 A Yes, sir, I was contacted by Medical University
3 that the child had died and I contacted the pathology
4 section of Medical University and ordered that an autopsy
5 be done.

6 Q All right, sir. And with respect to the cause of
7 death, is it part of your job as coroner to certify the
8 cause of death?

9 A Yes, sir, it is.

10 Q And did you do that in this case?

11 A Yes, sir.

12 Q And what was the cause of death on the death
13 certificate that you certified?

14 A Cardiopulmonary arrest would be on the first
15 line, due to a consequence of cerebral laceration, due to
16 a consequence of a .380-caliber gunshot wound to the head.

17 MR. BAILEY: Please answer any questions defense may
18 have for you.

19 THE COURT: Cross-examination?

20 MR. RUNYON: No questions, Your Honor.

21 THE COURT: You may step down. Thank you, sir.

22 MR. BAILEY: State would call Earl Asbell.

23 EARL VINCENT ASBELL, being first
24 duly sworn, testified as follows;

25 DIRECT EXAMINATION BY MR. BAILEY:

EARL ASBELL-DIRECT BY MR. BAILEY:

- 1 Q Mr. Asbell, where are you employed?
- 2 A Dorchester County Sheriff's Office.
- 3 Q And how long have you been in law enforcement?
- 4 A Eight and a half years.
- 5 Q How long -- how much of that time is with the
- 6 sheriff's office?
- 7 A Eight and a half years, July of '88.
- 8 Q All right, sir. And are you certified as a law
- 9 enforcement officer?
- 10 A Yes, sir, I am.
- 11 Q All right. Do you have any specialty in law
- 12 enforcement?
- 13 A Yes, sir, I do.
- 14 Q What do you do?
- 15 A My primary job is crime scene technician, latent
- 16 fingerprint examiner and the evidence custodian.
- 17 Q All right, sir. And how long have you held those
- 18 positions?
- 19 A Since 1990.
- 20 Q And how does your role differ from the
- 21 investigators that go out and investigate crimes?
- 22 A My primary job is to respond to all major crime
- 23 scenes. And it's my job to collect any physical evidence
- 24 at that time, photograph it, to make any sketches and to
- 25 take custody of the evidence and transport what needs to

EARL ASBELL-DIRECT BY MR. BAILEY:

1 be transported to SLED.

2 Q All right, sir. And calling your attention to
3 November of 1992, did you respond to Spell's Grocery
4 store?

5 A Yes, sir, I did.

6 Q Parking lot in front of the store?

7 A Yes, sir, I did.

8 Q And is that location in Dorchester County within
9 your department's jurisdiction?

10 A Yes, sir, it is.

11 Q All right, sir. What time did you -- about what
12 time did you arrive at Spell's store?

13 A I believe it was approximately seven o'clock that
14 evening.

15 Q All right, sir. And did you carry a camera with
16 you?

17 A Yes, sir, I did.

18 Q Did you take any photographs?

19 A Yes, sir.

20 MR. BAILEY: Bear with me one second.

21 (Pause.)

22 BY MR. BAILEY:

23 Q Okay, Mr. Asbell, I want to call your attention
24 to three photographs that are already in evidence, first
25 of all, State's 1. Which has been previously identified

EARL ASBELL-DIRECT BY MR. BAILEY:

1 as Mike Bu[REDACTED]'s truck. Did you take that photograph?

2 A Yes, sir, I did.

3 Q Was that taken on the night of
4 November 25th, 1992?

5 A Yes, sir, it was.

6 Q And State's 2, which has also been identified as
7 another view of that truck?

8 A Yes, sir, I took that picture also.

9 Q All right, sir. And then State's 3, already in
10 evidence, did you take that one?

11 A Yes, sir, I did.

12 Q All right, sir. Now, Mr. Asbell, let me hand you
13 what's been premarked State's 5, 6, 7, 8, 9, 10, 11 and 12
14 and ask you to look at those and let me know whether or
15 not you took all those pictures on the evening of
16 November 25th, 1992?

17 A Yes, sir, I did.

18 Q All right, sir. And do all those pictures
19 accurately depict what's shown in the pictures?

20 A Yes, sir.

21 MR. RUNYON: No objections, Your Honor, to State's
22 Exhibits 5 through 12.

23 THE COURT: Without objection they're in evidence.

24 BY MR. BAILEY:

25 Q I'm going to hand these to Mr. Asbell one at a

EARL ASBELL-DIRECT BY MR. BAILEY:

1 time. If you would, describe to the jury what they show,
2 first of all, State's 5.

3 A State's Exhibit 5 is a close-up of the rear
4 window of the pickup truck. In that photograph you can
5 see the bullet hole through the back window. It's a
6 couple of inches to the left of center of the pickup
7 truck.

8 Below that you will notice a piece of tape, that tape
9 has a scale in it. The purpose of that is to first
10 identify the case number, it has the case number, the date
11 and the initials, my initials on it. Another reason for
12 that tape is if we have to bring this picture up to scale
13 we can enlarge it to that scale there so that it would be
14 an actual duplication of the picture.

15 Q All right, sir. Did you take any measurements to
16 determine how -- how high up on the glass that -- that
17 bullet hole is?

18 A It's approximately six to ten inches from the
19 base of the glass, I don't have an accurate measurement.

20 Q In relation to the center of the glass, from
21 right to left, where is it?

22 A If you could zoom out of that picture just a
23 little bit. If you'll notice in the lower -- just below
24 the bullet hole and to the left you can actually see the
25 center of the backseat, it'd be approximately two to four

EARL ASBELL-DIRECT BY MR. BAILEY:

1 inches to the right of center and approximately six to ten
2 inches high.

3 Q All right, sir. And State's 6?

4 A That's a photograph from the outside of the truck
5 on the passenger side that shows the exit of the
6 projectile through the front window. You can see the
7 scale tape is in that picture also. It's approximately
8 two inches from the base of the glass to where the bullet
9 exited. And approximately a foot from the left side of
10 the glass to the exit.

11 Q State's 7?

12 A That's a photograph taken through the passenger
13 door. And that shows the exit of the projectile through
14 the front window taken from inside the truck. Again, I
15 have the scale tape in there which gives you the case
16 number, the date and my initials on it.

17 Q State's 8?

18 A There was a spent casing, a .380 casing
19 underneath the front of the truck. The white strip you
20 see in there is six inch scale tape. I can't tell from
21 here, either just on this side of it or just behind it is
22 a spent casing. You can see it now, the casing is right
23 behind the tape there.

24 Q And the casing is the empty shell that's ejected
25 from a semiautomatic pistol; is that correct?

EARL ASBELL-DIRECT BY MR. BAILEY:

1 A Yes, sir, that's correct.

2 Q All right. State's 9?

3 A That is another photograph of the shell casing.
4 There were two shell casings, one directly underneath the
5 front of the truck and one just outside of the passenger's
6 door, about five feet from the passenger's door in the
7 parking lot.

8 Q I show you State's 10 next.

9 A This was the left rear tire of Mr. Bu[REDACTED]'s
10 truck. Right below the tape you can see a ricochet mark
11 where it appears that a bullet had ricocheted off of the
12 rim of the tire.

13 Q State's 11?

14 A This picture was taken from Richardson Avenue
15 into the crime scene. It shows the front plate glass, the
16 front door and the telephone. The approximate area where
17 the incident started.

18 Q And other than the crime scene tape, does that
19 accurately depict how the store looked that night when you
20 went out there?

21 A Yes, sir.

22 Q All right, sir. Finally State's 12.

23 A That is a photograph of the left rear side of the
24 truck. It's hard to see it, but you can actually see the
25 bullet hole through the back window. And it shows you a

EARL ASBELL-DIRECT BY MR. BAILEY:

1 little bit of the store in the background.

2 Q All right, sir. Now there's an exhibit that
3 Mr. B [REDACTED] testified to that is a not to scale drawing,
4 which is State's 38. Did you prepare this?

5 A Yes, sir, I did.

6 Q All right, sir. Can you step up here and just
7 show the jury what -- what that shows?

8 A It shows the general layout of the area. This is
9 Richardson Avenue coming from Summerville, bypassing, it
10 goes around a curve here and crosses a railroad track.
11 This is Spell's Grocery, the back part of this, the front
12 section here is the sidewalk. This is Pigeon Bay Road,
13 which runs on the left hand side of the store. And then
14 you have Parsons Road which comes out right into the
15 parking lot of this area. And this is actually -- the
16 parking area is right in here.

17 Q Thank you, sir. And I'm going to show you a
18 couple of other sketches and ask if you prepared those.
19 Mr. Asbell, I show you State's 15 and 16 and ask if you
20 prepared these?

21 A Yes, sir, I did.

22 Q And are they also not to scale drawings of the
23 parking lot and Spell's store?

24 A That's correct.

25 Q All right, sir. And you prepared both of those?

EARL ASBELL-DIRECT BY MR. BAILEY:

1 A Yes, sir, I did.

2 MR. BAILEY: All right, sir. Your Honor, I would
3 offer these without objection.

4 MR. RUNYON: Without objection, Your Honor.

5 THE COURT: Without objection they're in evidence.

6 BY MR. BAILEY:

7 Q Calling your attention first of all to
8 State's 15. Would you show the jury what that depicts?

9 A State's Exhibit 15 shows the store and the
10 background, this is the sidewalk. Each one of these items
11 has a legend beside it to tell you what item was marked on
12 here was identified as. This is Mr. Bu [REDACTED]'s truck.
13 It's pointing towards the store.

14 Item number three is the spent casing you saw in the
15 photograph a while ago underneath the front of the truck,
16 it was located approximately right here.

17 Item number four was the other spent casing which was
18 outside of the passenger's door. There were some bullet
19 fragments found over here, there was some lead found on
20 the window sill itself. And there was a copper jacket
21 found behind the trash can, which is the letter A, as
22 shown right here in the legend. The copper jacket back
23 here and then lead on the window. I was just trying to
24 make some measurements so that I could recreate the crime
25 scene if I had to.

EARL ASBELL-DIRECT BY MR. BAILEY:

1 Q All right, sir. And State's 16?

2 A Again this shows Richardson Avenue, Pigeon Bay,
3 Parsons, Spell's Grocery and the parking lot area. And
4 what these are are the measurements from Richardson Avenue
5 to Pigeon Bay. From Spell's Grocery to where it
6 intersects Richardson Avenue and Pigeon Bay. And it shows
7 the dimensions of the parking lot.

8 Q All right, sir. And in order to give us some
9 kind of relative idea of the size of that parking lot, did
10 you take measurements inside of this courtroom that you
11 could use to correspond to the measurements you took of
12 the parking lot?

13 A Yes, sir, I did.

14 Q All right, sir. And, what measurements did you
15 make inside the courtroom?

16 A I made a measurement from the rear wall down the
17 aisle. And it is 47 feet to the 6th pew back. The width
18 of this courtroom is 47 feet. I believe it's 47 feet 3
19 inches, I would have to look at it, but it's
20 approximately 47 feet.

21 Q All right, sir. So you could place the entire
22 parking lot inside this courtroom from the 6th pew up; is
23 that correct?

24 A Yes, sir, you could.

25 Q All right. You can have a seat, Mr. Asbell.

EARL ASBELL-DIRECT BY MR. BAILEY:

1 Give me a second here, please.

2 (Pause.)

3 BY MR. BAILEY:

4 Q Now you testified that you observed two spent
5 cartridge casings; is that correct?

6 A Yes, sir.

7 Q All right. I'm going to hand you what's been
8 marked State's 13 and ask if you'll examine that. See if
9 you can recognize it.

10 A Yes, sir, these are the two metal cans that I
11 placed the cartridges in that night. On the outside of
12 them it is listed spent casing on ground, passenger side
13 of the truck. It's collected at 8:31 on 11/25 by myself
14 and placed in this can.

15 On the other can, a spent casing found under the front
16 of the truck. It was collected at 8:30. Dated 11/25/92
17 with my initials on it. Which I placed in the can also.

18 Q All right, sir. And then showing you
19 State's 14 A and B, can you identify that?

20 A These are the envelopes containing -- this is the
21 lead fragment that was found on the window, it was one
22 foot ten inches from the left side of the window. And a
23 piece of carpet, excuse me, copper jacket that was found
24 on the sidewalk behind the trash can, it was one foot
25 eleven inches from the side of the sidewalk.

EARL ASBELL-DIRECT BY MR. BAILEY:

1 MR. BAILEY: Your Honor, I would offer State's 13
2 and 14 A and B without objection.

3 MR. RUNYON: No objection, Your Honor.

4 THE COURT: Without objection they are in evidence.
5 BY MR. BAILEY:

6 Q Mr. Asbell, would you state whether or not you
7 carried these items, this 13, 14-A and 14-B to the SLED
8 state lab?

9 MR. RUNYON: Stipulate to the chain of custody, Judge.

10 THE COURT: Thank you.

11 BY MR. BAILEY:

12 Q Going back again, Mr. Asbell, to the size of that
13 parking lot. Could you determine the approximate
14 furthestest [sic] distance that a person could get from
15 that truck if it was anywhere in the parking lot? Does
16 that question make any sense to you?

17 A I think I know what you're saying. If the truck
18 was in the center of the parking lot you would be
19 approximately within about 20 feet of the truck anywhere
20 in that parking lot.

21 With the truck being parked where it was at, you would
22 be, you know, right on the edge of the parking lot within
23 20 feet of either side of it, with approximately 40 feet
24 from the very end of it out towards where the parking lot
25 kind of comes to a point, it's a triangular shaped type

EARL ASBELL-CROSS BY MR. RUNYON:

1 parking lot. That would be the furthest point from where
2 the truck was.

3 Q All right, sir. Let me go back to one of these
4 other. If you could step up here again, Mr. Asbell. I
5 believe you previously testified this is Richardson Avenue
6 out here on the other side of this line; is that correct?

7 A Yes, sir, it's from this point here to Richardson
8 Avenue is approximately 43 feet.

9 Q All right, sir. Which would correspond to what
10 in the courtroom?

11 A Just about to the 6th pew. Probably the 4th
12 or 5th pew from this back wall.

13 MR. BAILEY: All right, sir, thank you, you can have a
14 seat. Mr. Asbell, I believe that's all I have at this
15 time, please answer any questions Mr. Runyon may have for
16 you.

17 THE COURT: Cross-examination, please.

18 MR. RUNYON: Very briefly.

19 CROSS-EXAMINATION BY MR. RUNYON:

20 Q Mr. Asbell, as it relates to -- as it relates to
21 State's Exhibit No. 16, this is -- this is merely the
22 dimensions of the parking lot where Spell's is located,
23 isn't that correct?

24 A That's correct, sir.

25 Q And as it relates to the sketch in State's

EARL ASBELL-CROSS BY MR. RUNYON:

1 Exhibit 15, that's merely the crime scene as you found it
2 when you did your investigation?

3 A That is correct, sir.

4 Q All right. And nothing in 15 tells us where the
5 truck was when a shot was fired or where someone was
6 standing or what have you, isn't that correct?

7 A Only where it was parked when I arrived at the
8 scene.

9 Q And, considering the fact that EMS had been there
10 and people had been at the crime scene, the shell casings
11 were there, but you don't know where they could've come
12 from, what portion of the parking lot they necessarily
13 came from?

14 A That's correct.

15 Q Okay. And all this does is merely setup and try
16 to locate where the items were that you found when you got
17 there?

18 A That's correct.

19 MR. RUNYON: No further questions, Your Honor.

20 THE COURT: Redirect?

21 MR. BAILEY: No redirect, Your Honor.

22 THE COURT: You may step down, thank you, sir.

23 MR. BAILEY: Call David Collins.

24 DAVID COLLINS, being first duly
25 sworn, testified as follows;

DAVID COLLINS-DIRECT BY MR. BAILEY:

1 DIRECT EXAMINATION BY MR. BAILEY:

2 Q All right, sir, you're David Collins?

3 A Yes, I am.

4 Q Where are you employed, Mr. Collins?

5 A I'm employed by the South Carolina Law
6 Enforcement Division, commonly known as SLED. I'm
7 employed there in Columbia at the forensic services
8 laboratory.

9 Q All right, sir. And what do you do at the
10 forensic laboratory?

11 A I'm employed as a firearms examiner.

12 Q All right, sir. And how long have you been a
13 firearms examiner?

14 A Approximately six and a half years.

15 Q And what training have you had in firearms and
16 tool mark examination?

17 MR. RUNYON: Your Honor, I -- I don't mean to
18 interrupt, but I'd stipulate as to Mr. Collins expertise
19 as a firearms examiner and that he has in fact testified
20 on numerous occasions in the courts in South Carolina.

21 THE COURT: By stipulation again, ladies and
22 gentlemen, Mr. Collins is qualified as an expert in the
23 fields of firearms examination.

24 BY MR. BAILEY:

25 Q Mr. Collins, how do you go about determining

DAVID COLLINS-DIRECT BY MR. BAILEY:

1 whether or not a particular -- more than one shell casing
2 has been fired by a particular weapon?

3 A When a firearm is manufactured various machining
4 processes that are employed cut away metal to form parts.
5 This machining process leaves microscopic imperfections on
6 those metal surfaces. These imperfections are random and
7 are unique to each firearm, in much the same way that a
8 fingerprint is unique to a person.

9 When a cartridge is fired in a firearm the pressures
10 that are involved cause the cartridge -- the cartridge
11 case rather, to be pressed against these metal surfaces,
12 often impressing that cartridge case with these
13 imperfections.

14 The way that we can determine if a particular pair of
15 cartridge cases, for instance, were fired by one gun,
16 would be to examine both of them, side by side, under a
17 comparison microscope to see if they have the same random
18 unique identifying marks on them. These marks would again
19 have been placed on there by the actual firearm as it was
20 firing the cartridge. And if we can find where both of
21 these cartridge cases display the same markings we can
22 conclude that both of them were fired by the same gun and
23 not two separate guns.

24 Q All right, sir. And I'm going to ask you about
25 specific -- two specific cartridge casings. Before I ask

DAVID COLLINS-DIRECT BY MR. BAILEY:

1 you that, tell the jury, if you would, how a semiautomatic
2 pistol works as far as the ejection of the shell casing?

3 A The basic functioning of a semiautomatic pistol
4 would usually involve, first off, loading the firearm,
5 this would be done from a magazine, which is typically,
6 but not always, inserted into the butt or the handle of
7 the firearm. The slide of the firearm, which is the
8 portion on top, would be pulled to the rear and then
9 released. It is under spring tension and as it moves
10 forward it will take the top cartridge from the magazine
11 and load it into the chamber. The gun could then be fired
12 by pulling the trigger if the safety is off.

13 When the trigger is pulled and the gun fires the
14 slide, then, under the force of recoil or from the burning
15 gases in the firearm, depending on what type of
16 semiautomatic pistol it is, the slide will move to the
17 rear and extract the fired cartridge case from the chamber
18 and eject it from the firearm.

19 Then, again, being under spring pressure will move
20 back forward on its own and load the next cartridge and be
21 ready to be fired again with a second pull of the trigger.

22 Q I'm going to hand you State's Exhibit 13, which
23 Mr. Asbell identified as being two shell casings that he
24 recovered in the parking lot of Spell's store, and ask if
25 you had occasion to examine those previously?

DAVID COLLINS-DIRECT BY MR. BAILEY:

1 A I examined these cartridge cases and they each
2 bear markings I placed on them in the laboratory so that I
3 can identify them later in court.

4 Q All right, sir. Would you state whether or not
5 those are the same caliber?

6 A Yes, both of those are .380 auto caliber
7 cartridge cases manufactured by the federal ammunition
8 company.

9 Q All right, sir. And did you test those under the
10 microscope, that you explained previously, to determine
11 whether or not they were fired from the same gun?

12 A Yes, I did.

13 Q And what were the results of your test?

14 A As a result of my examination of these
15 microscopically, I was able to determine that both of them
16 had indeed been fired by one gun.

17 Q All right, sir. Calling your attention to
18 State's 14-A and 14-B, which have been testified to be
19 metal fragments recovered by Mr. Asbell in the same area,
20 same general area?

21 A Yes, I have also examined these items. They also
22 bear my mark.

23 Q Could you describe to the jury what those are?

24 A State's Exhibit 14-A is two very small pieces of
25 lead. This material is consistent with the type of

DAVID COLLINS-DIRECT BY MR. BAILEY:

1 material that I would expect to be found in a bullet or
2 bullet coil material. However, due to the small size and
3 damage that has been sustained by this individual item, I
4 cannot state for certain what its origin is.

5 When I received this in the laboratory it was one
6 piece. During the course of my examination, due to the
7 small size and the fragile nature of this evidence, it did
8 break into two pieces.

9 This piece of evidence is not suitable, on its own,
10 for identification with any specific firearm, it bears no
11 markings that I would need to identify it to a particular
12 gun.

13 State's Exhibit 14-B contains a piece of copper bullet
14 jacket material. This is also a part of a bullet, this I
15 could determine for sure. I cannot, due to its damaged
16 condition, tell exactly what caliber of bullet this came
17 from, it's been flattened out and badly distorted.
18 However, there are markings on this particular bullet
19 jacket fragment that are suitable for identification to a
20 specific firearm, if a specific firearm is submitted to a
21 laboratory.

22 Q All right, sir. Calling your attention to
23 State's 10 which is on the monitor up there. It's been
24 previously identified as being a photograph of the left
25 rear wheel of Mr. B [REDACTED]'s truck. And, if you can zoom

DAVID COLLINS-CROSS BY MR. RUNYON:

1 that in on the piece of metal there that appears to have
2 been struck by an object. Would you state whether or not
3 that appears to have been consistent with a -- a bullet
4 striking that rim?

5 A I have seen tire rims before that have been
6 struck by projectiles or bullets and that is the type of
7 mark it would leave.

8 MR. BAILEY: Thank you. Please answer any questions
9 the defense may have for you.

10 THE COURT: Cross-examination, please.

11 CROSS-EXAMINATION BY MR. RUNYON:

12 Q Basically, Mr. Collins, the picture you just
13 identified is also consistent with a lot of other types of
14 projectiles hitting that rim, isn't it, sir?

15 A From the resolution of this picture that I see
16 here, I really cannot state for sure what would've caused
17 that.

18 MR. RUNYON: No further questions.

19 THE COURT: Redirect?

20 MR. BAILEY: No redirect, Your Honor, may he be
21 excused?

22 THE COURT: You may step down. Any objection to
23 excusing Mr. Collins?

24 MR. RUNYON: No objection to him being excused.

25 THE COURT: Without objection you are excused, thank

CAPTAIN LESTER PATRICK-DIRECT BY MR. BAILEY:

1 you, sir.

2 MR. BAILEY: State calls Captain Lester Patrick.

3 LESTER PATRICK, being first duly
4 sworn, testified as follows;

5 DIRECT EXAMINATION BY MR. BAILEY:

6 Q Captain Patrick, where are you from?

7 A Tuskegee, Alabama.

8 Q All right, sir. And what type business or
9 employment are you in?

10 A I'm a member of Tuskegee Police Department, chief
11 of the criminal investigation division.

12 Q All right, sir. And how long have you been in
13 law enforcement in Alabama?

14 A I've been in law enforcement in Alabama for 15
15 years.

16 Q And were you employed as a police officer in
17 Alabama on December the 2nd, 1992?

18 A Yes, sir.

19 Q All right. And, what agency were you working for
20 at that time?

21 A Tuskegee Police Department.

22 Q And what was your rank at that time?

23 A At that time I was a lieutenant.

24 Q All right, sir. And, would you state whether or
25 not you had occasion to go to the campus of Tuskegee

CAPTAIN LESTER PATRICK-DIRECT BY MR. BAILEY:

1 University on December the 2nd, 1992?

2 A Yes, sir, I did.

3 Q All right, sir. And what was the reason for you
4 going there?

5 A We had received -- I had received information
6 from one of my investigators working under my command,
7 Detective Roger Douglas, that we had received information
8 from the Dorchester County Sheriff's Department in
9 reference to a fugitive wanted here in South Carolina
10 possibly being on the campus of Tuskegee University.

11 Q All right, sir. And who was that individual
12 named in the warrant?

13 A Timothy Rogers.

14 Q All right, sir. And where did you go
15 specifically to look for Mr. Rogers?

16 A We went to the Mary Students Apartments right
17 outside the University's gates.

18 Q Okay. And, was there an apartment there occupied
19 by a person named Elgin Green?

20 A Yes, sir, there was.

21 Q And did you go to that apartment?

22 A Yes, sir, we did.

23 Q Okay. And what occurred when you got there?

24 A We went to the apartment and we rang the bell
25 several times, we got no reply, we knocked several times

CAPTAIN LESTER PATRICK-DIRECT BY MR. BAILEY:

1 to which we still got no reply.

2 We then went to the -- the chief of security at that
3 particular time, Chief Neil McGlaughlin, contacted the
4 Vice President of business affairs and obtained a master
5 key to the apartment.

6 We then entered the apartment and commenced to search
7 the apartment.

8 Q And, did you find anything in the apartment?

9 A Yes, sir.

10 Q Okay. Who or what did you find?

11 A We found a black individual, male, named Timothy
12 Rogers.

13 Q All right, sir, do you see him here in court?

14 MR. RUNYON: Stipulate, Your Honor. This is the
15 gentleman he found.

16 THE COURT: Do you accept the stipulation?

17 MR. BAILEY: Yes, sir. For the record, Mr. Rogers is
18 the person he saw.

19 THE COURT: That is stipulated by the parties. That
20 is, the parties agree that Mr. Rogers is the person that
21 Captain Patrick saw.

22 BY MR. BAILEY:

23 Q Captain Patrick, where did you see Mr. Rogers?

24 A We found Mr. Rogers underneath the sofa in the
25 living room area of the apartment.

CAPTAIN LESTER PATRICK-CROSS BY MR. RUNYON:

1 Q Okay. And, can you describe the sofa, how
2 somebody could've gotten underneath the sofa?

3 A To the best of my recollection the sofa sat up
4 pretty high off the -- off the floor. We had searched the
5 entire apartment, then we looked behind the sofa. And,
6 just out of instinct we got down and looked underneath the
7 sofa and he was seen underneath the sofa. Approximately
8 how many inches, it's hard to really say.

9 Q All right, sir. And did you then take him into
10 custody?

11 A Yes, sir.

12 Q And was he eventually turned over to South
13 Carolina authorities and brought back here to Dorchester
14 County?

15 A Yes, sir, he was.

16 MR. BAILEY: Captain Patrick, please answer any
17 questions defense might have for you.

18 THE COURT: Cross-examination?

19 CROSS-EXAMINATION BY MR. RUNYON:

20 Q Captain Patrick, did you discuss anything with
21 Mr. Rogers after you took him into custody?

22 A Yes, sir.

23 Q Okay. Did you ask him about the circumstances up
24 here in South Carolina?

25 A Yes, sir.

CAPTAIN LESTER PATRICK-CROSS BY MR. RUNYON:

1 Q And did he make a full statement to you?

2 A He made a full statement not to me. In my
3 presence.

4 Q All right. Was he -- when you asked him to come
5 out from under the couch did he come out from under the
6 couch?

7 A Yes, sir.

8 Q Okay. Was he totally cooperative with you?

9 A Yes.

10 Q All right. I mean, he didn't try to run away
11 from you or fight with you or anything like that, did he?

12 A No, sir.

13 Q Okay. And, how long was he in your personal
14 custody?

15 A I'm not certain, a matter of hours.

16 Q Just a matter of hours?

17 A Yes, sir.

18 Q And during that time did you have any
19 difficulties with him?

20 A None whatsoever.

21 Q Okay. And, was he mannerly towards you, I
22 mean---

23 A Yes, sir, he was.

24 MR. RUNYON: Excuse me one second.

25 (Counsel consulted cocounsel.)

CAPTAIN LESTER PATRICK-CROSS BY MR. RUNYON:

1 BY MR. RUNYON:

2 Q Captain Patrick, did he -- was he housed in the
3 Tuskegee Police Department's jail or was he housed in
4 another facility?

5 A He was housed in the county jail.

6 Q He was housed in the county jail. And you
7 don't -- you don't control the county jail?

8 A No, sir.

9 Q And you didn't have occasion to see Mr. Rogers at
10 the county jail, did you, sir?

11 A No, sir.

12 Q And, he was in your personal custody for just a
13 matter of a few hours?

14 A Yes, sir.

15 Q Now, of course, when you arrested Mr. Rogers you
16 forwarded him all of his -- his rights, you told him he
17 didn't have to talk to you and all that sort of stuff;
18 isn't that correct?

19 A Yes, sir.

20 Q And he still made a complete statement to your
21 department?

22 A Yes, sir.

23 Q Do you recall -- I realize it's been some time,
24 but do you recall what Mr. Rogers looked like about four
25 years ago?

JAMES CARVER-DIRECT BY MR. BAILEY:

1 A Vaguely.

2 Q Okay. Does he look substantially different? I
3 mean, his hair may be different but, I mean, he's about
4 the same size as he was then?

5 A Somewhat. The hair is distinctively different.

6 Q All right, sir. He had a different hairdo in
7 other words?

8 A He had dreadlocks.

9 MR. RUNYON: Yes, sir. No further questions.

10 THE COURT: Redirect?

11 MR. BAILEY: No redirect. May he be excused, Your
12 Honor?

13 MR. RUNYON: No objection.

14 THE COURT: You are excused, thank you, sir.

15 MR. BAILEY: State calls James Carver.

16 JAMES CARVER, being first duly
17 sworn, testified as follows;

18 DIRECT EXAMINATION BY MR. BAILEY:

19 Q You're James Carver?

20 A Yes, sir.

21 Q And do you go by Jimmy Carver?

22 A Yes, sir.

23 Q Okay. Mr. Carver, where do you live?

24 A I live at [REDACTED], Summerville.

25 Q How old are you?

JAMES CARVER-DIRECT BY MR. BAILEY:

1 A Thirty-seven.

2 Q Okay. And, at the present time where are you
3 staying?

4 A In Berkeley County Detention Center.

5 Q All right, sir. Since November 25th of 1992
6 you've had some problems with the law; is that correct?

7 A Yes, sir.

8 Q Would you tell the jury what specific problems
9 you've had with convictions?

10 A I've had one grand larceny charge and forgery
11 and---

12 Q Let's hold on 'til that train gets by,
13 Mr. Carver. Just a second.

14 (Pause.)

15 BY MR. BAILEY:

16 Q Mr. Carver, go ahead and continue and tell the
17 jury what problems you've had as far as convictions since
18 November of 1992?

19 A I've had a grand larceny charge, forgery charges,
20 two forgery charges, and a burglary third degree charge.

21 Q All right, sir. And this has all occurred since
22 November 1992; is that correct?

23 A Yes, sir.

24 Q Did you have any problems with the law prior to
25 that time?

JAMES CARVER-DIRECT BY MR. BAILEY:

- 1 A No, sir.
- 2 Q All right, sir. Now, do you know Mike B[REDACTED]?
- 3 A Yes, sir.
- 4 Q And his family?
- 5 A Yes, sir.
- 6 Q How long have you and Mike B[REDACTED] been friends?
- 7 A Going on probably around 16 years now.
- 8 Q Okay. And, I want to call your attention to
- 9 November 25th, 1992. And ask where you were working that
- 10 day?
- 11 A I was working for FDM Leasing.
- 12 Q Okay. And, is -- is that a logging company?
- 13 A Yes, sir.
- 14 Q Okay. Now, what were your plans for that
- 15 Thanksgiving weekend?
- 16 A Me and Mike and his daughter, Stephanie, was --
- 17 after I knocked off of work we was headed to Santee Marina
- 18 to spend the Thanksgiving weekend with his in-laws on the
- 19 houseboat.
- 20 Q And what were your plans once y'all got -- of
- 21 course, you never got there, but if you had gone to the
- 22 lake what were y'all going to do that weekend?
- 23 A We was going to do some fishing and I was -- had
- 24 planned on doing some squirrel hunting.
- 25 Q Okay. And, did, in fact, Mike B[REDACTED] and

JAMES CARVER-DIRECT BY MR. BAILEY:

- 1 Stephanie show up at your place of work that afternoon?
- 2 A Yes. Yes, sir.
- 3 Q Okay. And what did you do that afternoon?
- 4 A I was---
- 5 Q When you got off work?
- 6 A I was repairing the tires on my truck and
- 7 trailer.
- 8 Q While you were working on the truck what was Mike
- 9 B [REDACTED] doing and what were -- what was Stephanie doing?
- 10 A Mike was standing around watching and Stephanie
- 11 was riding the golf cart around.
- 12 Q All right, sir. Did you drink any alcohol that
- 13 afternoon?
- 14 A No, sir.
- 15 Q All right, sir. Do you recall whether or not
- 16 Mike B [REDACTED] was drinking a beer?
- 17 A Not as far as I seen.
- 18 Q And, had you ever gone squirrel hunting before
- 19 out in that area where the lake was?
- 20 A Yes, sir.
- 21 Q Okay. And when you go squirrel hunting what kind
- 22 of a gun do you use?
- 23 A I use a .410 shotgun.
- 24 Q And did you own a .410 shotgun at that time?
- 25 A Yes, sir.

JAMES CARVER-DIRECT BY MR. BAILEY:

1 Q Okay. And would you state whether or not y'all
2 put that shotgun in the truck?

3 A Yes, sir.

4 Q And was the gun loaded or unloaded?

5 A Unloaded.

6 Q Okay. And, did you check to see if it was
7 unloaded?

8 A Yes, sir.

9 Q And was it in some kind of a case?

10 A Yes, sir.

11 Q Or container?

12 A Yes, sir, it was in a gun case.

13 Q Who actually put the gun in the truck?

14 A Stephanie did.

15 Q Okay. And where did she put it?

16 A She put it back behind the seat.

17 Q Okay. And, going to the lake did you bring any
18 other weapon with you?

19 A I brought a 9mm pistol.

20 Q Okay. And where was that pistol placed?

21 A In the back of the pickup in a clothes basket.

22 Q Okay. And why did you take the pistol with you?

23 A Because usually I -- I walk up and deer hunt.

24 Try to get a shot at him.

25 Q Okay. And this being November, it was during

JAMES CARVER-DIRECT BY MR. BAILEY:

- 1 deer season; is that right?
- 2 A Yes, sir.
- 3 Q And did you have a license to hunt?
- 4 A Yes, sir.
- 5 Q All right. Now, about what time was it when you
- 6 and Mike and Stephanie left your place of employment to go
- 7 towards the lake?
- 8 A It was around 5:30 that evening.
- 9 Q Did y'all make any stops?
- 10 A Yes, sir, we stopped at Spell's Grocery.
- 11 Q Okay. And what was the reason for that?
- 12 A Stephanie was hungry and she wanted a -- a
- 13 sandwich from the store.
- 14 Q And what's your best recollection as far as the
- 15 time when you got to Spell's?
- 16 A Around 6. In between 6 and 6:30.
- 17 Q Okay. And was it light or dark?
- 18 A It was dark.
- 19 Q Okay. Is there any lighting outside of Spell's
- 20 or was there any lighting at that time?
- 21 A Yes, sir, there's a big sign up at -- up above
- 22 the door.
- 23 Q Okay. Is there lighting around the pay phone?
- 24 A Yes, sir.
- 25 Q Any other lighting outside?

JAMES CARVER-DIRECT BY MR. BAILEY:

1 A Not that I noticed.

2 Q Okay. Did you have any trouble seeing the
3 parking lot when you got there?

4 A No, sir.

5 Q All right, sir. Now, where did Mike park the
6 truck when he pulled up at Spell's store?

7 A He parked parallel to the front of the door, the
8 driver's side of the door was facing the entrance door to
9 the store.

10 Q Okay. And where was the front of the truck
11 pointed?

12 A Out towards Richardson Avenue and 78.

13 Q All right, sir. And there's a sketch up here, if
14 you could stand up, and this is State's 38. And tell the
15 jury about where the truck was?

16 A The truck---

17 Q Stand to the side, if you could, so you don't
18 block the alternates.

19 A The truck was facing -- was pointed this way
20 facing that way.

21 Q Pointed where that arrow is?

22 A Yes, sir.

23 Q All right, sir, you can have a seat there. Now,
24 when Mike parked the truck parallel in front of the store,
25 what did you do?

JAMES CARVER-DIRECT BY MR. BAILEY:

1 A I remained in the front seat on the passenger's
2 side.

3 Q Okay. What did Mike and Stephanie do?

4 A Mike got out, when we pulled up there Mike
5 recognized a friend of ours on the pay phone, named
6 Anthony Riley. And, Mike and Stephanie walked into the
7 store. And then---

8 Q Did you know Anthony Riley?

9 A Yes.

10 Q Did you recognize him?

11 A Yes, sir.

12 Q How long had you known him?

13 A I've known Anthony for about six years.

14 Q Did you meet him through Mike or what?

15 A Yes, sir.

16 Q Okay. So he was on the pay phone when y'all
17 pulled up?

18 A Yes, sir.

19 Q And again, what did Mike and Stephanie do?

20 A Mike -- they both went into the store.

21 Q You stayed in the truck?

22 A Yes, sir.

23 Q Okay. And about how long were they in the store?

24 A Mike was probably in there for about two minutes.
25 And Stephanie probably five to six minutes.

JAMES CARVER-DIRECT BY MR. BAILEY:

1 Q Okay. And, did you see Mike when he came out of
2 the store?

3 A Yes, sir.

4 Q Did you see Stephanie when she came out?

5 A Yes, sir.

6 Q What did Stephanie do, where did she go when she
7 came out of the store?

8 A She got -- climbed back up in the pickup and sat
9 on the seat with me.

10 Q Okay. And as far as specifically where she sat,
11 where did she sit when she got in?

12 A She sat about in the middle, between me and Mike.

13 Q Okay. And at that time had you ever gotten out
14 of the truck?

15 A No, sir.

16 Q Okay. When Mike came out of the store what, if
17 anything, did he do?

18 A Anthony had gotten off the pay phone at that time
19 and him and Mike walked down to the corner of Spell's
20 Grocery next to Pigeon Bay Road.

21 Q Okay. Go back up to that chart again, State's
22 Exhibit 38.

23 A They walked down this way---

24 THE COURT: You need to speak up, please, sir, while
25 you're over there.

JAMES CARVER-DIRECT BY MR. BAILEY:

1 BY THE WITNESS:

2 A They walked right here to the corner of the
3 building and the sidewalk and they were standing there
4 talking.

5 Q You're pointing to the blue X over there?

6 A Yes, sir.

7 Q All right, sir, just have a seat again. Now,
8 were you in a position to hear what was going on at the
9 corner of the store?

10 A No, sir.

11 Q Okay. What's the next thing that you recall
12 seeing or hearing?

13 A While me and Stephanie was sitting in the truck
14 I -- I had turned around to see what Mike was doing. And,
15 at that time a white male and a black male and a black
16 female had walked around the corner of the store. And,
17 they headed -- was headed towards the pay phone that was
18 in front of the store. The white male turned around and
19 walked back towards Mike and Anthony. The black male and
20 the black female continued walking to the pay phone. The
21 white male went to throwing his hands up and saying stuff
22 to Mike and Anthony.

23 Q Could you hear what he said or just saw him?

24 A I just -- I just seen him, his actions.

25 Q Okay. Did you make any observations of these

JAMES CARVER-DIRECT BY MR. BAILEY:

1 three people?

2 A Yeah, they were -- the white male and the black
3 male had -- was staggering like they'd been drinking.

4 Q Okay. What's the next thing that you recall
5 seeing?

6 A The white male had -- after he was throwing his
7 hands up and making suggestions, he -- he backed up and
8 flipped a cigarette at Anthony Riley's foot.

9 Q What happened after that?

10 A He acted like he was going into a karate stance.

11 Q Who did?

12 A The white male.

13 Q Okay.

14 A And, I seen Mike, Mike said something to him and
15 he -- he started walking towards the truck and Anthony
16 turned around---

17 Q Who started walking towards the truck?

18 A Mike B [REDACTED].

19 Q All right.

20 A And Anthony had spoke to him and -- and, I reckon
21 he said, I don't know if he said, I'm going or---

22 Q Well, if you don't know what he said just tell
23 the jury what you saw.

24 A Okay, I don't know what he said, but Anthony
25 turned around and headed back down towards Pigeon Bay

JAMES CARVER-DIRECT BY MR. BAILEY:

1 Road.

2 Q On foot?

3 A On foot, yes, sir.

4 Q And when Anthony left what did Mike do?

5 A Mike started walking towards the truck. And, the
6 white male was in between Mike and the pickup trying to
7 get a fight started more or less.

8 Q All right. What did you observe Mike and the
9 white male doing, if anything?

10 A When Mike and the white male -- Mike got up to
11 the truck and was getting ready to get in. And he set in
12 the seat and he went to close the passenger -- the
13 driver's door. And, the white male kept jerking the door
14 open and wouldn't let Mike close it. And Mike told him,
15 look, we don't want no problems, we just want to leave.
16 And the white male kept jerking the -- the driver's door
17 open, wouldn't let him close it.

18 Q Okay. And what, if anything, was the black male
19 doing?

20 A He was on the pay phone.

21 Q Okay. Do you recognize the black male that was
22 on the pay phone here in court?

23 A Yes, sir.

24 Q Could you point him out?

25 A (Witness complied.)

JAMES CARVER-DIRECT BY MR. BAILEY:

1 Q For the record, you're indicating the defendant
2 in the blue blazer; is that correct?

3 A Yes, sir. Right.

4 Q All right. Mr. Carver, what's the next thing
5 that you recall happening?

6 A After the white male kept repeating -- pulling
7 the door open, the black male -- I heard the black male
8 say that -- to the person on the other end of the line,
9 hold on for a minute, let me get this fellow. And he --
10 he laid -- let the phone hang down and he walked over to
11 the truck.

12 Q Okay. Now when you say he, you're referring to
13 Timothy Rogers; is that correct?

14 A Timothy Rogers, yes, sir.

15 Q Okay. And, when he approached the truck were you
16 still seated in the truck?

17 A Yes, sir.

18 Q Was Stephanie still in the truck?

19 A Yes, sir.

20 Q What happened when Timothy Rogers approached the
21 truck?

22 A He walked up to the driver's door and reached in
23 his pocket and pulled out a pistol and stuck it to Mike
24 B[REDACTED]'s forehead and said, I'll kill you. And then he
25 backed away and spit in Mike's face. And Mike told him,

JAMES CARVER-DIRECT BY MR. BAILEY:

1 look, we don't want no problems, we just want to leave.
2 And, at that time Mr. Rogers backed up and dropped the
3 pistol down towards the back tire on the truck, on the
4 driver's side, and fired one shot.

5 Q What, if anything, was Stephanie doing when
6 this -- when this occurred, when her father had his face
7 spit in and the gun shot?

8 A She was in the middle of the seat screaming
9 between me and her father, screaming and hollering and
10 crying [sic].

11 Q At what point did Stephanie start crying?

12 A When Mr. Rogers walked up to the truck and pulled
13 the pistol and stuck it to her father's forehead.

14 Q Okay. Now, Mr. Carver, up until that point in
15 time, had either you, or to your knowledge, Anthony Riley
16 or Mike B [REDACTED] done or said anything to antagonize any of
17 these three people?

18 A No, sir.

19 Q Assault Victim 7, Daxton Patterson or the defendant,
20 Rogers?

21 A No, sir.

22 Q What occurred after that first shot?

23 A Mike finally got the door closed and we went to
24 pull off from where they were standing at. And we pulled
25 back out towards Richardson Avenue and was going to make a

1 right hand turn to come back into Summerville. And I
2 happened to -- I glanced out the back window of the truck
3 and I seen Mr. Rogers raise the pistol and fire one shot
4 at the truck.

5 Q Okay. Was the light good enough to see that?

6 A Yes, sir.

7 Q All right. Mr. Carver, approximately how far --
8 where was he standing, Mr. Rogers standing, in relation to
9 the back of the truck?

10 A From here to that -- the swinging doors right
11 there.

12 Q Okay. Well was he to the side or right behind?

13 A Directly behind it.

14 Q Okay. And, did you observe his hand and the gun
15 when it went off?

16 A Yes, sir.

17 Q And where was that gun pointed?

18 A It was towards the back of the truck.

19 Q And after -- let me back up a second. Do you
20 recall at any point ever getting outside of the truck?

21 A Yes, sir, I got out the truck when I seen the --
22 what I thought was going to be a confrontation between the
23 white male and Mike. I walked down the passenger side of
24 the truck just in case something did happen so I could get
25 in between them to stop it.

- 1 Q Okay. Was this before Rogers got off the phone?
- 2 A Yes, sir.
- 3 Q And came over with the gun?
- 4 A Yes, sir.
- 5 Q Okay. When you got out of the truck did you say
- 6 or do anything--
- 7 A No, sir.
- 8 Q --of a progressive nature?
- 9 A No, sir.
- 10 Q Which side of the truck were you on as compared
- 11 to which side they were on?
- 12 A I was on the right hand side, on the passenger's
- 13 side.
- 14 Q Did you say anything at all when you got out?
- 15 A No, sir.
- 16 Q All right. Going back to where you looked behind
- 17 the truck, saw the gun flash, you saw the gun in
- 18 Mr. Rogers' hand pointed at the back of the truck, what's
- 19 the next thing you recall?
- 20 A I remember seeing the flash from the barrel and
- 21 the bullet hitting the back window. And then I had --
- 22 I -- Stephanie had slumped over onto her father. And,
- 23 that's when I realized she had been shot.
- 24 Q After you realized she'd been shot what did Mike
- 25 do?

JAMES CARVER-DIRECT BY MR. BAILEY:

1 A Well I told Mike that Stephanie had been hit.

2 And he stopped the pickup and backed up.

3 Q Okay. And when he pulled back into the parking
4 lot what did you do?

5 A I got out the pickup and I told -- I pulled
6 Stephanie off of her father and -- and Mike got out and
7 shouted something like, you had shot my daughter, to
8 the -- to Mr. Rogers and the -- the white male. And when
9 he had said that they went to laughing and took off
10 running.

11 Q Okay. When Mike got out of the truck do you
12 recall whether or not he had any blood on him?

13 A Yes, sir, he had it on his right arm.

14 Q Okay. Now, what, if anything, did you do as far
15 as Stephanie, with her care?

16 A I -- I took my shirt off and wrapped it around
17 her head.

18 Q All right, sir. Was she conscious at that point
19 in time?

20 A Not -- no, sir.

21 Q What was her condition as you observed her?

22 A Well she was -- her foot was kicking the -- the
23 dashboard of the truck.

24 Q Did she -- did she make any noise or say
25 anything?

1 A There was some gurgling sounds.

2 Q Do you recall giving a statement to the deputies
3 after they came out to investigate?

4 A Yes, sir.

5 Q All right, sir. What was your emotional
6 condition at that time?

7 A I was pretty well shook up and frightened.

8 Q All right, sir. And, in that statement did you
9 say that the white male, not Mr. Rogers, was the one that
10 spit in Mike B [REDACTED]'s face?

11 A Yes, yes, sir.

12 Q Was that correct or incorrect?

13 A That was incorrect.

14 Q Who spit in Mike's face?

15 A The black male, Timothy Rogers.

16 MR. BAILEY: Mr. Carver, please answer any questions
17 the defense may have for you.

18 THE COURT: Cross-examination, please.

19 CROSS-EXAMINATION BY MR. RUNYON:

20 Q Mr. Carver, in that statement -- let me show you
21 something here and just ask you to take a look at this.
22 Take a minute to familiarize yourself with it. And then
23 tell me whether or not you recognize that.

24 A Yes, sir.

25 Q Is that the statement you made

1 November 25th, 1992?

2 A Yes, sir.

3 Q All right. And in that statement you say that
4 the white male spit in Mike's face?

5 A Yes, sir.

6 Q And in that statement you do not say anything
7 about Mr. Rogers saying, I'm going to kill you?

8 A No, sir, I don't.

9 Q You don't say anything about that, do you?

10 A No, sir.

11 Q And you don't say that Mr. Rogers stood there,
12 when you looked, and shot at the truck, do you, sir?

13 A It's been a while, I can't recall.

14 Q Well, you've got your statement there.

15 A (Witness reviewed statement.) No, sir.

16 Q In fact, what you did say was that the black male
17 ran after the truck to shoot at it. Didn't you?

18 A Yes, sir.

19 Q Now which was it, did he stand there or did he
20 run after the truck?

21 A He was standing back.

22 Q Okay. So he didn't run after the truck to shoot
23 at the truck, did he?

24 A No, sir.

25 Q All right. Now, you got out of the truck so you

1 could get near your laundry basket; didn't you, sir?

2 A No, sir. I had no intentions of getting near
3 that laundry basket.

4 Q All right. Well, let me ask you this, go back --
5 you and -- Mr. B [REDACTED] had to wait on you because you
6 had -- you drove a log truck at that time; didn't you?

7 A Yes, sir.

8 Q And, in case folks aren't familiar with that,
9 when you're driving log trucks you -- you run in and over
10 some pretty rough terrain; don't you?

11 A Yes, sir.

12 Q And, from time to time you mess up tires; right?

13 A Yes, sir.

14 Q And that's why they put so many on there; don't
15 they?

16 A Yes, sir.

17 Q All right. And -- and, you had a flat tire;
18 didn't you?

19 A Yes, sir.

20 Q All right. And so, you had to -- you weren't
21 going to work again until what, Monday?

22 A Yes, sir.

23 Q All right. But, would you have been driving that
24 particular truck or -- or some other truck on Monday?

25 A That particular truck.

JAMES CARVER-CROSS BY MR. RUNYON:

- 1 Q Okay. So basically what you wanted to do was go
2 ahead and fix the tires so you could get started early
3 Monday morning when you---
- 4 A Yes, sir.
- 5 Q When you went back to logging?
- 6 A Yes, sir.
- 7 Q Did you get paid by the load or by the day?
- 8 A By the hour.
- 9 Q Okay, by the hour. And, so as a practical matter
10 you -- you wanted to tend to this repair work, which you
11 did?
- 12 A Yes, sir.
- 13 Q And Mr. Burditt was willing to wait for you?
- 14 A Yes, sir.
- 15 Q And Stephanie amused herself with -- his daughter
16 amused herself with riding around in a golf cart?
- 17 A Yes, sir.
- 18 Q And you didn't see Mr. B [REDACTED] have anything to
19 drink that -- that evening, did you?
- 20 A No, sir.
- 21 Q And you didn't have anything to drink?
- 22 A No, sir.
- 23 Q And when Mr. B [REDACTED] went into the store,
24 whatever he did in there, he didn't bring anything back to
25 the truck?

JAMES CARVER-CROSS BY MR. RUNYON:

- 1 A I didn't see him with nothing in his hand.
- 2 Q Okay. And he didn't bring anything back to the
- 3 truck?
- 4 A No, sir.
- 5 Q And -- and, the only person who brought anything
- 6 out of the store was -- was his daughter?
- 7 A Yes, sir.
- 8 Q And she brought some food back?
- 9 A Yes, sir.
- 10 Q And so -- let me ask you this, do you recall
- 11 whether or not anything was disposed of out of the truck
- 12 after the shooting?
- 13 A No, sir.
- 14 Q Okay. So nothing was thrown away, after the
- 15 shooting, to your recollection?
- 16 A No, sir.
- 17 Q All right. Now, Mr. Rogers, based on your
- 18 observation, appeared to be intoxicated?
- 19 A Yes, sir.
- 20 Q And, Daxton Patterson or this white male as you
- 21 call him, you didn't know his name at the time?
- 22 A No, sir.
- 23 Q He appeared to be intoxicated?
- 24 A Yes, sir.
- 25 Q And -- and he basically, from what you observed,

JAMES CARVER-CROSS BY MR. RUNYON:

1 he was ranting and raving at -- at Mr. B [REDACTED] and trying
2 to create a problem?

3 A Yes, sir.

4 Q And, you got out of the truck to stand to the
5 back of the truck to -- so you could get between them?

6 A No, sir, I stood on my side of the truck, in
7 between the -- the tire and door.

8 Q Okay. Well what were you -- what were you out
9 there to do?

10 A If they had -- if they'd started a fight I was
11 going to get between them and stop it.

12 Q Okay. And -- now, these shots that you -- you
13 say were fired, there was one shot fired prior to the --
14 the truck going in motion?

15 A Yes, sir.

16 Q And then was there -- did they -- there was
17 continued conversation or what have you, what happened
18 then?

19 A We pulled away.

20 Q Pulled away. And you got almost to the end of
21 the parking lot and then the second shot was fired?

22 A Yes, sir.

23 Q So there was some space in between these shots,
24 wasn't there?

25 A Yes, sir.

JAMES CARVER-CROSS BY MR. RUNYON:

1 Q It was like bang and then -- then y'all pulled
2 off and then later on there was a bang?

3 A Yes, sir.

4 Q All right. It didn't happen real fast, did it?

5 A No, sir.

6 Q And, when -- when you pulled back, of course, you
7 attended to Mr. B [REDACTED]'s daughter while Mr. B [REDACTED] went
8 to get help?

9 A Yes, sir.

10 Q And you made your statement to the police when --
11 when they came?

12 A Yes, sir.

13 Q And essentially that's all you know about what
14 happened that night, because you didn't get involved in
15 the -- in the dispute in any way, did you?

16 A No, sir.

17 Q All right. Now, you indicated that -- you
18 indicated that after the shots the truck pulled back in
19 and Mr. B [REDACTED] got out and said you shot my daughter?

20 A Yes, sir.

21 Q And, that the -- they just started laughing?

22 A Yes, sir.

23 Q Okay. Now, I want to draw your attention to your
24 statement of November 25th, 1992. Specifically the last
25 two sentences there. Now, Mr. Carver, there's nothing in

1 there about anybody laughing, is there?

2 A No, sir.

3 Q As a matter of fact, you say the shots were fired
4 and the people took off running, isn't that correct, as
5 soon as they said somebody was shot?

6 A Yes, sir.

7 Q Okay. So, did they stand there laughing and
8 taunting or did they just run off?

9 A They -- they was laughing and then they took off
10 running.

11 Q So they laughed and then they took off?

12 A Yes, sir.

13 Q That's what happened according to what you're
14 testifying to now?

15 A Yes, sir.

16 Q But that's not what you told the police on
17 November 25th, 1992?

18 A No, sir, that -- that statement was wrote
19 probably 30 minutes after that incident happened.

20 Q Well that's when you would've recalled exactly
21 what happened, isn't it?

22 A Not the way I was shook up and everything, I
23 didn't.

24 Q Okay. Well, when was it that you remembered the
25 laughing and the taunting and what have you?

- 1 A The next day.
- 2 Q The next day?
- 3 A Yes, sir.
- 4 Q And did you ever tell anybody about it before you
5 testified?
- 6 A No, sir. No, sir.
- 7 Q And -- now, Mr. Carver, you -- I realize you've
8 had your problems with the law. But, as a practical
9 matter, when you work, particularly logging at that point
10 in time, you worked real hard; didn't you?
- 11 A Yes, sir.
- 12 Q And, did you stop to eat lunch?
- 13 A Yes, sir.
- 14 Q Do you usually have a beer with your lunch?
- 15 A No, sir.
- 16 Q You didn't have any alcohol that night?
- 17 A No, sir.
- 18 Q And Mr. B [REDACTED] didn't have any alcohol that
19 night?
- 20 A Not that I had seen.
- 21 Q All right. And -- so other than the shock of the
22 situation and what have you, there was nothing to -- to
23 fog your memory other than the shock of the situation?
- 24 A No, sir.
- 25 Q And, when did you -- when did you remember that

1 Mr. Rogers said I'm going to kill you or I'll kill you?

2 A It was the next morning.

3 Q The next morning. You didn't call the police and
4 tell them that, did you?

5 A No, sir.

6 Q Okay. Now, when Mr. B [REDACTED] and his daughter got
7 out of the truck to go in the store, Mr. B [REDACTED] and his
8 daughter went in the store then Mr. B [REDACTED] came out and
9 went over and started talking with Mr. Riley?

10 A Yes, sir.

11 Q He never came back to the truck?

12 A No, sir.

13 Q All right. And the only time he came back to the
14 truck was when he was trying to get in the truck with this
15 problem with this white male?

16 A Yes, sir.

17 Q And -- let me ask you this, was your 9mm loaded?

18 A Yes, sir.

19 Q All right. In the basket it was loaded?

20 A Yes, sir.

21 Q You didn't have the clip in your pocket or
22 anything like that?

23 A No, sir.

24 Q Okay. And where in conjunction to the -- or
25 where in relationship I should say to the basket and the

1 9mm were you standing?

2 A I was standing probably four foot away from it.

3 Q Okay. You were within easy reach?

4 A Yeah, if I wanted to go to it.

5 Q Okay. You just didn't have any reason to want to
6 go for it at that point in time?

7 A I had -- I had -- I wasn't even thinking about
8 the gun at that time.

9 Q And, let me ask you this, you deer hunt with a
10 9mm pistol?

11 A I have killed deer with it.

12 Q Well, I know you probably have killed deer with
13 it, but you don't deer hunt with a 9mm?

14 A No, sir, I usually carry it when I go deer
15 hunting. Or squirrel hunting.

16 Q Okay. What do you usually squirrel hunt with?

17 A .410. Shotgun.

18 Q When did you realize it was the white male who
19 spit in Mr. B [REDACTED]'s face and -- excuse me, when did you
20 realize that the black male spit in Mr. B [REDACTED]'s face and
21 not the white male?

22 A It was the next day when I remembered it and some
23 of the spit had hit me in the face.

24 Q Okay. Did you talk to Mr. B [REDACTED] that -- that
25 day after the -- his daughter's death and what have you?

1 A I seen him but we never did speak about the
2 incident.

3 Q All right. And, did you then -- and did you --
4 did you ever call up the police and tell them--

5 A No, sir.

6 Q --that it wasn't the white male who spit, it was
7 the black male?

8 A No, sir.

9 Q And -- and you never told anybody about this
10 alleged threat?

11 A No, sir.

12 Q Now the white male was -- was getting pretty --
13 pretty belligerent, wasn't he?

14 A Yes, sir.

15 Q And, he was -- he was, for whatever reason, he
16 was real upset with Mr. B [REDACTED]?

17 A Yes, sir.

18 Q And he was trying to get Mr. B [REDACTED] to fight?

19 A Yes, sir.

20 Q And he was acting really obnoxious, wasn't he?

21 A Yes, sir.

22 Q And, this upset you; didn't it?

23 A Yes, sir, at that time it did.

24 Q And Mr. B [REDACTED] was upset, wasn't he?

25 A Yes, sir, but he was trying to keep from having a

- 1 fight go -- go on.
- 2 Q And he wasn't happy about that?
- 3 A Not really.
- 4 Q I mean, did you hear him say anything?
- 5 A No.
- 6 Q He never said a word?
- 7 A He just told him that he didn't want no trouble,
8 that we wanted to leave.
- 9 Q Now how long have you known Mr. B [REDACTED]?
- 10 A As of today around 16 years, 17 years.
- 11 Q All right. And, Mr. B [REDACTED] at the time of this
12 incident was thoroughly calm?
- 13 A To see -- yes, sir, to my knowledge he was.
- 14 Q Well, I mean, you knew him at that time about 12
15 years; hadn't you?
- 16 A Yes, sir.
- 17 Q And you'd seen him upset, hadn't you?
- 18 A Yes, sir.
- 19 Q And you'd seen him calm?
- 20 A Yes, sir.
- 21 Q And, had you ever seen him really get angry?
- 22 A Oh, yes, sir.
- 23 Q All right. But he wasn't angry that day?
- 24 A No, sir.
- 25 Q And he wasn't displaying any temper then?

JAMES CARVER-CROSS BY MR. RUNYON:

1 A No, sir.

2 Q Okay. Do you recall where the 12-pack of beer in
3 the truck was?

4 A I didn't see no 12-pack of beer in the truck.

5 Q Wasn't it in the front seat?

6 A I didn't see no beer in the front seat.

7 Q Okay, was this a king cab, did it have a very
8 small space behind the seat?

9 A No, sir.

10 Q Okay. So whatever you were carrying had to be
11 carried inside the truck so to speak?

12 A Either inside or in the bed.

13 Q All right. So you didn't see anything in the bed
14 in the way of beer?

15 A No, sir.

16 Q And you didn't see anything in the truck in the
17 way of beer?

18 A No, sir.

19 MR. RUNYON: Excuse me. One moment, Your Honor.

20 (Counsel consulted cocounsel.)

21 BY MR. RUNYON:

22 Q So there's no question in your mind that you
23 didn't see any beer?

24 A No, sir.

25 Q Anywhere in that truck?

JAMES CARVER-CROSS BY MR. RUNYON:

1 A No, sir.

2 MR. RUNYON: No further questions, Your Honor.

3 THE COURT: Redirect?

4 MR. BAILEY: No redirect, Your Honor.

5 THE COURT: You may step down. Thank you, sir.

6 Okay, ladies and gentlemen of the jury panel, we'll
7 take an afternoon break at this time. If you would,
8 please, step into the jury room and don't talk about the
9 case yet. We'll be at ease for about 15 minutes. Please
10 step into the jury room.

11 (WHEREUPON, the following takes place out of the
12 presence of the jury.)

13 THE COURT: Okay, when the jury came back in from
14 lunch they had given a note to the SLED agents, one of
15 which was about -- one question was about the notes, I
16 went ahead and addressed them in regard to that.

17 The other one says, will the trial run through the
18 weekend if necessary? Does either side object to me
19 telling them that right now we do not anticipate that the
20 trial will last that long?

21 MR. BAILEY: That's fine, Your Honor, I'll finish
22 today.

23 MR. RUNYON: I have no problem with the Court advising
24 the jury that this most probably will be done by the
25 weekend or before the weekend.

JAMES CARVER-CROSS BY MR. RUNYON:

1 THE COURT: Okay. All right. One other thing -- I'll
2 tell them that when they come back. There was a
3 stipulation by the parties as to the chain of custody.
4 I'm sure that went right over the jury's head. Would you
5 like for me to explain to them what you're talking about?
6 That is, the transportation of the shell casings and
7 whatever other evidence was covered by that, to and from
8 SLED.

9 MR. BAILEY: Yes, sir, if you would, just in case they
10 think there's some problem on their own.

11 THE COURT: That went by so quickly I don't know
12 whether they understood what you were talking about.

13 MR. RUNYON: Your Honor, I have no objection to you
14 educating the jury on it.

15 THE COURT: For lack of education they might wonder
16 about what in the world that was about. So, I think we
17 ought to explain that to them, if there isn't any
18 objection. No objection from the state or the defendant.
19 We'll do that when we come back, thank you. We'll be at
20 ease 15 minutes.

21 (Brief recess was taken.)

22 MR. BAILEY: Your Honor, while the jury's out, this is
23 probably as good a time as any to go ahead -- for me to
24 put Mr. Rogers disciplinary -- excuse me, his conviction
25 record in.

JAMES CARVER-CROSS BY MR. RUNYON:

1 From the previous trial we've stipulated to let a
2 summary of the record in. And I think it's allowed now
3 under the court rules anyway. In order to avoid having
4 all the extraneous stuff come up. And, the jury may need
5 to be told about that also. We stipulate that is an
6 accurate copy of the record.

7 MR. RUNYON: Yes, Your Honor, that is correct.
8 Stipulation as to the -- the record that's previously been
9 admitted in the prior trial.

10 THE COURT: All right. So we need to tell them about
11 the record that is stipulated to by the parties. And then
12 about the stipulation as to the chain of evidence. And
13 that we'll -- we should be through before the weekend.

14 MR. RUNYON: Yes, sir.

15 MR. BAILEY: Yes, sir.

16 THE COURT: All right is that -- is the record already
17 admitted into evidence?

18 MR. BAILEY: No, sir, it's been -- been marked as
19 State's 22.

20 THE COURT: Do you want to move it in when the jury
21 comes back in, is that what you want to do?

22 MR. BAILEY: Yes.

23 THE COURT: Any objection to handling it in that
24 fashion?

25 MR. LEIENDECKER: No objection.

JAMES CARVER-CROSS BY MR. RUNYON:

1 MR. RUNYON: No objection.

2 THE COURT: I'll let the solicitor move that into
3 evidence and say that -- after he does that allow you to
4 say whether you agree or not. And then say that the
5 parties stipulate that that is a true and accurate
6 compilation of his record.

7 Bring the jury in, please.

8 (WHEREUPON, the following takes place in the presence
9 of the jury.)

10 THE COURT: Ladies and gentlemen, to answer the second
11 question that you gave me after lunch. The question is,
12 will the trial run through the weekend if necessary? I
13 will tell you right now that we do not anticipate that the
14 trial will take that long to complete.

15 Also, when you were out here previously and you heard
16 testimony, you heard the parties stipulate as to the chain
17 of evidence. I wanted to explain to you what that meant.
18 The parties agreed that the actual transportation of those
19 items that were being talked about, I believe it was the
20 shell casings and whatever else they were talking about,
21 they agreed that the transportation of those items to
22 Columbia to SLED and back was properly done and correct
23 and that those are the same items that were sent up to
24 SLED and came back from up there, so that's the chain of
25 evidence they were talking about.

JAMES CARVER-CROSS BY MR. RUNYON:

1 All right, Solicitor, go ahead.

2 MR. BAILEY: Your Honor, prior to calling my next
3 witness we have an exhibit that we've also got a
4 stipulation on, this is a summary of the defendant's
5 criminal conviction record, and I'd like to have this
6 published to the jury, please.

7 THE COURT: Any objection?

8 MR. RUNYON: No objection, Your Honor. What number
9 would that be at this point?

10 MR. BAILEY: 22.

11 THE COURT: Okay. The parties agree and stipulate,
12 ladies and gentlemen, that the record that is on this
13 board here is a true and accurate record of the defendant.
14 All right, it is in evidence without objection.

15 MR. BAILEY: Your Honor, if I may publish that at this
16 time to the jury.

17 THE COURT: Yes, sir, you may.

18 MR. BAILEY: Ladies and gentlemen, by stipulation this
19 is the defendant, Timothy Rogers', criminal conviction
20 record.

21 Starting on November the 12th -- excuse me, November
22 the 22nd, 1985, conviction for trespassing after notice.
23 July 27, 1986, conviction for carrying a pistol.
24 April 22, 1987, conviction for possession of marijuana.
25 July 31, 1987, conviction for shoplifting.

PRISCILLA MACK-DIRECT BY MR. BAILEY:

1 March 26, 1988, conviction for resisting arrest.
2 December 20, 1988, conviction for grand larceny of a
3 vehicle. September 14, 1990, conviction for possession of
4 cocaine. August 1992, conviction for criminal sexual
5 conduct with a minor, second degree. And again,
6 September '92, conviction of criminal sexual conduct with
7 a minor second degree.

8 The state would next call Pris Mack.

9 PRISCILLA MACK, being first duly
10 sworn, testified as follows;

11 DIRECT EXAMINATION BY MR. BAILEY:

12 Q You're Pris Mack?

13 A Yes, sir.

14 Q Ms. Mack, where are you employed?

15 A South Carolina Department of Corrections.

16 Q Okay. And what is your job at the South Carolina
17 Department of Corrections?

18 A I'm associate warden at Broad River R&E.

19 Q Okay. And how long have you worked for the
20 Department of Corrections?

21 A A little over 18 years.

22 Q And how long have you been associate warden?

23 A Not quite two and a half years.

24 Q Okay. Would you describe your duties at this
25 time?

PRISCILLA MACK-DIRECT BY MR. BAILEY:

1 A I'm generally responsible for the operations and
2 day-to-day administration of the R&E Unit which houses
3 anywhere from about 350 to 400 inmates.

4 Q Okay. And, would you -- do you supervise certain
5 records?

6 A Yes, I do, as part of that I'm general --
7 responsibility for the records of those inmates [sic].

8 Q Okay. And these are the inmates personnel files,
9 personnel records?

10 A They call them warden's jackets.

11 Q Okay. But in layman's terms it would be
12 personnel records?

13 A Right.

14 Q Okay. Do they include disciplinary infractions?

15 A Yes, sir, they do.

16 Q Okay. And at my request and pursuant to my
17 subpoena did you bring the warden's jacket for
18 Timothy Rogers?

19 A Yes, sir, I did.

20 Q With you -- do you have the original with you?

21 A Yes, sir.

22 Q Okay. Do your records reveal when Timothy Rogers
23 first entered the Department of Corrections?

24 A Yes, sir, they do. Initially he came in
25 July 5th of '89.

PRISCILLA MACK-DIRECT BY MR. BAILEY:

1 Q All right. And how long was he incarcerated at
2 that time?

3 A He came in on a youthful offender sentence. It's
4 an indeterminate sentence.

5 Q For what offense?

6 A Grand larceny of an auto.

7 Q And how much time did he actually serve?

8 A Originally he came in in '89, in December of '89,
9 he was released on youthful offender parole. He came back
10 in on a parole revocation on December 11th, '91. He was
11 again paroled from the youthful offender division in
12 April of '92. And stayed out that time until
13 January of '93.

14 Q All right. So, on April 30, 1992, he was
15 released from the Department of corrections?

16 A Yes, sir.

17 Q All right. Now, with respect to disciplinary
18 infractions, would you tell the jury the procedure that's
19 used when a correctional officer charges an inmate with a
20 disciplinary infraction, as far as his opportunity for a
21 hearing and due process?

22 A Okay, sir. Any staff member who witnesses any
23 incident involving an inmate will write what we call an
24 incident report. They'll write what we call an incident
25 report. That is then turned into a lockup disciplinary

PRISCILLA MACK-DIRECT BY MR. BAILEY:

1 action, that someone else may very well type, but the
2 accusing officer will sign. It then has to be issued to
3 the inmate within a certain time frame. At that time the
4 inmate's given an opportunity to sign for his copy of it,
5 which shows the narrative, as far as what he's been
6 charged for.

7 And then within certain guidelines they'll schedule a
8 hearing that's like a preponderance of the evidence
9 hearing, it's a magisterial system that they use, where
10 the inmate is allowed to have his accuser present, if he
11 chooses, he's also allowed to elect to have an inmate
12 representative to represent his side of the case, if you
13 will, and present it before the hearing officer at that
14 hearing.

15 Q Okay. And are the disciplinary records that you
16 maintain that are under your control, are they made at or
17 near the time of the alleged infraction?

18 A For a disciplinary action you mean?

19 Q Yes, ma'am.

20 A Yes, sir, like I said, you have to do it within
21 certain time constraints.

22 Q And are they made based on reports from people
23 that have direct firsthand knowledge of those infractions?

24 A Yes, sir, the accuser is generally the -- the
25 most involved person that witnessed the incident.

PRISCILLA MACK-DIRECT BY MR. BAILEY:

1 Q Okay. And are those records maintained in the
2 normal course of regular conducted activities in the
3 Department of Corrections?

4 A Yes, sir.

5 Q Okay. And, you've already testified you have
6 Mr. Rogers' warden file. I want to call your attention to
7 February 11, 1993. Do you have a documentation of a
8 disciplinary infraction for Mr. Rogers on that date?

9 A Yes, sir, I do.

10 Q Let me hand you a piece of paper and ask if this
11 is a copy of the original from your file?

12 A Yes, sir, that's the same document.

13 MR. BAILEY: Bear with me one second, please.

14 (Defense counsel reviewed document.)

15 MR. RUNYON: No objection, Your Honor.

16 THE COURT: Without objection that's in evidence.

17 (SCDC rules violation report marked as State's 39 for
18 identification and admitted into evidence.)

19 BY MR. BAILEY:

20 Q I want to hand you what's now been marked as
21 State's Exhibit 39 and again ask if that is a true and
22 accurate copy of the original that you have in that file?

23 A Yes, sir, it is.

24 MR. BAILEY: Okay. Your Honor, may I publish this to
25 the jury at this time?

PRISCILLA MACK-DIRECT BY MR. BAILEY:

1 THE COURT: Any objection?

2 MR. RUNYON: No objection, Your Honor.

3 THE COURT: Without objection you may publish that
4 document.

5 MR. BAILEY: It references the date February 9, 1993,
6 approximately 10:15 a.m.. On the above date and
7 approximate time I, Officer Tommy Powell, was assigned to
8 Congaree Unit A Wing recreation yard. As I unlocked the
9 gate to let inmate Bernard Simmons, SCDC 191454, on the
10 recreational field and locked the gate back, Inmate
11 Simmons and Anthony Raoul began to throw punches at each
12 other, which landed in the head and chest of each inmate.
13 At that time Inmate Timothy Rogers, SCDC 161087-Y and Eric
14 Wright, ran up to Inmate Raoul and began to kick and punch
15 him. I ordered all inmates to stop fighting. They
16 refused by continuing to kick and punch Inmate Raoul. I
17 then called for assistance, Officer Anthony Brown assisted
18 me by instructing all inmates to stop fighting and back up
19 to the fence, which they did. As Officer Brown went
20 inside to get handcuffs Inmate Simmons, Rogers and Wright
21 ran toward Inmate Raoul and began to kick and punch Inmate
22 Raoul a second time. All inmates were separated and
23 escorted to their assigned cells. Inmate Rogers was told
24 he'd be charged with the above rules violation.

25 And then down at the bottom of the form it indicates

1 that the justice committee found Mr. Rogers guilty of
2 assault and battery and placed him in administrative
3 segregation for 90 days.

4 Ms. Mack, that's all I have. Please answer any
5 questions the defense may have for you.

6 THE COURT: Cross-examination, please.

7 CROSS-EXAMINATION BY MR. RUNYON:

8 Q Ms. Mack, how long have you worked for the
9 Department of Corrections?

10 A A little over 18 years.

11 Q And in the course of those 18 years what
12 positions have you held with the Department of
13 Corrections?

14 A Well I began as a secretary II. I was later
15 promoted to staff assistant. Then, I was administrative
16 assistant. I was also a unit manager. I was also a
17 deputy warden for administration and now the associate
18 warden.

19 Q Okay. Now, do you have any formal education in
20 corrections or in the administration of a corrections
21 program?

22 A Are you asking what my college degree's in?

23 Q Well, do you have a formal education -- you have
24 a college degree, of course?

25 A Yes, sir.

1 Q And what -- what's your college degree in?

2 A Business.

3 Q Okay. And, have you taken any other courses as a
4 result of -- that -- that helps you in your job as it
5 relates to the Department of Corrections?

6 A Oh, yes, sir, we're required to have a minimum of
7 40 hours mandatory training every year.

8 Q And so, for all of your 18 years you've been
9 taking those mandatory continuing education courses?

10 A I don't believe they were required for all
11 those 18 years, I don't remember.

12 Q It just seems -- it just seems like 18 years?

13 A Perhaps.

14 Q All right. Now, in your jobs that you've
15 occupied with the Department of Corrections, do you --
16 which -- which facilities have you been located at?

17 A I started at the Central Correctional
18 Institution. I then went to the administration building,
19 I then went to a Harbison Complex where they have a
20 women's prison. Also at Kirkland Correctional
21 Institution. And now at Broad River.

22 Q All right. Now, as a result of your 18 years of
23 experience with the prison system, would it be a fair
24 statement to say that the Department of Corrections is
25 a -- is a -- is -- it's a difficult job, isn't it?

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 A I'm sure just as any other job is, yeah, it has
2 its moments.

3 Q Well, let me say -- let me ask you this, the
4 Department of Corrections, of course, they have their own
5 particular problems, but they -- they try to run a proper
6 system; don't they?

7 A Yes, sir.

8 Q And, in the course of doing that you -- the staff
9 is well-intentioned, but to be in -- the Department of
10 Corrections is not a nice place to be, is it?

11 A As a staff member?

12 Q No, as an inmate.

13 A I don't know that I could answer that, sir.

14 Q Well, based on what your observations are.

15 A We try to hold the inmates accountable and
16 responsible for their actions.

17 Q Well I understand that, I'm not suggesting that
18 you don't. What I'm saying is -- is -- is -- what's the
19 typical cell like at the Department of Corrections?

20 A It's not very large. It's rather small, I think
21 it's 40-something square feet.

22 Q Okay. And how many inmates do you ordinarily
23 have in a -- in a cell in the Department of Corrections?

24 A Normally two.

25 Q All right. And, do the -- do the inmates receive

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 a good number of benefits, I mean, do they go on
2 excursions or anything of that sort?

3 A Sir, they generally stay within the confines of
4 the institution where I work.

5 Q Right. So, in other words, if Mr. Rogers were
6 sentenced to life without parole, he would stay within the
7 confines of an institution, under the direction of the
8 Department of Corrections, isn't that -- isn't that not
9 correct, ma'am?

10 A I would assume so.

11 Q Okay. And as it relates to this incident that --
12 that's referenced here, while no one suggests that that
13 should occur, those things do, in fact, occur in prisons,
14 do they not? Inmates getting into tussles with one
15 another?

16 A Occasionally they do.

17 Q And other than this infraction that you've called
18 to the attention -- that you brought down here, do you
19 have any other substantial infractions of Mr. Rogers
20 during his times in the Department of Corrections?

21 A No, sir.

22 Q Okay. And so do you, as a -- as a warden, do you
23 have an opinion as to whether or not -- do you render
24 opinions as to whether or not prisoners have adapted to
25 prison life?

1 A I don't know that that's appropriate for me to
2 respond to, sir.

3 Q Well, when you say it's not appropriate, can you
4 respond to that?

5 A I generally don't hold an opinion as to their
6 activities, I'm just -- they're charged in my care.

7 Q Okay. And other than this one particular
8 incident you have no other indications of Mr. Rogers not
9 following the rules?

10 A No, sir, I do not.

11 Q And, as a -- as a result of that matter that you
12 brought the record on, there were other inmates who were
13 charged in that matter for not following the rules; isn't
14 that correct?

15 A I would assume so, I don't have their records.

16 Q All right. And, since 1993 -- strike that. As a
17 practical matter this is the only record that you brought
18 since this '93 incident?

19 A I brought his entire warden's jacket.

20 Q Right. But insofar as that particular matter,
21 that disciplinary matter is the only disciplinary matter
22 that you -- you brought to us?

23 A Yes, sir. Yes, sir.

24 MR. RUNYON: Excuse me one second, Your Honor.

25 (Counsel consulted cocounsel.)

1 BY MR. RUNYON:

2 Q Ms. Mack, you weren't the adjudicating officer in
3 this matter, were you?

4 A No, sir.

5 Q And, you, of course, didn't investigate the
6 matter in any way for this -- for the justice committee?

7 A No, sir.

8 Q And, when it says here that -- what's
9 administrative segregation?

10 A In layman's terms?

11 Q Yes, ma'am. In my terms, terms I can
12 understand.

13 A Lockup.

14 Q All right. So if you -- if you -- and when the
15 rule is broken he was put into a lockup situation?

16 A Yes, sir.

17 Q And, what -- what -- what is a lockup situation,
18 what does that consist of?

19 A They're generally taken out of the cell that they
20 were in, put in the confines of a lockup unit, if you
21 will, where a lot of the programs and stuff that they may
22 have had accessibility to, they no longer have access
23 during the duration of their lockup sentence.

24 Q All right. Kind of like a solitary confinement?

25 A No, sir, I wouldn't call it that.

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 Q You wouldn't call it solitary confinement?

2 A Huh-uh.

3 Q Now, as a result of -- have you been asked to
4 review any of Mr. Rogers' records or render any opinions
5 on Mr. Rogers' record of any sort or just bring the
6 warden's jacket?

7 A I was told to bring the warden's jacket.

8 Q Okay. What activities would be -- would a person
9 be restricted from, what are the activities at
10 Broad River?

11 A Like programs that are available?

12 Q Well, let's say programs that Mr. Rogers would be
13 available for.

14 A In general population?

15 Q In general population.

16 A He'd be eligible to attend school. He'd be
17 eligible to participate in social work programs, work
18 activity, things like that.

19 Q Now those would all be on the institution
20 grounds, is that not correct?

21 A Yes, sir.

22 Q Okay. So when you say attend school he wouldn't
23 go to football games off the institution and all that sort
24 of stuff, would he?

25 A Not off the institution property.

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 Q Right. And that's when someone's at the yard,
2 isn't that the correct name?

3 A Yes, sir.

4 Q Okay. And, where you're at is Reception &
5 Evaluation?

6 A Where I'm now, yes, sir.

7 Q Okay. Now, prisoners have work activities in
8 prison?

9 A In general population.

10 Q Okay. And they're required to work?

11 A Yes, sir.

12 Q And, that means they hold jobs, they'll clean the
13 floors or they'll -- whatever jobs they -- they qualify
14 for and get assigned to?

15 A Yes, sir.

16 Q Now, Mr. Rogers is not -- has not been in the
17 general population since he arrived this last time, has
18 he?

19 A No, sir.

20 Q All right. He's been in close confinement
21 because of this conviction?

22 A Yes, sir.

23 Q And he's been held in close confinement since he
24 came to you this last time?

25 A Yes, sir.

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 Q And, this matter such as it was in '93 -- strike
2 that. As it relates to what -- what type of close
3 confinement has he been in, what -- what does that consist
4 of?

5 A He's in a higher security status than general
6 population inmates would be.

7 Q Okay. And, primarily because of this conviction?

8 A Yes, sir.

9 Q And his -- his then current -- then current
10 sentence status?

11 A Yes, sir.

12 Q And, what kind of activities has he been engaged
13 in in the last two years?

14 A I personally am not aware, but I can tell you
15 what he'd be eligible for.

16 Q What's he eligible for?

17 A Social work, counseling, that sort of thing.
18 They have a volunteer work program that's selected by the
19 staff on the housing unit, where he could clean up around
20 the cell area perhaps.

21 Q Okay. So, do you know if he works?

22 A No, sir.

23 Q Do you know if he's participating in any social
24 work programs?

25 A I know that generally, as a rule, the social

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 worker gets around to all of them eventually, even if they
2 don't seek it out.

3 Q And, you certainly have not brought any
4 information other than this one incident that Mr. Rogers
5 has not adapted to his confinement status, have you?

6 A I'm sorry.

7 Q You haven't brought any information other than
8 this one disciplinary action to reflect that Mr. Rogers
9 has not adapted to his time in jail, have you?

10 A My feeling is that it may be an opinion and I'm
11 not sure that's appropriate.

12 Q When you say it's not appropriate, what do you
13 mean?

14 A If -- if someone's serving a sentence, if it's
15 out on YOA parole and has that parole revoked---

16 Q No, I'm talking about since he's been
17 re-incarcerated.

18 A This time?

19 Q Since '93, yes, ma'am.

20 A No, sir.

21 Q In other words, he's adapted to prison life other
22 than this incident?

23 A As far as I'm aware, yes.

24 MR. RUNYON: No further questions.

25 THE COURT: Redirect?

1 MR. BAILEY: Your Honor, I do have some redirect,
2 however, I've got a brief matter of law prior to redirect
3 for the Court.

4 THE COURT: Ladies and gentlemen of the jury panel,
5 would you please step into the jury room, don't talk about
6 the case yet.

7 (WHEREUPON, the following takes place out of the
8 presence of the jury.)

9 MR. BAILEY: Your Honor, Mr. Rogers, of course, has
10 been on death row since his prior conviction. Which is an
11 entirely different life-style, a different structure, than
12 the general population. He is not in that more refined
13 situation right now because of his conviction for murder,
14 as Mr. Runyon has inferred or implied, he's there because
15 of the sentence he received. This jury doesn't know he's
16 under a death penalty. They know he's been convicted of
17 murder, it would be highly prejudicial to bring out the
18 fact that he's under a death sentence.

19 And, what I want to do is -- and I'm not sure how I
20 can do it now that Mr. Runyon's asked the questions he
21 has, is -- he's -- he's gone into the life-style on death
22 row without using the word death row. And what I want to
23 do is contrast his present circumstances with the
24 circumstances he would be under if he was in the general
25 population.

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 If you're talking about adaptability to prison, this
2 jury is going to have to know what he's going to be
3 adapting to. He's not going to be adapting to death row,
4 he's going to be adapting to general population.

5 I instructed this witness prior to her testimony not
6 to mention the word death row, that if it came up just
7 refer to it as the Edisto Unit.

8 But what I want to do is explore with her the
9 difference in the Edisto Unit where he is now, not tell
10 the jury that's death row, but that's where he is now,
11 with what his life-style would be like in general
12 population, where he would go with a life without parole
13 sentence. I just want the Court to know where I'm
14 heading.

15 MR. RUNYON: I've got no problem with that, Judge.
16 I've got no problem with questions about the general --
17 general population.

18 THE COURT: Why don't you ask it, Solicitor, I assume
19 the way to ask it without it being objectionable is to ask
20 the witness where he would be or what kind of population
21 he would be in if he was -- if he received a life
22 sentence. And won't that get you where you want to go?

23 MR. BAILEY: That will get me where I want to go.

24 THE COURT: Any objection to that Mr. Runyon or
25 Mr. Leiendecker?

PRISCILLA MACK-CROSS BY MR. RUNYON:

1 MR. RUNYON: No objection whatsoever, Your Honor.

2 MR. BAILEY: But I also, Your Honor, plan to kind of
3 flashback and refer to the Edisto Unit since Mr. Runyon
4 did ask her questions about the amenities available where
5 he is now.

6 MR. RUNYON: I have no problem with that.

7 MR. BAILEY: And with the lack of---

8 THE COURT: As long as you don't refer to it as death
9 row Mr. Runyon doesn't object.

10 MR. RUNYON: I have no objection.

11 MR. BAILEY: Edisto Unit.

12 THE COURT: Yes, sir. All right, I have a phone call
13 I need to take if it's still on the line, let me see if I
14 can do that while the jury's out, if not we'll start right
15 back, bear with me just a minute.

16 (Brief recess was taken.)

17 THE COURT: State ready?

18 MR. BAILEY: State's ready, Your Honor.

19 THE COURT: Defendant ready?

20 MR. RUNYON: Ready, Your Honor.

21 THE COURT: Okay, bring the jury in.

22 (WHEREUPON, the following takes place in the presence
23 of the jury.)

24 THE COURT: Okay, redirect, Solicitor.

25 MR. BAILEY: Thank you, Your Honor.

PRISCILLA MACK-REDIRECT BY MR. BAILEY:

1 REDIRECT EXAMINATION BY MR. BAILEY:

2 Q Ms. Mack, I -- I believe for the last couple of
3 years Mr. Rogers has been in what's called the Edisto
4 Unit. Is that correct?

5 A Yes, sir. Yes.

6 Q Okay. If he is convicted -- if -- he has been
7 convicted of murder, but if he's given a life without
8 parole sentence will he remain in the Edisto Unit or go to
9 general population?

10 A He'll go to general population.

11 Q And are you familiar with general population as
12 associate warden of that facility?

13 A Not directly in the duties that I have now, but I
14 have been unit manager of our housing unit in general
15 population.

16 Q Okay. How much time did you spend directly
17 involved in general population?

18 A It was about two and a half years.

19 Q Okay. And Mr. Runyon asked you whether or not
20 there are a good number of benefits available. Are there
21 benefits available to general population that are not
22 available in the Edisto Unit?

23 A Oh, yes, sir.

24 Q What benefits are there in general population
25 that Mr. Rogers would have access to?

1 A Well, some of the benefits vary, but the degree
2 of access to them also varies. In general population
3 Mr. Rogers would be able to go to the programs, if you
4 will.

5 Q Okay. Now, let me get specific, what programs
6 are available to him in general population?

7 A All right, an educational program, he could
8 attend school. He could have a general job assignment,
9 where you earn a -- a salary, if you will, it's pretty
10 small, but nonetheless a salary. He could go to social
11 work group sessions or individual sessions. Occasionally
12 they'll have volunteer programs that come in and put on a
13 program, a church program, if you will, at night.
14 Visitation would be a little different as well, family
15 visitation.

16 Q You mentioned job assignments, if an inmate in
17 general population decides that he does not want to work,
18 does he have to work?

19 A We try to get them to work, if -- if they don't
20 work right now in general population at Broad River
21 they're moved to a different housing unit where some of
22 their privileges are more restricted.

23 Q So they would get additional privileges if they
24 work, if they don't want to work they get lesser
25 privileges [sic]?

- 1 A Yes, sir.
- 2 Q Does that summarize it?
- 3 A Yes, sir.
- 4 Q What about recreational facilities in general --
- 5 general population, what's available there?
- 6 A They have a big rec yard where they have soccer
- 7 matches and handball courts. They also have small
- 8 individual rec yards attached to the housing units now.
- 9 And that's in all the institutions that have gone to the
- 10 control movement. So sometimes they're let on the small
- 11 rec yard and sometimes on the big rec yard outside of
- 12 working hours.
- 13 Q Okay. Now the soccer matches, do they have
- 14 soccer teams?
- 15 A Yes, sir.
- 16 Q Within the institution?
- 17 A Yes, sir.
- 18 Q Do they wear uniforms?
- 19 A Sort of. Not as you and I know in the community,
- 20 but they have a different shirt that they can wear.
- 21 Q Okay. How about basketball, are there basketball
- 22 courts there?
- 23 A Yes, sir.
- 24 Q Okay. Is there a basketball team?
- 25 A Not at the moment they don't, they have, but they

PRISCILLA MACK-REDIRECT BY MR. BAILEY:

1 don't right now.

2 Q Okay. Is there a library there they can go read
3 books?

4 A Yes, sir.

5 Q Okay. Are they allowed to have color televisions
6 in their cells?

7 A If they are what we call grandfathered in, if
8 they have them already. They can no longer receive them,
9 but if they had one already they could.

10 Q Do they have access to color televisions say in
11 the recreation rooms and all?

12 A Yeah, they have a day room in each housing unit
13 where they have a couple of televisions.

14 Q What else would be in the day room besides the
15 televisions?

16 A It's generally got a conference table, some
17 chairs, television. During off work hours inmates are
18 allowed to gather in there, if you will.

19 Q Do they have other distractions, like say pool
20 tables, Ping-Pong, that type thing?

21 A No, sir. No, sir.

22 Q What about radios, stereos, do they have access
23 to that?

24 A Again, if it's grandfathered, if they already had
25 it in their possession.

PRISCILLA MACK-REDIRECT BY MR. BAILEY:

1 Q Okay. Are there movies shown to them?

2 A I believe they show a movie of the week to the
3 winning housing unit.

4 Q Okay. And, as far as job assignments, you say
5 they are paid if they work?

6 A Yes, sir.

7 Q Okay. And, are there canteens there where they
8 can go buy soft drinks and candy and so forth?

9 A Yes, sir.

10 Q And how often would an inmate in general
11 population be entitled to receive visitors?

12 A They can have visitors on a rotating schedule on
13 the weekends, every other weekend, if you will.
14 Occasionally there'll be some additional visitation during
15 periods like Christmas. Thanksgiving may have some extra
16 visits.

17 Q And on particular holidays do they make any extra
18 effort to decorate the facilities and have turkey for the
19 meals and so forth?

20 A I'm sorry, what?

21 Q Do they feed them any different on Thanksgiving
22 and Christmas?

23 A As opposed to other days, yeah, it's a special
24 menu, they generally try to do turkey and the trimmings,
25 stuff like that.

1 Q And, as far as medical and dental facilities, is
2 that all available to them?

3 A Yes, sir.

4 Q And if an inmate has some psychological problem
5 or just adjustment problem, are there social workers,
6 psychiatrists and so forth available to them?

7 A Yes, sir.

8 Q And, the meals that are served, is there a
9 dietitian there to make sure they get proper nourishment?

10 A Yes, sir, there's a -- a departmental
11 nutritionist who supervises the menu for the entire
12 agency.

13 Q And is there a social worker assigned to each
14 dormitory?

15 A They did have that until recently, now I think
16 there's one covering two housing units.

17 Q Okay. And you said there were educational
18 programs there, are they allowed to pursue college
19 courses?

20 A I don't believe they're doing that at the
21 facility where I am right now, they have in the past, but
22 I don't think they're doing it right now.

23 Q Now, as far as the difference in general
24 population that you've described and lockup, what would be
25 the difference there? And I'm referring to the 90 day

1 lockup Mr. Rogers had in '93.

2 A Okay. Since the lockup was for a period of 90
3 days or less those programs, of course, he could not go to
4 them, but if they're in there for longer than 90 days then
5 some of the programs have to be brought to him, if you
6 will. In lockup if he felt he had the need for a social
7 worker or a psychiatrist or medical or dental he would
8 have to write a request to the staff member responsible
9 for that function and have them come respond to him.

10 Q Okay. Are there any other amenities available to
11 an inmate in the general population that you haven't
12 already testified about that you're aware of at this time?

13 A I think I pretty well covered it.

14 MR. BAILEY: Ms. Mack, I think that's all I've got and
15 I thank you very much.

16 THE COURT: Recross, please.

17 RE CROSS-EXAMINATION BY MR. RUNYON:

18 Q Ms. Mack, now that we've talked about general
19 population, you talked about the various programs and
20 various amenities, as the Solicitor has referred to them,
21 these programs are designed to help control the
22 population, they play that role in your -- in your prison;
23 don't they?

24 A Well, for job assignment we want them to be
25 productively employed, yes, sir.

1 Q All right. And -- and, you -- and when we talk
2 about pay what kind of pay are we talking about?

3 A It's pretty minimal, the minimum pay I think now
4 is 575 every two weeks, generally designed just to afford
5 them enough to buy hygiene items. It can go up to as high
6 as, I think, 17 and some bonus pay in the industries
7 program.

8 Q All right. So you do have industries program,
9 where -- prison industries is a program where the
10 Department of Corrections tries to make money to be
11 self-supporting, so to speak; isn't that correct?

12 A Some of them do that, not all of them.

13 Q Not all of them, but it's an effort.

14 A Uh-huh.

15 Q Now, as a practical matter, at the canteens, as
16 you said, you buy more than just soda and candy, you buy
17 hygiene items?

18 A Yes, sir.

19 Q Like soap?

20 A Yes, sir.

21 Q And toothpaste?

22 A Yes, sir.

23 Q All right. And, as a practical matter, you have
24 physicians available and nurses available if somebody gets
25 sick?

PRISCILLA MACK-RECROSS BY MR. RUNYON:

1 A True.

2 Q You don't want pestilence running through the
3 population, do you?

4 A No, sir.

5 Q All right. And, as it relates to educational
6 programs, that's likewise designed to -- to -- to divert
7 people, to give them something to educate them on and
8 control their behavior?

9 A Designed to keep them gainfully working at
10 something, some inmates are sentenced to a certain kind of
11 sentence that will require an education if they have not
12 completed it. Others go by choice or as preference for a
13 job assignment.

14 Q Okay. Now, as a practical matter, if -- if you
15 have a person who's -- who's given a -- for example, you
16 say movies go to the winning housing unit. That means the
17 housing unit that keeps their place spick-and-span or the
18 best housing unit?

19 A Right, it's a sanitation inspection.

20 Q Sanitation inspection, so to speak, pass the
21 sanitation inspection you get to see a movie?

22 A No, sir, if they're the best at it for that week
23 they get to see a movie.

24 Q Okay. So even if they -- even if they keep
25 things spick-and-span they don't get to see the movie

1 unless they're the very best?

2 A Yes, sir.

3 Q Okay. Insofar as this television situation,
4 Mr. Rogers doesn't have a TV, does he?

5 A I don't know, sir.

6 Q You don't know. But if he -- if he doesn't have
7 one he can't have one?

8 A Yes, sir, that's correct.

9 Q And if he doesn't have a radio he can't have a
10 radio?

11 A Not in his possession.

12 Q Right. And, other than the day room where they
13 might sit at a conference table and talk or maybe watch
14 some television when they're not either working or locked
15 up, those are basically the amenities; isn't that correct?

16 A I'm not sure I understand your question.

17 Q Well, they have an opportunity to see television
18 in the day room?

19 A Yeah. Yes, sir.

20 Q All right. And they have an opportunity to do
21 recreation out in the yard?

22 A Yes, sir.

23 Q All right. Now, this recreation out in the yard
24 is -- is more than just to entertain the prisoners; isn't
25 that correct?

1 A Well, we're required to provide them with a
2 certain amount of recreation every week.

3 Q All right. And that's for a lot of things,
4 physical health?

5 A Yes, sir.

6 Q And it's also -- it's also a privilege that can
7 be taken away from them; isn't that correct?

8 A Yes, sir.

9 Q So, if you -- if you do right you might get to go
10 out and shoot a few basketballs. But if you don't do
11 right you don't get to shoots the basketballs; right?

12 A Not as many.

13 Q Not as many. And, if you work at a particular
14 job and maybe you'd like to get a better job in the prison
15 and you can't, for example, read, then you go to a reading
16 program and then maybe you can get the better job; right?

17 A Or you can do both.

18 Q Or you can do both. And, as a practical matter,
19 the social workers are there to -- there's one for every
20 two housing units you say, in the general population?

21 A I believe so, sir.

22 Q And they're there to try to handle those problems
23 that the prisoners may have, coordinate them with -- with
24 a program -- they're an administrative type social worker;
25 isn't that correct?

1 A Well, they also conduct group sessions and
2 individual counseling.

3 Q All right. Now group sessions and individual
4 counseling, what are you talking about group sessions,
5 what are you talking about?

6 A They have a variety of different topics that they
7 generally offer to the inmate population. Some of them
8 can be anger management, some of them can be for sex
9 offender programs, things like that.

10 Q Okay. So like, for example, an anger management
11 program you have because you don't want a bunch of people
12 locked up together who are always angry; right?

13 A Yes, sir.

14 Q I mean, that tends to be problematical; doesn't
15 it?

16 A It could be, yes, sir.

17 Q People can get in fights, can't they?

18 A Uh-huh.

19 Q Now insofar as the food is concerned, now the
20 Department of Corrections feeds a nutritional balanced
21 diet, at least tries to, to all the inmates; right?

22 A Yes, sir.

23 Q And maybe twice a year they get a special diet on
24 Thanksgiving and Christmas?

25 A Yes, sir.

PRISCILLA MACK-RECROSS BY MR. RUNYON:

1 Q All right. If they're very -- if they're good
2 and if they follow all the rules they may get visitors
3 every two weeks if somebody comes to visit them?

4 A Yes, sir.

5 Q And, some folks from churches may come in and do
6 a program?

7 A Yes, sir.

8 Q And work with them with choirs or going to church
9 or what have you?

10 A Yes, sir.

11 Q And that's going to church in the institution?

12 A Yes, sir.

13 Q Now, let's understand something, and I don't
14 think anyone would suggest that the inmates in the South
15 Carolina Department of Corrections are abused in any way
16 by the staff. That's not in the program, isn't that
17 correct?

18 A No, sir.

19 Q And, the staff tries to do the best with what
20 they've got to work with?

21 A Yes, sir.

22 Q And, I mean, for example, are the -- are the
23 prison facilities, the rooms, what time are they
24 ordinarily locked up for the night?

25 A At night, 11 or 12, depending on what night of

1 the week.

2 Q All right. And do they have -- do they have
3 climate control in those units?

4 A Yes, sir.

5 Q And, does every inmate have a blanket?

6 A They have the opportunity to have one, they don't
7 have to have one if they don't want to.

8 Q They don't have to have a blanket if they don't
9 want one, but they have the opportunity. In other words,
10 you're not going to freeze somebody to death?

11 A No, sir.

12 Q I mean, that's not what you're there for; right?

13 A No, sir.

14 Q And, you're not going to starve somebody to
15 death?

16 A No, sir.

17 Q And -- but it's not necessarily the place that --
18 that you're going to book tours to, is it?

19 A No, sir.

20 Q All right. The Department of Corrections, is it
21 overcrowded?

22 A Yes, sir.

23 Q Are your neighbors in general population, do they
24 tend to be members of country clubs and social registered?

25 A The neighbors, you mean the people that live near

PRISCILLA MACK-RECROSS BY MR. RUNYON:

1 the prison?

2 Q No, the people who live next door -- in the next
3 cell to you?

4 A Sir, I don't normally research the backgrounds.

5 Q All right. The -- as a practical matter, one of
6 the primary things that you -- strike that. As a
7 practical matter you have a broad variety of people who
8 are in the general population; don't you?

9 A Yes, sir.

10 Q You have people who are accused of stealing?

11 A Yes, sir.

12 Q You have people who are accused of violent
13 crimes?

14 A Yes, sir.

15 Q Or convicted of violent crimes?

16 A Yes, sir.

17 Q You have people who've done all sorts of things
18 who are in the general population, sentenced to prison?

19 A Yes, sir.

20 Q Okay. And, all of the programs that you have are
21 designed to control the population and get them to
22 cooperate and adapt to prison life, isn't that correct?

23 A It's to help them while they're there.

24 Q It's to help them while they're there. If you're
25 going to be in there for the rest of your life that's the

- 1 program you've got -- you've got to stick with; right?
- 2 A I guess so.
- 3 Q If you don't you get locked up; right?
- 4 A Pardon me.
- 5 Q If you don't you get locked up. Segregated
- 6 education or excuse me, administrative segregation, at
- 7 least?
- 8 A For not participating in programs?
- 9 Q No. If you don't adapt.
- 10 A Yes, sir.
- 11 Q If you give the guards trouble?
- 12 A If you get found guilty of a rules infraction,
- 13 yes, sir.
- 14 Q Right. Now, let's talk about some of these jobs
- 15 that are available, are there any -- strike that. Let me
- 16 strike -- let me go down the list. Jobs that would be
- 17 available would be cleaning the prison?
- 18 A Yes, sir.
- 19 Q Hauling trash?
- 20 A Yes, sir.
- 21 Q Working in some of the -- if they can do it,
- 22 working in some of the more technical aspects of helping
- 23 to run the prison, that is, heating and air conditioning,
- 24 for example?
- 25 A Maintenance, yes.

PRISCILLA MACK-RECROSS BY MR. RUNYON:

- 1 Q Maintenance?
- 2 A Uh-huh.
- 3 Q And cutting grass?
- 4 A Yes, sir.
- 5 Q And trimming hedges?
- 6 A Don't have any hedges.
- 7 Q Don't have any hedges. Okay. And in the prison
- 8 industry side there are -- there may be some carpentry
- 9 jobs and things of that sort?
- 10 A And the license tags.
- 11 Q And the license tags. So as a practical matter
- 12 Mr. Rogers could aspire, if he was given life without
- 13 parole, to make our license tags, couldn't he?
- 14 A Potentially.
- 15 MR. RUNYON: Potentially. Right. No further
- 16 questions, Your Honor.
- 17 THE COURT: Thank you, Ms. Mack, you may step down.
- 18 Thank you, ma'am.
- 19 MR. BAILEY: Your Honor, can we approach briefly with
- 20 regard to timing?
- 21 THE COURT: Yes, sir.
- 22 MR. BAILEY: May she be excused, Your Honor?
- 23 THE COURT: Any objection?
- 24 MR. RUNYON: No objection.
- 25 THE COURT: You are excused, Ms. Mack, thank you.

1 (WHEREUPON, a bench conference was held off the
2 record, in the presence of the jury, but out of the
3 hearing of the jury.)

4 THE COURT: Okay, ladies and gentlemen of the jury
5 panel, after conferring with the attorneys we've decided
6 to stop here for the day. We'll start back at nine
7 o'clock in the morning. I'll turn you over to the SLED
8 agents for this -- for the evening and for supper and
9 they'll bring you back up here in the morning.

10 Between now and then don't talk to anybody about the
11 case. Don't let anybody talk to you about the case.
12 Don't talk among yourselves about the case yet. I'll tell
13 you when you can do that. Please be very mindful of that
14 instruction.

15 Again, if you have any questions send them through
16 Mr. Helwig, he'll deliver them to me in the morning. If
17 you have any emergencies that come up over this evening
18 the SLED agents will help you with those. You are excused
19 for the evening, have a good evening, thank you.

20 (WHEREUPON, the following takes place out of the
21 presence of the jury.)

22 THE COURT: Anything further from the state?

23 MR. BAILEY: Not from the state, Your Honor.

24 THE COURT: From the defendant?

25 MR. RUNYON: Nothing further from the defendant, Your

1 Honor.

2 THE COURT: Would you like to take up these requests
3 to charge now?

4 MR. RUNYON: Perfectly fine, Your Honor.

5 MR. BAILEY: Yes, sir.

6 THE COURT: Okay, the defense has requested four
7 charges, any objections to No. 1, Solicitor?

8 MR. BAILEY: No objection, Your Honor, to the first
9 sentence of No. 1. I would object to the second sentence
10 which says in short a sentence to life, he will never be
11 eligible for parole. What he's doing is predicting the
12 future and none of us know what the legislature may do. I
13 think the first sentence is fine. I think we can only
14 tell what the present law is.

15 MR. RUNYON: Well, I think we're telling what the
16 present law is, but I don't know that the solicitor's
17 going to be able to argue that, well, something may happen
18 in the future. I think under South Carolina versus
19 Simmons they've got---

20 THE COURT: I don't have any trouble with that charge,
21 Solicitor, that objection is noted for the record and
22 denied. Charge No. 2.

23 MR. BAILEY: Judge, I -- not knowing specifically what
24 they want to charge on -- on emotional disturbance, I
25 don't think there's any evidence of any emotional

1 disturbance, any psychological disturbance, I mean, there
2 is some evidence that there was alcohol impairment.

3 If I knew specifically what they wanted to charge,
4 because those -- those mitigating circumstances, some of
5 them cover more than one thing.

6 THE COURT: Well, he's talking about (b)(1) and (2).

7 MR. BAILEY: Excuse me a second, let me just pull
8 that.

9 THE COURT: The first says the defendant has no
10 significant history of prior criminal convictions
11 involving the use of violence against another person. And
12 the second is, the murder was committed while the
13 defendant was under the influence of mental or emotional
14 disturbance.

15 MR. BAILEY: Your Honor, the only reason we're here is
16 because the Supreme Court decided that the CSC with a
17 minor was a violent offense, so I don't see how they can
18 possibly charge that he has no -- no history of a violent
19 conviction.

20 MR. RUNYON: Your Honor, we're not here because the
21 Supreme Court decided that CSC was a violent offense,
22 we're here because the Supreme Court said that the jury
23 wasn't instructed that he would get life without parole.
24 That's why we're here.

25 THE COURT: Do you differ with the solicitor's

1 characterization that CSC second is a violent offense?

2 MR. RUNYON: Statutorily it's a violent offense,
3 there's no question about that definition, Your Honor. I
4 can't differ with that.

5 THE COURT: Well, I don't think number one -- (b)(1)
6 is an appropriate charge, because CSC second is clearly a
7 violent offense. That's violence against another person.
8 He has a significant prior record with two instances of
9 that on his record, he's not entitled to the charge.

10 Number (2) he would be entitled to that, if the murder
11 was committed while the defendant was under the influence
12 of mental or emotional disturbance. That covers
13 intoxication by alcohol. I think that is the appropriate
14 charge.

15 Any others?

16 MR. RUNYON: I beg your pardon, Your Honor.

17 THE COURT: Are there any others that you're
18 requesting?

19 MR. RUNYON: The last request, Your Honor, is---

20 THE COURT: No, I'm talking about under mitigating
21 circumstances.

22 MR. RUNYON: No other statutory mitigating
23 circumstances, Your Honor.

24 MR. BAILEY: Judge, I can't cite the case, but I can
25 find it if you want. I think there's supposed to be a

1 procedure where the court, even if they don't ask for a
2 particular mitigating circumstance, has to review it and
3 suggest the ones they think may be appropriate.

4 THE COURT: Well, given that case, and I agree with
5 you, I was just about to say I think No. (6) is an
6 appropriate charge.

7 MR. RUNYON: Well, yes, Your Honor. And let me -- let
8 me say this, Your Honor, just so the record's clarified.
9 I've -- I've made specific requests to charge, I'm not --
10 I'm not waiving anything that the Court's got to do. But
11 I brought these up, it's come to the Court's attention,
12 obviously, the Court's going to produce a more generalized
13 charge. I wanted to get to the meat of a couple of things
14 that we wanted to talk about.

15 THE COURT: Yes, sir. Okay, I think No. (6) is an
16 appropriate charge where the allegation is made or the
17 facts substantiate the use of alcohol and diminish -- that
18 one says, for your edification, the capacity of the
19 defendant to appreciate the criminality of his conduct or
20 to conform his conduct to the requirements of the law was
21 substantially impaired.

22 MR. RUNYON: That is correct, Your Honor.

23 THE COURT: I don't see any others that I see right
24 now that appear to be appropriate charges. Yes, sir.

25 MR. BAILEY: There are some cases that say if there's

1 any evidence of impairment that (2), (6) -- that (2), (7)
2 and (8) -- excuse me, (2), (6) and (7) may be appropriate,
3 so.

4 THE COURT: Okay. Well, out of an abundance of
5 caution then we'll charge (7). That is the age or
6 mentality of the defendant at the time of the crime.

7 MR. RUNYON: I have no objection to that, Your Honor.

8 THE COURT: All right. Okay, your charge -- your
9 request to charge -- that covers the mitigating
10 circumstances of intoxication that you're requesting in 3.

11 MR. RUNYON: Yes, Your Honor.

12 THE COURT: All right. And what do you say about
13 No. 4, Solicitor.

14 MR. BAILEY: Your Honor, I object to it, if you could
15 give me a second I've got cases on that.

16 THE COURT: Yes, I -- I think the case law does not
17 allow that kind of charge.

18 MR. RUNYON: Well, Your Honor, if I could just put
19 on -- put on the record a short, brief argument.

20 THE COURT: Yes, sir.

21 MR. RUNYON: I understand the case law and I
22 understand the circumstances. But the simple fact is,
23 it's our theory at this point in time that if the jury --
24 the jury does not have to reach a -- a unanimous verdict
25 in order for this litigation to be ended. And we would

1 simply ask that the Court consider -- and, of course, the
2 Court's made its ruling, and I'm not arguing with the
3 Court's ruling.

4 But we made that request because as a practical matter
5 this jury doesn't have to unanimously agree on either one
6 to -- to effectively end this litigation and sentence him
7 to life without parole.

8 And, you know, it's like, for example, I would have a
9 serious objection if we had some problem with the jury
10 deliberating and they said, we can't agree at this point
11 in time, with the Court maybe considering giving them any
12 type of Allen charge. Because an Allen charge is designed
13 to bring about some finality to the litigation with the
14 jury verdict. And we don't need a jury verdict in order
15 to have finality to the litigation.

16 THE COURT: Okay, there is a case specifically on that
17 point, I can't recall the name of it, I know who the judge
18 was, where he gave an Allen charge and the Supreme Court
19 approved that as an appropriate charge.

20 MR. RUNYON: Judge, I'm not saying I've got a good
21 position I'm just saying I've got a position. And, you
22 know, it's like when they -- it's like when we started out
23 with Simmons, that wasn't the law and I'm just trying to
24 protect the record the best I can.

25 THE COURT: Well, I'm not cutting you off, you may

1 continue.

2 MR. RUNYON: No, no, I think the Court's -- the Court
3 understands what our -- where we're coming from. I
4 understand what the -- what the -- what the law is. But
5 as a practical matter, since that's the statute, and
6 there's no reason not to tell the jury that, insofar as --
7 I mean, you're going to tell the jury you have to reach a
8 unanimous verdict as it relates to death.

9 Now, the jury should be instructed as to whether or
10 not they have to, you know, they don't have to reach a
11 unanimous decision as it relates to death, they don't have
12 to reach a unanimous decision at it relates to life
13 without parole either.

14 MR. BAILEY: I -- I strongly disagree with that, Your
15 Honor, every case I've ever done like this they've been
16 told whatever your verdict is it has to be unanimous,
17 that's -- that's the law.

18 THE COURT: That's the law and that is the correct
19 instruction. That's the instruction the jury will be
20 given, that is, their verdict has to be unanimous between
21 one of those two choices.

22 MR. RUNYON: Thank you very much, Your Honor. And
23 since we brought up the -- the instructions, if we have a
24 few more minutes.

25 THE COURT: Yes, sir.

1 MR. RUNYON: We have previously filed with the -- in
2 the first case, I'd like to renew our motions and our
3 objections to submitting the case to the jury as under the
4 statutory aggravating circumstances as it relates to the
5 first count -- first aggravating circumstance alleged by
6 the state. That is, a weapon in which many people could
7 be injured, essentially is what it is. I don't recall the
8 exact -- I don't have it right in front of me.

9 And the second as it relates to the aggravating
10 circumstance, as it relates to the age of the child.

11 Your Honor, to go to the second one first, it's just
12 totally -- a total arbitrary classification to pick 11,
13 12, 10, I mean, there's just no -- and, I even tried to
14 get Senator McLeod's legislative research people to tell
15 us what legislative intent they could ascertain. And we
16 can't prove legislative intent in this state, in essence.

17 And there's no -- there's no legislative finding as
18 you have in federal litigation or legislation, where the
19 federal congress will state where as such and such and
20 such and such and they've put a basis in for some
21 congressional rational for a particular statute they may
22 be getting ready to pass.

23 And, Your Honor, the death of a child is an extremely
24 bad event, no question about that. But, to make that a
25 statutory aggravating circumstance without any other

1 guidelines, that means that, you know, every death of
2 every child under 11 years old they could constitute --
3 they could be classified as a quote murderer, could be a
4 capital case. And there's no -- there's no legislative
5 perimeters or guidelines as the United States Supreme
6 Court had originally said, when they struck down,
7 originally, capital punishment in this country.

8 And, therefore, we'd -- we just make the motion.
9 Actually we'd have to ask the Court to declare that that
10 portion of the statute as it relates to aggravating
11 circumstances would be unconstitutional.

12 Anticipating whether the Court's going to -- what the
13 Court may -- may think about that, I'll go on to the
14 second one, which is actually the first statutory
15 aggravating circumstance, Your Honor, as it relates to the
16 type of weapon.

17 Your Honor, when you read that -- that aggravating
18 circumstance it's very clear that it's made to cover, for
19 example, if you set off a bomb or something. What -- what
20 we're saying here is, you have a gun and, yes, there were
21 other people around. But there's -- and there's no case
22 law in this state, that I'm aware of, that's -- that's
23 interpreted that.

24 But the simple fact of the matter is, is if you read
25 that the way the state's reading it in this case, every

1 gun case, every gun case, which would -- where someone --
2 every homicide, which would constitute murder, wherein
3 someone dies as a result of a -- of a firearm, for
4 example, conceivably can be a capital case. In other
5 words, there's no legislative guidelines, no perimeters.

6 If I shoot someone on the streets in Charleston. And
7 if they're in a warehouse district with 18 inch brick
8 walls and all the doors are closed and nobody's inside and
9 stuck their head out, maybe that's not a capital case.

10 But if there's a door opened that a bullet could go
11 through and someone was working in there, even though
12 they're not hit, that's a capital offense murder. And it
13 just doesn't make -- make good common sense.

14 And, so, therefore, we'd object to that being
15 submitted to the jury as an aggravating circumstance.
16 Your Honor, there is no case law relatively, I wouldn't
17 say new, but it's a relatively little used aggravating
18 circumstance at this time, thank goodness. We haven't had
19 to have the Supreme Court of our state interpret that.

20 Clearly, I could put a bomb on an airliner, put a bomb
21 on a bus or something, an indiscriminate act of terrorism
22 like that, that clearly would be capital. This is not
23 that type of action. A weapon, a gun, in this case.

24 But if you carry it to its logical extreme, someone
25 who's using one of these compound bows for hunting, that

1 can shoot through a deer or shoot through somebody and hit
2 someone else, that could conceivably be a capital murder
3 case. And that just doesn't ring true and that doesn't
4 make sense either, Your Honor.

5 So, therefore, we'd object to that statutory
6 aggravating circumstance being submitted to the jury.

7 THE COURT: Thank you, sir. Mr. Bailey.

8 MR. BAILEY: Your Honor, our -- our death penalty
9 statute is modeled after the Georgia statute. The Georgia
10 statute was the statute that the Supreme Court reviewed in
11 Gregg versus Georgia, which along with Jurek versus Texas
12 and Proffitt versus Florida, set out the perimeters of what
13 was a constitutional death penalty.

14 In Gregg versus Georgia the aggravating circumstance
15 at issue there was, and I quote, the offender by his act
16 of murder, armed robbery, kidnapping knowingly created a
17 great risk of death to more than one person in a public
18 place by means of a weapon or device, which would normally
19 be hazardous to the lives of more than one person. The
20 same thing as our statute.

21 The facts in Gregg versus Georgia were, that a gun was
22 fired indiscriminately into a crowd at a church. And that
23 is the seminal case that brought back the death penalty
24 with this specific aggravating circumstance.

25 We've also got a 1990 State Attorney General's

1 opinion, which states that that aggravating circumstance
2 can be applied to the use of an automatic pistol and a
3 submachine gun. Excuse me, a fully automatic submachine
4 and a .38-caliber pistol, provided that more than one
5 person is in the quote zone of danger. Here we've got
6 three people in a confined space, any one of which was in
7 danger.

8 Your Honor, Proffit versus Florida, which was decided
9 the same day Gregg versus Georgia was decided, the facts
10 in that case were -- the aggravating circumstance was that
11 the petitioner knowingly created, through his intentional
12 act, a great risk of serious bodily harm or death to many
13 persons.

14 The defense alleged that was overbroad. The court
15 held that was properly applied to the defendant who
16 stabbed the victim to death in his bed and then beat the
17 wife of the victim who was in the bed who survived. And
18 that's certainly further removed from what we've got here.

19 So if the United States Supreme Court, from the two
20 main cases, re-established the death penalty has
21 specifically held that aggravating circumstance in cases
22 that were more remote than what we've got here to be
23 valid.

24 And with respect to the age of the victim, the United
25 States Supreme Court has never invalidated a state

1 aggravating circumstance unless it was overbroad. It was
2 too general to apply. Like in especially cruel or -- or
3 heinous crime, that type thing.

4 But when you -- this is as specific as you get, when
5 you get a specific age and below that age you can't kill
6 that child without subjecting yourself to the death
7 penalty, it's doing what the Supreme Court says you've got
8 to do to have a valid death penalty, you're channeling the
9 discretion of the jury, you're focusing them on specific
10 categories of defendants, where you take away that broad
11 perimeter to give the death penalty to anybody that
12 commits a murder.

13 And that's all the Supreme Court has said we've got to
14 do for a valid death penalty, is to channel and focus that
15 jury's discretion. So I would contend both aggravating
16 circumstances are valid.

17 THE COURT: Okay, after hearing arguments of counsel I
18 find that both aggravating circumstances are valid, that
19 they are constitutional, that they do meet these tests
20 laid out by the United States Supreme Court.

21 Clearly, the aggravating circumstance relating to the
22 murder of a child 11 years of age or under is clear, it
23 creates a clear and specific class, there is no way to
24 bend or change those rules. Eleven years and one day is
25 too old to fall under that and anything 11 and under falls

1 under that. I mean, it's a clear bright line test, that
2 is clearly constitutionally valid.

3 In regard to the offender by his act of murder
4 knowingly created a great risk of death to more than one
5 person in a public place by means of a weapon or a device
6 which normally would be hazardous to the lives of more
7 than one person.

8 Clearly it occurred in a public place, at a grocery
9 store. It's in a parking lot, there's more than one
10 person present. The weapon used was admittedly a
11 semiautomatic pistol that was fired at least twice. Not
12 only were there people in the parking lot, there were
13 witnesses who testified who were in the store, all of whom
14 were in the range -- the danger zone there while that
15 pistol was being fired by the defendant. It's clearly an
16 applicable aggravating circumstance to this case. The
17 weapon would be a hazardous device that could be used to
18 harm more than one person. Your motion is denied.

19 MR. RUNYON: Thank you very much, Your Honor.

20 THE COURT: All right, anything further by way of
21 charges from the state?

22 MR. BAILEY: Not from the state at this time, Your
23 Honor.

24 THE COURT: From the defendant?

25 MR. RUNYON: None from the defendant at this time,

1 Your Honor. And, we'd anticipate that we'll be able to
2 hear from the Court as it relates to the more -- the
3 general charge.

4 THE COURT: Yes, sir. I'll give you an opportunity to
5 read over the charge before it's charged. And you may, of
6 course, submit any other charges that you wish me to
7 consider before the actual charge. The door is not closed
8 for you to submit additional charges on either side.

9 All right, nine o'clock in the morning, please. Thank
10 you.

11 ***END OF VOLUME III OF REQUESTED TRANSCRIPT OF RECORD***

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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF BERKELEY)

4 I, the undersigned, Karen Mullins, Official Court
5 Reporter for the Ninth Judicial Circuit of the State of
6 South Carolina, do hereby certify that the foregoing is a
7 true, accurate and complete Transcript of Record of all
8 the proceedings had an evidence introduced in the trial of
9 the captioned case, relative to appeal, in the General
10 Sessions Court for Dorchester County, South Carolina, on
11 the 4th day of December, 1996.

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

14

15

16

17

June 20, 1997

18

Karen Mullins

19

Circuit Court Reporter

20

21

22

23

24

25

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM DORCHESTER COUNTY

Judge Charles William Whetstone, Jr.

THE STATE,

RESPONDENT,

V.

TIMOTHY D. ROGERS,

APPELLANT.

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) IN THE COURT OF
3) GENERAL SESSIONS
4 STATE OF SOUTH CAROLINA,)
5 Plaintiff)
6 -vs-)
7 TIMOTHY D. ROGERS,)
8 Defendant)

TRANSCRIPT OF RECORD
VOLUME IV
No. 93-GS-18-101

December 5, 1996
St. George, South Carolina

10 B E F O R E:

11 HONORABLE CHARLES WHETSTONE, Judge; and a jury.
12

13 A P P E A R A N C E S:

14
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16 Solicitor
17 B. HARRISON BELL, JR.
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19 Attorneys for the State.

20 MARK A. LEIENDECKER
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22 WILLIAM L. RUNYON, JR.
23 Attorneys for the Defendant.

24 KAREN MULLINS
25 Circuit Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER)

IN THE COURT OF
GENERAL SESSIONS

3 STATE OF SOUTH CAROLINA,)
4 Plaintiff)

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22

23 KAREN MULLINS
24 Circuit Court Reporter

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E X H I B I T

	<u>No.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV</u>
1				
2				
3	S-1	Photo of truck.	551	55
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5	S-2	Photo of truck.	551	55
6	S-3	Photo of Spell's grocery.	551	55
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8	S-4	Diagram of head.	551	55
9	S-5	Photo of bullet hole, entry.	551	55
10				
11	S-6	Photo of bullet hole, exit.	551	55
12	S-7	Photo of bullet hole and truck dash.	551	55
13				
14	S-8	Photo of shell casing.	551	55
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16	S-9	Photo of shell casing.	551	55
17	S-10	Photo of bullet hole in rim.	551	55
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E X H I B I T

	<u>No.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
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23	S-29	Photo of victim.	551	556
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E X H I B I T

	<u>No.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV</u>
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2				
3	S-31	Photo of victim.	551	55
4				
5	S-32	Photo of victim.	551	55
6	S-33	Photo of victim.	551	55
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8	S-34	Photo of victim.	551	55
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MELINDA B [REDACTED] -DIRECT BY MR. BAILEY:

1 THE COURT: State ready?

2 MR. BAILEY: State's ready, Your Honor.

3 THE COURT: Defendant ready?

4 MR. RUNYON: Yes, Your Honor.

5 THE COURT: Bring the jury in, please.

6 (WHEREUPON, the following takes place in the presence
7 of the jury.)

8 THE COURT: Good morning. Since you left here
9 yesterday has anybody talked to you about the case or have
10 you talked to anybody about the case? If so, please raise
11 your hand.

12 (No response.)

13 Okay, Solicitor, you may call your next witness,
14 please.

15 MR. BAILEY: State would call Melinda B [REDACTED].

16 MELINDA B [REDACTED], being first
17 duly sworn, testified as follows;

18 DIRECT EXAMINATION BY MR. BAILEY:

19 Q You're Melinda B [REDACTED]?

20 A Yes.

21 Q Okay. Ms. B [REDACTED], was Stephanie your daughter?

22 A Yes.

23 Q All right. And you and Mike were then married at
24 the time of Stephanie's murder; is that correct?

25 A Yes.

MELINDA B [REDACTED] T-DIRECT BY MR. BAILEY:

1 Q And are y'all now divorced?

2 A Yes.

3 Q You divorced after Stephanie's murder?

4 A Uh-huh. Yes.

5 Q What day was Stephanie born?

6 A July 25th, 1983.

7 Q And how old was Stephanie when she died?

8 A Nine years old.

9 Q Ms. B [REDACTED], I want to hand you what's been
10 marked State's 24 and ask if that's a copy of Stephanie's
11 birth certificate showing her date of birth?

12 A Yes, it is.

13 MR. BAILEY: Your Honor, I would offer this as
14 State's 24.

15 MR. RUNYON: No objection.

16 THE COURT: Without objection it's in evidence.

17 BY MR. BAILEY:

18 Q Now, Ms. B [REDACTED], did Stephanie live with you and
19 Mike her entire life?

20 A Yes, she did.

21 Q And where did y'all live?

22 A [REDACTED] Street.

23 Q Now, I want to show you some photographs, one at
24 a time. And I want to ask just first of all if you'll
25 look at this and I ask whether or not that shows Stephanie

MELINDA B [REDACTED] -DIRECT BY MR. BAILEY:

1 and if that's an accurate depiction of Stephanie?

2 A Yes.

3 (Defense counsel reviewed photographs.)

4 MR. RUNYON: Your Honor, these -- these photographs
5 are -- are subject to our prior objection, but not
6 objected to.

7 THE COURT: That's noted for the record and denied,
8 they're in evidence.

9 MR. BAILEY: Your Honor, I'd offer State's 35.

10 BY MR. BAILEY:

11 Q Ms. B [REDACTED], referring to that photograph, would
12 you tell the jury when that picture was taken,
13 approximately?

14 A Approximately March of 1989.

15 Q All right. And would you tell the jury who was
16 in that picture?

17 A Stephanie, her great-grandmother and one of my
18 cousins.

19 Q Okay. And do you recall the occasion that
20 picture was taken?

21 A It was at a family birthday party.

22 Q Let me show you what's been marked State's 32.
23 And ask if that's a picture of Stephanie?

24 A Yes, it is.

25 MR. BAILEY: Your Honor, I would offer this as

MELINDA B [REDACTED] -DIRECT BY MR. BAILEY:

1 State's 32.

2 MR. RUNYON: Subject to same.

3 THE COURT: That's noted for the record and denied,
4 the photograph is in evidence.

5 BY MR. BAILEY:

6 Q Ms. B [REDACTED], tell the jury, please, what that
7 shows.

8 A It's a picture of Stephanie on Christmas morning
9 of 1990.

10 Q Okay. And where is that taken?

11 A It's at her grandmother's house.

12 Q Is that a picture of Stephanie also?

13 A Yes, it is.

14 MR. BAILEY: I'd offer State's 33.

15 MR. RUNYON: Subject to the same ruling, Your Honor.

16 THE COURT: Noted for the record and denied, the
17 photograph is in evidence.

18 BY MR. BAILEY:

19 Q Okay, Melinda, what does that show?

20 A It's a picture of Stephanie the day after
21 Christmas, 1990. It's in our house.

22 Q State's 25. Does that show Stephanie also?

23 A Yes.

24 Q Okay. Melinda that also shows you -- you and
25 your daughter and husband; is that correct?

MELINDA B [REDACTED] -DIRECT BY MR. BAILEY:

1 A Correct.

2 Q When was that photograph taken?

3 A I believe it was around Christmas time, it
4 was 1991 at his mother's house, Mike's mother's house.

5 Q Okay. One final photograph. State's 28.

6 A (Witness reviewed photograph.)

7 Q Is that Stephanie?

8 A Yes.

9 Q Okay. Melinda, when was that photograph taken?

10 A It was in 1992 at one of the little carnivals
11 they have.

12 Q Okay. Now, Melinda, did Stephanie spend a great
13 deal of time with her grandparents?

14 A Yes.

15 Q Your parents?

16 A Yes, she spent a lot of weekends with them.

17 Q Okay. And how far apart did y'all live?

18 A About five miles.

19 Q Okay. Could you describe to the jury in your own
20 words, Ms. B [REDACTED], the kind of child Stephanie was during
21 her lifetime?

22 A She was an outgoing person, she liked to help
23 people, she liked to help her teachers in school. She was
24 real friendly and liked to play.

25 Q Did she have any pets at home?

MELINDA B [REDACTED] -DIRECT BY MR. BAILEY:

- 1 A Yes.
- 2 Q What kind of pets did she have?
- 3 A She had a little Chihuahua dog named Tippy. And
- 4 she had two rabbits at home.
- 5 Q All right. And did she go to church?
- 6 A Yes.
- 7 Q What church did y'all attend?
- 8 A She went to Faith Baptist Church with her
- 9 grandmother.
- 10 Q All right. Did she attend Sunday School there?
- 11 A Yes.
- 12 Q And was she baptized in that church?
- 13 A Yes.
- 14 Q All right. Where did Stephanie attend school?
- 15 A She was going to Newington Elementary at the time
- 16 she was killed.
- 17 Q And what grade was she in?
- 18 A She was in the 4th.
- 19 Q How were her grades in school?
- 20 A Her grades were very good in school.
- 21 Q All right. Did she ever have to repeat a grade
- 22 or did she go straight on up from kindergarten to 4th
- 23 grade?
- 24 A She went straight on up.
- 25 Q Let me hand you State's 26 and ask if that's

MELINDA B [REDACTED] -DIRECT BY MR. BAILEY:

1 Stephanie's report card from the 1st grade or from
2 kindergarten on up to 4th grade?

3 A Yes.

4 MR. BAILEY: Your Honor, I would offer this.

5 MR. RUNYON: Your Honor, we have no objection based on
6 the chain of custody of the recordkeeping, we -- we do
7 object to relevance.

8 THE COURT: Okay, that's noted for the record and
9 denied, the document is in evidence.

10 BY MR. BAILEY:

11 Q Melinda, what -- what type things did Stephanie
12 like to do as a child, what -- what games did she play,
13 what -- what activities did she participate in?

14 A She liked to go fishing, to the races. She like
15 to plant flowers outside. And just about anything that
16 was outside she loved to do, she liked to play with her
17 doll babies.

18 Q What was her relationship with her grandparents,
19 your father and your mother?

20 A She had -- they had a good relationship
21 together. It was their only grandchild.

22 Q What about other children in the neighborhood,
23 how did she relate to them?

24 A She liked to play with the other kids.

25 Q Melinda, where were you when you found out that

MELINDA B [REDACTED] -DIRECT BY MR. BAILEY:

1 Stephanie had been shot?

2 A I was on the houseboat in Santee.

3 Q How did you find out? Do you need some water?

4 A One of the men from the office come down to the
5 boat and said that there had been a B [REDACTED] child shot.
6 And he took me back up to the phone and I called Trident
7 Hospital. And, they told me Stephanie was still alive but
8 she had been shot and they didn't think she was going to
9 make it. They just told me I needed to get there as fast
10 as I could.

11 Q Just take your time. Did you go to the hospital?

12 A Yes.

13 Q And did you get to see Stephanie before she died?

14 A Yes.

15 Q Melinda, after Stephanie's death did you need any
16 help, any psychiatric help, counseling?

17 A Yes, I went to two counselors.

18 Q Are you still in counseling now or have you
19 finished that?

20 A No, I'm not going to counseling now.

21 Q When do you think of Stephanie now?

22 A I think of her all the time. No matter where I
23 am, it's like she's still there with me. I always think
24 of her.

25 Q As time goes on is it getting any easier to deal

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 with?

2 A Not really.

3 MR. BAILEY: Please answer any questions the defense
4 may have for you.

5 THE COURT: Cross-examination, please.

6 MR. RUNYON: No questions, Your Honor.

7 THE COURT: You may step down, thank you, ma'am. Cal
8 your next witness, please.

9 MR. BAILEY: Mike Bu [REDACTED]

10 THE COURT: Okay, Mr. Bu [REDACTED], you are still under
11 oath.

12 DIRECT EXAMINATION BY MR. BAILEY:

13 Q Mike, if you would, please, I'd like you to
14 describe to the jury in your own words what your
15 relationship with Stephanie was?

16 A Me and my daughter's relationship was real close
17 She went to McDonald's every morning. I would carry her
18 to school just about every chance I had. We'd go to
19 McDonald's and she'd always get a sausage biscuit. And
20 I'd get coffee. Everybody in McDonald's knew who she was
21 She was a very liked little girl. She was very polite to
22 people. She was just one little girl [sic].

23 Q All right. So you worked, you testified
24 previously, as a constable, so did she ever help you out
25 at work?

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 A Stephanie went with me -- when she would -- I'd
2 come home and meet her after school if her momma was at
3 work. And I would let her go with me occasionally to
4 serve papers.

5 Q How much of the child rearing responsibility did
6 you have as compared to Melinda, did y'all share that?

7 A We shared the responsibilities, my hours was a
8 lot different than Melinda's, she worked a lot at night.
9 When she did I was there. Melinda would usually fix
10 supper for us before she left to go to work. And then I
11 would make sure Stephanie got her homework done and her
12 bath to get ready for bed to get to school the next day.

13 Q All right, sir. And in your leisure time,
14 weekends, when you were not at work, Stephanie wasn't at
15 school, what did y'all do together?

16 A Stephanie usually would be at her mom and dad's
17 house, Melinda's mom and dad's. But occasionally -- I'm a
18 race fan and I've always been for about 12, 15 years, been
19 a NASCAR fan. And, sometimes she would ask me if she
20 could stay home instead of going over there and watch a
21 race with me on TV or either we attended a race.

22 Q What other type things did y'all do together?

23 A We done a lot of fishing together.

24 Q Okay. Where did y'all fish?

25 A Well, when we wasn't on the houseboat in

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 Santee -- her mom and dad had time-shares in the
2 houseboats up there and their time was usually in April o
3 in November. And if we wasn't up there then in the
4 springtime I had a boat myself. Me and her used -- would
5 go to either Rocks Pond in Eutawville or either go to
6 Edisto River. And when she was going to school, if it wa
7 warm then, when she got out, if I didn't have a lot to do
8 at work that day, I would have the boat ready and me and
9 her would go to the Edisto River and fish 'til dark.

10 Q All right, sir. I'm going to hand you a
11 photograph and ask if this is a picture of Stephanie?

12 A Yes, sir, it is.

13 MR. BAILEY: And that's State's 31. I would offer
14 this.

15 MR. RUNYON: Subject to the same---

16 THE COURT: Noted for the record and denied on the
17 same basis as before, the photograph is in evidence.

18 BY MR. BAILEY:

19 Q Mike, would you tell the jury when that picture
20 was taken?

21 A The picture was took in November of 1990 [sic].
22 As a matter of fact that was one of the times we was on
23 the houseboat again.

24 Q When is the last time you and Stephanie fished
25 together?

MICHAEL B [REDACTED] -DIRECT BY MR. BAILEY:

1 A The last time we had fished together was
2 November the 24th, 1993.

3 Q '92?

4 A '92.

5 Q All right, sir. And that was the Friday before
6 she was murdered by Timothy Rogers?

7 A Well, it would have been the Tuesday before.

8 Q You testified that you were a race car fan, did
9 you have your own car you worked on?

10 A Yes, sir, I had built a race car probably in '88
11 or '87. And it had Stephanie's name and the year on it
12 that she was born. The number of it was the year she was
13 born. Which is 1983.

14 Q When you worked on your race car would Stephanie
15 help? Or try to help?

16 A She would always pick wrenches up and try to help
17 do something. She would do that when I was in the yard
18 working on one of my vehicles. And she would try to work
19 on her bicycle, too.

20 Q All right. Did she like music?

21 A She liked country music.

22 Q And, did you ever take her to concerts or do
23 anything like that with her?

24 A I took her to her first concert, it was November,
25 I can't remember what year, it was when Wynonna and

1 McBride & The Ride was at the King Street Palace.

2 Q All right, sir. When Stephanie was murdered on
3 November 25th, 1992, what clothing was she wearing then?

4 A She had had a jumpsuit on that her grandmom had
5 made her, which would be Melinda's momma. And it had
6 American flags on it.

7 Q All right. Did she have a T-shirt?

8 A Yes, she had a T-shirt on, it was a Garth Brooks
9 T-shirt.

10 Q And, do you know of any organizations that she
11 belonged to at school or after school?

12 A Yes, sir. She was in Brownies. And she was in
13 Just Say No Club at school.

14 Q And, when Stephanie was buried, what was she
15 buried in?

16 A She was buried in a pair of black jeans. She ha
17 asked all that week when we was on the houseboat, telling
18 her momma that she had wanted a pair of black jeans. And
19 she didn't get them before she was murdered.

20 Q Mike, I'm going to show you a couple of other
21 photographs. Is that a picture of Stephanie?

22 A Yes, sir, it is.

23 MR. BAILEY: All right, sir. For the record,
24 State's 29, we'd offer.

25 MR. RUNYON: Subject to the -- same matter we

MICHAEL B [REDACTED] DIRECT BY MR. BAILEY:

1 discussed on the record, Your Honor.

2 THE COURT: Noted for the record and denied on the
3 same basis as before, picture is in evidence.

4 BY MR. BAILEY:

5 Q Okay, Mike, that's a picture of Stephanie?

6 A Yes, sir, it is.

7 Q When was that taken?

8 A Picture was took in 1988 at Olan Mills.

9 Q Any particular occasion or y'all just wanted a
10 picture?

11 A Just wanted a picture.

12 Q All right, sir. Would you please tell the jury
13 in your own words how Stephanie's murder has affected your
14 life?

15 A It's affected my life very much. It -- there's
16 not a day that I get up or be at home, which I still live
17 where she was when she was living, I still live there.
18 And, I have her swing set in the yard that we had got her,
19 still there. And, I think about my daughter every day of
20 my life.

21 Q When Stephanie was murdered did you seek
22 counseling?

23 A Yes, sir, I did.

24 Q And how many different counselors have you gone
25 through since Stephanie's murder?

MICHAEL B [REDACTED] DIRECT BY MR. BAILEY:

1 A Well, the first one I had had transferred to
2 where he does inmates, so I had to get another one. And
3 am under one right now.

4 Q Okay. And who is that?

5 A Connie Best.

6 Q Okay. And is Dr. Best in court with you today?

7 A Yes, sir, she is.

8 Q Is she back here -- the young lady back in the
9 middle?

10 A Yes, sir, that's her back there.

11 Q Now, Mike, as time goes by is Stephanie's death
12 getting any easier for you to cope with?

13 A I thought it would, but it don't. It's got --
14 it's got harder.

15 Q Now, there's been some testimony that on the day
16 Stephanie was murdered earlier that day you had bought
17 some beer and had a few beers out of that 12-pack, do you
18 recall that testimony?

19 A Yes, sir, I do.

20 Q And you did drink beer from time to time before
21 Stephanie's murder?

22 A Yes, sir, I drank beer when Stephanie was
23 living. And I was -- I could control my drinking.

24 Q All right. After Stephanie's murder did you
25 develop a problem with alcohol?

MICHAEL B [REDACTED] DIRECT BY MR. BAILEY:

1 A Yes, sir, I did.

2 Q All right, sir. And how long did that last?

3 A I haven't had a drink in over nine months now.

4 Q Are you under any kind of medication now?

5 A I take Xanax.

6 Q Okay. Is that prescribed?

7 A By my doctor.

8 Q By your doctor. I show you one other photograph
9 here, Mike. Is that a picture of Stephanie?

10 A Yes, sir.

11 MR. BAILEY: I'm going to offer State's 23.

12 MR. RUNYON: Subject to the same ruling of the Court
13 on the subject. Our position would be protected for the
14 record.

15 THE COURT: Motion denied on the same basis as before,
16 the photograph is in evidence.

17 BY MR. BAILEY:

18 Q Okay, Mike, when was that picture of Stephanie
19 taken?

20 A That picture there was her last school picture,
21 that was the very last one that was made before she was
22 murdered.

23 Q Is there a day in your life that goes by that you
24 don't think of Stephanie?

25 A No, sir, there's not, that picture's hanging

PALACE BUNCH-DIRECT BY MR. BAILEY:

1 right by my recliner in my living room now. And I glance
2 at it all the time. And the smile that's in it, because
3 that's the way -- that's the kind of child she was. She
4 was always happy.

5 Q What -- what hopes did you have for her future?

6 A I hoped she would come out to where she went to
7 college and either become a nurse or a lawyer or
8 something. She was a very bright, little girl.

9 MR. BAILEY: All right, Mike, please answer any
10 questions Mr. Runyon or Mr. Leiendecker may have for you.

11 THE COURT: Cross-examination, please.

12 MR. RUNYON: No questions, Your Honor.

13 THE COURT: You may step down, thank you, sir.

14 MR. BAILEY: Patsy Bunch.

15 PALACE L. BUNCH, being first
16 duly sworn, testified as follows;

17 DIRECT EXAMINATION BY MR. BAILEY:

18 Q Okay, Mrs. Bunch, I called you Patsy but your
19 real name is what?

20 A Palace.

21 Q Palace. And then you go by the name of Patsy?

22 A Uh-huh.

23 Q Okay. Mrs. Bunch, are you married?

24 A Yes, I am.

25 Q Okay. Who are you married to?

PALACE BUNCH-DIRECT BY MR. BAILEY:

- 1 A Leon Bunch.
- 2 Q Okay. And is Mr. Bunch here in court with you?
- 3 A Yes, he is, the gentleman---
- 4 Q Point him out.
- 5 A The gentleman there in the sports coat.
- 6 Q All right. And where do y'all live?
- 7 A [REDACTED], Summerville.
- 8 Q Okay. And do you have children?
- 9 A Yes, we have two.
- 10 Q Okay. Who are your children?
- 11 A Melinda and Joyce Wilson.
- 12 Q Okay. And, Stephanie was your granddaughter; is
- 13 that correct?
- 14 A That's right.
- 15 Q Okay. And at the time of Stephanie's life --
- 16 during her lifetime was she your only grandchild?
- 17 A Yes, she was.
- 18 Q Now, when Stephanie was growing up, during her
- 19 nine years of life, where did you live in relation to
- 20 where Mike and Melinda lived?
- 21 A It's about five miles between us.
- 22 Q And, how often did you and your husband see
- 23 Stephanie during her lifetime?
- 24 A Well, just about every weekend. Or maybe a time
- 25 or two during the week.

1 Q Okay. And on the weekends where would Stephanie
2 generally stay?

3 A She would stay at our house very often because
4 her mom worked. Sometimes had to work on the weekends.

5 Q Did she have her own room in your house?

6 A No, she didn't. She had a cot in our room.

7 Q Okay. Did she have toys and stuff at your house?

8 A Oh, yes.

9 Q That she played with? All right. During her
10 visitation periods with you and your husband, what type
11 things did y'all do together?

12 A Well, one thing we started baking Christmas
13 cookies as soon as she could stand up to the counter, you
14 know, help cut them out. She played with the -- our
15 animals we had. We would go in the yard and work in the
16 yard, flowers or raking, anything like that. She -- when
17 she got a little older she would help me pick out pattern
18 and cloth. And let me know how she wanted a particular
19 piece of material made up, you know. I made her a bit of
20 clothes.

21 Q All right. Mrs. Bunch, what's your husband's
22 state of health at this time?

23 A It's not good, he's had to retire on disability
24 from the stroke he had in '92.

25 Q Okay. And, prior to the time your husband had

PALACE BUNCH-DIRECT BY MR. BAILEY:

1 his stroke what was his relationship with Stephanie?

2 A Oh, they had a fine relationship. They -- they
3 would go off by themselves -- she loved to leave me home
4 while they went off so he'd buy her things she wanted.

5 Q Okay. And since your husband's stroke, which was
6 in '92, was that before Stephanie's murder?

7 A Before.

8 Q Okay. And the stroke impaired his speech?

9 A Yes, it did.

10 Q And would that prohibit him from testifying?

11 A Yes, he'd be very hard to understand.

12 Q And after your husband had his stroke in 1992,
13 was there any change in the relationship he had with
14 Stephanie?

15 A Just closer.

16 Q Okay. Could you explain that, how that
17 relationship developed after your husband's stroke?

18 A Well, he had his second stroke in the recovery
19 room. And was in intensive care for several days. And
20 the first day or so he wouldn't respond to any of us, I
21 mean, he just looked and that's it, he wouldn't take a sip
22 of water, he wouldn't do anything.

23 So we carried her -- one of them took her to the
24 window outside the intensive care room that he was in.
25 The nurse happened to be in there and the doctor. And,

PALACE BUNCH-DIRECT BY MR. BAILEY:

1 you could just see the change in his face, he just
2 brightened up. And the doctor told them to bring her on
3 inside. And, she took a few sips with him, a few bites of
4 food and from then on they let her go in every day.

5 And after he had -- he went to Walterboro for
6 rehabilitation and he got back home I went back to work
7 and she stayed with him during the week. She'd be there
8 to hand him something to drink, things like that.

9 Q Did she help with his recovery?

10 A Yes.

11 Q Mrs. Bunch, let me hand you this photograph,
12 State's 30, and ask if that's a picture of Stephanie and
13 your husband?

14 A Yes, it is.

15 Q Prior to the stroke?

16 A Yes.

17 MR. BAILEY: Your Honor, I would offer this.

18 MR. RUNYON: Subject to the same -- same position we
19 had before.

20 THE COURT: Noted for the record and denied on the
21 same basis as before, the photograph is in evidence.

22 BY MR. BAILEY:

23 Q Mrs. Bunch, tell the jury when and where that
24 picture was taken.

25 A That was made at -- we took her to the mountain

PALACE BUNCH-DIRECT BY MR. BAILEY:

1 in fall of '91. I can't think of the name of the park but
2 it was around Cherokee on top of one of the mountains.

3 Q I'm going to hand you two other pictures.
4 State's 34. And ask if you can identify that?

5 A Yes.

6 Q Okay, is that Stephanie?

7 A That's Stephanie with one of her Christmas toys.
8 That was her with a toy one of the great-grandmommies had
9 given her.

10 Q Okay, what Christmas was that, what year?

11 A '89.

12 Q Okay. And finally State's 36, is that a picture
13 of Stephanie?

14 A Yes, it is.

15 MR. BAILEY: Your Honor, I would offer this also.

16 MR. RUNYON: Subject to the same---

17 THE COURT: Noted for the record and denied on the
18 same basis as before, both those photographs are in
19 evidence.

20 BY THE WITNESS:

21 A That was Stephanie at a Christmas party --
22 Christmas parade. And that was about '90, I believe.

23 Q She's in a float there?

24 A Yeah, on a float, in the parade.

25 Q All right. Was Stephanie a happy child?

1 A Yeah, most of the time she was, she had some
2 little stubborn streaks but most of the time she was easy
3 to get along with.

4 Q And do you know anything about organizations that
5 she belonged to that you were aware of?

6 A Yes, she was a future astronaut -- in the
7 astronaut club. We built a rocket and her dad helped us
8 set it off at school. She was in Just Say No Club.
9 Brownies. I know those things I've taken her to meetings
10 in.

11 Q Okay. Mrs. Bunch, you've described your
12 husband's relationship with Stephanie and her relationship
13 with him. Can you describe what your relationship was
14 with your only grandchild at that time?

15 A We got along real well. I was -- I tried, you
16 know, made effort to -- to enforce her treatment, I mean,
17 her discipline -- like manners and listening when you tel.
18 her things and things like that. To let her know just
19 because it was grandmomma she couldn't get by, granddaddy
20 she could. But grandmomma is different. I thought she
21 ought to be -- like I tell people, a grandchild ought to
22 be somebody you're proud to take in public.

23 Q On the -- on the weekends that you and your
24 husband had her at your house, did y'all take her to
25 church and Sunday School?

1 A Yes, she always went with us.

2 Q Did she enjoy Sunday School?

3 A Yes, she did very much. She started at a young
4 age and nearly every Sunday she was there.

5 Q Did y'all have a nickname for her or did you call
6 her Stephanie?

7 A I usually called her Stef unless I got aggravated
8 and I'd holler Stephanie. But her granddaddy called her
9 Munk Munk.

10 Q Now the houseboat that the jury's heard about
11 that y'all had that Thanksgiving week, was that a
12 timeshare houseboat?

13 A Yes, it was.

14 Q Okay. And did Stephanie often go with y'all to
15 the houseboat?

16 A She went with us when we bought the first weekend
17 at the place. Yes, she went with us on a regular basis,
18 she was there the first time we ever stayed on it.

19 Q Okay. Mrs. Bunch, when and where were you when
20 you found out that Stephanie had been shot?

21 A Myself, my husband and Melinda, we were on the
22 boat, had supper ready, we were waiting on them to come
23 and it just kept getting later and we wondered what was
24 going on.

25 Q And what happened when they didn't show up?

1 A Well, the park manager came down and told us
2 there'd been a phone call. So I didn't want to upset my
3 husband 'til we had some details. So Melinda, she went up
4 to use the phone and I just stayed there and tried to put
5 him off. And she was gone so long I went ahead and got
6 him to put his shoes on and shirt and then I went up the
7 path to meet her. Then we all got in the car and I drove
8 to Charleston.

9 Q Did you have an opportunity to see Stephanie
10 before she died the next day?

11 A We saw her the next morning. Of course she was
12 hooked to all kind of machines, but she was still not
13 declared brain dead at that time.

14 Q All right. When Stephanie finally died the next
15 day, were her organs donated?

16 A Yes, they were. Both kidneys, small intestine
17 and a liver. They couldn't find a heart recipient quick
18 enough.

19 Q Patsy, can you tell the jury how Stephanie's
20 murder has affected your life?

21 A Of course we miss her an awful lot. But she's
22 affected my husband so much that -- of course that's put
23 more on me, too. Like mom and daddy said, she's always in
24 our thoughts. Sometimes you even think you hear her call
25 out. And it's, you know, it's just some other noise, you

PALACE BUNCH-DIRECT BY MR. BAILEY:

1 know, but.

2 MR. BAILEY: I think that's all I have. Please answer
3 any questions the defense has.

4 THE COURT: Cross-examination, please.

5 MR. RUNYON: No questions.

6 THE COURT: Thank you, you may step down.

7 MR. BAILEY: Your Honor, I have no further witnesses,
8 we do have a short piece of video that we want to
9 introduce and play for the jury at this time.

10 THE COURT: Any objection?

11 MR. RUNYON: Yes, Your Honor, we would like to be
12 heard on that.

13 THE COURT: All right. Okay, ladies and gentlemen, I
14 have a matter I need to take up out of your presence,
15 would you please step into the jury room and don't talk
16 about the case yet, please.

17 (WHEREUPON, the following takes place out of the
18 presence of the jury.)

19 THE COURT: Yes, sir.

20 MR. RUNYON: Your Honor, to get right to the point,
21 we're not -- we're not suggesting the solicitor needs to
22 bring in any chain of custody or anything like that, we
23 stipulate to that on this video.

24 The -- we would object to the playing of the video
25 because it has -- it shows -- it depicts Mr. Rogers when

1 he was returned from Alabama going into a bond hearing
2 over there, he's wearing his orange jumpsuit and his
3 hairdo as it was at that point in time.

4 And it -- it has no probative value in this situation
5 other than possibly to, I assume, perhaps get the jury
6 upset because he had a particular type of hairdo, I don't
7 know. But it just -- it just doesn't offer anything to
8 the -- to the record. It has no probative value for us to
9 cross-examine or for the jury to really be able to look at
10 it and tell anything or discern anything from it.

11 It just -- it just -- it's a news photo. And we
12 don't -- we don't object to the accuracy of it. And we're
13 not suggesting that this -- that this tape has in any way
14 been doctored or is altered to -- to depict anything that
15 it doesn't depict. As I said.

16 But, I mean, we just object on the grounds of
17 relevance. And the fact that perhaps it may have some
18 prejudicial value -- prejudicial impact to Mr. Rogers with
19 absolutely no probative value. I mean, whether his hair
20 was one way or another is really neither here nor there.

21 THE COURT: What say, Solicitor?

22 MR. BAILEY: Your Honor, my response is twofold.
23 First of all, this particular videotape was put into
24 evidence in the original trial. And I would again cite
25 State versus Richard Stewart, the second Stewart case,

1 341 SE 2d 783. I quote from that case, in a resentencing
2 hearing each side has the right to put into evidence
3 anything, that if properly put into evidence during the
4 guilt or sentencing phase of the previous trial. So I
5 think it automatically would come in since it came in
6 previously.

7 There are other cases along the lines---

8 THE COURT: What's the basis for it coming in other
9 than it came in in the last trial?

10 MR. BAILEY: The basis of it coming in is that
11 Mr. Rogers discusses in that tape details and his rational
12 for the -- the homicide and what the -- the whole purpose
13 of the penalty phase to deal with circumstances of the
14 crime and characteristics of the defendant.

15 And his -- his responses to -- to questions of the
16 news media and so forth go directly to his state of mind,
17 the circumstances of the crime, details of the crime.

18 THE COURT: Okay, let me see the tape, please.

19 MR. BAILEY: What hopefully, Your Honor, I'd like to
20 point out, that when this tape was introduced in the
21 original trial, I recall no objection made by the defense
22 at that point in time to the tape, it was not an issue on
23 appeal in the first trial. I don't believe---

24 THE COURT: I can't hear you with the TV.

25 MR. BAILEY: I don't believe there can be any

1 contention that it was not properly admitted the first
2 time. And in the language of the Stewart case.

3 THE COURT: All right.

4 (Court viewed videotape.)

5 MR. BAILEY: Your Honor, of course, our position again
6 is that Mr. Rogers is discussing the circumstances of the
7 crime and that's what this jury needs to know about in
8 order to make -- make that decision, that's what all the
9 cases say. Your Honor, I've got the Stewart case.

10 THE COURT: That's what I'm looking at.

11 (Court reviewed case.)

12 THE COURT: What's the cite of the Stewart case you're
13 referring to?

14 MR. BAILEY: 341 SE 2d 789, 1986.

15 THE COURT: Okay, that's a different Stewart case from
16 what I've got, let me see that one.

17 MR. BAILEY: Yes, sir, there are two of them.

18 THE COURT: Yes, sir, this is the 1984 Stewart case.

19 MR. BAILEY: Your Honor, I have that here, I can hand
20 it up.

21 THE COURT: All right, pass it up, please, sir.

22 (Court reviewed case.)

23 THE COURT: What phase of the trial did this evidence
24 come into in the first trial? Guilt phase?

25 MR. BAILEY: My recollection is it came in in the

1 penalty phase, but I can pull the transcript to make sure.

2 MR. LEIENDECKER: That's our recollection as well,
3 Your Honor.

4 MR. RUNYON: Your Honor, we have an additional
5 objection, an additional basis for our objection.

6 THE COURT: All right.

7 MR. RUNYON: Your Honor, the tape clearly depicts
8 Mr. Rogers in custody, as a matter of fact, he's in the
9 custody of not only the Sheriff's Department, he's in the
10 custody of Mr. Bell who was then the acting solicitor.
11 He's being taken from the jail, as the Court's familiar
12 with the jail, over to a bond hearing.

13 Everything subsequent to the bond hearing we would --
14 we would seriously suggest is not admissible based on the
15 fact that at the bond hearing, of course, he requested
16 counsel.

17 Michigan versus Jackson prohibits the state from
18 making inquiry of the defendant not under 5th Amendment
19 protection but under 6th Amendment protection. And when
20 you -- when the state takes the defendant out of the --
21 out of the court, subjects them to questioning, they had
22 control over him. A subjection to questioning, we think
23 that's the same thing as -- as the state making
24 questioning when they have him under control.

25 And so, therefore, we have basically a Michigan versus

1 Jackson 6th amendment objection to at least the portion of
2 the tape from the time he leaves the bond hearing back --
3 going back to the jail.

4 In addition there are other objections that we -- we
5 previously -- you know, Your Honor, the fact of the matter
6 is, is that we're not required -- we don't follow a script
7 in these things. And, we're not required necessarily to
8 not object this time if we didn't object that time.

9 But the simple fact is, that we do object for a couple
10 of reasons. Number one, we've reexamined that since --
11 since this case came back and made a determination that
12 whether it was error on our part or whatever you want to
13 call it, simple fact of the matter is, we think there's a
14 serious 6th Amendment question as it results -- as a
15 result of the -- as it relates to the period of time when
16 he left the bond hearing and went back into the jail.

17 And, he's clearly in the custody of the -- of the
18 state. The state clearly controlled his movements. The
19 state clearly controlled his access to -- to this
20 questioning procedure.

21 MR. BAILEY: Your Honor, if I could briefly respond to
22 that. Number one, there could be no possible 6th
23 Amendment violation since the right of counsel had not
24 attached yet, there was no lawyer appointed, he hadn't
25 been formally indicted or anything like that or had a

1 lawyer appointed.

2 Secondly, there could be no 5th Amendment problem
3 since there was no interrogation by the state, he was
4 responding to people -- to the news cameramen giving him
5 questions and he voluntarily made some responses there.

6 Your Honor, for this jury not to be able to hear
7 something that properly came in in the first phase is
8 going to deprive this jury of something that the initial
9 jury properly got to hear.

10 In all of the cases, Your Honor, Woodson versus North
11 Carolina in particularly -- particular, say that
12 consideration of the character and record of the
13 individual offender and the circumstances of the
14 particular offense are constitutionally an indispensable
15 part of the process of inflicting a penalty of death. And
16 there are other cases I could cite for Your Honor that
17 says that the jury in a death penalty case should have all
18 relevant information available.

19 Finally, Your Honor, to respond to his question about
20 this man being in jail clothes, this jury knows he's a
21 convicted murderer, they know he's been incarcerated,
22 there could be no possible prejudice in the context of
23 this case at this point in time.

24 MR. RUNYON: Your Honor, just for the record, the
25 Michigan versus Jackson doesn't have anything to do

1 with -- with, you know, the time when you've already had
2 the appointed lawyer.

3 In Michigan versus Jackson, Jackson was taken to a
4 bond hearing, he went in and he said, I want a lawyer.
5 And -- and the magistrate wrote it down, says we're going
6 to appoint you a lawyer or you can retain one. But it's
7 noted you want a lawyer. He was taken out.

8 Thereafter, he was -- there were questions asked of
9 him, he made some incriminating statements, the Supreme
10 Court of the United States said you can't do that because
11 it's -- he'd asked for the lawyer---

12 THE COURT: Who asked him the question?

13 MR. RUNYON: In that case it was a -- it was a police
14 officer, Your Honor. And no question about that. And
15 this is different from Michigan versus Jackson in the
16 sense that the questions were not asked by the police
17 officer.

18 But certainly the state controlled his movements as it
19 relates to when they took him to the bond hearing,
20 whether -- how close the press would get, whether or not
21 the press could question him and what have you.

22 And, I think it's a variation, but the simple fact of
23 the matter is, they knew he wanted a lawyer when he went
24 to the bond hearing. Whether he had one appointed or not
25 and we -- that -- that's a basis -- that's one of the

1 bases for our objection, Your Honor.

2 Your Honor, Mr. Leiendecker has something.

3 THE COURT: Yes, sir.

4 MR. LEIENDECKER: Your Honor, one other -- one other
5 matter related to the news and the news media being
6 there. The defendant informs me at the time when this was
7 done he specifically asked a question about whether he was
8 going to be shackled, chained and drug in front of the
9 cameras, because he didn't want that done to him, he was
10 assured inside the jail before he left---

11 MR. BAILEY: We're getting off the record, Your Honor,
12 this is not anything in the record.

13 THE COURT: I'll be glad to hear any testimony that
14 you want to present about that.

15 MR. LEIENDECKER: I can certainly proffer that
16 testimony at this time, Your Honor, that there was no news
17 media out there. And as soon as the door opened they were
18 in his face.

19 And I don't know, I mean, I haven't gotten the record
20 in front of me, but my memory is different, obviously,
21 than -- than the solicitor's, I do remember discussing
22 with Judge Brown and us objecting to the video at the time
23 that it was put in in the sentencing phase at that time.
24 I know we had problems with it at that time. And if we
25 didn't then we clearly--

1 MR. BAILEY: We may very well have.

2 MR. LEIENDECKER: --erred in not doing that.

3 MR. BAILEY: I stand corrected. But the bottom line
4 is, Judge Brown did let it in, the case was appealed on
5 both the guilt and the penalty phase, the Supreme Court
6 didn't even raise that as an issue.

7 Your Honor, finally, if I could---

8 THE COURT: Let Mr. Leiendecker finish, please.

9 MR. BAILEY: I'm sorry.

10 MR. LEIENDECKER: Your Honor, and -- and I'm not -- I
11 mean, the Stewart I have is obviously the -- the older
12 Stewart that you have, too.

13 But, this was admitted in the penalty phase, the
14 sentencing phase. For whatever reason and whatever ground
15 that was reversed. That's why we're back here, that's why
16 we're putting all this stuff back in again, that's why the
17 state's putting in more than it did at that time because
18 it is a resentencing, as I understand the original
19 Stewart, Judge Harwell's opinion to say, you know, you
20 have to put more evidence in in a resentence because
21 you're not hearing the entire guilt.

22 And, therefore, I think it's clearly -- if this Court
23 were to determine the prejudicial value outweighs the
24 probative value, it's excludable, besides the
25 constitutional grounds raised, I think from a prejudicial

1 standpoint, Your Honor. Yeah, we know he was arrested.
2 Yes, we know he's been convicted. Yes, we know he's been
3 in jail or in prison.

4 But it's clear, Your Honor, that the shackling and
5 everything else at that time creates an attitude or a
6 situation that may or may not truly reflect Mr. Rogers,
7 causes him to walk in short, shuffling steps, I think it's
8 derogatory, I think it's inflammatory, and I think that
9 there's plenty of evidence here in aggravation that this
10 is clearly cumulative and prejudicial.

11 THE COURT: Anything further, Solicitor?

12 MR. BAILEY: Your Honor, the only thing further is to
13 again quote from the subsection (e) of Section 16-3-25,
14 which controls the procedure for resentencing. And that
15 states, for the resentencing proceeding the new jury if
16 the defendant does not waive the right of a trial jury for
17 the resentencing proceeding, shall, not may, but shall
18 hear evidence in extenuation, mitigation or aggravation to
19 the punishment, in addition to any evidence admitted in
20 the defendant's first trial related to guilt for the
21 particular crime for which the defendant has been found
22 guilty.

23 I think that and the Stewart case basically mandates
24 the readmission of that evidence. And even if it didn't,
25 it's clearly probative, because it goes to the

1 circumstances of the crime, this is the defendant
2 spontaneously telling nonstate agents details of what
3 occurred here, which is the entire purpose of a penalty
4 phase hearing, the jury to hear those details.

5 THE COURT: Anything further from the defendant?

6 MR. RUNYON: Nothing further, Your Honor, I think we
7 made our -- we've tendered our objection and we stated
8 several basis for that objection.

9 Your Honor, for -- for the record, we -- we would
10 proffer Mr. Rogers for the testimony -- for the limited
11 testimony of the point about his asking about whether or
12 not news media would be there and being told they wouldn't
13 be.

14 THE COURT: All right, be glad to hear it.

15 MR. LEIENDECKER: From the witness stand or from here,
16 Your Honor?

17 THE COURT: If he's going to offer -- proffer
18 testimony he needs to be under oath and testify.

19 MR. LEIENDECKER: Thank you, Your Honor.

20 TIMOTHY D. ROGERS, being first
21 duly sworn, testified as follows;

22 DIRECT EXAMINATION BY MR. LEIENDECKER:

23 Q Timothy, very briefly. Do you remember the day
24 that we're talking about, in question, when you were
25 brought back to Dorchester County and taken before a

1 magistrate for a bond hearing on the charge of murder?

2 A Yes, sir.

3 Q Do you remember asking or talking with anyone at
4 the time before you were let outside the county jail about
5 news media or people being there to see you or photograph
6 you?

7 A I remember talking to -- I don't know which
8 officers it was, but I know it was about three or four of
9 them there. And I asked them was the cameras or whatever
10 going to be out there and they told me no.

11 Q And those would have been officers of -- of
12 Dorchester County Sheriff's Office?

13 A Yeah.

14 Q To the best of your knowledge?

15 A Yeah.

16 Q And why -- why did you ask them about that?

17 A Because I didn't really want to be on, you know,
18 TV or whatever.

19 Q And when you -- how did they take you across, I
20 mean, to the bond hearing, were you shackled or handcuffed
21 or do you remember?

22 A Shackled, handcuffed, belly chains.

23 Q Okay. And when you got to the outside door what
24 did you see?

25 A Well, before I got outside the door I seen their

1 news vans and I -- I -- I remember -- I think it was -- I
2 don't know whether he was a detective then or whatever
3 but, Ricky was one of them.

4 Q Deputy Ricky Jenkins?

5 A Yeah.

6 Q The black officer we saw in the video?

7 A Yeah. You know, I said, well, I thought there
8 was no media. And he said, well, it's no big deal or
9 whatever. And they took me out.

10 Q What efforts, if any, did the state make to keep
11 the camera or the reporters away from you or at a
12 distance?

13 A Not much of any.

14 Q Were they right in your face?

15 A Yeah.

16 MR. LEIENDECKER: One moment, Your Honor.

17 (Counsel consulted cocounsel.)

18 MR. LEIENDECKER: Nothing -- nothing's further on that
19 point, Your Honor.

20 THE COURT: Any questions on that point from the
21 Solicitor?

22 MR. BAILEY: Yes, sir.

23 CROSS-EXAMINATION BY MR. BAILEY:

24 Q Mr. Rogers, at the time you were carried back
25 from -- from Alabama -- you saw this film clip; right?

1 A Say again.

2 Q You just saw this -- for the record, you just saw
3 the film clip that we're talking about on the television;
4 didn't you?

5 A I didn't see it just now, no, I heard it.

6 Q Okay. But you -- you know what we're talking
7 about, you were brought back from Alabama for a bond
8 hearing; right?

9 A Yeah.

10 Q Okay. And you were not under the influence or
11 anything at that time, were you?

12 A No.

13 Q You were in your complete good state of mind at
14 that time; right?

15 A I was stressed.

16 Q Okay. The people that asked those questions that
17 you heard were cameramen, were they not?

18 A Yeah.

19 Q From the news media?

20 A Yeah.

21 Q And no law enforcement agent asked you any
22 questions; did they?

23 A No.

24 Q And you didn't have to respond to a single word,
25 did you?

1 A No, I didn't.

2 Q You could've kept your mouth shut and gone on
3 inside the building with those people; right?

4 A I mean, they was right there in my face and, you
5 know, as upsetting as it was, you know, I blurted out
6 answers.

7 Q Okay. You voluntarily talked to them about
8 details of this murder of Stephanie B [REDACTED]; didn't you?

9 A Not details.

10 MR. BAILEY: Thank you, that's all I have, Your Honor.

11 THE COURT: Any other questions?

12 MR. LEIENDECKER: Real quickly, Your Honor, as a
13 matter of record.

14 REDIRECT EXAMINATION BY MR. LEIENDECKER:

15 Q When you appeared in front of the magistrate, did
16 he inform you of your right to attorney or counsel at that
17 time, did he go down that form?

18 A Say that again.

19 Q When you appeared in front of the magistrate for
20 the bond, did he read down the form and tell you you had a
21 right to an attorney regarding this -- this case?

22 A Yeah, yes.

23 Q And did you tell him at that time you wanted
24 counsel?

25 A Yes, sir.

1 Q You didn't tell him you didn't want an attorney,
2 did you?

3 A No, I didn't tell him that.

4 MR. LEIENDECKER: Nothing further.

5 THE COURT: Anything further from the state?

6 MR. BAILEY: No, sir.

7 THE COURT: You may step down, thank you, sir.

8 (Pause.)

9 THE COURT: Okay, I find that the videotape is
10 admissible evidence in the sentencing phase of this trial.

11 It is not controlling, however, that the prior Court
12 in this case introduced this evidence. It needs to be
13 determined whether it's admissible in this particular
14 proceeding, based on this proceeding alone, not what was
15 done in a prior sentencing proceeding.

16 I do acknowledge that the Stewart case finds that in a
17 resentencing hearing each side has a right to put into
18 evidence anything that is properly put into evidence
19 during the guilt or sentencing phase of a prior trial.

20 Given that as the law in this state, which I
21 acknowledge is the law in this state, a further
22 determination needs to be made in regard to this
23 sentencing proceeding, whether the prejudicial value
24 outweighs the probative value.

25 I specifically find that the probative value outweighs

1 the prejudicial value in this hearing. And based on the
2 fact that there are no 5th or 6th Amendment rights which
3 attach in regard to this particular proceeding.

4 Sixth amendment right to counsel attaches when
5 adversarial judicial proceedings have been initiated and
6 at all critical stages. The right to counsel in judicial
7 proceedings is distinguished from 5th Amendment Miranda
8 right not to speak with -- 5th Amendment Miranda right to
9 speak with counsel upon request in a custodial setting.

10 In this particular setting 6th Amendment right does
11 not attach, simply because the defendant was arrested or
12 because the investigation is focused on him. He does not
13 have a 6th amendment right because he had not been
14 indicted and did not have counsel.

15 Further, a 5th amendment right does not attach because
16 this is not a state initiated or a custodial type setting
17 where the defendant is being asked questions by a
18 custodial authority.

19 In this instance the statements by the defendant are
20 made voluntarily and knowingly to news media organization

21 He requested or asked before he was brought out
22 whether news media would be there. That indicates a
23 knowledge on his part that he didn't want to talk to them
24 Even given that -- or be photographed. Even given that,
25 when he gets there he sees a camera truck before he even

1 enters the yard to go from the jail to the magistrate's
2 office.

3 He voluntarily, even though he expressed a desire not
4 to be photographed or not to say anything, he then goes
5 out on his own and voluntarily makes statements to the
6 news media.

7 No law officer, law enforcement officer, asked him a
8 question. He didn't say, I don't want to talk to you,
9 which he clearly had the opportunity to do. He volunteers
10 statements. And in volunteering those statements he
11 denies the charges, says it was an accident and says that
12 the other guy started the argument. He says something to
13 the effect, and I don't remember his exact quote, about
14 he's not a child killer or something to that effect. The
15 probative value of that clearly outweighs the prejudicial
16 value.

17 It's of no import that he had on jail clothes or that
18 he was shackled at the time, because he was in a custodial
19 type situation.

20 He didn't have to say anything. Without him saying
21 anything, him walking from the jail to the magistrate's
22 office and back, is not admissible. But the fact that he
23 made statements, voluntarily, to the news media in
24 response to the news media's questions are clearly
25 admissible.

1 There are no 5th or 6th Amendment rights that attach
2 at that point, these are statements by the defendant, made
3 by the defendant, without prompting from the law
4 enforcement authorities that had him in custody.

5 It's clear from the video that none of the law
6 enforcement officers who were there made any type
7 statements, asked any questions or did anything to
8 encourage the defendant to respond.

9 It is clearly a voluntarily -- voluntary statement by
10 the defendant to the news media, it is an admissible
11 statement made by the defendant without duress, coercion
12 or any other type of force made upon him.

13 It's a voluntary statement made by him being not under
14 the influence of any duress of any kind or any alcohol,
15 drugs or anything, by his own acknowledgment he was not
16 under the influence. It is an admissible statement.

17 So your objection's noted for the record and denied.

18 Yes, sir, anything further?

19 MR. RUNYON: Thank you very much, Your Honor. And
20 we're not, of course, arguing with the Court's ruling.

21 THE COURT: No, sir, you can go ahead.

22 MR. RUNYON: We would -- we would move -- in light of
23 the Court's ruling we would move rather than have the --
24 the video played for the jury, and since the thrust of
25 the -- of the matter is his statements, we'd move to only

1 have the audio played for the jury as it relates to his
2 statements.

3 THE COURT: That's noted for the record and denied.
4 The video and the audio both come into evidence.

5 MR. RUNYON: Thank you, Your Honor.

6 THE COURT: Okay, bring the jury back in.

7 MR. BAILEY: Your Honor, before the jury comes back
8 in, as far as letting the jury know what they're looking
9 at, we discussed this earlier, that Mr. Runyon would not
10 require anybody to authenticate it. Of course, Mr. Bell
11 was present.

12 MR. RUNYON: That -- that's correct, Your Honor, I
13 mean, our -- our -- our objections go to the heart of the
14 tape and not whether or not it was -- I mean, we --
15 knowing last time, but this time we've had an opportunity,
16 channel four has been fully cooperative of verifying the
17 raw tape and all those things, and we're not requiring a
18 chain of custody.

19 THE COURT: All right, that -- that is waived. But as
20 I understand what the Solicitor's saying, he wants to tell
21 something to the jury to put it in context. That is to
22 say, this is a -- this is video taken by channel
23 whatever. It was on whatever date.

24 MR. BAILEY: December.

25 MR. RUNYON: Yeah, we would stipulate to that, Your

1 Honor, we would offer a stipulation subject---

2 THE COURT: Well, why don't you, while the jury's out
3 agree on what the stipulation's going to be, write it dow
4 and one of you read it before the video is played.

5 MR. RUNYON: And the only -- and the only -- the only
6 thing for the record, just to protect the record, Your
7 Honor, I would state for the record that our written
8 stipulation is going to be subject to our objection to th
9 tape itself.

10 THE COURT: Yes, sir.

11 MR. RUNYON: And we're not intending to waive any
12 rights by virtue of any stipulation.

13 THE COURT: And your rights are not waived.

14 MR. RUNYON: Thank you very much, Your Honor.

15 THE COURT: All right. We'll take about five minutes
16 to let you get that situated, let me know when you're
17 ready, please. Thank you.

18 (Brief recess was taken.)

19 THE COURT: Is the state ready?

20 MR. BAILEY: State's ready, Your Honor.

21 THE COURT: Is the defendant ready?

22 MR. RUNYON: Yes, Your Honor.

23 THE COURT: Have you agreed on the stipulation?

24 MR. RUNYON: Yes, Your Honor.

25 MR. BAILEY: Yes, sir.

1 THE COURT: We can't go forward 'til Mr. Leiendecker
2 gets back.

3 MR. RUNYON: No, sir. He -- he's right in the
4 solicitor's office running us copies.

5 THE COURT: Okay. Who's going to read the
6 stipulation?

7 (Mr. Leiendecker returned to the courtroom.)

8 MR. BAILEY: Your Honor, I can if it's all right with
9 Mr. Runyon.

10 MR. RUNYON: Yes. Yes, Your Honor.

11 THE COURT: Okay, bring the jury in, please.

12 (WHEREUPON, the following takes place in the presence
13 of the jury.)

14 THE COURT: Okay, Solicitor, you may proceed.

15 MR. BAILEY: Thank you, Your Honor. I would offer the
16 videotape, that I'd referred to previously, into evidence
17 at this time. And I have a stipulation to read to the
18 jury, Your Honor.

19 THE COURT: All right, sir, go ahead.

20 MR. BAILEY: Ladies and gentlemen, it's stipulated
21 between the parties that the videotape that you're about
22 to see was taken by a local television station in
23 December, 1992, when Timothy Rogers was returned to
24 Dorchester County from Alabama.

25 (Videotape of defendant, State's 20, was played for

1 the jury.)

2 MR. BAILEY: Your Honor, the state's prepared to rest
3 at this time. I'd like to check with the court reporter
4 first to make sure I've got everything marked for
5 identification into evidence.

6 THE COURT: All right, sir, go ahead and do that.
7 (Counsel consulted court reporter.)

8 MR. BAILEY: Your Honor, I'd move State's 22, the
9 criminal record in, that's just been marked for
10 identification at this time.

11 THE COURT: Any objection?

12 MR. RUNYON: No, Your Honor.

13 THE COURT: Without objection, that is in evidence.

14 MR. BAILEY: For the record, the tape is State's 20,
15 that we just put in.

16 THE COURT: All right. And that's in evidence. Your
17 objection's noted for the record as previously noted, but
18 it is in evidence. Yes, sir, Mr. Leiendecker.

19 MR. LEIENDECKER: While we're going through this, I
20 wonder, in consultation with the defendant, if we couldn't
21 have just a five minute recess to get our stuff in order
22 and go over final discussion as we prepare to put our
23 mitigation up.

24 THE COURT: Yes, sir. Any other evidence, have you
25 been through your list now?

1 MR. BAILEY: Yes, sir. Nothing's further from the
2 state, Your Honor.

3 THE COURT: Okay. All right, ladies and gentlemen, I
4 have a matter of law I need to take up with the attorneys,
5 would you please step back into the jury room and don't
6 talk about the case yet. Please step into the jury room.

7 (WHEREUPON, the following takes place out of the
8 presence of the jury.)

9 THE COURT: Okay, are there motions at this time?

10 MR. RUNYON: Your Honor, we would -- and we discussed
11 this last night, we would move the Court to, in essence,
12 direct a verdict of life imprisonment without parole, on
13 the grounds that we previously stated. That
14 constitutionally we take issue with the -- the arbitrary
15 category of the death of a young child 11 or under.

16 We also would suggest to the Court that the other
17 aggravating circumstance addressed by this case, I mean,
18 this is not a grave case where someone walked in with an
19 automatic weapon into a church and sprayed the
20 congregation.

21 I note for the record, and it's not binding on this
22 Court, of course, but -- that some of the -- some
23 jurisdictions who've had appellate decisions on that very
24 issue, one of them is Arizona, and it does seem to be a
25 judicial distinction between -- whether or not someone

1 were to walk in in a grave situation and spray a
2 congregation or -- or another group of people.

3 Versus someone who's in a -- in a confrontational
4 situation with a weapon, where the possibility of others
5 being injured, as we stipulate for the purpose of this,
6 we're not suggesting that other people could not have beer
7 hurt in this case. But we just think that there's --
8 there should be a bright line distinction between this
9 type of situation and the -- and the sanctions situation
10 where people try to do and intend to do harm
11 indiscriminately to more than one person.

12 And for that reason we would ask the Court to direct a
13 verdict, in essence, direct a verdict and sentence the
14 defendant to life without parole.

15 THE COURT: Anything further on either of those
16 points, Solicitor, we pretty much addressed these last
17 night.

18 MR. BAILEY: I think I stated the state's position in
19 regard to the United States Supreme Court dealing with
20 those particular issues. And I would like to note that
21 the only two possibilities that any reasonable jury could
22 reach as far as that specific aggravating circumstance,
23 one that he was aiming for Stephanie B [REDACTED] and in fact
24 hit who he was aiming at. Or number two, he shot into the
25 back of the cab not knowing or caring who he hit. In

1 which neither -- neither one of those cases the other two
2 were in the zone of danger.

3 THE COURT: The objection's noted for the record and
4 denied on the same basis it was denied last night. The
5 statutory provisions as outlined are clear and defined.
6 They are properly submitted to the jury, the circumstances
7 of this case fit both of those aggravating circumstances.
8 And it is for a jury to decide whether they factually fit
9 this instance. I find that there is sufficient evidence
10 to warrant both of them going to the jury. So your motion
11 is denied. They are not constitutionally suspect, they
12 are properly -- proper and approved aggravating
13 circumstances. Your motion is denied on that basis also.

14 MR. RUNYON: Thank you, Your Honor.

15 THE COURT: Anything further?

16 MR. RUNYON: Nothing further at this time, Judge.

17 THE COURT: And Mr. Leiendecker has requested a break
18 to allow you to prepare for the -- for your testimony,
19 we'll have the opportunity to do that now.

20 Now, Mr. Rogers, I want to be sure you understand,
21 would you stand, please. You have the opportunity under
22 the statute, if you choose to, to make a final argument to
23 the jury. Do you choose to exercise that right or not?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You plan to make a final and closing

1 argument?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, sir. Thank you, sir. All
4 right, we'll be at ease for about ten minutes, let me know
5 when you're ready, please, Mr. Leiendecker.

6 MR. LEIENDECKER: Yes, sir, Your Honor.

7 (Brief recess was taken.)

8 (Photos of defendant's children marked as Defendant's
9 1, 2, 3 & 4 for identification.)

10 THE COURT: State's ready?

11 MR. BAILEY: State's ready, Your Honor.

12 THE COURT: The defendant ready?

13 MR. LEIENDECKER: Yes, Your Honor.

14 THE COURT: Bring the jury in, please.

15 (WHEREUPON, the following takes place in the presence
16 of the jury.)

17 THE COURT: Mr. Runyon or Mr. Leiendecker you may call
18 your first witness, please.

19 MR. LEIENDECKER: Your Honor, if it please the Court,
20 we would call Timothy Rogers.

21 TIMOTHY ROGERS, being first duly
22 sworn, testified as follows;

23 DIRECT EXAMINATION BY MR. LEIENDECKER:

24 Q Timothy, I'm going to ask you a few questions.
25 If you can't hear me, please let me know. And I'll let

- 1 you know, because I know if I can hear you back here that
2 the last seat in the jury box will be able to hear you as
3 well, okay [sic]?
- 4 A Yes, sir.
- 5 Q For the record, give us your full name and your
6 age.
- 7 A Timothy D. Rogers, 28.
- 8 Q And you have family members that are here today
9 in the courtroom with you?
- 10 A Yes, sir.
- 11 Q Is your mother here today?
- 12 A Yes, sir.
- 13 Q Point her out to the jury.
- 14 A Right there behind the correctional officer.
- 15 Q She's got on the pretty black sweater with the
16 beads on it?
- 17 A Yes, sir.
- 18 Q And your wife's here today?
- 19 A Yes, sir.
- 20 Q And the other people are various members, friends
21 of the family?
- 22 A Family and church members, yes, sir.
- 23 Q Timothy, where were you born?
- 24 A In New York; Brooklyn, New York.
- 25 Q And you lived in various parts of the country

1 before you came to South Carolina; is that right?

2 A No, just New York and South Carolina.

3 Q And South Carolina?

4 A (Nods head.)

5 Q And, when did your family move to South

6 Carolina? Do you remember?

7 A Well, we officially moved down here

8 about '80, '81.

9 Q You were still in grade school?

10 A Yes, sir.

11 Q Secondary school at that time?

12 A Yes, sir.

13 Q Did you play sports in school?

14 A A little bit.

15 Q Did you finish high school on time?

16 A No, sir.

17 Q Dropped out?

18 A I was expelled.

19 Q Do you have your GED now?

20 A Yes, sir.

21 Q You're married; is that right?

22 A Yes, sir.

23 Q How many children do you have?

24 A I have three kids and a stepchild with my wife,

25 four.

1 Q Four. She has -- she has a child other than --
2 than your child; is that right?
3 A Yes, sir, stepson.
4 Q And when you say you have three kids, you have
5 three children with your wife; is that correct?
6 A Yes, sir.
7 Q You have another child as well, we heard about
8 earlier?
9 A Yes, sir.
10 Q This week; right?
11 A Yes, sir.
12 Q And that is a little boy or a little girl?
13 A A little boy.
14 Q Who cares for or takes care of the kids now, Tim?
15 A My wife still takes care of them with the help of
16 my mom and her mom, family members help out.
17 Q And, do you see your kids on a regular basis now?
18 A Not regular.
19 Q Do you get to see your family members on a
20 regular basis now?
21 A Not on a regular basis, no.
22 Q Where are you housed or living now?
23 A Broad River Correctional Institution, Edisto.
24 Q Which is where? What city?
25 A In Columbia.

1 Q All your family lives where?

2 A Summerville and Ladson.

3 Q And so to visit you it requires your family to
4 make that trip, on days that they're allowed to visit, to
5 Columbia; is that right?

6 A Yes, sir.

7 Q And are they able to do that on a real regular
8 basis or not?

9 A No, sir.

10 Q If you had to estimate times a month or times a
11 year, how -- how many times a month or a year do you think
12 you get to see family members?

13 A I believe I see my mom about -- maybe twice a
14 year. And, my wife and kids I probably see them every two
15 or three months.

16 Q So three to four to five times a year for your
17 wife and children?

18 A Something like that.

19 Q Tell me about your mother, your relationship with
20 your -- with your mother, what kind of person is your
21 mother and how do you get along?

22 A My mom is everything, you know, best friends.
23 She's more than a mother, you know, she's -- she's my mom.
24 I don't know how to explain our relationship. I know it's
25 extremely special to me and to her.

1 Q You've had some trouble we've already seen, prior
2 to the incident which brings us here today, brushes with
3 the law here in Summerville; isn't that right?

4 A Yes, sir.

5 Q Do you think you've been in any way a
6 disappointment to your mom with some of the trouble you've
7 had, has it been hard for her, if you know?

8 A Yes, sir.

9 Q Do you have any regret for those problems that
10 you've caused your family?

11 A Every day.

12 Q Let's talk a little bit about this State's
13 Exhibit 22, Tim. It's pretty big, but you probably can't
14 read it from clear back there, maybe if I stand over here.
15 Is this okay, Solicitor?

16 MR. BAILEY: Sure.

17 BY MR. LEIENDECKER:

18 Q In 1985 it says that the Summerville Municipal
19 Court found you guilty for trespassing on somebody's
20 property and you had to pay a fine, is that right, do you
21 remember that?

22 A It was -- yeah, I remember it. But I don't know
23 about if it was somebody's property or what, you know, the
24 situation of it was.

25 Q But, you do remember that you went to court and

1 you had to pay---

2 A Yeah, I paid a fine.

3 Q You had to pay a couple hundred dollar fine;
4 right?

5 A Yeah.

6 Q Then in 1986 you were charged with carrying a
7 pistol, that was in July of 1986. How old would you have
8 been then, do you remember?

9 A '86?

10 Q That would have been ten years ago.

11 A I would be about -- in July I'd be just getting
12 ready to turn 18.

13 Q You weren't 18 yet?

14 A About 17.

15 Q Okay. And so you -- by -- by law you weren't
16 young enough to have or possess a gun; is that right
17 [sic]?

18 A No, sir.

19 Q And you went to the Court of General Sessions up
20 here in Dorchester County. And, was there a trial or did
21 you plead guilty to it?

22 A I plead guilty to it.

23 Q And, you got time in prison or a fine; isn't that
24 right?

25 A Yes, sir.

- 1 Q And do you remember what happened at that time?
2 Did you -- did you do six months or did you pay a fine?
3 A I paid a fine, I believe.
4 Q Got some probation and time to pay the fine?
5 A Yes, sir.
6 Q Then in 1987, just about a year later,
7 Summerville Police arrested you for simple possession
8 of -- of marijuana; is that right?
9 A Yes, sir.
10 Q And you went to court -- actually it doesn't even
11 look like you went to court, it says you forfeited a bond
12 that you posted, which was like paying a ticket at that
13 time; right?
14 A Yes, sir.
15 Q And you just -- you didn't contest that. And the
16 money went to the court; is that right?
17 A That's right.
18 Q Then in 1988 you were charged with resisting
19 arrest. Again in the Summerville Municipal Court?
20 A Yes, sir.
21 Q And, that was also a forfeited bond of \$118. Do
22 you remember that?
23 A Yes, sir.
24 Q That incident didn't involve an assault with a
25 police officer, it involved just not paying attention to

1 an officer when he told you you were under arrest; is that
2 correct?

3 A Yes, sir.

4 MR. BAILEY: Your Honor, I would object to the
5 leading.

6 THE COURT: Please refrain from leading,
7 Mr. Leiendecker.

8 MR. LEIENDECKER: Thank you, Your Honor, I'm sorry.
9 BY MR. LEIENDECKER:

10 Q 12/20/88 you were arrested for grand larceny of a
11 vehicle. And that was up here again in General Sessions
12 Court in Dorchester County?

13 A Yes, sir.

14 Q Do you remember what happened as a result of that
15 indictment?

16 A Yeah, I was sentenced one to six years.

17 Q Under what's called the Youthful Offender Act?

18 A Yes, sir.

19 Q An undetermined sentence; is that right?

20 A Yes, sir.

21 Q And was there a trial at that time or did you
22 plead guilty?

23 A There was no trial. I pled guilty.

24 Q Pled guilty to the grand larceny of a vehicle; is
25 that right?

1 A Yes, sir.

2 Q And we've heard some discussion about you did --
3 you did some time on that YOA sentence and then got out on
4 parole; is that right?

5 A About nine months.

6 Q And then you went back and finished that sentence
7 because you didn't follow all the conditions of your
8 parole; is that correct?

9 A Yes, sir.

10 Q Then in 1990 you were charged with the simple
11 possession of powdered cocaine; is that right?

12 A Yes, sir.

13 Q And, it says here 45 days imprisonment, that was
14 the finding or the penalty, you got 45 days in jail?

15 A Yes, sir.

16 Q And, was there a trial or did you plead guilty to
17 that?

18 A I pled guilty to having it.

19 Q Okay. And then on two separate months in 1992,
20 August and September of 1992, you were found guilty for
21 criminal sexual conduct with a minor in the second degree,
22 do you remember that?

23 A Yes, sir.

24 Q Let me ask you a little bit about the facts of
25 that. Who was the minor that you were accused of having

- 1 sexual relationships with?
- 2 A assault victim .
- 3 Q The same lady that testified here in the trial in
- 4 the state's presentation earlier, yesterday?
- 5 A Yes, sir.
- 6 Q Tell me what your relationship was at that time,
- 7 we've already heard what she said.
- 8 A She was my girlfriend, I guess.
- 9 Q You were married at that time, though, weren't
- 10 you, Tim?
- 11 A Yes, sir.
- 12 Q But you were dating Ms. ^{assault victim}; is that right?
- 13 A Yes, sir, we were somewhat separated.
- 14 Q You and your wife at that time?
- 15 A Yes, sir.
- 16 Q Now she testified that, if I understood how old
- 17 she was at that time, I think she said she was 15 or going
- 18 on 16; is that right?
- 19 A Yes, sir.
- 20 Q Did you know that at that time?
- 21 A No, sir.
- 22 Q Did it become -- did it come to your attention at
- 23 a later time how old she was?
- 24 A Yes, sir.
- 25 Q And when would that have been, if you remember?

1 A After I was brought back from Alabama.

2 Q After you came back from Alabama?

3 A In custody.

4 Q For the arrest of this case?

5 A Yes, sir.

6 Q And while you were in custody you found out that

7 assault victim was under the age of consent in our state and under

8 the age of 16; is that right?

9 A Yes, sir.

10 Q Do you understand now that -- that having sexual

11 relations with anyone under the age of 16 in our state is

12 a crime whether they consent or not?

13 A Yes, sir. I understood then but I didn't---

14 Q Didn't know her age?

15 A I was misled on her age, yes, sir.

16 Q But when you found out you knew that you were

17 guilty of having had sex with someone under the age of 16;

18 is that right?

19 A Yes, sir.

20 Q Was there a trial on these charges or did you

21 plead guilty to these charges?

22 A There wasn't no trial, it was an agreement

23 offered by the solicitor.

24 Q An agreement regarding the number of years and

25 time if you'd plead guilty?

1 A Yes, sir.

2 Q And you admitted that -- that you had had sexual
3 relations with ^{assault victim}?

4 A Yes, sir.

5 Q Were those relationships in any way nonconsensual
6 or did she ever oppose having those relations with you?

7 A No, sir.

8 Q It's purely a situation of you discovering later
9 that she was underage?

10 A Yes, sir.

11 Q How old were you at the time, Tim?

12 A '92? That would make me about 23, 24.

13 Q Okay. And that's the substance of your record;
14 right?

15 A Yes, sir.

16 Q Timothy, apparently back in 1986 you found out
17 that it wasn't the right thing to do to be carrying a gun
18 because you pled guilty to illegally possessing a pistol;
19 is that right?

20 A Well, without going into what happened, you know,
21 I wasn't carrying it, it was just in a car.

22 Q It was in the car that you were in?

23 A Yes, sir.

24 Q Before we get into the facts of -- of this case,
25 let's talk a little bit more about your family. Tell me

1 about your children, their ages and names.

2 A My oldest is Tameka and she'll be nine next
3 month. My next oldest is Timothy, Jr. and he's seven. I
4 have another daughter, Tiffany, and she's five. And my
5 stepson is three, Stephen. And my son with assault victim
6 is three.

7 MR. LEIENDECKER: Approach the witness, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. LEIENDECKER:

10 Q I ask you to take a look at this photograph,
11 which is Defense Exhibit No. 1. Can you identify that,
12 Timothy?

13 A Yes, sir.

14 Q Who is that?

15 A That's my oldest son.

16 Q That would be Timothy, Jr.?

17 A Yes, sir.

18 MR. BAILEY: No objection.

19 THE COURT: That's in evidence without objection.

20 (Photo of defendant's child marked as Defendant's 1
21 admitted into evidence.)

22 BY MR. LEIENDECKER:

23 Q Defense Exhibit 2, I'll ask you to take a look at
24 that picture, can you identify that picture?

25 A That's my oldest daughter, Tameka.

1 MR. LEIENDECKER: We'd move this into evidence, Your
2 Honor.

3 MR. BAILEY: No objection.

4 THE COURT: Without objection it's in evidence.

5 (Photo of defendant's child marked as Defendant's 2
6 admitted into evidence.)

7 BY MR. LEIENDECKER:

8 Q Defense Exhibit 3.

9 A That's -- that's still my oldest daughter,
10 Tameka.

11 Q Another picture of her?

12 A Yes, sir.

13 Q And Defense Exhibit 4?

14 A That's my youngest daughter, Tiffany.

15 MR. LEIENDECKER: Three and four.

16 MR. BAILEY: No objection.

17 THE COURT: Without objection they're in evidence.

18 (Photos of defendant's children marked as Defendant's
19 3 & 4 admitted into evidence.)

20 BY MR. LEIENDECKER:

21 Q How old are those pictures, do you know,
22 Timothy? Are those recent pictures?

23 A About a year or so old.

24 Q You weren't able to be at home or living at home
25 at the time those pictures were taken?

- 1 A No, sir.
- 2 Q Let's go to November of 1992. Day before
- 3 Thanksgiving, a Wednesday. Do you know where you were the
- 4 beginning of that day?
- 5 A Yes, sir.
- 6 Q Where was that?
- 7 A On Pigeon Bay Road.
- 8 Q What were you doing?
- 9 A Working on a car with my cousin.
- 10 Q Is that the individual that Ms. assault victim testified
- 11 to, what was his last name?
- 12 A Middleton. Yes, sir.
- 13 Q Middleton. And come about dark or dusk that
- 14 evening, do you remember what -- what you did?
- 15 A Went to use the phone up the street.
- 16 Q Up the street where?
- 17 A Spell's Grocery.
- 18 Q Who was with you and who went with you that time
- 19 to use the phone?
- 20 A assault victim and Daxton Patterson.
- 21 Q We haven't seen Daxton Patterson, but would you
- 22 describe Daxton to the jury?
- 23 A He's a white male about 23, 24 now.
- 24 Q Size-wise bigger or smaller than you are?
- 25 A Little bit smaller.

- 1 Q Had y'all been consuming any alcohol that day?
- 2 A All day.
- 3 Q What had you been drinking?
- 4 A Beer and liquor.
- 5 Q If you had to estimate would you say you had a
- 6 few drinks, a lot of drinks?
- 7 A I'd say -- I'd say between -- about four of us
- 8 drinking, about a case and a half of beer and half -- half
- 9 a 5th of Vodka.
- 10 Q Would you say you were feeling the affects of
- 11 that alcohol when you went to use the phone up at Spell's?
- 12 A Yeah, I felt some affects.
- 13 Q Do you know what time -- do you have any idea
- 14 what time it was when you arrived at the grocery?
- 15 A I didn't then, but I know now. About
- 16 six o'clock. Little bit before six.
- 17 Q When you got there did you observe anybody out
- 18 front of the grocery store?
- 19 A No, sir.
- 20 Q What did you do when you got there?
- 21 A I went to use the phone.
- 22 Q There wasn't a pickup truck parked in front and a
- 23 black man and a white man standing out on the corner
- 24 talking?
- 25 A No, sir.

1 Q Did that -- did a pickup truck arrive while you
2 were there in front of the store?

3 A Yes, sir.

4 Q And do you remember who was in that pickup truck
5 now that the events have unfolded?

6 A Yes, sir.

7 Q Who do you remember being in that pickup truck?

8 A Mr. B [REDACTED] and Mr. Carver. And little
9 Stephanie.

10 Q Did you observe them getting out of the pickup
11 truck and going into the store?

12 A No, sir.

13 Q There's been a lot of discussion about
14 Mr. Patterson's actions and conduct at that time. Were
15 you paying attention to what Mr. Patterson was doing or
16 where he was at that time?

17 A I knew where he was but, I wasn't really paying
18 attention what he was doing [sic].

19 Q Somehow during the course of that time on the
20 phone it came to your attention that there was a
21 disagreement going on between individuals; is that right?

22 A Yes, sir.

23 Q How did you come to notice or observe that?

24 A Well, it -- it started when the truck pulled up,
25 and Mr. B [REDACTED] was driving, and he told me that he needed

1 to use the phone. And, I told him that I will be off, you
2 know, in a minute. Then, I turned my back to him and
3 continued talking on the phone.

4 Q Then, what's the next thing you remember?

5 A While I was talking he was behind -- in the truck
6 behind me mumbling and talking about he needed to use the
7 phone now and I needed to give him the phone, boy. And
8 just being very vulgar about it.

9 Q Did Daxton get involved at that time,
10 Mr. Patterson?

11 A Yes, sir.

12 Q And how would you characterize the conduct
13 between Mr. B [REDACTED] and Mr. Patterson?

14 A Well, when Mr. B [REDACTED] was talking to me, I
15 wasn't paying no attention to him, you know, I was talking
16 on the phone, but I -- I heard him. And, Daxton, he was
17 over by the trash can or whatever, came over to the truck
18 I guess where Mr. B [REDACTED] was telling him no, that, you
19 know, he'll be off the phone in a minute, you know, you'll
20 have to wait.

21 Q Did they get into a verbal fight?

22 A Yes, sir.

23 Q At some point you got involved in that
24 altercation, when was that and what caused that?

25 A I got involved in it when I heard them getting

- 1 out of the truck.
- 2 Q Them, who do you mean by them?
- 3 A Mr. B [REDACTED] and Mr. Carver.
- 4 Q They had been back in the truck after going in
- 5 the store?
- 6 A I don't remember them going in the store.
- 7 Q So you didn't notice that?
- 8 A No.
- 9 Q But you heard -- you heard what?
- 10 A I heard them getting out of the truck.
- 11 Q The doors -- doors opening is that how you heard
- 12 that?
- 13 A Yeah.
- 14 Q And you heard both doors opening?
- 15 A I can't say I heard both doors, I heard them
- 16 opening, but I heard them getting out of the truck.
- 17 Q And when you turned around what did you see?
- 18 A I seen ^{assault victim} was pulling Dax who was trying, I
- 19 guess, he wanted to fight him or whatever, she was pulling
- 20 him back. And, Mr. B [REDACTED] and Mr. Carver was approaching
- 21 ^{assault victim} and Dax.
- 22 Q Where was Mr. Carver in relation to the pickup
- 23 truck and Mr. Patterson?
- 24 A Mr. Carver would have been towards the rear of
- 25 the truck.

1 Q Still on the passenger side or on the driver's
2 side?

3 A Coming around from the passenger side, yeah.

4 Q And what did you do?

5 A I told the person on the phone to hold on for a
6 minute. And let me go see what's going on.

7 Q And what did you do when you went to see what was
8 going on, Timothy?

9 A I put the phone down and stepped in between
10 Mr. B [REDACTED] and Mr. Carver. And Dax and ^{assault victim} were behind
11 me. And I was going to ask him, you know, what's the
12 problem.

13 Q Were you really that polite at the time, Timothy?

14 A I mean, I wasn't -- I wasn't as polite as a
15 scholar or anything, but I asked him probably, what's up,
16 something like that.

17 Q What happened next?

18 A Mr. B [REDACTED] turned around and went to the truck.

19 Q What'd Mr. Carver do, did you see?

20 A He pretty much stayed by the back of the truck.

21 Q And what'd Mr. B [REDACTED] do when he went to the
22 truck?

23 A He was pulling something from behind the backseat
24 of the truck.

25 Q Did he lift the seat up on the truck and reach

1 behind it, is that what you're saying?

2 MR. BAILEY: Objection, leading, Your Honor.

3 THE COURT: Rephrase your question, please, sir and
4 refrain from leading.

5 MR. LEIENDECKER: Yes, sir, Your Honor.

6 BY MR. LEIENDECKER:

7 Q You said you saw him go back to the truck; is
8 that right?

9 A Yes, sir.

10 Q What specifically did you observe him do?

11 A He went to the truck, the door was opened, he
12 pulled the backseat up a little bit and was pulling
13 something out.

14 Q Pulling something out from where?

15 A The backseat of the truck.

16 Q From behind the backseat?

17 A Behind the seat.

18 Q What did you do then?

19 A I pulled out my gun and fired in the air.

20 Q You did what?

21 A Pulled out my gun and fired a shot in the air.
22 Not exactly in the air, but in the air.

23 Q Why did you do that, Timothy?

24 A At the time I was hoping that in me doing that
25 that he wouldn't, you know, wouldn't pull out what he was

1 pulling out.

2 Q What did you think he was pulling out?

3 A It looked like a gun to me, I wasn't sure what it
4 was. I didn't, in fact, know it was a gun until maybe '93
5 or whatever, before the trial.

6 Q Did he quit doing whatever he was doing when you
7 shot the -- the bullet?

8 A Yeah.

9 Q Then what happened?

10 A Then, Dax told me that I had shot somebody in the
11 truck.

12 Q The truck hadn't moved yet and you'd shot
13 somebody?

14 A No, the truck didn't move.

15 Q Everybody else says there were two shots,
16 Timothy, is it possible there were two shots?

17 A Yeah, it's possible there were two. I don't know
18 for a fact that it was two shots.

19 Q When did the second shot occur? Do you know?

20 A It had to happen right -- right after the first
21 shot.

22 Q Was the truck moving at the time?

23 A No, sir.

24 Q What did you find out had happened with that
25 second shot?

1 A Well, it wasn't like I shot and I stopped and I
2 shot again. It was -- it had to have been more like two
3 shots immediately behind each other. And then Dax told me
4 that I better get out of there, he think I shot somebody
5 in the truck.

6 Q And what did you do, Timothy?

7 A I ran.

8 Q What did Daxton Patterson and assault victim do?

9 A I guess they followed behind me. I wasn't too
10 much paying attention to what they did after that there.

11 Q Did you make any comment to Mr. B [REDACTED] or
12 Mr. Carver or anybody else after the shot that -- that
13 fatally injured Stephanie?

14 A No, sir.

15 Q Did you stand around and laugh about what had
16 happened?

17 A No, sir.

18 Q What was your mental state or reaction when you
19 found out what had happened?

20 A Scared.

21 Q So scared that what did you do next?

22 A I ran.

23 Q To where? You didn't just run home, eventually
24 you ran to where?

25 A I ran down the street through the woods. Left --

1 left Summerville.

2 Q How'd you leave Summerville?

3 A Caught a ride out to Orangeburg.

4 Q Then where'd you go?

5 A Alabama.

6 Q Why'd you go to Alabama?

7 A Just---

8 Q Did you know somebody there?

9 A Yeah.

10 Q Were you running away from what you had done?

11 A Yeah.

12 Q At that point did you know what you had done or

13 did you feel you knew what you had done?

14 A I didn't know, you know, the -- the depth of it,

15 it being a child.

16 Q You did know who you shot, Timothy?

17 A No.

18 Q You didn't know it was a 9-year-old girl?

19 A No, sir.

20 Q How long did you stay in Alabama?

21 A A week maybe.

22 Q Police came to the apartment where you were and

23 found you then?

24 A Yes, sir.

25 Q Were you hiding under the couch when they came?

1 A No, sir.

2 Q Where were you?

3 A Sitting on the couch.

4 Q The same couch that the officer from Tuskegee
5 described?

6 A Yes, sir.

7 Q And at that time did you try to flee or resist or
8 deny that you were who they were looking for?

9 A The only thing I did was when they got there they
10 knocked on the door, I looked through the window and seen
11 them. I said, well, I didn't open the door, no.

12 Q You didn't open the door 'til they opened the
13 door and came in?

14 A Eventually they came back with some keys.

15 Q Did you ever resist them or any -- cause them any
16 trouble at that time?

17 A No, sir.

18 Q You remember the officer testifying yesterday, he
19 said you gave a statement in his presence, do you remember
20 that?

21 A Yes, sir.

22 Q I'm going to show you what was previously marked
23 State's Exhibit No. 18 and ask you to take a look at
24 that.

25 (Witness reviewed statement.)

1 BY MR. LEIENDECKER:

2 Q Do you recognize that statement?

3 A Yes, sir.

4 Q Is that an accurate copy or that's the original,

5 actually, is that the original of the statement you gave

6 to the Tuskegee Police?

7 A Yes, sir.

8 Q Does it in substance comply with what we talked

9 about today about what happened?

10 A Pretty much, yeah.

11 MR. LEIENDECKER: Move to introduce it, Your Honor.

12 MR. BAILEY: Without objection, Your Honor.

13 THE COURT: Without objection it is in evidence.

14 BY MR. LEIENDECKER:

15 Q When you were arrested in Alabama they told you

16 what you were arrested for; right?

17 A Yes, sir.

18 Q What were you being arrested for?

19 A The murder of little Stephanie.

20 Q Did you know the B [REDACTED] or Mr. Carver before

21 this incident?

22 A No, sir. Not to my knowledge.

23 Q Did you put a gun to Mr. B [REDACTED]'s forehead and

24 tell him to get in the truck or you'd kill him?

25 A No, sir.

1 Q Did you spit in Mr. B[REDACTED]'s face because you
2 were having a fight with him?

3 A No, sir.

4 Q Do you know if Daxton Patterson spit in his face
5 during the course of a fight?

6 A No, sir.

7 Q Does that mean Daxton didn't or you don't know?

8 A I mean, I heard he did but, I didn't actually see
9 it, no, sir.

10 Q They brought you back from Alabama to where?

11 A Dorchester County Sheriff. St. George. Right
12 here.

13 Q And we saw a video, that was you leaving the
14 Dorchester County Jail for a bond hearing, do you remember
15 that?

16 A Yes, sir.

17 Q And you told the news media at that time what
18 about the -- the killing?

19 A I told them that it was an accident. And I
20 wasn't, you know, no child murderer or something like
21 that.

22 Q But you killed a 9-year-old child, you understand
23 that; right?

24 A Yes, sir.

25 Q What did you mean that it was an accident and you

1 weren't a child murderer, because someone was murdered.

2 A Yes, sir.

3 Q What -- what do you mean by that, Timothy, what
4 did you mean when you told them that?

5 A It was meant like I don't -- didn't do it on
6 purpose or like I just went around killing children.

7 Q But you pulled the trigger on purpose; didn't
8 you?

9 A No, sir -- well, yeah, I did pull the trigger on
10 purpose.

11 Q And you had the gun on purpose; didn't you?

12 A Yes, sir.

13 Q And you're guilty of murder because of that,
14 aren't you?

15 A Yes, sir.

16 Q Did you point that gun at Stephanie B [REDACTED] and
17 intend to shoot her?

18 A No, sir.

19 Q Is that what you mean by accident?

20 A Yes, sir.

21 Q It's a pretty stupid accident; wasn't it,
22 Timothy?

23 A Yes, sir.

24 Q It's ruined a lot of people's lives, wouldn't you
25 agree, Timothy?

- 1 A Yes, sir.
- 2 Q It's especially ruined the B [REDACTED]'s lives,
3 hasn't it?
- 4 A Yes, sir.
- 5 Q How about your family's lives?
- 6 A Yes, sir.
- 7 Q How about your life?
- 8 A Yes, sir.
- 9 Q What's the best possible outcome from this trial
10 that could happen for you? I mean, where would you spend
11 the rest of your life?
- 12 A In prison.
- 13 Q Understanding that, is that what you want to do,
14 based on what has happened to this point in your life?
15 Because you can't go back and change the facts.
- 16 A If I want to spend the rest of my life in prison
17 in?
- 18 Q Are you asking this jury to do that, to put you
19 in prison for the rest of your life?
- 20 A Rather than execution, yes.
- 21 Q Do you feel that you can contribute somehow, in
22 some small way, to your family or someone else if you're
23 allowed to maintain your life and stay in prison?
- 24 A Yes, sir.
- 25 Q Are you somehow able to still be a dad and a son

1 in prison?

2 A Yes, sir.

3 Q Tell me about your feelings about that as they
4 relate to the B [REDACTED], knowing that they can't be dads
5 and moms anymore to their daughter.

6 A I can't sit here and say that I feel what
7 Ms. B [REDACTED] or her family may be feeling, because I know
8 that's really unexplainable, how that can feel. But, I
9 somewhat feel their grief.

10 MR. LEIENDECKER: One moment, Your Honor.

11 THE COURT: Yes, sir.

12 (Counsel consulted cocounsel.)

13 MR. LEIENDECKER: No further questions at this time,
14 Your Honor.

15 THE COURT: Cross-examination, please, Solicitor.

16 MR. BAILEY: If it please the Court.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION BY MR. BAILEY:

19 Q Mr. Rogers, no question about it, when you came
20 back from Alabama, brought to the jail here in Dorchester
21 County, and the jury saw that film clip there, you knew at
22 that time you'd murdered a 9-year old-child; didn't you?

23 A At that time, yes, sir.

24 Q All right, sir. Same as you know it now; right.

25 A Yes, sir.

TIMOTHY D. ROGERS-CROSS BY MR. BAILEY:

1 Q Okay. Now, I want to ask you a real simple
2 question, did you fire that gun one time or two times,
3 you're under oath here?

4 A With knowledge I fired that gun once. But, with
5 the type of gun it was I know it went off twice.

6 Q Okay. When did you know it went off twice?

7 A When I was told.

8 MR. BAILEY: May I approach the witness, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. BAILEY:

11 Q I'm going to hand you State's -- I want to hand
12 you what's been marked State's Exhibit No. 18. And, is
13 this your statement?

14 A Yes, sir.

15 Q Is that a true and accurate statement?

16 A Yes, sir.

17 Q All right, sir. And before you gave that
18 statement the police officers, Captain Patrick, and the
19 other officers in Alabama gave you your Miranda rights;
20 didn't they?

21 A Yes, sir.

22 Q And at the time they gave you those rights you
23 understood them and you were sober, weren't you?

24 A Yes, sir.

25 MR. BAILEY: All right, sir. Bear with me one second,

TIMOTHY D. ROGERS-CROSS BY MR. BAILEY:

1 please.

2 (Pause.)

3 BY MR. BAILEY:

4 Q Mr. Rogers, I want you to start reading at line
5 12, from there to the bottom of that statement out loud so
6 the jury can hear it, okay?

7 A I pulled out the gun, the gun was a .380, I fired
8 a shot and it was intending on scaring them [sic]. I
9 heard ^{assault victim} scream and Daxton told me I had to go, that I
10 had shot somebody. Then I ran down the street towards my
11 uncle's house and then through the woods. That's
12 basically what happened that night.

13 Q All right. So you said in that statement, after
14 you had your Miranda rights, that you fired a shot into
15 the air; is that correct, one shot?

16 A Yes, sir.

17 Q And now you're saying you fired two times?

18 A I'm saying that I fired a shot. That definitely
19 two shots came out.

20 Q Two shots, all right, sir. And are you as sure
21 of that as you are of anything else that you testified to
22 here today?

23 A Excuse me.

24 Q Are you as sure of that statement as you are of
25 everything else that you said in response to

TIMOTHY D. ROGERS-CROSS BY MR. BAILEY:

1 Mr. Leiendecker's questions?

2 A I know for a fact that two shots were fired.

3 Q Do you recall giving testimony under oath at a
4 previous proceeding involving you, don't you?

5 A Yes, sir.

6 MR. BAILEY: All right, sir. May I approach again,
7 Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. BAILEY:

10 Q Let me hand you a portion of the transcript,
11 starting with page 1107. And, by the way, you have a GED,
12 do you not?

13 A Yes, sir.

14 Q All right, sir. Turn to page 1127.

15 A (Witness complied.)

16 Q Got it?

17 A All right.

18 Q Okay, line 4. Do you recall my question, didn't
19 you tell those fellows out there you shot one time? What
20 was your answer?

21 A I shot one time to my recollection.

22 Q All right, sir. And, one time or two times?

23 A Obviously it was twice.

24 Q Okay. Why did you say under oath on that
25 previous occasion that you fired one time, Mr. Rogers, if

1 you shot twice?

2 A Because I thought I shot one shot.

3 Q When did you realize you shot two shots instead
4 of one shot?

5 A When I was told differently.

6 Q When were you told differently? Before or after
7 you testified that you shot one time?

8 A It was before.

9 Q Okay. And if you were told before you testified
10 the first time that you had fired two shots, did you then
11 lie under oath when you said you fired one shot, in your
12 prior testimony?

13 A No, I did not.

14 Q Well explain that to me so I'll understand.

15 A Because I said to my recollection. That at the
16 time of the crime I thought I fired one shot.

17 Q Okay. And when did your recollection change,
18 after you testified under oath here a couple of years ago?

19 A No, it was before.

20 Q Well, if you knew before that you fired two
21 shots, why did you say after that, under oath, that you
22 fired one shot, Mr. Rogers?

23 A Because you asked me---

24 Q I'm asking you for the truth.

25 A You was asking me about the night it happened.

1 And I told you to my recollection I thought I fired one
2 shot.

3 Q All right, sir. Let's kind of skip by that a
4 little bit, we may come back to it in a minute,
5 Mr. Rogers. Let me ask you this, you were not so drunk
6 that evening that you didn't know what you were doing,
7 were you?

8 A No, sir.

9 Q All right, sir. And you remembered how many
10 times you fired; didn't you?

11 A I remember firing one shot.

12 Q As you sit here now you remember firing one shot?

13 A Yes, sir.

14 Q Okay. You don't remember firing two shots?

15 A No, sir.

16 Q So the only reason you think you might've fired
17 two shots is somebody told you that?

18 A The only reason is because I was told before
19 court, that it was two shots fired. But, at the time I
20 only recall shooting one shot. But being a semiautomatic
21 pistol, two shots can go off, I mean.

22 Q You've got to pull the trigger two times for the
23 gun to go off two times with a semiautomatic pistol;
24 right?

25 A Yes, sir, you do.

1 Q Did you pull the trigger one time or two times?

2 A I pulled the trigger once.

3 Q You pulled the trigger one time and the gun went
4 off two times, is that what you're saying?

5 A Well, I pulled -- I pulled the trigger once -- I
6 pulled the trigger with the intentions of firing one
7 shot. The gun went off twice.

8 Q Okay. When the gun went off a second time did it
9 all of a sudden just by magic go bang or did you pull the
10 trigger a second time?

11 A No. It didn't -- I don't remember the bangs or
12 none of that, it's just the type of gun it is possible
13 that two shots can come out so fast that you would think
14 it was one.

15 Q Okay. But do you agree with me that's your
16 pistol, a semiautomatic pistol, that you've got to pull
17 the trigger each time that gun fires; right?

18 A Yes, sir.

19 Q So if the gun fired twice you had to pull the
20 trigger twice?

21 A Yes, sir.

22 Q And you know that because you were not so drunk
23 that you don't remember what happened right?

24 A I know that now, yeah.

25 Q Okay. All right, sir. You testified that you

1 were expelled from school?

2 A Yes, sir.

3 Q Why were you expelled from school?

4 A I believe I was expelled from school for striking
5 a teacher.

6 Q Striking a teacher?

7 A Yes, sir.

8 Q And how old were you then?

9 A I was young. I'd say about 15 maybe. Sixteen.

10 Q Male -- male or female teacher?

11 A A male.

12 Q Okay. And, why did you strike a teacher?

13 A Well, I struck the teacher because it was -- it
14 was during class. And I was not feeling well. And, I
15 repeatedly told the teacher that I was not feeling well
16 and I wanted to see a nurse or a doctor. And he refused
17 to let me do that.

18 So, I laid my head down on the desk and he kept
19 telling me to sit up straight. I'd sit up straight, I'd
20 start feeling bad, I'd lay my head back down on the desk.

21 And then he walked up behind me and snatched me up by
22 my shirt. And when he snatched me up I came up, I
23 reflexed, I hit him.

24 Q Hit him with your fist?

25 A I hit him -- yeah.

1 Q Okay. And they kicked you out of school for
2 that?

3 A Yeah.

4 Q Okay. Now, going back, Mr. Rogers,
5 Mr. Leiendecker asked you about your criminal conviction
6 record of nine convictions. No question about it, you
7 were convicted of all nine of these offenses, weren't you?

8 A No question.

9 Q Okay. Trespassing after notice. General
10 Sessions offense of carrying a pistol when you were 17
11 years old. So you -- and you were 22 when you murdered
12 Stephanie B. [REDACTED]?

13 A '92?

14 Q No, you were -- how old were you when you
15 murdered that little girl?

16 A That was 1992, that's six years ago. That would
17 make me -- I was about 23, 24.

18 Q Okay. So you -- you had known for a period of
19 say, five to seven years, that it's illegal in South
20 Carolina for somebody to carry a pistol with them, because
21 you'd already been convicted in 1986 at the age of 17 in
22 this courtroom for carrying a pistol; right?

23 A I pled guilty to carrying that pistol then.

24 Q Okay. So you knew it was illegal?

25 A I knew it was illegal, but back then I was not

1 even carrying a pistol.

2 Q Okay. But regardless of whether you were
3 carrying a pistol or you had it in your car, you knew on
4 November 25th, 1992, that you weren't supposed to be
5 carrying a pistol around with you; didn't you?

6 A Yes, sir.

7 Q Okay. Why were you -- why'd you have a pistol
8 with you that evening?

9 A (No response.)

10 Q Make you feel like a big man?

11 A No, it ain't a point of feeling like a big man,
12 it's just that back then I used to be around people where
13 people get shot at, whatever, what have you. And---

14 Q You carried that gun for protection?

15 A Yeah.

16 Q Because that's a bad neighborhood out there on
17 Pigeon Bay Road?

18 A I wouldn't say Pigeon Bay Road, but that little
19 side of Summerville, it's pretty bad.

20 Q You felt like you needed to carry a gun; right?

21 A I mean, I wasn't obligated to carry a gun or
22 licensed to carry it, I pretty much had to carry it.

23 Q You weren't allowed to carry it, were you? It's
24 against the law.

25 A It's against the law.

1 Q And you knew that. In 1988 the police trying to
2 arrest you and you got arrested for resisting arrest;
3 didn't you?

4 A Yes, sir.

5 Q Okay. In 1988 again, later on that same year,
6 you steal a car. Right?

7 A Yes.

8 Q And you got up here in this same courtroom, a
9 judge was sitting where Judge Whetstone is now, you pled
10 guilty to that; didn't you?

11 A I pled guilty.

12 Q And you went to prison?

13 A Yes, sir.

14 Q And they paroled you, didn't they, after a few
15 months?

16 A After about nine months, yes, sir.

17 Q Okay. And you told Mr. Leiendecker that after
18 they paroled you they revoked that parole?

19 A Yes, sir.

20 Q Why?

21 A For having drugs in my system.

22 Q Okay. What kind of drugs?

23 A Marijuana and cocaine.

24 Q Okay. And you knew a condition of your parole
25 was you couldn't -- you couldn't take drugs. Right?

- 1 A Yes, sir.
- 2 Q Did it any way?
- 3 A (No response.)
- 4 Q Because, Mr. Rogers, you're going to do pretty
5 well what you want to do, aren't you?
- 6 A Excuse me.
- 7 Q You're going to do pretty well whatever you want
8 to do. Don't matter what the law is.
- 9 A You say I could do?
- 10 Q You do whatever you want to do, don't you?
- 11 A Not everything.
- 12 Q Ever since 1985 whatever you feel like doing you
13 do it, don't you? Whether it hurts anybody or it's
14 against the law or whatever. If Timothy Rogers wants to
15 do something he does it; right?
- 16 A No.
- 17 Q You don't follow the rules, do you?
- 18 A I follow the rules, but I just---
- 19 Q Did you get revoked a second time? How many
20 times did they revoke that YOA parole?
- 21 A It was revoked once for drugs in my system.
- 22 Q Right.
- 23 A And once for this right here.
- 24 Q Okay. In fact, you were only out of prison for
25 seven months when you murdered that little girl, weren't

1 you?

2 A Yes, sir.

3 Q And this criminal sexual conduct with assault victim
4 [REDACTED].. Are you telling this jury under oath that you
5 had sexual relationships with that girl that you were
6 staying with or she was your girlfriend -- and at that
7 time you were how old, 22, 23?

8 A I was about 23.

9 Q And you were married?

10 A Yes, sir.

11 Q How many children did you have then?

12 A I had three.

13 Q Three children. And you did not know this child
14 was 15-years-old?

15 A I did not know.

16 Q Did you ever ask her?

17 A No. She told me she was 17 when I first met her.
18 I went by that. And her parents and family and
19 everything.

20 Q And as far as your background, your upbringing,
21 Mr. Rogers, your mother did her level best to raise you in
22 church; didn't she?

23 A She did her best.

24 Q There's nothing's that she could have done that
25 she didn't do to see that you got a good education, that

1 you were raised in church; you were raised right?

2 A Ain't nothing's she could have done to do better.

3 Q And, your stepfather, you've got a good

4 relationship with; him, don't your?

5 A Back then it wasn't, but now, yeah.

6 Q Okay. And both your stepfather and your mother
7 are fine decent Christian people that did their very best
8 to bring you up right?

9 A Yes, sir.

10 Q You've got no complaints about that; do you?

11 A No.

12 Q All right, sir. The gun that you used to murder
13 Stephanie B [REDACTED], it was a .380-caliber semiautomatic
14 pistol; right?

15 A Yes, sir.

16 Q Where'd you get it?

17 A I believe I bought it on the street somewhere.

18 Q Bought it on the street somewhere?

19 A Yes, sir.

20 Q Okay. And at the time you bought the gun on the
21 street you were a convicted felon, because grand larceny
22 is a felony; right?

23 A Yes, sir.

24 Q And you knew at the time you bought the gun that
25 a convicted felon can't buy a handgun; didn't you?

- 1 A Yes, sir.
- 2 Q Okay. Who'd you buy it from?
- 3 A Somebody on the street.
- 4 Q I know, but what was his name?
- 5 A Oh, I don't know all that there.
- 6 Q Somebody you'd seen before?
- 7 A No.
- 8 Q Where is that gun now?
- 9 A I have no idea.
- 10 Q Well, what did you do with it after you murdered
- 11 that 9-year-old child?
- 12 A I threw it in the woods.
- 13 Q What woods, Alabama or here?
- 14 A No, in Summerville.
- 15 Q Okay. When -- when did you do that?
- 16 A When I threw it in the woods?
- 17 Q Yeah.
- 18 A Right after I -- after it happened and I ran.
- 19 And when I got in the woods I just threw it.
- 20 Q Before November 25th, 1992, you had fired a
- 21 pistol before, hadn't you?
- 22 A Before when?
- 23 Q Before November 25th, 1992, you had fired a
- 24 pistol before, hadn't you?
- 25 A Yes, sir.

1 Q Okay. And you know that wherever you aim that
2 pistol that's where that bullet's going to go; right?

3 A Yes, sir.

4 Q If I aim this pistol, that's a bad shot, up at
5 the ceiling, it's going to hit the ceiling; right?

6 A Yes, sir.

7 Q And if I aim down at the floor it's going to hit
8 the floor?

9 A Uh-huh.

10 Q If I level it towards that board over there, it's
11 going to hit the board; right?

12 A Yeah.

13 Q A gun shoots in a straight line; isn't that
14 right?

15 A Yes, sir.

16 Q I believe Mr. Leiendecker asked you a little bit
17 about prison. And you spent some time in prison, under
18 your YOA sentence, as I understand?

19 A Yes, sir.

20 Q And more recently. All right. Tell -- tell us
21 about prison. Do you have a television that you've got
22 access to?

23 A I can have access to it, yeah.

24 Q Okay. And is there a library where you go and
25 read books in your spare time?

1 A In which prison, on the yard or in the Edisto?

2 Q No, in the yard. The general population where
3 you would go if you get a life in prison sentence.

4 A Yeah, they have libraries.

5 Q Okay. And they got basketball courts there?

6 A Yeah.

7 Q Okay. And you've played basketball in prison
8 before, haven't you?

9 A Yeah.

10 Q They got a canteen where you can buy Coke Cola,
11 cigarettes or whatever?

12 A Yeah, they got a canteen where you buy
13 everything.

14 Q What else can you buy at the canteen where you
15 buy everything?

16 A Well, the canteen is basically there for hygiene
17 purposes. And, then they just start adding things to it.
18 Like food -- food and potato chips and whatever.

19 Q Candy bar, chewing gum, whatever?

20 A Yeah.

21 Q Okay. And what else they got to do for you there
22 in your spare time at prison?

23 A What else they got for you to do?

24 Q Yeah, in the general population.

25 A It's pretty much everything else, there's work or

1 programs.

2 Q I'm sorry, I didn't mean to interrupt you.

3 A They got like work, school, counseling program,
4 church programs.

5 Q What if a fellow in general population decides,
6 you know, I'd just soon not work, they got to work?

7 A They don't have to work. Or if they don't work
8 then I guess you pretty much say, don't get -- no work, no
9 play.

10 Q Okay. So they could, if they want to, just sit
11 around?

12 A They're locked in their room.

13 Q Locked room, sit around. All right. Let me ask
14 you a few more questions and I'm going to sit down in a
15 minute, Mr. Rogers. You told Mr. Leiendecker that Mike
16 B [REDACTED] and Stephanie never did go in the store; is that
17 right?

18 A I didn't say they never went into the store. I
19 told him I never seen nobody get out of that truck and go
20 in the store.

21 Q Isn't it your testimony you were on the phone
22 when they came up?

23 A When they came up I was on the phone, already
24 there.

25 Q And then some argument started at the truck

1 between Daxton Patterson and Mr. B[REDACTED]. And while you
2 were still on the phone you went over there and that's
3 when you pulled the gun out and that's when you fired?

4 A I didn't go over there until they got out of the
5 truck, no, sir.

6 Q Well, if they'd gotten out of the truck and gone
7 in the store you would've seen them, wouldn't you?

8 A Not if I wasn't, you know, paying attention or
9 heard them get out or arguing, that's what got my
10 attention is the arguing and them getting out at the same
11 time.

12 Q No question about it, you saw Stephanie E[REDACTED]
13 in the truck; didn't you?

14 A No, I did not.

15 Q You never saw her?

16 A I never saw her.

17 Q Didn't you testify in response to
18 Mr. Leiendecker's question that you saw Stephanie there?

19 A No, I did not.

20 Q You're as sure of that as anything else; right?

21 A I said that Mr. Carver and Mr. B[REDACTED] and
22 Stephanie was in the car. But, at the time the situation
23 happened I did not see her in the car, no, sir.

24 Q Okay. When you testified in response to
25 Mr. Leiendecker's question you fired a shot into the air

1 and you said not exactly in the air, what were you talking
2 about there?

3 A It wasn't straight up in the air. When
4 Mr. E [REDACTED] went to the truck and start pulling out the
5 thing I pulled out the gun and I fired above the truck.

6 Q Above the truck?

7 A Yes, sir.

8 Q Well, haven't we already established that the
9 gun, a bullet coming out of a gun goes in a straight line?

10 A Yes, we did.

11 Q So if you pointed that gun above the truck the
12 bullet would've gone above the truck; wouldn't it?

13 A Yes, sir.

14 Q And the bullet went in the back window; didn't
15 it?

16 A One of the bullets went in the back window.

17 Q Did you see it go in the back window?

18 A No, sir, I didn't.

19 Q Your testimony is, when Captain Patrick arrested
20 you in Tuskegee you were sitting on the couch, you weren't
21 hiding under the couch?

22 A I was sitting on the couch smoking a cigarette.

23 Q And are you as sure of that as you are anything
24 else you've said here today under oath, Mr. Rogers?

25 A I'm as sure of that as I am sitting right here.

1 Q How far from the truck were you when you fired
2 the shot at little Stephanie B [REDACTED]?

3 A I'd say from about here to a couple of rows back.

4 Q A couple of rows back?

5 A Yeah.

6 Q Well, didn't you say earlier that you were right
7 up against the truck and Mike B [REDACTED] was trying to get
8 something from behind the seat?

9 A I said that Mike B [REDACTED] and them was by the
10 truck.

11 Q Okay.

12 A I stepped in between ^{assault victim} and Daxton. I mean,
13 it was some distance. I mean, you've got the thing there
14 you want me to show you?

15 Q Yeah. Do that for me.

16 A The truck would have been here. The phone is
17 somewhere up in here. They had done walked out to this
18 point. ^{assault victim} and Daxton was up over here. I walked over,
19 stepped up in between here. In about that space there.

20 Q Okay. So you're saying that ^{assault victim} was not over
21 by the phone with you she was over with Daxton?

22 A At the time she was over there by me -- in the
23 area I was in. And Daxton was at the truck. And whenever
24 they started getting out the truck they started moving
25 away from the truck I guess.

1 Q All right. Mr. Rogers, I'm not going to belabor
2 this much further. But, turn to page 1127 of that
3 transcript. Did you tell me a few minutes ago that you
4 did not see the gun -- the bullet hit the windshield?

5 A Yeah.

6 Q Okay. Look at line 8 on page 1128. My question,
7 you shot the back windshield, what's your answer?

8 A I accidentally shot the back windshield.

9 Q What's the answer you got here? Yes, sir; right?

10 A Yeah.

11 Q So you did -- you did know you shot the back
12 windshield; right?

13 A When Daxton told me, yeah.

14 Q Mr. Leiendecker asked you about your children.
15 And your oldest child is Tameka, 9-years-old?

16 A Yes, sir.

17 Q What's her birthday?

18 A January 2nd.

19 Q Okay. And Timothy, Jr., what's his birthday?

20 A His birthday would be August 15th or something
21 like that. I believe.

22 Q Okay. Tiffany, what's her birthday?

23 A Tiffany would be October 5th.

24 Q October 5th. And your child that you've got with
25 assault victim, the little boy, what's his name?

1 A Delante.

2 Q And what's his birthday?

3 A August 1st.

4 Q Your cousin that was with y'all earlier that
5 evening, his last name is Middleton?

6 A Yes, sir.

7 Q Is he related to the minister at your church?

8 A Well, I call him my cousin because I've known him
9 all my life, but that's his son, yes, sir.

10 Q That's the son of the minister?

11 A Right.

12 MR. BAILEY: Indulge me one second, please, Your
13 Honor.

14 (Counsel consulted cocounsel.)

15 MR. BAILEY: Nothing further, Your Honor, of this
16 witness.

17 THE COURT: Redirect?

18 MR. LEIENDECKER: No questions, Your Honor.

19 THE COURT: You may step down, thank you, sir.

20 MR. RUNYON: We call Mr. Jessie Middleton.

21 JESSIE MIDDLETON, being first
22 duly sworn, testified as follows;

23 DIRECT EXAMINATION BY MR. RUNYON:

24 Q Mr. Middleton, how old are you, sir?

25 A Excuse me, I couldn't hear you.

JESSIE MIDDLETON-DIRECT BY MR. RUNYON:

- 1 Q How old are you, sir?
- 2 A Thirty-five.
- 3 Q All right. And, where do you live?
- 4 A I live at [REDACTED], Summerville.
- 5 Q And what is your job or occupation?
- 6 A Carpenter.
- 7 Q All right. Do you have -- do you perform any
- 8 duties other than being a carpenter?
- 9 A I'm a minister at World Wide Deliverance Church.
- 10 Q Is Mrs. Aletha Nichols a member there?
- 11 A Yes, she is.
- 12 Q And, are you married?
- 13 A Yes, I am.
- 14 Q All right. Now, are you Mr. Rogers' cousin?
- 15 A Not by natural cousin, but we've been together,
- 16 known him all his life, so we say we're cousins.
- 17 Q Okay. Was he -- was he over at your house that
- 18 afternoon back in November? Was that your house that he
- 19 was at?
- 20 A No, they were over three houses down working at a
- 21 car, working on cars.
- 22 Q Okay. That -- so it wasn't your house he was at?
- 23 A No, it was not my house.
- 24 Q All right. Now, have you -- how long have you
- 25 known Mr. Rogers?

1 A Well, he's, I believe, 29 years old. And I've
2 been knowing him ever since he was born. Twenty-nine
3 years.

4 Q Now, you're familiar with the fact that he's had
5 trouble over the years?

6 A Yes, sir.

7 Q And, of course, you don't -- didn't recommend him
8 get in that trouble, did you?

9 A No, sir.

10 Q His family always treated him nice?

11 A Yes, sir, he was raised by his mother most of the
12 time.

13 Q She tried to raise him right?

14 A Yes, sir.

15 Q And he just did some wrong?

16 A Yes, sir, ever -- she raised him in New York.
17 And when he moved down here he got in a little trouble.

18 Q Okay. Now, how did you -- how did you know
19 Mr. Rogers, did y'all socialize?

20 A Mr. Rogers were -- his mother was a close friend
21 to the family. And, I knew Mr. Rogers when he was born
22 and he ate over our house, he was like one of the
23 brothers. And, he wanted to be so much like my father.

24 Q And, your father is who?

25 A Apostle Middleton. From the church that I go to.

ELAINE WILLIAMS-DIRECT BY MR. RUNYON:

1 Q Now, have you ever known Mr. Rogers to be -- is
2 he a mean person?

3 A No, he's not mean, he's just like any other young
4 kid sometime you get, you know, influenced with the wrong
5 crowd or hang with the wrong person things rub off on you.

6 Q Okay. Now, did -- did he come to church with his
7 mother when he was a teenager?

8 A Oh, yeah, I mean, when -- when he was living at
9 his mother's house every Sunday he had to be to church,
10 you know, every time the church doors open they had to be
11 there.

12 MR. RUNYON: No further questions.

13 THE COURT: Cross-examination.

14 MR. BAILEY: No cross, Your Honor.

15 THE COURT: You may step down, thank you, sir.

16 MR. RUNYON: One moment, Your Honor.

17 (Counsel consulted cocounsel.)

18 MR. RUNYON: We call at this time Ms. Elaine
19 Williams.

20 ELAINE WILLIAMS, being first
21 duly sworn, testified as follows;

22 DIRECT EXAMINATION BY MR. RUNYON:

23 Q Ms. Williams, how old are you, ma'am?

24 A Oh, 32.

25 Q And where do you live?

1 A [REDACTED] in Summerville.
2 Q And, what do you do for a living?
3 A Well, I work in the hotels.
4 Q Okay. Which hotel do you work at?
5 A Holiday Inn, Summerville.
6 Q All right. And, do you know Mrs. Aletha Nichols?
7 A Oh, yes.
8 Q How do you know her?
9 A Well, she was a tenant in our home in New York.
10 In Brooklyn, New York.
11 Q And, do you know Timothy Rogers?
12 A All his life.
13 Q And, have you been around him all his life?
14 A All his life. We went to PSME III in New York
15 and I was like Timothy's second mom because his mom
16 worked. She was a single parent. There was no man in the
17 home and I just stepped in as a stepmom.
18 Q Now, Ms. Williams, his -- his mother tried to
19 raise him right?
20 A Oh, man, she did the best she could.
21 Q And, was Timothy basically a good kid early on?
22 A Tim was very, very good. He was very curious.
23 He was the type that if he asked you something and you
24 told him he would just come back and say, well, why. He
25 was very curious.

ELAINE WILLIAMS-DIRECT BY MR. RUNYON:

1 Q Did he attend church regularly with his mother?

2 A He went to church every Sunday, every Tuesday,
3 every Friday. And he just went on and on and on in New
4 York.

5 Q Did there come a point in time in his life when
6 he started having some trouble?

7 A Well, we went -- we -- we left New York first.
8 And I think that was in '79. And, they followed
9 in '80, '81. At that time I noticed -- I noticed some
10 changes with him, his mom just recently married and he
11 didn't like that too much. And, I think that's where it
12 started at, because he was a whole different person.

13 Q And subsequently he started getting in trouble,
14 dropped out of school?

15 A Yes, sir. Yes, sir. And that surprised me,
16 because he was very, very smart. In New York he was
17 getting straight A's and if you can hold straight A's in
18 New York you can do it here.

19 Q And, have you ever -- have you ever seen him get
20 angry?

21 A No. Not in my presence, no.

22 Q Before he got in these problems, was he mannerly?

23 A Oh, yes. Oh, yes, I was -- just like I said I
24 was second mom.

25 MR. RUNYON: No further questions.

Applicant's Mother DIRECT BY MR. BAILEY:

1 THE COURT: Cross-examination?

2 MR. BAILEY: Bear with me one second, please, Your
3 Honor.

4 (Counsel consulted cocounsel.)

5 MR. BAILEY: Your Honor, I have nothing for
6 Ms. Williams.

7 THE COURT: You may step down, thank you, ma'am.

8 MR. RUNYON: Mrs. Applicant's Mother.

9 Applicant's Mother, being first duly
10 sworn, testified as follows;

11 DIRECT EXAMINATION BY MR. RUNYON:

12 Q Mrs. ^{Applicant's Mother}, where do you live, ma'am?

13 A Woodside. Ladson, Summerville.

14 Q Okay. Are you married?

15 A Yes, I am.

16 Q And to whom are you married?

17 A Martin N [REDACTED].

18 Q All right. Is he in the courtroom here today?

19 A Yes, he is.

20 Q What's he do for a living?

21 A He's a landscaper.

22 Q Okay. And how long have you lived in Summerville
23 since returning from New York? Summerville area?

24 A We've been here, I believe it's -- it's been 18
25 years this October gone, I believe.

- 1 Q Okay. And, are you employed?
- 2 A Yes.
- 3 Q Where do you work?
- 4 A I work for the Worldwide Deliverance Ministries.
- 5 And for pastors.
- 6 Q All right. And, how many children do you have?
- 7 A I have four children.
- 8 Q And, what are their names and ages?
- 9 A Al is 30. Robert -- no, Timothy is -- going to
- 10 be 29. Robert is 28. And Faith is 18.
- 11 Q All right. Now, your other two sons, are they
- 12 employed?
- 13 A Yes.
- 14 Q And where -- what kind of jobs do they do?
- 15 A Robert works for Jiffy Lube in Summerville.
- 16 Curtis is a maintenance man for the chain of Kentucky
- 17 Fried Chicken stores.
- 18 Q And what does your youngest child do?
- 19 A She attends college. Going for paralegal.
- 20 Q All right. And -- and, of course, then there's
- 21 Timothy?
- 22 A Yes.
- 23 Q Did you try to raise him in the church?
- 24 A Yes, I did.
- 25 Q Did you try to make sure he went to school?

1 A Yes, I did.

2 Q Did you have any real troubles with him?

3 A Only trouble that I had with Timothy is when I
4 got married and he did not approve of that. And, then he
5 began to get somewhat in trouble, his life took a turn
6 then.

7 Q Despite that fact, Applicant's Mother, his stepfather
8 worked to support the family with you?

9 A Did the best that he could.

10 Q And, looked after his -- his stepchildren?

11 A Yes, he did.

12 Q And, did Timothy get in trouble in school?

13 A Yes, he did.

14 Q Did he get expelled?

15 A Yes.

16 Q What did he do thereafter -- just briefly would
17 you tell us about his -- about his life, I mean, fairly
18 briefly.

19 A He would get jobs, he would work, but he couldn't
20 hold a job because he would get in trouble. He did at one
21 point -- the -- the school advised me to seek counseling
22 for him because through counseling our ministers we found
23 out the reason why he was reacting the way that he did, so
24 we did that. And, he still, you know, would lose a job,
25 get in trouble, he would get another job. He would work,

1 but he just still had that problem that would cause him
2 to go -- go astray, do wrong to other people.

3 Q Did he ultimately get married?

4 A Yes, he did.

5 Q His wife is in court today?

6 A Yes, she is.

7 Q And they have -- how many grandchildren do you
8 have by that union?

9 A Four, I just -- Stephen is just -- I just count
10 Stephen, I don't, you know, separate Stephen. So it's
11 three with them two.

12 Q Stephen is Timothy's stepson?

13 A Yes.

14 Q And -- but as far as you're concerned those four
15 children are your grandchildren?

16 A Yes, sir.

17 Q All right. And you see them regularly?

18 A All the time.

19 Q And what about the -- the child, your grandchild,
20 Tameka, as a result of Mr. Roger's union with Ms. assault victim?

21 A I wasn't allowed to -- not so much allowed to, I
22 just -- because I didn't want to cause conflict with his
23 wife. But this -- she did spend this Thanksgiving with us
24 for the first time and we enjoyed it.

25 Q All right. So, Mr. Rogers was raised in a loving

- 1 family?
- 2 A Uh-huh.
- 3 Q And, you did the best you could with him?
- 4 A Yes, sir.
- 5 Q And he still had his problems?
- 6 A Yes, sir.
- 7 Q Got in the -- with the wrong people?
- 8 A Uh-huh.
- 9 Q And, he did what -- what we've heard he did?
- 10 A Yeah.
- 11 Q Was -- during all the years that you were raising
- 12 him and he was around the house, both in good times and
- 13 bad, was he ever a mean person?
- 14 A No.
- 15 Q Did you offer him any assistance when he was
- 16 having these troubles?
- 17 A Yeah, like I said, we counseled with our
- 18 ministers often. And they would send him to counselors,
- 19 psychiatrists like, when he was in school, through the
- 20 school system. And he got counseled.
- 21 Q And then after he -- after he was expelled from
- 22 school did you try to get him to go back to school?
- 23 A Yes.
- 24 Q He did -- did he go back?
- 25 A Yes, he did for a period of time. He went to

1 Trident.

2 Q What kind of jobs did he hold when -- when --
3 when he worked?

4 A Quincy's. Ryan's. He did some carpentry. And
5 he used to work at times with my husband. Sometimes.

6 Q Okay. So he did hard work?

7 A Some of it, yeah.

8 Q When I say hard, I mean, he just didn't sit at a
9 desk?

10 A No.

11 Q Was he a carpenter? Or a carpenter's assistant?

12 A Uh-huh.

13 Q And he worked in landscaping?

14 A Uh-huh.

15 Q And he worked in restaurants, I believe you said?

16 A Yes.

17 Q Do you approve of anything your son did which
18 brought about the death of this young child?

19 A No. In no way, shape or form do I approve of
20 what happened to little Stephanie. I raised children
21 prior to working in the ministry, that was my field of
22 work, in the Summerville area. It was no different of
23 race or color. And when this happened I felt just what
24 they felt. And I still do. I was never allowed to let
25 Ms. [REDACTED] know. But I always kept her in my heart. I

1 wasn't there. She wasn't there. But God knows if I could
2 bring that baby back, I would. But I can't.

3 Q Applicant's Mother---

4 A My love for my son is the same love that they
5 have. And I was just as much as devastated, I prayed just
6 as hard that that child wouldn't die.

7 Q Applicant's Mother, what are you asking this jury to do
8 to your son?

9 A I'm just asking them to just have mercy on him.

10 MR. RUNYON: No further questions, Your Honor.

11 THE COURT: Cross-examination, please.

12 MR. BAILEY: No questions, Your Honor.

13 THE COURT: You may step down.

14 MR. RUNYON: That's it, Your Honor, we'd rest.

15 THE COURT: Ladies and gentlemen of the jury panel, I
16 have a matter I need to take up with the attorneys.
17 Please step into the jury room and don't talk about the
18 case yet.

19 (WHEREUPON, the following takes place out of the
20 presence of the jury.)

21 THE COURT: Any motions? Renew your motions.

22 MR. RUNYON: Your Honor, we would renew our motions,
23 all the previous motions made, particularly as it relates
24 to submission of this case to the jury as a capital case.
25 We would anticipate the ruling of the Court by -- by

1 saying that and we're not waiving any motions we
2 previously made or any positions we've taken. But we
3 would anticipate the Court would maintain its former
4 rulings, but we do renew our motions. We would ask the
5 Court to direct the jury to return life without parole for
6 the previously stated grounds.

7 THE COURT: Okay, your motion's noted for the record
8 and denied on the same basis as before. Anything further
9 from the state?

10 MR. BAILEY: Nothing from the state at this time.

11 THE COURT: Okay. Why don't we break for lunch at
12 this point, let the jury take an hour and a half for
13 lunch, come back at two o'clock and have closing arguments
14 and charge. Any objection from the state?

15 MR. BAILEY: No, sir.

16 THE COURT: From the defendant?

17 MR. RUNYON: No, Your Honor.

18 THE COURT: That will give you sufficient time, both
19 sides, to prepare what you need to prepare. Okay, bring
20 the jury back in, please.

21 (WHEREUPON, the following takes place in the presence
22 of the jury.)

23 THE COURT: Okay, ladies and gentlemen, we will stop
24 here for lunch. We'll ask all of you to be back up here
25 at two o'clock.

1 Between now and then don't talk about the case with
2 anyone, don't let anybody talk to you about the case with
3 anyone [sic].

4 You have heard all of the testimony that you will hear
5 in the case and after lunch we will have closing arguments
6 and the charge on the law.

7 Have a good lunch and please be back up here at two
8 o'clock, thank you.

9 (WHEREUPON, the following takes place out of the
10 presence of the jury.)

11 THE COURT: Okay, if we could get back together at
12 about a quarter 'til two I'll have the charge ready and
13 let all of you look it over before we actually go to
14 closing arguments and charge. Any objection from the
15 state?

16 MR. BAILEY: None from the state, Your Honor.

17 THE COURT: From the defendant?

18 MR. RUNYON: None from defense, Your Honor. Just as
19 matter of housekeeping, so my colleague over there is --
20 is aware of what we plan to do on our closing, of course,
21 we get the final argument. And we plan, Mr. Leiendecker
22 and I, to split our closing arguments. Mr. Leiendecker
23 then Mr. -- would address certain issues and Mr. -- and
24 introduce Mr. Rogers again. Mr. Rogers would make a short
25 statement to the jury. And then I will finalize.

1 THE COURT: Yes, sir, that is fine. All right. Two
2 o'clock, please. Please be in here at a quarter 'til and
3 we'll talk about the charge.

4 (Lunch recess was taken.)

5 THE COURT: Okay, here are the statutory instructions,
6 jury's verdict on proof of aggravating circumstances,
7 recommendation of sentence, life imprisonment and
8 recommendation of sentence, death penalty, along with the
9 penalty phase charge, in which I have included a charge on
10 how the jury is to treat the defendant's record, which has
11 been put into evidence. And also an additional charge
12 that the jury is not to be persuaded by passion or
13 prejudice or any other -- or mere sympathy in making their
14 decision. And you may review all of them, keep them in
15 order please, if you will.

16 MR. BAILEY: There's just one copy?

17 THE COURT: Just one copy, yes, sir.

18 MR. BAILEY: I'll let him look at it.

19 (Counsel reviewed charge.)

20 MR. BAILEY: Your Honor, I haven't read the entire
21 penalty phase jury instruction, but I -- I did note right
22 off the bat that you said that the penalty will be carried
23 out by electrocution.

24 THE COURT: Yes, sir, that will be corrected when I
25 read it to them.

1 MR. RUNYON: Your Honor, while Mr. Bailey's---

2 MR. BAILEY: Go ahead.

3 MR. RUNYON: I don't want to rush Mr. Bailey, but just
4 to call the Court's attention to the fact that the
5 instructions -- I particularly have no objection to the
6 instructions.

7 However, under the provisions for mitigating -- the
8 instructions as to mitigating the circumstances--

9 THE COURT: Yes, sir.

10 MR. RUNYON: --it -- it -- it basically is couched in
11 terms of whether or not the defendant has shown certain
12 mitigating circumstances.

13 I -- I question whether or not the jury should be
14 told -- instructed that the defendant, you know, prove
15 something. I think that rather, it should be general as
16 whether upon all the evidence you find mitigating
17 circumstances versus saying the defendant has to show it
18 or the defendant---

19 THE COURT: And then it also goes on to say he doesn'
20 have to show anything.

21 MR. RUNYON: Well, I understand, Your Honor. But, I
22 mean -- and I understand where the Court's coming from
23 with the instructions. I'm not -- we're on the same
24 track. I'm concerned about the jury, because as a
25 practical matter, both the -- the evidence of

1 intoxication, for example, came both from state's
2 witnesses and defense witnesses.

3 And so, I think that rather than have them focus on or
4 get the idea that maybe the defendant has to prove
5 something, and I know you went on to say that he doesn't
6 have to prove anything. But it just seems, though, that
7 the verbiage could be like a burden shifting verbiage.

8 THE COURT: All right, sir, I'll take a look at it.
9 (Counsel reviewed charge.)

10 MR. BAILEY: Your Honor, I have no objection to
11 anything in here. The only addition I would request, I
12 guess, it's sort of an unusual request. But inasmuch as
13 the -- the defendant basically has kind of gone back into
14 the guilt phase of the first trial by alleging that the
15 homicide was accidental, which he has every right to do
16 under that Spartanburg case I eluded to earlier.

17 I was wondering if it would be appropriate just to
18 give the jury a charge on murder, so that they know what
19 we're talking about.

20 MR. RUNYON: Your Honor, we stipulate to the guilt of
21 murder, we're estopped from suggesting he's not guilty of
22 murder.

23 I would call to the Court's attention that the state
24 asked to put into evidence the -- the tape, the
25 videotape. Our client says on the way to the bond hearing

1 that it was an accident.

2 Now, I don't think that the jury needs to be given any
3 more law other than the fact that we've told them all
4 along during the voir dire he's guilty of murder. The
5 only thing we're doing here is considering sentence.

6 And I have no problem with the Court giving the
7 general instruction, reminding them that they're not to --
8 this is not a question of guilt, this is a question of
9 sentence.

10 But to go back and charge murder all over again, I
11 mean, we stipulate that he's guilty of murder.

12 MR. BAILEY: Your Honor, they will be sentencing him
13 for murder, not for the aggravating circumstance. And I
14 think for them to sentence him for an offense on which
15 they've not received a general charge from the Court, a
16 definition, you're asking them to sentence either to life
17 or death for murder, when they don't officially know what
18 murder is, other than what I've said and what Mr. Runyon
19 has said.

20 (Pause.)

21 THE COURT: Okay, I think it's appropriate to charge
22 murder since we are just doing a penalty phase, in this
23 trial the jury has not heard that instruction. Normally
24 they would have heard it by now.

25 I think it is important that the jury know the legal

1 definition of murder, not what they might have seen on
2 television or read in the newspaper or have formulated in
3 their own minds, since none of these jurors have
4 backgrounds in the law.

5 I think it's important for both the state and the
6 defendant that the jurors have a definition of murder. In
7 order to define that I will read what I normally read as
8 the charge on murder. That is, I'll define motive, I'll
9 define criminal intent and I'll define for them what
10 murder means, defining malice inferred or implied. And
11 just read the normal charge on murder and read that as a
12 preliminary part of this charge.

13 On your other objection, Mr. Runyon, I will change the
14 wording under mitigating circumstances where it now reads,
15 whether the defendant has introduced any -- any evidence,
16 I will read, when I give the charge, whether there has
17 been introduced any evidence. I'll make a similar change
18 in that second one and try to catch it in any other place
19 it might appear in here, I think that's all, but I'll look
20 through it and see if there are any others.

21 MR. RUNYON: Thank you, Your Honor.

22 MR. BAILEY: Your Honor, in regard to closing
23 arguments, I'd previously filed a motion in limine with
24 you up in Berkeley County in regards to either eliminating
25 or strictly limiting religious references in argument.

1 And my fear is that I could get up here, and I don't
2 want to do this, and don't plan on doing it, and quote
3 from the Old Testament, Mr. Runyon and Mr. Leiendecker can
4 quote from the New Testament, it's an arbitrary factor.
5 The death penalty is the law of the land. And I think if
6 we get into moral and religious things it's going to get
7 that arbitrary factor in there and distract the jury from
8 instructions.

9 I'm not really clear on what -- what Your Honor ruled
10 in Berkeley on that.

11 THE COURT: I thought Mr. Runyon said he wasn't going
12 to do that.

13 MR. RUNYON: Well, Your Honor, I'm not going to do
14 that, first of all. Secondly, the a brief reference to --
15 it was a fairly brief reference to the impact of capital
16 punishment on the defendant.

17 And, you know, my Jewish priest brother-in-law died
18 three years ago and my Baptist minister uncle just retired
19 last year. So I'm going to leave them out of it. I'm not
20 being sarcastic when I say that, I'll leave them -- leave
21 them totally out of it so we won't have that problem.

22 THE COURT: And that's the way I thought we left it in
23 Berkeley County.

24 MR. RUNYON: Yes, sir.

25 MR. BAILEY: I wasn't -- wasn't sure, Your Honor.

1 And also, I'm sure there's no problem here, in view of
2 the Court's previous rulings in regard to proposed
3 requests to charge, but the jury will not be told about
4 the effect of a dividing verdict.

5 THE COURT: No, sir, they will not. They -- they will
6 be given the first sentence of the charge -- I think the
7 entire charge that was proposed by the defense, that is,
8 the sentence the -- should the jury sentence the defendant
9 to a life sentence, his sentence shall be for life without
10 the possibility of parole. In short, if sentenced to life
11 he will never be eligible for parole. All right? That's
12 what I'll tell them.

13 The other one is not proper to tell the jury that if
14 they can't agree the defendant will be given a life
15 sentence. That's just absolutely not proper. And I'm not
16 going to do that. All right, bring the jury in, please.

17 MR. BAILEY: Your Honor, could we possibly have about
18 two minutes prior to starting this?

19 THE COURT: Yes, sir.

20 (Brief recess was taken.)

21 THE COURT: Okay, is the state ready?

22 MR. BAILEY: State's ready, Your Honor.

23 THE COURT: Defendant ready?

24 MR. RUNYON: Yes, Your Honor.

25 THE COURT: Okay, what I plan to do, depending on how

1 long the closing arguments run, is I will break before the
2 charge. If they are considerably shorter than what I
3 anticipate then we may go directly into the charge, but
4 right now I plan to break between the closing arguments
5 and the charge for five or ten minutes, give the jury an
6 opportunity to get up and stretch, then we'll give the
7 closing charge. Bring the jury in.

8 (WHEREUPON, the following takes place in the presence
9 of the jury.)

10 THE COURT: Ladies and gentlemen, since you left here
11 for lunch has anybody talked to you about this case or
12 have you talked to anybody about the case? If so, please
13 raise your hand.

14 (No response.)

15 THE COURT: We'll now have closing arguments, I'll ask
16 all of you to continue to pay very close attention as you
17 have throughout the course of this trial. Mr. Bailey.

18 MR. BAILEY: May it please the Court? Ladies and
19 gentlemen, I want to thank y'all for your attention
20 throughout the trial, it's been a fairly short trial, but
21 I'm sure you understand that due to the nature of this
22 trial, where the defendant's been previously adjudicated
23 guilty of murder, it just doesn't require us to go back
24 into all the details of the murder, we're dealing
25 primarily with punishment here.

1 I know it has been a hardship on all of y'all being in
2 a motel. This will be the last day of the trial. And I
3 do thank you for your attention and the sacrifices that
4 you've made by serving as jurors in this case.

5 What I want to ask y'all to do is to continue to pay
6 close attention to the closing arguments, the closing
7 statements, to Judge Whetstone's instructions to you.

8 And ask you to please give me about 45 minutes to an
9 hour more. And that may sound like a long time for me to
10 stand up here and talk. But this is the last opportunity
11 I'm going to have to say anything to y'all in this trial.

12 Obviously one side or the other has got to go first
13 and one side goes last. And under our rules I go first,
14 the defense goes last.

15 And I may want to get up here when they finish and
16 take issue with what they say, but I can't do that. So
17 whatever I'm going to say I've got to say it now and I've
18 got to kind of anticipate what they may say and kind of
19 deal with it ahead of time. So if I go on too long,
20 please forgive me.

21 As all of y'all know, this man here, Timothy Rogers,
22 is a convicted child murderer. Murder is the killing of a
23 human being with malice aforethought. And when Judge
24 Whetstone instructs you he's going to give you a detailed
25 charge on what the law of murder is. Murder's killing

1 with malice aforethought.

2 Now, your sole duty, your only duty at this point when
3 you go back and deliberate, is to make a choice. Two
4 choices that y'all well know by now, life without parole
5 and the death penalty.

6 Y'all went through the jury qualification process
7 starting Monday. And each one of you were asked to raise
8 your hand and you were put under a solemn oath. You said
9 I swear to tell the truth, the whole truth, nothing but
10 the truth, so help me God. And each and every one of you
11 said, under oath, that in the appropriate case you could
12 vote for the death penalty.

13 And under that same oath each of y'all said that if
14 you voted for the death penalty in that appropriate case
15 you could then sign your name to a death verdict form that
16 would result in that execution taking place.

17 And each of y'all said if you did those first two
18 things, the vote, signing the form, you could then come
19 out into open court and announce that verdict.

20 And each of you said, if the case is bad enough I can
21 do those things. I can vote for the death penalty, I can
22 sign that form, I can announce that decision.

23 And when y'all said that under oath I believed you or
24 you wouldn't be on this jury.

25 So, ladies and gentlemen, the question of whether or

1 not the death penalty's right or wrong, whether we ought
2 to have a death penalty in South Carolina is not an issue.
3 Because all of y'all said under oath that the death
4 penalty is an appropriate form of punishment in some
5 cases.

6 So, it's part of the law in this state, it's not a
7 moral issue, it's not a religious issue. The only
8 question is this case, this defendant, Timothy Rogers, the
9 appropriate case for the death penalty? That's as simple
10 as I can boil it down, that's the decision y'all have to
11 make. Is this the death penalty case that y'all had in
12 mind?

13 Now what I'm going to talk to y'all about, of course,
14 is the testimony, and that testimony dealt with the
15 circumstances of the crime, the murder of Stephanie
16 B [REDACTED], committed by Timothy Rogers. The characteristics
17 of Timothy Rogers. The characteristics surrounding that
18 murder. And his conduct before that and his conduct after
19 the murder, and we'll talk about that.

20 And I want to talk to y'all about the impact of
21 Stephanie's death on the people that loved her, her
22 mother, her father, her grandmother, her grandfather. And
23 that's called victim impact evidence.

24 And let me say this, and this is real obvious, the
25 victim in this case is Stephanie B [REDACTED] and her family

1 seated over here. Timothy Rogers is not the victim,
2 Timothy Rogers' family are not the victims.

3 And his family, from what we saw on the witness stand,
4 are fine, upstanding people that did their level best to
5 raise Timothy Rogers the best way they could. And we
6 can't help but feel sorry for Mrs. Nichols, about what
7 she's going through and has been through.

8 But Judge Whetstone, when he instructs y'all, is going
9 to tell you that you cannot -- he'll instruct you that you
10 cannot base your verdict on mere sympathy, passion,
11 prejudice or any arbitrary factors. Although, we all feel
12 sorry for Mrs. Nichols and the other members of Timothy
13 Rogers family, that cannot enter into your deliberations.
14 You have to make your decisions based on the facts and the
15 law.

16 The facts of this case, ladies and gentlemen, spell
17 out a picture of a course of conduct so devoid of
18 conscience, so lacking in basic human compassion and so
19 bent on malice that it literally cries out for the
20 imposition of the death penalty.

21 This is a brutal, senseless, stupid murder of an
22 innocent 9-year-old girl who had never harmed a single
23 soul in her entire life. Y'all heard about her, the kind
24 of child she was, from her parents.

25 If y'all had heard that somebody had gone out and sho

1 a dog at Spell's store the way she was shot you'd be
2 appalled. And we're dealing with a little girl, a human
3 being that's dead because of this man, this ex-convict.

4 And Mr. Rogers got up here and testified under oath,
5 this was an accident, didn't mean to. Well, ladies and
6 gentlemen, you don't get found guilty of murder with
7 malice aforethought if it's an accident.

8 Judge Whetstone's going to tell y'all what murder is.
9 Murder and accident are not the same thing.

10 We're past the point of guilt or innocence. This man
11 is guilty of murder.

12 And, since it was brought up I want to go into that a
13 little bit, to show y'all this could not have been an
14 accident. What we're going to do, this is Spell's store.
15 Y'all have seen the diagram of the parking lot, we're not
16 talking about the Piggly Wiggly parking lot or the Bi-Lo
17 parking lot or some big place, we're talking about a
18 parking lot that could easily fit into this courtroom up
19 until the third or fourth pew here. A very tiny confined
20 space.

21 You've heard testimony there's lighting outside there,
22 it's getting dark, but there are lights out there, you can
23 see. Okay, this is the back of the truck, you can't see
24 that too well. Closer view of the truck. And you can
25 see, if you look real close, the entry wound from that

1 bullet, it's almost right in the middle of that back
2 window. If you're aiming right at the person sitting in
3 the middle you couldn't take a better shot than what
4 you've got here.

5 That's a closer view, the little decal of the car is
6 in the middle, you can see the bullet hole just over to
7 the left of it, you can see the height of it.

8 That's Dr. Nichols' sketch of the entry point. And
9 you can see it's high up on her head, a little bit over to
10 the left.

11 Now bear in mind the testimony of Jimmy Carver and
12 Mike B [REDACTED]. That when this man came over to that truck
13 with that semiautomatic pistol that child was in the truck
14 scared to death, crying out loud, because she was afraid
15 this man was going to hurt her father. And Jimmy Carver
16 said they made eye contact, he saw her in the truck, she
17 saw him.

18 As they drove off in that little parking lot, Mike
19 B [REDACTED] hadn't even gotten to Richardson Avenue, when
20 Rogers stepped behind that truck, leveled that gun a
21 second time and fired that shot directly into the back of
22 her head.

23 And, ladies and gentlemen, I keep saying the obvious,
24 but a bullet goes where you point it. If you shoot up in
25 the air it doesn't go down into the window. It goes where

1 you point it. This man has said he was under control,
2 he'd been drinking, but he recalled what was happening, he
3 was not intoxicated and he's responsible for what he did.

4 The only conclusion y'all can reach, based on the
5 evidence, is he shot the little girl in the back of the
6 head, for whatever reason, because she was there and in
7 his line of fire.

8 But again, there is no doubt of his intent to kill,
9 but that's really not your decision, he's a convicted
10 murderer at this point. That's our starting point.

11 And can you imagine a more cowardly act? A grown
12 man, 22, 23 years old, in the prime of his life, prime of
13 health, armed with a semiautomatic gun, shooting down a
14 little girl, who's doing nothing more than sitting in her
15 father's truck, trying to have a Thanksgiving weekend with
16 her family.

17 And they find him a week later up in Alabama hiding
18 under a sofa. He tells you he's sitting on the sofa
19 smoking a cigarette, but y'all heard Captain Patrick say
20 where they found him.

21 Just the enormity of this crime, the seriousness of
22 it, the brutality of it, the tragedy of it, is kind of
23 overshadowed by the approach we have to take in a
24 courtroom.

25 And even though I've got pictures, I've got testimony,

1 it's hard for me as a lawyer, a prosecutor, to really, I
2 think, get through to y'all how bad this thing was.

3 We're all on our best behavior, we're wearing coats
4 and ties, the judge has his robe on and we have decorum in
5 the courtroom, and it's just hard for me to convey to
6 anybody how bad this is and what y'all have to do.

7 And what I ask you to do, is in your mind's eye try to
8 place yourselves at Spell's store on the night of
9 November 25th, 1992. And think of what that -- what that
10 little girl went through. You have evidence that she
11 suffered. She didn't die that night. She died the next
12 day. And you've heard the EMS people. Mr. Scharff that
13 was there. You've heard Mr. Carver testify. And y'all
14 can gather from that testimony that child suffered.

15 She didn't immediately lose consciousness. When they
16 talked to her she could respond, from the testimony, her
17 teeth clenched. That her -- her -- her feet pushed
18 against the floor. That she responded to stimulus. What
19 was going on in her mind after being shot in the back of
20 the head for no reason by this man? And I ask you to try
21 to visualize it.

22 Now, I want to talk to y'all about aggravating
23 circumstances. And like I said in my opening statement,
24 it isn't just any old murder in South Carolina that
25 justifies the death penalty, you may want to impose the

1 death penalty, but unless there's an aggravating
2 circumstance you cannot do it.

3 And the legislature sets out certain aggravating
4 circumstances. And I have to prove at least one
5 aggravating circumstance to y'all's satisfaction, beyond a
6 reasonable doubt, or you cannot bring back the death
7 penalty.

8 Now, I've alleged on behalf of the State of South
9 Carolina two statutory aggravating circumstances. The
10 first is, the murder of a child under the age of 11. And
11 we've put into evidence Stephanie's birth certificate
12 showing her date of birth, the fact that she was 9 years
13 old when she was murdered by Timothy Rogers. That's
14 uncontradicted. That statutory aggravated circumstance,
15 that child's age, is -- is clear and it's proven beyond a
16 reasonable doubt.

17 The second aggravating circumstance that I've alleged
18 is that by his act of murdering 9-year-old
19 Stephanie B [REDACTED], Timothy Rogers knowingly created a
20 great risk of death to more than one person in a public
21 place, by means of a weapon which normally would be
22 hazardous to the lives of more than one person.

23 Now, the evidence shows there were three people in the
24 cab of that car -- that truck. Mike B [REDACTED], Jimmy Carver
25 and Stephanie. Seated in the cab of the truck. They were

1 in a public place, the grocery store parking lot. And the
2 murder was committed with a semiautomatic pistol, which
3 put everybody in a zone of danger, they were all three in
4 danger. And I submit to you that statutory aggravating
5 circumstance has also been proven beyond a reasonable
6 doubt.

7 Now y'all don't need to find that I've proven both
8 aggravating circumstances. Proof of either one is
9 sufficient for y'all to bring back the death penalty if
10 that's your decision.

11 And as I said, the fact that this child's 9 years old
12 is not in dispute. It's a proven fact. So with that
13 evidence y'all are lawfully empowered to bring back the
14 death penalty if you think that's appropriate in this
15 case.

16 But in making your decision on life without parole or
17 the death penalty, y'all aren't restricted to the
18 statutory aggravating circumstance, but that's the
19 starting point.

20 Once you've found that an aggravating circumstance
21 exists then you can go on and look at other things.
22 Characteristics of the defendant that y'all are going to
23 judge here, the kind of person he is. And y'all know some
24 of the stuff about Timothy Rogers, the kind of person he
25 is.

1 What y'all know is that he got kicked out of school
2 for hitting his teacher. You heard him testify to that.

3 Y'all can look at his criminal record, not as an
4 aggravating circumstance, but as a characteristic of
5 Timothy Rogers. And, y'all have seen his record. It's
6 hard to read there, but you've got it on this exhibit.

7 He has nine criminal convictions. And it isn't like a
8 situation where right off the bat he got in trouble and
9 got locked up from then on, you know, he was a victim of
10 the system or something.

11 He didn't get locked up until his sixth conviction,
12 this grand larceny of a car. Prior to that he was -- he
13 was convicted of trespassing, carrying a pistol,
14 possession of marijuana, shoplifting, resisting arrest.
15 He didn't do time on any of that stuff. He got a break
16 all those five times.

17 And finally, the court system had had enough and when
18 he got this grand larceny conviction back in 1988, '89, he
19 got a youthful offender sentence and went off to prison.

20 And when he was sent to prison, he told y'all about
21 that, in 1989, and got a parole. Stayed there a few
22 months, he got paroled, they gave him a chance. And what
23 happened when he got out on parole? They gave him a
24 random drug screen and he tested positive for cocaine and
25 marijuana, sent him back to prison.

1 He got out of prison April 30th, 1992, y'all recall
2 Ms. Mack from the Department of Corrections, he was
3 released from prison just seven months before he murdered
4 this child.

5 And, you know, I really shouldn't say prison because
6 they don't call them prisons anymore, they call them
7 correctional institutions. The idea is they're not
8 supposed to punish you, they're supposed to correct you,
9 to rehabilitate you, to make you a better person than the
10 person that went into prison.

11 The problem with Mr. Rogers here is that it didn't
12 work on him. All of the efforts, the schooling, the
13 counseling, the stuff that he told you about, Ms. Mack
14 told you about, didn't work on Timothy Rogers. Because
15 after he got out of prison, seven months later, he
16 murdered a little girl. Didn't learn a thing.

17 And when y'all think about the choice between the
18 death penalty and life in prison, take a look at how he
19 adjusted to prison life.

20 I want to call your attention to February the 11th,
21 1993. Y'all have this in evidence, that's the
22 disciplinary infraction. Where on that date Rogers --
23 he's at Broad River R&E Unit in the recreation yard where
24 they can relax and do whatever. He and two other inmates
25 gang up on a third inmate, punch, kick him. Correctional

1 officers break them up. They get back into it again. And
2 then he's charged with assault and battery within that
3 prison system. He goes through a little trial process,
4 he's found guilty of assault and battery, given 90 days
5 lock down.

6 He is locked down in jail within the prison. This man
7 can't even conduct himself like he should in the confines
8 of a prison.

9 Now, what I'm going to talk about next is mitigating
10 circumstances. And Judge Whetstone's going to charge you
11 on all three statutory mitigating circumstances. He's
12 going to ask y'all to consider those mitigating
13 circumstances. And you should consider them.

14 It doesn't mean you have to find that they exist. And
15 if you find they exist it's up to you to decide what
16 difference it makes, how much consideration to give it.

17 Even if you find all three mitigating circumstances
18 the judge will ask y'all to think about, you can still
19 bring back the death penalty, because you've found or will
20 have found at least one aggravating circumstances.

21 Now, those mitigating circumstances Judge Whetstone is
22 going to charge y'all on are all kind of related because
23 they deal with a person's mental condition at the time he
24 commits the murder.

25 And one of them he'll charge you on is, he'll ask you

1 to consider that the murder was committed while the
2 defendant was under the influence of mental or emotional
3 disturbance.

4 The next one he'll tell you about -- tell you to
5 consider is the age or mentality of the defendant at the
6 time of the crime.

7 And the third, he'll ask you to consider whether the
8 capacity of the defendant to appreciate the criminality of
9 his conduct or to conform his conduct with the
10 requirements of the law was substantially impaired. So
11 we're dealing with age and mentality.

12 Mr. Rogers was an adult, 22, 23 years old. Old enough
13 to vote, old enough to be in the Army, old enough to serve
14 on a jury. He wasn't a kid, he'd been through the system
15 before, he'd been locked up. He's a grown man, married,
16 with children, he's not a kid. So the age should not --
17 not be a factor.

18 As far as his mental state, there hasn't been any
19 testimony that he's got any kind of mental disorders, that
20 he's retarded, that he's got anything wrong with his mind,
21 not one single word. The only impairment that he could
22 have possibly have had was intoxication.

23 He told y'all under oath, yeah, I'd been drinking, but
24 I wasn't drunk, I remember what happened, I was in
25 control, I know what I'm doing. But if there was any

1 impairment, the impairment was brought about by his
2 voluntary ingestion of alcohol. I think he said they had
3 a case and a half of beer and some quantity of liquor.

4 Now, ladies and gentlemen, nobody opened Timothy
5 Rogers mouth and dumped that beer and liquor down his
6 throat. He did it himself, voluntarily, of his own free
7 will and accord.

8 And, for someone to go out and get drunk then commit a
9 murder and come in here and ask for sympathy or ask for a
10 break from the jury because they were drunk is kind of
11 like murdering your parents and then coming into court and
12 asking for sympathy because you're an orphan.

13 He's responsible for what he did. He's responsible
14 when he drank, he's responsible for his conduct after he
15 drank. And that's what this is all about, it's about
16 responsibility. People accounting for their own conduct.

17 Now, let's talk about adaptability to prison. The
18 defense is probably going to get up here and say that
19 Mr. Rogers has only got written up one time [sic], that in
20 the last couple of years he's been a model prisoner,
21 hasn't done anything wrong, he can adapt to prison and
22 that's the reason that y'all ought to give him a life
23 without parole sentence.

24 He's in the Edisto Unit now. Ms. Mack told y'all the
25 difference from the Edisto Unit and the general population

1 where he'd go if he gets a life without parole sentence.
2 The Edisto Unit is a more restricted environment, less
3 opportunity to get in trouble.

4 If he goes -- if he gets a life without parole
5 sentence and gets into general population, you need to
6 think about life in the general population as an
7 alternative to the death penalty. If he can adapt to it
8 like they're going to tell you he can, you've better
9 consider what is it that he's adapting to. What is prison
10 like? And I'm not going to get up here and insult y'all's
11 intelligence by saying that prison's like the Holiday Inn
12 because it's not. But it's not the grave either.

13 Mr. Rogers told y'all about life in general
14 population, Ms. Mack told you about life in general
15 population. And what they told you is, they have access
16 to televisions. Stephanie B [REDACTED] has no access to a
17 television. They have movies that they can see, if they
18 have the cleanest dormitory around. Stephanie B [REDACTED] ca
19 never see a movie again, she's dead. They have a library
20 they can go and read books. Stephanie B [REDACTED] will never
21 read another book.

22 They have basketball courts, at leisure times they ca
23 go shoot baskets. Of course, Stephanie B [REDACTED] can't pla
24 basketball. They have soccer teams, they can join up
25 teams and have little uniforms to go out and play soccer

1 on the recreation yard.

2 Hospital and dental care there for them.

3 They get three hot meals a day prepared by a
4 dietician.

5 They can work and get paid a little bit of money. But
6 they don't have to work if they don't want to.
7 Stephanie's never going to work.

8 They have educational programs. Stephanie got into
9 the 4th grade, that's the end of her education.

10 They have counselors there, if they have a little
11 problem they can go see the counselor. Mike B [REDACTED],
12 Melinda B [REDACTED] are going to counseling.

13 They got a canteen where they can go buy candy and
14 Cokes. Stephanie B [REDACTED]'s had her last Coke, her last
15 sandwich, her last meal.

16 They can have visitation every other weekend. If
17 Melinda and Mike want visitation with Stephanie they go to
18 the cemetery. Roger's told you that he can be a dad and a
19 son even in prison. Stephanie B [REDACTED] is gone forever
20 because of this man.

21 And again, I want to emphasize this, the mere fact
22 that Judge Whetstone asks y'all to consider one of these
23 mitigating circumstances doesn't mean you have to find
24 that it exists. If you do find it, it doesn't mean that
25 y'all have to think that it overpowers anything. You can

1 still find for the death penalty as long as we prove an
2 aggravating circumstance, which we have done.

3 I ask you to look at everything. Not just the
4 aggravating, mitigating circumstances. Circumstances of
5 the crime and the characteristics of the defendant that
6 y'all are going to decide his fate here today and the
7 victim impact.

8 When I sit down here the defense is going to get up
9 here and they're going to try to spread a little blame
10 around. They're going to blame Rogers. But they're going
11 to pass blame around a little bit further; society, maybe
12 the prison system for not straightening him out. Might
13 even blame Mike B [REDACTED], saying he helped cause this fight
14 out here.

15 Ladies and gentlemen, this is not a blame hearing,
16 it's not a rehabilitation hearing, it's not an excuse
17 hearing, it's a penalty hearing. And the only person to
18 blame for what happened on November 25th, 1992 is this man
19 here, Timothy Rogers. Nobody else to blame. He's guilty
20 of murder.

21 And again, I can't emphasize this enough, the victims
22 in this case, the B [REDACTED] family, Mrs. Bunch -- and we
23 can't help but feel sorry for Mr. Rogers family. But
24 again, you cannot allow yourself to be guided by sympathy,
25 passion, prejudice or any kind of undue influence.

1 Ladies and gentlemen, what I'm trying to stress to
2 y'all is accountability and responsibility. In order for
3 our judicial system in South Carolina to work, for our
4 society to work, people have to be accountable for their
5 own actions. And that's what I'm asking y'all to do, to
6 hold Timothy Rogers accountable for the horror that he
7 created. The ruining of the lives of these people. The
8 snuffing out of a life of that little girl for no reason.

9 And I can't get up here and tell y'all why Timothy
10 Rogers did what he did, why he murdered that child. I'm
11 not a psychiatrist, a social worker, a psychologist. It's
12 not my job to tell you that, even if I could figure it
13 out, it's not your job.

14 Your job is to figure out what we do with someone who
15 has this criminal record, all of these convictions, drug
16 convictions, gun convictions, criminal sexual conduct with
17 children, the murder of a child.

18 Once someone has done this kind of stuff, once society
19 has done whatever they can do, worked with them, fined
20 him, let him get five convictions, and finally he goes to
21 prison and gets paroled and can't even stay clean enough
22 to stay out on the street. What do you do with the kind
23 of person, once society's tried everything they can with
24 them, and then he kills a little girl?

25 And after that he gets locked up inside the prison for

1 a two or three on one assault of another inmate. What is
2 left to do with him?

3 This was not a killing in the heat of passion or a
4 crime of impulse, it's a cold-blooded murder. And I
5 submit to you, when you kill that way, you forfeit your
6 right to live.

7 Hank Aaron was once asked how he hit so many home
8 runs. And he said, it's simple, I keep my eye on the
9 ball. Well, I want to ask y'all to keep your eye on the
10 ball. Don't be distracted by defense tactics to prey
11 Timothy Rogers as the victim. Or to tell y'all this was
12 an accident, he didn't mean it. We're past that point.
13 The only person responsible here for what occurred is this
14 man here, Timothy Rogers, he's the man on trial.

15 I ask you to please use your common sense. Nothing
16 that's come out in this case that y'all've heard is
17 sufficient to justify any sentence less than the death
18 penalty.

19 It'd be one thing if you had a situation where a
20 child's been beaten and deprived and abused and neglected
21 by its parents. That isn't this situation. He had a
22 loving family that took care of him, raised him in the
23 church, did whatever they could to set him on the right
24 path and it just didn't work for him, nothing's worked for
25 him. There's no excuse, no rationalization, no

1 justification that can possibly mitigate what this man's
2 done.

3 Don't let -- don't let the defense get up here and
4 convince y'all that life without parole is such a horrible
5 punishment, that it's adequate punishment in this case.
6 Mr. Runyon and Mr. Leiendecker represent Mr. Rogers.
7 They're advocating his position. They're going to ask
8 y'all to do what he wants y'all to do. He wants life
9 without parole. That's the best y'all can do for him.
10 Life without parole will be a reward for Timothy Rogers.

11 Rogers has forever deprived Mike and Melinda B [REDACTED]
12 of their only child. They're divorced now, they'll never
13 have another child together.

14 Mike B [REDACTED]'s in counseling, has been in counseling
15 since 1992, because of Stephanie's death, he says it's not
16 getting a bit better.

17 You know, natural sequence of life and death you lose
18 your grandfather, your grandmother. You lose your
19 parents. You die. Then your children die. That's --
20 that's the way things are supposed to happen.

21 But to lose a child at 9 years old through an accident
22 or sickness would have to be just horrible. But to lose a
23 child because she was senselessly murdered by an
24 ex-convict would be something that nobody could live with.
25 And maintain any kind of life after that. Her death

1 wasn't like an accidental death. Or a sickness. Didn't
2 have to happen.

3 Rogers has forever taken Stephanie away from a family
4 that loved her, who cared for her. Y'all saw the
5 pictures, you saw the emotion from Mrs. Bunch, Patsy
6 Bunch, and Melinda and Mike B[REDACTED]. You could feel how
7 they cared for her, what she meant to them, the kind of
8 child she was.

9 And he's deprived that child of life itself, of
10 growing up, finishing school, having her first date,
11 getting married, having children of her own.

12 And she'll never be there again. Christmas is coming
13 up in a couple of weeks. And, you know, she won't be
14 there to open presents. Give her parents a present.
15 She's gone forever. As I say, if they want to see her,
16 the closest they can get is going to the cemetery, because
17 this man snuffed her life out.

18 And again, I submit to you, under the facts that y'all
19 have heard here, ladies and gentlemen, Timothy Rogers
20 deserves the ultimate penalty that can be imposed by the
21 State of South Carolina. And that is the death penalty.

22 The way our society treats children -- a child is
23 helpless until they're 18, 19 or -- or a teenager. But
24 they're helpless, they depend on adults, their parents,
25 their teachers, to care for them, to lead them in life.

1 And here you have an adult, with children of his own, that
2 goes out and kills a young child for no reason.

3 When y'all come back with a verdict later on this
4 afternoon, tonight, whenever you reach a decision, you're
5 going to have to come out into open court and you need to
6 be able to look Timothy Rogers in the eye and announce
7 that decision. Life without parole or the death penalty.

8 But you should also be able to look in the eyes of
9 Patsy Bunch, Melinda and Mike, and with your verdict let
10 them know that justice is being done in this case. And
11 I'm asking you for justice, not mercy.

12 There may be some cases where you could do both. This
13 isn't one of them. You cannot do justice to Stephanie
14 B [REDACTED] and show this man mercy, you've got to take your
15 pick. And I ask you for justice in this case.

16 And justice is a simple concept. Justice exists when
17 the punishment fits the crime. If the punishment doesn't
18 fit the crime you don't have justice. And the only
19 punishment that fits the crime of the murder of a child, I
20 submit, is the death penalty. A person deserving of mercy
21 was that 9-year-old child and she sure didn't get it from
22 this man.

23 By his record, his criminal conviction record, his
24 disciplinary record from the Department of Corrections,
25 Mr. Rogers has shown that he shouldn't be allowed to exist

1 in society, either inside or outside of prison. He's a
2 danger inside, he's a danger outside.

3 Your task is an awesome task. I know that what I'm
4 asking y'all to do today is going to be the hardest
5 decision y'all will ever have to make in your lives. It's
6 not supposed to be an easy decision.

7 Y'all were picked out of 300 potential jurors that
8 were summoned in this case, by both sides, as being 12
9 fair, impartial jurors, that could and would listen to the
10 facts and render the appropriate decision in this case.

11 In closing, I want to make one request of you. Y'all
12 have a lot of evidence in this case; photographs,
13 Stephanie's report card, other -- other items of evidence
14 you've heard a lot of testimony. All of that testimony
15 and all of that evidence was introduced for one reason; to
16 guide you and help you make your decision in this case.

17 And that evidence will be put in a box and carried
18 back in that jury room, you'll have it with you. And if
19 you want to you can make your decision and you can just
20 leave that evidence in the box.

21 What I'm going to ask y'all to do is take those
22 pictures and turn them face up. Some of those pictures
23 aren't easy to look at. But if you don't look at them
24 you're turning a blind eye to the truth.

25 That was Stephanie B [REDACTED]. This was the last

1 picture, school picture, taken in 1992, shortly before
2 Timothy Rogers murdered her. That's the before, this is
3 after. That's Timothy Rogers handiwork there. He did
4 that. Took that child's life.

5 When I asked y'all, each one of you, if the case is
6 bad enough can you bring back the death penalty? And
7 you -- and y'all said yes, if the case is bad enough I can
8 do it. Y'all had in the back of your minds a case so bad,
9 a defendant so bad, it would justify the death penalty.
10 And I submit you've heard that case, that's the result of
11 that case. Not because I say so, but because the evidence
12 shows it.

13 And nothing Mr. Leiendecker, Mr. Runyon can say when
14 they get up here to make their closing statement can
15 change those facts. Can change that picture. Can change
16 what this man did to that child.

17 What is the appropriate penalty, ladies and gentlemen,
18 for a man, who after murdering a 9-year-old girl, and
19 finds out that he murdered that child, as her father gets
20 out covered with blood and says, you shot my child, they
21 laugh in his face and run off? I submit to you the death
22 penalty.

23 When y'all deliberate -- I want y'all to think about
24 the last piece of evidence the state put in, that
25 videotape. You saw Timothy Rogers, after he found out,

1 there's some discrepancy from his testimony -- let me
2 wait 'til that train gets by.

3 (Pause.)

4 MR. BAILEY: His testimony was he didn't know he hit
5 the child, he didn't know he shot the child 'til
6 afterwards, ran off, went to Alabama, didn't know.

7 No question, when he got back here for that bond
8 hearing, at the time y'all saw him in that short
9 videotape, he knew he killed a child. He knew he had.

10 And y'all saw him in that video clip. That is the
11 Timothy Rogers, that's the real Timothy Rogers y'all saw
12 there.

13 Again, ladies and gentlemen, each of y'all raised your
14 hand, you said I can sign my name to the death verdict,
15 under the appropriate circumstances.

16 And I'm going to ask y'all to send a message with your
17 verdict, that the jurors of Dorchester County are not
18 going to tolerate a drunken, ex-convict loaded with a
19 semiautomatic pistol, snuffing out the life of a
20 9-year-old girl in Dorchester County, by shooting her in
21 the back of the head without having that person pay the
22 ultimate penalty that is allowed under the laws of the
23 State of South Carolina.

24 And hopefully that message may prevent somebody else
25 from taking a child -- taking a child's life, if they know

1 that the death penalty will be carried out in Dorchester
2 County. The citizens of this state and this county are
3 not going to tolerate that without having that person pay
4 the ultimate penalty.

5 I submit to you that a verdict of life without parole
6 would be a reward for Timothy Rogers and a blight on the
7 memory of Stephanie E [REDACTED]. And I ask you finally,
8 ladies and gentlemen, to have the courage to do your full
9 duty in this case. Thank you.

10 THE COURT: Mr. Runyon. Or Mr. Leiendecker.

11 MR. LEIENDECKER: Two and a half days, two days of
12 jury selection, here we are. My name again is Mark
13 Leiendecker. On behalf of myself and Mr. Runyon, as well
14 as Mr. Rogers, before I get into the arguments I want to
15 thank y'all. There may be no more difficult duty than
16 sitting as a juror in judgment of your fellow man. And
17 there may be no more difficult jury to sit on than the
18 jury you sit on today. Where the ultimate decision is
19 whether someone lives or dies.

20 I've watched y'all throughout the course of the trial
21 and I know that each of you have paid very close attention
22 to what's been said. I'm confident from the inquiry that
23 we had in the voir dire before your selection that each of
24 you are fair, competent, impartial jurors. Before we
25 started the process. I'm confident now that each of you

1 have had sufficient time and seen sufficient evidence to
2 reach a decision regarding the penalty to be imposed in
3 this case.

4 Solicitor Bailey asked you, and he reminded you in
5 closing argument, if each of you could return a death
6 verdict in a case that was, to use his own words, bad
7 enough. So I guess the rubber hits the road here.
8 Because that must be what we're here to decide. Is it.
9 Is this bad enough?

10 By the imposition of the statute in our code, which
11 permits the execution of an individual for the commission
12 of murder in the State of South Carolina, we have
13 accepted, as part of our law, that the death penalty is a
14 just and proper punishment. What we have not accepted is
15 that the death penalty is a just and proper punishment for
16 all cases.

17 That is why we sit through a sentence phase after the
18 completion of, what's commonly referred to as, a capital
19 murder case. In which a jury of 12 individuals, in the
20 only case in our state, tell the judge what the sentence
21 should be.

22 In any other felony case it is purely within the
23 discretion of the Court, the Court being the judge, to
24 determine sentence. In fact, the jury is not even given
25 information regarding sentence. Their only decision is

1 the facts and the guilt or innocence in the case.

2 But our legislature, in their wisdom, determined that
3 if you're going to have a death penalty it's got to be
4 more serious than that. And we are not going to leave it
5 to anyone but 12 tried and true citizens to determine the
6 facts and put their 12 minds together to come to a common
7 conclusion. And they must agree, all 12, to impose the
8 penalty of death. And that's why we're here today. And
9 that's why you're sitting on this unique jury. And that's
10 why we're arguing this case.

11 Now just as Solicitor Bailey argued that the mere fact
12 that there may be mitigation facts that you can find in
13 this case doesn't mean that you can't impose the death
14 penalty. Mr. Runyon and I will argue to you that the mere
15 fact that the state has proven an aggravating
16 circumstance, if you find that they have, does not require
17 you to impose the death penalty.

18 You see, the state has to get over that hurdle of
19 aggravating circumstance before they can even ask you if
20 you will impose the death penalty.

21 If for some reason you were to go back to the jury
22 room and determine that the state failed to prove either
23 of the two aggravating circumstances they presented to
24 you, then the issue would be over. By law you would not
25 be permitted to even consider death.

1 But the mere fact that the state can or has proven an
2 aggravating circumstance only gets them over the first
3 hurdle. It doesn't mean because of the proving of that
4 circumstance death must be imposed. What it means is,
5 it's now permissible to consider death as a penalty.

6 The law also says, as the solicitor properly told you,
7 the judge will instruct you that your decision's not to be
8 based on, nor should it ever be based on, mere sympathy,
9 passion, prejudice.

10 I don't understand the law to say that those factors
11 can't come into a decision process, but it can't be based
12 on that. Merely.

13 I don't understand the law to say that you have to sit
14 there as 12 individuals and have no sympathy for any of
15 the participants in this case. Most assuredly for the
16 B [REDACTED] and the Bunchs, because they have paid the
17 ultimate price in the loss of a daughter and
18 granddaughter.

19 But the law also doesn't restrict you from having
20 sympathy for the Nichols and the other individuals of the
21 Rogers family who have been equally damaged by the actions
22 of Timothy Rogers.

23 Timothy Rogers took the witness stand and told you his
24 remembrance of the case. Now the solicitor tried very
25 hard to shake him from that remembrance of the case

1 because it didn't comply with the facts as the solicitor
2 remembers them or wants them. That doesn't mean that the
3 way Timothy Rogers remembers this case is anything less
4 than murder under the definition of South Carolina law.
5 And the judge will give that to you.

6 The fact that Timothy Rogers says that he didn't shoot
7 at or intend to shoot at Stephanie B [REDACTED] doesn't obviate
8 what happened, doesn't mitigate the fact that he killed
9 her. Because he did.

10 Physics is simple. The solicitor may have had more
11 education about it than I did. But, even in my simple
12 high school understanding, I know that a bullet travels in
13 a straight direction until it strikes something.

14 So the fact that Timothy Rogers got up here and told
15 you he thought he was shooting up or over the truck, it's
16 clear that he wasn't. It's clear that the bullet struck
17 the window. It's clear that that bullet killed Stephanie
18 B [REDACTED].

19 What I understood him to be saying was, at that time,
20 following that day, following that participation in
21 drinking and goofing off and fixing on cars, in a heated
22 argument, that he didn't pull a gun out, bring it to bear,
23 point it at a 9-year-old child and say, this is how I'm
24 going to solve this argument, I'm going to kill someone.

25 That's what I understood him to say when he said it

1 was an accident, he was not intending to kill Stephanie
2 B [REDACTED].

3 Now, that doesn't lessen the fact that it's murder. A
4 depraved indifference for the care of human life. A
5 transfer of intent, whatever the statute catchall is that
6 finds that, there's this -- an imputation of malice by the
7 use of that weapon, the reckless, clearly reckless, use of
8 that weapon by Timothy.

9 How did we get to that point? I'm not going to
10 belabor it, I'm not sure how we got to that point. I
11 listened to all of the witnesses. None of them tell
12 exactly the same story, and that's how it should be, I
13 think, because nobody remembers things exactly the same
14 way.

15 But what I'm struck with are the things that were or
16 were not said. The things that don't make sense to me.
17 The individuals most intimately involved in what happened
18 that day are clearly Mike B [REDACTED] and Mr. Carver. Who
19 were both in the truck when Stephanie was struck.

20 Mike told us that he got there. That he'd had a few
21 beers to drink. Three, maybe, I think. Certainly wasn't
22 intoxicated, was fine to drive. Mr. Carver said he hadn't
23 had any beers. Mike said that the rest of the 12-pack was
24 in the truck. Mr. Carver said there wasn't any beer in
25 the truck, that he was certain that there was no 12-pack

1 in the truck. Mike said he bought a cold beer.

2 Mr. Carver said there wasn't any other beer.

3 Is Mr. Carver trying to help Mike by not remembering
4 the beer? Does he just forget it? I don't know, I'm not
5 certain.

6 I do know that there are several facts that they now
7 say in unison happened. That at the time, when they were
8 asked to review their statements -- right after the
9 incident, Mr. Carver on the afternoon or evening after the
10 shooting and Mike sometime later, in a prepared statement
11 to the solicitor, Mr. B [REDACTED], sometime later -- they
12 didn't -- they didn't mention until they got to the
13 witness stand.

14 One thing that neither of them mentioned was, and they
15 agreed with this when asked by Mr. Runyon on
16 cross-examination, neither of them told the police, the
17 solicitor or anyone else in their statements that Timothy
18 Rogers told Mike Burditt I'm going to kill you. Or Mike
19 might've even used a profanity when he described what was
20 said to him. Neither of them told the solicitor or the
21 police that. They -- they didn't bring that to bear until
22 they came to court.

23 Mike said that Mr. Rogers approached him and posed
24 himself into the argument and spit in his face.
25 Inflammatory act. Mr. Carver echoed that and said, yeah,

1 yeah, he did. But when questioned about it at the time,
2 when he told the police what happened, Mr. Carver clearly
3 said in his statement to the police, and he agreed with
4 that on the stand, he told the police this skinny white
5 kid spit in Mike's face, that's Daxton Patterson. We're
6 pretty certain that they couldn't be mixed up, they're a
7 different race.

8 assault victim , state's witness, an individual
9 participant, a friend of both Mr. Rogers and
10 Mr. Patterson, with them that day, the only other person
11 there to testify about the spitting, said, Daxton
12 Patterson spit in his face.

13 Mr. Rogers was never asked, never said he spit in his
14 face. Didn't know if Dax did, because he was preoccupied
15 with his phone conversation. Could have. Might not have.

16 Why are these things important? I'm not sure. I
17 want to -- I want to bring them out because I want you to
18 understand that there's been some time since this
19 happened, there's a lot of passion about what happened
20 here.

21 And again, sometimes greater inflammation, the longer
22 it sits, the longer those embers burn underneath the
23 frustration that you have over the incident, the more you
24 want to heap on what happened to explain what happened.

25 I don't know if that's what's happening with

1 Mr. B [REDACTED] and Mr. Carver. But I know that what they
2 said happened doesn't correspond with what they testify --
3 what they said at the time doesn't correspond with what
4 they testified to.

5 Now, Mr. Patterson, who is remiss by his absence, I
6 mean, we didn't hear what he had to say, the state didn't
7 bring him. We didn't bring him.

8 Mr. Patterson started this, I mean, it doesn't seem
9 that there's any argument about that. Depending on when
10 they got there or when he got there, he's the one that got
11 in people's faces and started an argument.

12 It was when that argument reached a heated pitch that
13 Mr. Rogers interposed himself in that argument with a .380
14 semiautomatic weapon. That's why we're here. Mr. Rogers
15 told you that that was stupid, I think, the sum and
16 substance of what he testified to.

17 Mr. B [REDACTED] and Mr. Carver agree that they got there
18 before Timothy Rogers, Daxton Patterson and ^{assault victim}
19 [REDACTED]. That's what they say. Timothy remembers that
20 they got there after they were already there. I don't
21 honestly remember what Ms. ^{assault victim} remembers, I'm not even
22 sure she was asked the question. All of those people are
23 intimately involved in this, because they were either
24 friends of or involved in the shooting.

25 But the one person -- and -- and this one kept me up,

1 but, I mean, I kept thinking that I heard it somewhere.
2 There was one person who commented about who was there
3 before the shooting. One person that had absolutely no
4 involvement with any of the parties, probably didn't know
5 any of the parties. And that was the brick mason,
6 Mr. Isaiah Jennings, I think was his name, if you'll
7 remember. A short man. I think he had on a leather
8 jacket, sport coat type jacket when he sat on the stand
9 and testified. Very, very briefly, very short state's
10 witness.

11 But he said he got there around closing time, it was
12 dark. He knew Spell's store and he'd gone there often.
13 When you were outside the store, the solicitor asked him,
14 before you went in, did you see anyone? And he said he
15 saw a skinny, white boy who was getting in his face and
16 being obnoxious, and he -- and he looked at him and
17 watched him all the way in the store.

18 I can sort of visualize it like, you know, worried
19 about what he was going to do until he got inside and then
20 he closed the door and -- and he just sort of tried to
21 ignore him and started talking to his cousin, I believe it
22 was, Ms. Lincoln. And then he heard the shots.

23 Well, the solicitor went on to ask him, after he
24 described that, did you see anyone else when you got
25 there, other than this skinny, white boy who was in your

1 face? When you were outside the store, I think the
2 solicitor asked him. At that time did you see anyone
3 else, meaning anyone other than the skinny, white boy?
4 The answer was no, sir.

5 Mr. Jennings didn't see the truck. Mr. Jennings
6 didn't see Mr. Carver or Mr. B [REDACTED]. Mr. Jennings didn't
7 mention it. Yet he was there just before. He was there
8 when Daxton Patterson was there because he was confronted
9 by him. But he didn't see the other people there. He
10 pulled his car up right in front of the store. Right in
11 that small parking lot. Right up there he said.

12 Does that change the facts of what happened, does that
13 change the fact that Timothy Rogers pulled the trigger?
14 No, it doesn't, it doesn't change the facts. But what it
15 does is it casts a little bit of doubt on what really
16 happened that night. Was this a cold, senseless act? Or
17 was this a ridiculous stupid argument that escalated to a
18 level of -- of insane proportion? I really believe it was
19 the latter -- that it was the latter. I really do.

20 MR. BAILEY: Objection to his personal belief, Your
21 Honor.

22 THE COURT: That is sustained. Please refrain from
23 such references, Mr. Leiendecker.

24 MR. LEIENDECKER: Yes, sir, Your Honor.

25 When the act happened, two individuals told you, and

1 the solicitor wants to rely on this as an aggravation, two
2 of the individuals told you that Mr. Patterson and
3 Mr. Rogers left.

4 Yet in both of their statements, that being
5 Mr. B [REDACTED] and Mr. Carver, they didn't tell the solicitor
6 at the time and they didn't tell the police at the time
7 that the boys were even there when they turned around and
8 pulled back up.

9 If that had really happened that way, wouldn't that
10 have been one of the most infuriating things about that
11 night, wouldn't that have been something that just
12 would've eaten you alive? Wouldn't you have told the
13 police what a cad, what a cowardly act had happened, I
14 mean, they stood there and laughed.

15 But it wasn't until they came to this court that the
16 concept of laughter about what had happened came forward.
17 Not in the statements to the police. Not in the
18 statements to the solicitor.

19 What happened in this case is a lot like picking up a
20 stone on a calm day and tossing it into a pond. When it
21 plunked down on the night of the 25th it was a pretty good
22 sized stone and it made a pretty big hole in the water.
23 Took the life of an innocent 9-year-old child.

24 And then as that stone sinks to the bottom there were
25 other effects on the top of the surface of that pond.

1 Clearly there were initial rapid and big ripples that
2 sucked the B [REDACTED] and the Bunches into the tragedy of
3 what happened.

4 But it doesn't stop with the first concentric circles,
5 it continues to spread out. It spreads out so far that it
6 even reaches Mr. Rogers and Mr. Rogers' family. And I'm
7 not asking you to have an increased level of sympathy for
8 them over the Bunchs or over the B [REDACTED]s. I don't think
9 that Mr. Runyon's going to ask you to do that.

10 But the fact is, those concentric circles are reaching
11 out. We lost a 9-year-old child. Another family has lost
12 a son, because he's now incarcerated and can't come home
13 ever again. Another family lost a father. Because he'll
14 never be there to help raise the kids. He'll never be
15 there for any of those things, whether he was there or
16 not, he'll never have that opportunity now.

17 I can't imagine being able to argue that, life in
18 prison without the possibility of parole is anything less
19 than punishment. But, but, it is the punishment that
20 Timothy Rogers asks you, between the two alternatives, to
21 give to him.

22 And after I speak to you he's going to get up here and
23 he's briefly going to try to explain to you, as best he
24 can, why he wants you to consider that penalty. Why he
25 still thinks that there are things that he can do while

1 he's in prison that can make a difference. Not make up
2 for what he did, not excuse what he did, but make a
3 difference.

4 Is this case bad enough? I don't know what bad enough
5 is. And, luckily I don't have to decide what bad enough
6 is, the 12 of you do. This was not, this was not, an up
7 close calculated execution murder, we know that. No one
8 said he pointed a gun to somebody's face and pulled the
9 trigger. Two people said he pointed a gun, but everybody
10 said he didn't shoot it at that time. Nobody said he
11 stood outside the window, looked in at the individuals in
12 the cab and shot anyone.

13 It seems like, even if it happened the way the state
14 argues that it happened, that the bullet was shot from 20
15 to 40 feet away. I don't know how accurate the gun is, we
16 don't have the gun here. But I don't know -- I don't know
17 if it could be repeated, on a consistent basis, to stand,
18 shoot and kill Stephanie B [REDACTED].

19 We have not offered evidence, in fact, we didn't begin
20 to offer evidence about intoxication of Timothy Rogers to
21 explain away the murder. Voluntary intoxication is not a
22 defense to murder. That's why he stands guilty of murder
23 today. But it is a mitigating factor by our statutes.
24 And it would be improper not to think that the judgments
25 of Timothy Rogers were impaired that night, because of the

1 fact that he and three other individuals had drunken --
2 drank a case and a half of beer and some Vodka.

3 Now Mr. Runyon's going to talk a lot about the record
4 and its impact and all those other things, and -- and I --
5 and I think that that's all important. I just wanted to
6 talk to you a little bit about the impact of this case on
7 everyone in this courtroom. Everyone in this courtroom.
8 The fact that the facts can't be changed, no matter what
9 the penalty is.

10 The solicitor seemed to suggest that, you know, he
11 believes this is a proper case for the death penalty
12 because of the depraved indifference of Mr. Rogers. I
13 don't believe that it is. I don't believe it's bad
14 enough.

15 MR. BAILEY: Objection.

16 MR. LEIENDECKER: I'm sorry.

17 THE COURT: That's sustained. Please refrain from
18 those type references, Mr. Leiendecker, the jury is to
19 disregard that remark.

20 MR. LEIENDECKER: The solicitor told you that we were
21 going to get up here and -- and, in essence, blow some
22 smoke at you and try to spread it around. He asked you to
23 be Henry Aaron. He said that you've got to keep your eye
24 on the ball. I don't disagree with any of that. I
25 certainly wouldn't categorize the defense case as that of

1 Greg Maddux or -- or of Tom Glavine either, I don't think
2 we're throwing you any curve balls. I don't think we've
3 tried to throw any curve balls. I don't think Mr. Rogers
4 ever has tried to do anything but tell you what he
5 remembered happening that night.

6 MR. BAILEY: Your Honor, this is the third time he's
7 injected his opinion.

8 THE COURT: It is sustained. Mr. Leiendecker,
9 references to I think and I believe are improper argument,
10 please refrain from that type argument.

11 Ladies and gentlemen, you are to disregard such
12 remarks by any of the attorneys who argue.

13 MR. LEIENDECKER: I apologize, Your Honor.

14 The case the defense presented didn't throw you any
15 curve balls. The case the defendant presented is
16 straightforward.

17 The impact of the actions of Mr. Rogers hit hard on
18 both sides of the aisle of this courtroom today. Life is
19 a proper penalty in this case. I believe you can be fair
20 and just and use mercy. The solicitor said that this is
21 not a case for mercy. The defense disagrees. The defense
22 would thank you for your consideration.

23 I'm going to let Mr. Rogers stand up here very
24 briefly. He's going to talk to you from his heart. He's
25 going to read you a letter that he's written to his mother

1 and his church about this situation. I want you to listen
2 real closely to that.

3 When he finishes, Mr. Runyon's going to close our case
4 for you. Thanks.

5 THE COURT: Mr. Rogers.

6 MR. BAILEY: Your Honor, could we briefly approach?

7 THE COURT: Yes, sir.

8 (WHEREUPON, a bench conference was held off the
9 record, in the presence of the jury, but out of the
10 hearing of the jury.)

11 THE COURT: Mr. Rogers.

12 THE DEFENDANT: The first thing I want to say is,
13 really wouldn't have too much to do with the jury. I
14 wanted to give my apologies to Ms. B [REDACTED] and Mrs. Bunch
15 and all the B [REDACTED] family and Mr. B [REDACTED] for what
16 happened on that night.

17 And, I sat here and I listened to the solicitor and my
18 lawyers and they say what -- what a reward it will be and
19 what -- I don't know, in the sense of they'd be doing me a
20 favor or all I would ask them to do is give me a life
21 sentence. And, the only thing I -- I really would like to
22 happen or be some kind of reward is for that -- that night
23 that everything happened would never even have exist
24 [sic].

25 And that -- I don't -- I don't know what. I could

1 some way change time and all. I don't know what. I know
2 that I would -- I don't ask for mercy like that. If I was
3 to ask for anything close to that it would be to bring
4 little Stephanie back. But, I know that's not possible.

5 And for four years I've thought about it, every day go
6 by and I think about it. And it all boils down to me
7 thinking about little Stephanie more than probably myself
8 or my -- my kids even. Everything I think about it still
9 comes back to her, you know.

10 And if I was to ask for anything that anybody could be
11 able to give me it most definitely would be for little
12 Stephanie to not have to have that happen to her. But, I
13 can't do that, you know.

14 But, I can ask the B family to forgive me, but I
15 know how hard that will be. And, if I could some kind of
16 a way do anything I'd -- I'd sit and I'd think of if I can
17 give her one of my daughters or one of my kids, I would do
18 that, too. But, I know I can't do that either. And it's
19 just a situation I've got myself in that I can't change.
20 And nobody can change it.

21 And, my -- my mom and my little sister, you know,
22 requested that I -- I read a letter that I wrote a year
23 ago last month, it was on the 9th of '95. I was in my
24 cell one night and, you know, I called home or something
25 and I hear about all the kids and whatnot, at my church

1 particularly, getting into trouble or doing stuff or
2 whatever. And I just thought I would write them a
3 letter. And, they asked me to read the letter today. So
4 I'm going to read the letter for y'all now.

5 And it was addressed to all the kids at World Wide
6 Church, from someone who knows -- from someone who knows
7 what's up.

8 It starts off, it says, what is cool? There has been
9 this question among the young, as well as some of the
10 old. It's been a question from the past, the present and
11 in the midst of our future. A perfect example of a fool
12 who thinks they're cool.

13 Me, I thought I was cool as far back as when I was a
14 child growing up in New York. Me, my mother and my two
15 brothers. Everyone used to call me and my brothers "the
16 boys."

17 I want y'all to pay very close attention to what I'm
18 about to write. Because this is what I thought cool was.

19 I remember back when I went to PS73, public school,
20 when I was in about 5th or 6th grade, I was about 13, 14
21 years old. And, I had a girlfriend and a so-called crew.

22 Then we moved to South Carolina in 1981 and I knew it
23 was going to be hard, hard to grow up here. But I never
24 thought it would be this rough.

25 But wait, all this is on the road of the cool. In the

1 south I thought everything was in slow motion compared to
2 the north. I didn't -- I didn't let that get in my way, I
3 thought I was cool. Too fast and street smart. I was so
4 smart I was on A plus honor roll -- I was A plus honor
5 roll candidate, a promising college athlete, but I never
6 finished the 10th grade. I got expelled from school. Now
7 what does a cool person do?

8 I started drinking and using drugs. That was the
9 dumbest thing I ever did, that I thought was cool.

10 So now I was getting older, you know, the man. So I
11 had to do some more stupid stuff I thought was cool, like
12 get my girlfriend pregnant at a age we both were. That
13 was the biggest mistake a young man can ever make.
14 Getting pregnant before marriage.

15 I hope you kids are paying close attention to this
16 letter, because the rest of the ride on my journey to
17 being so cool was headed downhill. And before I knew it I
18 crashed into this wall.

19 After me and my girlfriend had our daughter, you guys
20 know her, her name is Tameka, I went to prison for the
21 first time. Yeah, I was out -- yeah, I was out and stole
22 a car and got caught, I was just riding around and then
23 being cool. I went to jail for it. I got out of jail and
24 got married and back to hanging with my old crew, being
25 cool. Right back in jail again.

1 Then, I got out for the second time, still trying to
2 be cool, one night I was being cool, out drinking and
3 accidentally killed a little, young girl.

4 And you must -- must -- then most -- most of you --
5 most of you know, the police came and got me and locked me
6 up again, only this time they don't ever want to let me
7 out again. In fact, let's just be blunt and say they want
8 to kill me.

9 You see, I had become too cool, so cool they call me a
10 menace. So all -- all the while I thought I was being
11 cool I was only being a fool.

12 Cool is avoiding all those foolish mistakes I made and
13 not yielding to evil temptations or any kind of
14 temptation.

15 Cool is being obedient to the command of God and to
16 your parents and elders.

17 Cool is stay in school until you finish and go back
18 and get some more from college.

19 And cool is not making the same mistakes I'm talking
20 to you about in this letter and being like me.

21 I love you all, Timothy Rogers. Thank you.

22 THE COURT: Mr. Runyon.

23 MR. RUNYON: Mr. Foreman, ladies and gentlemen of the
24 jury, the state, the solicitor, an honorable person, got
25 up here, and it's interesting because he said to send a

1 message.

2 About that time, and we've had during the course of
3 this trial, if you stop and think about it, the trains
4 going by. There was a time, in the history of this town,
5 when that train stopped here. This court house was
6 important. People came by after they'd went to the feed
7 and seed store to see what was going on. Came by to see
8 how Senator Parlor, whose picture hangs over you, did in
9 his latest case. And probably messages went from the
10 court house during those times, people debated them over
11 the coffee at the lunchroom, things of that sort.

12 Unfortunately, perhaps times have changed. The train
13 don't even stop here anymore. Community isn't here.

14 What we're here about, however, is not sending
15 messages about generalized things about what other juries
16 have to do. We're here talking about what to do with this
17 man right here.

18 No one's telling you that he didn't murder that little
19 girl. Under the law it was murder. Plain, pure and
20 simple. And under the law as the solicitor gave to you,
21 as Mr. Leiendecker alluded to, His Honor's going to give
22 to you, and you can find differently if you want, but I
23 would suggest to you that there is -- the solicitor's
24 absolutely correct, there is a statutory aggravating
25 circumstance in murdering a young child under 11 years of

1 age.

2 Frankly, you probably would think people would take
3 leave of their senses if someone tried to tell you that
4 this child wasn't under 11, because she is.

5 I might have trouble with this whole concept of
6 whether or not this gun that was used was a weapon or
7 device that could cause injury to a lot of people.
8 Circumstances that night, yes. More than one person was
9 in the line of fire and more than one person could have
10 been injured, but this wasn't a bomb or things of that
11 sort.

12 Are you going to decide that every shooting case in
13 the public sector is going to be an applicable case? No,
14 you're not sending a message to that. You're sending a
15 message, in this case, what to do with him for what was
16 not, as the solicitor said, a cold-blooded murder.

17 Well, His Honor's going to tell you what murder is.
18 And I'm not going to stand up here and debate that issue,
19 because he's guilty of murder, under the law he's a
20 murderer.

21 Timothy Rogers drank that night, drank that day,
22 walked down the street, he may have thought he was in
23 control, he may have thought he was cool. When this whole
24 thing happened, he didn't go down there intending to shoot
25 anybody, he went down there to use the telephone. Went

1 down there to use the telephone.

2 What did Ms. Lincoln tell you? Bang, bang. Real
3 short. Bang, bang.

4 This was not an action where someone really thought
5 about it. Please understand, His Honor's going to tell
6 you what murder is, there's enough intent, the law's been
7 satisfied, he's a murderer. This wasn't a situation where
8 someone stood here and said, well, I think I'll kill that
9 little girl or I'm going to go down there and kill
10 somebody. And then cold-bloodedly just went bang, bang.
11 That's not the way it happened, not the way it happened.

12 The way it happened is as the Solicitor and Mr.
13 Leiendecker and the witnesses have told you it happened.
14 There was some sort of stupid senseless encounter by
15 strangers in a parking lot. Daxton Patterson, you know,
16 created this dispute.

17 Now, let's understand something about Mr. B [REDACTED] over
18 here. Mr. B [REDACTED] is an honorable man. It's a terrible
19 tragedy in his life. And he's going to live with this the
20 rest of his life also. And frankly, given his testimony,
21 I would suggest to you that executing this man's not going
22 to change his pain. It's not going to. He's going to
23 live with that.

24 But the simple fact of the matter is, is things didn't
25 necessarily happen the way Mr. B [REDACTED] said or the way

1 Mr. Carver said. They just didn't happen that way -- and
2 here comes the train that's not stopping anymore. I hear
3 it in the distance and I'll keep talking 'til it gets a
4 little closer.

5 What happened was Mr. B [REDACTED] had this encounter with
6 this person Daxton Patterson -- if you need to send a
7 message you've got to get out there real fast.

8 (Pause.)

9 MR. RUNYON: And there was -- there was a stupid
10 senseless argument and then bang, bang. Abrasion on the
11 wheel. Mr. B [REDACTED] says, well, I was trying to pull off
12 or I was pulling off fast.

13 I would suggest to you, respectfully, you look at
14 this, no one had a clear target of anything. The last
15 person that anybody wanted to shoot was Stephanie B [REDACTED].

16 Is this case bad enough for the death penalty, that's
17 what you've got to decide.

18 Now, let's understand what we've got here from this
19 record. Magistrate's or general or municipal court,
20 number one, number three, number four, number five. So
21 five of these things were in municipal court, in
22 magistrate's court. And I'm not going to minimize those
23 things.

24 These were an indicator that this young man was in
25 trouble, he was having trouble conforming, no question

1 about that. But these are not what you would call serious
2 cases. You're not going to put someone to death for
3 trespassing or because they've trespassed in the past.

4 Eight and nine here, criminal sexual conduct with a
5 minor, that's because he had sexual relations with Ms.
6 assault victim and he has a child. And unfortunately that's a
7 fact of life in our society, probably a fact of life
8 throughout most human history, although, probably people
9 are just thinking that this is a modern day occurrence.

10 Now, he went to prison. He went to prison. And he
11 went back to prison one time, not because he didn't
12 conform to prison life, he went back to prison because he
13 got outside and he took some drugs. Once again, pretty
14 common problem in our society.

15 And out of all of his incarcerations, and you'll have
16 it, out of all of his incarcerations, he had one incident
17 in 1993. Obeyed the rules otherwise. Adapted.

18 Now, let's talk about life without parole. Now, the
19 solicitor has indicated that, you know, this is some kind
20 of reward. Well, it's not a reward. His one incident
21 that they told you about shows you prison's not a nice
22 place to be, it's a pretty rough place to be. And he's
23 going to have to survive in there.

24 Jobs, fine. If you don't do a job you stay locked up
25 in your cell. It's that simple. Okay? If he wants to

1 spend the rest of his life locked in a cell, recalcitrant
2 and not conforming to, you know, trying to be a part of
3 the system, he can do that, that's true. But there's
4 nothing in this record that says that he's going to be
5 that way.

6 Maybe he'll aspire to and maybe he'll get to the point
7 where he'll be making our license plates. Jobs. And, you
8 know, what Ms. Mack told you, jobs like cutting grass,
9 cleaning toilets and cleaning the place and keeping the
10 place cleaned, you've got to do that, number one.

11 Number two, you get a reward of maybe a movie, if
12 you're the best cleaning place in the place [sic]. Not
13 just because you've got it clean. You know, it's -- it's
14 a pretty rigorous place.

15 Now, you've seen these security officers around here,
16 they're from the Department of Corrections, tight
17 security. You know, these people aren't here to -- and
18 they're not there to beat these people. They don't go up
19 there to prison and beat them.

20 Solicitor says, well they've got a nutritionist to
21 feed them three square meals. Well, frankly, if you don't
22 feed them they're going to get sick and then you've got
23 medical costs.

24 And they get some special diet on Christmas and
25 Thanksgiving. That's a pretty rough society -- that's

1 pretty bad of society that maybe suggests you get turkey
2 and dressing on Thanksgiving and Christmas. I'll bet you
3 everybody's just knocking on the door to get in. And
4 that's not so.

5 Recreation, you've heard about -- a little bit about
6 the prison life. There is recreation and there is some
7 minor entertainment and what have you. You've got to keep
8 all these people occupied, you've got to use up their
9 energy, you've got to make them work, because they're
10 going to be locked up together. They're regimented. If
11 you wind them tighter than a \$2 watch what happens? Well,
12 pretty soon the spring breaks. And then you've got parts
13 all over the room.

14 The simple fact is, is that life without parole is not
15 a reward. Life without parole is a punishment.

16 Now, someone, in their august wisdom, decided to name
17 our prison system the South Carolina Department of
18 Corrections, it sounds so -- so, I don't know, so hip, I
19 guess, so modern, Department of Corrections. It's prison.
20 You don't get to wear your clothes, you don't, you know,
21 you're in a small room, you're locked up and particularly
22 if you're locked up for life without parole, you're going
23 to spend the rest of your life in there.

24 And television, let's talk about television. Yeah,
25 you get a little access to TV according to Ms. Mack. You

1 know, if you had a radio before and you're in there now,
2 but he doesn't have a radio, he doesn't have a TV, he gets
3 to see it in the day room.

4 Train going by, wonder where it's going, wonder where
5 it's been? You don't know. You can sit there and imagine
6 all the day long about where that train's going and where
7 it's been. Maybe you can amuse yourself.

8 What a television does is let you see life, let you
9 see every single solitary thing you're missing, all the
10 news, all the current events. You know, probably see
11 something about foreign countries, where maybe you'd like
12 to go, but you'll never be able to travel there. You're
13 going to work and you're going to live for the rest of
14 your life locked up. That's punishment.

15 The solicitor has said, Rogers must be accountable,
16 he's not suggesting that he shouldn't be accountable.
17 He's not telling you that, you know, don't hold him
18 accountable, don't punish him. He's not saying that. He
19 said look, I did what I did.

20 And he's maintained, from the time they hauled him in
21 front of the cameras, 'til now, he said, look -- and he
22 uses the word accident. Accident.

23 You've got to remember, this guy's got a GED. Got
24 expelled from school when he was 15. Now let's face
25 facts, you know, both my wife and -- was born in the

1 education system, that happens [sic].

2 But the simple fact of the matter is, when he's says,
3 it's an accident, what he's saying and what he's told you
4 is, I didn't intend to shoot her. And I really didn't
5 intend to shoot anybody. Under the law what I did was
6 reckless, it was -- it was -- it was constituted murder,
7 but it was an accident, I didn't intend to kill her.

8 If this is going to be the bad kind of case that you
9 impose the death penalty on, what are the -- I mean, what
10 are the other terrible cases?

11 This is not a cold-blooded murder, as the solicitor
12 has suggested to you. This was a spontaneous, impulsive
13 situation. That does not make it not murder. But this
14 was something that occurred on an impulse, spontaneously.
15 And if Daxton Patterson had not gotten in Mr. Jennings
16 face, for whatever reason, Daxton Patterson did, had he
17 not got in Mike B[REDACTED]'s face, had that argument not
18 ensued, Mr. Rogers wouldn't have come over there, wouldn't
19 have gotten off the telephone, that gun wouldn't have been
20 produced.

21 You know, I -- yeah, it was illegal to carry that gun
22 Now we've got guns all over. Simple fact of the matter
23 is, is that's not what we're here to decide about. The
24 fact is that he had the gun and a terrible thing happened
25 and it was murder.

1 And he wouldn't have gone over there had Daxton
2 Patterson not started this whole thing. And all this
3 stuff about the beer and what have you and a cold one and
4 why it was thrown away and all that, I don't understand.
5 Maybe people's recollection, you know, His Honor's going
6 to tell you about credibility, possibly, he's going to
7 tell you about -- he's going to instruct you as to the
8 law.

9 But, you know, credibility doesn't mean that someone's
10 lying, credibility means believability based on
11 recollection. They don't have to be lying. You can
12 believe part of what one witness says and part of what
13 another witness says. You can disbelieve everything one
14 witness says and believe everything one witness says. You
15 can believe one against many or many against one. It's
16 your choice.

17 What we're asking you to do, very simply, and I would
18 respectfully suggest to you that you will find at least
19 one aggravating circumstance. Now you don't have to if
20 you don't want to. But the simple fact is, under the law
21 as His Honor's going to give it to you, it's almost
22 uncontradicted that there's an aggravating circumstance
23 here, the death of this child under 11, at least that.

24 Your job is to determine whether or not you give him
25 life without parole or put him -- impose capital