

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James R. Barber, III, Circuit Court Judge

Case No. 2006-CP-32-3221

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S.C. SUPREME COURT

Johnny O. Bennett.....Petitioner,

v.

State of South Carolina Respondent.

APPENDIX

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1 area did you then search the mattress?

2 A. As I was putting it down I did discover that there
3 was kind of a lump in the center of it, and as I was pulling
4 the stuffing out of it I found a portion of a light fixture.

5 Q. So you found both a shank and a light fixture?

6 A. Yes, sir.

7 Q. Are both of those items considered contraband?

8 A. Yes, they are.

9 Q. And what is contraband?

10 A. Stuff that is not permitted by inmates to have
11 inside the jail.

12 Q. And possession of contraband would be a violation
13 of jail policy and the rules?

14 A. Yes, sir.

15 Q. So would this statement be correct; Lexington
16 County Detention Center, December 30th, 1990, possessed of
17 contraband metal shank, possessed contraband light fixture;
18 is that accurate?

19 A. Yes, that's accurate.

20 MR. GRAHAM: Your Honor, we're back on State's
21 Exhibit 12, and I'll reveal that line at this time.

22 THE COURT: That's without objection.

23 MR. GRAHAM: And that's all the questions I have.
24 Please answer any questions from the defense.

25 THE COURT: Cross?

CROSS-EXAMINATION

1

2 BY MR. FLOYD:

3 Q. Good morning, Mr. Patel. How did you happen to be
4 searching Mr. Bennett's cell at this time?

5 A. As best I can recall, I was under orders from the
6 sergeant on duty to clean out his cell.

7 Q. His cell or everybody's cell?

8 A. Just his. I believe, if I recall, he was being
9 transferred to a different floor.

10 Q. And so which time, this was December of 1990; is
11 that correct?

12 A. Correct.

13 Q. And you found at that time a metal shank. Do you
14 have the shank here?

15 A. I'm not aware if they do or don't.

16 Q. How big was it?

17 A. It was about -- I'd say about seven inches long.

18 Q. And how wide?

19 A. About an inch wide.

20 Q. About an inch wide, okay. And what was it?

21 A. It apparently seemed to be part of the light
22 fixture, one of the blade sides taken off.

23 Q. Just a little piece of metal?

24 A. Yes, sir.

25 Q. And what else did you find?

1 A. At that time, the light fixture, the rest of it,
2 which was inside the mattress.

3 Q. Now, Mr. Bennett, you never did know of him to ever
4 use that on anybody else, did you?

5 A. Not to my knowledge, no.

6 Q. In fact, the only time he ever used a piece of
7 metal was on his own wrist, wasn't it?

8 A. At one time I do recall it, yes.

9 Q. And is that all you found, just these two pieces of
10 metal?

11 A. Yes, sir.

12 Q. And he tried to commit suicide one time?

13 A. At one time, yes, he did.

14 Q. And that was using a piece of metal to cut his
15 wrist?

16 A. Yes, sir.

17 MR. FLOYD: Thank you.

18 THE COURT: Redirect?

19 MR. GRAHAM: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q. On the incident that Mr. Floyd is talking about, I
23 think that was in January, when you went by the cell; did you
24 see the metal object in Mr. Bennett's hand?

25 A. I saw a flash of light, something reflecting off of

1 something in his hand, and later on after we went in we did
2 get that piece of metal from him.

3 Q. And did you see any injuries on Mr. Bennett?

4 A. There was an incision on his left wrist, and they
5 did call paramedics.

6 Q. And did the paramedics arrive?

7 A. They did.

8 Q. And do you know what kind of treatment he received?

9 A. We put restraints on him and took him to the short
10 hallway again, the secured area, and they said that it was
11 superficial and he could return.

12 MR. GRAHAM: No other questions.

13 THE COURT: Any recross?

14 MR. FLOYD: No, Your Honor.

15 THE COURT: All right. You can step down, sir.

16 And you're free to go if you want to.

17 MR. GRAHAM: Rodney Dreher.

18 RODNEY KEITH DREHER, after having been duly
19 sworn, testified as follows:

20 THE CLERK: State your full name.

21 THE WITNESS: Rodney Keith Dreher.

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. Mr. Dreher, where are you currently employed?

25 A. Michelin Tire Corporation.

1 Q. And how long have you been there?

2 A. Approximately three years.

3 Q. Back in January of 1991, did you work at the
4 Lexington County Detention Center?

5 A. Yes, sir, I did.

6 Q. And what did you do there?

7 A. I was a correction officer.

8 Q. And did you have an incident involving Johnny
9 Bennett on January 31st, 1991?

10 A. Yes, sir, I did.

11 Q. And, in fact, you had two that day, didn't you?

12 A. Yes, sir.

13 Q. Would you tell the jury about the first incident
14 that morning.

15 A. The first incident occurred approximately about 11
16 o'clock. I observed Mr. Bennett tapping approximately a
17 four-inch metal object on his food flap, which is -- it's a
18 door and they have the little flap that we can flip down and
19 feed them, put a tray on it so they can eat their food, and
20 he had a metal object in his hand tapping on this flap. I
21 asked Mr. Bennett to give me the object, he refused. I
22 called Sergeant Holcomb to the floor. He then gave the
23 object to Sergeant Holcomb without further incidents.

24 Q. And can you describe what that object looked like?

25 A. Rectangle in shape, about four inches long. I

1 don't know exactly what it could have been.

2 Q. And that would be considered contraband?

3 A. Yes, sir, it would have been.

4 Q. So is the statement January 31st, 1991, possess
5 contraband, four-inch metal object accurate?

6 A. Yes, sir.

7 MR. GRAHAM: We would uncover that at this time,
8 Your Honor.

9 Q. Did you have another incident involving Mr. Bennett
10 on that same day?

11 A. Yes, sir. Approximately 40 minutes later that same
12 day I was feeding their wing of the floor, Mr. Bennett
13 refused to go back into his room. I tried to tell him to go
14 back into his cell, he refused. Called for back up. At that
15 time, Sergeant Holcomb, Officers Bell, Anderson and Wilson
16 arrived on the floor, and at that time he went back in his
17 cell without further incident.

18 Q. So would the statement January 31st, 1991, refused
19 to enter his cell be accurate?

20 A. Yes, sir.

21 MR. GRAHAM: We would uncover that, Your Honor.

22 THE COURT: Without objection.

23 BY MR. GRAHAM:

24 Q. And did you have another incident when you were on
25 duty in May of that same year involving Mr. Bennett?

1 A. Yes, sir. On May 14th at approximately two o'clock
2 in the afternoon I observed Mr. Bennett chase another inmate
3 named Kenneth Sanders into the dayroom. I think Officer
4 Huddle was on the floor with me at the time. Captain Bost,
5 Officers Bell, Louis and Mingle arrived and we placed
6 Mr. Bennett into the cell wing corridor, and the other
7 inmate, Kenneth Sanders, he was escorted downstairs by
8 Captain Bost, than we all placed Mr. Bennett back in his cell
9 without further incident.

10 Q. Now, Mr. Bennett didn't actually catch the other
11 inmate that day?

12 A. No, he did not.

13 Q. So the statement May 14th, 1991, chasing another
14 inmate is accurate?

15 A. Yes, sir.

16 MR. GRAHAM: We would undercover that, Your Honor.

17 THE COURT: Without objection.

18 MR. GRAHAM: Please answer any questions they have,
19 Mr. Dreher.

20 THE COURT: Cross?

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q. So, Mr. Dreher, this first incident Johnny Bennett
25 was standing in his cell tapping the cell bars with a piece

1 of metal?

2 A. If I recall correctly, it was kneeling. The flap
3 is kind of low. So for Johnny he had to kneel down and look
4 through it and was kind of -- was doing like that with it
5 (indicated).

6 Q. And you were outside?

7 A. I was outside the cell, yes.

8 Q. So he knew you could see what he was doing?

9 A. Yes, sir, I believe so.

10 Q. So showing you he had a piece of metal?

11 A. Yes, sir.

12 Q. Didn't threaten anybody with it, didn't use it?

13 A. No, sir.

14 Q. So you asked him for it?

15 A. Yes. I asked him for it, he refused to give it to
16 me. And I called my supervisor on the floor, he gave it to
17 her.

18 Q. In fact, the supervisor was a female officer,
19 wasn't she?

20 A. Yes, sir.

21 Q. She comes up, he gives it to her?

22 A. Yes, sir.

23 Q. That's that incident?

24 A. Yes, sir.

25 Q. Second one, he'd been to eat or something like

1 that, coming back from the dayroom?

2 A. Actually, I think -- we unlocked the cells and feed
3 them in the wing, if I recall correctly.

4 Q. And he was supposed to go back to his cell after
5 you all ate; is that correct?

6 A. Yes, sir.

7 Q. You asked him to get into the cell and he said no?

8 A. Yes, sir.

9 Q. So some other officers came, he went in the cell;
10 isn't that right?

11 A. Yes, sir.

12 Q. Nobody had to put a hand on anybody, did they?

13 A. Not that I recall.

14 Q. He didn't threaten anybody, hit anybody, anything
15 like that?

16 A. Not that I recall, no, sir.

17 Q. On the third incident, that's when he was chasing
18 some inmate into the dayroom?

19 A. Yes, sir.

20 Q. Now, you don't know what started that, do you?

21 A. No, I do not.

22 Q. You don't know whether the other inmate had done
23 something to him and he was chasing him for it or not?

24 A. No, sir, I don't.

25 Q. You all told him to stop, he stopped?

1 A. No, basically ran after him and after he saw me, I
2 came out, he stopped.

3 Q. He stopped?

4 A. Yeah.

5 Q. Nobody had to wrestle him down, nobody had to put
6 their hands on him, they just stopped?

7 A. After I got everyone on the floor he went back to
8 his cell, yes, sir.

9 Q. And Mr. Bennett, nobody put him on the floor, did
10 they?

11 A. No, sir.

12 Q. And so you say you've got to go back to your cell,
13 so he goes back to his cell; so that's that incident?

14 A. Yes, sir.

15 MR. FLOYD: Thank you. No further questions.

16 THE COURT: Any questions?

17 MR. GRAHAM: No, Your Honor.

18 THE COURT: Step down. You're free to go if you
19 want to.

20 MR. RIDDLE: Paul Smith.

21 PAUL SMITH, after having been duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RIDDLE:

25 Q. Mr. Smith, where are you employed?

1 A. Bell Atlantic Mobile.

2 Q. Now Verizon?

3 A. Now Verizon.

4 Q. You have been with them for how long?

5 A. One year.

6 Q. One year. Let me ask you this. Back in 1992, were
7 you employed with them?

8 A. Yes, sir -- no, sir, I was not.

9 Q. Where were you employed then?

10 A. At the Lexington County Detention Center.

11 Q. And what was your job there?

12 A. I was a correctional officer.

13 Q. And during the time that you were a correctional
14 officer did you have dealings with Mr. Bennett?

15 A. Yes.

16 Q. You would supervise his floor about how often?

17 A. On a normal three-day rotation, at least once in
18 that three-day rotation.

19 Q. Now, let me just get straight to the point here.
20 Did you have an incident with him on February the 18th of
21 1992?

22 A. Yes, I did.

23 Q. And tell the jury what happened on that particular
24 day.

25 A. Okay. As I recall, I just completed the lockdown

1 of the floor B-Wing and started to clean up, and I noticed
2 that water was flowing from C-Wing where Bennett was housed.
3 Upon further investigation, I found that the water was coming
4 out of his cell, Cell C-12. Inmate Bennett was the only
5 occupant in that cell, he acted alone. And I contacted my
6 supervisor, Sergeant Martin, and he instructed me to turn off
7 the water.

8 Q. Now, you said you were doing lockdown on the floor,
9 is that done at night?

10 A. Yes, sir, it is.

11 Q. And all inmates are put back in their cell?

12 A. That is correct.

13 Q. Bennett is in C-12 by himself?

14 A. That is correct.

15 Q. When you go on that wing, that wing is flooded; is
16 that correct?

17 A. That is correct.

18 Q. Does that cause you all a problem there at the
19 jail?

20 A. Yes, it did.

21 Q. Does it flood Mr. Bennett's cell?

22 A. Normally, the perpetrator, when it comes out of
23 their cell, they are controlling the flow outward. So little
24 or no damage is done to their cell, but the adjacent cells --
25 excuse me, it's a downward sloping corridor and water, you

1 know, so water travels to the other cells.

2 Q. So Mr. Bennett flooded his cell, the wing and some
3 adjacent cells?

4 A. That's correct.

5 Q. Let me ask you this -- or were you able to
6 determine how the flooding took place? Was it coming out of
7 the sink or what was it coming out of?

8 A. Well, the actual sink and toilet is one fixed unit.
9 Most cases it was done out of the toilet because it has more
10 water, the standing water there.

11 Q. Is this an accurate statement; February 18, 1992,
12 clogged the commode, flooded wing and other cells?

13 A. That is correct.

14 Q. You have another incident with him April 2nd, 1992?

15 A. Yes.

16 Q. Tell the jury about that, please, sir.

17 A. Okay. Inmate Bennett was allowed out into the
18 dayroom. He asked to shave, and I got approval from my
19 supervisor, Sergeant Chisholm. He was allowed to come out
20 and shave. Shortly thereafter he returned his razor and the
21 mirror that he used to shave but he took the can of shaving
22 cream and proceeded to go to the cameras, surveillance
23 cameras and squirt, you know, to block the views there, and,
24 of course, I had to contact Sergeant Chisholm.

25 Earlier in that evening, around 9:45, I proceeded

1 to give Inmate Bennett his medication, and when I attempted
2 to give him his medication sheet to sign that he had actually
3 received and taken his medication he snatched the receipt
4 book out of my hand and placed it into his room and refused
5 to return it until he actually spoke to Sergeant Chisholm.
6 None of the sheets were damaged but he did return it to
7 Sergeant Chisholm.

8 Q. You all have to give inmates medicine; isn't that
9 correct?

10 A. That is correct.

11 Q. And when you all give it to them you get them to
12 sign that they received it so you can keep track of who's had
13 what?

14 A. That is correct.

15 Q. And all of the inmate's paperwork is together?

16 A. In one binder, yes.

17 Q. In one binder. And so when you went to give him
18 that he just snatched the paperwork from you?

19 A. That is correct.

20 Q. Wouldn't give it back to you?

21 A. That is correct.

22 Q. Did you ask him to give it back?

23 A. Yes.

24 Q. Did you order him to give it back?

25 A. Yes.

1 Q. What was his response to that?

2 A. His response, as I recall, he wanted a gold badge.
3 At the time, classified correctional officers wear a silver
4 badge, supervisory staff normally has a gold badge, and that
5 would be Sergeant Chisholm.

6 Q. So basically he wasn't going to give it back until
7 he got what he wanted?

8 A. Exactly.

9 Q. Let me ask you if this is a correct statement.
10 April 2, 1992, refused to follow orders?

11 A. That is correct.

12 Q. Mr. Smith, did you have another run-in with
13 Mr. Bennett on April 14th of 1992?

14 A. Yes.

15 Q. Tell the jury about that.

16 A. Okay. I had given Inmate Bennett a direct order to
17 return to his cell, and he flatly refused. And I contacted
18 my supervisor, then Sergeant Chisholm, and he was able to get
19 Inmate Bennett to return to his cell without further
20 incident.

21 Q. So again refusing to follow the directions of the
22 correctional staff?

23 A. That is correct.

24 Q. Is this a correct statement; April 14th, 1992,
25 refused to return to cell?

1 A. That is correct.

2 MR. RIDDLE: Your Honor, this is a continuation
3 chart of, I believe that's State's 12 up there. This one
4 will be State's 57.

5 THE COURT: Thank you, sir.

6 (WHEREUPON, State's Exhibit No. 57, a Summary
7 Chart, was marked and admitted into evidence.)

8 BY MR. RIDDLE:

9 Q. Did you have another problem with Mr. Bennett on
10 June 25th of 1992?

11 A. That is correct.

12 Q. Tell the jury about that incident, please, sir.

13 A. Okay. As I recall, Mr. Bennett and another inmate
14 both occupied cell C-12. At the time, he was placed on
15 confinement. The other inmate, Inmate Patterson, was not.
16 So per procedure we had to let that inmate out and at which
17 time when I opened the cell for Inmate Paterson, Inmate
18 Bennett came out unauthorized.

19 And once I got him to go back into his cell, Inmate
20 Bennett, I noticed that he had one cigarette hidden behind
21 his ear, and I notified him that the guidelines now
22 prohibited any cigarettes of any kind, it was considered
23 contraband. He refused to give up the cigarette, and I
24 informed my immediate supervisor, Sergeant Martin,
25 immediately.

1 Q. So on June the 25th of 1992 cigarettes were
2 contraband?

3 A. That is correct.

4 Q. And he possessed them?

5 A. Yes, sir.

6 Q. And when you ordered him to give those cigarettes
7 back to you he would not do that?

8 A. That is correct.

9 Q. Is this a correct statement; June 29th, 1992,
10 possessed contraband cigarettes, and refused to follow
11 orders?

12 A. That is correct.

13 MR. RIDDLE: Thank you, Mr. Smith. Please answer
14 any of their questions.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q. Officer Smith, let me make sure I got these things
19 down. The first thing I think you testified to was something
20 about flooding cells; is that correct?

21 A. Yes, February 18th.

22 Q. So the cell was flooded, so everybody has to clean
23 it up; that was basically it?

24 A. Whenever an inmate floods a cell, as I stated
25 earlier, they control the flow of the water outwards. The

1 corridor has a downward adjacent, and it went into other
2 cells which caused a commotion because some of the inmates
3 were getting their property damaged, wet by the water.

4 Q. And that's not that uncommon, is it?

5 A. To flood their cell? That is uncommon, that's
6 not --

7 Q. That's not that common. Did he attack anybody,
8 hurt anybody?

9 A. No. Inmate Bennett was housed separately in that
10 cell so there was no one else to harm or attack.

11 Q. He didn't make any threats to anybody, he just
12 flooded his cell; would you agree with me there?

13 A. That is correct.

14 Q. And what was the next incident?

15 A. April the 2nd, '92.

16 Q. That's with the shaving cream?

17 A. Yes. The shaving cream and also the medicine
18 receipt book.

19 Q. Okay. So that's basically he put shaving cream
20 over the camera?

21 A. Surveillance cameras, that's correct.

22 Q. It's got a protective shield on it, doesn't it,
23 that he put it on, a protective lens?

24 A. To my understanding, there's a lens and there is a
25 shield. He covered that, yes, sir.

1 Q. Didn't affect the camera but it --

2 A. It obstructed the view from anyone -- anyone in
3 main control, yes. It would obstruct their view.

4 Q. But he didn't do anything else that he was trying
5 to hide he just obstructed the view?

6 A. I don't --

7 Q. He wasn't caught doing anything but putting the
8 shaving cream on the lens?

9 A. That's what I observed, yes, putting shaving cream
10 up there.

11 Q. And then didn't want to go back to his cell; was
12 that the next thing?

13 A. That is correct.

14 Q. Of course, he went on back in without incident,
15 didn't he?

16 A. Once I summoned my supervisor, Sergeant Chisholm,
17 yes.

18 Q. Nobody used any force, he didn't use any force?

19 A. No.

20 Q. Nobody put any hands on anybody?

21 A. No.

22 Q. And the next incident was he walked out of his cell
23 with his roommate?

24 A. Right.

25 Q. And wasn't supposed to?

1 A. Right.

2 Q. You told him to go back in and he went back in; is
3 that correct?

4 A. I told him to first give up the cigarette, which
5 was contraband. And then he refused, he went back into his
6 room. He refused to give up the contraband.

7 Q. But nobody put their hands on him?

8 A. No.

9 Q. He didn't put his hands on you?

10 A. No.

11 Q. No violence to anybody?

12 A. No.

13 Q. Is that correct?

14 A. That's correct.

15 MR. FLOYD: Thank you. I have no further
16 questions.

17 THE COURT: Redirect?

18 MR. RIDDLE: No, sir.

19 THE COURT: You can step down. You're free to go.
20 Thank you, sir.

21 MR. GRAHAM: Nicholas Van Put.

22 NICHOLAS VAN PUT, after having been duly
23 sworn, testified as follows:

24 THE WITNESS: My name is Nicholas Van Put. It's
25 V-a-n P-u-t.

DIRECT EXAMINATION

BY MR. GRAHAM.

Q. Where are you employed?

A. I'm the corporal at Batesburg Police Department.

Q. At one time, did you work for the Lexington County Detention Center?

A. That's correct.

Q. And what did you do there?

A. I was a correction officer.

Q. Did you have an incident where you searched Johnny Bennett's cell on March 20th, 1992?

A. That's correct.

Q. And what did you find?

A. On March the 20th of 1992 at 5:05 p.m. Officer Mingle and myself -- actually, I was advised by an inmate, but to this day I cannot remember what the inmate's name is. The inmate advised me that Johnny Bennett had a three-foot metal rod somewhere in his room. So we conducted a cell check. And after we conducted a cell check, we found and confiscated three linen sheets, three towels and one three-foot metal rod, the metal rod found inside the ventilation shaft nearest to the ceiling above the cell door.

Q. And how -- we know it was three foot, how heavy was it?

A. It was heavy.

1 Q. Did you figure out where it came from?

2 A. I believe it came from the bottom section of the
3 metal door to the cell.

4 Q. And where did you say that it was found?

5 A. It was above the cell door where the ventilation
6 shaft is. It was visible when I looked inside, and when I
7 pulled it out that's where I discovered it.

8 Q. So is it a correct statement to say that on March
9 20th, 1992, possession of contraband, three-foot metal rod?

10 A. That is correct.

11 MR. GRAHAM: Please answer any questions that they
12 have.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q. Officer Van Put, which one is yours, this one?

17 A. Yes, sir.

18 Q. Isn't it true that at that time Johnny Bennett had
19 a cellmate, a man by the name of Michael Glover?

20 A. I believe so.

21 Q. And isn't it true that you never could determine
22 whether it was Johnny Bennett's three-foot metal rod or
23 Michael Glover's three-foot metal rod?

24 A. That's correct.

25 Q. So really this ought to say maybe he possessed a

1 contraband. Maybe he possessed it or maybe Michael Glover
2 possessed it; would that be fair?

3 A. That would be fair to say.

4 Q. And Michael Glover was no angel, was he?

5 A. We've had our problems before with him, sir.

6 MR. FLOYD: Thank you. No further questions.

7 MR. MYERS: James Harris.

8 THE COURT: You can step down, and you're free to
9 go.

10 JAMES EARL HARRIS, after having been duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. MYERS:

14 Q. Would you tell the jury your name, please.

15 A. James Earl Harris.

16 Q. And how long have you and I been in this business?

17 A. 28 years.

18 Q. And what's your position over at the Sheriff's
19 Department?

20 A. Now? Now, I'm detention services B-roll chief.
21 That means I'm over the courthouse security and the jail.

22 Q. And what is your rank now?

23 A. Major.

24 Q. Now, back in June of 1992, what were your duties
25 then?

1 A. June of 1992, I was a detective lieutenant. My
2 duties then was over -- 90 -- I was a detective sergeant.

3 Q. So you were working in detective division two?

4 A. Yes, sir.

5 Q. Let me ask you this. Showing you photograph 47,
6 who is that right there?

7 A. That's me.

8 Q. Your hair is a little grayer now..

9 A. Yes, sir.

10 Q. Who took you all out there that day to find these
11 items?

12 A. Johnny Bennett.

13 Q. Now, in 1992, did you have to conduct an
14 investigation at the Lexington County Jail?

15 A. Yes, sir, I did.

16 Q. And did that investigation center around officers
17 and inmates?

18 A. Yes, sir.

19 Q. And just basically, what was the investigation
20 about?

21 A. The investigation initially started with contraband
22 coming into the jail, which was cigarettes.

23 Q. And during this investigation you had to talk with
24 various people; is that correct?

25 A. Yes, sir, I did.

1 Q. One of the inmates that you had to talk with, was
2 it Johnny Bennett?

3 A. Yes, sir.

4 Q. Now, when you talked with him did you advise him of
5 anything before you talked with him?

6 A. We advised him of -- I advised him of his Miranda.

7 Q. And just real quickly, what rights?

8 A. I advised him that he had a right to remain silent.
9 If he give up the right to remain silent anything he said can
10 and will be used against him in a court of law.

11 I advised him that he had a right to have an
12 attorney present with him during questioning now or after,
13 and I advised him if he gave up the right to remain silent
14 that he may stop talking at any time.

15 I also advised him that if he could not afford an
16 attorney one would be appointed to represent him by the clerk
17 of court. And the last thing, I asked him do he wish to talk
18 to me.

19 Q. Did he wish to talk with you?

20 A. Yes, sir, he did.

21 Q. Did he ever --

22 THE COURT: Hold on one minute.

23 Ladies and gentlemen, again, remember the same
24 thing we told you before regarding an alleged statement, you
25 determine if the statement was made, you determine if it was

1 made with the understanding of the defendant's rights, if he
2 freely and voluntarily did so, and then you decide how much
3 weigh to give to it.

4 MR. FLOYD: Your Honor, would the record also note
5 our standing objection on that matter.

6 THE COURT: Objection noted.

7 BY MR. MYERS:

8 Q. Did he give up those rights, waive those rights?

9 A. Yes, sir, he did.

10 Q. Did he ever tell you he didn't want to talk with
11 you?

12 A. No, sir.

13 Q. Did he ever tell you he wanted a lawyer?

14 A. No, sir.

15 Q. Did you threaten him, intimidate him or coerce him
16 in any way?

17 A. No, sir.

18 Q. Did you even have a weapon on you when you talked
19 with him?

20 A. No, sir.

21 Q. Did he freely and voluntarily give up those rights?

22 A. Yes, sir.

23 Q. And did he talk with you?

24 A. Yes, sir, he did.

25 Q. And this is June 19, 1992?

1 A. Yes, sir.

2 Q. Now, when you talked with him what, if anything,
3 did you ask him about cigarettes coming into Lexington County
4 Jail?

5 A. Well, basically, the interview, how it got started,
6 he sent for an investigator to come and talk to him.

7 Q. Johnny Bennett?

8 A. Yes, sir.

9 Q. Sent word for an investigator to come talk with
10 him?

11 A. Yes, sir.

12 Q. So that's how you became involved?

13 A. That's how I got a chance to interview him. And we
14 started to talk about cigarettes, and he was telling me how
15 the cigarettes were coming into the jail. He was telling me
16 the different officers who were bringing the cigarettes into
17 the jail. He advised me the amount of money that he was
18 paying for a carton of cigarettes and he advised me what he
19 was making off a carton of cigarette.

20 Q. Cigarettes allowed in the jail for inmates at that
21 time?

22 A. No, sir.

23 Q. They are contraband?

24 A. Yes, sir.

25 Q. And he told you what officers were bringing the

1 contraband in to the inmates?

2 A. To him.

3 Q. To him?

4 A. To him.

5 Q. And how much would he pay the officer for a carton
6 of cigarettes?

7 A. If I'm not mistaken, I think he paid -- I'll be
8 sure. 170 dollars is what he was paying the officer -- no,
9 he paid the officer 150 dollars a carton, for a carton of
10 cigarettes.

11 Q. He paid the officer 150 dollars for a carton of
12 cigarettes?

13 A. Yes, sir.

14 Q. And when this officer would bring the carton of
15 cigarettes to him he paid 150 dollars; what would Johnny
16 Bennett do with that carton of cigarettes?

17 A. He would turn around and take the carton of
18 cigarettes, each cigarette he would sell two dollars a piece.

19 Q. He would sell the cigarettes for two dollars each?

20 A. Yes, sir.

21 Q. And who would he sell them to?

22 A. He would sell them to the inmates in the facility.

23 Q. Now, in a carton of cigarettes -- first of all, in
24 a pack of cigarettes, how many cigarettes in a pack?

25 A. I think it's 20 cigarettes to a pack.

1 Q. 20 cigarettes to a pack. And how many packs are in
2 a carton?

3 A. Ten.

4 Q. So 200 cigarettes and he'd sell those 200 for 2
5 dollars each?

6 A. Yes, sir.

7 Q. So this is right, it's 20 cigarettes to a pack?

8 A. Yes, sir.

9 Q. And there's 10 packs in a carton, that's 200
10 cigarettes?

11 A. Yes, sir.

12 Q. 200 times 2 dollars. He's making 400 dollars being
13 an inmate in the Lexington County Jail?

14 A. Yes, sir.

15 Q. He admitted this to you?

16 A. Yes, sir.

17 Q. But this was just a one-time thing?

18 A. No, sir, it was ongoing.

19 Q. Were some actions taken against these correctional
20 officers, were they fired?

21 A. I would -- actually, I could not say, because I
22 don't know -- I know once I did my investigation I gave it to
23 the assistant sheriff, and I know some of them are no longer
24 employed there but they did not get into that to me as to
25 what happened there.

1 Q. When you were talking with Johnny Bennett, did he
2 tell you anything about marijuana in the Lexington County
3 Jail?

4 A. He told me about marijuana, I think, and crack
5 cocaine.

6 Q. What did he say about marijuana?

7 A. He told me that it was coming in, and he gave me
8 the name of the guard and said he did not sell that, that was
9 for his own personal use.

10 Q. So he was getting marijuana at the Lexington County
11 Jail and using it for his own personal use?

12 A. Yes, sir.

13 Q. And how much would he pay for the marijuana; did he
14 tell you that?

15 A. He said that for a slab, was street value, he would
16 pay 100 dollars for it.

17 Q. That was crack cocaine; how much for the marijuana
18 would he pay?

19 A. I don't think that he actually gave me a price on
20 what he would pay for the marijuana.

21 Q. You're looking at your notes. This was a taped
22 interview, wasn't it?

23 A. Yes, sir.

24 Q. And you've got a transcript of that interview.
25 Look in there at what he told you he was paying for the

1 marijuana.

2 A. He said the marijuana was, like, 25 and 50 dollars
3 a piece. He said he averaged about a pound coming in, and
4 was bringing 25, 50 cent a piece, and he told me that was
5 regular street value. And then said 25 would be like for 60
6 dollars, for a 50 cent piece was about 120 dollars.

7 Q. Now, they call marijuana by pieces, 25 cents a
8 piece; 50 cents a piece; and things like that?

9 A. Yes, sir.

10 Q. That's the drug lingo, right?

11 A. Yes, sir.

12 Q. And, of course, 50 cents a piece costs more than 25
13 cents a piece, and what was the price range in there?

14 A. He said for about a hundred and 20 dollars.

15 Q. Was that a one-time thing or an ongoing thing?

16 A. It was ongoing.

17 Q. Did he ever give you a quantity involved?

18 A. He said average all together at least a pound.

19 Q. At least a pound?

20 A. Yes, sir.

21 Q. Of course, he said that was for his personal
22 consumption?

23 A. Yes, sir.

24 Q. What about crack cocaine coming into the Lexington
25 County Jail?

1 A. He said that was for his personal consumption also,
2 and he said at least three or four ounces.

3 Q. How much would he pay for that a slab, I think they
4 call that a slab?

5 A. Right.

6 Q. And how much did he pay for a slab?

7 A. He said regular street value he said was a hundred
8 dollars, and he advised me that this had been done numerous
9 times over.

10 Q. And it ended up being several; three or four ounces
11 total involved?

12 A. Yes, sir.

13 Q. Now, let me ask you this. Did he also tell you
14 anything about guards getting him to take care of other
15 inmates?

16 A. Yes, sir, he did.

17 Q. Tell the jury what he said about that.

18 A. He was -- he told me that if an individual came in
19 the jail, and depending on their demeanor or if it's a black
20 female correctional officer and if it was a white inmate
21 coming in, they would call the black female correctional
22 officers niggers, and they would take the inmate up on the
23 floor where Mr. Bennett was and they would look at him and
24 wink at him, give him a sign, and Mr. Bennett would
25 straighten the inmate up. He would whoop up on the inmate,

1 is what he was telling me.

2 Q. Where?

3 A. Sir?

4 Q. Where would this take place?

5 A. In Mr. Bennett's cell.

6 Q. And this would happen to both black and white
7 inmates?

8 A. Yes, sir.

9 Q. More than one time?

10 A. Yes, sir.

11 Q. He was the enforcer?

12 A. He was the enforcer, yes, sir.

13 Q. Is this correct here, Major Harris; June 19, 1992
14 is when you talked with him?

15 A. Yes, sir.

16 Q. It says that he was buying and selling cigarettes,
17 contraband in jail?

18 A. Correct.

19 Q. Buying and using crack cocaine and marijuana?

20 A. Correct.

21 Q. And he was the enforcer?

22 A. Yes, sir.

23 THE COURT: Any objection from the defense?

24 MR. YOUNG: No objection.

25 THE COURT: Same objection as the statement?

1 MR. YOUNG: Yes, sir.

2 THE COURT: Okay. So noted.

3 BY MR. MYERS:

4 Q. And that enforcer, that did involve physical
5 violence didn't it?

6 A. Yes, sir.

7 MR. MYERS: Thank you. Answer any questions that
8 they have.

9 THE COURT: Cross?

10 CROSS-EXAMINATION

11 BY MR. FLOYD:

12 Q. Major Harris, now, Johnny Bennett had been in jail
13 since 1990?

14 A. Yes, sir.

15 Q. And this happened in 1992; isn't that correct.

16 A. June 19, 1992.

17 Q. And isn't it true that when the jail declared
18 cigarettes contraband sometime there in 1992 or thereabouts,
19 if you know that?

20 A. I don't know.

21 Q. But at one point in time cigarettes were allowed,
22 weren't they?

23 A. Correct, sir.

24 Q. Now, Johnny Bennett didn't bring the cigarettes
25 into the jail, the guards did?

1 A. Yes, sir.

2 Q. They didn't let Johnny Bennett out to go to the
3 store to buy the cigarettes?

4 A. No, sir.

5 Q. So the guards brought the cigarettes in, then the
6 guards would sell the cigarettes to Johnny who would sell
7 them to other people?

8 A. Yes, sir.

9 Q. That's what was going on, wasn't it?

10 A. Yes, sir.

11 Q. And the guards were getting the money, Johnny was
12 getting some too?

13 A. Both of them were getting their part of it, yes,
14 sir.

15 Q. And then, of course, the guards were selling Johnny
16 some marijuana for his personal use at an inflated price and
17 some crack cocaine at an inflated price?

18 A. They were -- I don't know the price but they were
19 selling it, selling it to him, yes, sir.

20 Q. So the guards were the ones that ended up with the
21 money in the long-run, and Johnny probably made some too?

22 A. On the drugs, the guard probably made the money.
23 On the cigarettes, both of them made money.

24 Q. So, basically, Johnny couldn't have done any of
25 this if it wasn't for the guards?

1 A. He had to have someone to bring it to him.

2 Q. And Johnny had been in jail for a couple of years,
3 so the guards were the ones that brought the cigarettes in?

4 A. Yes, sir.

5 Q. Now, this other part, he said the enforcer, called
6 him the enforcer, I believe, for guards?

7 A. Yes, sir.

8 Q. He was also the protector for the guards too,
9 wasn't he?

10 A. I don't --

11 Q. There were some female guards and there was a man
12 giving that female guard trouble, Johnny stepped in to
13 protect, didn't he?

14 A. Well, what was told to me is that they would put
15 him on the floor so when they would come in -- these
16 primarily were the female officers that was in booking. So
17 therefore -- and to my understanding, he was not at booking
18 he was in the cell. So he couldn't have stepped in, so this
19 apparently was an arranged deal between him and the sergeant
20 on that shift. And the sergeant would take them up and let
21 Bennett know that this is the one that was giving the officer
22 trouble and Bennett would work them over. So as far as him
23 stepping in on the floor, I don't have no information to
24 that, sir.

25 Q. So, basically, they were using Johnny to help keep

1 order and control?

2 A. I don't -- well, I cannot determine in that order
3 that they was using -- they was using -- not to keep order
4 because that is not what you do to keep order. They was
5 using Johnny as an enforcer. That was improper. So I cannot
6 say that they was using him to keep order, no, sir.

7 Q. Well, they only used him -- if they had an unruly
8 prisoner who was giving the guards trouble they used Johnny
9 to control that situation, didn't they?

10 A. Well, I guess to a point, yes, but you can't --
11 that's not --

12 Q. Not saying what's proper or not.

13 MR. MYERS: Don't cut him off. We object to the
14 attorney cutting off the witness.

15 MR. FLOYD: I'm not purposely cutting him off.

16 THE COURT: Were you through, Officer Harris?

17 THE WITNESS: Sir?

18 THE COURT: Were you through answering your
19 question?

20 THE WITNESS: Yes, sir.

21 BY MR. FLOYD:

22 Q. I didn't mean to cut you off. If I did, go ahead.

23 A. They used him as an enforcer, not to keep order,
24 because by doing that that made it more of a raid than
25 keeping order.

1 Q. Well, I guess what I'm getting at is, if the
2 guards -- if this was an inmate that was giving the guards
3 trouble.

4 A. Yes, sir.

5 Q. One of the ways the guard would deal with that is
6 to use Johnny Bennett to take control of that situation and
7 stop the guy from being in trouble -- being a troublemaker?

8 A. Let me try to explain then how I view this. Okay,
9 John Doe come in, he's giving the female guards trouble. Say
10 Bennett is on second floor. They take Bennett in, give
11 Bennett the eye that this guy is giving trouble, Bennett beat
12 the guy up. Whether that stop them or not, that's just as
13 far as my investigation went. I know that they was using him
14 as an enforcer, not to control the situation but if one came
15 in more or less as a punishment. So I don't see that as
16 control.

17 Q. Okay. I understand what you're saying.

18 A. Yes, sir.

19 Q. They were using him. You don't want to call it
20 control because you don't think that's a proper way to use
21 it?

22 A. Correct, sir.

23 Q. But in any event, the Lexington County Jail were
24 using Johnny Bennett to help out themselves with their
25 problems and they used his size and strength and so forth to

1 do that?

2 A. I assume, sir. I do not know why the guards were
3 doing it. The only thing I can actually tell you what was
4 told to me as fact that they were using him on unruly inmates
5 as an enforcer. As to why they did it, sir, I do not know,
6 but I know that that was an ongoing thing. So that's the
7 only thing I could honestly tell you.

8 Q. So the Lexington County Sheriff's Office employees
9 used Johnny Bennett in the jail to maintain control and now
10 they want to use the fact that they used him in the jail to
11 help them out to ask a jury to kill him?

12 MR. MYERS: Objection. That's a jury argument for
13 later on.

14 THE COURT: Sustained. The witness can't answer
15 that question.

16 Q. But did they use him?

17 A. They used him as an enforcer.

18 MR. FLOYD: Okay. Thank you, Major Harris.

19 REDIRECT EXAMINATION

20 BY MR. MYERS:

21 Q. Look at page seven of the transcript of the
22 interview of Mr. Bennett. Are you on the seventh page?

23 A. What's the top number?

24 Q. Seventh page. It's the first line. It says
25 Harris; where did you keep that much money at? You see that

1 page? I'm not talking about the transcript I'm talking about
2 your interview, the transcript of your interview.

3 A. Oh, my interview.

4 Q. Yes.

5 A. I have that here.

6 Q. You see that?

7 A. Yes, sir.

8 Q. You were asking him about where he kept that much
9 money.

10 A. Yes, sir.

11 Q. You asked him what's the most amount of money that
12 he had in his room from all this stuff.

13 A. At one time, yes, sir.

14 Q. What was his answer to you?

15 A. 17 hundred dollars.

16 Q. One thousand, seven hundred dollars at the
17 Lexington County Jail. Johnny Bennett was an inmate out
18 there; is that right?

19 A. Yes, sir.

20 MR. MYERS: No further questions.

21 RECROSS-EXAMINATION

22 BY MR. FLOYD:

23 Q. Do you know whether or not that was money that he
24 had to give a portion of that to the correctional officers?

25 A. I don't know. From the interview with him this

1 should have been the money that he cleared because he
2 actually paid the guard. When they delivered to him he paid
3 for the product. So this should be his clearing from what
4 he'd been getting from the cigarettes and that he be selling
5 over a period of time.

6 Q. The guards wanted their money up-front?

7 A. He indicated to me that he would pay them when they
8 bring it to him. So all indication, that once they
9 delivered, whether it's the drugs or the cigarettes, he would
10 pay them the agreed amount that they'll set, then he would go
11 about selling the rest of the cigarettes. Then that's how he
12 would make his money so he could buy more cigarettes and the
13 drugs.

14 Q. And no question cigarettes were being brought in
15 there by the Lexington County Sheriff's Department employees?

16 A. Yes, sir.

17 Q. The drugs were being brought in there by the
18 Lexington County Sheriff's Department employees?

19 A. Yes, sir.

20 MR. FLOYD: Thank you.

21 MR. MYERS: No further questions.

22 THE COURT: All right. You may step down. You're
23 free to go, if you want to or you can stay here.

24 MR. RIDDLE: Sharon McChesney.

25 THE COURT: Lets m note. By the way, I've just

1 gotten a note that indicates that it's going to be about 15
2 to 20 minutes before lunch is here.

3 Jurors, is it okay to keep going or do you want to
4 take a break and just wait for the lunch, or do you want to
5 go ahead and just keep plugging while we can? The foreman is
6 doing that (indicated).

7 Do you want to stand and stretch for a second? If
8 you want to stand and stretch while the next one is coming,
9 okay. In fact, between any of the witnesses feel free to
10 stretch at any point, as long as you don't talk about the
11 case while you're stretching.

12 THE FOREPERSON: We might need to take that break.

13 THE COURT: Okay, a quick break.

14 As I understand, the jury might need to take a real
15 quick break here. Just don't talk about the case during the
16 quick break.

17 (WHEREUPON, the jury leaves the courtroom at
18 approximately 1:05 p.m.)

19 (WHEREUPON, a brief recess was taken.)

20 THE COURT: Bring them on in.

21 (WHEREUPON, the jury enters the courtroom at
22 approximately 1:15 p.m.)

23 THE COURT: All parties and attorneys are in the
24 courtroom and all jurors are back in better shape than when
25 they left.

1 All right. Mr. Riddle?

2 MR. RIDDLE: Sharon McChesney.

3 SHARON MCCCHESNEY, after having been duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RIDDLE:

7 Q. Ms. McChesney, where are you employed?

8 A. Mostly a full-time mother right now, but I work
9 part-time at Coldstream Golf Club.

10 Q. What do you do with them?

11 A. Work in the pro shop and the tennis shop, things
12 like that.

13 Q. Now, let me ask you this. Back in 1993 you were a
14 correctional officer?

15 A. Yes, I was with Lexington County.

16 Q. With Lexington County?

17 A. Yes, sir.

18 Q. And at that time, you weren't married?

19 A. No, sir.

20 Q. Your name was Tanner then?

21 A. It was Tanner, T-a-n-n-e-r.

22 Q. If I mess up, because my paperwork says Tanner, I
23 think.

24 A. It says Tanner, I think.

25 Q. Now, February 20th, 1993, you were working that

1 day?

2 A. Yes, sir.

3 Q. And did you have an occasion to go on the first
4 floor of the jail that day?

5 A. Yes, sir, I did. I was actually brought back in, I
6 was working main control at the time. And Johnny Bennett and
7 Glover, Inmate Glover, they were in the confinement side.
8 There's three wings to -- three sections to a floor. You've
9 got A-Wing, you've got B-Wing, you've got C-Wing.

10 Q. Right.

11 A. Confinement was on A, and you've got a little
12 dayroom in there where they're out for about an hour at a
13 time to stretch their legs, shower, whatever they have to do.

14 Q. On confinement they are in lockdown?

15 A. Lockup, lockdown.

16 Q. Whatever you want to call it.

17 A. Right. Whatever you want to call it. People use
18 different terms for it. They are only allowed out an hour a
19 day.

20 Q. And you were working main control but you went in
21 there to help another officer; is that correct?

22 A. Yes, sir, I did. Officer Shopshire was there, I
23 think, from what I can remember, he was fairly new, but this
24 was around nine o'clock at night. And had a canteen that
25 came on this floor at that time, he also had the library.

1 It's hard to keep an eye on 40, 50 inmates at one time and
2 keep things where they are supposed to be.

3 Q. Right.

4 A. I went on the floor, Johnny and Michael Glover had
5 actually talked to me. I had been gone having -- for medical
6 reasons for awhile, I was back on the floor. I went down to
7 the floor, and Officer Shopshire said, you know, this Inmate
8 Dougins needs his medicine. I do not have time to stop and
9 give it to him, can you do it?

10 Q. Okay. So you went on the floor to help the other
11 officer by giving another inmate some medicine?

12 A. Their nightly medicine. There's certain times we
13 have to give the medicine, yes.

14 Q. During the time you went on the floor, Mr. Bennett
15 was on confinement?

16 A. Right.

17 Q. But he was on his hour out?

18 A. Right.

19 Q. Along Mr. Glover?

20 A. Right.

21 Q. They are out in the dayroom area; is that correct?

22 A. In the small dayroom area. Right, the big dayroom
23 had the canteen and other in it.

24 Q. The small dayroom area is for the confinement
25 people?

1 A. Yes, sir.

2 Q. And Mr. Dougins, where was he at this time?

3 A. He was locked up. He was still in his cell on
4 A-Wing.

5 Q. Lockdown?

6 A. Lockdown.

7 Q. Now, you went to Mr. Dougins' cell to give him his
8 medication?

9 A. I got the key from Officer Shopshire, went in,
10 opened the door to the small dayroom where Johnny and Michael
11 were. Turned around, locked the door and the door to the
12 hallway where the cells are was already open. Had the
13 medicine in his hand, they were talking to me. I said, Wait
14 a minute, let me go give Dougins his medicine. Went down
15 there, opened the door, and as force of habit for most
16 officers, the door opens this way.

17 Q. Opens out toward you?

18 A. It opens out.

19 Q. All right.

20 A. I'm not a very large person.

21 Q. Right, I think that they saw that.

22 A. I usually took my foot and put on the outside of
23 the door, that way when I opened the door I've got a small
24 way -- if somebody is going to try to push their way out it's
25 going to be harder for them to push their way out.

1 Q. So you just kind of put your foot as a door stop?

2 A. I propped my foot on the outside of the door,
3 right.

4 Q. And that way the door only opens as far as you want
5 it to?

6 A. As far as I want it to go. I opened the door,
7 handed Dougins his medicine. And before I even knew, I mean,
8 this was in seconds, Johnny and Glover were behind me. I
9 could look up and see -- I'm five-foot-four, I could look up
10 and see Johnny over me.

11 Q. You're talking about Johnny Bennett?

12 A. Yes. Yes.

13 Q. Now, what does he do when he walks up behind you?

14 A. Well, at first he really didn't do a lot, just
15 stand there and kind of -- it was like he was starting to
16 want to walk into the cell, and Glover was on this side of
17 me.

18 Q. On your left?

19 A. On my left, where the door was open, and my foot
20 was down. Johnny was directly behind me, and Glover was on
21 this side of me.

22 Q. Now, does Bennett start talking to Inmate Dougins
23 at that time?

24 A. Basically, his words, if I can remember correctly,
25 and they may not be exact, but as exact as I can remember, Go

1 ahead and talk your shit now. Go ahead, you got anything to
2 say to me say it now, dammit. You know, say what the hell
3 you want to say, was pretty much --

4 Q. What did you do at that time?

5 A. Well, to be honest with you, at first I thought
6 Johnny was joking, but sometime Johnny, the intimidation
7 part, you know, he would play a little bit of intimidation,
8 and he would think it was funny. Well, after a few seconds
9 later I knew it wasn't intimidation because he was pushing on
10 me while I was standing up and he was at my back. I mean, he
11 wasn't shoving me but he was just walking further where I was
12 going further in. He had his hand on the door trying to open
13 the door and my foot was on the outside.

14 Q. So Bennett tried to force his way to the cell?

15 A. He's trying to get in.

16 Q. Where did Dougins go?

17 A. Dougins is backing up, real fast.

18 Q. How big is Dougins?

19 A. Johnny and Dougins were probably not far from
20 height-wise. Dougins was probably a little shorter, not far
21 from height-wise, but Dougins was a skinny little thing. He
22 was a little -- you know, he was not a big man, big guy.

23 Q. How old was Dougins? He was older, wasn't he?

24 A. I honestly don't remember. I would say maybe in
25 his 30's. I honestly do not know.

1 Q. Now, Dougins is backing up, Bennett is moving
2 forward?

3 A. Moving forward.

4 Q. What does he do at that point?

5 A. He's reaching over me. When I realized that this
6 was not a joke, this was not Johnny just playing games, I
7 started backing up and I told Johnny to back off. Well, he
8 wasn't backing off and you could hear his voice, he was
9 getting madder by the minute.

10 Q. Did Dougins say anything to him?

11 A. Dougins, I don't even remember as far as that goes.
12 Dougins was just backing up to the back side of the cell,
13 trying to back up, and Johnny was reaching over me trying to
14 get his hands on Dougins. And I remember Dougins saying,
15 Man, I didn't say anything.

16 Q. Okay.

17 A. As far as -- you know, as far as that goes. But I
18 had my radio in my back pocket. That's where I always kept
19 it. It was easier for me than trying to unclip my belt to
20 get to it.

21 Q. Could you get your radio?

22 A. Every time I tried to reach back to get my radio
23 out and call for some backup Johnny would reach over me so I
24 could not get to my radio. Luckily my sergeant, Sergeant
25 Anderson, was in main control and he saw what was going on.

1 Q. Did he see it like visually or through the security
2 cameras?

3 A. Through the monitors.

4 Q. So that's what those cameras are for?

5 A. Yeah, right. The cameras -- luckily, I was in a
6 spot where he could see me, because if I had been one cell up
7 he couldn't have seen it.

8 Q. So the cameras are up there basically for your
9 protection?

10 A. Right.

11 Q. Now, he's reaching over you trying to get to
12 Dougins?

13 A. Right.

14 Q. Dougins is backed up. Does he ever get to Dougins?

15 A. Oh, yeah.

16 Q. What happens when he gets to Dougins?

17 A. Well, like I said, I was still standing there. He
18 was, you know, shoving on -- not pushing, but just walking
19 up, you know, and just then pulling on the door, pulling on
20 the door.

21 Q. He's using his weight and size to move you?

22 A. His weight and size to move me.

23 Q. He doesn't have to use his hands?

24 A. No, he doesn't have to. He got the door swung
25 open, reached inside, grabbed Dougins by the hair on his

1 head, snatched him out, here we go.

2 Q. Snatched him out of his cell at that point?

3 A. Just about out of the cell. He had him halfway out
4 of the cell, yes.

5 Q. What's happening at that point?

6 A. The yelling was still going on, and I was yelling
7 at Johnny to stop and this that and the other. And I don't
8 remember if it was at that point in time or a later point in
9 time, but I was in the middle of the two with one hand on
10 Johnny and one hand on Dougins.

11 Q. And was Dougins trying to fight or was he trying to
12 get away?

13 A. Dougins was trying to get the heck away. You just
14 didn't mess with Johnny, you left it alone.

15 Q. Where was Glover at during this time? Was he
16 participating in the assault?

17 A. He was still on to my left. He was still over to
18 my left edging -- I don't know egging it on, I don't know if
19 you want to call it that, but he was just kind of standing
20 back grinning.

21 Q. But wasn't taking any action?

22 A. No. No.

23 Q. So Bennett grabs him by the hair and then pulls him
24 out?

25 A. Pretty much out of the cell.

1 Q. I'm sorry?

2 A. Pretty much out of the cell, yes.

3 Q. What happens after that?

4 A. Like I said, I had gotten in between the two with
5 my one hand on Johnny and one hand on Dougins. I was pushing
6 and Johnny, I guess, kind of let up a little bit, and I had
7 Dougins just about back in the cell. I was pushing on
8 Dougins and had him back in the cell, had the door shut
9 getting ready to stick the key in and lock it.

10 Didn't even get a chance to lock it. Johnny threw
11 the door open, snatched him out again, threw him on the floor
12 and -- well, before that when he had slung the door open and
13 went to get him again and I couldn't budge Johnny. I mean,
14 there was nothing for me to back up on. I stomped his foot.

15 I mean, your energy kicks in, your instinct kicks
16 in, your training, whatever you want to call it. I stomped
17 his foot, I brought my hand down and hit him in the groin
18 area. I headbutted him back in the chest, didn't budge him,
19 didn't move him.

20 That's when he finished. He just jerked him out of
21 the cell and threw him on the cement floor, and I was pulling
22 on the back of Johnny's shirt trying to get him off and he
23 had -- they called this man Preacher. They called Dougins
24 Preacher. He had him and he was just pounding his head in
25 the floor (indicated). He was on his back just pounding his

1 head in the floor.

2 And I was screamed at him, Johnny, get off of him,
3 you're going to kill him. And what I didn't know at the time
4 is my sergeant had seen it and called for backup because I
5 could not get to my radio. There was no way I could let go
6 and get to my radio.

7 Q. So he -- you almost get the door shut, he snatches
8 him out, throws him on the ground?

9 A. Right.

10 Q. Starts pounding his head in the floor?

11 A. Right.

12 Q. What are the floors in the jail made out of?

13 A. Cement, hard cement.

14 Q. Now, where is Glover during this time?

15 A. He is still -- Glover -- well, I guess at that
16 time, because they were laying on the floor, he was more
17 behind me. And he was actually telling Johnny, Johnny, let
18 him go man. Let him up. You're going to kill him. Let him
19 go.

20 Johnny turned around and said, You better back the
21 hell off.

22 Q. Well, tell me what Johnny Bennett says to
23 Mr. Glover when Mr. Glover tried to intervene?

24 A. You better back the hell off, or you better get the
25 hell away.

1 Q. Or what? What did you take those words to mean?

2 A. You didn't never -- you never had to ask that
3 question. Glover backed up. He was gone. He was gone to
4 the end of the hallway.

5 Q. So when he says you better back the hell up --

6 A. You move.

7 Q. Even Glover backs away from him?

8 A. Even Glover backs away.

9 Q. Were you able to eventually get Mr. Bennett off of
10 Preacher Dougins?

11 A. I wasn't alone. Like I said, I had gotten the key
12 from the officer. So they had to go, actually, to main
13 control and get another key to get to me, and the fight that
14 was going on. So when the door opened -- the door opened,
15 there was officers coming from everywhere, five officers
16 coming in. There was four or five if I can remember
17 correctly, and I yelled.

18 They snatched Dougins up. And I said, Just put
19 Dougins in his cell. Just get Dougins out of here and get
20 him in a cell locked down. And I actually said something to
21 the fact he didn't start it, because I had no idea what had
22 gone on before. And I said, Just put Dougins in a cell now.

23 And they got Dougins, they got Johnny up. Johnny
24 had backed up to the back wall. Dougins, they threw him in
25 the cell, locked the door. And Johnny was backed up against

1 the wall, and all the officers there were kind of around him.
2 He wasn't really putting up much of a fight, he was just
3 standing there, but we had like five officers.

4 Q. Now, was Dougins taken anywhere that night?

5 A. After the incident and after we got Johnny locked
6 back down -- well, actually, I was so mad at the time I tried
7 -- when I went to leave that wing, A-Wing, wherever that was
8 going on, I guess I was starting to calm down and relax and
9 it was starting to hit what had happened.

10 Q. But back up for a second with that. Did you all
11 end up having to take Dougins somewhere?

12 A. Yes, sir. I left the floor and they called the
13 ambulance, and they took Dougins to the emergency room.

14 Q. Now, ultimately they were able to get Mr. Bennett
15 and place him back in his cell; is that correct?

16 A. Right, they did that before they took Dougins to
17 the hospital.

18 Q. And Mr. Dougins was treated at the hospital?

19 A. He was.

20 Q. And released a couple hours later?

21 A. Right.

22 Q. Now, did you see any injuries on Mr. Dougins?

23 A. What I saw was a little bit of swelling or the
24 blueness starting to the face, and I read the medical report
25 from the hospital which said there was bruising around the --

1 MR. YOUNG: Objection, Your Honor, hearsay.

2 Q. Well, let me ask you this. Did you not on your
3 report, report injuries to Mr. Dougins?

4 A. The left side of Dougins had some cuts, some
5 scratches, bruises, bruises and swelling in the kidney area.
6 I saw what his face looked liked, I could not see the inside
7 of his kidney.

8 Q. Right.

9 A. And as far as the bruising on his kidneys is what I
10 read. But as far as the bruising on his face, the outside of
11 him, yes, I saw that.

12 Q. Those injuries were inflicted by Mr. Bennett?

13 A. Yes, they were not there before that.

14 Q. Now, let me just get to this because I know it's
15 coming on cross. Mr. Bennett never hit you?

16 A. No.

17 Q. Never hurt you?

18 A. No, he just grabbed me by the shoulders, picked me
19 up, turned me around, set me down, reached in and grabbed
20 Dougins.

21 Q. Pushed you out of the way so he could get at what
22 he wanted?

23 A. Pretty much, yes.

24 Q. And you're, of course, a woman?

25 A. Yes.

1 Q. Preacher Dougins, was he in his cell at the time
2 this incident started?

3 A. Yes. I had -- yes -- well, I don't know what
4 started it. I'm not sure I understand.

5 Q. No. The incident that you saw when Mr. Bennett
6 came up behind you.

7 A. He was inside his cell. I had unlocked the cell
8 door, handed him his medicine and Johnny was behind me.

9 Q. And Mr. Dougins at that time when he's locked in
10 his cell is he any threat to Mr. Bennett?

11 A. Not while he's locked in his cell, no.

12 Q. But as soon as you open the door --

13 A. That was all it took, seconds, for Johnny and
14 Michael to be right up behind me.

15 Q. Who was the aggressor?

16 A. Well, like I said, the first thing that was said
17 was Johnny was saying talk your shit now, and yelling at
18 Dougins. And Dougins was going man, you know, I don't know
19 what you're talking about, I don't know what's going on. He
20 was backing up. So he was trying to stay out of trouble. He
21 knew that he couldn't take on Johnny.

22 Q. Who threw the first punch?

23 A. As far as punching, I don't know how much punching
24 went on. The first pounding or grabbing or snatching came
25 from Johnny. I don't think Dougins had time to punch.

1 Q. Was Dougins trying to get at Bennett?

2 A. He was trying to get the hell away from Bennett.

3 MR. RIDDLE: Thank you. Please answer any of their
4 questions.

5 MR. FLOYD: Good afternoon, Officer.

6 MR. RIDDLE: Wait, Your Honor. Excuse me just one
7 second. I'm sorry.

8 Q. One last thing. Is this correct, Ms. McChesney;
9 February 20th, 1993, assault on an inmate?

10 A. Yes, that is.

11 MR. RIDDLE: Thank you. Now I'm done.

12 THE COURT: All right. Now cross.

13 MR. FLOYD: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. FLOYD:

16 Q. Ms. McChesney?

17 A. Yes, sir.

18 Q. This guy Preacher wasn't really like we would think
19 of the word preacher, was he?

20 A. No.

21 Q. In fact, wasn't he kind of biker type, tattoos,
22 six-four, about 225?

23 A. No, I wouldn't call him a biker type.

24 Q. About six-four, about 225?

25 A. Him and Johnny run close to the same height. I

1 don't know exactly how tall Johnny is but --

2 Q. And you didn't know what had gone on between --
3 from Dougins towards Johnny?

4 A. At that time, no.

5 Q. Before this incident happen?

6 A. All I knew was what Johnny told me later on.

7 Q. What did he tell you?

8 A. The only thing he said to me -- and this was a
9 couple of days later, the only words he said to me, he said,
10 Well, he shouldn't have been talking about my momma. And
11 that was the only thing he said.

12 Q. Preacher Dougins says something about Johnny's
13 momma and Johnny was --

14 A. That's all I know is what Johnny told me, and
15 that's the exact words he told me.

16 Q. And, like you said, it was kind of more of a -- it
17 really wasn't like a boxing match. It wasn't like --

18 A. You don't box with Johnny, Johnny boxes. You don't
19 box Johnny.

20 Q. Didn't you say he pulled him out?

21 A. He snatched him up by the hair in the head.

22 Q. Now, you did an incident record on this, didn't
23 you?

24 A. Yes, sir.

25 Q. In there you don't say anything about him putting

1 him down on the concrete floor and hitting his head on the
2 floor or anything, did you?

3 A. I think my words were at this time, when Johnny
4 picked me up and set me to the side he proceeded to pull
5 Dougins out of the room and hit him repeatedly. At this
6 time, I was able to get help to my radio and call for backup.
7 I then tried to get Bennett off of Dougins again and was
8 pushed to the side.

9 Q. Nothing about pounding his head or anything, was
10 there? And like you say, Johnny exhibited no violence toward
11 you, did he, Ms. McChesney?

12 A. Not itself, just pushing me out the way.

13 Q. Pushing you out of the way?

14 A. Yeah, just picking me up and moving me.

15 Q. And the whole time you were there Johnny never
16 exhibited any personal violence to you, did he?

17 A. Not personal violence. After everything was over
18 and I tried to leave A-Wing he wouldn't let me out of A-Wing
19 at first. He put his arm up like this and I was so mad that
20 I just told him just to get out of my way, and I just went on
21 about my business.

22 Q. He got out of your way, didn't he?

23 A. Oh, yeah.

24 MR. FLOYD: Thank you. No further questions.

25 THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. RIDDLE:

Q. Those statements that Mr. Bennett gave you, he told you that a couple days after the incident?

A. Yes, sir.

Q. What exactly is it that he tells you?

A. The only thing he said to me -- I was still working main control and never had to go down to the floor for something, and I don't know exactly how the conversation came up about why or whatever, and he said he shouldn't have been doing it. I said, basically, Johnny, why, you know? He said he shouldn't have been talking about my momma. And that was the only thing he said about it, that he shouldn't have been talking about my momma.

Q. And, basically, Bennett says that Dougins deserved that, didn't he?

A. In my opinion, yes, because he said something about his mother.

Q. Now, you've had a number of dealings with Mr. Bennett, did you not?

A. Yes, sir.

Q. And Mr. Bennett would tell you things on a number of occasions?

A. Oh, sure. Johnny liked to talk. Especially after an incident, he liked to talk.

1 Q. And did you ever find that any of the incidents
2 that Mr. Bennett was involved in were his fault, according to
3 Bennett?

4 A. Bennett had a way of explaining things. Johnny
5 liked to explain why it was not his fault; somebody else
6 aggravated him, somebody else did whatever. It was explained
7 away.

8 Q. Always somebody else's fault?

9 A. Always somebody else's fault.

10 MR. RIDDLE: Thank you.

11 THE COURT: Any recross?

12 RECROSS-EXAMINATION

13 BY MR. FLOYD:

14 Q. Well, that's pretty typical, isn't it?

15 A. I'm sorry? I apologize, I didn't hear you.

16 Q. Did you ever talk to other inmates who got in
17 trouble, other than Johnny?

18 A. On occasion, yes.

19 Q. Did they always take responsibility?

20 A. Some did.

21 Q. And some didn't?

22 A. Some did.

23 Q. And some didn't?

24 A. I've heard him say I beat the hell out of him
25 because I didn't like him, and that was just -- you know,

1 some took the responsibility.

2 Q. Well, he said that he did it because of something
3 he said about his mother. He took responsibility for his
4 actions there?

5 A. He shouldn't have been talking about my momma is
6 all he said.

7 MR. FLOYD: No further questions.

8 THE COURT: Thank you, ma'am, you can step down.
9 You're free to go if you want to.

10 Ladies and gentlemen, I understand the lunch
11 finally got here. I am again sorry. This is the second
12 straight day that lunch has been this late, and I do know
13 that it was ordered early this morning. So I'll find out
14 what's going on. We had one place yesterday that we're not
15 going to use anymore, maybe this is another place we're not
16 going to use anymore. And I apologize about that, but I'll
17 find out what the problem is.

18 Anyway, we'll take a lunch break until -- what is
19 it now, about 1:35. In my advanced stage the eyes are going.
20 Let's say 2:45, okay. We'll come back and start back then.
21 Be sure we don't talk about the case.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 1:35.)

24 THE COURT: All right. We'll stand in recess until
25 2:45 p.m.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: State ready?

3 MR. MYERS: The State is ready.

4 THE COURT: The defense ready?

5 MR. FLOYD: The defense is ready, Your Honor.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 3:00 p.m.)

8 THE COURT: All parties and attorneys are in the
9 courtroom and all the jurors have returned.

10 Call your next witness, please.

11 MR. GRAHAM: The State calls Adrian Bost.

12 ADRIAN BOST, after having been duly sworn,
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GRAHAM:

16 Q. Good afternoon, Mr. Bost, how are you?

17 A. Fine. How are you today?

18 Q. I'm good. You are currently retired; is that
19 correct?

20 A. That's correct.

21 Q. And how long have you been retired?

22 A. Six years.

23 Q. And where did you retire from?

24 A. Lexington County Sheriff's Department.

25 Q. And what did you do there?

1 A. I was the jail administrator.

2 Q. And how long of a history or how many years did you
3 have in law enforcement?

4 A. 25.

5 Q. And how many of that dealt with correctional
6 matters?

7 A. I started off with the South Carolina Department of
8 Corrections as a correctional officer, became a shift
9 lieutenant, a training officer, an investigator, and whenever
10 I came over here, worked over here for about 18 months, then
11 the sheriff asked me to take over the jail.

12 Q. And your title when you were running the jail was
13 called what?

14 A. Captain.

15 Q. As captain over the jail, what were your
16 responsibilities?

17 A. Running a jail is just like a city manager running
18 a town. You literally have to make decisions affecting every
19 employee under your supervision. You have to make decisions
20 in reference to the inmates; visitations, medical, clothing,
21 food. Anything that you can think of that you would need to
22 run your household is what I had to make decisions on as far
23 as running the county jail.

24 Q. During the years of 1990 to '93, were you the jail
25 administrator at that time?

1 A. Yes, sir, I was.

2 Q. And could you tell the jury how disciplinary
3 matters were handled when you were the jail administrator?

4 A. First of all, the officer at his post would be the
5 one that would initiate the incident report, depending on
6 whatever the incident was. He would then turn that in to
7 either his master correctional officer or either the sergeant
8 over his shift.

9 After they've had a conversation in reference to
10 the incident then it was forwarded on to the administrative
11 lieutenant for her to take a look at it and handle whatever
12 she could at that level. Regardless of whatever was done
13 with it, whether she handled it or whether the sergeant on
14 the shift handled it or if it went before the institutional
15 adjustment committee, every report would eventually land up
16 on my desk for my review.

17 Q. Would you consider yourself a hands-off or a
18 hands-on administrator?

19 A. Absolutely hands-on.

20 Q. And when you say hands-on, what would that include?

21 A. Anything. Anything that was done inside that jail,
22 if my officers needed my help, I was there.

23 Q. So it was not uncommon for you to actually respond
24 as backup?

25 A. Quite often. Quite often.

1 Q. Do you remember an incident on January 7th, 1991
2 where you had the opportunity to have a conversation with
3 Mr. Bennett?

4 A. Yes, sir. Mr. Bennett had been at the Lexington
5 County Jail at that time roughly five and half to six weeks.
6 We had already had several incident reports come across my
7 desk concerning him. I've had several of the shift sergeants
8 come to me and express their concern that it looked like he
9 was developing a pattern of intimidating not only officers
10 but other inmates.

11 At that time, I had Sergeant Chisholm and
12 Correction Officer Dan Anderson get Mr. Bennett from his cell
13 and bring him to my office where Lieutenant McDaniel,
14 Sergeant Chisholm and Dan Anderson and I were there, and I
15 tried to counsel Mr. Bennett about his intimidating presence
16 and his threatening manner within the jail.

17 Q. What did he say to you after you had that
18 conversation with him?

19 A. During the conversation he got extremely hostile.
20 And at one point he remarked that I would just have to do
21 whatever I had to do because he was going to do whatever he
22 wanted to do.

23 Q. Would it be correct to say then that on January
24 7th, 1991 you counseled Johnny Bennett for intimidation and
25 rules violation?

1 A. That's correct.

2 Q. Is that accurate?

3 A. Yes, sir.

4 MR. GRAHAM: Your Honor, on State's Exhibit Number
5 12.

6 THE COURT: Any objection?

7 MR. FLOYD: No objection.

8 BY MR. GRAHAM:

9 Q. Mr. Bost, did you again have another dealing with
10 Mr. Bennett on September 11th, 1991?

11 A. Yes, sir, I did.

12 Q. And do you remember what that involved?

13 A. Yes, sir. I was notified that there was a problem
14 up on the floor, up on the third floor, particularly the
15 C-wing, Cell 12. Upon my going up there, I was advised by
16 the officers on the floor that Mr. Bennett had threatened
17 suicide and disrespect to the officers whenever they were
18 trying to handle him -- or handle the situation.

19 Q. And what happened when you arrived on the scene?

20 A. Mr. Bennett was loud and boisterous, refusing to do
21 whatever the officers asked him to do. The officers needed
22 to get inside the cell to do a couple of things. One was to
23 take a search of Johnny Bennett himself to see what items he
24 may very well have on him, if he was indeed contemplating
25 suicide. But we also needed to do a cell search to see what

1 else was inside the cell to see if he had anything that he
2 could harm himself with.

3 Q. And did you direct the officers working under you
4 to search Mr. Bennett's cell?

5 A. It took probably five to ten minutes to even get
6 Mr. Bennett out of his cell. I ordered him to go down to the
7 end of the wing, C-Wing, and then I had the officers go
8 inside the cell and search the cell.

9 Q. And what was found as a result of that search? Was
10 there some items of contraband that were found?

11 A. Yes, sir. My procedure over there was that every
12 officer that was involved in the incident had to write an
13 incident report.

14 Q. Do you have a copy of the September 11th incident?

15 A. Yes, sir. He had what we call a homemade pipe. It
16 was a smoking pipe, it was not a pipe to do harm to anybody
17 else. He had excessive amounts of blanket and sheets,
18 towels. He had a pillow, and how he got the pillow we still
19 don't know, house shoes that were obviously brought to him by
20 someone because we didn't issue house shoes. But those are
21 the items that we found in the cell at that particular time.
22 We did not find anything at that particular time that he
23 could harm himself with.

24 Q. Referring to the pipe, specifically, wasn't that
25 actually a pen?

1 A. It was a pen that he had fashioned into a pipe,
2 yes, sir.

3 Q. So would the statement be correct on September
4 11th, 1991, possessed contraband, homemade pipe and spring?

5 A. Yes, sir.

6 Q. Mr. Bost, on November 20th, 1991, did you have the
7 occasion to write a memo to Johnny Bennett?

8 A. Yes, sir. I do not have a copy of that memo.

9 Q. Let me show you this and see if you can recognize
10 that.

11 A. Yes, sir, that is my memorandum.

12 Q. And that has what date on it?

13 A. November the 20th, 1991.

14 Q. And do you see your initials on there?

15 A. Yes, sir. I did sign it -- or initial by my name,
16 yes, sir.

17 Q. And what is that document?

18 A. It is a confinement notice to Mr. Bennett, where it
19 goes on to say on November 17th, 1991 you were written up and
20 confined for creating a disturbance, disrespect to an
21 officer, threatening an officer and refusing to obey an
22 order. Given your past performance in confinement numbers,
23 you currently have no regard for the rules and regulations of
24 this facility. You are hereby notified that if you are
25 involved in any type of incident or altercation you will be

1 confined until you are discharged from this facility.

2 It was served on Mr. Bennett by Earl Martin, one of
3 my sergeants over there, and it was dated 11-20-91, and
4 Mr. Bennett signed it as receiving it.

5 MR. GRAHAM: Your Honor, at this time we'd like to
6 offer that into evidence.

7 THE COURT: Any objection?

8 MR. FLOYD: No objection.

9 (WHEREUPON, State's Exhibit No. 58, a Letter,
10 was marked and admitted into evidence.)

11 BY MR. GRAHAM:

12 Q. Would it be an accurate thing to say that on
13 November 20th, 1991 you served notice for threatening
14 officers and refusing orders on Johnny Bennett?

15 A. Yes, sir.

16 MR. GRAHAM: We would reveal that, Your Honor.

17 Q. Did you have another incident, another occasion on
18 February 19th, 1992 to write another letter to Mr. Bennett?

19 A. Yes, sir, I did.

20 Q. Let me show you this and ask if you can identify
21 that.

22 A. Yes, sir.

23 Q. And what is that document, Mr. Bost?

24 A. This is a copy of a letter that I wrote to
25 Mr. Bennett on February the 19th, 1992.

1 On November the 20th, 1991 you were served written
2 notice that clearly stated that you would be placed on
3 permanent confinement if you were written up again. On
4 February the 18th, 1992 you were written up for flooding your
5 cell. You are hereby being notified that you are on
6 permanent confinement and will remain so until you are
7 discharged from this facility.

8 I served that on him. I signed where I served.
9 Mr. Bennett refused to sign, and it was witnessed by Sergeant
10 Chisholm and Lynn Hair.

11 Q. What's the purpose of writing these letters and
12 serving them on Mr. Bennett?

13 A. Documentation to do two things. One is to let
14 Mr. Bennett know, because every time we did one of these he
15 received a copy of it. And two, to document what I'm doing.

16 Q. Is there any question that Mr. Bennett would -- at
17 some time or another would have explained to Mr. Bennett what
18 was expected of him, and what was appropriate and what was
19 inappropriate behavior?

20 A. Yes, sir.

21 MR. GRAHAM: Your Honor, we would offer that into
22 evidence.

23 THE COURT: Any objection?

24 MR. FLOYD: No objection.

25 (WHEREUPON, State's Exhibit No. 59, a Letter, was

1 marked and admitted into evidence.)

2 BY MR. GRAHAM:

3 Q. Mr. Bost, is it then accurate to say on February
4 19th, 1992 Mr. Bennett was extended on confinement?

5 A. That's correct.

6 MR. GRAHAM: And, your Honor, I'll show that at
7 this time.

8 Q. Would you explain to the jury, Mr. Bost, what
9 confinement is.

10 A. Well, how can you confine somebody when they are
11 already in jail? It's easy. You take -- I had a particular
12 wing in the jail that was strictly set up for inmates who
13 acted up within the facility. Whenever they went before the
14 institutional justice committee or lockdown or whatever we
15 would put them in that particular wing, and they had limited
16 restrictions for coming out.

17 We did not allow them to have contact with other
18 inmates, and that's extremely difficult in a jail. Whenever
19 you're talking about a confined facility like that, you can't
20 always just have them completely out of sight and sound of
21 everybody else.

22 But as far as physical contact, we would not let
23 them out with the general population. If they went out for
24 recreation they had to go out by themselves. If they came
25 out to make a phone call, they had to come out by themselves.

1 So whatever was done they had to do it by themselves.

2 Q. Is there anything else that you can do when someone
3 continues to violate the rules, other than put them on
4 confinement?

5 A. Not as long as I've got them in the jail, no, sir.

6 Q. Did you have the occasion in fact on the next day
7 to have another incident involving Mr. Bennett, that would be
8 on February 20th, 1992?

9 A. Yes, sir.

10 Q. And do you have personal knowledge of what happened
11 on that day?

12 A. Yes, sir.

13 Q. Would you tell jury what happened.

14 A. Michael Glover and Johnny Bennett and Powers, they
15 were let out into the dayroom on the first floor -- I'm
16 sorry, on the third floor. They were all three confined
17 inmates. Whenever it was time for them to go back to their
18 cells they refused to go back to their cells.

19 At that time, a host of people were called as
20 backup, me being one of them. We went up, along with Officer
21 Van Put, South and Huggins, and we were able to get everybody
22 to go back to their cells, but not until after there was
23 pretty much a show of force on behalf of the jail officers to
24 go up there.

25 Q. Would it be a correct statement then to say that on

1 February 20th, 1992 Johnny Bennet refused to return to his
2 cell?

3 A. That's correct.

4 Q. Was there another incident that occurred on
5 February 23rd, 1992?

6 A. Yes, sir. There again, Michael Glover and Johnny
7 Bennett were in the same cell. And we got word that there
8 were inmates up on third floor throwing food trays down the
9 hallway. And upon going up there it was obvious that more
10 than one person, but Mr. Bennett was one of the two people
11 that we knew for a fact was taking their food trays and
12 slinging them down the hallway with food and everything else
13 on it.

14 Q. And did you talk with Johnny Bennett about that
15 incident, about him throwing the food tray?

16 A. Yes, I did.

17 Q. And did he deny that he threw it?

18 A. Did not.

19 Q. So would it be accurate to say then that on
20 February 23rd, 1992 Johnny Bennett threw a food tray?

21 A. That's correct.

22 Q. Did you have another occasion on March 18th of 1992
23 to write another letter to Johnny Bennett?

24 A. Yes, sir, I did. It was entitled periodic review
25 of indefinite confinement, on March the 18th.

1 Mr. Bennett, after a review of the past 30 days you
2 have not demonstrated your willingness to conform to the
3 rules and regulations of this facility. You are hereby
4 notified that you will remain on indefinite confinement until
5 your next periodic review.

6 I served it on him. I had him brought to my office
7 where I served it on him, and he signed for it on March the
8 18th, 1992.

9 MR. GRAHAM: Your Honor, we'd offer that document
10 into evidence.

11 THE COURT: Any objection?

12 MR. FLOYD: No objection.

13 (WHEREUPON, State's Exhibit No. 60, a Letter, was
14 marked and admitted into evidence.)

15 BY MR. GRAHAM:

16 Q. So then would it be accurate to say that on March
17 18th, 1992 Johnny Bennett was extended on confinement?

18 A. That's correct, yes sir.

19 Q. And did you have an occasion on April 15th of 1992
20 to again write another letter regarding confinement to Johnny
21 Bennett?

22 A. Yes, sir. There was another letter entitled
23 periodic review of confinement on April 15th, 1992.

24 Mr. Bennett, after a review of your conduct for the
25 past 30 days you have not demonstrated your willingness to

1 conform to rules and regulations of this facility. You are
2 hereby notified that you will remain on confinement until
3 your next periodic review.

4 There again, I had him brought to my office where I
5 served it on him. Mr. Bennett signed it. I dated it
6 4-16-1992. Mr. Bennett dated it 4-20-92.

7 Q. And let me show you this and ask you if that's the
8 same thing you just read off of.

9 A. Yes, it is.

10 MR. GRAHAM: Your Honor, at this time, we'd offer
11 that into evidence.

12 THE COURT: Any objection?

13 MR. FLOYD: No objection, Your Honor.

14 (WHEREUPON, State's Exhibit No. 61, a Letter, was
15 marked and admitted into evidence.)

16 BY MR. GRAHAM:

17 Q. So would it be accurate then to say that on April
18 15th, 1992 Johnny Bennett was again extended on confinement?

19 A. Yes, sir.

20 MR. GRAHAM: Your Honor, we're now on State's
21 Number 57.

22 Q. Moving to January 1st, 1993, was there another
23 incident that involved Johnny Bennett and contraband?

24 A. There was, but this is one that I can't testify to.
25 I was out on extended medical leave at that particular time.

1 Even though I know about the incident, because I received a
2 phone call at the house, but I can't testify to that
3 particular incident itself. It is one incident that I did
4 use later on for another confinement.

5 Q. Let me show you an incident report dated January
6 1st, '93. And if you turn to the last page, is that your
7 initials there?

8 A. No, that is Ernestine Favor's initials where she
9 signed for me. I had received a phone call at the house, and
10 as a result of that phone call I instructed them -- like I
11 said, I was out on extended medical leave at that time, I
12 instructed the sergeant what to do and about my concerns
13 about what they had found.

14 Q. Mr. Bost, did you have a conversation with Johnny
15 Bennett about that?

16 A. Yes, sir, I did.

17 Q. What did you and Johnny Bennett talk about?

18 A. Well, the items that they had found was clay.

19 Q. What's so bad about clay?

20 A. Well, inside of a jail, inside of any correctional
21 facility, jail, it can be used to disrupt the facility in
22 several ways. One of the most important ways is that if you
23 have a key and lock system, like we did over at the jail, you
24 could use that clay to stuff down into the keyhole which
25 would prevent that cell from either, one, being unlocked --

1 (WHEREUPON, the court reporter requested a
2 brief recess.)

3 THE COURT: Why don't you step to the jury room
4 just for a moment. Remember, we don't talk about the case.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 3:25 p.m.)

7 (WHEREUPON, a brief recess was taken.)

8 THE COURT: Let's bring the jury in.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 3:35 p.m.)

11 THE COURT: All parties and attorneys are in the
12 courtroom and all jurors have returned. I think we fixed the
13 problem.

14 Counsel, just pick up asking -- start with the clay
15 again, and let's start from there. Go ahead.

16 BY MR. GRAHAM:

17 Q. Mr. Bost, did you have another incident that
18 occurred involving Johnny Bennett on January 1st, 1993?

19 A. Yes, sir, we did.

20 Q. And it's my understanding that you were actually
21 out on leave and not present at the facility at the time; is
22 that correct?

23 A. That particular day, that's correct.

24 Q. Did you later, when you came back to work, have an
25 occasion to talk to Johnny Bennett about what occurred on

1 that day?

2 A. Yes, sir, I did.

3 Q. And would you tell the jury about your
4 conversation.

5 A. I told him about my concern about still again his
6 actions within the jail and the mere fact I want to know
7 where he got the clay from. Clay is something that you just
8 don't have laying around the jail. He never explained to me
9 where he got it from, and I reiterated to him again that his
10 continued violating of the policies and procedures of the
11 jail and everything would just keep him on extended
12 confinement even longer.

13 Q. Did Johnny Bennett ever deny that he had the clay?

14 A. No, sir.

15 Q. And would you tell the jury what's so bad about
16 clay.

17 A. The two main things is that you can take clay in
18 the old jail like we had over here at Lexington, it's a lock
19 and key system. You could take that clay, you can put that
20 into the keyhole and you can prevent that door where that
21 lock is from being closed and locked or opened. That's an
22 immediate concern.

23 An even greater concern in any correctional
24 facility one of your biggest problems is trying to make sure
25 you don't lose any keys or misplace them or whatever, with

1 clay you can take an impression of a key and you can make a
2 key then, and then you can unlock any door that that
3 particular key would fit.

4 Q. Would it be correct to state then that on January
5 1st, 1993 Johnny Bennett possessed contraband clay?

6 A. Yes, sir.

7 MR. GRAHAM: Your Honor, we would show that on
8 State's 57.

9 Q. Mr. Bost, did you then again have an occasion to
10 write another letter regarding confinement to Johnny Bennett
11 on January 22nd, 1993?

12 A. Yes, sir. It's entitled extended confinement
13 January 22nd, 1993. After reviewing your files, I have
14 hereby decided that you shall remain on extended confinement
15 until your next evaluation case.

16 It was signed by Johnny Bennett, and signed by me
17 as serving it on him.

18 Q. Let me show you this and ask you if that's the same
19 document you just read from.

20 A. Yes, it is.

21 MR. GRAHAM: Your Honor, we'd introduce this into
22 evidence.

23 THE COURT: Any objection?

24 MR. FLOYD: No objection.

25 (WHEREUPON, State's Exhibit No. 62, a Letter, was

1 marked and admitted into evidence.)

2 BY MR. GRAHAM:

3 Q. Would it be accurate then to state, Mr. Bost, on
4 January 22nd, 1993 Johnny Bennett was again extended on
5 confinement?

6 A. Yes, sir.

7 MR. GRAHAM: We would show that, Your Honor.

8 Q. Mr. Bost, would you tell the jury about an incident
9 that occurred on July 23rd, 1993.

10 A. Yes, sir. I was in my office whenever I heard an
11 extremely loud commotion going on in the secured portion of
12 the jail. I immediately went to the main control lobby area
13 where I saw down the first floor hallway, I saw a couple of
14 correctional officers standing outside our main dayroom, and
15 just an awful lot of commotion coming out of the dayroom.
16 About that same time I saw two of my other correctional
17 officers have a hold of another officer pulling them out of
18 the dayroom.

19 I immediately went into that area and got a hold of
20 the officer, and they escorted him back out of the jail back
21 towards my office. In doing so, I heard tables, chairs being
22 thrown around against the wall and everything. So it was an
23 indication to me that whatever the problem was inside the
24 dayroom that it was still continuing. I immediately went to
25 my office and retrieved the tazer, and I immediately went

1 back to the dayroom where I ordered all the officers out of
2 the way.

3 Q. Let me stop you just for a second. You said you
4 got a tazer gun, what is a tazer gun?

5 A. A tazer gun is something that looks like -- you
6 call it a gun but it's not really a gun. It is an instrument
7 that can be used where it will -- it looks like it's got a
8 flashlight on it, which it does, whenever you pull the
9 trigger on it it will fire two barbs at the individual on
10 15-foot-long copper wire.

11 That barb will go into the individual, their
12 clothing and everything, and you have a switch on it that
13 will emit electricity into them. At that point, the
14 individual -- every time I've ever seen it used or used it
15 myself the individual would lose control of himself, fall to
16 the floor and then would do whatever you order him to do.

17 Q. Would you explain to the jury why you use a tazer
18 gun.

19 A. In the past in running the jail and working in
20 correctional facilities and dealing with the various inmates
21 that we've had to deal with inevitably you had to get into
22 physical confrontations too often to try to handle whatever
23 the situation was. If it could be breaking up a fight,
24 ordering somebody back to their cell, whatever that situation
25 may be where that physical encounter took place.

1 The tazer is an instrument, it's a nonlethal
2 instrument. While it does emit electricity it will not kill
3 an individual, but it will put them in an incapacitated state
4 where you can go ahead and get them restrained with
5 restraining devices. And the vast majority of the time, even
6 if you don't restrain them, they don't want to be shot a
7 second time.

8 Q. Referring back to the incident on July 23rd, 1993,
9 you retrieved the tazer gun, went and ordered your officers
10 out of the room, then what happened?

11 A. I explained to Mr. Bennett I had the tazer in my
12 hand, showing it to him, that his actions has to cease, that
13 whenever I told him to do something he was to do it
14 immediately. That his failure to follow my commands could
15 result in him being shot with the tazer.

16 At that time, I ordered him to go back to the cell,
17 which we did. We went right back to the first floor dayroom,
18 back to his cell and opened up a cell door. In putting him
19 in his cell, two things immediately came to my mind. One, I
20 didn't know what he had on him since he had pitched a tirade
21 up in the dayroom. We had broken furniture up there.

22 I didn't know whether he had picked up a piece of
23 broken furniture and had it on him or anything. Plus, in
24 looking around his cell, there again, he had items in the
25 cell that was not supposed to be there. I ordered that he

1 submit to a strip search. He backed up in the corner and
2 absolutely refused. At that time, I shot him with the tazer.
3 He went to the floor. After probably 30 seconds he gathered
4 himself, stood up and stripped.

5 Q. At some time later did you talk with Johnny Bennett
6 about that incident?

7 A. Yes, sir, I did.

8 Q. And did he admit to you that he had been fighting
9 with another inmate prior and that's what the commotion was
10 that you heard?

11 A. He admitted to me that the other inmate had started
12 the fight and that he had lost his temper because of it. My
13 concern was where he and that inmate had gotten into a fight
14 was in the small dayroom on the first floor confinement area.

15 Where he was throwing his tirade and breaking
16 furniture and challenging my officers was in a large dayroom,
17 probably another 30 or 40 feet completely away from that
18 area. The officers had done an extremely good job of
19 breaking the whole incident up, the other inmate was already
20 locked up back in his cell, and for Mr. Bennett to continue
21 his tirade was unjustified.

22 Q. Would it be correct then to say that on July 23rd,
23 1993 Johnny Bennett was fighting with another inmate, refused
24 to follow orders and was controlled with a tazer?

25 A. That's correct.

1 Q. Again, Mr. Bost, when you were talking with
2 Mr. Bennett regarding that incident did he give you a reason
3 why he refused to follow your order?

4 A. Again, like he had so many times before, he wasn't
5 going to do what I told him to do. He was not going to
6 follow the rules and regulations of that jail.

7 Q. And did he tell you that -- do you remember how
8 many days after the incident occurred that you actually spoke
9 to Mr. Bennett?

10 A. It was either three or four days later.

11 Q. And, in fact, when you spoke with him didn't he
12 tell you that the reason that he didn't want to strip was
13 because there was a female officer present?

14 A. Yes, sir, he did.

15 Q. And what are your feelings on that?

16 A. Every female officer I interviewed over there
17 before they came to work I explained one thing to them, that
18 they are working inside a male dominated facility, and I
19 don't necessarily mean my officers, I mean 95 percent of my
20 population over there were male inmates.

21 I couldn't put every female I had working in the
22 female area. I just didn't have the population great enough
23 for the females to all work there. So they understood that
24 they had to work the floors, they had to work wherever their
25 assignment was in the jail.

1 That particular day there were two female officers
2 present, but it was not uncommon for an inmate to be
3 conducted in a strip search situation. Because those are the
4 officers that you have to deal with you can't wait until you
5 have somebody else come over to relieve them to do a lot of
6 this stuff. Time is a factor that you just didn't enjoy to
7 be able to get some of these things done another way.

8 Q. On the date of this incident when he refused to
9 follow your orders to strip for a strip search, at any time
10 before you ended up having to use the tazer on him did he
11 tell you that the reason he didn't want to strip was because
12 there were female officers present?

13 A. No, sir.

14 Q. Do you remember how many disciplinary reports there
15 were or incidents occurred during your tenure at the jail
16 involving Johnny Bennett?

17 A. It was roughly 70 or more.

18 Q. And do you have an opinion as to what kind of an
19 inmate Johnny Bennett was while he was at the Lexington
20 County Detention Center?

21 A. Yes, sir, I do.

22 Q. And would you tell the jury what that is.

23 A. In my career, Johnny Bennett is absolutely one of
24 the most intimidating, violent, disrespectful, disorderly
25 inmates that you would ever, ever want to deal with.

1 Mr. Bennett used his size to intimidate people.

2 He was counseled numerous times by me, by my
3 officers about that. That didn't seem to have any affect on
4 him. He always used his size to push people around, and not
5 just officers. You would be surprised at how many inmates
6 that I would have come to me and express --

7 MR. FLOYD: Your Honor, I object to any kind of
8 hearsay like that.

9 THE COURT: Sustained.

10 Ladies and gentlemen, disregard the comments about
11 what any other inmates may have said.

12 Go ahead.

13 MR. GRAHAM: That's all I have. Mr. Bost, please
14 answer any questions the defense has for you.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q. Captain Bost, how long was Johnny Bennett at
19 Lexington County Jail?

20 A. He came in there in 1990 of November, and he was
21 still there whenever I retired July 15th of 1994.

22 Q. And up to that point in time, he still hadn't been
23 to court yet, had he? That's why he was still in Lexington?

24 A. I wouldn't say that he hadn't been to court. I
25 would say that he had not been to trial at that time.

1 Q. He hadn't been to trial yet. So he had been there
2 four years and not been to trial yet. Now, you don't usually
3 have people there that long, do you?

4 A. We have people over there for lengthy periods of
5 times.

6 Q. Now, have you ever known inmates who physically
7 attack and harm guards?

8 A. Yes, sir.

9 Q. Maybe even kill guards?

10 A. Yes, sir.

11 Q. Killed other inmates?

12 A. Yes, sir.

13 Q. Johnny Bennett was there for four years?

14 A. Yes, sir.

15 Q. He never laid a hand in anger on the guards, did
16 he?

17 A. I disagree with you on that.

18 Q. Oh, tell us when. We haven't heard anyone tell us
19 he hit a guard yet.

20 A. You had testimony right before me in reference to
21 where he used the physical size of his body to maneuver a
22 female officer around to get to another inmate. He was
23 exhibiting anger whenever he was doing that.

24 Q. She said that he picked her up and moved her out of
25 the way. I want to know -- give me one incidence in four

1 years where he physically harmed one of your employees. Not
2 a single one, did he? Did any other inmates there do that?
3 Have any of your other inmates ever harmed one of your
4 guards?

5 A. When you say harm, I have had officers hurt,
6 including with Johnny Bennett, whenever they were having to
7 struggle with him to get him to go back in his cell, yes.

8 Q. Woah --

9 A. Wait a second. Wait a second. You asked me a
10 question I'm going to answer it. Whatever you're running a
11 jail and an inmate refuses to abide by the rules and
12 regulations of that jail and that officer has no alternative
13 but to get into a physical encounter with that inmate then
14 that inmate has caused any jury that comes to that officer,
15 be it a pulled muscle, be it a busted lip, an eye or whatever
16 that may become because of that physical encounter. That is
17 on the shoulders of that particular inmate. If that inmate
18 happened to be Johnny Bennett then it was because of him.

19 Q. Captain Bost, we have not heard one single officer
20 say --

21 MR. GRAHAM: Objection, Your Honor. It doesn't
22 matter what was testified before. He asked him a question
23 and he was answering it.

24 THE COURT: I understand. Sustained.

25 BY MR. FLOYD:

1 Q. There's never been an officer that's ever had to
2 use their hands on Johnny Bennett to make him get in his
3 cell, has there?

4 A. That's not true.

5 Q. I don't see it on that board, do you?

6 A. You don't see a report on that board either. You
7 don't see every incident that he was involved in in that jail
8 in four and a half years on that board either.

9 Q. Let's talk about the tazer gun.

10 A. Yes, sir.

11 Q. You didn't like Johnny Bennett, did you?

12 A. Sir, my likes or dislikes is of no qualm. I did my
13 job at the Lexington County Sheriff's Department.

14 Q. Let's talk about the tazer gun incident.

15 A. Okay.

16 Q. On that day in question, isn't it true that when
17 you looked through that video camera or whatever you saw one
18 of your officers being pulled out of the multipurpose room;
19 is that what you're saying?

20 A. Yes, sir.

21 Q. That officer being pulled out of there was your
22 supervisor, Colonel Reynolds, wasn't it?

23 A. That's correct, yes, sir.

24 Q. And Colonel Reynolds was being pulled out of that
25 room because he was about to loose his temper and get

1 physical with Johnny Bennett; isn't that true?

2 A. That is true.

3 Q. So you got your tazer gun. Now, Johnny Bennett
4 didn't get physical with Colonel Reynolds. He didn't hit
5 him, did he?

6 A. You want me to answer that question? Do you want
7 me to answer that question?

8 Q. Sure.

9 A. He pushed another officer in there, and that's the
10 reason why Colonel Reynolds responded the way that he did.

11 Q. Colonel Reynolds was losing his temper.

12 A. He did.

13 Q. They pulled him away from him. You saw him pull
14 Colonel Reynolds out, you knew he was mad at him?

15 A. Yes, sir.

16 Q. You got your tazer gun and you went to get Johnny
17 Bennett; isn't that true?

18 A. I went to control the situation within the confines
19 of that jail, yes, sir.

20 Q. And then what you did -- when you asked him, he
21 went to his cell without anybody putting a hand on him or
22 needing to, did he?

23 A. That's correct.

24 Q. He got in his cell. He was in his cell. He was
25 causing nobody any trouble when you came in there with that

1 tazer gun; isn't that correct?

2 A. I never left his sight. From the moment that we
3 left the multipurpose room I was with him every step of the
4 way.

5 Q. But you were going to use that tazer gun before you
6 put it up, weren't you?

7 A. You're absolutely wrong. Mr. Bennett was the one
8 who was going to decide whether I used it or not.

9 Q. So you got in the cell. Nobody had to force him in
10 his cell. He walked voluntarily into his cell and he stood
11 there politely; isn't that true?

12 A. No, sir, it is not. You said he voluntarily went?
13 He went because I had the tazer gun and he knew that his
14 failure to do what I told him to do would result in him being
15 shot with the tazer gun. That doesn't mean that he went
16 voluntarily.

17 Q. He went in without anybody having to push him in
18 the cell, did he?

19 A. That's true, yes, sir.

20 Q. Went under his own free movements; isn't that true?

21 A. Not free, no, sir.

22 Q. Because you had the tazer gun?

23 A. Absolutely.

24 Q. He went in. In fact, that's what he usually did,
25 didn't he? If somebody asked him, he went in his cell?

1 A. No, sir.

2 Q. So he goes. He's in his cell, he's not harming
3 anybody at that point in time. You're there. How many
4 officers do you have in there with you?

5 A. Outside the cell? Probably four or five.

6 Q. So you got four or five officers. You got him five
7 on one, you got this tazer gun and you tell him to strip in
8 front of these women; is that true?

9 A. I told him to strip in front of my officers, yes,
10 sir.

11 Q. Were they women?

12 A. Two of them were, yes, sir.

13 Q. And he didn't want to do that, did he?

14 A. He refused to do it.

15 Q. Now, you said because you thought he might have
16 some kind of broken piece of furniture secreted on himself;
17 is that what the thing was?

18 A. That's what I said.

19 Q. Did anybody pat him down?

20 A. Not up there, not with the way he was reacting up
21 there. I'm sorry, sir, whenever I do a search in the jail, a
22 pat down is just that, a pat down. You can miss many, many
23 items whenever you do a pat down. I had a situation in the
24 jail that was out of control at that particular moment, and
25 for me to feel uncomfortable and for the safety of my

1 officers, yes, sir, I ordered the strip search to make sure
2 he didn't have anything.

3 Q. Did anybody tell you he had something on him?

4 A. Nobody had to tell me anything, sir. I know what
5 he was doing inside that multipurpose room.

6 Q. So he's in your room -- he's in his cell?

7 A. Yes, sir.

8 Q. You say take off your clothes?

9 A. Yes, sir.

10 Q. He says no, and you shoot him with the tazer gun?

11 A. That's correct.

12 Q. How many volts did you put into him?

13 A. Sir, right now I'd probably have to go back and
14 look at the book to tell how many volts that gun has.

15 Q. But you took him to his knees, didn't it?

16 A. That's correct. Yes, sir, I did.

17 Q. Did it feel good?

18 A. What felt good?

19 Q. Did it feel good when you took him to his knees?

20 A. Mr. Floyd, that's a ridiculous question. Whenever
21 I did something at the jail I did it for several reasons;
22 one, to maintain control of that jail. I don't get sheer
23 pleasure out of doing something to anybody else because it's
24 in the performance of my duty.

25 As I told you a few minutes ago, Mr. Bennett was

1 the one and his reactions to whatever I told him to do would
2 decide whether I used that tazer or not. He absolutely
3 refused to strip after I had given him a direct order and,
4 yes, sir, I did shoot him with it.

5 I get no pleasure out of shooting anybody with
6 anything. In my 25 year career I never had used my pistol on
7 anybody, never. So I get pleasure out of shooting somebody
8 with a tazer, absolutely not. But do I use it because it is
9 the most humane type of device I have over there to do it
10 with? Yes, sir, I do.

11 I took my job seriously then I retired after 25
12 years, and I resent the fact that you think I got pleasure
13 out of somebody else's getting hurt in any respect because I
14 did my job.

15 Q. Captain Bost, you had five officers there, did you
16 not?

17 A. Did I not explain why I used the tazer a while ago?

18 Q. Just let me ask the question and just answer my
19 question. Did you have five officers there?

20 A. I already testified to that, yes, sir.

21 Q. Did you have him in his cell under control?

22 A. Under control?

23 Q. Was he in his cell?

24 A. He was in his cell.

25 Q. Did you have five officers there any one of which

1 you felt like could have gone and patted him down?

2 A. I've already explained. A pat down was not going
3 to be justified in that situation.

4 Q. Did he have anything on him when he stripped?

5 A. No, sir.

6 Q. Didn't have a thing on him, did he?

7 A. No, sir.

8 Q. But you saw your superior officer losing his cool
9 with him and you took control with the tazer gun; isn't that
10 true?

11 A. I took control based on the situation that
12 Mr. Bennett was providing at that particular time. Yes, sir,
13 I took control.

14 MR. FLOYD: Thank you. I have no further
15 questions.

16 THE COURT: Any redirect?

17 MR. GRAHAM: None. Thank you, Mr. Bost, you can
18 step down.

19 THE COURT: Thank you. You can step down. You're
20 free to go if you'd like to.

21 MR. GRAHAM: James Smith.

22 JAMES ALVIN SMITH, after having been duly
23 sworn, testified as follows:

24 THE CLERK: Have a seat and state your full name
25 for the record.

1 THE WITNESS: James Alvin Smith.

2 DIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q. Mr. Smith, where are you employed, sir?

5 A. I work for the South Carolina Department of
6 Corrections training academy.

7 Q. Back in 1993, what facility -- were you still
8 working for the South Carolina Department of Corrections at
9 that time?

10 A. Correct, I was.

11 Q. And at that time, I believe you had more contact
12 with inmates at that time; isn't that right?

13 A. That's correct.

14 Q. And, in fact, during -- actually, on December 9th,
15 1993, didn't you have the responsibility of imposing
16 disciplinary measures on Johnny Bennett who was there at the
17 Department of Corrections as a safe keeper?

18 A. Correct.

19 Q. And for the jury, a safe keeper is an individual
20 who has pending charges in a county who is housed temporarily
21 at the Department of Corrections; isn't that correct?

22 A. Correct.

23 Q. Would you tell the jury what the incident was that
24 occurred on December 9th, 1993 and what disciplinary measures
25 you had to take as a result of it?

1 A. Johnny Bennett and another inmate was in the
2 recreation yard and they got into an altercation. It
3 extended into a wrestling match. At that point, the officer
4 gave a directive to stop and they did not stop.

5 Sergeant Logan and another officer responded to rec
6 field, handcuffed the two inmates, separated them, handcuffed
7 them and placed them into their unit rooms. I was called to
8 the scene. They told me exactly what happened, and at that
9 point, I imposed three days of recreation restriction to keep
10 the two inmates separated.

11 Q. And would you tell the jury what recreation
12 restriction is.

13 A. Recreation restriction is that once a day they have
14 approximately one hour to go out on the rec, and at this
15 particular time I cut that from them because of the fact if
16 the two inmates was out on the yard and they meet there's a
17 possibility they would start the altercation again. So what
18 we did, just restrict them to their cell, and that's one hour
19 that they miss for three days.

20 Q. Would it be accurate then to say that on December
21 9th, 1993 Johnny Bennett was fighting with an inmate and
22 received three days recreation restriction?

23 A. Correct.

24 MR. GRAHAM: Your Honor, we would show that on
25 State's Exhibit 57.

1 That's all the questions I have. Please answer any
2 questions from the defense.

3 THE WITNESS: All right.

4 THE COURT: Cross?

5 CROSS-EXAMINATION

6 BY MR. YOUNG:

7 Q. Officer Smith, this incident happened in '93?

8 A. December 9th, 1993.

9 Q. Approximately one o'clock?

10 A. Approximately around one, one o'clock.

11 Q. This occurred out on your rec field?

12 A. Yes, on the rec field.

13 Q. On the rec field you have basketball courts out
14 there?

15 A. Basketball courts, yes, sir.

16 Q. The officer who made this report, he did not see
17 the altercation start?

18 A. From the report that I received, that he looked
19 over and saw the two inmates engaged in a wrestling
20 altercation. He gave them a direct order to stop, they
21 didn't stop. He called for assistance, and Sergeant Logan,
22 another officer, responded. And they, at that time, broke it
23 up and handcuffed them and took them to the cell, then they
24 contacted me.

25 Q. The reporting officer of this incident.

1 A. Yes.

2 Q. He did not see the start of this altercation?

3 A. He was on the rec field, so from his report I
4 assume that he did see the start of the actual altercation.

5 Q. Do you have a copy of his report with you?

6 A. I have a copy of the report.

7 Q. Where in that report does it say that he saw the
8 start of this altercation?

9 A. It says the above date and approximate time our
10 Officer Nelson Aveala [ph] was observing the safe keepers cut
11 on the recreation field. When I saw Inmate Johnny Bennett,
12 this number, and Inmate Eric Forney wrestling on the ground.

13 Q. So when he noticed them they were already
14 wrestling, correct?

15 A. Could have been, but it could have been at the
16 beginning.

17 Q. But that report does not say that, does it?

18 A. Well, from the report --

19 MR. GRAHAM: Objection, Your Honor. He's answered
20 everything he can --

21 THE COURT: He's answered the question.

22 BY MR. YOUNG:

23 Q. This altercation was a wrestling match I believe
24 you described?

25 A. When the officer saw it that's what he described, a

1 wrestling match.

2 Q. Did not describe this as a fight?

3 A. Any time that two inmates are involved in an
4 altercation and the officer gives them a direct order to stop
5 and they continue the altercation it is going from an
6 altercation to a fight at that point, which we use in our
7 inmate guide to write the report on.

8 Q. Did this officer report that he saw any punches
9 thrown?

10 A. From the report, no.

11 Q. Did this officer -- well, this officer reported
12 that he gave an order for them to stop, correct?

13 A. Correct.

14 Q. And at that moment backup came, correct?

15 A. Yes.

16 Q. And at that point, he states that the altercation
17 was over, correct?

18 A. Correct.

19 Q. He did not say that when he gave an order that the
20 altercation did not stop, did he?

21 A. From the report it said that once backup arrived
22 that at that time the altercation did stop at that moment.

23 Q. So the answer to my question is that that report
24 does not reflect that the altercation continued, does it?

25 A. From the report and from what my investigation I

1 did once I got there, that the altercation stopped when
2 Officer Logan and the other officer went on the yard and
3 separated the two inmates.

4 Q. The report does not indicate that at any point in
5 time that Johnny Bennett struggled or assault any of the
6 officers?

7 MR. GRAHAM: Objection, Your Honor. He's asked
8 this question two or three times already, I believe.

9 THE COURT: The question was whether or not the
10 report showed if he had assaulted any of the officers.

11 MR. GRAHAM: I'm sorry.

12 THE COURT: That's all right.

13 Go ahead.

14 A. No, it does not say anything in reference to the
15 officer. It just stated at that point that him, Johnny
16 Bennett, and another safe keeper, was wrestling on the rec
17 yard.

18 Q. This Eric Forney, are you familiar with him?

19 A. At this point, I cannot remember too much about
20 Eric Forney.

21 Q. After this altercation occurred, both of the --
22 Mr. Bennett and Mr. Forney were sent to medical, correct?

23 A. Not at the same time, but both of them was seen by
24 medical.

25 Q. And both of them were, I believe the report

1 indicated, cleared by medical?

2 A. Cleared by medical.

3 Q. That meant that they were not injured or anything?

4 A. Correct.

5 Q. And as a result of the altercation, both of the
6 inmates were sanctioned to three-day rec suspension, correct?

7 A. Correct.

8 Q. And that report does not indicate what caused or
9 what the altercation was about?

10 A. No, it doesn't.

11 MR. YOUNG: No further questions.

12 MR. GRAHAM: You may step down.

13 THE COURT: You're free to go if you'd like.

14 MR. GRAHAM: The State calls Priscilla Mack
15 Phillips.

16 PRISCILLA MACK PHILLIPS, after having been
17 duly sworn, testified as follows:

18 THE CLERK: Please state your full name for the
19 record.

20 THE WITNESS: Priscilla Mack Phillips.

21 DIRECT EXAMINATION

22 BY MR. GRAHAM:

23 Q. Ms. Phillips, where are you currently employed?

24 A. South Carolina Department of Corrections.

25 Q. And how long have you worked there?

1 A. A little over 22 years.

2 Q. What's your current position there?

3 A. I'm the warden at the State Park Correctional
4 Institution.

5 Q. What were you doing in February and March of 1995?

6 A. I was associate warden at the facility where Johnny
7 Bennett was housed.

8 Q. Did you receive a memo in February of that year
9 regarding instruction of cell windows?

10 A. Yes, sir, I did.

11 Q. And what did that memo require you to do?

12 A. It was a memo from Mr. Coda [ph] who was then our
13 deputy director for operations in reference to not
14 obstructing any of the windows in any of the cells,
15 agency-wide.

16 Q. And when was that memo dated?

17 A. It was dated February 9th of 1995 to be effective
18 March 1 of 1995.

19 Q. And could you explain to the jury what the problem
20 is with having obstructions in the windows?

21 A. Certainly. In a corrections facility you've got
22 cell doors that will close. We need to be able to look into
23 their cells to not only make sure that they are not up to any
24 wrongdoing but also to make sure that the inmates are safe
25 and secure also.

1 Q. On March 2nd, 1995, did you write a report on
2 Johnny Bennett regarding a violation?

3 A. I signed off on one.

4 Q. And what was that report for?

5 A. After the memo had gone out we had distributed it
6 and decided that the day after this was to go into effect
7 we'd go around and make sure that everybody was in compliance
8 with the directive, and learned that Mr. Bennett was not.

9 Q. And what kind of penalties were imposed for that
10 violation?

11 A. The citation from our inmate guide which was our
12 rules infraction book was for creating a health safety or
13 fire hazard.

14 Q. And what punishment was received for that
15 violation?

16 A. He was deadlocked for 48 hours, loss of all
17 privileges.

18 Q. So would it be accurate to say that on March 2nd,
19 1995 Johnny Bennett was responsible for creating a hazard and
20 received 48 hours lockdown and loss of all privileges?

21 A. Yes, sir.

22 MR. GRAHAM: Your Honor, we would show that on
23 State's Exhibit 57.

24 Thank you, Ms. Phillips. If you would answer any
25 questions the defense has for you.

CROSS-EXAMINATION

BY MR. YOUNG:

Q. Ms. Mack, you stated that this memo came out February 29th?

A. No, sir, February 9th.

Q. February the 9th.

A. And I'm Ms. Phillips now. I've been married since this happened.

Q. Okay. I'm sorry.

A. That's all right.

Q. How was that memo distributed or posted for the inmates to know about?

A. I don't recall specifically on this memo, but as a general rule of practice they had bulletin boards on their cell block and we often put individual copies under their cell blocks.

Q. And can you say for a fact that that was done with this memo?

A. That it was put under the doors? One or both was. I don't know specifically.

Q. Approximately when would that have occurred?

A. As soon as I received the memo.

Q. So it would have been sometime in early February?

A. Yes. They had about three weeks to get compliance.

Q. Okay. So by March 1st, February the 28th, that

1 time frame, any other guards of that facility go around and
2 remind everyone of the new policy taking effect on March the
3 1st?

4 A. I don't recall.

5 Q. This incident occurred on March 2nd?

6 A. That was when the write-up occurred, yes, sir.

7 Q. And this write-up occurred because the decision was
8 made to walk around and see who all were not in compliance
9 with this new policy, correct?

10 A. Correct. Well, could I clarify it? It really
11 wasn't a new policy. It was a policy that was already in
12 effect but we were being reminded to go back and make sure
13 people were in compliance, and even after that they had three
14 weeks to get ready.

15 Q. But there were no reminders, to the best of your
16 knowledge, that this was going to be strictly enforced
17 starting March 1st?

18 A. I don't know that directly so.

19 Q. This incident occurred on March 2nd?

20 A. Yes, sir.

21 Q. And I believe the report indicates that Mr. Bennett
22 -- now, these are steel doors?

23 A. Yes, sir.

24 Q. Have a little window in it?

25 A. Yes, sir.

1 Q. And he was written-up for having a piece of paper
2 over his window?

3 A. Yes, sir.

4 Q. The officer who found -- who made this report, he
5 opened -- he moved the paper and opened the window up?

6 A. Uh-huh, yes, sir.

7 Q. Looked in?

8 A. Yes, sir.

9 Q. And he saw Mr. Bennett in his room, correct?

10 A. Yes, sir.

11 Q. In fact, he was laying down, correct?

12 A. Yes, sir.

13 Q. In fact, he was asleep?

14 A. At that time, yes, sir.

15 Q. And this occurred at approximately 8:15 in the
16 morning?

17 A. Yes, sir.

18 Q. And the report does not indicate that the officer
19 said anything to Mr. Bennett to kind of inform him that you
20 know you can't have these windows covered, does it?

21 A. Not at that time, sir, no.

22 Q. In fact, the report does not even indicate that the
23 officer informed Mr. Bennett that as a result he would be
24 written up, correct?

25 A. No, sir, it doesn't.

1 Q. You testified earlier on direct examination that
2 the reason for this policy is so that the officers could be
3 assured that the inmates are not doing anything wrong,
4 correct?

5 A. Partly.

6 Q. And for their own individual safety, correct?

7 A. Yes, sir.

8 Q. So that the officers can come by and look in on
9 them?

10 A. As we do count we need to see a living, breathing
11 body.

12 Q. Exactly, and plus you want to make sure they're not
13 doing anything they shouldn't been doing, correct?

14 A. Yes, sir.

15 Q. But Mr. Bennett was written up for creating a
16 health and safety hazard, was he not?

17 A. Yes, sir.

18 MR. YOUNG: Thank you. I have no further
19 questions.

20 THE COURT: Redirect?

21 MR. GRAHAM: You may step down.

22 THE COURT: You're free to go if you'd like.

23 MR. GRAHAM: The State calls Johnny Ray.

24 JOHNNY RAY, after having been duly sworn,
25 testified as follows:

1 THE CLERK: State your full name for the record,
2 please.

3 THE WITNESS: Johnny Ray.

4 DIRECT EXAMINATION

5 BY MR. GRAHAM:

6 Q. I believe it's Corporal Ray; is that correct?

7 A. Yes, sir.

8 Q. Where are you employed, Corporal?

9 A. Department of South Carolina Department of
10 Corrections.

11 Q. And were you employed there on April 3rd, 1995 as
12 well?

13 A. Yes, sir.

14 Q. On April 3rd, 1995, did you write a report on
15 Johnny Bennett for a violation?

16 A. Yes, sir.

17 Q. And would you tell the jury what rule Mr. Bennett
18 violated.

19 A. Yes. That particular day we was getting him out
20 for rec. We put him in the screen and opened the cell to let
21 him go out. Johnny Bennett refused to go outside on the
22 recreation yard.

23 Q. Don't they have to indicate prior to actually going
24 out whether they're going to go to recreation or not?

25 A. Yes, sir.

1 Q. And what did Mr. Bennett indicate on that day he
2 was going to do?

3 A. He was going out.

4 Q. And then when it was time to take him out, what did
5 he do?

6 A. Once we got him out of his cell he refused to go.

7 Q. And what happened after he refused to go?

8 A. After he refused to go I called for assistance. I
9 think Officer Hudson came, and the supervisor was notified.
10 And Mr. Hudson, after talking to him for awhile he decided to
11 go back to his cell. But at that same time he stated to me
12 that day he wasn't going out. That I could kiss his ass,
13 fuck that shit. I could kiss his ass, he wasn't going out on
14 the recreation yard.

15 Q. Is this accurate to say, that on April 3rd, 1995
16 Johnny Bennet refused to follow orders?

17 A. Yes, sir.

18 MR. GRAHAM: Your Honor, we'd show that on State's
19 57.

20 Thank you, Corporal.

21 THE WITNESS: You're welcome, sir.

22 MR. GRAHAM: If you'd answer any questions the
23 defense has for you.

24 THE WITNESS: Yes, sir.

25 THE COURT: Cross?

CROSS-EXAMINATION

BY MR. YOUNG:

Q. Corporal Ray, when you went to get Mr. Bennett out of his cell and told him that he had to go to rec he informed you that he was supposed to have a telephone call at that time, correct?

A. No, sir.

Q. In fact, he was going to call -- he was supposed to call his lawyers?

A. No, sir, he did not state that.

Q. Your immediate supervisor was Sergeant Jones at that time?

A. No, sir.

Q. Who was your immediate supervisor?

A. Captain Pridgen.

Q. Captain Pridgen was a lieutenant at the time, was he not?

A. Well, he was. He just became captain.

Q. On April 3rd, 1995, he was Lieutenant Pridgen, correct?

A. He had just become captain.

Q. Had just become captain. And isn't it true that when Mr. Bennett asked to go to use the telephone that he asked to speak with the shift supervisor?

A. Like I said, he did not state that to me, no, sir.

1 Q. As a result, you called Lieutenant Pridgen or
2 Captain Pridgen?

3 A. Yes, sir.

4 Q. And Officer Hudson?

5 A. Yes, sir.

6 Q. Did both of them talk with him?

7 A. Yes, for a period of time. Yes, sir.

8 Q. You weren't present when they talked to him, were
9 you?

10 A. No, sir.

11 Q. So you don't know what they told him, do you?

12 A. No, sir.

13 Q. But as a result of their conversation with him he
14 decided that he wasn't going to take his rec time, correct?

15 A. State that again, sir.

16 Q. After talking with them he decided that he wasn't
17 going take his rec time, correct?

18 A. Yes, sir.

19 Q. He wasn't disciplined to not taking his rec time,
20 was he?

21 A. I think he was disciplined later. I think he was.

22 Q. Do you have a copy of that report?

23 A. It would be in my report. No, it wouldn't be on my
24 report.

25 Q. On those report forms, does it not say in the lower

1 corner action taken, and have a list of things to be done by
2 the administration?

3 A. No, it doesn't state that.

4 Q. If you would look in the lower left-hand corner of
5 that form. I'll show you this form here. Is that a copy of
6 your report?

7 A. Yes, sir.

8 Q. The lower left-hand corner, does it not have a box
9 down there that says action taken?

10 A. Yes, it has that.

11 Q. And it has a list of items for the administration
12 or the supervisors to check off this is what they did,
13 correct?

14 A. Right.

15 Q. Just across from there I want you to look on the
16 lower right-hand corner. There's a space there for comments
17 from the supervisors, correct? And on that report it says
18 that this report was made and put in the file for later
19 purposes, correct?

20 A. Correct.

21 Q. Does not say anything about any disciplinary action
22 taken, does it?

23 A. No, sir.

24 MR. YOUNG: Thank you. I have no further
25 questions.

1 MR. MYERS: No further questions.

2 We call Mr. James Green.

3 THE COURT: Officer, you're free to go if you'd
4 like to.

5 JAMES EDWARD GREEN, after having been duly
6 sworn, testified as follows:

7 THE CLERK: State your full name for the record,
8 please.

9 THE WITNESS: James Edward Green.

10 DIRECT EXAMINATION

11 BY MR. MYERS:

12 Q. Mr. Green, what is your occupation?

13 A. I'm a criminal investigator with the South Carolina
14 Department of Correction Internal Affairs branch.

15 Q. And how long have you been employed with the
16 Department of Corrections?

17 A. A little over 25 years.

18 Q. Now, in 1997, did you have to --

19 MR. FLOYD: Your Honor, may we approach the bench a
20 moment.

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was had.)

23 THE COURT: Ladies and gentlemen of the jury, we're
24 going to do a couple of quick witnesses and then take a
25 break, okay.

1 BY MR. MYERS:

2 Q. Mr. Green, in 1997, did you have to conduct an
3 investigation into Johnny Bennett who was a prisoner at the
4 Department of Corrections as to some infractions or rules
5 violations?

6 A. Yes, sir, I did.

7 Q. And were you --

8 MR. FLOYD: Your Honor, we object. We don't think
9 this investigation had to do with Mr. Bennett, infractions
10 had to do with some of the officers.

11 THE COURT: All right. I'm going to overrule the
12 objection. We'll let the jury make such inferences as they
13 determine appropriate from it, okay. Let me just hear what
14 the witness says.

15 BY MR. MYERS:

16 Q. Were you the only investigator or were there
17 others?

18 A. There was others, sir.

19 Q. And did the investigation involve just inmates or
20 inmates and officers?

21 A. Inmates and officers.

22 Q. And during that investigation, did you have an
23 occasion to talk with Johnny Bennett on March the 26th of
24 1997?

25 A. Yes, sir, I did.

1 Q. And just generally, and not into too much detail,
2 what was this investigation about?

3 A. It was concerning some sexual allegations between
4 Mr. Bennett and his visitor.

5 Q. Involved allegations of Mr. Bennett having sex at
6 the Department of Corrections with a visitor?

7 A. Yes, sir.

8 Q. Is that against the Department of Corrections'
9 rules and regulations?

10 A. Yes, sir, it's against the rules and regulations.

11 Q. Now, March the 26th, 1997, did Mr. Bennett write
12 out a statement as to having sex with a visitor?

13 A. Yes, sir, he did.

14 Q. Did he sign it?

15 A. Yes, sir.

16 Q. Do you have that statement with you?

17 A. Yes, sir, I do.

18 Q. Could you read it to the jury, please.

19 MR. FLOYD: Your Honor, please note our objection
20 on the record.

21 THE COURT: Objection is noted. We'll put that on
22 the record in a minute.

23 A. Judie Hardee and I have known each other for
24 numbers of years, even before I was incarcerated. We have
25 had incident -- intimate sexual relationships at L. C. D. C.

1 and here at S. C. D. C.

2 Q. Let me stop you right there. It says we have had
3 intimate sexual relationships at L. C. D. C. What is that?

4 A. Lexington County Detention Center.

5 Q. The Lexington County Jail?

6 A. Correct, sir.

7 Q. And here in S. C. D. C. What's S. C. D. C.?

8 A. That's South Carolina Department of Corrections.

9 Q. Okay, go ahead.

10 A. The officer who allowed it were Officer Watson,
11 Taylor and Tollen on different occasions. No money ever
12 changed hands. It was always permitted and they would simply
13 look the other way while Judie and I were in the back. With
14 Officer Watson it happened two or three times; Taylor one,
15 and Tollen one. It had happened with -- it never happened
16 with any other officers or sergeants. She had been visiting
17 me while I was a safe keeper and since I've been at S. C. D.
18 C. My family member never had anything to do with this one
19 way or the other, and signed Johnny Bennett, dated 3-26-97.

20 Q. Now, Judie Hardee, he said he'd been having
21 intimate sexual relationships at the Lexington Jail and in
22 the prison. Who is Judie Hardee?

23 A. Judie Hardee was his visitor. She was a deputy at
24 the Lexington County Jail, and then she began to visit him in
25 the Department of Corrections.

1 Q. She was employed at the Lexington County Jail as a
2 guard?

3 A. Yes, sir.

4 Q. And she was on his visitor list to come visit him
5 in prison?

6 A. Yes, sir.

7 Q. Was she one of the visitors on his visitor list?

8 A. She was on his visitor list.

9 Q. And how do you make up a visitor list? How did she
10 get on his visitors list?

11 A. They would have to fill out a form.

12 Q. Who would?

13 A. Bennett and she would. Ms. Hardee would have had
14 to fill out a form requesting to be put on his list.

15 Q. So the prisoner, Mr. Bennett, would have to fill
16 out a form of who he wants to visit him, then the visitor
17 would have to fill out one saying, yeah, I want to visit?

18 A. That's correct.

19 Q. Now, after this investigation, Ms. Hardee was still
20 allowed to come visit him?

21 A. No, her visitation privilege was suspended
22 indefinitely.

23 Q. Is this a correct statement -- when was her
24 visitation suspended?

25 A. It was shortly after -- around that time.

1 Q. In March?

2 A. Right, in March.

3 Q. Is this correct; March the 26th of 1997 Johnny
4 Bennett confessed to having sexual relations with former
5 Lexington County correctional officer, Judie Hardee, while
6 incarcerated at both the Lexington County Jail and the South
7 Carolina Department of Corrections prison?

8 A. That's correct.

9 Q. Is there a policy in South Carolina prisons that
10 inmates can have sex with visitors?

11 A. That's against the policy. Policy is that they
12 cannot have sex.

13 MR. MYERS: Answer any questions they have.

14 THE COURT: Cross?

15 MR. FLOYD: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. FLOYD:

18 Q. Now, Mr. Green, your investigation wasn't just
19 about Johnny Bennett in this matter, was it?

20 A. Him and some other inmates also.

21 Q. Pardon?

22 A. It was about other people, also

23 Q. There were several inmates who were on death row at
24 that time that the guards were allowing them to have conjugal
25 visits?

1 A. That's correct.

2 Q. Now, the prison system used to allow conjugal
3 visits years ago, didn't it?

4 A. In some places, years ago.

5 Q. But now death row, it's not where it was then; it's
6 not there now, is it?

7 A. No, it's not.

8 Q. Death row -- when all this happened, where was
9 death row then?

10 A. Death row was at Broad River Correctional, Broad
11 River.

12 Q. Broad River Correctional?

13 A. Right.

14 Q. And how many of the inmates there were being --
15 were involved in having sex with their visitors?

16 A. Well, at that particular time we were looking at I
17 think three other inmates.

18 Q. And that's all it was, the guards were allowing
19 them privacy and they were having intimate relations --

20 A. That's correct.

21 Q. -- during the visits? That's all this was?

22 A. That's all we discovered.

23 Q. And isn't it true that Ms. Hardee's visitation
24 privileges with Mr. Bennett had been restored?

25 A. I can't answer that. I don't know.

1 Q. That's something not in your area?

2 A. Right.

3 MR. FLOYD: Thank you. No further questions.

4 MR. MYERS: I take it based on counsel's statement
5 I get to ask a few more questions, Your Honor.

6 THE COURT: Let's take this up before we do it,
7 okay.

8 Ladies and gentlemen, let me ask you to step to the
9 jury room just for a moment. Be sure we don't talk about the
10 case.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 4:30 p.m.)

13 THE COURT: The jury is secured.

14 Mr. Myers?

15 MR. MYERS: Your Honor, at our bench conference it
16 was brought up that this witness would testify about Judie
17 Hardee, and I mentioned over there that I was going to put it
18 on the record later. But the letter written or the statement
19 written by Mr. Bennett, to which Mr. Green has just
20 testified, he put in there that she was -- she has been
21 visiting with me while I was a safe keeper and since I've
22 been on death row.

23 And I told the Court that I explicitly told the
24 witness Mr. Green not to mention the defendant being on death
25 row, and we put in there in place of on death row we put at

1 S. C. D. C., South Carolina Department of Corrections. Now
2 twice Mr. Floyd on cross-examination asked him about death
3 row. Not once, but twice.

4 THE COURT: Yes, sir.

5 MR. MYERS: So now I think I have the right since
6 Mr. Floyd has opened that door, I have the right to walk in
7 and ask him that, in fact, this sex with Ms. Hardee and the
8 defendant took place on death row.

9 THE COURT: Mr. Floyd?

10 MR. FLOYD: Your Honor, if an error was made, and I
11 guess it was, and I admit it, then we don't accomplish
12 anything by compounding it and repeating it again. The
13 information is out, it's out. And I don't know why that
14 would allow them to come back and emphasize it. I would move
15 for a mistrial since I made that error, and I think it's
16 prejudiced my client. I'd move for a mistrial.

17 MR. MYERS: You can't ask for a mistrial on
18 something that you do, first of all, and there is a well
19 known exception. There are excellent books written on the
20 rules of evidence in South Carolina and one exception is
21 there that's titled opening the door.

22 Now, the defense attorney can't open the door and
23 then slam it back on me. The law is if he opens it I have
24 the right to walk in. I didn't bring it up. I purposely and
25 intentionally kept it out. But now that it's been opened

1 wide I think I can just ask it, and I would request to be
2 allowed to do so.

3 THE COURT: Mr. Floyd?

4 MR. FLOYD: Your Honor, the other response to it
5 would be there was no mention of Mr. Bennett being on death
6 row. There was a question about investigation about sex on
7 death row, but there was no mention about Mr. Bennett being
8 on death row. As far as that goes, he was on death row for
9 safe keeping before he even got the death penalty sentence,
10 although this did occur after his sentence.

11 MR. MYERS: No, sir.

12 THE COURT: I understand.

13 MR. MYERS: That's not right. Why would he be
14 talking about the character of other people on death row.
15 Certainly he was talking about his client during his
16 cross-examination.

17 THE COURT: Anything else, Mr. Floyd?

18 MR. FLOYD: Your Honor, it would be highly
19 prejudicial and would outweigh any probative value to allow
20 that to proceed.

21 THE COURT: Yes, sir, I understand but it was
22 mentioned. It came out. I don't know that there's any way
23 to get around it or get by it now. I think I'm going to have
24 to let it in, because there were two references to death row,
25 and the way it was asked, unfortunately, gave me the clear

1 inference that Mr. Bennett was on death row. So I think the
2 Solicitor has a right to go into it.

3 I don't know there's much reaction, to be honest,
4 that I can reduce the damage done at this point. I can't
5 grant you a mistrial because it was a question you asked. I
6 imagine the Supreme Court will do something with it on a PCR
7 in about three or four years. I'll let them do it then.

8 All right. Let's bring the jury back in.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 4:35 p.m.)

11 THE COURT: All parties and attorneys are in the
12 courtroom and all jurors have now returned.

13 Mr. Myers?

14 REDIRECT EXAMINATION

15 BY MR. MYERS:

16 Q. Mr. Green, where Johnny Bennett was having sexual
17 relations with Ms. Hardee, is this just a minimum security
18 facility or was this one of the most secure facilities in
19 South Carolina?

20 A. That was the most secure we had, sir. That was on
21 death row.

22 MR. MYERS: Thank you, sir. No further questions.

23 THE COURT: Ladies and gentlemen of the jury, let
24 me be sure to give you an instruction. The fact that the
25 witness has testified occurred on death row should not have

1 anything to do with the issues here. Remember, you are
2 basing the issues here, and the sentence that you give in
3 this matter is going to be issued only on the evidence that
4 you hear and only on those aggravating circumstances and
5 mitigating circumstances. Be sure to remember that.

6 Any recross?

7 MR. MYERS: Nothing further.

8 THE COURT: You can step down. Thank you, sir.

9 MR. MYERS: We call Rudolph Tillman.

10 THE COURT: And you're free to go if you'd like to.

11 After this witness we'll take a break.

12 MR. FLOYD: Your Honor, we have a motion we need to
13 make before we go any further, outside the presence of the
14 jury.

15 THE COURT: Okay. Let's go ahead. We will go
16 ahead and take the break now. This will be our break now in
17 just a minute. Be sure and don't talk about the case.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 4:40 p.m.)

20 THE COURT: I think some folks need to take care of
21 some matters real quick. So let's do that and then we'll
22 come back and argue these in just a minute, okay. We're
23 going to take a break now.

24 (WHEREUPON, a brief recess was taken.)

25 THE COURT: State ready? Let's go ahead and put

1 the motions on the record.

2 Mr. Floyd, you had something to put on the record
3 about this witness?

4 MR. FLOYD: Yes, Your Honor, actually it has to do
5 with the instruction Your Honor gave the jury. We appreciate
6 Your Honor was making some type of effort to assist in a
7 matter, however, we did not request an instruction.

8 What concerns us is that the instruction may have
9 cleared up something that the jury may not have realized.
10 The jury's been told in this trial that there was another
11 jury that all they did was found Mr. Bennett guilty. They've
12 not been told there was ever any sentencing of Mr. Bennett at
13 all and that this is a sentencing hearing.

14 So, therefore, they may have been under the
15 impression that his being housed on death row, if that's what
16 they concluded from the questioning here, which is where they
17 put people until they have their sentencing hearing.

18 However, when Your Honor instructed them that they
19 were not to use that in any way in connection with this case,
20 then it all of a sudden may have dawned on them, well, maybe
21 he was there because he's actually serving a death sentence.
22 And I think whereas we had a situation that was unfortunate
23 but maybe not mean anything to the jury has now been put into
24 their heads in such a fashion that they probably now feel
25 sure he did have a death sentence.

1 THE COURT: Yes, sir. I understand. And let me be
2 sure, as I understand the record was that -- and, of course,
3 when we had the bench conference over here, and we need to
4 put that on the record too, Mr. Myers clearly indicated that
5 he had redacted any reference to death row from the State.

6 As I recall, in fact, what happened was when you
7 asked questions of the witness -- in fact, you asked him
8 twice about death row and I remember you using the term about
9 other inmates on death row. To me it was very clear, there's
10 no question that that pretty well let the cat out of the bag
11 at that point. And as you know, under rules of evidence I
12 didn't see any other alternative but to allow the Solicitor
13 to ask that same question of the witness on redirect.

14 And, frankly, I think the curative instruction was
15 done frankly obviously not to confirm that with the jury but
16 to ease that problem with the jury and make sure they
17 understood not to consider that in any way.

18 I think once the questions -- my impression was
19 once the questions were asked on cross, though, that that
20 pretty well did it right there, I think. As I indicated,
21 hopefully we cured it to the point that it will be helpful,
22 but that will just be a matter for the Supreme Court to
23 review at the appropriate time, I think.

24 Mr. Myers?

25 MR. MYERS: Yes, sir, just one quick thing for the

1 record. You were ready to bring the jury back out and we
2 asked you to wait a minute because I had intended to ask the
3 witness straight out did this sexual relation happen on death
4 row. I had a conference here with Mr. Graham and Mr. Riddle,
5 and I decided not to ask that.

6 And I wanted to bring out from him, based on
7 Mr. Floyd's cross-examination, about there had been some
8 conjugal visits at some less secure facilities. So my
9 question to him was, was this a minimum security or a more
10 maximum security type facility. And I did not mention those
11 two words, death row. So I just wanted to make sure that
12 this was a maximum facility without classifying what it was
13 and conjugal visits aren't allowed there. And that's the
14 only question I asked.

15 THE COURT: I think the witness said it though.
16 Did not the witness say he was on death row?

17 MR. MYERS: He did. He did say that, but I was
18 going at the maximum security aspect of it rather than --

19 THE COURT: I understood. But once the witness
20 said death row that's when I felt like I needed to give the
21 curative instruction. And obviously, that's what I assume
22 you were trying to do. And when you asked the question in
23 the fashion you did, Mr. Myers, I thought well, maybe we can
24 get by this, I don't know. But once the witness said death
25 row there was pretty well no way around that.

1 MR. MYERS: Yes, sir.

2 THE COURT: But, again, I think it's clear from --
3 and I'm not trying to pick on you, Mr. Floyd, I think it's
4 clear from the questions that he was on death row, at least
5 the questions asked on cross-examination.

6 And let me note for the record, I was observing
7 you, Mr. Floyd, when you did it and it was obvious you didn't
8 do it intentional, because you were just doing it within the
9 regular flow of question. So certainly it wasn't done
10 intentionally, I understand that, it just came out.
11 Sometimes things like that just happen. Okay. Hopefully, we
12 tried to resolve the problem as much as we can, though.

13 MR. MYERS: The State is ready.

14 MR. FLOYD: The defense is ready.

15 THE COURT: Did you not have an objection to this
16 witness though, Mr. Floyd?

17 MR. FLOYD: The witness that just testified?

18 THE COURT: That's coming up?

19 MR. MYERS: No, sir, he wanted to get this on the
20 record.

21 THE COURT: Okay. You wanted to get this on the
22 record?

23 MR. FLOYD: Yes, sir.

24 THE COURT: One other thing to put on the record
25 too, by the way, and that was that we had the bench

1 conference over here, remember. I don't believe we got it on
2 the record, did we, about the statement that they took of
3 Mr. Bennett, about Mr. Green took of him.

4 Let me just put on the record that we had a bench
5 conference. Mr. Floyd objected to that statement being
6 admitted as taken by Officer Green. I ruled it would be
7 admitted on a couple of grounds; one that the statement did
8 not involve a criminal offense, criminal offenses, so did
9 not feel that Jackson V. Denno would apply. As I understand,
10 that ruling has been made previously in this case though; is
11 that not correct?

12 MR. MYERS: Yes, sir. And not only that, Your
13 Honor, in State vs. George, 476 S.E.2d, 903, that case stands
14 for the proposition as stated in Middleton and I think in
15 Green also about the burden of proof of other crimes or
16 infractions or things of that nature.

17 And I have here an order stated by a judge,
18 controlling precedent consists of State vs. Anthony Green and
19 State vs. Howard and the admissability that is not involved
20 as to the guilt of the defendant charged for which he is on
21 trial that these statements were not introduced to obtain
22 convictions but were introduced in the penalty phase as
23 evidence of other relevant crimes or infractions as to the
24 defendant's character. And that's also State vs. Skipper and
25 State vs. Stewart cited for those propositions.

1 So it goes to character. Not to secure guilt but
2 as to character and other crimes, and Middleton and George
3 and those cases say the burden of proof is not even clear and
4 convincing or anything else.

5 THE COURT: Anything else on the record?

6 MR. FLOYD: Thank you, Your Honor. Just to make
7 sure the record is clear on that point. It's our position
8 that they were going to use these statements against
9 Mr. Bennett in this trial. He was entitled to a Jackson
10 Denno hearing particularly because it's clear from the
11 statement or at least it appears from the statement that he
12 was never advised of his rights when the statements were
13 taken, and they were taken in a custodial confinement
14 situation. So this would have been a new statement not
15 covered under the previous trial's Jackson Denno hearing, and
16 we felt we were entitled to one in this matter.

17 THE COURT: All right. I note that for the record.
18 The motion stands -- the ruling stands.

19 Okay. Are we ready to bring the jury in?

20 MR. MYERS: Yes, sir.

21 MR. FLOYD: The defense is ready, Your Honor.

22 THE COURT: Bring them in.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 5:10 p.m.)

25 THE COURT: All parties and attorneys are in the

1 courtroom and all jurors are here.

2 Call your next witness, please.

3 MR. MYERS: We call Mr. Tillman to the stand.

4 RUDOLPH TILLMAN, after having been duly sworn,
5 testified as follows:

6 THE CLERK: Please state your full name for the
7 record.

8 THE WITNESS: Rudolph Tillman.

9 DIRECT EXAMINATION

10 BY MR. MYERS:

11 Q. Mr. Tillman, by whom are you employed, sir?

12 A. The South Carolina Department of Corrections.

13 Q. And what are your duties with the Department of
14 Corrections?

15 A. I'm a criminal investigator.

16 Q. Now, as part of your duties in 1997 were you
17 involved in the investigation looking into sexual relations
18 with the defendant, Johnny Bennett, and a visitor named Judie
19 Hardee in a prison at the South Carolina Department of
20 Corrections?

21 A. Yes, sir, I was.

22 Q. And on April the 3rd of 1997, did you have an
23 occasion to talk with Mr. Bennett?

24 A. Yes, sir.

25 Q. And did you talk with him about sexual activity

1 between him and a female visitor at the prison?

2 A. Yes, I did. On April the 3rd I conducted an
3 interview with Inmate Johnny Bennett at the institution where
4 he was housed.

5 Q. Would you tell the jury or read the jury what
6 Mr. Bennett said.

7 A. Inmate Johnny Bennett had provided a statement to
8 myself on April the 3rd. As stated by Bennett, Officer
9 Watson, Taylor, Tollen and Sergeant Duck allowed him to have
10 sex while he was on visit. He had asked them could he have
11 sex with the visitor and he said yes. Watson allowed him to
12 have sex in December. She got up and went to the door and he
13 took his visitor in the men's bathroom and had sex.

14 Q. Now, you said Watson allowed him to have sex in
15 December, and she got up and went to the door. Was Watson a
16 female correctional officer?

17 A. She was a female correctional officer, yes, sir.
18 When he came back she was sitting at the desk. She never
19 received any monies for this favor. She had allowed him to
20 have sex about two or three times. He had asked Correction
21 Officer Taylor and he allowed it. Taylor had gone into the
22 office to use the telephone and he took his visitor in the
23 back and had sex with her.

24 Q. Who took the visitor in the back to have sex?

25 A. Bennett. Taylor saw him when he had gone in the

1 back. They were in the back awhile, and Taylor came and
2 knocked on the door and told him to hurry up. Taylor had
3 allowed him to have sex once, this was in August.

4 He had asked Tollen if he could have sex with his
5 visitor. Tollen had allowed him to go in the back and have
6 sex. Approximately 10 or 15 minutes later Tollen came and
7 knocked on door and told him that he needed to hurry up. An
8 officer came but he doesn't know who it was. It was a black
9 officer. This happened around August or July of 1997.
10 Tollen had allowed him to have sex once.

11 Duck had allowed him to have sex around the time
12 that Cecil Lucas was getting ready to be executed. This was
13 the only time Duck did him this favor. Cecil had a visit in
14 the lobby area. He had asked Duck could him and his visitor
15 go into the back to talk with Cecil Lucas. He had asked Duck
16 -- he had told him yes, he could.

17 He came in the back to check on Cecil and noticed
18 that he was not there. He came and saw that the bathroom
19 door was closed. He got back up front, Taylor came in and
20 started talking to Duck. They came back out and sat down at
21 the table.

22 Q. And Mr. Bennett signed that?

23 A. Yes, he did.

24 Q. Now, let me ask you this. Was Judie Hardee on the
25 visitation list?

1 A. Yes.

2 Q. To visit Johnny Bennett?

3 A. Yes.

4 Q. And in March of '97 was her visitation rights
5 revoked indefinitely?

6 A. Yes.

7 Q. Is this correct; March 1997 visits with Hardee
8 revoked indefinitely?

9 A. Yes, sir.

10 Q. Now, as part of your duties did you check certain
11 telephone records to see if there had been any telephone
12 calls between the Defendant Bennett and Judie Hardee?

13 A. Yes.

14 Q. And that's part of your duties to pull those
15 records and check on them?

16 A. Yes, sir, that's correct.

17 Q. And could you tell whether or not a particular
18 inmate would make those calls?

19 A. Yes, I could tell the inmate that had made the
20 calls by the inmate pin number.

21 Q. So an inmate has a number?

22 A. Yes, that's correct.

23 Q. And they use that number to make a call?

24 A. Yes, sir.

25 Q. And when you pulled up Johnny Bennett's number did

1 you find out whether or not he had made calls to Judie
2 Hardee's telephone number?

3 A. Yes, I did, sir. When I pulled up his pin number I
4 saw that he had made numerous calls to Judie Hardee's
5 residence at area code 803-791-8160.

6 Q. Now, just from the December, the middle of
7 December, '96, up until March of '97 or February, early part
8 of March of '97, could you tell approximately how many calls
9 there had been middle of December, middle of March?
10 December, January, February, April, March, just in those
11 three or four months, how many calls had Johnny Bennett made
12 from prison to the outside to Judie Hardee?

13 A. There had been approximately 400 calls made to her
14 residence.

15 Q. 400 calls?

16 A. Yes, sir.

17 Q. And is this a copy of all of these listed calls?

18 A. Yes, sir, that is a copy of the call detail
19 records.

20 MR. MYERS: Answer any questions they have.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MR. YOUNG:

24 Q. Mr. Tillman, the Solicitor asked you if Ms. Hardee
25 was on Mr. Bennnett's visiting list, correct?

1 A. That's correct.

2 Q. In order for a person to get on someone else's
3 visitors list they have to make a request to be on there,
4 right?

5 A. That's correct.

6 Q. The inmate have to request that this person be
7 added, and that person requests to be put on this also,
8 right?

9 A. Yes.

10 Q. And, ultimately, the Department of Corrections
11 approves that visitors list, correct?

12 A. Yes.

13 Q. If there's somebody on there who shouldn't be on
14 there or who may be a threat or something to security that
15 person wouldn't be approved ordinarily, correct?

16 A. They shouldn't be.

17 Q. They shouldn't be. Okay. But at any result, the
18 visitors list is approved by the department?

19 A. That's correct.

20 Q. Or by that facility?

21 A. Yes.

22 Q. In order for the way these phone records work, in
23 order for an inmate to dial out they have to put in a code
24 number that identifies them, right?

25 A. Yes.

1 Q. And before a number could be added to their code
2 number that number has to be presented to the department for
3 approval?

4 A. Have to be submitted on a form and sent forward for
5 approval.

6 Q. Okay. All of the calls that are made from the
7 department, they are made as collect calls?

8 A. Yes, they are.

9 Q. And, ordinarily, would the operator come on and ask
10 if you want to accept these calls, correct?

11 A. Yes.

12 Q. You're not here today telling us that because
13 Mr. Bennett and Ms. Hardee were friends or had a relationship
14 that there was something wrong with him calling her, are you?

15 A. No, I'm not here to say that. I am here to say
16 that he did make approximately 400 calls to her at her
17 residence.

18 Q. He called her a lot, right?

19 A. Yes, he did.

20 Q. You're reading a statement that Mr. Bennett gave to
21 you. In that statement when he was talking -- well, let me
22 ask you this; the investigation was officers, correct?

23 A. Negative. There was both officers and inmates.

24 Q. Well, he signed a statement as a witness statement,
25 correct?

1 A. Yes, he did.

2 Q. And in that statement form it indicated that this
3 is a statement in reference to a particular officer, correct?

4 A. Negative. He signed a statement in reference to
5 the incident, but he also implicated himself.

6 Q. I understand. Understand. Do you have a copy of
7 that statement with you?

8 A. Yes, I do.

9 Q. In fact, you just read from it?

10 A. Yes.

11 Q. In the upper portion before the handwritten part
12 starts, this is a typed form, right, a typed form that you
13 just fill in the blanks, correct?

14 A. That's correct.

15 Q. And on that form is stated, this statement is in
16 reference to, and you filled in the blank, correct?

17 A. Yes, that's correct.

18 Q. And you filled in that blank with an officer's
19 name, correct?

20 A. Yes, that's correct.

21 Q. And in that statement I believe you testified that
22 Mr. Bennett asked an officer if he could have sex with his
23 visitor, didn't he?

24 A. I did.

25 Q. And they approved it?

1 A. The sergeant approved it.

2 Q. In fact, that was with Watson, correct? Watson
3 allowed it?

4 A. That was never proved, but I was speaking in
5 reference to Sergeant Duck.

6 Q. I'm not talking about what's true, I'm talking
7 about what's in the statement. The statement says he asked
8 Watson?

9 A. Yes, that's correct.

10 Q. And Watson allowed it?

11 A. That's correct.

12 Q. Further on in the statement he said he asked
13 Tollen, correct?

14 A. Correct.

15 Q. And Tollen allowed it, correct?

16 A. Yes, that's correct.

17 MR. YOUNG: That's all the questions I have. Thank
18 you.

19 THE COURT: Any redirect?

20 MR. MYERS: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. MYERS:

23 Q. That statement, it consists of three pages?

24 A. Yes, sir.

25 Q. And is this a copy that you provided us?

1 A. That's a copy of what I had that I provided for
2 you, yes.

3 Q. This is a copy of what Mr. Young just asked you
4 about?

5 A. Yes, sir.

6 MR. MYERS: We offer this in evidence, Your Honor.

7 MR. YOUNG: May we approach?

8 THE COURT: Yes, sir

9 (WHEREUPON, a bench conference was had.)

10 (WHEREUPON, State's Exhibit No. 63, a
11 Statement, was marked and admitted into evidence.)

12 MR. MYERS: That's all we have. Thank you.

13 THE COURT: Anything else?

14 MR. YOUNG: No further questions, Your Honor.

15 THE COURT: You can step down, and you're free to
16 go.

17 MR. RIDDLE: Martha Gilmore.

18 MARTHA GILMORE, after having been duly sworn,
19 testified as follows:

20 THE CLERK: State your full name for the record,
21 please.

22 THE WITNESS: Martha Gilmore.

23 DIRECT EXAMINATION

24 BY MR. RIDDLE:

25 Q. Ms. Gilmore, where are you employed?

1 A. South Carolina Department of Corrections at Lieber.

2 Q. At Lieber?

3 A. Right.

4 Q. Institution?

5 A. Uh-huh.

6 Q. And what is your job there?

7 A. Classification caseworker.

8 Q. And does that involve arranging visits for
9 particular inmates? Is that part of what you do or part of
10 what you were doing?

11 A. It was a part of what I was doing in '97.

12 Q. You've changed jobs?

13 A. Right.

14 Q. From '97 until now?

15 A. That's correct.

16 Q. Now you're working with --

17 A. I work with the case load in prison industry but
18 still classification.

19 Q. Right. Back then what was your job title in '97?

20 A. My job title was classification caseworker for the
21 special management unit.

22 Q. And in that regard, back in 1997, was part of your
23 job to facilitate visitations?

24 A. Right, to schedule the inmates for their visits.

25 Q. And did you receive a letter from Mr. Johnny

1 Bennett in connection with visitations back in April of '97?

2 A. That's correct.

3 Q. And is that the letter that you received?

4 A. That's correct.

5 Q. And is that your handwriting where you responded to
6 that?

7 A. That is correct.

8 MR. RIDDLE: Your Honor, at this time we'd offer
9 this into evidence.

10 THE COURT: Any objection?

11 MR. YOUNG: No objections.

12 (WHEREUPON, State's Exhibit No. 64, a Letter,
13 was marked and admitted into evidence.)

14 BY MR. RIDDLE:

15 Q. State's Exhibit Number 64, Ms. Gilmore, that's a
16 copy of a letter you received from Mr. Bennett; isn't that
17 correct?

18 A. That is correct.

19 Q. And March of 1997 Mr. Bennett's visitation with
20 Ms. Hardee had been revoked; is that correct?

21 A. I was informed by the visitation coordinator that
22 it was, and that was the response that I gave back to him.

23 Q. What's the date on that letter that Mr. Bennett
24 sent to you?

25 A. It is dated April 24th of '97.

1 Q. And what specifically is he inquiring about?

2 A. He really wanted to know who he could get in touch
3 with that would clarify the visits that Ms. Hardee -- when
4 she was on the list and was revoked and what he could do and
5 what the time frame would be for her to be reinstated or if
6 it would happen automatically. And when I contacted the
7 visitation coordinator she informed me that they were
8 suspended indefinitely, and that was the response I gave back
9 to him.

10 Q. So he was wanting to have her reinstated --

11 A. Reinstated.

12 Q. -- in April of '97?

13 A. Right.

14 Q. One month after they had been revoked?

15 A. Right.

16 MR. RIDDLE: Thank you. Please answer any of their
17 questions.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. YOUNG:

21 Q. Ms. Gilmore, Mr. Bennett simply wrote you a letter
22 asking you how long was the revocation and what he needed to
23 do?

24 A. Right.

25 Q. To get them reinstated?

1 A. Right.

2 Q. He did not say he wanted them reinstated
3 immediately, did he?

4 A. Not according to this note.

5 Q. After you responded to him and informed him that it
6 was a permanent revocation, he didn't write you back?

7 A. No.

8 Q. Or anything?

9 A. No.

10 Q. He just sent you a letter inquiring for the
11 information?

12 A. That's correct.

13 MR. YOUNG: Thank you. That's all the questions I
14 have.

15 THE COURT: Any redirect?

16 MR. RIDDLE: No, sir.

17 Willie Weldon.

18 THE COURT: You can step down, ma'am, and if you'd
19 like to leave you can.

20 WILLIE WELDON, after having been duly sworn,
21 testified as follows:

22 THE CLERK: State your full name for the record,
23 please.

24 THE WITNESS: Willie Weldon.

25

DIRECT EXAMINATION

BY MR. RIDDLE:

Q. Where are you employed, sir?

A. South Carolina Department of Corrections.

Q. And where?

A. At Lieber Correctional Institution.

Q. And your job there?

A. I'm entitled the warden.

Q. You're the head man?

A. Some may say that, yes.

Q. At least at Lieber?

A. At least at Lieber, yes, sir.

Q. You got some folks in Columbia you've got to answer to?

A. That will say different.

Q. More than you want. As the warden there you're in charge of essentially the whole unit, right?

A. Yes, sir.

Q. And you were in charge with Mr. Johnny Bennett there in 1999; is that correct?

A. Yes.

Q. Did Mr. Bennett write a letter to Warden Sheedy, which you were copied?

A. Yes.

Q. Now, tell the jury who Mr. Sheedy is.

1 A. He's the associate warden for operation and
2 basically second in command when I'm not there.

3 Q. So essentially he wrote to your assistant?

4 A. Right.

5 Q. And you were copied on this letter?

6 A. Right.

7 Q. Let me show you this letter. Is it dated 4-14-99?

8 A. Uh-huh.

9 Q. And is that the letter you received?

10 A. Yes, sir.

11 Q. And that's Mr. Sheedy's response there at the
12 bottom?

13 A. Right.

14 MR. RIDDLE: I'd offer this, Your Honor.

15 MR. YOUNG: No objections.

16 (WHEREUPON, State's Exhibit No. 65, a Letter,
17 was marked and admitted into evidence.)

18 BY MR. RIDDLE:

19 Q. This letter, this is on what's known as a request
20 to staff member?

21 A. Yes, sir.

22 Q. And that's a standard form that all of the inmates
23 use to write if they have a question they want to ask the
24 staff?

25 A. Right.

1 Q. Those things are readily available all over your
2 facility, are they not?

3 A. Yes, sir.

4 Q. This is dated 4-14-99; is that correct?

5 A. Yes, sir.

6 Q. And addressed to Warden Sheedy?

7 A. Right.

8 Q. And from Johnny Bennett?

9 A. Yes, sir.

10 Q. If you would, just read the body of that letter,
11 sir.

12 A. Yes, sir. I spoke to you about trying to get a
13 visit reinstated that was suspended in February of 1997, her
14 name is Judie Ann Hardee. Like I said, I don't know by whom
15 it was done but any information you can give me to assist me
16 in this would be highly appreciated. She is no longer
17 employed in the law enforcement, which was by Lexington
18 County. The reason she was suspended is she didn't have
19 permission from her supervisor officer and it was said she
20 had -- and I don't particularly know what this last word is.
21 Oh, we had sex, I'm sorry.

22 Q. Said that we had sex?

23 A. And if I may read that. It said, And it was said
24 we had sex.

25 Q. And that's April of '99?

1 A. Yes, sir.

2 Q. So in April of '99 he's in a roundabout way denying
3 the sexual relationship?

4 A. Based on this, yes, sir.

5 MR. RIDDLE: Thank you. I don't have any further
6 questions.

7 THE COURT: Cross?

8 CROSS-EXAMINATION

9 BY MR. YOUNG:

10 Q. Warden Weldon, you have supervised Mr. Bennett
11 approximately three years?

12 A. Thereabouts, yes.

13 Q. The Solicitor mentioned these requests to staff
14 member forms.

15 A. Yes, sir.

16 Q. You stated that these forms were available all over
17 your facility?

18 A. Yes, sir.

19 Q. Proper procedure is that if an inmate has a request
20 or have any questions that they should complete one of these
21 forms?

22 A. That's correct.

23 Q. Put who they believed to be the appropriate person
24 and forward it through the inner-mail system?

25 A. Yes, sir.

1 Q. And on this particular incident, this occurred
2 approximately two years after the sex incident between
3 Mr. Bennett and Ms. Hardee?

4 A. Thereabouts. I'm not privy to the previous
5 incident because they were not housed at my institution.

6 Q. But this request to, I believe it was your
7 associate warden?

8 A. Absolutely, yes, sir.

9 Q. This request was asking him to look and see if
10 there was anything that he can do?

11 A. Right.

12 Q. That Mr. Bennett could do to try to get the
13 visitation re-established?

14 A. Basically, was there anything he needed to do, yes,
15 to get it reinstated.

16 Q. And he stated that they were -- that the privileges
17 were revoked because of the acts at the other --

18 A. Facility.

19 Q. -- facility?

20 A. Yes, sir.

21 Q. He did not deny those events, did he?

22 A. Based on that, no, and I didn't question him. It
23 was just based on what that said.

24 Q. As a warden, have you had the occasion to receive
25 additional requests from Mr. Bennett?

1 A. Yes.

2 Q. Would it be fair to say that when Mr. Bennett had a
3 concern or a question that he would submit a form?

4 A. Yes, it would be fair to say that.

5 Q. One of those requests was relating to getting some
6 knobs for a television?

7 A. If my memory serves me right, I believe so.

8 Q. I'll show you a form here, and tell me if it will
9 refresh your memory.

10 A. Yes, sir.

11 Q. And was that a request where he was asking to get
12 some knobs for the television?

13 A. Yes.

14 Q. He did not take it upon himself to have someone to
15 bring any knobs in?

16 A. No.

17 Q. Made a request for it?

18 A. Yes, he did.

19 Q. At some point in time there was a concern about the
20 ability to use -- well, let me back up. The inmates at your
21 facility, they have privileges to canteen?

22 A. Yes.

23 Q. That's the way that they buy their stuff?

24 A. Right.

25 Q. Toiletries and things of that nature?

1 A. Yes, sir.

2 Q. Occasionally, the canteen will sell maybe some
3 juices or some sandwiches or something along those lines?

4 A. They don't sell sandwiches, but they sell some
5 canned goods and cigarettes, pastries, and those kinds of
6 things.

7 Q. Okay. So they sell pastries, maybe like some -- do
8 they sell the bagged popcorn-type stuff?

9 A. Yes, sir.

10 Q. They sell stuff that an inmate may want to use the
11 microwave for?

12 A. Yes.

13 Q. Do you recall receiving a request from Mr. Bennett
14 where he was inquiring as to the availability of a microwave
15 being used?

16 A. I don't remember specifically.

17 Q. I'll show you a document, and tell me if that
18 refreshes your memory.

19 A. Yes, it does.

20 Q. And in that letter he requested the -- requested
21 permission to use a microwave?

22 A. Yes.

23 Q. Mr. Bennett did not take it upon himself to use a
24 microwave without permission?

25 A. No, he did not.

1 Q. To the best of your knowledge, did he ever demand
2 any of your officers to let him use a microwave?

3 A. Not to my knowledge.

4 Q. As I stated, you have supervised Mr. Bennett
5 approximately three years now, correct?

6 A. Yes, sir.

7 Q. You are privy to information regarding the conduct
8 of inmates in your facilities?

9 A. Yes, sir.

10 Q. To the best of your knowledge, have you received
11 any information regarding Mr. Bennett receiving any types of
12 disciplinary problems?

13 A. No, sir.

14 Q. Have you received any information regarding
15 Mr. Bennett being a threat to anyone at your facility?

16 A. No, sir.

17 Q. Have you received any information regarding
18 Mr. Bennett being disrespectful to yourself or any officers
19 at your facility?

20 A. No, sir.

21 Q. I believe that you personally have had some
22 personal contact, face-to-face contact with Mr. Bennett?

23 A. Yes.

24 Q. Based on your availability to the information
25 regarding your inmates, your personal involvement with

1 Mr. Bennett, how would you characterize Mr. Bennett as an
2 inmate?

3 A. Average.

4 Q. Would you characterize him as being a threat to the
5 safety of your guards?

6 A. No.

7 Q. Has he exhibited any type of behavior that you are
8 aware of that is inappropriate for your facility?

9 A. Not that I'm aware of, no.

10 Q. I'll show you a document, you tell me if you
11 recognize that document.

12 A. Yes, sir.

13 Q. Did you receive a copy of that document?

14 A. Yes, sir.

15 Q. In that document, were the privileges for
16 visitation between Mr. Bennett and Ms. Hardee reinstated?

17 A. I'll have to reread it, I didn't read the whole
18 thing, to make sure.

19 Yes.

20 Q. In this letter, was Mr. Bennett warned of any
21 inappropriate behavior as to what the results would be if he
22 violated visitation policies?

23 A. Yes, sir.

24 MR. YOUNG: Thank you. That's all the questions I
25 have.

1 RIDDLE: Your Honor, may we approach?

2 THE COURT: Yes, sir.

3 (WHEREUPON, a bench conference was had.)

4 THE COURT: Ladies and gentlemen of the jury, let
5 me ask you to step to the jury room just for a minute. Now,
6 don't get anything to drink or anything because you're
7 probably going to get there and come right back. I just need
8 to take care of a couple quick things. Just don't talk about
9 the case.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 5:45 p.m.)

12 THE COURT: All right. The jury is secured.

13 Mr. Witness, he's going to ask you some questions
14 in just a minute, the Solicitor is, and when he does be
15 careful about not mentioning death row.

16 THE WITNESS: Okay.

17 THE COURT: Anything about death row.

18 MR. RIDDLE: Your Honor, I'm going to characterize
19 it as the specialized management unit --
20 is that correct?

21 THE WITNESS: Special management unit.

22 MR. RIDDLE: Special management unit, and I'm going
23 to ask you about some conditions at the special management
24 unit, but I'm going to characterize it in that fashion and
25 I'd just like to leave it at that.

1 THE WITNESS: Yes, sir.

2 MR. MYERS: You need to get on the record what you
3 all talked about at this time, too.

4 THE COURT: Yes, sir, I thought we did.

5 He's going to ask you some questions about Mr. --
6 on the record, he's going to ask you some questions about
7 Mr. Bennett's situation at jail. As I understand, the
8 appropriate terminology is special management unit; is that
9 right?

10 THE WITNESS: Yes, sir.

11 THE COURT: Like I was saying, be sure that you
12 don't mention death row. Don't say anything to even elude to
13 death row in any way, okay?

14 THE WITNESS: Yes, sir.

15 MR. RIDDLE: And, Your Honor, for the record, the
16 bench conference was just about getting -- I wanted to get
17 the witness instructed about that before I started asking
18 these questions so we didn't end up in a bad situation.

19 THE COURT: Certainly.

20 Anything on that, Mr. Young?

21 MR. YOUNG: No, sir, Your Honor.

22 THE COURT: Okay. Bring the jury back.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 5:48 p.m.)

25 THE COURT: All parties and attorneys are in the

1 courtroom and all jurors are right back.

2 Continue.

3 REDIRECT EXAMINATION

4 BY MR. RIDDLE:

5 Q. Is this the letter that Mr. Young just showed you?

6 A. Yes, he did.

7 Q. And that's the letter from Mr. Montgomery?

8 A. Ben Montgomery, yes, sir.

9 Q. He's out in the courtroom right now, isn't he?

10 A. Yes, sir.

11 Q. Going to be the next witness to testify.

12 A. Okay.

13 Q. That reinstates Ms. Hardee's visitation privileges
14 as of April 18th, 2000?

15 A. Yes.

16 Q. Is that correct?

17 A. Yes, sir.

18 Q. Now, I want to ask you a couple other questions if
19 I could. While Mr. Bennett has been incarcerated at Lieber
20 he has been on the special management unit, has he not?

21 A. Yes, sir.

22 Q. And on the special management unit he's not allowed
23 contact visits with anyone, is he?

24 A. No, sir. Well, no outside visitors.

25 Q. No outside visitors. He has --

1 A. Contact with staff.

2 Q. With staff, right. And he can have a contact visit
3 with his lawyer?

4 A. Yes, sir.

5 Q. But no visitors?

6 A. No visitors, no.

7 Q. Okay. So when Mr. Young asked you about the TV
8 knobs, and wasn't it correct that Mr. Bennett didn't try to
9 do anything inappropriate by getting TV knobs brought in, he
10 doesn't have a way to do that, does he?

11 A. Not likely.

12 Q. And he asked you about a microwave?

13 A. Yes, sir.

14 Q. And Mr. Bennett wanting a microwave. But they
15 don't have a microwave in the special management unit, do
16 they?

17 A. Access to use one, yes, sir, we do. There is one.

18 Q. The special management unit, is that a lockdown
19 situation?

20 A. Mostly, yes.

21 Q. Essentially 23 hours a day?

22 A. Thereabouts, with exception of recreation and
23 showers and medical, but essentially about 23 hours.

24 Q. And he is pretty much segregated from the other
25 inmates; is that correct?

1 A. Yes, sir.

2 Q. Now, he asked you about a number of request forms.

3 A. Yes, sir.

4 Q. That he sent. Do you recognize that one?

5 A. Yes, sir.

6 Q. And that's a request that was addressed to you?

7 A. Yes, sir.

8 Q. Let me show you this one. Is that just a copy of
9 that same thing but with your response whited-out?

10 A. Yes.

11 Q. Is that the same date?

12 A. Yes, sir.

13 Q. Just with your response taken off?

14 A. Right.

15 Q. But the body of the letter from Mr. Bennett is the
16 same?

17 A. Exactly.

18 MR. RIDDLE: Your Honor, I'd offer the redacted
19 version into evidence.

20 THE COURT: Any objection?

21 MR. YOUNG: Is that the one dated May 27th?

22 MR. RIDDLE: Yes, it is.

23 MR. YOUNG: No objection.

24 (WHEREUPON, State's Exhibit No. 66, a Letter,
25 was marked and admitted into evidence.)

1 BY MR. RIDDLE:

2 Q. When Mr. Young asked you about Mr. Bennett not
3 having disciplinaries and that type of information; is that
4 correct?

5 A. Yes, sir.

6 Q. Please read the last phrase in that letter to the
7 jury starting with the word because.

8 A. Because anything in my jacket could very well have
9 an impact on me when I go back to court.

10 MR. RIDDLE: Thank you, sir.

11 THE COURT: Recross?

12 RECROSS-EXAMINATION

13 BY MR. YOUNG:

14 Q. That statement that the Solicitor just asked you
15 just to read.

16 A. Yes, sir.

17 Q. That statement indicates that Mr. Bennett was
18 concerned about his behavior now?

19 A. I'm not sure what you're asking.

20 Q. Let me clarify it.

21 A. Okay.

22 Q. Based on that phrase, do you believe that
23 Mr. Bennett was concerned that he do the right things now?

24 A. If I read the lettering correct I think what he is
25 saying was in response to there was something in his ward

1 jacket from a past disciplinary that could have an affect on
2 him.

3 Q. Okay. And he knew that whatever he did from there
4 on would affect him when he went back to court, right?

5 A. Yes, sir.

6 Q. The Solicitor asked you about visitations.

7 A. Yes, sir.

8 Q. And I couldn't quite hear everything that you said,
9 but did you say that he had no-contact visitations?

10 A. With outside visitors, no.

11 Q. With outside visitors?

12 A. Right.

13 Q. In fact, that special management unit, he would
14 have to talk with outside visitors pretty much through a
15 glass, right?

16 A. Yes.

17 Q. Can't reach out and touch their hand?

18 A. No.

19 Q. Can't give them a hug?

20 A. No.

21 Q. No contact whatsoever?

22 A. None.

23 Q. In fact, can't even feel their own breath, can he?

24 A. No.

25 MR. YOUNG: Thank you. That's all the questions I

1 have.

2 THE COURT: Anything else, Mr. Riddle?

3 MR. RIDDLE: No, sir.

4 THE COURT: All right. You can step down. You're
5 free to go, if you like.

6 MR. RIDDLE: Benjamin Montgomery.

7 BENJAMIN MONTGOMERY, after having been duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. RIDDLE:

11 Q. Tell the jury who you are, sir.

12 A. My name is Benjamin Montgomery.

13 Q. And what do you do for a living?

14 A. I'm the deputy director for the Department of
15 Corrections, South Carolina Department of Corrections.

16 Q. You're one of those guys from Columbia that
17 Mr. Weldon has to report to?

18 A. Exactly.

19 Q. Now, Mr. Montgomery, as part of your job do you
20 have the final say so on inmate visitation matters?

21 A. Yes.

22 Q. And you would review suspensions and things like
23 that, reinstatements, that type of information?

24 A. Not on all, but indefinite and permanent
25 suspension.

1 Q. On serious matters?

2 A. Right.

3 Q. And the letter that we've been talking about from
4 April 18th, 2000 where visits with Hardee were reinstated,
5 you actually wrote that letter; is that correct?

6 A. April 18th, 2000?

7 Q. Yes, sir.

8 A. Yes.

9 Q. All right. Now, I'm going to come back to that in
10 just a minute, okay. In 1999, specifically May 26th of '99,
11 did you receive this letter from Mr. Bennett?

12 A. Yes.

13 Q. And in that letter from Mr. Bennett is he
14 requesting visitations again with Ms. Hardee, that's the
15 5-26-99 letter?

16 A. Yes.

17 MR. RIDDLE: Your Honor, I'd offer this into
18 evidence.

19 THE COURT: Any objection?

20 MR. YOUNG: No objections.

21 (WHEREUPON, State's Exhibit No. 67, a Letter,
22 was marked and admitted into evidence.)

23 MR. RIDDLE: Your Honor, this is State's 67.

24 BY MR. RIDDLE:

25 Q. Now, looking at State's 67, about four lines, five

1 lines down there's a sentence in there that starts with I
2 admit. This was written on 5-26-99?

3 A. That's the date it's dated, yes.

4 Q. Yes, sir. Would you read that sentence to the
5 jury, please.

6 A. I admit we did have sexual relations on several
7 different occasions in a room separated from the visitation
8 area with the officer's consent.

9 Q. So on May the 26th, 1999, State's Exhibit 67, he
10 admits to having sex to you?

11 A. Yes.

12 Q. And when he writes to Warden Sheedy, State's
13 Exhibit 55, basically six weeks earlier, it is said that we
14 had sex; is that correct, very last line?

15 A. Yes.

16 Q. Now, did you subsequently receive some other
17 letters in connection with Ms. Hardee's visitation --

18 A. Yes.

19 Q. -- with Mr. Bennett? Let me show you these
20 documents and ask you if you recognize what they are.

21 A. They are two letters regarding Mr. Bennett's visit
22 and a cover letter from an attorney, Wayne Floyd.

23 Q. And when is the cover letter dated?

24 MR. YOUNG: Objection, Your Honor. We have a
25 matter of law we'd like to take up.

1 THE COURT: All right. Can we do it over here or
2 is it something you need to put on the record? Let's put it
3 on the record.

4 Ladies and gentlemen, let me ask if you'll step to
5 the jury room. One second before you go. One second. It
6 looks like -- I think it's been about an hour. I know you
7 went out one quick time, but it's been about an hour since
8 we've been in there anyway so we'll go ahead and get a short
9 break in. I see some of you want it. Be sure not to talk
10 about the case.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 5:58 p.m.)

13 THE COURT: The jury is secured. Go ahead.

14 MR. YOUNG: Your Honor, now that this witness have,
15 in essence, put Mr. Wayne Floyd's name on the record as far
16 as being involved with the transmission of letters that the
17 State is the actually using against Mr. Bennett I feel that
18 there may be a possibility that I may have to call Mr. Floyd
19 as a witness in order to explain his involvement, which poses
20 a conflict of interest with Mr. Floyd representing
21 Mr. Bennett possibly being required to be a witness.

22 Likewise, it also, if the State is going to go
23 where I think they are going, it's going to put Mr. Floyd's
24 credibility at question here, and even if he is not excused
25 at this point and a new attorney appointed, then it puts us

1 in a position where anything that Mr. Floyd do for the
2 remainder of the trial is going to be questioned by the jury.
3 That is going to result in prejudice to Mr. Bennett. And
4 based on that, I have no choice but to ask for a mistrial at
5 this point and ask that a new attorney be appointed to assist
6 in representing Mr. Bennett.

7 THE COURT: Mr. Floyd, what's your position on
8 that?

9 MR. FLOYD: I agree with what Mr. Young says. The
10 State had no basis to bring me into it that way except to
11 kind of demean us in front of the jury. Because what
12 happened there, there was a transmittal letter sent by my
13 office, and that was it. No relevance except the transmittal
14 letter was sent. They brought it up just to demean us in
15 front of the jury. And I agree with Mr. Young, I've lost my
16 credibility with them, and I don't think I can continue to
17 participate in Mr. Bennett's behalf because the jury is going
18 to be prejudiced against us.

19 THE COURT: Mr. Riddle?

20 MR. YOUNG: Your Honor, before Mr. Riddle argue I
21 would like -- I don't know if Mr. Riddle showed this document
22 to you, but if the State is going to elicit from this witness
23 testimony regarding two letters that he received from
24 Mr. Floyd and as a result he responded to Mr. Floyd in a
25 letter and he subsequently received another letter, then I

1 ask the Court to take note of the letter that was sent to
2 Mr. Floyd. In that letter there is indication from this
3 witness that even he questioned the credibility of either the
4 authors of the letters or Mr. Floyd's involvement.

5 THE COURT: The jury hasn't seen this letter, am I
6 right?

7 MR. YOUNG: No, sir, but I would anticipate that
8 this witness would testify regarding the two letters that he
9 received, and at some point in time that letter is probably
10 going to get involved somehow.

11 THE COURT: But the jury hasn't seen those two
12 letters either, right?

13 MR. RIDDLE: Correct.

14 THE COURT: As I understand, Mr. Floyd's name has
15 just really been sort of mentioned in passing, was it not?

16 MR. YOUNG: Well, the witness said that he received
17 the two letters with a cover letter from Attorney Wayne
18 Floyd.

19 THE COURT: Right.

20 MR. YOUNG: And when he further testified that he
21 responded to the letters as he did in that letter is
22 automatically going to cast a shadow on Mr. Floyd, and the
23 jury is going to be sitting over there and they are going to
24 be wondering what, if anything, did Mr. Floyd know about that
25 this witness will testify, and therefore, it will put his

1 credibility at issue.

2 THE COURT: Mr. Riddle?

3 MR. RIDDLE: Your Honor, the cover letter from
4 Mr. Floyd that's being addressed simply says I have enclosed
5 letters from Judie Hardee and Johnny Bennett regarding the
6 reinstatement of their visiting privileges. Please contact
7 me if you require anything additional.

8 The letters that Mr. Montgomery received from
9 Johnny Bennett and allegedly from Ms. Hardee are undated.
10 The only reason I'm talking about this cover letter at all is
11 because it's the only thing in there with a date. I'm just
12 trying to establish the date.

13 Now, he does, in fact, respond back to Mr. Floyd
14 because Mr. Floyd is the one that offered them. I don't have
15 an objection to saying he responded back to Mr. Bennett
16 because that's essentially what he did, he just did it
17 through Mr. Floyd. I'm not offering Mr. Montgomery's letter,
18 the one that Mr. Young just handed you, but simply allowing
19 him to read that second paragraph of that letter. That was
20 his response back.

21 THE COURT: Okay.

22 MR. RIDDLE: I'm not trying to put Mr. Floyd in the
23 middle of this. All I'm trying to do is establish when he
24 got the correspondence, which was February of 2000.

25 MR. YOUNG: Your Honor, I do not mean to imply that

1 the Solicitor intentionally tried to elicit that testimony.
2 In fact, I anticipated that he was going to try to skirt
3 around it. But that's the reason I knew that that letter was
4 out there, and when this witness stated Mr. Floyd's name I
5 anticipated that that was going to happen.

6 I still say that it's been -- it's out there now.
7 They know that Mr. Floyd sent the letters to this witness.
8 This witness is going to testify that in his response to
9 Mr. Bennett is that he questioned the author or the
10 penmanship of both of these letters, specifically the letter
11 that is purportedly sent by Ms. Hardee.

12 And when he offers that testimony with the cover
13 letter from Mr. Floyd saying please contact me if there are
14 anything additional, it's automatically going to put him in
15 the middle of it in the jury's mind. And that is something
16 that I don't believe that we can get around. Mr. Floyd's
17 credibility is at issue. Even if for nothing else I may have
18 to put Mr. Floyd on the stand to just say his only
19 involvement was he got the letters and he forwarded them
20 over. And that's the problem that I am in now.

21 Your Honor, I also would like to note for the
22 record that the letters are stamped dated received March
23 20th, 2000. They are not dated as far as the date that they
24 would have been written, but they are stamped dated received
25 March 20, 2000, deputy director of operations, or deputy

1 director of operations, as well as the letter from Mr. Floyd.

2 THE COURT: Well, go ahead and talk to Mr. Floyd
3 for a second.

4 [PAUSE.]

5 THE COURT: Anything else?

6 MR. YOUNG: That's all we have, Your Honor.

7 MR. RIDDLE: Your Honor, if it please the Court.

8 I'd hand up my copies of the letters. Again, the letters
9 that I showed to this witness is a cover letter dated
10 February 2nd, 2000. That letter is date stamped received
11 February 4th, 2000. It had two enclosures not dated, not
12 date stamped; one purporting to be from Ms. Hardee, a second
13 letter from Johnny Bennett. Neither one of those is date
14 stamped.

15 There is a subsequent letter from Johnny Bennett
16 which is the rest of all of this which is, in fact, date
17 stamped March 20th, 2000 where he says I want to apologize I
18 was the one who wrote the last letters. Now, that one is
19 date stamped March 20th, 2000. But it is incorrect when
20 Mr. Young states that the letters that came with the February
21 2nd letter are date stamped March 20th of 2000.

22 MR. YOUNG: That is correct, Your Honor. I was
23 looking at the previous letters when I stated that.

24 THE COURT: Counsel, I'm going to -- I'm sorry, go
25 ahead.

1 MR. RIDDLE: Your Honor, I'll do it however. I'm
2 just trying to establish that it happened in February of
3 2000.

4 THE COURT: Yes, sir. Well, at this point, I'm
5 going to deny the motion for a mistrial. I don't think the
6 mistrial is necessary because Mr. Floyd's name was mentioned
7 and it was only mentioned that it was done. We can always
8 stipulate or I can give a curative instruction to the jury
9 that the letter was done only to transmit the letters and
10 that was all.

11 I would think that provided the jury doesn't see
12 the two letters that keeps Mr. Floyd out of it and doesn't
13 impugn his credibility in any way I think then. Obviously,
14 if they did, I can understand your point that if they saw the
15 two letters then that's going to be a problem with Mr. Floyd
16 having sent two letters that were signed and basically
17 written in the same fashion, in fact, almost identical. So I
18 think we can resolve that. We don't need a mistrial for
19 that. Okay, anything else?

20 MR. RIDDLE: I'd just like a little instruction on
21 how you want me to handle it.

22 THE COURT: Well, I don't see why you couldn't just
23 ask the witness straight up if he didn't get the letters when
24 he got the letters.

25 MR. RIDDLE: I'll ask him if he received these

1 letters, these two letters from Mr. Bennett and Ms. Hardee on
2 February the 4th of 2000.

3 THE COURT: Yes, sir.

4 MR. RIDDLE: And then did he respond back to
5 Mr. Bennett.

6 THE COURT: Yes, sir, I think that's satisfactory.

7 MR. RIDDLE: On February the 24th, 2000.

8 THE COURT: Yes, sir.

9 MR. RIDDLE: Without introducing this letter. And
10 then did he subsequently receive another letter from
11 Mr. Bennett March the 20th of 2000. And then which you've
12 already heard and is already in evidence that he reinstated
13 him April 18th.

14 THE COURT: Yes, sir. Again, as long as we do that
15 that resolves the problem.

16 MR. YOUNG: Your Honor, I just want the record to
17 reflect that our objection stands.

18 THE COURT: Noted. I'll note that.

19 MR. YOUNG: And I also wish to note that I do not
20 request a curative instruction of the nature that the Court
21 has addressed because I believe if the Solicitor is going to
22 come back with questions the way he is going to come back the
23 Judge's instruction will pretty much inflame and make them
24 start wondering what was the significance of Mr. Floyd's
25 name.

1 THE COURT: I don't want to inflame then. Okay.

2 What we can do, let's just give everybody a quick meditating,
3 just maybe five or ten minutes, everybody have a chance for a
4 bathroom break, and that's all.

5 Yes, sir, Mr. Myers?

6 MR. MYERS: The only thing I want to do before we
7 break, State's Exhibit 63 was a three-page statement by
8 Mr. Bennett to Rudolph Tillman, and when I offered that as an
9 exhibit we had a side-bar conference.

10 The defense said they had no objection as long as
11 the third page, the last sentence on the third page says he
12 is willing to take a polygraph. They said that they wanted
13 that redacted. We now have that third page with he is
14 willing to take a polygraph redacted and not in the exhibit.
15 And the third page will read that on Exhibit 63 without
16 objection from the defense.

17 THE COURT: Okay. Satisfactory, Mr. Young?

18 MR. YOUNG: Yes, sir, Your Honor.

19 THE COURT: All right. We'll stand in recess just
20 for a few minutes.

21 (WHEREUPON, a brief recess was taken.)

22 THE COURT: The State ready?

23 MR. MYERS: Yes, sir.

24 THE COURT: All right. Bring them in.

25 (WHEREUPON, the jury enters the courtroom at

1 approximately 6:23 p.m.)

2 THE COURT: All parties are in the courtroom and
3 all jurors have now returned.

4 Madam Forelady, as I understand and I believe you
5 advised Ms. Jacobs a few minutes ago that a number of the
6 jurors are tired but you feel like you could go on a little
7 bit more; is that right?

8 THE FORELADY: (Nodded).

9 THE COURT: And what she's told me, and tell me --
10 certainly I'm not putting things in your mouth, tell me if
11 this is correct. She said you felt like if the State could
12 probably get their case through about 8:00 that you'd be able
13 to stay; is that right? Is everybody okay with that?

14 All the jurors are nodding.

15 Go ahead.

16 BY MR. RIDDLE:

17 Q. Mr. Montgomery, you received two letters on
18 February the 4th of this year; is that correct?

19 A. That's correct.

20 Q. And those letters were purportedly one from Johnny
21 Bennett and one from -- well, it's signed Ms. Hardee; is that
22 correct?

23 A. That's correct.

24 Q. But the first sentence of that letter says my name
25 is Judie Hardee; is that correct?

1 A. That's correct.

2 Q. And did these letters concern having Ms. Hardee's
3 reinstatement privileges restored?

4 A. Yes, they did.

5 MR. RIDDLE: Your Honor, I'd offer these into
6 evidence at this time.

7 THE COURT: Any objection?

8 MR. YOUNG: No objection.

9 THE COURT: All right, without action.

10 (WHEREUPON, State's Exhibit Numbers 68 and 69,
11 Letters, were marked and admitted into evidence.)

12 MR. RIDDLE: And, Your Honor, for the record,
13 State's Number 68 is the letter from Johnny Bennett, and
14 State's Number 69 is the one that is signed Ms. Hardee.
15 BY MR. RIDDLE:

16 Q. Now, referring to State's Number 68 and 69,
17 Mr. Montgomery, when you received these did anything strike
18 you about these two letters?

19 A. They were very similar in the way that they were
20 written and the handwriting.

21 Q. The handwriting was the same?

22 A. Yes, sir.

23 Q. And the style of the letters was?

24 A. Yes. Yes.

25 Q. And when you read those letters did you reach any

1 conclusion as to whether or not they were authored, written
2 by the same person?

3 A. They appeared to be, yes.

4 Q. And as a result of that, did you respond back to
5 Mr. Bennett regarding his request in February of 2000 for
6 visitation?

7 A. Yes.

8 Q. And you wrote a letter on February 24th of 2000; is
9 that correct?

10 A. Yes.

11 Q. Would you please read the second paragraph of your
12 letter to the jury, the one that starts with while the
13 letters, and this was a communication to Mr. Bennett?

14 A. Yes.

15 Q. Okay.

16 A. While the letters are in different colored ink and
17 have been addressed at the bottom by two different names both
18 letters were written by the same person. Honesty plays an
19 important role in matters like this, and obviously, someone
20 is not being totally honest. Such deception leaves me with
21 doubts about whether our agency will again have problems if
22 their visitation privileges are reinstated.

23 Q. Now, subsequent to your responding to Mr. Bennett
24 did you receive a letter on or about March the 20th of 2000?

25 A. Yes.

1 Q. And that's a letter from Mr. Johnny Bennett?

2 A. That's correct.

3 Q. And that's your stamp at the top there, is it not?

4 A. That's correct.

5 MR. RIDDLE: Your Honor, I'd offer this letter into
6 evidence.

7 THE COURT: Any objection?

8 MR. YOUNG: No objections, Your Honor.

9 (WHEREUPON, State's Exhibit No. 70, a Letter,
10 was marked and admitted into evidence.)

11 BY MR. RIDDLE:

12 Q. Now, do you have a copy of this letter with you,
13 the March 20th letter?

14 A. Yes.

15 Q. Starting down near the bottom of the page there's a
16 paragraph that starts with Mr. Montgomery. I would like for
17 you to read the first sentence.

18 A. Mr. Montgomery, I want to apologize to you. I was
19 the one who wrote the last letters.

20 Q. And he goes on, does he not, to give a reason why
21 he wrote those letters?

22 A. That's correct.

23 Q. And isn't that reason he indicates that Ms. Hardee
24 had been ill and so he took it upon himself to do that; is
25 that correct?

1 A. That's correct.

2 Q. Now, after receiving that letter, April 18th of
3 2000, you reinstated Mr. Bennett's visitation with
4 Ms. Hardee?

5 A. That's correct.

6 MR. RIDDLE: Your Honor, I'd offer this into
7 evidence.

8 THE COURT: Any objection?

9 MR. YOUNG: No objection.

10 (WHEREUPON, State's Exhibit No. 71, a Letter,
11 was marked and admitted into evidence.)

12 BY MR. RIDDLE:

13 Q. Tell me if this is correct, sir. February 2000,
14 writes letter and signs Judie Hardee's name attempting to get
15 her visits reinstated?

16 A. That's correct.

17 Q. And March 2000, writes letter admitting he
18 falsified February letter from Hardee, asks again for visits
19 to be reinstated?

20 A. That's correct.

21 Q. And, of course, this one's already up there. April
22 18, 2000, visits with Hardee reinstated?

23 A. That's correct.

24 MR. RIDDLE: Thank you, sir. Please answer any of
25 the defense's questions.

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. YOUNG:

4 Q. Mr. Montgomery, the Solicitor had you reading from
5 State's Exhibit 70, the second paragraph. If you would,
6 would you read the second sentence of that paragraph.

7 A. Second sentence of the second paragraph?

8 Q. Of the second paragraph, yes, sir.

9 A. Mr. Montgomery, I want to apologize to you -- the
10 second sentence, I'm sorry.

11 Q. Yes, sir.

12 A. I wasn't trying to be deceitful in any way.

13 Q. He stated that right before he explained why he
14 wrote that letter, did he not?

15 A. That's correct.

16 Q. And he wrote that letter because of an illness that
17 Ms. Hardee had?

18 A. That is what he indicated, yes.

19 Q. So a more accurate statement on this board would be
20 he falsified the letter because Ms. Hardee was ill?

21 A. I could not verify if Ms. Hardee was ill or not.

22 Q. That's what he said, did he not?

23 A. That's what he said, yes.

24 Q. Stated that he wasn't trying to deceive anyone?

25 A. Yes.

1 Q. He accepted responsibility for what he did?

2 A. Yes.

3 Q. You did at some later date receive a letter from
4 Ms. Hardee?

5 A. Yes.

6 Q. And as a result, her privileges were reinstated?

7 A. That's correct.

8 Q. And both him and Ms. Hardee were strongly cautioned
9 about their behavior?

10 A. That's correct.

11 Q. In fact, in one of the letters that Mr. Bennett
12 wrote you, he promised you that he will make sure that that
13 wouldn't happen again, didn't he?

14 A. That's correct.

15 MR. YOUNG: Thank you. I have no further
16 questions.

17 MR. MYERS: Thank you. We call John Christy to the
18 stand.

19 THE COURT: You can step down, and you're free to
20 go if you'd like to.

21 JOHN CARLTON CHRISTY, after having been duly
22 sworn, testified as follows:

23 THE CLERK: State your full name for the record,
24 please.

25 THE WITNESS: John Carlton Christy, C-h-r-i-s-t-y.

DIRECT EXAMINATION

BY MR. MYERS:

Q. By whom are you employed?

A. I'm employed with the South Carolina Law Enforcement Division, or SLED as it is commonly referred to here in Columbia, South Carolina.

Q. And how long have you been employed with SLED?

A. Ten years now.

Q. Now, I'd like to ask you back December 1st, December 2nd, 1990 when you're performing your duties at SLED, did you have an occasion to come into Lexington County and go to an area outside Swansea off Happy Town Road to assist with the processing of a murder scene?

A. Yes, sir, I did.

Q. And all of that was in Lexington County, right?

A. Yes, sir.

Q. And were there some other officers from the Sheriff's Department there also processing the scene?

A. Yes, sir. The officers from the Sheriff's Department that were present at the scene was Lieutenant Bucky Phillips, Lieutenant Jim Hickman, Captain Paavel, Corky Spires and the coroner's representative was Jake Knotts.

Q. Had the body been moved by the time that you arrived?

A. No, sir, it had not.

1 Q. I show you what's been marked State's Exhibit
2 Number 42. Does that appear to be the position that the body
3 was in?

4 A. Yes, this is the position that the body was in
5 after it was uncovered.

6 Q. Did you get there before it was uncovered?

7 A. It was not uncovered until I got there. That was
8 what myself and Special Agent Don Girndt did.

9 Q. You all help uncovered the body?

10 A. Yes, sir.

11 Q. So prior to getting there, the condition of the
12 body was as depicted in State's Exhibit 40?

13 A. Yes, sir.

14 Q. Now, after the body was uncovered, and the debris
15 moved off did you all take some photographs?

16 A. Yes. As we would partially uncover it we would
17 photograph as we progressed. First thing we did when we
18 arrived was we photographed the debris. By debris, I mean
19 leaves and tree limbs that were piled on top of the
20 deceased's body, then we would remove some and take some more
21 photographs.

22 Q. And once all the debris, or as much as you could
23 moved off the body, did you take some more photographs of the
24 body then?

25 A. Yes, prior to it being moved we did photograph it.

1 Q. And other than the debris being moved off did you
2 all alter the body in any way?

3 A. No, sir.

4 Q. And some of those photographs depict the wounds
5 inflicted to the body and the condition the body was in that
6 night?

7 A. Yes, those do.

8 Q. Are these three photographs that you took of the
9 body as it was at the scene?

10 A. Yes, that is correct, the three photographs
11 accurately depict the condition of the body at the scene.

12 MR. MYERS: Your Honor, we would offer these three
13 into evidence.

14 THE COURT: Any objections?

15 MR. YOUNG: Your Honor, we will object to these and
16 we would like to show them to the Court.

17 THE COURT: Okay. Let me take a look at them.

18 [PAUSE.]

19 THE COURT: Counsel, I'm going to allow the
20 photographs to be admitted. I'll put a little bit more on
21 the record later.

22 (WHEREUPON, State's Exhibit Numbers 72 through
23 74, Photographs, were marked and admitted into evidence.)

24 BY MR. MYERS:

25 Q. State's Exhibit 73 -- could you come down, please.

1 A. Yes, sir.

2 Q. Start at that end and show it to the jury.

3 A. State's Exhibit Number 73 is a photograph of the
4 victim's body after it was uncovered. There was a tree
5 between both legs of the victim, and there was damage to the
6 victim's arms from animals being present.

7 MR. YOUNG: Your Honor, is it possible that he
8 could turn so that we could hear him as well.

9 THE COURT: Yes, sir.

10 Mr. Christy, can you either turn that way or just
11 speak up. If you can speak up louder that's okay, so the
12 other attorneys can hear you.

13 BY MR. MYERS:

14 Q. Repeat about the damage to the arm.

15 A. Sure. On the victim's arms there's damage from
16 where animals had visited the crime scene prior to our
17 arrival. This is a photograph of the victim after the leaves
18 and tree limbs had been removed from the top of the body.

19 Q. Just come down this way. You don't have to explain
20 that again.

21 A. (The witness complied.)

22 Q. Now, the arm that you were talking about that
23 animals had damaged, was that the one that's kind of up in
24 the air?

25 A. Yes, sir, there was damage, I believe, to both

1 arms.

2 Q. Does State's Exhibit 72 show the other arm?

3 A. Yes, sir, it does. State's Exhibit 72 is a closer
4 up photograph of mainly of the upper body, the torso area of
5 the deceased and the arms. It's taken at a closer distance.

6 Q. And State's Exhibit 74, do you notice any wounds to
7 the face on 74?

8 A. Yes, sir. On State's Exhibit Number 74, the wounds
9 just to the left of the eye there, just above my finger
10 (indicated).

11 Q. Now, Agent Christy, you all did not try to identify
12 all the wounds at the scene; is that correct?

13 A. No, sir, we did not. That would have been done by
14 the pathologist at some later time.

15 Q. And the body was removed to be taken to a
16 pathologist to go into all of the wounds and the cause of
17 death; is that right?

18 A. That's correct. Our job was to recover the body
19 intact so that it could be submitted for examination by a
20 pathologist and collect and secure the evidence in regard to
21 the crime.

22 Q. So this is basically how you found the body after
23 digging all the stuff off of it, uncovering the grave?

24 A. That's correct.

25 MR. MYERS: If you would, please answer any

1 questions they have.

2 THE COURT: Cross?

3 CROSS-EXAMINATION

4 BY MR. FLOYD:

5 Q. Agent Christy, what time did you arrive on the
6 scene?

7 A. Myself and Special Agent Girndt arrived at
8 1:06 a.m.

9 Q. What time did the two of you depart the scene?

10 A. We both departed at 4:15 a.m.

11 Q. And while you were there were both of you assisting
12 in the investigation of the crime scene?

13 A. We were.

14 Q. When was the body removed?

15 A. The body was removed by Knight Body Removal Service
16 at the direction of the assistant coroner at that time, Jake
17 Knotts, at four a.m. in the morning.

18 Q. Four a.m. is when the body was removed?

19 A. That's correct.

20 Q. Now, while you and Agent Girndt, is it?

21 A. Girndt.

22 Q. Girndt were there for those three -- approximately
23 three hours, were you all searching for any evidence in the
24 crime scene area?

25 A. Yes, we were.

1 Q. Did you all do a thorough search of the crime scene
2 area?

3 A. Yes, we did.

4 Q. And while you all did this search of the crime
5 scene area did you locate any type of murder weapon?

6 A. No, sir, we did not that night.

7 MR. FLOYD: Thank you. No further questions.

8 MR. MYERS: Come down, please.

9 THE COURT: Agent Christy, you're also free to
10 leave, if you'd like to.

11 MR. RIDDLE: Dr. Joel Sexton.

12 DR. JOEL STEPHEN SEXTON, after having been
13 duly sworn, testified as follows:

14 THE CLERK: Please state your name for the record,
15 sir.

16 THE WITNESS: Dr. Joel Stephen Sexton.

17 DIRECT EXAMINATION

18 BY MR. RIDDLE:

19 Q. Doctor, where are you employed?

20 A. In Newberry, South Carolina.

21 Q. And what do you do in Newberry?

22 A. I'm the contract pathologist for the hospital, our
23 group, Newberry Pathology Associates, do the surgical
24 pathology for the hospital, as well as autopsies for the
25 hospital. I'm also a consulting forensic pathologist, and

1 our group are, for the coroners in the State, approximately
2 30, those in the upstate bring cases to us.

3 Q. And you are a medical doctor?

4 A. Yes, that's correct.

5 Q. Tell the jury your background, your education, your
6 qualifications in this area.

7 A. I graduated from the University of Virginia with a
8 B. A. in chemistry, and then served in the Navy for three
9 years because I was on a Naval scholarship. I then attended
10 the Medical College of South Carolina in Charleston and
11 received a Masters in Chemistry from the Medical College,
12 then attended the Medical University of South Carolina, which
13 was the same institution but it became a university during
14 the time that I was in graduate school, and received my M. D.
15 degree, graduating 1968 and becoming licensed to practice
16 medicine in South Carolina. I then did a residency in
17 pathology at the Medical University, finishing in 1972.

18 Q. Stop for a minute, Doctor. Did a residency in
19 pathology?

20 A. That's correct, finishing in 1972 and becoming
21 nationally certified in anatomic pathology, clinical
22 pathology and forensic pathology.

23 Q. Tell the jury what pathology is and a little bit
24 about those three subspecialties of pathology.

25 A. Pathology basically is the study of disease as it

1 pertains to making a diagnosis from looking at tissue. So
2 the pathologist in a hospital setting does examinations of
3 tissue removal surgery to see if the patient has cancer or
4 some infection or some other condition and to what extent it
5 is involved in the individual to help your physician better
6 treat you.

7 The pathologist also supervises examination of
8 blood, urine, spinal fluid, other fluids that come into the
9 lab to determine if there are abnormal constituents present
10 or if there are normal constituents in abnormal quantities
11 present, and we have advised your physician as to what the
12 values mean and to determine if you have a condition, an
13 abnormal disease or illness, and whether you're getting
14 better or worse based on how these changes develop in this
15 those particular fluids.

16 The pathologist also does autopsies in the hospital
17 setting on person's dying of natural disease to learn more
18 about that disease with the benefit of the physicians
19 treating that individual as well as others that might treat
20 similar disease.

21 The area of forensic pathology deals with trauma
22 and sudden deaths that are due to poisons or some other
23 condition. So the pathologist has a background understanding
24 of natural disease and then has specialized training on how
25 to recognize what different types of trauma look like in the

1 body, what stab wounds look like, blunt force injury, gunshot
2 wounds, as well as understanding the affects of drugs or
3 chemicals on the body.

4 And more particularly, trying to piece together the
5 facts found at the death scene, the facts found on the body,
6 the facts found in the laboratory on samples that were
7 collected to determine not only the cause of death, which is
8 generally very obvious in a violent death, but how that death
9 occurred, what were the circumstances leading up to the
10 death.

11 Q. And you're here today in the capacity as a forensic
12 pathologist; is that correct?

13 A. Yes, that's correct.

14 Q. Now, you indicated you were a consultant for
15 approximately 30 of the coroners in this State?

16 A. Yes, that's correct.

17 Q. And having done that, can you give the jury some
18 estimate of the number of forensic autopsies you've performed
19 over, I think you've been practicing 32 years; is that
20 correct?

21 A. Over eight thousand cases.

22 Q. Eight thousand autopsies?

23 A. Yes, that's correct.

24 Q. Now, Doctor, have you ever been qualified as an
25 expert witness before in the area of forensic pathology?

1 A. Over seven hundred times.

2 Q. Sometimes in this courtroom?

3 A. Yes, that's correct.

4 Q. Approximately how many other counties in this State
5 do you think you've been qualified as an expert?

6 A. When I was at the Medical University where I stayed
7 from 1972 when I finished my residency program until I moved
8 to Newberry in '83, I was a consulting forensic pathologist
9 and head of the forensic section at the University for that
10 period of time for all the county coroners. So I feel like
11 I've probably testified in most all the counties in the State
12 over the last 32 years.

13 Q. And have you also been qualified as an expert in
14 other states in the area of forensic pathology?

15 A. That's correct.

16 Q. Can you give us an estimate on the number without
17 just listing them?

18 A. Only about two or three, just neighboring states.

19 Q. And you've been qualified as well in the federal
20 courts?

21 A. That's correct.

22 MR. RIDDLE: Your Honor, at this time I would offer
23 Dr. Sexton as an expert in the area of forensic pathology.

24 THE COURT: Any objection?

25 MR. FLOYD: No objection.

1 THE COURT: Do you wish to voir dire him at all?

2 MR. FLOYD: No, Your Honor.

3 THE COURT: All right. We'll qualify Dr. Sexton as
4 an expert in the area of forensic pathology.

5 Now, ladies and gentlemen, let me go over this with
6 you just a minute, okay. Now, listen very closely. As we've
7 told you, most witnesses are considered lay witnesses. They
8 testify as to some knowledge about the case in particular.
9 There are, however, some witnesses who are allowed to testify
10 as experts, and they testify as an expert in a particular
11 area because of their background, training, education,
12 qualifications or experience in that particular area.

13 Now, when an expert is -- when a witness is allowed
14 to testify as an expert witness then that witness may also
15 give an opinion in that area. Now, you are not bound by the
16 opinion of any expert. You determine how much weight and
17 credibility to give to the opinion of any expert. Again,
18 they'll be allowed to give an opinion but it's up to you to
19 determine the weight and credibility to be given to the
20 opinion.

21 With that in mind, continue.

22 BY MR. RIDDLE:

23 Q. Now, Doctor, when you perform a forensic autopsy,
24 and I'm not talking about the one in this case, but just in
25 general, can you give the jury an idea of sort of the process

1 and the procedures that you go through in order to perform
2 that autopsy?

3 A. Yes, I'll be glad to. Initially, when I was in
4 Charleston we tried to go to the scene of the accidents.
5 In fact, for ten of those years I was the Charleston County
6 medical examiner, which is a medical equivalent of a coroner.
7 And in that capacity, myself or some of my people went to
8 each scene of the death and examined the body there checking
9 for evidence along with the police, and then bringing the
10 body in and examining it further and then doing a complete
11 autopsy.

12 In my capacity now, I generally don't get to those
13 scenes but they bring photographs, they bring information
14 from the scene. So we try to first get an understanding of
15 what was found at the scene with the photographs, the
16 descriptions or drawings. We look at the body externally as
17 it arrives, photographing it externally and documenting
18 what's present, if you find anything on the clothing or if
19 the body is nude, anything on the outside of the body.

20 Then we collect the clothing carefully, putting it
21 in appropriate bags to be transferred to SLED for them to
22 further examine it, and then we examine the external surface
23 of the body before we clean it up. Then after we clean it up
24 if we found all the evidence that we think might be present
25 externally then we document this not only with dictation but

1 with photographs and drawings of what we've seen.

2 And then we do a complete internal examination,
3 looking at all the organs to see if there's any disease or
4 illness or injury, having documented any injury that might be
5 present externally, and then we examine the same tissues,
6 small fragments of those tissues microscopically as well as
7 collecting samples that can be used by the laboratory for
8 toxicological analysis.

9 So we basically try to understand everything from
10 the scene through the complete autopsy, including microscopic
11 and later reports from SLED from the toxicology that was
12 collected.

13 Q. Doctor, when you perform a forensic autopsy would
14 it be fair to say that you're looking for evidence about not
15 only the cause of death but the manner of death as well?

16 A. That's correct, because as I mentioned earlier,
17 we're particularly interested in the circumstances
18 surrounding the death which help lead to a manner. A manner
19 of death -- well, first, a cause of death is what physically
20 caused the person to die; a shooting, stabbing, beating.

21 The manner of death has to do whether it's at the
22 individual's own hands in the case of a suicide, whether it's
23 at the hands of another, whether it's a natural death or
24 whether it's some type of accidental death, or in some cases
25 the death would be unable to determine the cause of death,

1 which we refer to as undetermined.

2 Q. Now, Doctor, did you perform a forensic autopsy in
3 this case on the body of Mr. Benton Smith?

4 A. I did, on the 3rd of December 1990.

5 Q. And that was done where?

6 A. In Newberry.

7 Q. At your offices?

8 A. That's correct.

9 Q. Now, you indicated, essentially, that the process
10 is you've got to start with the whole then work down to the
11 various parts; is that correct?

12 A. Yes, that's correct.

13 Q. Starting with the whole, did you weigh Mr. Smith
14 and measure his height?

15 A. What we do is we measure the person's length, which
16 corresponds generally quite well with the person's height.
17 Although, after death when all the muscles relax sometimes
18 the height is not exactly the same as the length, plus often
19 times we measure our height when we are alive with our shoes
20 on. His length was five-feet, eight-inches, and based on his
21 body frame we estimated his weight at 135 pounds.

22 Q. Five-eight, 135?

23 A. That's correct.

24 Q. Now, would it be fair to say based on your autopsy
25 -- or could you describe Mr. Smith's build.

1 A. He was a slender individual, and would look to be
2 tall in a sense, only five-eight but looked to be tall and
3 thin, even though he's not really very high, just
4 slender-type individual.

5 Q. Not a very big man?

6 A. That's correct.

7 Q. Now, Doctor, during the autopsy process I believe
8 you indicated you take photographs?

9 A. Yes, that's correct.

10 Q. And have I showed you these photographs previously
11 or do you recognize them?

12 A. Yes, I do recognize these. These are some that I
13 have seen previously.

14 Q. And these were all taken at the autopsy of
15 Mr. Benton Smith?

16 A. They were. These are blow-ups of the photographs
17 that I took on two-by-two slides. I took my photographs with
18 two-by-two slides, but these are prints made from those
19 slides.

20 Q. And would these photographs assist you, Doctor, in
21 presenting your evidence and findings to the jury?

22 A. Yes, they would.

23 MR. RIDDLE: Your Honor, we would offer those into
24 evidence.

25 THE COURT: Any objection, Counsel?

1 MR. FLOYD: Yes, Your Honor, we do have an
2 objection to these photographs.

3 (WHEREUPON, a bench conference was had.)

4 THE COURT: Ladies and gentlemen of the jury, let
5 me ask if you'll step to the jury room just for a moment. I
6 just need to put a couple things on the record. Don't talk
7 about the case while you're there now.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 7:00 p.m.)

10 THE COURT: All right. Counsel, I think the jury
11 is secured at this point. Counsel, let me do this, for the
12 record. We had some photographs earlier, three photographs
13 that were admitted with Agent Christy. These photographs had
14 been shown to me.

15 These photographs now, of course, are much more
16 graphics than the photographs admitted before. But again,
17 while they are graphic, I still find that the probative
18 nature of the photographs actually outweighs the graphic or
19 inflammatory nature of them.

20 As you know, the standard is actually the other
21 way. As long as the probative value is not substantially
22 outweighed by the graphic nature of it. In this case, I
23 find, again, that the probative value is rather high in terms
24 of illustrating to the jury the number and nature and
25 severity of the stabs wound involved, and I think the fist

1 wounds involved to the victim. And so, again, while they're
2 graphic certainly the probative value still outweighs the
3 graphic nature of them. So I would find they are admissible.

4 And I make the same finding as to the three
5 photographs a few moments ago with Agent Christy. In that
6 case, the photographs illustrated the condition in which the
7 body was left. And while there was some -- maybe a tad of
8 decomposition, there was also some damage to an arm where
9 apparently animals had eaten part of the arm or something
10 like that, but it was not so much as to make the photograph
11 inadmissible. And again, in that case, I found that those
12 photographs were also admissible.

13 Counsel, I believe you wanted just a second with
14 your client; is that correct?

15 MR. FLOYD: Yes, Your Honor, Mr. Bennett requested
16 a brief recess.

17 THE COURT: I'll just stay here on the bench for a
18 couple minutes and let you take a couple minute doing that,
19 okay.

20 (WHEREUPON, a brief recess was taken.)

21 (WHEREUPON, State's Exhibit Numbers 75 through
22 82, Photographs, were marked and admitted into evidence.)

23 MR. FLOYD: Your Honor, Mr. Bennett has asked me to
24 ask the Court if this testimony will go forward now if he
25 could sit back in the jury room throughout this presentation.

1 He's a little tired, he's not feeling that good.

2 He's a little concerned, Benton was his friend and
3 he doesn't want to break down in front of the jury and maybe
4 Benton's parents also, and he requests the Court to allow him
5 to sit back in the jury room while this witness testifies.

6 THE COURT: Okay. Mr. Benton, is that correct, you
7 want to be able to stay back in another room while this part
8 of testimony is going on?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. You understand, of course, you
11 have a right to be in here; you understand that, right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand you would have to
14 specifically give up or waive your right to be in the
15 courtroom during that time. Are you giving that up, the
16 right to be in here during this testimony?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. You had a chance to talk with
19 your lawyer about that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And I don't know whether your being
22 here or not being here would have an impact on the jury or
23 not, but have you discussed that alternative with your
24 lawyer, too?

25 THE DEFENDANT: Well, Your Honor, you know, I

1 discussed it with Mr. Floyd. And, you know, based upon the
2 nature of the photographs, I mean, I honestly feel that it
3 would be in my best interest not to be here at this time.
4 Because like he said, you know, those photographs -- I mean,
5 I just can't sit here and see those things and then I got to
6 try to be a certain way for the jury.

7 THE COURT: Yes, sir, I understand.

8 THE DEFENDANT: Then I got to be a certain way for
9 my family, and then I also know that the photographs are
10 going to affect the victim's family, you know what I mean?
11 And I don't feel that right now it would be in my best
12 interest because I know I can't handle it.

13 THE COURT: Yes, sir.

14 THE DEFENDANT: And I honestly feel that it would
15 be in my best interest if I was to, you know, miss out on
16 this part of the trial.

17 THE COURT: I understand.

18 Okay. Mr. Floyd, you've discussed that with him?

19 MR. FLOYD: Yes, Your Honor.

20 THE COURT: Do you want to make -- I will give an
21 attorney the alternative of commenting on it if you wish to,
22 whether he agrees or doesn't agree. You don't have to
23 comment, but do you want to make any comment about that
24 decision?

25 [PAUSE.]

1 MR. FLOYD: Your Honor, Mr. Bennett and I were
2 talking, and I believe I think I've advised him of what my
3 feelings are, that it's best for his presence to be here
4 throughout the entire trial. He's requested that he be given
5 about a ten-minute recess if we can talk some more and
6 prepare himself for this testimony.

7 THE COURT: Mr. Riddle?

8 MR. RIDDLE: He's already had a ten-minute recess,
9 Your Honor. We're under a time crunch, which is not really
10 relevant, but the jury wanted to work until about eight
11 o'clock.

12 THE COURT: Yes, sir.

13 MR. RIDDLE: I don't know how long this is, but
14 we're pretty close to resting and we would like to rest
15 tonight.

16 THE COURT: I think you're going to be able to.
17 How many witnesses do you anticipate after Dr. Sexton?

18 MR. MYERS: Three short ones.

19 THE COURT: Three short ones?

20 MR. MYERS: Yes, sir.

21 THE COURT: Well, let's do this. Let's take about
22 five minutes or so, Mr. Floyd, okay, and let you talk with
23 him about that, and then we'll get started. I think that
24 will give him time. And I believe the jury has been patient
25 enough. I'll try to talk them into it, because if you've

1 just got short ones within a few minutes I think they'll
2 manage that.

3 Agent Jacobs, how are they doing, are they still
4 hanging on pretty strong?

5 AGENT JACOBS: Yes, sir.

6 THE COURT: We'll give you about five minute, okay.

7 (WHEREUPON, a ten-minute recess was taken.)

8 THE COURT: Mr. Bennett, I understand after
9 discussing it with your attorneys you've just decided to stay
10 in the courtroom; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Counsel, are you ready to bring the
13 jury in? The State ready?

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

15 THE COURT: The defense?

16 MR. YOUNG: Yes, sir, Your Honor.

17 (WHEREUPON, the jury enters the courtroom at
18 approximately 7:24 p.m.)

19 THE COURT: All right. All parties and attorneys
20 are in the courtroom and all jurors have returned.

21 Mr. Riddle?

22 BY MR. RIDDLE:

23 Q. Dr. Sexton, you performed the autopsy on Benton
24 Smith on December the 3rd, 1990; is that correct?

25 A. Yes, that's correct.

1 Q. And during the course of that autopsy you started
2 with the outside and worked your way in; is that correct?

3 A. Yes, that's correct.

4 Q. Now, when he arrived, Doctor, was he clothed in
5 blue jeans, red shirt and tennis shoes as depicted in State's
6 Exhibit 42?

7 A. Yes, sir, that's correct.

8 Q. And what's one of the first things that you do,
9 Doctor, or what's the first thing you did in this particular
10 case?

11 A. We photographed the body externally just as it
12 arrives, and then as I mentioned earlier, work from the
13 outside in. We'll examine the clothing, see if we see
14 anything on the clothing or on the body that might be
15 disturbed by removing the clothing, then we'd remove that
16 clothing and examine the body, and do the same thing, check
17 for anything that might be helpful as far as evidence before
18 cleaning it up, then doing an internal exam.

19 Q. And did you go through those steps in this
20 particular case?

21 A. Yes, sir, I did.

22 Q. And then you cleaned the body up?

23 A. Yes.

24 Q. Did you then at that point photograph it again?

25 A. Yes, I did.

1 Q. Did you visually inspect it for the presence of
2 wounds on the external portion of the body?

3 A. I did, and there were some areas we had to shave to
4 see because they were in the hairline.

5 Q. Doctor, specifically, did you find some wounds and
6 markings on Mr. Smith's chin and facial area of this
7 particular area here?

8 A. There were three marks, two on the bottom of the
9 chin on the left side, and one on the bottom of the chin on
10 the right side. These were referred to as abrasions, and an
11 abrasion is where a surface is scraped away by impact or some
12 sort of blunt force injury, impact to these areas to cause
13 the skin to be partially scraped away.

14 Q. Doctor, I'm going to ask you to step down and talk
15 loud so that the court reporter can hear you because we don't
16 have any microphones down here.

17 A. (The witness complied.)

18 Q. Let me show you what's been marked State's Exhibit
19 Number 75, and ask you if you recognize it.

20 A. Yes, I do.

21 Q. And could you tell the jury what's in that
22 photograph, Doctor?

23 A. If you notice, there's a ruler at the bottom of the
24 photograph that's one inch long with our autopsy number.

25 This is the chin area of the decedent, and you can see part

1 of the beard still present, some we've shaved away. Here are
2 the teeth and the nose. So we're actually looking up at the
3 bottom of the face, looking at the chin area where there's
4 some abrasions on both the left side and the right side.

5 There are also some artifacts here that we feel
6 were caused postmortem, but these areas are consistent with
7 being premortem based on the contusion that was present.
8 When a person is alive and an injury occurs that breaks blood
9 vessels, such that you might get if you were hit by a
10 baseball or hit by a bat and you have a bruise develop,
11 that's because blood vessels have broken. The heart pumping
12 forces blood outside those vessels into the tissue where it
13 can't be washed away. In this case, that was present in both
14 of these, but what's up here is more consistent with
15 postmortem artifact when we dissected into that area.

16 Q. Let's step down here and show this end of the jury
17 what you're referring to.

18 A. Again, we're looking at the bottom of the chin area
19 right here, looking up, seeing the teeth, the bottom of the
20 lower left, part of the beard that has been shaved away here
21 in the middle, and you can see that there are injuries here
22 on the left side of the bottom of the chin and the right
23 side. Above here on the front of the chin are some areas
24 that are postmortem artifacts but show a contusion. There's
25 no bruising underneath these, whereas these two do have

1 bruising underneath them.

2 Q. Now, Doctor, the body in this picture appears wet,
3 is that from where you all cleaned it up?

4 A. Yes, that's correct.

5 Q. Now, let me show you State's Exhibit Number 76. Is
6 that a better photograph of those bruises up underneath the
7 chin?

8 A. It is. This is a closer view of the same area here
9 under the chin, and you can see the oval abrasion here on the
10 right side of the bottom of the chin. The left side is a
11 little more disruptive to the point where it's even lacerated
12 or some of the tissue has been torn as opposed to just
13 scraped away, and there are two injuries here and one injury
14 on the right side.

15 Q. Now, what -- well, go ahead and explain that down
16 here.

17 A. Looking at the bottom of the chin with a closer
18 view you can see the oval bruise and abrasion here on the
19 right side of the bottom of the chin. On the left side is
20 more disrupted to the point where it's actually lacerated,
21 meaning the skin is torn as well as scraped, the surface
22 scraped away. And there are two injuries here on the left
23 side, both of which have bruising underneath them, unlike
24 these areas up above that don't show any bruising that are
25 postmortem artifact by animals.

1 Q. Now, Doctor, these contusions and bruising and
2 lacerations under the chin, can you tell based on your
3 experience and education what type of instrument caused that?

4 A. There are multiple things that could cause this
5 type of injury. Let me also mention that in association with
6 these injuries there was hemorrhage on the surface of the
7 brain, which we refer to as subarachnoid hemorrhage.

8 Q. We're going to get to that part in just a minute.

9 A. Which indicates that this was a forceful injury.
10 The bruising underneath the skin also indicates that, and
11 this could be with a fist, this could be with the head being
12 thrown against something or it could be from a person falling
13 and hitting their chin.

14 The fact that there are three in almost the same
15 area makes it more likely a fist hitting the person
16 repeatedly there, but I can't exclude the fact that somebody
17 couldn't fall on their chin three times. But it's a blunt
18 type of injury from some object that's hard enough to scrape
19 the skin on impact.

20 Recognize the bone of your chin is directly
21 underneath this area of skin. So whatever strikes this area
22 pinches the skin between the object that strikes it and the
23 bone underneath it, and that's what causes the disruption of
24 the skin here completely and the scraping of the skin here on
25 the right side. And in this case, both of these are what we

1 call blunt force injuries.

2 Q. Blunt force?

3 A. From multiple different causes.

4 Q. And when you say blunt force, you're talking about
5 something that's not pointed; is that essentially what you
6 mean?

7 A. That's correct, something different from a sharp
8 pointed puncture-type wound or cutting-type wound.

9 Q. Now, Doctor, this is directly underneath the chin.
10 Did you make any findings or did you have any findings in
11 relation to the jaw and the jawbone and where it connects to
12 the skull itself?

13 A. The jawbone is actually loose. In other words,
14 when we find a skeleton where the body has totally
15 skeletonized there's nothing holding the jawbone in place.
16 So what's holding the jawbone in place is the fact it's in a
17 -- the condyles are in recesses in the skull and the muscles
18 and tendons hold it in place.

19 In this case, they had been disrupted to the point
20 where the jaw was easily movable. In other words, it was
21 dislocated. It was not fractured here in this part, but it
22 was dislocated, indicating again, that the force was very
23 significant. It impacted here on the bottom of the skull to
24 the point where going in this direction one time and this
25 direction the other time and it actually dislocated the

1 joints in the corner in the angle of the jaw.

2 Q. And was it dislocated on both sides, Doctor?

3 A. Yes, sir, that's correct.

4 Q. Now, you mentioned some hemorrhaging around the
5 brain, is that hemorrhaging, in your opinion, associated with
6 these chin wounds?

7 A. It is, because of the other wounds that were
8 present none of the other wounds would have, in my opinion,
9 caused diffuse hemorrhage over the entire surface of the
10 brain.

11 Q. And when you say diffuse, what do you mean?

12 A. Just over the entire surface. And recognize the
13 brain is suspended in water, or actually it's called cerebral
14 spinal fluid, which is 99 percent water with various
15 ingredients in it. The reason for that is if you put
16 something in water, say a bottle of water, so there's no air
17 in it, you can shake it, say a raw egg, and you can't break
18 it, because the water acts as a shock absorber, it prevents
19 the movement from taking place that might disrupt that soft
20 material, like a fresh egg yolk.

21 The brain is encased in water the same way, plus it
22 has a thin layer called the piarachnoid, where this
23 hemorrhage was located, underneath the piarachnoid, actually
24 on the brain, to protect it, then another hard layer of fiber
25 tissue inside the skull to protect the brain from the inside

1 of the skull, some of which is fairly rough.

2 So it takes tremendous force for the brain to have
3 hemorrhage over the surface. It has to be shaken to the
4 point with that impact that the little vessels going from the
5 skull lining, the dura, to the brain are torn so that you get
6 a subdural hemorrhage, which was present, particularly in the
7 back of the skull, and to disrupt the small vessels going
8 from the piarachnoid to the brain to cause a subdural
9 hemorrhage. So it's very difficult to cause hemorrhage in
10 the brain itself without tremendous force.

11 To give you an illustration, a person going through
12 a red light by mistake and T-boning somebody so that their
13 head hits the windshield, sometimes all we see is a bruise on
14 their head and their brain is perfectly normal with no
15 hemorrhage, and they are dead. The impact is enough to kill
16 them but not enough to disrupt the brain to the extent that
17 this was.

18 Part of that, though, is not so much the force of
19 the impact as the plain of the impact. If the head is put
20 into a tangential sort of motion as opposed to just a
21 straight motion it causes more disruption of the vessels
22 because it tends to tear them more easily. So a forceful
23 impact on the jaw, particularly at an angle in either
24 direction, is what generally causes this type of subarachnoid
25 and subdural hemorrhage on surface of the brain.

1 Q. And all of that is related to these chin wounds?

2 A. That's correct.

3 Q. Doctor, would these chin wounds, this blunt force
4 trauma, would that be sufficient to cause unconsciousness in
5 a person?

6 A. Usually it is. Recognize that people who have head
7 injuries can be very unpredictable. I've seen people in
8 emergency rooms and read records about people that had
9 devastating injuries to the front of their brain, the frontal
10 lobes which have to do with our intellect, and yet they would
11 survive that injury and sometimes were conscious shortly
12 afterwards. But when you have this much subarachnoid and
13 subdural hemorrhage it generally results in unconsciousness
14 for some period of time.

15 I can remember a number of cases where the history
16 recounted the fact the person was struck multiple times and
17 each time rendered unconscious and then finally died with
18 this type of injury. But it's not uniform. We can't always
19 say that occurs, but within reasonable medical certainty, in
20 my opinion, the amount of hemorrhage here would have rendered
21 the person unconscious upon receiving that injury.

22 Q. But the period of time would be uncertain?

23 A. That's correct. It may have been for a short
24 period of time or could even have been enough to cause death.
25 However, in this case, there are other injuries that would

1 have caused a more rapid death.

2 Q. Now, stay right there, Doctor.

3 When you did the external examination of Mr. Smith,
4 did you find some wounds on Mr. Smith's left hand?

5 A. Yes, sir, I did.

6 Q. And the left forearm area?

7 A. Yes, that's correct.

8 Q. Now, referring to State's Exhibit Number 72,
9 Mr. Smith's right hand and right forearm area had been
10 subjected to some animal abuse; is that correct?

11 A. That's correct. The right forearm and hand were
12 essentially missing, the soft issue, due to destruction by
13 animals, postmortem. This is easily recognized because
14 there's, again, no contusion. The tissue looks fresh without
15 any bruising.

16 Q. Now, Doctor, are you familiar with the term
17 defensive wounds?

18 A. Yes, I am.

19 Q. Tell the jury what defensive wounds are and where
20 you generally expect to find them on an individual.

21 A. Wounds that we often refer to as defensive wounds
22 are on the extremities, either the hands, the forearms or the
23 legs and they are nonfatal wounds. They are wounds that are
24 inflicted, generally, when the person is trying to ward off
25 something either by putting their hands up or putting their

1 hands over their head, so that they get injured in the same
2 action that the injury is occurring where they are trying to
3 be stabbed or beaten or shot because these are wounds where
4 the hands or legs are up in defense of their body at the
5 time.

6 Q. And were you able to find some wounds on
7 Mr. Smith's left hand that you characterize as defensive
8 wounds?

9 A. Yes, I was.

10 Q. And approximately how many wounds did you find on
11 Mr. Smith's left hand that you characterize as defensive?

12 A. Let me look at the photograph. My recollection is
13 about six. Yes, I see five of them -- or six of them in this
14 photograph.

15 Q. And this is State's Exhibit Number 77. Tell the
16 jury which ones are the defensive wounds.

17 A. In this photograph, on 77, you can see some of the
18 defense wounds very clearly. Here's one that's on the
19 forearm, another on the forearm, a third one, a fourth one
20 here on the wrist, one here on the hand between the thumb and
21 index finger, there's another here on the back of the hand
22 (indicated). These wounds that are down here further are
23 postmortem. In other words, they are not during life so they
24 are not defensive wounds. They are, again, due to animals in
25 this case -- excuse me, this case probably scratching the

1 body with nails.

2 Q. Let's walk down here and show the jury what you're
3 talking about on here.

4 A. Here on this hand you can see a wound here between
5 the thumb and index finger (indicated). There's at least one
6 more on the back of the hand. There's one at the wrist,
7 there's another one at the wrist, and here are two on the
8 forearm (indicated).

9 Q. Now, defensive wounds, Doctor, you indicate that
10 they can come from someone trying to ward off blows; is that
11 correct?

12 A. That's correct.

13 Q. And you would expect to find defensive wounds of
14 that nature on what part of your hand?

15 A. Those are generally on the palms of the hands.
16 Often times a palm will also grab a knife and get cut.

17 Q. And you indicated that defensive wounds could also
18 come from the nature of somebody trying to cover up like
19 that?

20 A. That's correct, putting their hands over their head
21 to prevent stabbing in the head you have stab wounds of the
22 hands and the forearms.

23 Q. And that would be generally on the backs of the
24 hand and the forearm?

25 A. That's correct.

1 Q. Now, Doctor, defensive-type wounds, as a general
2 matter, require purposeful movement, do they not?

3 A. Yes, that's correct.

4 Q. And explain to the jury what you mean by purposeful
5 movement.

6 A. Purposeful movement means something that a person
7 does in response to some obnoxious stimulus that would be
8 different from what they might do if, say, they were
9 unconscious or in a coma.

10 The way we determine if a person is in an
11 irreversible coma is by injuring them. We pinch them,
12 generally here on the side of the chest on either side, and a
13 person that's been in a coma awhile you'll see a little
14 bruising there because they pinch them hard enough to see if
15 they react.

16 But that reaction is not generally a purposeful
17 reaction, it's just a movement. A purposeful reaction, where
18 you're actually trying to protect yourself from a specific
19 stimulus, is doing something that occurs while you're
20 conscious.

21 Q. Now, Doctor, do you have a fair number of pain
22 receptors in your hands and your arms as compared to some
23 other parts of your body?

24 A. You do. The parts of the body that have movement
25 that's precise have more pain receptors than parts of the

1 body that do not, as well as your face and genitalia and
2 breasts have more receptors than other parts of your body.

3 Q. And, Doctor, do you have an opinion to a reasonable
4 degree of medical certainty whether these stab wounds to
5 Mr. Smith's hands would be painful to a conscious person?

6 A. You would usually expect them to be, and in this
7 case I think they probably were. But recognize that people
8 who are shot or stabbed by someone in a heat of anger whether
9 they are fighting or something, particularly police officers
10 who have given accounts of being stabbed or shot, often times
11 they really feel like they've only been struck with a fist
12 and as opposed to being stabbed with a sharp object because
13 of the adrenaline in their system.

14 So it's not always possible to know what the person
15 actually was perceiving at the time. They may or may not
16 have felt the sharpness of it. In this case, however, since
17 it went through the hands as opposed to hitting the trunk,
18 which is where most people feel just the blow, and because it
19 hit the scalp and the skull, in my opinion, it's more likely
20 that these would have been painful and would have been
21 perceived as painful.

22 Q. And, Doctor, I frankly forgot to ask you, would the
23 blows to the jaw from the blunt trauma, whatever that was,
24 would those as a practical matter have been painful to a
25 conscious person?

1 A. They may have been rendered a person unconscious
2 immediately so no pain would have occurred at that time. But
3 if any of us have ever had a real bad lick to the head you
4 know when you wake up you generally have a headache. So I
5 think the person generally had a headache at the time they
6 were conscious, if they were conscious after the blow.

7 Q. Now, Doctor, I believe you counted six stab wounds
8 present on Mr. Smith's left hand and left forearm; is that
9 correct?

10 A. Yes, that's correct.

11 Q. Did you encounter other stab wounds on Mr. Smith's
12 body?

13 A. Yes, over 60.

14 Q. Over 60, additional?

15 A. I think it was a total of 64. Although, in looking
16 back at the photographs there's some that initially we didn't
17 feel were stab wounds that may represent tangential stab
18 wounds, but at least a total of 64 between the hand and the
19 rest of the body.

20 Q. And, Doctor, where were most of those stab wounds
21 located?

22 A. Primarily on the back of the head, the left side of
23 the head, the upper back, and the upper part of the chest and
24 left shoulder.

25 Q. And in order to see those stab wounds did you have

1 to shave Mr. Smith's head during the autopsy?

2 A. Yes, we did.

3 Q. Now, Doctor, let me show you what's been marked as
4 State's Exhibit Number 78. I'm going to ask you if you
5 recognize that?

6 A. Yes, I do.

7 Q. Is that a picture of Mr. Smith's head with numerous
8 stab wounds and also a couple on his chest?

9 A. Yes, it is.

10 Q. Can you show the jury which ones are the stab
11 wounds, Doctor.

12 A. We're looking at the left side of the head and some
13 of the back of the head, and again, you can see the one-inch
14 ruler. Here's the left ear, here's the chin (indicated).

15 These large areas that have a hole in the middle are areas of
16 stab wound with some decomposition around it.

17 There was some involvement in this area by
18 decomposition, but here you see individual stab wounds on the
19 side of the head without the decomposition. But recognize
20 these darker areas do not represent a different type of stab
21 up here on top of the head (indicated).

22 There are some that are tangential. Some of these
23 simply scrape across the surface of the skin, some go in and
24 either prior to going in or coming out they scrape across the
25 surface of the skin, and they're primarily, as I mentioned,

1 on the left side of the head, the back of the head, and you
2 can see there's some on the left shoulder and the back.

3 Q. All right. And State's Exhibit Number 79, Doctor,
4 does that also show the back and the shoulder area of
5 Mr. Smith where as 78 shows more of the chest area?

6 A. That's correct, 79 shows more of the back. Again,
7 there's some discoloration due to the decomposition, but I
8 think you can see the individual holes that are present here.
9 Here are a cluster of six, here's another, here's some more
10 across this part of the upper back, some on the back of the
11 neck, some on the very back of the head on up here are
12 additional ones (indicated). As I mentioned, the total of
13 over 64 between the head, upper chest and back, and the left
14 arm and hand.

15 Q. Walk down here with me, please, Doctor. State's 78
16 is the chest area and the head?

17 A. Right. You can see the left side of the head, you
18 can see the stab wounds here on this side of the head, you
19 can see some up here on the back of head. As I mentioned
20 earlier, these darker areas are just decompositions around
21 the individual stab wounds (indicated).

22 Some are linear, meaning they didn't go in but they
23 just scraped across the surface of the skin. Some as they go
24 into a wound have done that, others have done it coming out,
25 and there's some that don't even penetrate at all they just

1 scrape across the skin. But there are a number of them here
2 on the left side of the head, left side of the face, the back
3 of the neck and the back of the head, as well as on the top
4 of the shoulder, the chest, and on the back (indicated).

5 Q. And, Doctor, State's 79, that's the one with the
6 back area shown as well?

7 A. That's correct. You can see the ones up here on
8 the back of the head a little better. The back of the neck
9 there are a number of them. Here are two, four, six, seven
10 here in the back of the neck (indicated). There's two more
11 here, another one here, a cluster of six here on the upper
12 left back through the base of the neck (indicated).

13 Q. Now, Doctor, State's Exhibit Number 80, that's a
14 close up of the few of those wounds; is that correct? And
15 referring to State's 78, can you orient the jury where
16 State's 80 is in comparison to 78.

17 A. Here behind the left ear and slightly below the
18 left ear are these two stab wounds that are -- actually four,
19 a cluster of four, that are depicted in State's Exhibit
20 Number 80.

21 Q. And those are behind the left ear of Mr. Smith?

22 A. That's correct. Behind and a little below the left
23 ear.

24 Q. Now, Doctor, these wounds have certainly some
25 circular stabs but they also have some other markings. Can

1 you explain those other markings to the jury.

2 A. Here particularly in the middle of photograph you
3 see a circular appearing stab wound and coming out of that or
4 going into that is a linear scrape, and to me this represents
5 the fact that the body was moving at this time so that the
6 stab wound didn't penetrate straight in. Either as it came
7 out it slid this way or as it was going in slid this way, and
8 yet this is on a flat surface and it's going straight up that
9 flat surface. So just as the fact that these stab wounds are
10 on the front, the back, the side indicating there's most
11 likely movement between the two individuals at the time, this
12 particular wound I think also characterizes movement.

13 Q. Movement on the part of Benton Smith?

14 A. That's correct.

15 Q. And do you see the same or sort of the same type
16 characteristics with this wound here on the right-hand side
17 of State's Number 80?

18 A. To a degree this one shows the same, however, it
19 looks more tangentially as though it happened to be a single
20 wound and a separate wound that was beside it, but it also
21 may represent the same. But here this one tends to stop or
22 start in the wound, where this one is more beside it and
23 tangential.

24 Q. All right. Step down here, if you would. And
25 again, referring to State's Number 78, show the jury where on

1 State's 78 and State's Number 80 is a close up of it.

2 A. Here below and behind the left ear is where the
3 close-up photograph was taken that's shown here in Exhibit
4 80.

5 Q. And the wound that you were discussing that shows
6 the linear abrasion --

7 A. That's correct. This wound here in the middle that
8 is shaped sort of like a comma is a circular wound either out
9 of which or into which goes a linear abrasion consistent with
10 the object used for stabbing having either scraped the skin
11 and then went in or went in and as it came out scraped the
12 skin, indicating movement between the individual and the
13 object that was used to stab him at that time.

14 Q. Now, State's Exhibit Number 81, Doctor, what is
15 that photograph of?

16 A. 81 is a photograph of one of the stab wounds. It's
17 a close-up photograph to show you what the wound looked like.
18 And you can see here above the one-inch ruler is a T-shaped
19 injury. You can see a long injury here and then one that
20 abuts onto it. What's not clear in this photograph is the
21 fact that it's actually an X-shaped injury. This doesn't
22 show it as clearly as some of the others but the injuries
23 were all X-shaped on the body, the one's that did not fully
24 penetrate the skin.

25 Q. Go ahead.

1 A. This shows one of the injuries, a close-up
2 photograph of it, and you can see easily a T-shaped injury
3 here. The injuries were more characteristically X-shaped in
4 most areas.

5 Q. Doctor, you have seen State's Exhibit Number 51
6 before, the Phillips head screwdriver?

7 A. Yes, I have.

8 Q. And is the Phillips head screwdriver, State's
9 Exhibit 51, is that consistent with the findings that you
10 found on the body of Benton Smith in terms of the X-shaped
11 wounds?

12 A. It is. Most of you have seen a Phillips head
13 screwdriver but later you can look at this and see how if you
14 look at the end of it, if it were coming toward you, you
15 would see an X. Also notice that the very end of it is
16 blunt, it's not real sharp. Unless it's a very tiny
17 screwdriver of this type the end is always blunt. And that's
18 consistent with the type of injuries we see.

19 Notice this one-inch ruler in this particular
20 photograph is about four inches because it's been blown up,
21 so the wound here looks much larger than that screwdriver but
22 if you look at the dimensions the wound is such that it's
23 less than a quarter of an inch all the way across and that's
24 consistent with the end of this screwdriver. It's even more
25 characteristic in some other locations.

1 Q. Now, Doctor, let me show you this other photograph,
2 State's Exhibit Number 82. Before I do that, when you do an
3 examination, particularly with somebody with a head wound, do
4 you actually open the head and look inside at the brain, the
5 tissues inside?

6 A. That's correct. You look at each of the organs
7 including the brain. We deflect the scalp so we can see
8 under the scalp and remove the calvarium and then take the
9 brain out for examination.

10 Q. When you say deflect the scalp, tell the jury
11 exactly what that means.

12 A. We start here behind the ear, go across the head
13 with a cut so we can peel the scalp forward and backward and
14 then remove the skull cap, the top of the skull, in order to
15 get to the brain to examine it then remove it.

16 Q. And when you deflected the scalp on Benton Smith
17 did you get right down to the bone; is that correct?

18 A. Yes, that's correct.

19 Q. Let me show you State's Exhibit Number 82. Tell
20 the jury what this is a photograph of.

21 A. This is, again, a close-up photograph. Notice the
22 one-inch ruler. So this is about an eighth of an inch across
23 here, and this is a stab wound into the bone. Not through
24 the bone, however, there was one that did fully penetrate the
25 bone on the left that I'll mention later.

1 But many of the wounds that went through the skin
2 penetrated the bone but only for about an eighth of an inch,
3 just enough to leave this X-shaped imprint that you see in
4 this case. And this is more characteristic of the end of
5 that Phillips head screwdriver.

6 Q. This screwdriver here?

7 A. Yes, that's correct. You can actually only see
8 again two or three of the legs of this X. You can see the
9 vertical and one side, the other side has some tissue in it
10 still that wasn't removed from the photograph, but as we
11 looked at these, these were all X-shaped, very consistent
12 with the Phillips head screwdriver.

13 Q. Doctor, you mentioned some wounds on different
14 parts of the head and one wound that went through the skull?

15 A. That's correct.

16 Q. How thick is the skin and the covering of the
17 skull, say, on the back of your head?

18 A. Your skin is fairly uniformly thick. It's more
19 than three-eighths, it's almost four-tenths or in some cases a
20 half inch thick all the way around your skull. But the skull
21 itself is much thinner on either side. The skull on either
22 side is about an eighth of an inch or less thick on either
23 side but there's a lot of muscle covering it because that's
24 where the muscle that allows you to chew is located that
25 moves your jaw up and down, so therefore it looks the same on

1 the side. But the thickens of the skin is at least
2 three-eighths to a half inch all the way around.

3 Q. And, Doctor, the skin, someone's skin -- I don't
4 know exactly how to ask this, someone's skin is somewhat
5 elastic and tends to give, does it not?

6 A. That's correct.

7 Q. And does it require more force to put a blunt
8 object such as a Phillips head screwdriver through the skin
9 as opposed to something sharp?

10 A. There is more force required for an object like
11 this screwdriver as opposed to a knife with a sharp point.
12 It would be even more force if it were something like a pool
13 cue or some type of tire iron which would, though, with
14 enough force hitting the scalp split the scalp open in a
15 linear fashion, because it would be a hard object coming
16 against the scalp with a hard bone below it and it gets
17 pinched between the two.

18 But this type of object does have a point so it
19 takes less force to use an object like the Phillips head
20 screwdriver to penetrate the skin than it would the force
21 required, say, with a pool cue lacerating and poking the
22 scalp, but it would be even less force if it were a sharp
23 pointy knife.

24 Q. And, Doctor, do you have an opinion as to the
25 amount of force that it would take to produce the type of

1 injuries depicted in State's Exhibit Number 82?

2 A. All I'd say is it's significant force because the
3 skull is resilient and recognizes the head as mobile. If you
4 hit somebody with a bat in the head while they're standing up
5 and you don't catch them right on top of the head generally
6 the head moves to the side making the force less serious.
7 However, if the person's head is down against some surface or
8 is held in place and the same blow is rendered it causes more
9 injury to the individual.

10 Likewise, if a person is stabbed with an object
11 like this Phillips head screwdriver, in order to penetrate
12 into the bone, in my opinion, the head has to be held ridged
13 either against a surface like the ground or somebody's grass
14 in order for it to penetrate the bone because it tends to go
15 in and then graze across the skull and come out, if it's not
16 held in place.

17 So there has to be generally some form of holding
18 it in place and generally against a firm object for it to
19 penetrate since, as you'll see when you look at the Phillips
20 head screwdriver, the point is not real sharp. So it takes a
21 lot of force.

22 Q. Doctor, do you have an opinion as to whether or not
23 these stab wounds to Mr. Smith's arms constitute serious body
24 injury?

25 A. They would be referred to as superficial injuries

1 and not injuries that would be life threatening.

2 Q. How about the ones to head?

3 A. The ones to the head would be the same with the
4 exception to the one that went through the skull, and yet the
5 one that went through the skull struck the membrane I
6 mentioned earlier, the dura, and pushed the dura into the
7 brain for approximately an inch that caused very little
8 hemorrhage. The hemorrhage was over the rest of the surface
9 of the brain and particularly in the back of the brain from
10 the injuries to the chin.

11 So even the stab wound in the skull caused very
12 little hemorrhage and probably would not have by itself
13 rendered a person unconscious because it didn't cause
14 disruption of a lot of brain functions.

15 In other words, the things that render you
16 unconscious are tearing the nerve fibers that go through your
17 body and particularly the base of the brain to the rest of
18 the brain, and that takes a forceful movement of the head,
19 particularly in sort of a tangential fashion in order to tear
20 those little fibers that run through the brain substance.
21 But there were stab wounds that entered the chest and the
22 back that penetrated each lung and the vessels here in the
23 base of the neck that caused internal bleeding.

24 Q. We're going to get to those wounds in just a
25 minute. Doctor, the head wounds, would they have been

1 painful to Benton Smith were he conscious?

2 A. Again, not knowing his particular mental state and
3 how much adrenalin was in his system at the time it's
4 impossible to know exactly whether they were painful, but we
5 all know if you get hit in the head with some object and
6 whether it's pointed like that or a hammer or a fist or some
7 other object to cause this much disruption, as I mentioned
8 earlier, I think it would have certainly caused a headache if
9 he were conscious at that time.

10 MR. RIDDLE: Your Honor, I'd offer this into
11 evidence, I believe without objection.

12 THE COURT: Any objection?

13 MR. FLOYD: No, Your Honor.

14 (WHEREUPON, State's Exhibit No. 83, a Chart,
15 was marked and admitted into evidence.)

16 BY MR. RIDDLE:

17 Q. Doctor, State's 83, this is a diagram of some of
18 the wounds that we've been discussing?

19 A. Yes.

20 Q. And was this prepared under your supervision by our
21 office?

22 A. Yes, that's correct.

23 Q. And, as a matter of fact, there's a correction in
24 here where we changed the length of one of the penetrating
25 wounds, and that was done at your request, was it not?

1 A. Yes, sir, that's correct.

2 Q. Does this fairly and adequately represent the
3 wounds that you found on Mr. Smith?

4 A. Yes, it does.

5 Q. Or at least to the head region?

6 A. To the head region only.

7 Q. Yes, sir. Doctor, you mentioned -- I'm going to
8 put this right over here. I'm going to ask you to turn
9 around and stand right here by the alternate and speak good
10 and loud so your voice will project back toward the court
11 reporter and towards this end. You mentioned there was one
12 wound on Mr. Smith that penetrated his temple, that was his
13 left temple?

14 A. Yes, that's correct.

15 Q. And you indicated -- well, explain those charts to
16 the jury and particularly as it relates to that one wound
17 that penetrated the temple.

18 A. As you can see on the diagram, on the chart, you
19 can see a facial view, the right side and left side of the
20 face and the back of the head, as well as here in the middle
21 two views that show some internal anatomy. Looking at the
22 upper left of this chart you can see a line drawn here
23 labeled stab wound tract, consistent with the tract that goes
24 into the brain here on the left side.

25 It's also depicted here in both of these internal

1 ones showing that it goes into the outer portion of the brain
2 but only by pushing it out of the way. It doesn't penetrate
3 the brain because it did not actually penetrate the dura. So
4 it's noted here on these two lateral. The far right upper
5 shows the stab wounds on the back of the head. The lower
6 right one shows stab wounds on the left side of the head.

7 Q. And, Doctor, tell the jury what the yellow part is
8 right on Mr. Smith's nose.

9 A. This yellow area on the nose that's seen here and
10 most of these that show the face was an area that had been
11 removed by animals after death, also a postmortem artifact.

12 MR. RIDDLE: Your Honor, I have one more diagram
13 without objection.

14 MR. FLOYD: No objection.

15 THE COURT: Without objection.

16 (WHEREUPON, State's Exhibit No. 84, a Chart,
17 was marked and admitted into evidence.)

18 BY MR. RIDDLE:

19 Q. Now, previously you mentioned stab wounds about the
20 shoulders, I believe?

21 A. Yes. The shoulders, the upper back and the upper
22 part of the chest.

23 Q. Now, let me show you State's 84. Was this likewise
24 prepared by our office based on some diagrams which you had
25 actually done at the autopsy?

1 A. Yes, that's correct.

2 Q. I noticed Mr. Smith's nose is yellow again, as well
3 as the arm and the right hand. Is that postmortem animal
4 disruption?

5 A. That's correct. There's also some up on the left
6 -- I'm sorry, the right forearm that's not shown here.

7 Q. So really the yellow should extend farther up then?

8 A. That's correct.

9 Q. Doctor, you indicated that some of the wounds were
10 superficial, meaning not life threatening?

11 A. Yes, sir.

12 Q. But some of the wounds were deeper wounds, as it
13 relates to the chest and the back?

14 A. Yes, that's correct.

15 Q. How many wounds did you find that were deeper
16 wounds, deeper type wounds?

17 A. There were a total of four all together that
18 penetrated the chest either from the back or from the front.
19 As you can see on the diagram, the left-hand diagram, shows
20 the one that penetrated here at the base of the neck or the
21 top of the chest down into the right chest cavity from the
22 front. You look at the right-hand diagram, it's sort of
23 faint here, but you can see three dotted lines that extend
24 downward on the back and all of these, particularly the ones
25 on either side, entered the chest cavity. The one here went

1 just into the soft tissue in the back.

2 Q. I'm sorry, which one went into the soft tissue?

3 A. The one in the middle. So there were actually only
4 three that penetrated the chest cavity and caused internal
5 bleeding. The one here in the middle just went into the
6 muscular tissue in the back.

7 Q. And, Doctor, could you tell how deep those wounds
8 penetrated into Mr. Smith?

9 A. I need to refer to my notes. But my recollection
10 was that the measurement at least four inches in some cases,
11 but let me make sure of that.

12 Yes, the deepest wounds penetrate for a depth of
13 four inches.

14 Q. All right. Doctor, and again, is that consistent
15 with State's Exhibit 51, this Phillips head screwdriver?

16 A. In my opinion it is.

17 Q. And were these wounds, were they circular stab
18 wounds or did they appear to have been made with an edged
19 instrument such as a knife?

20 A. The wounds were circular. In other words, they
21 went all the way through the skin. They simply left a
22 puncture wound that was consistent with a screwdriver-type of
23 wound with about a quarter inch diameter shaft. So these
24 that did penetrate all the way into the chest either from the
25 back or from the front had simply round puncture holes that

1 were approximately a quarter inch in diameter.

2 Q. And, Doctor, some of these chest wounds penetrated
3 some arteries or blood vessels in the chest?

4 A. Yes, that's correct.

5 Q. And when you opened Mr. Smith's chest up, did you
6 find a quantity of blood inside his chest cavity?

7 A. That's correct. We found approximately two pints
8 of blood on one side of the chest and almost a pint on the
9 other side. You can give a pint of blood if asked by Red
10 Cross or other agencies and after a few minutes get off the
11 table and you're fine. But if you give three pines of blood
12 quickly, as in the case of a stab wound or a shooting, that
13 is a fatal event because you can only spare one and at most
14 two without dying from acute blood loss because you only have
15 ten pints in your body.

16 Q. And, Doctor, the wounds that penetrated the chest
17 and the back of Mr. Smith, would you classify those as
18 serious bodily injuries?

19 A. Yes, I would.

20 Q. And, Doctor, as a practical matter, what was the
21 cause of death of Benton Smith?

22 A. On a practical basis, he bled to death, we call
23 that exsanguination, due to these stab wounds that did
24 penetrate the body.

25 Q. And that would be the chest and the back?

1 A. Yes, that's correct.

2 Q. And most all of that bleeding, would that have been
3 internally or externally?

4 A. Most of it would have been internally because you
5 have a large cavity internally in which the blood can bleed
6 before it then comes out. And what happens when you have a
7 puncture wound, the muscle and the soft tissue tend to close
8 that wound. So it's very difficult for the blood to come out
9 of that wound unless there's a pressure behind it, and it
10 first has to fill up the cavity before it has pressure enough
11 to come out of the wound.

12 That's not to say you don't have a little bit of
13 bleeding externally from these puncture wounds from the
14 superficial wound, portion of the wound, but the deeper blood
15 that's generated internally takes a longer period of time to
16 come out and sometimes doesn't come out at all when you have
17 wounds such as this or with an ice pick.

18 Q. Doctor, during your autopsy you found evidence of
19 movement on the part of Benton Smith?

20 A. Yes.

21 Q. Relative of the neck wounds; is that correct?

22 A. That's correct.

23 Q. And as a result of the depth of the head wounds, is
24 it your belief that he was either being held or his head was
25 against a hard object at the time that he was stabbed in the

1 head?

2 A. In my opinion, within reasonable medical certainty,
3 he was either against a firm object or held in order to get
4 the deep wounds into the bone, as well as the wound into the
5 skull itself.

6 Q. And you base that on the degree of force it would
7 take to penetrate the skull?

8 A. That and the fact that even if you had enough
9 force, if the head wasn't held still, some of these wounds
10 should have gone into the bone and then taken a different
11 course and gone between the skin and the bone for some
12 distance instead of being perpendicular in each case, because
13 some of them were on the rounded edge of the skull where it
14 could easily do that if the skull wasn't held in place and
15 having something to keep it from moving.

16 Q. So you would expect basically for it to hit and
17 skip if it was --

18 A. At least a few, I would think, would have done that
19 if it weren't in some rigid location at the time of the
20 stabbing.

21 Q. And, Doctor, you found defensive wounds on
22 Mr. Smith's arm; is that correct?

23 A. Yes, sir, on his left arm.

24 Q. And that would be consistent with the kind of
25 wounds you would get if you were trying to cover up?

1 A. Yes, that's correct.

2 Q. On the back of the hands and arm; is that correct?

3 A. That's correct.

4 Q. Do you have an opinion to a reasonable degree of
5 medical certainty whether or not Benton Smith was conscious
6 for at least a portion of this attack?

7 A. In my opinion, he would have been during at least
8 the time where he was shielding his head, plus the fact that
9 they are not all on one side of the body they are on at least
10 two sides, front and back. So either he was moved by someone
11 then stabbed further or he moved during the course of the
12 stabbing so as to distribute the wounds not only on the back
13 of the head, the left side of the head, the upper chest and
14 the upper back.

15 MR. RIDDLE: Doctor, thank you. Please answer any
16 of the defense's questions.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MR. FLOYD:

20 Q. Good afternoon, Dr. Sexton.

21 A. Good afternoon.

22 Q. My name is Wayne Floyd. I represent Mr. Bennett.

23 Now, Dr. Sexton, I believe you testified that the
24 cause of death was bleeding to death; would that be correct?

25 A. That's correct.

1 Q. Now, you were asked whether or not this weapon
2 would be consistent or this screwdriver would be consistent
3 with whatever caused the stab wounds on Mr. Smith; is that
4 correct?

5 A. That's correct.

6 Q. Now, there's no way you can say with any type of
7 medical certainty that this weapon, that this screwdriver was
8 actually the instrument used to place these wounds, can you?

9 A. That's correct. I can't say it was that specific
10 screwdriver. All I'm saying is it's an instrument like that
11 screwdriver, of that size and that type where it's a Phillips
12 head. But to be able to say it's the one would have to match
13 something like blood or something to the individual's blood,
14 and that's not our job, that's what SLED does. So I don't
15 have any indication that that was done, that's handled by a
16 different department.

17 Q. Can you even really say the weapon or the
18 screwdriver that was used was the same size?

19 A. Size as far as length or as far as dimensions of
20 the bit?

21 Q. Either.

22 A. I can't say it's exactly the same size because
23 there are a lot of screwdrivers that are made like that, are
24 approximately that same size by different brands. They would
25 have roughly the same measurements.

1 In other words, the measurements aren't precise
2 enough to say it wasn't one of approximately that size. I
3 can say it wasn't one that was, you know, a half inch or a
4 three-eighths inch diameter simply because the holes weren't
5 that large. But it certainly could be a different brand or
6 instead of a wooden handle maybe a plastic and slightly
7 different size. But it's approximately that size.

8 Q. Now, do you know whether or not the blow to the
9 chin or the stabbing occurred first or second?

10 A. I do not. All I know is that the person was alive
11 during both of these injuries. To have the bleeding in the
12 brain from the forceful injury to the jaw requires the
13 person's heart pumping, and to have the stab wounds have
14 contusion under them in the scalp and in the chest requires
15 the heart to be pumping. But I can't say which came first.
16 All I can say is they both occurred during life.

17 Q. And, you cannot say, can you, whether or not -- or
18 do you have an opinion as to whether or not the blow to the
19 chin rendered Mr. Smith unconscious?

20 A. In my opinion, it most probably would have within
21 reasonable medical certainty because of the injury on the
22 brain surface, but recognize there are three injuries here.
23 I can say at least one of them would have, and perhaps all
24 three because all of them produced very serious injuries here
25 on the chin, but I don't know what angle each was struck and

1 so I can't say for sure which one of them caused all the head
2 injury or all three of them contributed to it.

3 Q. And there's no question that, in your opinion, he
4 would have been rendered unconscious?

5 A. In my opinion, he would have been.

6 Q. Now, once -- but you don't know whether the
7 stabbing occurred before or after?

8 A. That's correct. I don't know how long he would
9 have been unconscious. There's no way to quantitate that.

10 Q. Now, there's no question that there was a
11 significant number of stab wounds with some type of
12 instrument similar to the one we have here; is that correct?

13 A. Yes, that's correct.

14 Q. Now, you said there's some like movement
15 tangential to the stab wounds, to show some movement, I think
16 you said?

17 A. Correct. The wound that showed a stab hole where
18 the instrument after going in slid across the skin or on the
19 way in slid across the skin to me represented movement
20 occurred at that time. Plus the fact they are distributed on
21 the front, the back and the left side, indicating either he
22 was moved by somebody stabbing him or he moved in trying to
23 get out of the way. Plus, the hand up over the head.

24 Q. Well, now you mentioned the hand up over the head
25 but you don't really know that's what happened, do you?

1 A. Well, that's correct. I should point out the fact
2 that all I know was the hand was stabbed. What most probably
3 happened would be over the head, but it certainly could have
4 been in some other position if the person just wanted to
5 inflict pain by stabbing the hand while it was on the ground
6 or if in the struggle the hand came up and got stabbed. But
7 the wounds did penetrate the hand significantly so I suspect
8 it was against some object, but not in the same fashion as
9 the skull because the skull had more force applied than the
10 hands necessarily did.

11 Q. Now, in fact, if a person were unconscious and say
12 laying on the ground, and were stabbed in repeated fashion,
13 wouldn't there be some movement in the body as a reaction to
14 that, to the stab wounds?

15 A. You're saying if the person were unconscious at
16 that time?

17 Q. Yes.

18 A. Usually, the movement in an unconscious person is
19 just sort of a jerking-type nonpurposeful movement. I
20 wouldn't necessarily expect the person to roll over so that
21 they would expose their other side from simply being stabbed.

22 Q. But it would be a natural reaction of physics for
23 the body to react to the blows, wouldn't it? Move to the
24 blows, move in reaction to the blows.

25 A. You're talking about conscious or unconscious?

1 Q. Unconscious.

2 A. Again, an unconscious person doesn't always react
3 normally. They either don't react at all if they are past
4 the point of being able to be salvaged or brain dead or they
5 react in a nonpurposeful fashion. So I wouldn't, say, expect
6 an unconscious person to actually roll over.

7 Q. Okay. I appreciate that. Now, the wounds
8 themselves, do you have an opinion as whether or not they
9 were implemented in a rapid fashion?

10 A. I would suspect they probably were because they are
11 concentrated primarily on the back of the head, the left side
12 of the head, the upper chest and back. So more likely than
13 not, these were rendered in a fairly rapid succession, but I
14 don't know that. Of course, that's what I'm saying within
15 reasonable medical certainty, it's a greater likelihood or
16 more probable that's occurred, but I can't say that it, in
17 fact, it did.

18 Q. And would you say within a reasonable medical
19 certainty that the wounds were most likely implemented, say,
20 within a minute?

21 A. They easily could have been within a minute. Of
22 course, it doesn't take but just less than a second to render
23 a stab wound, and recognize these wounds are not penetrating
24 the skull except for that one. They are simply hitting on
25 the outside.

1 Now, if each one penetrated the skull and they had
2 to draw it back out that would take longer, but there are
3 only a few that penetrated it very deeply, and so certainly
4 within 60 seconds the approximately 64 to 70 wounds could
5 have been rendered, certainly within a minute or a little
6 over a minute.

7 Q. Now, Doctor, when you say something with degree of
8 medical certainty, you're not able to tell us for sure what
9 happened here, are you?

10 A. That's correct. Medicine is not an exact science
11 like mathematics, it's an art and a science. If we took
12 everybody's temperature in this courtroom, presuming they are
13 all healthy, these would all have a slightly different
14 temperature so we'd be able to plot a curve. Some of them
15 would have a temperature that if we just measured their
16 temperature we might think they were sick if we didn't
17 evaluate other aspects of the person.

18 So medicine is not something we find one thing and
19 say this exactly happen this way. We have to use experience
20 and training and understanding of the circumstances to come
21 to a conclusion, and it's not an exact conclusion it's an
22 opinion based on experience and medical training.

23 Q. Now, for example, you testified that you didn't
24 think there would be a great deal of external bleeding with
25 these wounds?

1 A. Yes, that's correct.

2 Q. But isn't it true that there may well have been
3 significant external bleeding with these wound?

4 A. Correct. Certainly in the environment where the
5 body was found blood could have seeped into the ground and
6 not even been detected at the scene. But generally speaking,
7 puncture wounds of this type, even of this diameter, don't
8 bleed a great deal because the blood is held in by the
9 muscles contracting either during life or after death from
10 rigor mortis so as to prevent the small holes from bleeding.

11 Q. Would you agree with me that it appears to be a
12 pretty good bit of blood on State's Exhibit 56, I believe
13 that's 56?

14 A. Yes, it's 56. The shirt is red, but there is
15 definitely some moisture on the upper portion of the neck of
16 the shirt that's consistent with blood. Often times we think
17 of blood being a lot of blood just because it happens to be
18 red. If you've ever spilled a glass of milk on the floor you
19 know it covers the whole kitchen floor frequently, and yet
20 it's only a cupful or a glass of liquid. I suspect what's
21 there on the shirt is less than a half of a glass, and maybe
22 even less than that, but because it's red it does look like
23 more.

24 Q. Did you measure the blood that was remaining in the
25 body other than that that had accumulated in the chest

1 cavity?

2 A. By that you mean what was in the vessels?

3 Q. Yes.

4 A. It's really not possible for us to do that because
5 it accumulates in vessels that are far enough away from the
6 mainstream that we can't milk that blood out of there.
7 Sometimes it also clots in these areas. But we get an
8 impression of whether the person is, quote, bloodless, and my
9 recollection that we were able to collect blood -- let me
10 check my evidence transfer and see what we transferred.

11 Right, we had the usual bottles of blood and tubes
12 of blood that we normally collect. So the person still had
13 the amount of blood we usually see in a dead body, as well as
14 the three pints, approximately, that was in the chest cavity.

15 Q. And how much of that do you usually collect?

16 A. How much of --

17 Q. How much do you usually collect?

18 A. As far as for toxicology? It's not a large amount,
19 maybe less than half a pint if we get bottles of blood, and
20 individual tubes of blood, about six tubes of blood. So it's
21 not a large quantity, but there was no difficulty getting
22 that.

23 Q. Now, do you have an opinion as to the time of
24 death?

25 A. Time of death meaning precise time, or length of

1 time it took to die?

2 Q. No, precise time of death.

3 A. We're not really able to give a precise time.

4 What we do is look at the information that tells us by
5 somebody's recollection when the person was last seen alive,
6 when they were found dead, evaluate the rigor mortis, the
7 livor mortis, the condition of body as far as any
8 decomposition and try to evaluate all of that to determine if
9 the time they were last seen is consistent with the time that
10 they may have died.

11 In this case, an individual was last seen on the
12 27th. Our findings are not inconsistent with him dying on
13 the 27th, but they are not sufficient to say he definitely
14 died on the 27th. We're given the body having it already
15 been moved by the people who picked up the body.

16 And rigor mortis is where the joints become stiff
17 because the muscles solidify, and if we examine the body at
18 the scene and evaluate that rigor it gives us a little better
19 time frame as to when the person died. But after the body
20 has been moved some of the rigor may have been broken by just
21 moving the body.

22 The lividity becomes fixed on the body on the
23 dependent portion after about eight hours, and obviously, it
24 was fixed in this case, but there was also loss of rigor.
25 And I don't know whether that was from just movement, or

1 combination of and the time, or just the time. It generally
2 takes two days at least to lose the rigor mortis.

3 Q. So the body was found -- it takes two days to lose
4 the rigor mortis and the rigor mortis was lost; isn't that
5 correct?

6 A. And I ought to preface that by saying that depends
7 on the temperature. If a person's at room temperature, as we
8 are now, it takes approximately two days when they are found
9 in their dwelling. If they are in a cooler environment, and
10 recognize we refrigerate bodies that die in the hospital so
11 as to prevent rigor mortis so that funeral director has an
12 easier time doing the embalming, and it can be left in a
13 refrigerator for a matter of days and not develop rigor
14 mortis because the temperature is low enough. So the
15 temperature does inhibit the formation of rigor mortis.

16 Q. And what temperature though would it take to
17 inhibit the formation of rigor mortis?

18 A. Usually somewhere down in the low 50's or in the
19 40's, because a rigor refrigerator is about 41. Of course,
20 our cooler is kept at 41 degrees.

21 Q. So would you agree with me that the time of death
22 would also be consistent with November the 28th?

23 A. Certainly could be, that's correct.

24 Q. And the time of death would also be consistent with
25 November the 29th?

1 A. It could be as late as the 29th. The body, I
2 think, was -- we examined the body on the 3rd but the body
3 had been put in a refrigerator prior to us examining it. But
4 certainly the 29th would not be inconsistent.

5 Q. Would not have been?

6 A. Would not be inconsistent, correct.

7 Q. In fact, I think the body was removed from the area
8 -- the body removed from the area at four o'clock a.m. on, I
9 believe, the 2nd of December?

10 A. I'm not sure of that.

11 Q. Would you agree with me then the time of death
12 could even be consistent with November the 30th?

13 A. Possibly.

14 Q. Particularly if the temperatures were higher than
15 50 degree or so?

16 A. Well, certainly if they were around 70. If they
17 were lower, and recognize that -- I don't know whether you've
18 ever done this before, but if you put two ice trays in the
19 refrigerator, one with hot water and one with cold water, the
20 one with hot water freezes first because there's a greater
21 difference between the temperatures.

22 A body at 98 degrees left in a cold environment
23 will cool down very rapidly but then doesn't warm very
24 quickly unless the environment gets very hot or the sun is
25 directly on the body. So once it gets cool, if it's cool

1 enough that first day or first night, whenever the person
2 dies, they can stay cool a pretty good while if they are in a
3 shaded area or if their body is damp.

4 MR. FLOYD: Thank you, Dr. Sexton. No further
5 questions.

6 THE COURT: Any redirect?

7 MR. MYERS: No, sir.

8 We call Mr. Paul Smith.

9 THE COURT: Just one second.

10 Doctor, you're free to go, if you want to.

11 Ladies and gentlemen, we are about 30 minutes
12 beyond the deadline you gave us. I apologize for that. It
13 just took awhile to get this witness in. I understand the

14 State has -- what you have three short witnesses, you said?

15 What's your pleasure on that? Do you want to go
16 ahead and get those done or come back in the morning, or
17 which? Either way is all right.

18 THE FORELADY: Let's get them done.

19 THE COURT: Is everybody okay? Is there any juror
20 that's going to have trouble concentrating or focusing at
21 this point?

22 Okay. All indicate they want to go ahead and get
23 them done.

24 PAUL SMITH, after having been duly sworn,
25 testified as follows:

DIRECT EXAMINATION

1

2 BY MR. MYERS:

3 Q. Paul, I'm going to ask you to speak up if you
4 would. Can you tell the jury your name.

5 A. Paul Smith.

6 Q. Mr. Smith, who was Benton Smith?

7 A. That was my son.

8 Q. And can you tell the jury who this lady is out here
9 in the white dress with the hat on right here. Can you see
10 that far?

11 A. Oh, yeah.

12 Q. Who is that with the hat on right there?

13 A. I know, but I just can't recall her name right off.

14 Q. Did Benton live with you and your wife, Mr. Smith?

15 A. Right.

16 Q. You remember that morning when he left home for the
17 last time?

18 A. Right.

19 Q. Were you at your house when Benton left home that
20 morning?

21 A. Right.

22 Q. Who was in the car with Benton when he left your
23 house that morning for the last time?

24 A. Well, when he started off, when I know that he
25 backed back, and I looked out and he picked up Johnny.

1 Q. He picked up who?

2 A. Johnny. Johnny Bennett.

3 Q. So the last time you saw your son, who was in the
4 car with him?

5 A. He was the only one I seen with him.

6 Q. Who was that?

7 A. Johnny Bennett.

8 Q. So when he left your house that morning, he was in
9 that little blue car?

10 A. Right.

11 Q. And Johnny Bennett was with him?

12 A. Right.

13 MR. MYERS: Your Honor, we'd like to put this on
14 the calendar, the last thing we're going to put on here.

15 Q. Bennett Smith leaves Smith's house in Smith's
16 little blue car?

17 A. Right.

18 Q. State's 14, do you recognize that car, Mr. Smith?

19 A. Yes.

20 Q. Is that the car your son drove away that morning?

21 A. Right.

22 Q. Did he have some kind of a sign on the dashboard
23 about smoking on that car?

24 A. Yeah, up on the front.

25 Q. No smoking sign?

1 A. Uh-huh.

2 Q. Your son didn't like smoking in the car?

3 A. No, uh-uh.

4 Q. How much did that car cost?

5 A. I believe 23 hundred we paid for it.

6 Q. 23 hundred?

7 A. (Nodded).

8 Q. And whose car was it, really?

9 A. Well, my wife, me and her went on and bought it.

10 Q. Now, your son, Benton, he didn't come home that
11 night?

12 A. Right. you all had to see him?

13 Q. Was that like him not to come home at night or he
14 usually came home?

15 A. No, that's the last time I seen him.

16 Q. That's the last time you saw him?

17 A. Right.

18 Q. But did Benton not come home at night all the time
19 or he usually came home when he went out?

20 A. That's right, he usually come home. He don't stay
21 out nowhere.

22 Q. What about the things in his car, would he let
23 other people have his things or use his things or did he kind
24 of like to keep his own things?

25 A. Well, he had a good bit of things in the car.

1 Q. Would he let other people use those things or not?

2 A. No. No.

3 Q. Do you remember that day you had to go down to the
4 high school when they found his car down there?

5 A. Right.

6 Q. Where did you take the car after you got it from
7 the high school; where did you take it, Mr. Smith?

8 A. I took it to my house.

9 Q. And did you have a key to it?

10 A. No.

11 Q. And when the Sheriff's Department brought it back
12 to you later on after they had it for awhile, how did you get
13 a key for your car?

14 A. Well, I had went to Lexington, took it to the
15 nation out [ph], carried it over down there and had a key
16 made for it.

17 Q. You had to have a key made for the car?

18 A. Right.

19 Q. You had to pay to have that key made?

20 A. 35 dollars.

21 Q. How much?

22 A. 35.

23 Q. Now, do you remember one morning going down to
24 Orangeburg to try to find some girls and stuff with Johnny
25 Bennett?

1 A. Right.

2 Q. Do you remember one of those girls giving you
3 something that was Benton's?

4 A. Yeah, over there by the Police Department she gave
5 me a little pillow.

6 Q. She gave you those pillows?

7 A. Right.

8 Q. These right here, Mr. Smith?

9 A. Right.

10 Q. Those were Benton's pillows?

11 A. Right, and I brought them up here and give them to
12 you.

13 Q. You gave them to the police?

14 A. Right.

15 Q. Now, let me ask you this, Mr. Smith, you remember
16 that day up at Stillinger's Gas Station?

17 A. Right.

18 Q. When you saw Johnny Bennett?

19 A. Right.

20 Q. What did Johnny Bennett have in his hand?

21 A. He had the little stick where he had a head on it.

22 Q. This one?

23 A. (Nodded.)

24 Q. Whose stick was this?

25 A. That was Benton's.

1 Q. That was Benton's?

2 A. Right.

3 Q. When Benton had it was it short like this?

4 A. No, it was long.

5 Q. It was long. Johnny Bennett had your son's stick?

6 A. Right.

7 Q. Did you talk with Johnny Bennett up there at

8 Stillinger's?

9 A. I asked him where he was. Let's see, he said, I
10 don't know where he is and I don't give a damn where he is.

11 Q. That's what Johnny Bennett told you?

12 A. That's what he said.

13 Q. Do you remember when they found your son's body,
14 Mr. Smith?

15 A. That Saturday night.

16 Q. Did you have to go up to the hospital?

17 A. I went to the hospital up there but they wouldn't
18 let me go in, and then when they find him they wanted to come
19 back and get me, and the SLED wouldn't let them come back and
20 get me.

21 Q. He was the only child that was living with you and
22 your wife at that time?

23 A. Right.

24 Q. Just Benton?

25 A. Right.

1 Q. He was the baby?

2 A. That's right.

3 Q. Do you recognize this photograph here, Mr. Smith?

4 A. Right.

5 MR. MYERS: We'd offer this in evidence, Your
6 Honor.

7 THE COURT: Any objection?

8 MR. FLOYD: No objection.

9 (WHEREUPON, State's Exhibit No. 85, a
10 Photograph, was marked and admitted into evidence.)

11 BY MR. MYERS:

12 Q. This man up here at the top, who is that?

13 A. That's me.

14 Q. That's you?

15 A. (Nodded.)

16 Q. And this good looking lady down here with the
17 glasses on in the front, who's that?

18 A. That's my wife.

19 Q. That's your wife. Is that the same one with the
20 hat on out there?

21 A. Right.

22 Q. How about this lady over here on the right side?

23 A. That's my daughter back there.

24 Q. That's your daughter back here. And what about
25 this lady over here with the blue coat on?

1 A. That's my other daughter.

2 Q. That's your other daughter. And what about this
3 fellow right here in the middle?

4 A. That was Benton.

5 Q. That was Benton. This is about the last picture
6 made of all of you all together; is that right?

7 A. Right.

8 Q. Mr. Smith, Benton being murdered, that kind of
9 change you all's lives?

10 A. Right.

11 MR. MYERS: If you would, Mr. Smith, answer any
12 questions these fellows have for you.

13 THE COURT: Any questions?

14 MR. YOUNG: Come on down, Mr. Smith, we have no
15 questions.

16 THE COURT: You can step down. Thank you, sir.

17 ANNIE RUTH SMITH, after having been duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MYERS:

21 Q. Ms. Smith, can you tell the jury your name.

22 A. Annie Ruth Smith.

23 Q. Ms. Smith, Benton lived at the house with you all?

24 A. Yes, sir.

25 Q. Now, he had a wallet and a Bible. Who bought him

1 that wallet and that Bible?

2 A. I did.

3 Q. They have the same type of cover on each one of
4 them, kind of matching; is that right, they look about the
5 same thing?

6 A. The Bible was -- I mean, the billfold was light
7 brown leather. It's been so long I just about forget what
8 color the Bible was.

9 Q. Ms. Smith, do you recognize this picture here?

10 A. Yes.

11 Q. Ms. Smith, I'm not going to ask you too many
12 questions. You have to go in the morning to be hooked up on
13 a dialysis machine; isn't that right?

14 A. Yes, sir.

15 Q. Ms. Smith, has it affected you by not having Benton
16 with you from this murder?

17 A. Yes, it affected the whole family.

18 Q. How is that, Ms. Smith?

19 A. We just miss him so bad.

20 Q. Ms. Smith, how far do you live from where the
21 cemetery is he's buried, not far?

22 A. Since I moved my daughter, it's just a few steps.

23 Q. Just a few steps. And that's the closest you can
24 get to him now?

25 A. Yes.

1 MR. MYERS: Thank you. Would you answer any
2 questions they have.

3 THE COURT: Any cross?

4 MR. FLOYD: No questions, Your Honor.

5 THE COURT: Okay. You can step down.

6 CYNTHIA HARRISON, after having been duly
7 sworn, testified as follows:

8 THE CLERK: State your full name for the record.

9 THE WITNESS: Cynthia Harrison.

10 DIRECT EXAMINATION

11 BY MR. MYERS:

12 Q. Tell the jury your name, please.

13 A. Cynthia Harrison.

14 Q. Cynthia, Melvin out here, that's your husband?

15 A. Yes, sir.

16 Q. You're Benton's sister?

17 A. Yes.

18 Q. Were there any children between you and Benton in
19 age?

20 A. Yes, I got an older brother. Kent, he's in Fort
21 Stewart; Hinesville, Georgia. And I got another brother in
22 Fort Bragg, he's up under me, and he's Paul Smith. He's
23 named after my father. Then I have a sister Renee.

24 Q. Now, this is Renee right here?

25 A. Yes, sir.

1 Q. Tell the jury why Renee can't come up to the
2 courtroom.

3 A. She's pregnant, and she took it real bad. I mean,
4 we was close, very close.

5 Q. Could she stand to come up here and hear all this?

6 A. No, sir.

7 Q. When did Benton graduate from high school?

8 A. He graduated in '85.

9 Q. Now, you brought me some things and I made copies
10 of it about his graduation. Are these two of the things that
11 you brought me?

12 A. Yes, sir.

13 MR. MYERS: Your Honor, we'd offer this in
14 evidence.

15 THE COURT: Any objection?

16 MR. YOUNG: No objection.

17 MR. FLOYD: No objection.

18 (WHEREUPON, State's Exhibit Numbers 86 and 87,
19 Documents, were marked and admitted into evidence.)

20 BY MR. MYERS:

21 Q. In '86, May 23rd, 1985, Benton Smith music award,
22 award for the chorus senior merits this special musical
23 achievement. Was he given that during graduation?

24 A. Yes, sir.

25 Q. He enjoyed singing? He sang?

1 A. Yes, sir.

2 Q. Did he enjoy that?

3 A. Yes, sir.

4 Q. Then '87, certificate of scholarship which
5 certifies that Benton D. Smith has done superior work in
6 English and math, given at Swansea High School 27th of May,
7 1985.

8 A. Yes.

9 Q. Benton was a good student?

10 A. Yes, sir.

11 Q. Now, where your momma and daddy and Benton were
12 living, how close did you and Melvin live to them when Benton
13 was missing?

14 A. Well, the trailer was much close, like, the house
15 is, like, right here and the trailer is real close
16 (indicated.)

17 Q. Just right together?

18 A. Yes, it's pretty close.

19 Q. And were you home that morning when Benton left for
20 the last time?

21 A. Yes, sir.

22 Q. Did you see who was in the car when he let for the
23 last time?

24 A. Yes, sir.

25 Q. Who was it?

1 A. Johnny Bennett.

2 Q. Benton never came back after that?

3 A. No, sir.

4 Q. Did you all start looking for him that night?

5 A. I know daddy and all the rest was looking for him,
6 but I stayed home.

7 Q. Now, was that normal for Benton not to come home at
8 night?

9 A. No, sir.

10 Q. What was his habits about coming home?

11 A. He always came home. He never stayed out late at
12 night. He would always be there, please.

13 Q. And what about his car and the things in the car,
14 Cynthia, would he let other people have his things?

15 A. No, sir.

16 Q. He kind of particular about his things?

17 A. Yes, very particular.

18 Q. Benton about the size of your husband, Melvin?

19 A. Yeah, I think he's a little bit taller, I think,
20 not much.

21 Q. Maybe a little taller?

22 A. Yes.

23 Q. Let me ask you this. Benton graduated from high
24 school?

25 A. Yes, he did.

1 Q. Had his picture made?

2 A. Yes, he did.

3 Q. He also have a prom he went to?

4 A. Yes, sir.

5 Q. Have a picture made?

6 A. Yes, sir.

7 Q. Are these the two of them here?

8 A. Yes, sir.

9 MR. MYERS: We offer these in evidence, Your Honor.

10 THE COURT: Any objection?

11 MR. FLOYD: No objection.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit Numbers 88 and 89,
14 Photographs, were marked and admitted into evidence.)

15 BY MR. MYERS:

16 Q. 88, that's his graduation?

17 A. '85.

18 Q. I'm sorry, '85. Holding his diploma in his hand?

19 A. Yes, sir.

20 Q. And 89, what was that?

21 A. That's a prom.

22 Q. And that's his date for the prom?

23 A. I'm not sure.

24 Q. Cynthia, you remember the night they came in and
25 said they found Benton's body?

1 A. Yes, sir.

2 Q. After they found his body, and after the funeral
3 and all, during all that time, were you the daughter that had
4 to help kind of clean up his things around the house and get
5 it organized and everything?

6 A. Yes, sir.

7 Q. That's kind of hard to do?

8 A. Yes, sir.

9 Q. When you all went through Benton's things, did you
10 all ever find that big wad of money in his things?

11 A. No, sir.

12 Q. Were you all able to see him? to look when Benton

13 A. No, sir.

14 Q. Were you able to have an open-casket funeral?

15 A. No, sir.

16 Q. Why was that?

17 A. Because it looked like somebody else. It didn't
18 look like him.

19 Q. Has that changed your momma and your daddy's lives,
20 Cynthia?

21 A. Yes, sir.

22 Q. How is that? Why is that?

23 A. He was the baby.

24 Q. You all live right near where he's buried?

25 A. Yes, sir.

1 Q. Does your momma ever want you to take her over
2 there?

3 A. Yes, sir.

4 Q. Cynthia, I'm just going to ask you one more
5 question. How has this affected you all's lives?

6 A. It's real hard knowing that he's not there. I
7 mean, we've been together, you know, all that time, and he
8 would come home and so we would know he's right there with
9 mom and dad and just -- birthday comes around and stuff, it's
10 kind of hard. He used to buy stuff for momma's birthday and
11 stuff, and when we have family get-togethers and stuff he's
12 not there. He's not there anymore, different occasions and
13 stuff.

14 Q. Somebody named their son after Benton?

15 A. Yes, my sister.

16 Q. Renee?

17 A. Yes, sir.

18 Q. The one that can't come up here?

19 A. Yes.

20 Q. Will you all ever get over this?

21 A. No time soon.

22 MR. MYERS: Thank you, Cynthia. Answer any
23 questions they have.

24 THE COURT: Questions?

25 MR. YOUNG: No questions, Your Honor.

1 THE COURT: You can step down. Thank you.

2 MR. MYERS: Your Honor, with that, the State would
3 rest its case in chief at this time.

4 THE COURT: All right. Thank you, sir.

5 Ladies and gentlemen, you've heard the State has
6 now rested their case, and we will recess for the evening.
7 Let me ask, is there a particular time you want to come back
8 in the morning?

9 Madam Forelady, have you had a chance to discuss
10 that at all?

11 THE FORELADY: We have not discussed that.

12 THE COURT: We can come back at 9:00, if you want
13 to, or if you'd rather come back later than 9:30 we can do
14 that too. I know you got --

15 THE FORELADY: Probably 9:30 would be better than
16 9:00.

17 THE COURT: 9:30?

18 THE FORELADY: It's kind of late now, I believe.

19 THE COURT: It's nine o'clock now, and I know
20 you've got to still go get dinner and then you're going to
21 need some rest. We don't want to push it. We're still doing
22 that balancing thing. Is 9:30 okay with everybody?

23 Okay. We'll see you in the morning at 9:30. Have
24 a good evening. Don't talk about the case.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 8:58 p.m.)

2 THE COURT: All right. Counsel, the jury has left
3 now. With the State having rested their case, defense, are
4 there any motions?

5 MR. FLOYD: Your Honor, could we make those in the
6 morning?

7 THE COURT: Okay. We need to come at 9:00 to do
8 that, or 9:15.

9 MR. FLOYD: 9:15.

10 THE COURT: 9:15. All right. We'll see you at
11 9:15 then. We'll stand in recess.

12 (WHEREUPON, the trial of this case was
13 recessed for the day.)

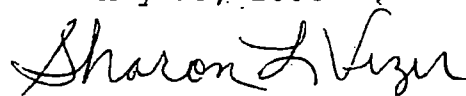
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15 ** END OF VOLUME V **
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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned case in Circuit Court on the 14th day of July 2000.

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

May 19, 2004



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 93-GS-32-2354

JOHNNY O. BENNETT,) ** VOLUME VI **

DEFENDANT.)

JULY 15, 2000

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE

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

DONNIE MYERS

DAYTON RIDDLE

SHAWN GRAHAM

ATTORNEYS FOR THE STATE

WAYNE FLOYD

HERVERY B.O. YOUNG

ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

VOLUME VI

SATURDAY, JULY 15, 2000

MOTIONS MADE BY THE DEFENSE

AFTER THE STATE RESTED

-1765

WITNESSESMAJOR SHEILA MAZEK (DW):

DIRECT EXAMINATION BY MR. YOUNG

-1789

CROSS-EXAMINATION BY MR. MYERS

-1802

REDIRECT EXAMINATION BY MR. YOUNG

-1803

MICHELLE MCLAUREN (DW):

DIRECT EXAMINATION BY MR. FLOYD

-1805

ALLEN PAAVEL -(IC) (DW):

DIRECT EXAMINATION BY MR. FLOYD

-1814

REBECCA DIXON -(IC) (DW):

DIRECT EXAMINATION BY MR. FLOYD

-1817

JOHN PURVIS (DW):

DIRECT EXAMINATION BY MR. FLOYD

-1830

I N D E XWITNESSESNATHANIAL SUTTON (DW):

DIRECT EXAMINATION BY MR. YOUNG	-1834
CROSS-EXAMINATION BY MR. MYERS	-1839
REDIRECT EXAMINATION BY MR. YOUNG	-1841

MARSHALL JEFFCOAT (DW):

DIRECT EXAMINATION BY MR. YOUNG	-1842
CROSS-EXAMINATION BY MR. MYERS	-1848
REDIRECT EXAMINATION BY MR. YOUNG	-1849

BEN KILLIAN (DW):

DIRECT EXAMINATION BY MR. YOUNG	-1852
CROSS-EXAMINATION BY MR. MYERS	-1861

VALERIE WITAKER (DW):

DIRECT EXAMINATION BY MR. YOUNG	-1864
CROSS-EXAMINATION BY MR. MYERS	-1868
REDIRECT EXAMINATION BY MR. YOUNG	-1869

LUCIUS MARTIN (DW):

DIRECT EXAMINATION BY MR. FLOYD	-1870

ROBERT ROTH (DW):

DIRECT EXAMINATION BY MR. FLOYD	-1873

CAPTAIN FISHMEND SANDERS (DW):

DIRECT EXAMINATION BY MR. YOUNG	-1876
CROSS-EXAMINATION BY MR. MYERS	-1883
REDIRECT EXAMINATION BY MR. YOUNG	-1887

I N D E XWITNESSESGLORIA BELL (DW):

DIRECT EXAMINATION BY MR. FLOYD -1889

SERGEANT JOHNNY BUNCUMB (DW):

DIRECT EXAMINATION BY MR. YOUNG -1892

ALBERT MACK (DW):

DIRECT EXAMINATION BY MR. FLOYD -1897

CROSS-EXAMINATION BY MR. MYERS -1900

SERGEANT SHARON ADCOX (DW):

DIRECT EXAMINATION BY MR. YOUNG -1902

CROSS-EXAMINATION BY MR. MYERS -1905

REDIRECT EXAMINATION BY MR. YOUNG -1908

TIMOTHY CLARK (DW):

DIRECT EXAMINATION BY MR. FLOYD -1911

SERGEANT CANDACE CRAGGS (DW):

DIRECT EXAMINATION BY MR. YOUNG -1914

CROSS-EXAMINATION BY MR. MYERS -1919

ROGER STEWART (DW):

DIRECT EXAMINATION BY MR. FLOYD -1920

JOYCE PERRY (DW):

DIRECT EXAMINATION BY MR. YOUNG -1922

CROSS-EXAMINATION BY MR. MYERS -1925

BRYANT FULLER (DW):

DIRECT EXAMINATION BY MR. FLOYD -1926

I N D E XWITNESSESCANADA KNOTTS (DW):

DIRECT EXAMINATION BY MR. FLOYD -1928

ANDREW JEFFCOAT (DW):

DIRECT EXAMINATION BY MR. YOUNG -1929

DAVID WENDELL MARTIN (DW):

DIRECT EXAMINATION BY MR. FLOYD -1934

BOBBY SAMUEL JOHNSON, JR. (DW)

DIRECT EXAMINATION BY MR. FLOYD -1938

CERTIFICATE OF REPORTER -1951

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE COURT:</u>			
1	LETTER ABOUT DR. AIKEN AND REPORT	-1056	
2	WITNESS LIST	-1056	
3	911 TAPE	-1816	
4	INVESTIGATION REPORT	-1817	
5	NOTE FROM JURY REQUESTING AN EASEL	-2142	
6	NOTE FROM JURY	-2147	
<u>FOR THE DEFENDANT:</u>			
1	CERTIFICATE		-1104
2	STATEMENT	-1252	
3	STATEMENT	-1252	
4	STATEMENT	-1252	
5	CLIMATOLOGY DATA		-1829
6	OWENS STEEL APPLICATION		-1829
7	PHOTOGRAPH		-2027
8	PHOTOGRAPH		-2027
9	PHOTOGRAPH		-2027
10	PHOTOGRAPH		-2027
11	PHOTOGRAPH		-2027
12	PHOTOGRAPH		-2027
13	DIPLOMA CERTIFICATE		-2027
14	HOSPICE CERTIFICATE		-2027

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
1 -	SUMMARY CHART		--925
2 -	SUMMARY CHART		--952
3 -	SUMMARY CHART		--962
4 -	MAP		--987
5 -	LARGE PHOTOGRAPH		-1015
6 -	SENTENCE SHEET		-1029
7 -	LARGE PHOTOGRAPHS (2)	-1035	-1036
8 -	DOCUMENT - EXTENSION LETTER		-1089
9 -	SUMMARY CHART		-1090
10 -	CERTIFICATE OF RELEASE		-1108
11 -	MAP		-1109
12 -	SUMMARY CHART		-1113
13 -	CALENDAR		-1119
14 -	PHOTOGRAPH OF CAR		-1124
15 -	PILLOW		-1138
16 -	PILLOW		-1138
17 -	DRINKING GLASS		-1139
18 -	DRINKING GLASS		-1139
19 -	RED GLASSES		-1140
20 -	FLOOR MAT		-1141
21 -	FLOOR MAT		-1141
22 -	SHAVING CASE		-1142

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
23	- CANE WITH BRASS DUCK HEAD		-1144
24	- COPY OF CHECK		-1172
25	- COPY OF CHECKS		-1177
26	- CAMERA		-1233
27	- STATEMENT/RECEIPT		-1242
28	- BENCH WARRANT		-1272
29	- MAP		-1290
30	- MAP		-1298
31	- STATEMENT		-1304
32	- AUDIOTAPE		-1309
33	- HANDWRITTEN STATEMENT		-1317
34	- STATEMENT		-1321
35	- AUDIOTAPE		-1321
36	- MESSAGE/NOTE		-1328
37	- MESSAGE/NOTE		-1328
38	- PHOTOGRAPH		-1443
39	- PHOTOGRAPH		-1443
40	- PHOTOGRAPH		-1448
41	- PHOTOGRAPH		-1448
42	- PHOTOGRAPH		-1448
43	- FINGERPRINT CARD		-1454
44	- PHOTOGRAPH		-1458

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
45 -	PHOTOGRAPH		-1458
46 -	PHOTOGRAPH		-1458
47 -	PHOTOGRAPH		-1458
48 -	PHOTOGRAPH		-1458
49 -	PHOTOGRAPH		-1458
50 -	KEYCASE		-1461
51 -	SCREWDRIVER		-1464
52 -	PHOTOGRAPH		-1466
53 -	PHOTOGRAPH		-1466
54 -	PHOTOGRAPH		-1468
55 -	PHOTOGRAPH		-1468
56 -	SHIRT		-1471
57 -	CHART		-1499
58 -	MEMO NOTICE/LETTER		-1554
59 -	MEMO NOTICE/LETTER		-1555
60 -	MEMO NOTICE/LETTER		-1559
61 -	MEMO NOTICE/LETTER		-1560
62 -	LETTER		-1564
63 -	STATEMENT		-1626
64 -	REQUEST LETTER		-1628
65 -	REQUEST LETTER		-1632
66 -	REQUEST LETTER		-1644

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
67	REQUEST LETTER		-1 648
68	LETTER		-1 660
69	LETTER		-1 660
70	LETTER		-1 662
71	LETTER		-1 663
72	PHOTOGRAPH		-1 668
73	PHOTOGRAPH		-1 668
74	PHOTOGRAPH		-1 668
75	PHOTOGRAPH		-1 683
76	PHOTOGRAPH		-1 683
77	PHOTOGRAPH		-1 683
78	PHOTOGRAPH		-1 683
79	PHOTOGRAPH		-1 683
80	PHOTOGRAPH		-1 683
81	PHOTOGRAPH		-1 683
82	PHOTOGRAPH		-1 683
83	CHART/DIAGRAM OF WOUNDS		-1 714
84	AUTOPSY DIAGRAM		-1 716
85	PHOTOGRAPH		-1 741
86	AWARD		-1 745
87	CERTIFICATE		-1 745
88	PHOTOGRAPH		-1 748

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
89 -	PHOTOGRAPH		-1748
90 -	BOOKING PHOTOGRAPH		-2004

Saturday, July 15, 2000

THE COURT: All parties and attorneys are in the courtroom. Counsel, I believe we need to take up motions from last night.

Are there any motions by the defense?

MR. FLOYD: Yes, Your Honor.

THE COURT: Okay.

MR. FLOYD: Your Honor, at this time, the defense would move for a directed verdict of life imprisonment, or alternatively, for a new trial for each of the following reasons: First, because of the -- what we contend to be errors in the jury selection process.

First, the Court excused the first witness called as a potential juror by the name of Owensby. It's our position that she was excused without just cause. The reason she was excused was that she was covering for three other Lutheran ministers who were on vacation. Covering, by that I mean if any emergencies came up she had to go visit at the hospital and so forth.

She advised the Court that she could call the Lutheran senate to see if there was a replacement available. She was excused without allowing to make that call. We renew that objection.

The Court approved as a juror a lady by the name of Gaskin, even though she three times said that anyone

1 convicted of murder with malice should receive the death
2 penalty.

3 Next, the Court approved Juror Porter, who was a
4 witness to the murder of her own sister, which was prosecuted
5 by the Lexington County Solicitor's Office when Mr. Myers was
6 the Solicitor.

7 Next, the Court approved a Juror Huckabee, a
8 veterinarian who has euthanized several hundred animals, and
9 likewise, knew the Solicitor through his connection with the
10 Rotary for 20 years. We felt there was a question as to
11 whether or not this history of euthanization of animals might
12 make him insensitive to the killing of a human being.

13 Next, the Court approved a juror named Padgett, the
14 wife of James Padgett, formerly the assistant jailer in
15 Lexington County who retired in June of 1990, some six months
16 before this incident, but who continued to work in the jail
17 on a contract basis for the telephone service, and who was in
18 the jail while Johnny Bennett was in the jail. And we
19 presented evidence to the Court that he was, in fact, a
20 witness to one of the incidents involved in this crime.

21 The error in admitting Juror Padgett was compounded
22 just because of the luck of her placement in the jury panel.
23 She ended up as juror number 27. Since there are 12 jurors,
24 15 strikes available between both parties, there was no way
25 that the defense could keep her off of the jury and exercise

1 all 10 of their peremptory strikes. As a result, the defense
2 only had nine strikes available. They had to sacrifice a
3 strike in order to keep her off of the jury panel.

4 Next, it's our position the Court erred in
5 releasing a juror from the panel by the name of Outlaw, who
6 came in and advised the Court of some medical problems that
7 he had that he thought prevented him from serving on the
8 jury. There was no medical certificate presented at that
9 time. We do not know if one has been presented since then.

10 THE COURT: Let me note for the record, there has
11 been one presented. And the doctor did say that it was his
12 recommendation that Mr. Outlaw not serve on the jury.

13 MR. FLOYD: Thank you, Your Honor.

14 THE COURT: And let me note for the record, I gave
15 it to the clerk once we received it.

16 MR. FLOYD: Thank you, Your Honor.

17 But as luck would have it, when he was excused
18 that, in fact, made Juror Padgett number 27, which presented
19 us some problems, referred to right above.

20 We also felt that the jury [sic] erred in allowing
21 the State to strike Juror Shirlie Sands, a black female. We,
22 of course, challenged that under Batson.

23 The reason given by the State was that -- and I'm
24 probably paraphrasing here a little bit, she was
25 anti-authoritarian, hardheaded, plus she was employed in the

1 school district and the school system as a teacher and the
2 defendant's mother works in the cafeteria service of another
3 school district, not the one that she was in. We felt that
4 that strike was pretextual. Basically what they were saying
5 in effect was, you know, she's not an Uncle Tom. As a
6 result, 50 percent of the available black jurors were struck.

7 We then lost -- we then feel that the Court erred
8 when they allowed the remaining black juror who was in the
9 panel and selected to be excused when he said that he could
10 not -- felt he could not be fair to both parties. We
11 understand that presented some significant difficulties for
12 the Court because it was, in fact, an admission he might not
13 be able to comply with the requirements of jury service.

14 We then feel the Court erred when it refused to
15 grant a continuance so that we could have another jury panel,
16 because the result of all that was we have 12 white jurors
17 and one black defendant. So we have no blacks on this jury
18 at all. That juror's name was Brown.

19 We also felt that the Court erred when it refused
20 to suppress the alleged confessions of the defendant or grant
21 the defendant a Jackson Denno hearing on those confessions.
22 That goes to both the confessions that were entered into the
23 previous trial and the confession that was entered into for
24 the first time in this trial, which was a statement made by
25 the defendant to Department of Corrections officials

1 investigating allegations of sexual activity between visitors
2 to the prison and the inmates.

3 We also feel the Court erred in failing to grant
4 the defendant's motion for equitable relief and estoppel
5 because of the State's destruction of potential evidence, to
6 wit, tapes that were made while -- unbeknownst to the
7 defendant, while they were moving to various locations in the
8 county on December the 5th of 1990.

9 We feel the Court erred when it allowed into
10 evidence photographs of Shannon Gilbert and Aaron McGough,
11 who were the two young men involved in the Pizza Hut
12 incident. We felt those photographs were inflammatory and
13 prejudicial, the prejudicial aspect of the photographs far
14 outweighing the probative value.

15 We feel the Court erred when it failed to grant a
16 mistrial when the Court required the defendant to tell the
17 State whether we were going to use mental health testimony.

18 We feel the Court erred when it failed to grant our
19 motion to exclude the dream testimony of Shannon Gilbert, who
20 then testified that the dream he had was that Indians were
21 chasing him, and they were black. We feel that this was an
22 insertion of race into these proceedings to the defendant's
23 prejudice, particularly in light of the all-white jury.

24 We also feel that the State inserted race in the
25 case when they had a Y.O.A. officer testifying about an

1 incident down in the Aiken correctional facility in which she
2 said Mr. Bennett was disciplined as a result of actions when
3 there was a fight between a group of black men and a group of
4 white men. Another insertion of race by the State to the
5 prejudice of the defendant.

6 The equitable argument, equitable estoppel argument
7 for seeking the death penalty would also include what we
8 previously mentioned about the fact that we have an all-white
9 jury sitting in judgment of a black male in deciding whether
10 or not he should die.

11 Furthermore, we move for a direction of life
12 imprisonment because this jury is in effect in contravention
13 and violation of the requirements and protections contained
14 in Section 16-3-20 of the South Carolina Code of Laws.

15 First of all, this jury, which we are having here
16 today and having this trial, is over four years, almost five
17 from the time that an initial jury found Mr. Bennett guilty
18 of murder. The statute requires that a jury -- that the same
19 jury that rendered a death penalty must hear the sentencing
20 as soon as possible, but no earlier than 24 hours after the
21 imposition of the guilt of murder.

22 Four years, almost five years would violate that as
23 soon as possible requirement of the statute. And likewise,
24 violate the statute in that it is a separate jury panel
25 rather than the jury panel that, in fact, found the defendant

1 guilty of murder.

2 Furthermore, we feel that the State has failed to
3 prove any aggravating circumstances beyond a reasonable
4 doubt. First of all, there's absolutely no evidence on the
5 value of any property allegedly taken. There is no evidence
6 that Johnny Bennett ever had any intention to permanently
7 deprive the defendant of any property or that the murder had
8 anything to do with theft of any type.

9 The State's best case is that the confession that
10 Mr. Bennett made was that he went into a rage and committed
11 the act. There was no premeditation to take any type of
12 property and any property that Mr. Benton Smith had, just had
13 nothing to do with the crime itself.

14 Furthermore, there's no evidence to show that there
15 was any torture or any kidnapping. They were voluntarily
16 together the entire time that this happened.

17 Furthermore, it was improper for us to even have a
18 new sentencing trial, as there was no error in the original
19 sentencing proceeding. And under the requirements of Section
20 16-3-25, Subsection 2, provides that there can be a new
21 sentencing trial if, in fact, there was error made in the
22 initial sentencing procedure which was prejudicial to the
23 defendant.

24 The error that was ruled upon by the Supreme Court
25 was that one of the jurors was not death penalty qualified.

1 That error was made before the guilt phase even started in
2 the jury selection process. So there was no error made in
3 the sentencing procedure itself, and accordingly, it was
4 improper to remand this case for a new sentencing trial.

5 In fact, what should have happened was that the
6 Court should have -- the Supreme Court should have ruled that
7 Mr. Bennett was entitled to the punishment of life
8 imprisonment because, in fact, the end result was that his
9 initial sentence of death was made only by 11 qualified
10 jurors, and in order to sustain a conviction of death there
11 must be a unanimous verdict of the jury, which by our
12 constitution requires 12 jurors. There were only 11
13 qualified that voted for death, so life imprisonment was the
14 appropriate sentence.

15 Furthermore, there was an error made by
16 Mr. Bennett's trial counsel by inadvertently asking a
17 juror [sic] about -- mentioning death row, and we think
18 that's prejudiced him.

19 We feel that was compounded by the State's witness
20 repeating it right after that, and by the Court's instruction
21 on the point because it may not have been known to the jury
22 that that meant he was on death row or that other prisoners
23 who do not have death sentences could well, in fact, be on
24 death row, as, in fact, Mr. Bennett was on death row without
25 a death sentence at one time.

1 Furthermore, the State should be equitably estopped
2 from seeking the death penalty and this Court should impose a
3 penalty of life imprisonment because the State's own
4 officials have engaged in conduct with this defendant.
5 They've used this defendant, and they now try to seek the
6 same conduct that the State participated in to seek the death
7 penalty against Mr. Bennett.

8 By this, I specifically refer to the fact the
9 State's own witnesses said when Johnny Bennett was in
10 Lexington County Jail the jailers used him to enforce
11 discipline. They used him if they had somebody they had
12 trouble with, unruly with, they sent him in to calm them
13 down, to take care of them. Whether they had to do it
14 physically or whatever, they used him to do it.

15 Then other State officials used him to distribute
16 contraband throughout the jail. He made money from it, but
17 the State used him. He couldn't have done it without the
18 State's officials. They are the ones that brought it in.
19 Then the same State officials came in and they sell him
20 marijuana, they sell him crack.

21 The State officials' conduct here, and then they
22 use this same conduct now to try to seek the death penalty
23 from him. We don't think that that's fair. And we think
24 equity demands that a life sentence be imposed because of
25 this attempt by the State to use State officials' conduct

1 against him.

2 Then they also used a State official, a sheriff's
3 deputy who had a sexual relationship with this defendant.
4 That's a State official. That's State conduct. Once more,
5 they are using that against Mr. Bennett now to try to seek
6 the death penalty. We think it's unfair for the State to do
7 error, the State to do wrong and then the State to try to use
8 that to now impose the death penalty upon Mr. Bennett.

9 Furthermore, the State then sought to introduce
10 evidence that would have discredited Mr. Bennett's attorney,
11 which prejudiced him in this trial.

12 Now, the Court will analyze that situation. What
13 you had here was Mr. Bennett wrote two letters. Now, they
14 make a big issue because he actually wrote the letter on
15 behalf of Judie Hardee. That has nothing to do with
16 anything. It's nothing wrong for somebody to write a letter
17 on somebody's behalf.

18 The question is whether the contents of the letter
19 were not truthful. We know the contents were truthful
20 because when the State insisted that she personally write the
21 letter, we don't know why that should be a requirement, she
22 wrote the letter. If he had been untruthful about it and
23 they granted her the visitation privileges, then she wouldn't
24 have come. So what's the big deal here?

25 If they would have looked at the letter, the letter

1 from his attorney's office was merely a transmittal letter of
2 those two documents. If they looked at the letter closely
3 they would have noticed that circled on the bottom of the
4 letter was the paralegal who wrote the letter. Though his
5 attorney's name was signed, it was clear from the notation on
6 the letter that it was actually prepared and signed by the
7 paralegal.

8 Now, that doesn't relieve any civil
9 responsibilities or liabilities of the attorney, respondeat
10 superior. However, that does not make the -- they didn't
11 have to bring the lawyer's name out in it because the lawyer
12 had nothing to do with the actual signing of the letter, in
13 addition to it not having any bearing on anything anyway.

14 Accordingly, then the Court refused the defense's
15 request to appoint a new lawyer because that in effect left
16 the defendant with only one lawyer in violation of the
17 statute, and that lawyer is not death penalty certified.

18 Furthermore, the Court refused -- the Court allowed
19 the State to introduce hearsay testimony from sheriff's
20 department witnesses, specifically allowing Mark Jones to
21 testify to things that Paul Smith told him, and then denied
22 the defendants when they attempted to introduce evidence in
23 the same fashion.

24 Furthermore, the Court erred when it allowed victim
25 impact testimony through the mothers of the two young boys

involved in the Pizza Hut incident.

Furthermore, the Court erred when it refused to grant a mistrial when one of the State's witnesses, Pamela Gonsalves, testified that she thought that there had been drug activity by the defendant.

Furthermore, the defendant was prejudiced when Captain Bost came in and testified about Bennett being such a horrible individual, and had to tazer gun him. But what really came out in that testimony was that what prompted the tazer gun was that when he saw the video he saw his superior officer being pulled out of a room because the superior officer had lost his temper and control in some type of argument with this defendant.

So that was the real motivation for the tazer gun incident, and yet they're now bringing that in to try to impugn the character of Johnny Bennett. It's one more incident of State misconduct, and they're trying to clear up the State's misconduct, clean their house, by killing this man. For all these reasons, we move for a new trial or direction of verdict of life imprisonment.

THE COURT: Counsel, I've previously ruled on each of these motions. And again, I would deny the motion on each of those counts.

Let me do clarify just a couple of things. One thing I do want to clarify for the record that we didn't do

1 at the time. When the Y.O.A. officer testified regarding --
2 and I recall in her testimony she distinguished white males
3 from black males. I note that my recollection of it was the
4 State didn't actually, basically, seek that particular
5 information from her in that fashion, she just did it as part
6 of her testimony.

7 But again, I would note that the officer was a
8 black female who actually made the statement. So certainly,
9 I can't imagine on its face that there was any reason why she
10 would want to use that to prejudice Mr. Bennett. I just want
11 to be sure that's clear for the record.

12 As to the other matters, again, I've previously
13 ruled on all of them and would deny the motions at this time.

14 Mr. Myers, you want to put anything on the record
15 at all about it?

16 MR. MYERS: Yes, sir, just one thing. If you
17 recall when we struck Ms. Sands, the black female, I told you
18 that the State had no reason to strike her for racial reasons
19 because the victims were black, the investigating officers
20 were black, and I told you the majority of our witnesses were
21 minorities. Let the record reflect that the State put up 45
22 witnesses, 24 were black, 2 others were different type of
23 minorities. So 26 out of 45 were minorities of the State's
24 witnesses. Thank you.

25 THE COURT: So noted.

1 All right. Any other motions?

2 MR. FLOYD: No, thank you, Your Honor. No further
3 motions.

4 THE COURT: Sure. Now, I need to ask some
5 questions of Mr. Bennett, if I might.

6 Mr. Bennett, let me ask if you'd please stand, sir,
7 and just raise your right hand, if you would.

8 Madam Clerk, put him under oath.

9 JOHNNY OLANDIS BENNETT, JR., after having been
10 duly sworn, testified as follows:

11 THE COURT: Mr. Bennett, first of all, you
12 understand in this particular proceeding that the State has
13 the burden of proof. In other words, they must prove the
14 aggravating circumstances beyond a reasonable doubt before
15 the jury can give a sentence of death; you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And, of course, what that means is that
18 you have no burden of proof, you don't have to prove
19 anything; you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And, of course, that also means then
22 that you're not required to put up a case. In other words,
23 you don't have to call a single witness if you don't want to.
24 You can say let's go to the jury right now, and on the basis
25 of everything that we've got in at that point not put

1 anything else in and see if the jury will find that the
2 State's carried the burden of proof. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Of course, you have the right,
5 obviously, to put up witnesses, if you want to. The other
6 thing I would discuss with you is that you have the right to
7 testify. Now, you have two alternatives of presentation in
8 front of jury. One is testimony, sworn testimony; and the
9 other is a procedure called allocution, and it's spelled
10 a-l-l-o-c-u-t-i-o-n. I just spell that for the record.

11 Allocution, basically, is where you have the right
12 to give a closing statement to the jury itself. Now, we're
13 going to discuss that later, but I do let you know that you
14 have that option later, if you want. But for right now I
15 want to make sure you understand that you have the right to
16 testify, if you want to; do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, you understand that since you
19 don't have the burden of proof you don't have to testify,
20 also. Under the Fifth Amendment you have the right not to
21 get up on the stand and don't have to do so; do you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, if you do get on the stand, the
25 State may have the right to ask you about any prior

1 convictions. And what we'll do is we'll ask the State at
2 this time -- I know there's been some that have come in and
3 the State may ask you about those.

4 But, Mr. Myers, if he testifies, would you ask him
5 about any prior convictions?

6 MR. MYERS: In the penalty phase I can ask him
7 about convictions, character, anything else.

8 THE COURT: Yes, sir, I understand that. Are there
9 any others that you would ask him about?

10 MR. MYERS: The only conviction that I know of that
11 he has is the one from the Pizza Hut.

12 THE COURT: All right. So you understand that
13 then, Mr. Bennett?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And bearing in mind then that that
16 would be asked -- could be asked of you, probably would be
17 asked of you if you testify you need to also consider that.

18 Now, first of all, as to making these decisions, do
19 you feel like you are mentally and emotionally capable of
20 making these decisions?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Have you had a chance to talk with your
23 lawyers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And after -- and at this time -- and I

1 know this sounds like a stupid question but we always have to
2 ask it to be sure. At this time, are you under the influence
3 of any drugs or alcohol or medication of any kind?

4 THE DEFENDANT: No, sir.

5 THE COURT: Nothing that influences your judgment
6 in any way; is that right?

7 THE DEFENDANT: No, sir.

8 THE COURT: Now, understanding that then, have you
9 determined whether you will call a case, in other words,
10 whether you will call witnesses or not?

11 THE DEFENDANT: Yes, sir, I will.

12 THE COURT: You will call witnesses. And, again,
13 you've talked with your lawyers about that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And you don't have to tell me now, you
16 can wait until later, if you wish, have you determined
17 whether you will testify yourself or not? Do you wish to
18 tell me now or you want to just make that decision later?

19 THE DEFENDANT: I'll wait until later.

20 THE COURT: Okay. Now, as far as the decision, now
21 let me ask you this, Mr. Floyd. Have you given Mr. Bennett
22 the best advice you feel you could give him?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: And as far as his decision to call
25 witnesses, do you wish to make any statement as to whether

1 you concur or agree or disagree, or just not make any
2 statement? You don't have to stay anything, but if you want
3 to certainly you can.

4 MR. FLOYD: I concur with the decision to call
5 witnesses.

6 THE COURT: Okay. Mr. Young, you also have had a
7 chance to talk with Mr. Bennett?

8 MR. YOUNG: I have, Your Honor.

9 THE COURT: Have you given him the best advice you
10 could give him?

11 MR. YOUNG: Yes, sir.

12 THE COURT: And do you feel that -- again, do you
13 have anything you want to say about the decision to call
14 witnesses?

15 MR. YOUNG: No, sir, I agree with the decision.

16 THE COURT: Okay. Anything else, Counsel, at this
17 point? Are there any other matters that either counsel are
18 concerned about that you want me to ask Mr. Bennett?

19 MR. FLOYD: Well, no, Your Honor. I would maybe
20 like to put one other thing on the record.

21 THE COURT: Okay.

22 MR. FLOYD: We, of course, are doing our best for
23 Mr. Bennett, and I understand the Court has quite a balancing
24 act when we have one of these kind of cases because we have
25 -- well, right now 13 members of the community who are being

1 highly disrupted, taken away from their families and so
2 forth, and we have a lot of court personnel and so forth
3 involved in these proceedings. So there is an effort to try
4 to expedite these proceedings to minimize the interruptions
5 of people's lives. But as a result, I think the earliest
6 that we've broken down is sometime after seven o' clock,
7 usually been eight o'clock range. Last night about 9:15.

8 Now, as a result, Mr. Young and I, we have to then
9 spend a little bit of time with our client and then we have
10 to go get together and try to plan the next day and deal with
11 any problems that come up. Now, I understand that the
12 Solicitor's Office has the same playing field. However, they
13 have many, many lawyers who can assist them with things that
14 come up during trial, and we've seen them in the courtroom.
15 They have the Sheriff's Department that can assist them in
16 locating and speaking with witnesses.

17 So as a result, I'm not sure exactly for Mr. Young,
18 but myself, I haven't been to bed before two o'clock in the
19 morning. So I think it takes its toll on us, and so we are a
20 little concerned that maybe this could impact on the
21 representation that we are providing.

22 THE COURT: Okay. I note that. And let me note
23 one thing that I do is when each side puts up their case, as
24 you gathered, I try to work with them as much as I can. And
25 you note that the other night I was even concerned that there

1 had been some reference about favoritism in the scheduling
2 and, in essence, what happens is this. When each side puts
3 up their case, I know they have problems with witnesses that
4 they have to work out, and the State was having some problems
5 with witnesses, so we've had to go later to do that sometime,
6 and we did that. And I give them some say so in that. Once
7 you're calling your case we'll do the same thing with you,
8 and if we get to 5:30 or 6:00 and you want to stop at 5:30 or
9 6:00, we will stop at 5:30 or 6:00.

10 MR. FLOYD: Thank you, Your Honor.

11 THE COURT: Now, you understand, I'll ask the jury
12 about that, but certainly we'll try to -- I'll let you talk
13 with Mr. Young, if you want to.

14 MR. FLOYD: Thank you, Your Honor.

15 THE COURT: Let me just finish that statement. We
16 will try to give you the same place in the decision process
17 in your case that we did with the State when they were
18 calling their case, okay. That's just the way we normally do
19 it. Go ahead.

20 MR. FLOYD: And the only other thing, Your Honor,
21 is, basically, they get Mr. Bennett up at 4:30 every morning
22 so it makes it for a very long day on him also, and so it
23 impacts on us all.

24 THE COURT: Well, consider that we got through here
25 last night after 9:00, and I don't know what time he got

1 back.

2 Officers, do you know what time he got back to the
3 jail last night?

4 THE DEPUTY: I believe it was 9:30, Your Honor.

5 THE COURT: He was at the jail by 9:30. Are you
6 sure, because I saw him in the courtroom here for awhile
7 after the trial was over with?

8 THE DEPUTY: We transported him at 9:30.

9 THE COURT: You did. Okay. Okay.

10 Mr. Bennett, let me ask you to stand. How much
11 sleep did you get last night?

12 THE DEFENDANT: Well, Your Honor, I got up -- like
13 I said, they got me there, I guess about 9:30. I got up on
14 the floor, but they got me assigned too in about 10 minutes
15 after 10:00. And I didn't actually get to bed until around
16 sometime about after 12:00, you know, because there was some
17 things that I was, you know, looking over myself, going over
18 for my case, and I didn't get to sleep until like after
19 12:00. That's been going on for about the past week.

20 And, you know, I was able to deal with it but, you
21 know, the past few days being that we haven't been -- you
22 know, time has gotten later, and later, and later, you know,
23 it has started taking an effect on me. So that's why I felt
24 you said that if it ever got to that point to let you know.
25 That's why, you know, I told my attorneys to bring it to your

1 attention.

2 THE COURT: But do you feel like you're at that
3 point now?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What time did you get up this morning?

6 THE DEFENDANT: Four --

7 THE COURT: Four?

8 THE DEFENDANT: About 4:45.

9 THE COURT: So you had what, between four and a
10 half and five hours sleep?

11 THE DEFENDANT: Somewhere around there.

12 THE COURT: How much sleep you been getting each
13 night during the week?

14 THE DEFENDANT: About the same, because they been
15 getting me up at like 4:30 every morning.

16 THE COURT: At this point -- I'm talking about
17 right now, do you feel like you need to take a break and get
18 some time to be able to get some rest before we get started
19 on your case? And if you want to, I'm going to let you do
20 it, because if that's all you've been getting sleep during
21 the week -- and, again, I apologize. I didn't know the jail
22 was getting you up at 4:30 in morning. If they're doing
23 that, we're going to take a break right now and let you rest,
24 if you want to.

25 THE DEFENDANT: I really don't -- I mean, I'm up

1 now, but I really could use a few minutes before we actually
2 get started.

3 THE COURT: We'll do it. And if you want to, we'll
4 see if we can stop a little earlier this evening if we have
5 to, to give you a chance to maybe get back and get a good
6 night's rest.

7 THE DEFENDANT: I appreciate it.

8 THE COURT: Sure.

9 THE DEFENDANT: Thank you, Your Honor.

10 THE COURT: Anything else then, Mr. Floyd, at this
11 point?

12 MR. FLOYD: No, Your Honor. Thank you.

13 THE COURT: Let's do this, we'll take just a few
14 minute break here then, give Mr. Bennett a chance to maybe
15 just go back in the defense room with the lawyers and kind of
16 relax a little bit and get some rest and just -- I'll check
17 with you in a little while, Mr. Floyd, and see how he's
18 doing, okay?

19 Anything from the State before we take a break?

20 MR. MYERS: No, sir.

21 THE COURT: All right. We'll stand in recess for a
22 few minutes.

23 (WHEREUPON, a brief recess was taken from
24 approximately 10:10 a.m. until 10:35 a.m.)

25 THE COURT: Mr. Bennett, have you had a chance to

1 get a little bit of rest?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. Are you ready to start?

4 THE DEFENDANT: Yes, sir. Thank you, Your Honor.

5 THE COURT: The defense ready?

6 MR. FLOYD: Yes, Your Honor.

7 THE COURT: State ready?

8 MR. MYERS: Yes, sir.

9 THE COURT: Bring the jury in.

10 By the way, for the record, Agent Jacobs tells me
11 the jury did fine last night, had no problems.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 10:36 a.m.)

14 THE COURT: All parties and attorneys are in the
15 courtroom and all jurors have returned.

16 Good morning. Let me first apologize for late
17 getting started. There were some matters that were not
18 actually related to the trial as such, they were sort of
19 related, but some other things I had to take care of and we
20 had to get straightened out before we could get started.

21 That's one thing about a trial such as this,
22 occasionally things come up and when they come up we don't
23 get to wait, we have to take care of them right then. And I
24 apologize for that. But anyway, we are prepared to get
25 started this morning.

1 Mr. Floyd, Mr. Young?

2 MR. YOUNG: May it please the court. We call Major
3 Mazeek.

4 SHEILA MAZEK, after having been duly sworn,
5 testified as follows:

6 THE CLERK: Please state your name on the record.

7 THE WITNESS: Sheila Mazeek.

8 DIRECT EXAMINATION

9 BY MR. YOUNG:

10 Q. Ms. Mazeek, where are you employed?

11 A. South Carolina Department of Corrections, Broad
12 River, S. M. U. Unit.

13 Q. S. M. U. means super max?

14 A. Special management for lower rank of super max.

15 Q. Special management. What is your rank there?

16 A. I am the major over S. M. U. Unit.

17 Q. As the major, do you have any correction officers
18 that work under you?

19 A. Yes.

20 Q. What are your duties at the Department of
21 Corrections?

22 A. Excuse me?

23 Q. What are your duties at the Department of
24 Corrections?

25 A. My duty now is to maintain custody and control and

1 welfare of inmates, to separate H. I. V. inmates from
2 non H. I. V. inmates, P. C. assorted behavior, escape-type
3 inmates.

4 Q. And in 1995, '96, were you employed with the
5 Department of Corrections?

6 A. Yes, I was a lieutenant at the Edisto unit whereas
7 they house inmates that have been trial and convicted of a
8 sentence and also inmates that has not been trial and
9 convicted, which is called safe keepers, kind of safe
10 keepers.

11 Q. How long have you been with the Department of
12 Corrections?

13 A. 24 years, two months.

14 Q. 24 years total?

15 A. 24 years and two months.

16 Q. Two months?

17 A. Yes.

18 Q. Did you have an occasion in 1995 to be able to
19 supervise Johnny Bennett?

20 A. Yes.

21 Q. In what capacity did you supervise him?

22 A. Johnny Bennett was a safe keeper on the A-Wing top
23 tier at the time I was a lieutenant.

24 Q. How often would you say that you had contact with
25 Mr. Bennett?

1 A. Daily.

2 Q. When new persons come into your unit that you were
3 supervising, did you have a procedure or something that you
4 did with all the inmates?

5 A. Yes. The procedure is to sit the inmate down and
6 go over the rules and regulations of that unit to insure that
7 they abide by rules and regulations and let them, you know,
8 understand that if they violate the rules and regulations
9 they would be dealt with according to that policy.

10 Q. Did you have an occasion to sit down with Johnny
11 Bennett --

12 A. Yes.

13 Q. -- and talk with him? When you sat down and talked
14 with Mr. Bennett about these policies, did you inform him
15 your position as a correctional officer?

16 A. Yes. I informed him that, you know, that the
17 rules, you know, state that regardless of what conditions
18 he's in safe keeper or not safe keeper that they still apply,
19 that if he violates the rules and regulations he will be
20 dealt with according to that statis.

21 Q. How did he respond when you informed him of that?

22 A. Well, he understood and, you know, Bennett, he
23 always was a big guy, so I kind of made him understand that,
24 you know, he can't put fear in me because of his size and
25 that regardless of his size that I was going to deal with

1 him.

2 Q. Did he attempt to intimidate you with his size or
3 put you in any fear?

4 A. No, I kind of like put a stop to that before it
5 came to that point.

6 Q. So he didn't blow up to you when you were telling
7 him these rules?

8 A. No.

9 Q. Did he say anything to you that was -- that you
10 would perceive to be disrespectful?

11 A. No, he never disrespect me.

12 Q. Did he do anything that was either disrespectful or
13 threatening toward you?

14 A. No.

15 Q. Have you ever had the occasion to give Mr. Bennett
16 a direct order of what he needed to do?

17 A. No. I never had to give him a direct order, just
18 maybe one or two times playing basketball on the basketball
19 court where inmates become aggressive so far as showing their
20 ego, who's better than the other person, and I think I had to
21 talk to him one or three times about the pushing and shoving,
22 you know, based on the fact that he's so big, you know,
23 compared to the other guys that were playing with him.

24 Q. How would he respond when you were talking to him
25 about that?

1 A. He understood because I think he understood my
2 statis, that if it continued I would cancel the recreation or
3 whatever for that day.

4 Q. When you would tell him to stop acting up on the
5 basketball court, would he do what you told him to do?

6 A. Yes.

7 Q. Did he ever blow up at you or anything?

8 A. No.

9 Q. Did Mr. Bennett have a habit that occasionally he
10 would try to negotiate with you on certain things that you
11 asked him to do?

12 A. Well, he had a tendency to try to manipulate
13 certain things and just to get his way, such as to see his
14 point, you know. You know, if we don't see eye-to-eye to see
15 his point. And when I say see his point, that my thing was
16 to him that, I mean, you're a big guy, you need to see other
17 people's points since you are so big, and sometimes you have
18 to let a little man win, you know.

19 Q. So he would, basically, in negotiating would be
20 stating his view of things?

21 A. Right.

22 Q. When he would negotiate on those things, did he do
23 it in a threatening way?

24 A. Oh, no.

25 Q. Did he do it in a way where he would stand over you

1 as if to intimidate you or anything?

2 A. No. I thought I was more intimidated than he was.

3 Q. During the time that he was negotiating or stating
4 his point, did he eventually do whatever it was he was
5 supposed to do?

6 A. Oh, yes.

7 Q. And you mentioned earlier about rec time. What
8 exactly is rec time?

9 A. Recreation is a time period where they have one
10 hour to mingle with other safe keepers, play basketball or
11 handball or even exercise, you know, during that period.

12 Q. And that time frame would last about how long?

13 A. One hour.

14 Q. Is that an hour a day?

15 A. Yes.

16 Q. Typically, what schedule would the inmates have?

17 MR. MYERS: Objection. That's irrelevant.

18 THE COURT: I'll sustain the objection as it
19 relates to the general question of inmates. If you want to
20 relate it to Mr. Bennett certainly you can.

21 BY MR. YOUNG:

22 Q. You mentioned that they had rec time for one hour.
23 When Mr. Bennett was not on rec time what else would he be
24 doing the rest of his time?

25 A. He would be in his room. Sometimes they refuse to

1 come out on rec, and that's fine with me because that's less
2 I have to deal with.

3 Q. So it's okay with you if they don't go to rec?

4 A. True. All I have to do is document it, log it in
5 the book that he refused rec.

6 Q. During the time that Mr. Bennett would be out on
7 rec time playing basketball, things of that nature, how would
8 he act?

9 A. As a model inmate, other inmates. I mean, he was
10 no different from the other ones.

11 Q. Did Mr. Bennett view himself, in your opinion, as a
12 good basketball player?

13 A. He thought he was.

14 Q. Did he show that ego while he was playing
15 basketball?

16 A. Yeah.

17 Q. In December of 1993, there was testimony that
18 Mr. Bennett was involved in a wrestling match on rec time one
19 day; are you familiar with that incident?

20 A. No, sir. December '93, I wasn't at Broad River.

21 Q. Okay. Is it unusual for the time that you were
22 there, was it unusual for the guys who were playing
23 basketball to get a little hot at each other?

24 A. Well, it is unusual because some of them think they
25 are better than others, and they kind of like bring that back

1 into the unit and pick at each other about I'll beat you
2 today and I'll whip you tomorrow or something like. So
3 that's normal to me.

4 Q. So it's normal for the inmates to kind of pit each
5 other against each other?

6 A. Yeah.

7 Q. During the time that you were at the facility, did
8 Mr. Bennett, did he behavior exhibit any characteristics that
9 he wanted to rule things?

10 A. No, he never had that opportunity.

11 Q. Did he ever show that he wanted to be in charge and
12 do things his way?

13 A. No.

14 Q. Would you at times talk with inmates and just talk
15 with them and give them some advice and things?

16 A. Yes. When I make my rounds we listen at a lot of
17 gripes and complaints or something like that, you know. Most
18 of them had chores to do, you know, I had to make sure. I do
19 an inspection on a daily basis to insure that the rooms are
20 clean and they're following the rules and regulations, that
21 they're getting a shower, that they're getting the
22 recreation, that they're getting medical attention, stuff
23 like that. So I had to constantly talk with them on a daily
24 basis.

25 Q. Now, you've been in the Department of Corrections

1 for 24 years and two months?

2 A. Approximately two months, yes.

3 Q. So you know that -- you've been exposed to a lot of
4 inmates who had some concerns, would you say?

5 A. I've been exposed to a lot of difficult inmates,
6 yes.

7 Q. Now, you're not a caseworker there, right?

8 A. No.

9 Q. But you've heard the problems?

10 A. Sure. I had to sit on committees and stuff, annual
11 review with the caseworker.

12 Q. And you have seen things that were --

13 MR. MYERS: Objection. Whatever else happens out
14 there is of no concern to this case, and this defendant, and
15 this crime. We're not trying anybody else.

16 THE COURT: Yes, sir. I don't think you can get
17 into the circumstances relating to the prison in general, but
18 certainly anything that affects the defendant directly you
19 can.

20 MR. YOUNG: Your Honor, I'm actually leading up to
21 her experiences of being able to give advice specifically to
22 Mr. Bennett.

23 THE COURT: Okay. I'll give you a little latitude
24 to do that.

25 BY MR. YOUNG:

1 Q. In your experiences, you have seen a lot of things
2 that tend to lead an inmate to a wrong direction?

3 A. In my experience, I have seen a lot of things that
4 lead inmates to be isolated in a more isolated area, in other
5 words, be locked down.

6 Q. So you've been able to figure out what the inmate
7 needs to do to prevent that from happening?

8 A. Yes.

9 Q. Did you have an occasion to sit down and talk with
10 Mr. Bennett at any point in time?

11 A. Yes, I've talked to him.

12 Q. Did you specifically talk with Mr. Bennett
13 regarding his size?

14 A. Yes.

15 Q. He's a pretty tall fellow, right?

16 A. Pretty big.

17 Q. And I believe you stated that he was bigger than
18 the other inmates?

19 A. Yes. He was much larger than the group that we
20 had, yes.

21 Q. At that time, he was bigger than the rest of them?

22 A. Right.

23 Q. What specifically did you tell Mr. Bennett
24 regarding his size?

25 A. Well, I basically talked to him and explained to

1 him, you know, that pushing and shoving, such as maybe on
2 recreation, he can get a disciplinary, and a disciplinary
3 would lead to -- down the road maybe that would affect him
4 later on, even when he go to court, you know, that it could
5 affect him. That his size is -- I mean, you know, I'm more
6 or less telling him he a football player instead of a
7 basketball player and maybe he should consider playing
8 football instead of basketball.

9 Q. You had the opportunity to see Mr. Bennett interact
10 with the other inmates?

11 A. Yes.

12 Q. How would you describe that interaction?

13 A. Well, that was normal, you know, interacting such
14 as playing, you know, sports any type like that. Once he
15 came inside to be placed in his room all that ceased. All
16 that type of behavior ceased. I never had a problem with him
17 continually carry the situation on and on until it explode.

18 Q. Have you ever observed Mr. Bennett to be violent or
19 aggressive towards another inmate?

20 A. No.

21 Q. Have you ever observed Mr. Bennett to be
22 disrespectful to another inmate?

23 A. No.

24 Q. Have you had the occasion to view Mr. Bennett
25 interact with your other guards, the other correction

1 officers?

2 A. Talking, yeah.

3 Q. Have you ever observed Mr. Bennett to ever be
4 violent towards those other guards?

5 A. No, because once he become violent everything
6 cease. So I never had the occasion of locking him down to
7 the point where I had to cancel rec or anything else for that
8 particular day.

9 Q. Have you observed Mr. Bennett to ever be
10 disrespectful to any other correction officers?

11 A. No.

12 Q. There was an incident in April of 1995 when
13 Mr. Bennett refused to go out to rec when he was told to go.
14 Are you familiar with that incident?

15 A. I remember on several occasions he refused to go
16 outside, you know, didn't want to be bothered for the day or
17 didn't want to get into a contest with who's a better person,
18 it's an ego thing.

19 Q. As a result, was he disciplined because he refused
20 to go to rec?

21 A. No. You don't discipline for not going out to rec.
22 As a matter of fact, like I said, it make my job easier when
23 they refuse to go out to rec. If it got to the point where
24 he's refusing too many days I more or less would talk to him,
25 if there's something wrong, because if somebody refuse rec

1 after maybe about the second or third day, there got to be a
2 problem, but normally, no.

3 Q. Have you yourself ever had any problems with
4 Mr. Bennett?

5 A. No, sir.

6 Q. Have you had to result to writing him up for some
7 type of infraction or anything?

8 A. I don't remember, no, sir.

9 Q. How would you describe Mr. Bennett as an inmate?

10 A. Well, with the group of inmates we had, I described
11 him as being a model inmate like some of the other ones that
12 were there. He's a lot more respectful than some of them,
13 the ones that we had, and whatever I say to him he always
14 followed my instructions so I never had a problem with
15 Bennett.

16 Q. Based on your experiences in the area of
17 corrections and based on your experiences with Mr. Bennett,
18 would you say that Mr. Bennett is the type of inmate that the
19 Department of Corrections cannot control?

20 A. No, I wouldn't say. Because with the group of
21 inmates that I have now compared to Bennett, no.

22 Q. So in your experiences, Mr. Bennett is an inmate
23 who could follow the rules?

24 A. Yes.

25 Q. And have followed the rules?

1 A. Yes.

2 MR. YOUNG: Thank you, Ms. Mazeek. Please answer
3 any questions they have.

4 THE COURT: Cross?

5 CROSS-EXAMINATION

6 BY MR. MYERS:

7 Q. Ms. Mazeek, you had him on Edisto unit in '95 and
8 '96, I think you said; is that correct, ma'am?

9 A. Right, '95 and a portion of '96.

10 Q. A portion of '96?

11 A. Right.

12 Q. And that's when you read him about the policy and
13 the rules out there?

14 A. The unit rules and the regulations, yeah.

15 Q. Then you also counseled with him another time
16 telling him look, Johnny, whatever you do you know it's going
17 to affect you when you go back to court because the jury
18 might hear what you do?

19 A. Yes, I do.

20 Q. And Edisto unit is where he was having sex with
21 that female guard during visitation, isn't it?

22 A. That's what I was told, yes.

23 Q. Was that his one-hour recreation?

24 A. No, that's during a visitation.

25 Q. So he got a one-hour recreation and visitation?

1 A. They got a one-hour recreation daily. You got like
2 visitation twice a month.

3 Q. And when you went over that policy with him and was
4 counseling him did you advise him --

5 A. No contact --

6 Q. Did you advise him that it was --

7 A. Yes. I advised him that once you visit, you know,
8 the visits and the things you can have, you can do and you
9 can't do.

10 Q. Did you advise him during visitations on the Edisto
11 that he could have sex?

12 A. Oh, no.

13 Q. That's wrong, isn't it?

14 A. That's wrong.

15 Q. And you told him don't do anything wrong?

16 A. Don't do anything that would violate the rule and
17 regulations.

18 Q. That's a violation of rules and regulations?

19 A. Yes, it is

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. YOUNG:

23 Q. You were not present or involved with that incident
24 of him having sex?

25 A. No.

1 Q. During visitation, right?

2 A. No. At that time they moved me out of Edisto unit.

3 In other words, they boot me out, I was too strict. And it
4 wasn't because of him or safekeeping, because the other
5 statis, the inmate statis that we had there and --

6 Q. So you don't know if another correction officer
7 would have given him permission --

8 A. No.

9 Q. To have sex or not?

10 A. No, I would not.

11 MR. YOUNG: Thank you. That's all the questions I
12 have.

13 THE COURT: Any recross?

14 MR. MYERS: No.

15 THE COURT: You can step down.

16 MR. YOUNG: We ask that she be excused, Your Honor.

17 THE COURT: You're free to go, if you'd like to.

18 Counsel, I'll do the same thing that I did with the
19 State's witnesses. I'll advise them they're free to go. If
20 either side objects to it let me know ahead of time.

21 MR. YOUNG: Thank you, Your Honor.

22 THE COURT: Call your next witness.

23 MR. FLOYD: Your Honor, Michelle McLauren.

24 MICHELLE MCLAUREN, after having been duly
25 sworn, testified as follows:

1 THE CLERK: Have a seat and state your full name
2 for the record, please.

3 THE WITNESS: Michelle McLauren.

4 DIRECT EXAMINATION

5 BY MR. FLOYD:

6 Q. Ms. McLauren, by whom are you employed?

7 A. Lexington County Sheriff's Department.

8 Q. And what is your position there?

9 A. I'm now a school resource officer.

10 Q. And how long have you been with the Lexington
11 County Sheriff's Department?

12 A. Ten years this month.

13 Q. And were you working for the Sheriff's Department
14 back in December of 1990?

15 A. Yes, sir, I was.

16 Q. And, specifically, were you on duty on the evening
17 of December the 1st of 1990?

18 A. Yes, sir.

19 Q. And what were your duties on that evening?

20 A. Dispatcher, take phone calls and dispatch officers
21 to calls.

22 MR. MYERS: Your Honor, we have a matter.

23 THE COURT: Okay.

24 Ladies and gentlemen, let me ask if you'll step to
25 the jury room just for a moment. While you're there be sure

1 not to talk about the case.

2 (WHEREUPON, the jury leaves the courtroom at
3 approximately 11:00 a.m.)

4 THE COURT: All right. The jury is secured.
5 Mr. Myers?

6 MR. MYERS: Your Honor, counsel is attempting to do
7 the same thing this time he attempted to do the last time,
8 and that is to get in a 911 call through this same witness by
9 a third party, and the 911 call and the statement, well, you
10 ought to look for some other person or some other person
11 committed this crime.

12 She got ready to testify like she did now, the last
13 time, and on page 1988, I said, Your Honor, maybe we should
14 take this up outside the presence of the jury. And I told
15 the judge, I said, Your Honor, about an hour and a half ago
16 you ruled that evidence about third parties and other people
17 they tried to cast aspersion on as committing a crime was
18 inadmissible. And now they come right back and try to do the
19 same thing.

20 The Court rules after they made a bunch of
21 arguments, they were renewing it, and they renewed this over
22 and over and over and kept calling witnesses in front of the
23 jury and kept trying to get the same thing out. We had to
24 send the jury out three or four times.

25 The judge says, I will protect your record in this

1 regard. I am not going to let in the 911 call or calls.
2 That absolutely vitiates Parker and its prodigy. Rights are
3 reserved, rights are protected in that regard. Specifically,
4 I want the Supreme Court to know I do not believe that this
5 evidence is admissible under any circumstances as juxtaposed
6 to State vs. Parker, State vs. Sutherland, and State vs.
7 South, and it is so ordered. Rights are reserved, the
8 proffer is accepted as the 911 tape is concerned.

9 And also he says I've taken testimony at lengthy
10 prior hearings. Then there was further argument by defense
11 attorneys. The Court said again a few pages later, The tape
12 is crystal clear, I'm not going to let it come in. It's not
13 coming in because anyone in the world could call 911. We
14 have got to have evidence that's admissible in the courtroom.

15 And later on, Your Honor, through several other
16 witnesses, the same thing was attempted again in front of
17 jury. We had to send them out. Page 2023, the Court
18 sustained our objection, casting any guilt on the third
19 parties of 911 calls. The Court said, Objection is
20 sustained, that they could mark the 911 call as a Court's
21 exhibit or the tape as a Court's exhibit.

22 And about ten pages later, it was tried again. The
23 Court says that our motion was sustained, rights are
24 reserved, rights are protected for appellate review. So they
25 are trying the same thing that they tried before.

1 And the cases that were cited there, Your Honor,
2 there are numerous cases, and since State vs. Parker, State
3 vs. Sutherland, State vs. South, there's been some more cases
4 than that, State vs. Byram, a death penalty case that came
5 out recently, State vs. Beckham, State vs. Kinlaw. So from
6 '95 up to 2000 the Supreme Court has reaffirmed what the
7 Court ruled in 1995 in this case, and that testimony, we
8 submit, is inadmissible. It was inadmissible at the last
9 trial.

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: Your Honor, at this point in time, I
12 haven't tried to get the tape in.. There's two distinctions
13 here. One, we are now trying to introduce this testimony at
14 the penalty phase rather than the guilt phase. In the
15 penalty phase, of course, one of the factors that a jury can
16 consider statutorily is whether or not there were others
17 involved in the crime and then what was the defendant's role
18 as an accomplice or what was the exact role in the crime.

19 We have already gotten in evidence that there were
20 some other suspects in this case, through Detective Hamer,
21 and this is kind of an elaboration on that thing. I am right
22 now going to question -- intend to question Mrs. McLauren on
23 her investigative report she made up.

24 Now, Your Honor, this is the same thing they did
25 with Mark Jones yesterday or the day before, when they got

1 through Mark Jones, because he had done an investigative
2 report, statements made to him by another party, that being,
3 to wit, Paul Smith, the father of the victim.

4 So that's what we want to do here. She has a copy
5 of her investigative report, and I want to ask her about the
6 information that was provided to her and that what she did as
7 a result of receiving that information. So it's the same
8 thing they did with Mark Jones, which the Court approved a
9 couple days ago.

10 MR. MYERS: No, sir. State vs. Byram takes care of
11 that issue, a death penalty case out of Richland County,
12 where the same thing tried to be done. They tried to say
13 well, third parties did it, third parties were involved.
14 Now, the testimony here is the defendant blamed some other
15 people before he finally confessed to say I did it alone.
16 That's the only thing in this record at this time.

17 This testimony that would say some other people did
18 it, well that goes in the face of the defendant's alibi
19 defense, because that's what his defenses were the last time,
20 alibi. So how can a mitigating circumstance be involved when
21 he says I didn't do it and I wasn't there.

22 In any event, even if he said that, Byram knocks
23 that out, because Byram said on that and decided the death
24 penalty case is about mitigating circumstances, that the
25 defendant is entitled to put in various mitigating

1 circumstance, but they say this; it is that the evidence must
2 be otherwise admissible.

3 And under the cases previously cited for Your
4 Honor, the Supreme Court said that that type of testimony is
5 not in mitigation, that that type of testimony is not proper,
6 and they're trying to do the same thing here. And they still
7 go back to talking about reports. Well, reports are the same
8 thing. The reports are inadmissible if they contain
9 inadmissible statements, and they are inadmissible in this
10 case. This is the law of the case.

11 And not only that, the law has gotten even stronger
12 since '95. One of the best cases is State vs. Kelvin Cooper,
13 at 514 S.E.2d, 589, a 1999 case by Chief Justice Toal, that
14 this type of evidence is excluded, this type of evidence is
15 not admissible. And as a matter of fact, in her opinion she
16 cites State vs. Parker, State vs. Gregory, State vs.
17 Calder [ph], and all of those cases where this is not
18 admissible.

19 THE COURT: Mr. Floyd, anything else?

20 MR. FLOYD: Nothing further on that, Your Honor.

21 THE COURT: All right. Counsel, I'm going to
22 sustain the objection. I understand the point you make about
23 the report, but regardless, it still points back to the issue
24 of third party liability -- or culpability, and the Supreme
25 Court -- in fact, I recall pretty clearly the State vs.

1 Kelvin Cooper case last year. They were pretty clear about
2 that in basically reaffirming that they've not diluted the
3 standards for third party culpability. Considering all that,
4 I'll have to sustain the objection.

5 MR. FLOYD: Thank you, Your Honor. I'd like to
6 proffer the testimony for the record.

7 THE COURT: Sure. I'll let you proffer it.

8 BY MR. FLOYD:

9 Q. Ms. McLauren, on the night of December the 1st,
10 1990, did you receive a call on the 911 line that would be in
11 connection with this particular matter?

12 A. Yes, sir.

13 Q. Would you tell us what time you received the call?

14 A. It was at almost a quarter until nine.

15 Q. And what was the date?

16 A. December the 1st, 1990.

17 Q. And would you tell us the substance of what the
18 caller told you?

19 A. A female caller didn't identify herself, stated she
20 was told where the body was that we were looking. I asked
21 her what body? She said the Smith boy, and she proceeded to
22 tell me that it was located on McKinley [sic] Road, where we
23 had already looked but we didn't look far enough, it was up
24 in the woods. And also basically, she was told that they had
25 actually killed him at the Lexington County Community Park

1 and then they moved him over to McKinley Road, and to ask
2 Isadore Mack about it because he knew about it.

3 Q. Now, does your report indicate when that call
4 terminated?

5 A. Not the exact time. I placed her on hold to try
6 and locate Detective Hamer since he was working the case, and
7 when I got back to her she had already disconnected. And a
8 second call came in about 9:30, said the body that we're
9 looking for is on McKinley Road two miles where we stopped
10 looking. And that was all the caller said on the second
11 call.

12 Q. Do you recall whether or not that second caller
13 also mentioned the name of Isadore Mack?

14 A. They did.

15 Q. And do you recall what actually was -- do your
16 notes reflect what the second caller said about Isadore Mack?

17 A. Said ask Isadore Mack about it, he knows all about
18 it.

19 Q. Now, as a result of those calls, did you take any
20 type of action?

21 A. I wrote this investigative report and turned it
22 over to Detective Hamer.

23 Q. Do you know whether or not you got in the touch
24 with Detective Hamer that evening?

25 A. I believe I did.

1 Q. When you placed the first caller on hold, did you
2 make contact with Detective Hamer at that time between the
3 first and the second calls?

4 A. I don't remember.

5 Q. I'm going to play this tape, a portion of it. I
6 won't play the whole thing, and ask if you can identify your
7 voice on the tape.

8 A. Okay.

9 MR. MYERS: Your Honor, we have no objection to the
10 tape being made a Court exhibit. And she's heard the tape
11 before, so we can speed that up.

12 THE COURT: You want to just do that and let it be
13 entered as a Court's exhibit?

14 MR. FLOYD: Okay. Your Honor, I've got one other
15 witness that I'll briefly put it in through. No further
16 questions then of this witness, Your Honor.

17 THE COURT: Any questions, Mr. Myers?

18 MR. MYERS: No, sir.

19 THE COURT: You can step down.

20 MR. FLOYD: Your Honor, on this point we'd also
21 call Major Allen Paavel.

22 THE COURT: All right.

23 ALLEN PAAVEL, after having been duly sworn,
24 testified as follows:

25 THE CLERK: State your name for the record.

1 THE WITNESS: Allen Paavel. That's P-a-a-v-e-l.

2 DIRECT EXAMINATION

3 BY MR. FLOYD:

4 Q. Would you state your name for the record.

5 A. Allen Paavel.

6 Q. And where do you work, Mr. Paavel?

7 A. With the Lexington County Sheriff's Department.

8 Q. What's your rank with them?

9 A. I'm major.

10 Q. And were you working for them back in 1990?

11 A. Yes, sir, I was.

12 Q. What was your position at that time in December of
13 1990?

14 A. I was a captain supervisor over the Field of
15 Operations Bureau, which involved patrol investigations
16 communications.

17 Q. And in that position, did you have anything to do
18 with the 911 communication system?

19 A. Yes, sir, I did.

20 Q. And what was that?

21 A. I was the supervisor over the communications
22 division.

23 Q. Now, when a 911 call is received by the Sheriff's
24 Department at that time, was it recorded?

25 A. Yes, sir.

1 Q. And on what type of a device was it recorded?

2 A. It was recorded on a reel-to-reel logging tape
3 recorder.

4 Q. Now, in connection with this particular matter, was
5 that recorded communication transferred from that
6 reel-to-reel device to a cassette tape?

7 A. Yes, it was.

8 Q. Now, have I allowed you to play this cassette tape
9 this morning?

10 A. Yes, you did.

11 Q. And did you recognize it?

12 A. Yes, sir, I do.

13 Q. And is it an accurate representation of the 911
14 calls, both of them, that were made on the evening of
15 December the 1st, 1990, both of which mentioned the name
16 Isadore Mack?

17 A. To the best of my recollection, yes, it is.

18 Q. In fact, are you on the tape itself?

19 A. Yes, sir. I'm the one who transcribed -- or
20 rerecorded it onto the cassette.

21 MR. FLOYD: Does Your Honor wish to hear the tape?

22 THE COURT: I don't know that I need to.

23 Mr. Myers, do you?

24 MR. MYERS: No, sir. The witness before has pretty
25 much said what's in the tape. She just said somebody unknown

1 called and said you're looking at the wrong place. Look on
2 Kennerly Road, the body will be found on Kennerly road, look
3 somewhere else. And Isadore Mack knows about it. Stuff like
4 that. That's basically what the tape says.

5 THE COURT: All right.

6 MR. FLOYD: We would also contend that a portion of
7 it says that Isadore Mack did it, also.

8 THE COURT: Okay.

9 MR. FLOYD: Your Honor, we'd like to offer this
10 into evidence as a defendant's exhibit.

11 MR. MYERS: Court's exhibit.

12 THE COURT: It will be a Court's exhibit, but
13 obviously, it wouldn't go to the jury.

14 MR. FLOYD: Okay. Well, we would probably have a
15 few more witnesses on it. But if you want to call it a
16 Court's exhibit, we'll make it a Court's exhibit.

17 THE COURT: That's fine. We'll make it a Court's
18 exhibit. It's on the record.

19 (WHEREUPON, Court's Exhibit No. 3, a 911
20 Audiotape, was marked and made a part of the record.)

21 MR. FLOYD: Thank you, Major Paavel.

22 THE COURT: Any questions of this witness,
23 Mr. Myers?

24 MR. MYERS: No, sir.

25 THE COURT: And, again, you're free to go, if you

1 wish to, Officer Paavel.

2 And I didn't tell Officer McLauren. Ms. McLauren,
3 you're free to go if you'd like to, also.

4 MR. FLOYD: Your Honor, could we also make the
5 investigative report a Court's exhibit, also?

6 THE COURT: Certainly.

7 (WHEREUPON, Court's Exhibit No. 4, an
8 Investigative Report, was marked and made a part of the
9 record.)

10 MR. FLOYD: I guess, Your Honor, as long as we're
11 on this point, maybe we ought to go ahead and get these other
12 witnesses out of the way.

13 THE COURT: Okay.

14 REBECCA DIXON, after having been duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat state your name for the
17 record, please.

18 THE WITNESS: Rebecca Dixon.

19 DIRECT EXAMINATION

20 BY MR. FLOYD:

21 Q. Would you state your name for the Court.

22 A. Rebecca Dixon.

23 Q. And, Ms. Dixon, where do you live?

24 A. Swansea.

25 Q. And how long have you lived in the Swansea area?

1 A. All my life.

2 Q. On -- in December of 1990, where were you employed?

3 A. Stillinger's Gas.

4 Q. And what shift did you work there?

5 A. Second.

6 Q. Now, do you recall when Bennett Smith came up
7 missing?

8 A. Yes.

9 Q. And during that time that when he was missing,
10 specifically on the evening of December the 1st of 1990, did
11 you place a 911 call to the Lexington County Sheriff's
12 Department?

13 A. Yes, I did.

14 MR. FLOYD: Your Honor, at this time, I'd like to
15 play the tape for the Court.

16 THE COURT: As to what she's testified to?

17 MR. FLOYD: Because I'll have some questions about
18 it.

19 THE COURT: Okay.

20 (WHEREUPON, Court's Exhibit No. 3, the 911
21 Tape, was played.)

22 BY MR. FLOYD:

23 Q. Ms. Dixon?

24 A. Yes.

25 Q. Did you make either one of those phone calls?

1 A. The first one.

2 Q. The first one?

3 A. Yes, sir.

4 Q. Do you recognize the voice of the second caller?

5 A. No, sir.

6 Q. Who -- in this first call, you mentioned that
7 someone gave you this information?

8 A. Yes, sir. I was working that night, and you hear
9 things come in and out the store. And I got involved, so I
10 called 911.

11 Q. Who gave you the information?

12 A. I don't know who gave me that information. It was
13 coming in and out of the store. There was a bunch of people
14 coming in and out the store saying they was looking for the
15 body in the wrong place. And I told them if y'all know where
16 the boy's body is, y'all need to tell somebody so you can
17 find him.

18 Q. And who told you that Isadore Mack did it?

19 A. Nobody told me Isadore Mack did it. I said Isadore
20 didn't do it, they didn't hear that first part.

21 Q. Would you agree the tape seemed to say --

22 A. No, sir, they left out that one part. That's not
23 the whole tape. I remember everything I said. I got up for
24 work that morning. I went to work at two o'clock. By dusk
25 started, a bunch of people was coming in and out. I saw a

1 lot of police coming in and out from in there and I asked
2 them what was going on. They said they was looking for the
3 Smith boy on Mckinley Road. So after they left, a lot of
4 people kept coming in and out and they was talking about it,
5 saying they were looking for him in the wrong place.

6 Q. Well, why would you call the Sheriff's Department
7 to tell them that Isadore Mack didn't do it?

8 A. Because he came in there crying, he said, I didn't
9 do it.

10 Q. Why would you call the Sheriff's Department and
11 tell them Isadore Mack knows where the body is?

12 A. Because -- I didn't do that. I said that Isadore
13 Mack know where the body was, yes, sir, I did say that, but
14 he didn't do it.

15 Q. Okay. And how did you know Isadore Mack knew where
16 the body was?

17 A. Because a lot of people said they was together.
18 You hear things and you repeat -- I was just repeating what I
19 heard, it's hearsay.

20 Q. Did Isadore Mack tell you he knew where the body
21 was?

22 A. No, sir..

23 Q. You mentioned there that somebody was on call
24 Monday, if they hadn't found the body --

25 A. That part, I don't know nothing about. I didn't

1 say that.

2 Q. Are you saying that the Lexington County Sheriff's
3 Department altered this tape?

4 A. No, sir. All I know, I didn't say that. That part
5 I did not say.

6 Q. And did anybody from the Lexington County Sheriff's
7 Department ever come and talk to you about this tape?

8 A. This time or the first time?

9 Q. The first time.

10 A. Yes, sir, they came to my house.

11 Q. When did they come to your house? Is it like at
12 the first trial?

13 A. Yes, sir.

14 Q. Which would have been about five years afterwards?

15 A. It was right after I had my surgery.

16 Q. When would that have been?

17 A. In '95.

18 Q. In '95?

19 A. Yes, sir.

20 Q. So nobody from the Sheriff's Department ever came
21 to speak to you about this tape from 1990 until 1995?

22 A. No, sir.

23 Q. I mean, are you saying that's right, nobody did?

24 A. Nobody didn't come until '95.

25 MR. FLOYD: Thank you, Your Honor. I have no

1 further questions of the witness. I have a motion to make.

2 I don't know if Mr. Myers has any questions.

3 MR. MYERS: No questions.

4 THE COURT: You can step down, Ms. Dixon.

5 And do you have any other proffer?

6 MR. FLOYD: No further questions.

7 THE COURT: You're free to go.

8 Okay. Let's do this. We need to take a break at
9 this point. A couple folks just need to get a short break,
10 it won't take but a second.

11 MR. FLOYD: Thank you, Your Honor.

12 THE COURT: We'll stand in recess just for a few
13 minutes.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: Mr. Floyd, do you want to move the tape
16 player?

17 MR. FLOYD: Oh, Your Honor, I do have a short
18 witness. I need to just go ahead and take this all out the
19 way. I won't be very long.

20 THE COURT: I'm not giving you a hard time now, but
21 we do need to try to get moving on. We're set for 9:30.
22 It's noon and you've had one witness so far.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: What's your motion?

25 MR. FLOYD: Well, Your Honor, as far as that

1 particular portion of the tape, Your Honor, we would move
2 that it should be admissible. Your Honor, in addition to the
3 reasons we have already advanced to the Court, we would
4 suggest that it's also admissible now under the theory or
5 under the point as to whether or not there was an adequate
6 investigation of this matter in that this was evidence,
7 potential evidence and it was not followed up by the
8 Lexington County Sheriff's Department for over five years.
9 So we think it's admissible under that principle, also.

10 Furthermore, Your Honor, she's made this allegation
11 that the tape is not accurate. Now, I personally do not feel
12 in any way that the Sheriff's Department in any way altered
13 that tape, no question on that point. I think it's accurate.
14 However, the fact that she denies it, I think that we should
15 perhaps -- I would ask the Court to conduct its own
16 investigation since it's an allegation like the call into
17 SLED, to investigate whether the tape is accurate and whether
18 she's being truthful to the Court.

19 And she may be possessed of information that is
20 vital to this case, because somebody gave her that
21 information. And we feel it needs to be investigated, and we
22 would ask that that be done and ask that this matter be
23 continued until such investigation is complete.

24 THE COURT: I'd have to deny the motion, Mr. Floyd.
25 Again, the record, I think, has been pretty clear on this

1 issue. It's been made pretty clear.

2 MR. FLOYD: Thank you, Your Honor. I just have two
3 brief witnesses then I'll be off this point.

4 THE COURT: On the same proffer?

5 MR. FLOYD: To the second -- she denied the second
6 part.

7 THE COURT: Do you want to maybe just -- if you
8 want to, just tell me what the witnesses would testify to; is
9 that sufficient?

10 MR. FLOYD: Well, I've got one witness that I don't
11 know what she's going to say, Your Honor. I do have a
12 witness under subpoena, Linda Butler. Linda arrived there --
13 Linda would come say to the Court, I think, because she did
14 last time, that the second person on the tape is an
15 individual by the name of Lula Zeigler, who is, in fact,
16 Rebecca Dixon's mother. So I would proffer that or call her
17 on that point.

18 MR. MYERS: Your Honor, Lula Zeigler testified last
19 time at page 2018. Linda Butler testified last time at page
20 2019. We have no objection to making that a part of this
21 record, which I think it already is anyhow.

22 THE COURT: You want to just do that, Mr. Floyd?

23 MR. FLOYD: Your Honor, the only thing I'd like to
24 try is Ms. Zeigler denies that's her voice. I've had her
25 voice identified by various members of the community. I

1 would like to call her to see if she still denies that that
2 is her voice.

3 THE COURT: Well, do you have reason to believe
4 that she wouldn't deny at this time?

5 MR. FLOYD: I don't know she'll say, Your Honor.

6 MR. MYERS: Well, what difference does it make,
7 really, because that's what the Judge here said the last
8 time? The last time he refused to let Mr. Floyd play the
9 tape, until finally Mr. Floyd said, Well, I need to make a
10 proffer.

11 And the Judge said, Well, go ahead and play the
12 tape. And the Judge kept ruling that none of this -- on page
13 2000, I have ruled that a call to 911 is not admissible. On
14 2002, the tape is not admissible regardless. Then on page
15 2004, again, this is inadmissible evidence, totally
16 inadmissible.

17 Then again, that it's inadmissible evidence, rights
18 are preserved. Then on 2006, the Court; the tape is not
19 admissible. It's not in compliance with the law. And
20 finally, on 2007, the Judge finally said, Well, Counsel, I
21 don't believe we are communicating. Regardless, it's not
22 admissible.

23 So we're just going over and over and delaying. I
24 don't know why they don't want to finish the case. But
25 whatever they said before is fine. And anything on this --

1 let's say the woman says it is her voice, let's say it ain't
2 her voice; it makes no difference. And he can say whatever
3 it is. I'll let him pick out whatever he thinks is best now.
4 Whether she denies it or doesn't deny it, it doesn't make any
5 difference to us, it's still not admissible.

6 THE COURT: Anything else, Mr. Floyd?

7 MR. FLOYD: Your Honor, perhaps she will admit it's
8 her voice this time, I don't know that. But perhaps, she's
9 also possessed of information on this matter because,
10 obviously, somebody has got information here. And, to me,
11 justice requires us to get to the bottom of, is this
12 information any good? You know, because somebody is saying
13 -- somebody is giving this information to Rebecca Dixon.

14 THE COURT: Well, at this point, it's still
15 speculative. And, as you know, State vs. Parker, along with
16 State vs. Kelvin Cooper, which came out last year, still
17 indicated that anything on that has to clearly establish some
18 sort of third party guilt. It just doesn't do that in this
19 case. Of course, again, Judge Anderson ruled before
20 basically the same thing.

21 MR. FLOYD: Yes, sir.

22 THE COURT: And the tape just -- Mr. Myers is
23 right, the tape is just not admissible.

24 MR. FLOYD: Well, Your Honor, see, our problem is
25 somebody has got some information out of there, whether it's

1 good or not, but the Lexington County Sheriff's Department
2 wouldn't investigate it and so we're stuck with this. That's
3 why we want to pursue it as diligently as we can, and that's
4 why we ask that there be an investigation because there maybe
5 some information out there that has serious impact on
6 Mr. Bennett's culpability and certainly his punishment.

7 MR. MYERS: Your Honor, I --

8 THE COURT: I'll let you say something in a minute,
9 Mr. Myers.

10 But we're not still -- I understand, you know, the
11 issue of culpability, but we're not trying that issue. He's
12 been found guilty of murder. The Supreme Court has let that
13 conviction stand.

14 MR. FLOYD: Yes, sir.

15 THE COURT: The only issue here is the issue of the
16 appropriate sentence. At this point, I don't think that it
17 adds anything else to that.

18 MR. FLOYD: Well, Your Honor, of course, if, in
19 fact, it's accurate when it says Isadore Mack is the one that
20 did it, that certainly would have some impact on the
21 punishment of Mr. Bennett if he's just an accomplice.

22 THE COURT: I can't do that. I'd be going back
23 behind what a jury did and behind what the Supreme Court
24 affirmed and I don't have the authority to do that.

25 MR. MYERS: I would request the Court to invoke the

1 rules and put an end to all this argument and let's get
2 before the matter at hand, and that's trying this case before
3 a jury.

4 THE COURT: Yes, sir.

5 Mr. Floyd, I think we need to get moving on.
6 There's nothing else we can do on this issue.

7 MR. FLOYD: Thank you, Your Honor.

8 THE COURT: Let's bring the jury in.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 11:55 a.m.)

11 THE COURT: All parties and attorneys are in the
12 courtroom and all jurors have returned.

13 Defense, call your next witness, please.

14 MR. FLOYD: Thank you, Your Honor. Before I do
15 that, I have -- the Solicitor's Office graciously consented
16 to a stipulation on a couple of items, because our witnesses
17 had problems being here today to identify the items.

18 THE COURT: Yes, sir.

19 MR. MYERS: Yes, sir. I talked to two ladies last
20 night. One of them is pregnant. I told her she didn't have
21 to stay here, she could leave. Another one was an elderly
22 lady that had something today. I told her she could leave.
23 So whatever he's got, I don't have any objection.

24 MR. FLOYD: Thank you, Your Honor. Your Honor, we
25 offer at this time as an exhibit, first, there is some

1 climatological data. This was to be put in through a Mizell
2 -- I mean, Hope Petite Mizell, who, as Mr. Myers said, she's
3 pregnant and had somewhere she had to go today, but she
4 worked for a climatological service. We'd offer that as a
5 defense exhibit.

6 THE COURT: All right. And, again, Mr. Myers,
7 indicated that's by stipulation.

8 MR. MYERS: I haven't even looked at them, don't
9 want to see them, but I have no objection.

10 THE COURT: Okay.

11 (WHEREUPON, Defendant's Exhibit No. 5, a
12 Climatology Report, was marked and admitted into evidence.)

13 MR. FLOYD: Your Honor, the other was through a
14 Brenda Parshal [ph], she had to go out of town to a wedding,
15 and it's an application to Owens Steel signed by Benton
16 Smith, dated November 27th, 1990.

17 (WHEREUPON, Defendant's Exhibit No. 6, an
18 Application for Owens Steel, was marked and admitted into
19 evidence.)

20 MR. FLOYD: Thank you, Your Honor. We call
21 Mr. John Purvis.

22 JOHN C. PURVIS, after having been duly sworn,
23 testified as follows:

24 THE CLERK: Have a seat and state your full name
25 for the record.

1 THE WITNESS: My full name is John C. Purvis.

2 DIRECT EXAMINATION

3 BY MR. FLOYD:

4 Q. Mr. Purvis, where were you formerly employed?

5 A. By the National -- it was the U. S. Weather Bureau
6 at first, but at the Columbia Airport as meteorologist in
7 charge of the station.

8 Q. And how long did you work with the meteorology
9 sector?

10 A. I entered the field of meteorology in 1940, had, of
11 course, other assignments. I came to Columbia in 1947, and
12 served in Columbia until I retired from the National Weather
13 Service in, I believe, 1981.

14 Q. Did you have any education --

15 MR. MYERS: We admit he's an expert in the weather.

16 MR. FLOYD: Okay. Thank you.

17 THE COURT: We'll qualify the witness as an expert
18 in meteorology.

19 Ladies and gentlemen of the jury, remember, again,
20 that he's qualified as an expert. He's allowed to give an
21 opinion in that area. You decide how much weight and
22 credibility to give to the opinion.

23 THE COURT: All right, continue.

24 BY MR. FLOYD:

25 Q. Mr. Purvis, in connection with this matter, have

1 you reviewed any documents or information?

2 A. I'm sorry, I didn't understand.

3 Q. In connection with this matter, have you reviewed
4 any data that's been provided?

5 A. I have.

6 Q. And would you tell the jury what you have reviewed.

7 A. I have viewed the copy of the original records as
8 observed at the Columbia Airport. I've also looked at the
9 climatological data that is observed at various
10 climatological stations in the area. And this information,
11 of course, will be the basis of my testimony.

12 Q. And are you familiar with the area where Benton
13 Smith's body was found?

14 A. I am.

15 Q. And how did you familiarize yourself with that
16 area?

17 A. I actually visited the area a number of -- sometime
18 ago.

19 Q. And as a result of your review of this data and the
20 scene and so forth, do you have an opinion as to the weather
21 conditions or climatic conditions in that area beginning
22 November the 27th of 1990 for that week?

23 A. I do. The -- perhaps, I should have the records in
24 front of me to be sure that I follow them exactly. We had at
25 that time changeable weather in the Columbia area, as is

1 normal for late November and early December.

2 The -- on the 26th, the weather generally was -- I
3 have in front of me the December climatological data, and
4 also, I have the climatological data for South Carolina for
5 December 1990. I do not have here the November data. I do
6 have a copy of it at my seat there.

7 Thank you.

8 I have here a copy of the climatological data for
9 the Columbia Airport for November, 1990. On the 27th, the
10 sky was cloudy most of the day. The high temperature was 75,
11 the low temperature was 43. The weather -- the cloudiness
12 thickened late in the day and rain started before midnight
13 over the area. Not just the Columbia Airport, but over the
14 area, so a weather system is was moving in.

15 And on the 28th, the rain intensified. The
16 heaviest was in the morning. And we had measured at the
17 Columbia Airport .83 hundredths inches -- of an inch. All of
18 that is, is a little less than an inch of a rain. The rain
19 continued in the area of South Carolina into the night and
20 tapered off and ended, of course, shortly after midnight.
21 The -- we had following that, of course, cooler weather to
22 move in.

23 Q. Okay. What about the weather for the following
24 days?

25 A. On the 29th, the weather -- the high temperature

1 was 68, the low was 43, and the skies were essentially partly
2 cloudy. And on the 30th, the cooler weather, of course, was
3 covering the area. We had a low that morning of 30, a high
4 during the day of 57, and the skies were clear. It was a
5 sunny, dry day.

6 Then on the -- December the 1st, the weather was
7 still quite cool. The early morning on December the 1st, it
8 was 27 degrees. There was a heavy frost, of course, on that
9 morning as well as on the previous morning in the general
10 area. The high temperature on the first came up to 66,
11 cloudiness increased somewhat. And on the second, the high
12 temperature for the day was 74.

13 Q. And if you would just go back to November the 28th
14 and give us the high and low for that day.

15 A. On November 28th, the low in the morning, of
16 course, was 62; and the high on the 28th at the Columbia
17 Airport was 79. It was the -- it was humid air over us, and
18 as a result, there was -- it was rather warm weather.

19 MR. FLOYD: Thank you, Mr. Purvis. No further
20 questions.

21 MR. MYERS: Thank you, Mr. Purvis. Come down.

22 THE COURT: You can step down. Thank you, sir.
23 You're free to go, if you'd like to.

24 THE WITNESS: Thank you, Your Honor.

25 MR. YOUNG: Your Honor, we would call Nathaniel

1 Sutton.

2 NATHANIAL SUTTON, after having been duly
3 sworn, testified as follows:

4 THE CLERK: Please be seated and state your full
5 name for the record.

6 THE WITNESS: My full name is Nathaniel Sutton.

7 DIRECT EXAMINATION

8 BY MR. YOUNG:

9 Q. Mr. Sutton, where do you live?

10 A. As of now, I live at 732 Charlie Rast Road,
11 Swansea.

12 Q. Did you live at that location in December of 1990?

13 A. No, I did not, I lived --

14 Q. Where --

15 A. I lived at 648 Old Wire Road, West Columbia.

16 Q. Did you have any family members that lived on
17 Charlie Rast Road in Swansea?

18 A. Yes, my mother-in-law.

19 Q. And where did she reside?

20 A. At 728 Charlie Rast Road.

21 Q. Do you recall in December of 1990 going to visit
22 your mother-in-law?

23 A. Yes, I do.

24 Q. I show you what is State's Exhibit 29. You stated
25 that your mother-in-law lives on Charlie Rast Road?

1 A. Right.

2 Q. This being 321, that is the main road in Swansea?

3 A. Yes, it is.

4 Q. When you were visiting your mother-in-law on
5 Charlie Rast Road, did you have an occasion to go for a walk
6 or something?

7 A. Yes, I did.

8 Q. Do you remember which way you would have taken your
9 walk?

10 A. I walked east of Charlie Rast Road to Huckabee Mill
11 Road. And I also proceeded northeast on Huckabee Mill Road.

12 Q. This being Charlie Rast Road there, would this be
13 Huckabee Mill Road?

14 A. Yes, it is.

15 Q. And that is the route that you walked?

16 A. Yes, it is.

17 Q. When you walked that route, did you find or notice
18 anything?

19 A. Yes, I did.

20 Q. What is it that you found?

21 A. As I was proceeding on the road, I noticed a set of
22 floor mats from a car. And I went closer to them because
23 they looked brand new. And I moved a little closer to them,
24 and as I got close to them, I noticed that they had initials
25 or a name on them.

1 And I looked at them for a spell or so, then I
2 continued to take my walk. Because I recognized the initials
3 -- I can't remember whether it was the full name or just the
4 initials now, I can't remember. But I continued to walk up
5 east further down Huckabee Road. Eventually I turned around
6 and came back up Huckabee Mill Road, proceeded back to
7 Charlie Rast Road and went back to my mother-in-law's house.

8 Q. Was it unusual for you to see floor mats from a car
9 out there?

10 A. Yes, it was.

11 Q. This route that you walked, it wasn't ordinarily a
12 trashy route, was it?

13 A. No, it wasn't. And another thing about it, it
14 wasn't many houses in that area.

15 Q. I'm going to show you what has been marked State's
16 Exhibit 20 and 21. Are these the mats that you saw that day?

17 A. Yes, it is.

18 Q. When you arrived back at your mother-in-law's
19 house, did you discuss what you found or what you saw with
20 anyone?

21 A. No, I didn't.

22 Q. At some point in time, did you discuss this with
23 someone?

24 A. Yes, sir, I did. That evening, I proceeded to
25 Swansea and talked with Mr. Lucius Martin, which I have known

1 for a long time, and I told him about it. I told him what I
2 saw, and, you know, he told me what he would do from there.

3 Q. At this point in time, did you know who those mats
4 could have belonged to?

5 A. Well, I knew the young man, Benton, I knew him. He
6 had several occasions -- well, very, very frequent visits
7 with my sons. They was about the same age. And he would
8 come by my house and visit with my sons, so I knew him. And
9 when I saw the mats that had his name on them, that's when I
10 realized that they were his car mats.

11 Q. And during this time frame, you knew that he was
12 reported missing?

13 A. Yes, I did.

14 Q. Did you also know Johnny Bennett and his family?

15 A. Yes, I do -- I did.

16 Q. Did?

17 A. Yes.

18 Q. Now, you don't know who would have thrown these
19 mats out there?

20 A. No, I don't.

21 Q. Or how they would have gotten out there?

22 A. No, I don't.

23 Q. In the time that you have known Johnny Bennett and
24 his family, had you personally ever had any problems with
25 Johnny Bennett?

1 A. No, I have not.

2 Q. What type of person would you describe him as?

3 A. Well, he was a young man at that time. He was a
4 well disciplined young man, as far as that I know.

5 Q. And you're family with both the Smith family and
6 the Bennett family?

7 A. Yes, I am.

8 Q. And you are not here today to show any favoritism,
9 are you?

10 A. No partiality, no.

11 MR. YOUNG: Thank you. Please answer any questions
12 the State may have.

13 BY MR. YOUNG:

14 Q. I have just a few more questions, if I may. You
15 mentioned that you walked east from Charlie Rast Road to
16 Huckabee Mill Road?

17 A. Right.

18 Q. Had you taken that walk before?

19 A. I used to live -- when I got married, I was living
20 on Huckabee Mill Road. So I was familiar with Huckabee Mill
21 Road. And I was walking towards where I used to live. And
22 this was a route that wasn't very, during that time of the
23 day, busy with traffic; and during the walking, that's why I
24 chose to walk that way.

25 Q. And as you were walking, you were pretty much

1 walking on the roadway?

2 A. Yeah, I was walking on the road.

3 Q. Where you saw -- the location that you saw these
4 mats at, were you able to see them from the roadway?

5 A. I spotted them and then that's when I went over
6 closer to look at them because they -- at that time, they
7 looked new to me.

8 Q. Right.

9 A. And that's when I went over a little closer to look
10 at them, wondering why somebody threw away perfectly -- you
11 know, good-looking mats like that. And when I got there,
12 that's when I saw the name on them.

13 MR. YOUNG: Thank you. Please answer any questions
14 the State may have.

15 CROSS-EXAMINATION

16 BY MR. MYERS:

17 Q. Mr. Sutton, Benton Smith used to be friends with
18 your sons?

19 A. Yes, sir.

20 Q. He would come over to your house?

21 A. Yes, sir.

22 Q. You knew who Benton was?

23 A. Yes, I did.

24 Q. You had seen those floor mats in his car before?

25 A. No, I had not seen the floor mats in his car.

1 Q. But you saw the name?

2 A. I saw the name.

3 Q. That's how you put it together?

4 A. Yes, sir.

5 Q. And Benton Smith was a pretty nice little fellow,
6 wasn't he?

7 A. Yes, he was.

8 Q. Always polite?

9 A. Yes, he was.

10 Q. Always pleasant?

11 A. Quiet, easygoing.

12 Q. Easygoing, didn't give anybody any trouble?

13 A. Not that I know of.

14 Q. Johnny called him a momma's boy, he liked to be
15 home around his family a lot of times?

16 A. Well, I wouldn't know about a momma's boy, but he
17 was disciplined and very respectable when he was at my house.

18 Q. Yes, sir.

19 A. Around me and my wife and kids.

20 Q. Because he was around there a lot with your kids
21 and everything?

22 A. He would come up pretty often and be with my boys.

23 MR. MYERS: Thank you, Mr. Sutton.

24 THE COURT: Any redirect?

25 MR. YOUNG: Yes, sir.

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Mr. Sutton, Mr. Smith, Benton Smith, and Johnny Bennett, you saw them pretty much alike as they were growing up?

A. I went to church along with Johnny Bennett, we had attended the same church. And as I said, Benton Smith, I knew him from the community. And they -- he and my boys went to school together.

MR. MYERS: I hate to cut him off, but I didn't ask anything about Johnny Bennett on cross, so I didn't open up anything for redirect on Johnny Bennett. All I asked about was Benton Smith.

THE COURT: I understand. You got into the issues related to the character evidence, I'll let him do it.

Go ahead.

BY MR. YOUNG:

Q. Both of these young men were what you considered to be good boys?

A. Yes.

Q. Very well disciplined?

A. Yes.

MR. YOUNG: Thank you, that's all questions I have.

MR. MYERS: No further questions.

THE COURT: You can step down. You're free to go.

1 MR. YOUNG: We would call Marshall Jeffcoat.

2 MARSHALL WESLEY JEFFCOAT, after having been
3 duly sworn, testified as follows:

4 THE CLERK: Please have a seat and state your full
5 name for the record.

6 THE WITNESS: Marshall Wesley Jeffcoat.

7 DIRECT EXAMINATION

8 BY MR. YOUNG:

9 Q. Mr. Jeffcoat, where do you reside?

10 A. In Gaston, South Carolina.

11 Q. Are you originally from the Swansea area?

12 A. Yes, sir.

13 Q. Are you familiar with Johnny Bennett?

14 A. Yes, I am.

15 Q. How do you know Johnny Bennett?

16 A. Childhood friends, we grew up together.

17 Q. Are you also familiar with Benton Smith?

18 A. Yes.

19 Q. How do you know Mr. Smith?

20 A. Neighborhood, we kind of -- he was older than I
21 was, but I knew him from the neighborhood.

22 MR. MYERS: Your Honor, we have an objection to his
23 testimony.

24 THE COURT: All right, sir.

25 Ladies and gentlemen, let me ask you to step to the

1 jury room just for a moment. Be sure not to talk about the
2 case while you're there.

3 (WHEREUPON, the jury leaves the courtroom at
4 approximately 12:20 p.m.)

5 THE COURT: All right. The jury is secured.
6 What's the objection?

7 MR. MYERS: We don't think his testimony has any
8 relevance and it goes to third party guilt.

9 THE COURT: Is that --

10 MR. YOUNG: Your Honor, I'm offering this witness
11 for -- because of his relationship to Mr. Bennett, as far as
12 what type of person Mr. Bennett is as he was growing up with
13 him.

14 THE COURT: You're not going to ask him about the
15 third party issue?

16 MR. YOUNG: No, sir, Your Honor.

17 MR. MYERS: Well, I have no objection.

18 THE COURT: Okay. Bring the jury back in.

19 (WHEREUPON, the jury enters the courtroom at
20 approximately 12:22 p.m.)

21 THE COURT: All parties and attorneys are in the
22 courtroom and all jurors have now returned.

23 Continue, Mr. Young.

24 BY MR. YOUNG:

25 Q. Mr. Jeffcoat, you're familiar with both Johnny

1 Bennett and Benton Smith?

2 A. Yes, I am.

3 Q. You all grew up in the same area?

4 A. Yes.

5 Q. How would you classify your relationship to
6 Mr. Bennett and Mr. Smith?

7 A. We were friends. Johnny and I were childhood
8 friends, we grew up together, kind of got close. I knew him
9 and basically he knew me. Mr. Benton and I were, quote,
10 unquote, family members. We knew each other from other
11 members of the family. We kind of got ourselves in a
12 situation. We had it communicated and we just did everything
13 as together, one person is doing one thing, and we kind of
14 communicate with that person.

15 Q. Mr. Smith was just a little older than you were?

16 A. Yes.

17 Q. Your relationship with Johnny Bennett, describe to
18 the jury what type of person Johnny was as you were growing
19 up?

20 A. To me, Johnny was just like one of us. He just was
21 a person that you could basically count on in a time of need
22 or something. We never had too many big arguments. The only
23 thing we probably would have any discrepancies about is
24 probably sports. Other than that, he was just -- I mean, he
25 was one of the guys.

1 Q. Did you go to school with Johnny?

2 A. Sure did.

3 Q. Were y'all in the same class or --

4 A. I don't think so. I don't remember that.

5 Q. You were a year or two or so behind him or ahead of
6 him?

7 A. I think we were together. I think we were
8 together.

9 Q. Okay. Okay. Did you know Johnny to be in the
10 neighborhood to start a lot of fights or anything?

11 A. No. I'm thinking Johnny was the person that would
12 take over and he would help out if someone needed help.

13 Q. When Johnny was in school, do you recall whether or
14 not he got into some trouble every now and then?

15 A. Yeah.

16 Q. Other than those instance that you may have heard
17 about as you were growing up, do you know Johnny to be an
18 aggressive or violent person towards anyone?

19 A. To me, only when someone was violating him or
20 someone that he was very close to. I don't think he was --
21 me, personally, I don't think he was the type of person to
22 want to go out and start it. I think he would pick it up and
23 finish it.

24 Q. When you say he'll take it up and finish it, does
25 that mean that if a fight has started, he would defend

1 himself?

2 A. Yes.

3 Q. Was Johnny the type of person that went out looking
4 for trouble?

5 A. I don't think so. I think he was more scared of
6 it. I think he wanted to show, you know, he was better than
7 what they was looking at him about. I think he just wanted
8 to show a bigger side of himself, not being a scary person.

9 Q. Was Johnny always a little bit bigger than the rest
10 of the guys y'all hung around with?

11 A. Yes.

12 Q. What types of activities would you all do while
13 y'all were hanging out?

14 A. Started off as basketball. As I grew older, I had
15 started drinking and we just kind of started drinking
16 together. It was like way after my 20's -- well, about 20 to
17 21, started drinking and those type of activities. But,
18 basically, it was just basketball in group in the
19 neighborhood and that was basically it, some football.

20 Q. When y'all played basketball, y'all always played
21 over at the, I guess it's called the rec center over there in
22 the Swansea area?

23 A. No, not really. We played mostly behind my family
24 member's house. We played right behind there on the side of
25 it.

1 Q. And were these like pick-up games?

2 A. Yes.

3 Q. Did y'all have a regular schedule that you all
4 would play these games as far as dates?

5 A. Not as putting something on paper, but basically,
6 it was like a known -- it was about almost every day, any
7 time we could. And, basically, mostly on Sunday afternoons
8 that we played.

9 Q. So if y'all didn't have anything else to do, you
10 would --

11 A. Yes.

12 Q. -- show up at that yard to play?

13 A. Uh-huh.

14 Q. Was Johnny a competitive player?

15 A. Yes. I think all of us were competitive, we wanted
16 to win. I guess, it's a norm to me. You wanted to win, this
17 other team. So if some person -- I'm not sure if they're
18 going to understand what it is, but, you know, you foul
19 someone, you foul so often then the person can get aggressive
20 by, listen, don't foul me no more. And that's the aggressive
21 part I know about.

22 Q. Since growing up, have you had an opportunity to
23 keep your relationship with Johnny?

24 A. Yes, in some ways. It's been kind of hard since
25 the situation, but I had a chance to talk with him maybe a

1 couple of times. And on both of our new meetings, I looked
2 at him totally different.

3 Q. What type of person do you view Johnny as now?

4 A. I view Johnny as a young man that made mistakes. I
5 believe he would like to correct some of the mistakes he's
6 made. But most of all, I look at him as being a person
7 settling this with Christ; I want to do the right things; I
8 want to make things just right. He's a kind person, trying
9 to find a means above some past.

10 Q. Do you still speak with the Smith family?

11 A. Yes, I do. Yes, I do.

12 MR. YOUNG: Thank you, Mr. Jeffcoat. Please answer
13 any questions the State may have.

14 CROSS-EXAMINATION

15 BY MR. MYERS:

16 Q. Did I understand you to say that you had talked
17 with Johnny Bennett recently?

18 A. Yes.

19 Q. Where was that?

20 A. Over here.

21 Q. While the trial was going on?

22 A. No, sir. It was right before everything got
23 started. I walked in and spoke with him.

24 Q. Okay. This week?

25 A. Yes, sir.

1 Q. This week. And prior to this week, you haven't
2 talked with him in years?

3 A. No, sir.

4 MR. MYERS: Thank you.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MR. YOUNG:

8 Q. The lack of you talking with him, does that change
9 your opinion of how you feel about him?

10 A. No, sir.

11 MR. YOUNG: Thank you. That's all I have.

12 THE COURT: All right, sir. You can step down.
13 You're free to go.

14 Counsel, let me ask you to step up here just one
15 minute, please.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: Ladies and gentlemen, I'm advised that
18 the lunch is here. Do you want to go ahead and get lunch at
19 this point? I assume, you don't want it to get too cold.
20 Let's try to see if we can take about 45 minutes for lunch.
21 Is that enough, give you enough?

22 THE FORELADY: That's fine.

23 THE COURT: Okay. Good. Be sure we don't talk
24 about the case.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 12:30 p.m.)

2 THE COURT: Let me note again, we haven't had much
3 problems with that this week, so that's actually been good,
4 but let's please remember if everybody -- if you want to
5 stand in place for respect for the jury when they come in or
6 go out, you can do that, but don't move out of your seats,
7 please, okay.

8 We'll stand in recess for 45 minutes for lunch.

9 (WHEREUPON, a lunch break was taken.)

10 THE COURT: Counsel, let me note for the record. I
11 asked the head of the sequestration team to check with the
12 jury on what they wish to do about tomorrow. They indicated
13 their desire is to come back tomorrow morning at 9:00 or
14 9:30, so we'll go ahead and plan to do that then.

15 Okay. Anything else?

16 MR. RIDDLE: We're ready.

17 THE COURT: Is Mr. Myers really going to be gone
18 for awhile?

19 MR. RIDDLE: I don't know how long he's going to be
20 gone. He said he'd be gone for a minute or two.

21 THE COURT: So we'll start without him then?

22 MR. RIDDLE: Yes, sir.

23 THE COURT: Let's bring the jury in.

24 (WHEREUPON, the jury enters the courtroom at
25 approximately 1:35 p.m.)

1 THE COURT: All parties and attorneys are in the
2 courtroom and all jurors have now returned.

3 Madam Forelady, I understand that Agent Jacobs, at
4 my request, asked you about your preference for tomorrow, and
5 I understood that the entire jury preferred to come back at
6 9:00 or 9:30 in the morning; is that right?

7 (All answered in the affirmative.)

8 THE COURT: And what I usually do is, obviously, I
9 certainly want to show any necessary deference or respect for
10 anybody who has problems concerning church on Sunday morning.
11 I know I can't let you get out and go to church, but some
12 people don't like to be on the jury during the time when
13 church is going on. I understand nobody has a problem with
14 that; is that correct?

15 THE FORELADY: Yes, sir.

16 THE COURT: We'll plan -- before we leave today,
17 we'll let you call it, 9:00 or 9:30, okay? Unless you've
18 just already decided one, have you?

19 THE FORELADY: Nine.

20 THE COURT: All right, 9:30.

21 THE FORELADY: Nine.

22 THE COURT: Nine, excuse me. All right, will be
23 nine in the morning then.

24 All right. Call your next witness, please.

25 MR. YOUNG: We call Ben Killian.

1 BEN KILLIAN, after having been duly sworn,
2 testified as follows:

3 THE CLERK: Have a seat and state your full name
4 for the record.

5 THE WITNESS: Ben Killian, K-i-l-l-i-a-n.

6 DIRECT EXAMINATION

7 BY MR. YOUNG:

8 Q. Mr. Killian, where do you reside?

9 A. Where?

10 Q. Yes, sir.

11 A. I'm retired from the Gaston-Swansea School
12 District.

13 Q. Are you currently employed now?

14 A. Well, I retired in 1998 after 34 years in the
15 classroom, and now I'm in charge of the program in the school
16 district of assisting and supporting first year teachers.

17 Q. So you're like training or leading them in the
18 right direction for first year students?

19 A. Well, I like to think so.

20 Q. How long were you in the education field?

21 A. Well, 34 years in the classroom, and now this is
22 starting my third year as the induction teacher director.

23 Q. Did you have an occasion to teach at Swansea High
24 School?

25 A. Yes, sir, for 12 years.

1 Q. When did you start there?

2 A. I started in 1986.

3 Q. Did you have an occasion while you were at Swansea
4 High School to meet Johnny Bennett?

5 A. Oh, yes, sir.

6 Q. How is it that you got to know Mr. Bennett?

7 A. I had Johnny in class his second year at Swansea
8 High School.

9 Q. That would have been his tenth grade year or ninth
10 grade year?

11 A. Well, Johnny did not pass enough of his subjects in
12 the ninth grade to go up to the tenth grade as a full
13 sophomore, so it would be a mixture of the ninth and tenth
14 grade.

15 Q. And that would have been the year that he was in
16 your class?

17 A. Yes, sir.

18 Q. What did you teach him at that time?

19 A. I taught him law.

20 Q. Taught him?

21 A. Law.

22 Q. Law?

23 A. We called it law related education.

24 Q. Law related education?

25 A. Yes, sir.

1 Q. Did you hold another position while you were at
2 Swansea High School?

3 A. Yes, sir, I was a football coach and a baseball
4 coach. At one time, I was an assistant principal.

5 Q. As an assistant principal, were you responsible for
6 disciplinaries?

7 A. Yes, sir.

8 Q. Did you have an occasion to ever have to discipline
9 Johnny Bennett?

10 A. No, sir.

11 Q. You only served in that capacity for how long?

12 A. For only one year.

13 Q. Were you aware of Mr. Bennett being disciplined, as
14 a teacher?

15 A. I'm not quite sure I understand your question.

16 Q. In your capacity as a teacher, not as an assistant
17 principal, were you aware that Mr. Bennett had been
18 disciplined for some of his behavior?

19 A. Yes, sir.

20 Q. Was that something that was pretty much known among
21 the faculty and staff?

22 A. Yes, sir. In a small school, generally speaking,
23 you know pretty much what's going on.

24 Q. Did Mr. Bennett ever play any sports or anything
25 with you?

1 A. Not for me. He played basketball as well as I can
2 recall under Coach Novinger one semester. That would have
3 been about his junior year, I believe, or his third year
4 there, something like that.

5 Q. So it would have been after he was in your class?

6 A. Yes, sir.

7 Q. Did you have an occasion to sit down and talk with
8 Mr. Bennett prior to him starting in your class or after he
9 got into your class?

10 A. Well, generally speaking, I reviewed all my
11 student's records, briefly at least, before the start of each
12 school year to try to find out which students had had some
13 problems in the past, to try to, you know, speak with them a
14 little bit before they started my class, let them know that
15 they were starting a new school year in a new class and, you
16 know, a new slate.

17 Q. Understanding that, you were aware of Mr. Bennett
18 having some disciplinary problems in his ninth grade year?

19 A. That's right.

20 Q. What, if anything, did you do with that
21 information?

22 A. As well as I can recall, the first day he came into
23 my class I called him aside away from everybody else and told
24 him that I knew he had had some problems, behavioral and
25 academic, in the ninth grade and I just wanted him to know

1 that he wasn't bringing that baggage into my classroom and
2 that I would treat him with respect and I expected him to
3 treat me the same way.

4 Q. During the -- was he in your class for the entire
5 year?

6 A. No, sir, it was a one-semester course.

7 Q. That entire semester, he was in your class?

8 A. Yes, sir.

9 Q. During the time that he was in your class, how did
10 he treat you?

11 A. I don't ever recall him treating me with anything
12 but respect.

13 Q. Did you have an occasion to have to write him up
14 for any disciplinary problems?

15 A. I never had any problem with Johnny in class, and I
16 think it was because I treated him right.

17 Q. How did he do -- you mentioned that he was -- had
18 some academic problems. How did he do academic-wise?

19 A. As well as I can recall, it was probably around a
20 solid C, maybe a little bit better than that, I don't recall.
21 He was a good solid student in my class.

22 Q. Was that an improvement compared to his previous
23 behavior -- I mean, academic standings?

24 A. That was a decided improvement, yes, sir.

25 Q. While Mr. Bennett was in the tenth grade -- and I

1 refer you to State's Exhibit Number 2, he would have been in
2 your class in October of '86 and November of '86?

3 A. I don't recall whether it was a first semester
4 class or a second semester class. We change around Christmas
5 or shortly thereafter and I'm not sure whether it was a first
6 or second semester class. I think it was a first semester
7 class. I'm not sure.

8 Q. So somewhere between the start of school in '86 and
9 the end of school in '87, he would have been in your class
10 one of those semesters?

11 A. Yes, that's correct.

12 Q. During that period of time, were you aware that
13 Mr. Bennett was suspended from school on four occasions?

14 A. I knew that he had had some problems, but I didn't
15 -- I wasn't aware of how many times he was referred to the
16 office or how many suspensions he had or anything like that.
17 I just knew he had had some problems.

18 Q. Did you have an occasion -- well, let me ask you
19 this. Why did you sit down to talk with Mr. Bennett about
20 his disciplinary problems and his academic problems?

21 A. The best way to handle discipline problems is to
22 prevent them in the first place. And if you set the ground
23 rules and you treat people with respect, it's been my
24 experience over 34 years in the classroom that you generally
25 get a better result that way. And I just wanted him to know

1 -- and it was not just for Johnny, but for any kid that's
2 been in trouble that, you know, you don't have to bring that
3 baggage to school to start every school year.

4 Q. And to the best of your knowledge, if you know, the
5 -- Mr. Bennett only had approximately -- well, if he was in
6 your class in the first semester, on State's Exhibit Number
7 2, would you agree with me that he only had two incidents
8 during that time frame?

9 A. I haven't looked at this, I don't know. If that's
10 what it says, I assume that's correct.

11 Q. The semester -- the first semester would have been
12 October or August through December?

13 A. Yes, sir.

14 Q. And would you agree with me that State's Exhibit
15 Number 2 shows one incident on October the 15th, 1986?

16 A. Yes, sir.

17 Q. And one incident on November the 13th, 1986?

18 A. Yes, sir. And the more I think about it, the more
19 I believe it was a first semester course that I had him.

20 Q. So during the time that he would have been in your
21 class during that semester, he would have only had two
22 incidents, would you agree with me?

23 A. If that was the time frame.

24 Q. Okay. Did you try to help Mr. Bennett correct his
25 problems?

1 A. I'd like to think I tried to help all my students
2 behave properly and to try to achieve academic success. I do
3 remember telling Johnny something like with the body he had
4 -- and he's always been a well-built young man, that he could
5 get more involved in school activities and that would be good
6 for him. And what I specifically told him, as I recall, was
7 to try to become academically eligible and, perhaps, take
8 part in athletics.

9 Q. But he was not able to take part in athletics
10 because of his academic standing, mostly?

11 A. Well, that was true in the year I taught him. And
12 I think the next year was the year that he played a little
13 basketball. I believe that's right, I'm not sure.

14 Q. And would you agree with me that prior to
15 Mr. Bennett being in your class and even while he was in your
16 class that he had a reputation of being a troublemaker?

17 A. He had a reputation of being in trouble.

18 Q. And during that time frame that he was in your
19 class, was he ever a person in trouble on a regular basis,
20 that you remember?

21 A. You mean throughout the school?

22 Q. Yes, sir.

23 A. Not on a regular basis, I don't think so. And like
24 I've said already, he never caused me a problem.

25 Q. And overall, did he do pretty well in your class?

1 A. I don't want to present him as a model student,
2 okay, but he brought his things to class, he participated, he
3 volunteered to get involved in discussions, he even helped
4 other students. He wasn't an A student, but he was a good
5 student for me.

6 Q. Is it an accurate statement to say that based on
7 your exposure to him that Johnny Bennett was a student who
8 showed potential?

9 A. Yes. And I'll say this, it seemed to me -- and
10 this is just my opinion and as I recollect, that Johnny
11 tended to respond to people the way people treated him.

12 Q. Did you treat Mr. Bennett with respect?

13 A. I'd like to think so.

14 Q. And how did he respond to you?

15 A. In kind.

16 Q. Have you ever observed Mr. Bennett to be aggressive
17 or violent towards you or any of your students?

18 A. No.

19 Q. While Mr. Bennett was in your classes, if you
20 instructed him to do something, did he respond to you?

21 A. Yes, sir. I'm sure there were occasions when I had
22 to call him down like you do any other young person for
23 talking or whatever, but there was never anything worth --
24 you know, he never even was, you know, punished by me like
25 staying in a certain period of time or after school or

1 certainly no referrals to the office. I just didn't have any
2 problem with him.

3 Q. Describe to this jury based on your experiences
4 with Johnny Bennett what type of person he was.

5 A. Respectful, helpful, a person who responded to
6 somebody who, you know, treated him fairly.

7 Q. And you're not here today to say that Johnny
8 Bennett is an angel, are you?

9 A. I don't think so.

10 MR. YOUNG: Thank you.

11 A. But then are any of us?

12 MR. YOUNG: Thank you. Please answer any questions
13 the State may have.

14 THE COURT: Cross?

15 CROSS-EXAMINATION

16 BY MR. MYERS:

17 Q. Did you have him when he repeated the ninth grade?
18 They had that on his records as 9-A; is that when you had
19 him?

20 A. Mr. Myers, I don't remember.

21 Q. You just don't remember?

22 A. No, sir.

23 Q. But you remember when he had to repeat the ninth
24 grade?

25 A. I remember that he had failed enough courses in the

1 ninth grade that he was not eligible to participate in
2 athletics as a tenth grader. I remember that was the
3 conversation I had with him. But I don't remember whether
4 when I taught him whether he was classified as a ninth grader
5 or a tenth grader. I think he was still classified as a
6 ninth grader.

7 Q. So '84, '85, they've got down here ninth grade.
8 Then they've got '85, '86 9-A.

9 A. That 9-A could have just been which section of the
10 ninth grade he was still assigned to.

11 Q. Well, they've got him for two school years, one is
12 9 and one is 9-A, the second school year. So that second
13 school year --

14 A. That has no relevance. That just means he was in a
15 ninth grade homeroom two years in a row.

16 Q. Do you remember even what year you had him,
17 Mr. Killian?

18 A. It was the second year that he was in school at
19 Swansea, so I assume that would have been the year that he's
20 classified in the records there as 9-A.

21 Q. And 9-A, I see here his grades in English was 47;
22 Math was 60; Biology was 11; American Government was 0;
23 Home-ec, 52. Would you have taught him any of those classes?

24 A. No, sir.

25 Q. But, anyhow, you tried to help him, didn't you?

1 A. Yes, sir.

2 Q. And then the following year is when he beat those
3 boys up down at the Pizza Hut after you tried to help?

4 A. Mr. Myers, I'm not familiar with that incident. I
5 had no part in it. I don't recall anything about that.

6 Q. Do you remember making the statement that -- I
7 think it was the next year that he got in some trouble at
8 maybe the Pizza Hut and you were disappointed because you
9 thought he had turned the corner --

10 A. I do remember making that statement in the first
11 trial that I was disappointed, that I thought he had turned
12 the corner in my class and he did get in the trouble the next
13 year, you're correct.

14 Q. So you tried to help him, but he didn't turn the
15 corner and that kind of disappointed you?

16 A. Yes, sir.

17 MR. MYERS: Thank you, Mr. Killian. I appreciate
18 it.

19 THE COURT: Any redirect?

20 MR. YOUNG: No further questions, Your Honor.

21 THE COURT: Thank you, sir. You can step down, and
22 you're free to go if you'd like to.

23 THE WITNESS: Thank you.

24 MR. YOUNG: We call Ms. Valerie Whitaker.

25 VALERIE WHITAKER, after having been duly

1 sworn, testified as follows:

2 THE CLERK: Have a seat and state your full name,
3 please.

4 THE WITNESS: Valerie Whitaker.

5 DIRECT EXAMINATION

6 BY MR. YOUNG:

7 Q. Ms. Whitaker, could you please tell us where you
8 are currently employed?

9 A. I'm currently employed with South Carolina
10 Department of Juvenile Justice.

11 Q. And what do you do there?

12 A. Classification case manager.

13 Q. In 1995, '96, where were you employed at that time?

14 A. South Carolina Department of Corrections.

15 Q. At that point in time, what was your role?

16 A. Classification case manager for the safekeepers.

17 Q. As part -- you said case manager, correct?

18 A. Uh-huh.

19 Q. So you would have daily or monthly contact with the
20 people who were incarcerated?

21 A. Daily.

22 Q. And assist them with their problems and give them
23 some guidance?

24 A. Correct.

25 Q. Did you have an occasion while you were at the

1 Department of Corrections to come in contact with Johnny
2 Bennett?

3 A. I did.

4 Q. Were you assigned as his caseworker?

5 A. I was.

6 Q. As part of your duties as a caseworker, were you
7 required to conduct status reviews every six months?

8 A. Correct.

9 Q. And those status reviews were basically reviewing
10 how the person is doing?

11 A. If the person had a job, we did evaluate their work
12 performance; and as far as disciplinaries, their behavior.

13 Q. And this was basically an evaluation of their
14 adjustment to that facility?

15 A. Correct.

16 Q. During this time, did Mr. Bennett hold any type of
17 jobs?

18 A. He was, at that point -- at that time, it was like
19 a work-out program and it was like food service. He helped
20 take the trays to the other guys.

21 Q. So he was kind of responsible for helping to feed
22 everyone?

23 A. Uh-huh, and cleaning up the area, also.

24 Q. Did you have an occasion on 4-11-96 to conduct a
25 status review of Mr. Bennett?

1 A. I did.

2 Q. In that status review, how was his work evaluation?

3 A. It was good.

4 Q. Were there any recommendations for any type of
5 changes in his work employment?

6 A. No.

7 Q. At that point in time, had Mr. Bennett incurred any
8 type of disciplinaries?

9 A. No, at this report, it was a clear disciplinary
10 record.

11 Q. A clear --

12 A. Uh-huh.

13 Q. -- disciplinary record?

14 A. Every six months we do one.

15 Q. And that one was done in April?

16 A. Correct.

17 Q. Of '96?

18 A. Correct.

19 Q. In October of 1996, did you have an occasion to do
20 a second evaluation?

21 A. I did every six months, yeah.

22 Q. On that evaluation, were there any -- what was the
23 evaluation as far as his work evaluation?

24 A. It was average at that time.

25 Q. And were there any type of disciplinary records at

1 that time?

2 A. No, it was a clear record at that time, also.

3 Q. Shortly after -- well, when did you leave the
4 Department of Corrections to go to the Department of Juvenile
5 Justice?

6 A. I believe it was October of '96.

7 Q. So it would have been shortly after that report?

8 A. Correct.

9 Q. Did you have an occasion as his caseworker to have
10 any one-on-one conversations or counseling with Mr. Bennett?

11 A. I did.

12 Q. What type of person would you say that Mr. Bennett
13 was?

14 A. Mr. Bennett was very polite. He had good manners,
15 happy-go-lucky, just a likable person.

16 Q. Was there a nickname?

17 A. I always called him Big Baby Huey, because I think
18 that's just how he came across to me, was just gentle, but
19 just big.

20 Q. At any point in time during this time that you were
21 his caseworker was Mr. Bennett ever disrespectful to you?

22 A. No, he was not.

23 Q. Did you ever observe him to be disrespectful to
24 anyone?

25 A. No, I did not.

1 Q. Was he ever aggressive or violent towards you?

2 A. No, he was not.

3 MR. YOUNG: Thank you, Ms. Whitaker. Please answer
4 any questions that the State may have.

5 THE COURT: Cross?

6 CROSS-EXAMINATION

7 BY MR. MYERS:

8 Q. Ms. Whitaker, you reviewed him in April of '96 and
9 October of '96?

10 A. Correct.

11 Q. So reviewed him two times?

12 A. Correct.

13 Q. And if his review wasn't good, he wouldn't get to
14 keep his job, is that pretty much it?

15 A. Well, no, not when it comes to safekeepers. After
16 a certain time, they rotate them regardless of what kind of
17 review they get for job performance, because everybody wanted
18 to have a chance to be work-outs.

19 Q. Then why would you review him?

20 A. Excuse me?

21 Q. Why would you review him?

22 A. Review him? We reviewed everybody every six months
23 whether they worked or not.

24 Q. So it made no difference, you just had to review
25 them every six months?

1 A. Correct, that was this law.

2 MR. MYERS: No further questions.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MR. YOUNG:

6 Q. As part of your review, did you have a certain
7 procedure that you had to go by?

8 A. As far as?

9 Q. Reviewing inmates?

10 A. It all depends on when the inmate came into the
11 system and then every six months -- we would review them
12 every six months regardless of whether they worked or
13 anything. Every six months, it was just computerized, you
14 had to have a review.

15 Q. And these reviews, they were not rubber stamped,
16 were they?

17 A. When you say rubber stamped?

18 Q. They weren't just -- you just look at the name and
19 you stamp what you want on it?

20 A. Oh, no, no.

21 MR. YOUNG: Thank you.

22 MR. MYERS: No further questions.

23 MR. YOUNG: May she be excused, Your Honor.

24 MR. MYERS: No objections.

25 THE COURT: I'm sorry, I thought he had one other

1 question.

2 I'm sorry, ma'am, you're free to go. Pardon me.

3 MR. FLOYD: Your Honor, we call Lucius Martin.

4 LUCIUS T. MARTIN, after having been duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FLOYD:

8 Q. How you doing, sir? Would you please state your
9 name for the jury.

10 A. Lucius T. Martin.

11 Q. And, Mr. Martin, where do you work?

12 A. I'm Town Clerk for the Town of Swansea.

13 Q. And how long have you had that position?

14 A. October of '64.

15 Q. So since October of '64?

16 A. Right.

17 Q. And as such, you know most of the people in that
18 area, don't you?

19 A. Yes, sir.

20 Q. Now, did you have the occasion to have -- to come
21 into contact with someone about some floor mats?

22 A. Yes, sir. I don't recall the date or time because
23 I didn't go out there with the intent of investigating. A
24 Mr. Daniel Sutton that lives kind of north, northwest of
25 Swansea, he used to work for me in the sanitation department.

1 And he happened to be walking in the town that
2 morning and he found some floor mats in the -- going away
3 from Swansea back towards Gaston, the floor mats would be on
4 the left of the road. He was walking, coming into Swansea,
5 so he would have been walking on that side, on the right of
6 the road. And he found some floor mats.

7 And at that time, there was a lot of talk on the
8 street as to what was missing from the Smith's car, like a CB
9 and a billfold, switch keys, floor mats and so forth. And he
10 found these, and he said it looked like the ones that they
11 had been talking about.

12 He came in and talked to me, I was in the office.
13 So I got -- kind of pinned him down to exactly where it was.
14 And so I called the sheriff's office and I asked particular
15 for the detective Investigator Charlie Jones because he had
16 been down there on this case a number of times.

17 And at the time I called, I had a little bit of
18 trouble finding him, but I told him to be sure and get a hold
19 of me, I needed him right away. And so they said he was in
20 the back of the jail talking to someone out there. And I
21 said, Well, get him out, I need to talk to him. So when I
22 told him what seemed to be -- that he needed to look at, it
23 seemed to be the mats maybe that they were looking for.

24 I first rode out to take a look before I called
25 anybody. I wanted to be sure that there was something there.

1 I did not get out of my car. I just drove and I could see it
2 looked like some monogrammed floor mats. They were kind of
3 in the grass off of the pavement and kind of looked like it
4 might have been kicked out, thrown out for some reason. They
5 wasn't neatly spread out, they was kind of in an oval shape.

6 So Detective Jones and his crew came on down. I
7 led them out there to show them where they was, and there was
8 a number of law enforcement vehicles. And I talked to
9 Detective Jones for a moment and --

10 Q. Lucius, were these the mats that you --

11 A. I'm not sure, I did not get that close to them.
12 They were kind of in an oval, the part that I could see.

13 Q. I got you.

14 A. And it was between -- I mean, just off of the
15 pavement enough in the grass I could tell it was floor mats
16 and I could see some writing. But I did not get out, I
17 didn't get any closer than my vehicle.

18 Q. And did you lead the Sheriff's Department out to
19 where they were?

20 A. I did. I did.

21 MR. FLOYD: Thank you, Mr. Martin. Answer any
22 questions that Mr. Myers might have for you.

23 MR. MYERS: I don't have any questions, Mr. Lucius.
24 Come on down.

25 THE WITNESS: Sir?

1 THE COURT: He said he didn't have any questions.
2 You can step down now.

3 THE WITNESS: A number one. Glad to see you,
4 Judge.

5 THE COURT: Good to see you. And you can go if you
6 want to.

7 THE WITNESS: Thank you, sir.

8 MR. FLOYD: Your Honor, we call Mr. Robert Roth.

9 ROBERT ROTH, after having been duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat and state your full name.

12 DIRECT EXAMINATION

13 BY MR. FLOYD:

14 Q. Would you state your name for the jury.

15 A. Robert Roth.

16 Q. And, Mr. Roth, where are you employed?

17 A. South Carolina Department of Corrections, Lieber
18 Correctional Institute.

19 Q. And how long have you worked at Lieber?

20 A. Approximately a year.

21 Q. And is this your first job as a correctional
22 officer?

23 A. Yes, sir.

24 Q. Now, in your work out there as a correctional
25 officer, have you met Mr. Johnny Bennett?

1 A. Yes, sir.

2 Q. And so how long have you known Johnny Bennett?

3 A. Approximately close to a year.

4 Q. And how often do you see Johnny?

5 A. Whenever I'm assigned to his wing, maybe once,
6 twice a month sometimes.

7 Q. Now, in that time that you have been there, have
8 you ever had any problems with Johnny?

9 A. No, sir, none whatsoever.

10 Q. Does he show you respect?

11 A. Yes, sir.

12 Q. Does he obey you when you tell him to do
13 something?

14 A. Yes, sir.

15 Q. Now, how often would Johnny get out of his cell?
16 How often does he get to get out of his cell?

17 A. Normally, about once a day for about an hour, hour
18 and a half for rec time and for showers.

19 Q. And how does he usually spend that time?

20 A. Usually, he --

21 MR. MYERS: Objection, it's irrelevant how he
22 spends his time or how they treat folks down there.

23 THE COURT: I understand. I'm going to give him a
24 little bit of room with it.

25 Go ahead.

1 BY MR. FLOYD:

2 Q. How does he usually spend his time?

3 A. During rec time, usually he's playing basketball or
4 playing cards.

5 Q. And you ever seen him have any problems with any of
6 the other inmates?

7 A. No, sir.

8 Q. And do you remember any kind of specific incident
9 where he might have been of assistance to the correctional
10 officers?

11 A. No, sir, not right offhand.

12 MR. FLOYD: Thank you, Officer Roth. Answer any
13 questions --

14 MR. MYERS: No questions.

15 THE COURT: Cross?

16 MR. MYERS: No questions.

17 THE COURT: You can step down, and you're free to
18 go if you'd like to.

19 MR. YOUNG: Your Honor, I would call Mr. Fishmend
20 Sanders, Captain Fishmend Sanders.

21 FISHMEND SANDERS, Jr., after having been duly
22 sworn, testified as follows:

23 THE CLERK: Have a seat and state your full name,
24 sir.

25 THE WITNESS: Fishmend Sanders, Jr.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Mr. Sanders, if you would, speak up loud enough so everybody can hear you. Where are you currently employed?

A. South Carolina Department of Corrections at the Lieber Correctional Institution.

Q. And what is your position there?

A. I'm a captain three, captain of the special management housing unit.

Q. What are your duties there?

A. Supervision of my lieutenants, sergeants and officers and all transfers, all events that occur in the special management unit.

Q. Your title is captain. You have some officers working underneath you who you're supervisor of?

A. Yes, I do.

Q. So you would have access to reports and things of that nature that your officers would submit?

A. All reports.

Q. Tell the jury as a captain, what is the objective of the Department of Corrections?

A. To protect the public, to protect the employees, to protect the offenders, security, custody and control.

Q. In that capacity, have you had the opportunity to come in contact with Johnny Bennett?

1 A. Daily, yes, I have.

2 Q. Have daily contact with him?

3 A. Pretty much.

4 Q. How would you describe Johnny Bennett as a person?

5 A. Respectful. He says what's on his mind, but he
6 says it -- he knows how to say it to bring his point across.
7 He obeys orders. I look at him pretty much as like in the
8 inmate population as he's kind of -- he helps -- he helps
9 with issues and he's kind of a voice.

10 Q. What -- you mentioned that he helps, what types of
11 things has he done that has been helpful?

12 A. Well, at the Department of Corrections, there's
13 always changes and there's some guys that he explains -- he
14 questions and he explains things and he helps as far as
15 issues. He's kind of a spokesperson, I kind of call him like
16 that, because if there's a change, he questions the change,
17 but then it's just to understand why the change is being
18 imposed, and then somehow he makes the others to understand.
19 He's involved with the church. We have church on Wednesdays
20 and Fridays. And he's usually with the church group as far
21 as the initiation and getting the program started, that type
22 of thing.

23 Q. You mentioned that he was involved in the helping
24 of the church activities. Are you familiar with an incident
25 involving Mr. Bennett when a pastor wasn't there?

1 A. Yeah, yeah, I remember I learned something that
2 day. There's policy, procedure and guidelines for us to
3 follow --

4 MR. MYERS: Is he present? I didn't understand
5 whether he was present or whether this is hearsay or what.

6 THE COURT: Yes, sir.

7 MR. MYERS: If he's present, I don't have any
8 objection. If he was not present, then I do have an
9 objection.

10 BY MR. YOUNG:

11 Q. Were you present --

12 A. Yes, I was.

13 Q. -- when this incident occurred?

14 A. It was brought to my attention because --

15 MR. MYERS: Objection. I understand he said he
16 wasn't present but brought to his attention.

17 THE COURT: Yes, sir. You need to let him clarify.
18 He says he was present, then he says it was brought to his
19 attention --

20 A. I was present.

21 THE COURT: You said you were present?

22 A. I was.

23 THE COURT: Okay.

24 MR. MYERS: I withdraw the objection.

25 THE COURT: Go ahead.

1 A. I was present and it was brought to my attention the
2 schedule -- we have volunteer chaplains to come in. They are
3 scheduled through the chaplain's office to come in every
4 Wednesday. And this particular chaplain, for some reason, I
5 can't remember what it was, wasn't able to make it.

6 And SCDC policy is, is that an inmate can't conduct
7 church services without a pastor there on site. And so the
8 pastor not showing up, the question was Mr. Bennett wanted to
9 lead, to carry on the church service and we couldn't allow it
10 to transpire because of our supervision.

11 Q. So it was the rule that if a pastor wasn't there --

12 A. Right.

13 Q. -- then you won't be able to have an inmate to
14 conduct the service?

15 A. He can lead them with a pastor present, with a
16 pastor present. A pastor was not present. As I understand
17 it, I think Mr. Black came down later on and the service was
18 allowed to go on.

19 Q. When Mr. Bennett learned that the services were not
20 going to be held, his response was that he wanted to conduct
21 the services?

22 A. Right, but he understood that the pastor wasn't
23 going to be there. The scheduled attending pastor was not
24 going to be there.

25 Q. Did Mr. Bennett disobey the rules and still have

1 services?

2 A. No, sir.

3 Q. What did he do?

4 A. Well, when it was brought to his attention and he
5 questioned -- I was brought to the question, and then I posed
6 the question to Mr. Black, who was the associate warden for
7 that area during that period of time, and he had been --
8 it was my understanding he came down, he's an ordained
9 minister, and then chapel services were allowed to go on.

10 Q. Okay. Have you had an occasion to observe
11 Mr. Bennett interact with other inmates?

12 A. Every day.

13 Q. How does he interact with them?

14 A. Bennett is going to be Bennett. He's always --
15 he's quite talkative, he's always talking. I mean, he's
16 always encouraging. It's never nothing negative. It's
17 always an encouraging thing. It's always about what they're
18 entitled to or it's always something beneficial, is my word
19 for it. It's nothing negative, it's always something to
20 benefit either him or the other guys.

21 Q. Have you ever observed Mr. Bennett to be violent or
22 aggressive towards any of the other inmates?

23 A. No, sir.

24 Q. Have you ever had an occasion when Mr. Bennett was
25 violent or aggressive towards you?

1 A. No. We talk daily and, as I say, we talk daily. I
2 come on, and if I don't speak, then he'll encourage me to
3 speak or acknowledge and say something in an encouraging way,
4 just a greeting or gesture, that kind of thing, just a
5 reminder. But never any kind of violence toward me or
6 anybody that I knew.

7 Q. Has Mr. Bennett ever done anything to disrespect
8 you as an officer?

9 A. No, sir.

10 Q. Have any of the officers underneath you ever sent
11 you any reports about Mr. Bennett disrespecting them?

12 A. No, sir.

13 Q. Have you ever had the occasion to give Mr. Bennett
14 a directive or an order to do something?

15 A. Yes, I have.

16 Q. How did he respond to you?

17 A. He just responded. Whatever the request was, he
18 did it.

19 Q. He didn't respond to you by being violent towards
20 you?

21 A. No, sir, that's not his -- he's never displayed
22 that kind of display to me, never.

23 Q. How long have you been exposed to Mr. Bennett on a
24 daily basis?

25 A. Well, when he came on the -- I met him on the 12th

1 of April of '97, and I assumed my position on June 2nd of
2 '97. And from June the 2nd, '97 until this day, I've been in
3 my position. So I see him on a daily basis. I work a
4 five-day work week pretty much and on those five days, pretty
5 much, I see him.

6 Q. How long have you been in the field of corrections?

7 A. 15 and a half years.

8 Q. Based on your experiences, based on your exposure
9 to Johnny Bennett, how would you describe him as an inmate?

10 A. Respectful. If you ask him to do something, he
11 does it. He's an outspoken inmate, but when I say outspoken,
12 he questions things that are as far as well-being, but he
13 does it in a respectful way. He's never been a problem. He
14 pretty much treats you for how you treat him. You know,
15 there's never been a bad word between me and him or anybody
16 else that I know.

17 Q. Would you say that Mr. Bennett is the type of
18 inmate that can or cannot be controlled by the Department of
19 Corrections?

20 A. Not a problem, he could be controlled.

21 Q. Would you consider Mr. Bennett to be a troublemaker
22 as far as inmates are concerned?

23 A. No, sir.

24 MR. YOUNG: Thank you, Captain Sanders. Please
25 answer any questions the State may have.

CROSS-EXAMINATION

BY MR. MYERS:

Q. Captain, how are you?

A. Fine, how are you?

Q. Good. You sound like you're where I'm from, down in the Low Country; is that right?

A. Say it again.

Q. You sound like you're where I'm originally from, down in the Low Country, is that where you're from?

A. Yeah, that's where I'm from. Can you tell?

Q. I can understand you. If I talk with you long, I'll revert back to that Geechee talk, too.

Where is Lieber?

A. Lieber is in the town of Ridgeville, off of Highway 78. It's about an hour and a half from here, from the Columbia area.

Q. I know exactly where it is. And down there at Lieber, have you been down there on this unit since June of '97, I think you said?

A. Yes, sir.

Q. And you said there's always changes in the Department of Corrections; isn't that right?

A. Every day.

Q. Daily. Always changes. And Mr. Bennett keeps up with those changes, he's the spokesman?

1 A. Oh, believe me, he does. He's got a nickname down
2 that I gave him personally.

3 Q. What's that?

4 A. Secretary of defense.

5 Q. That's right. And he makes sure that others
6 understand the rules?

7 A. Yeah, he does pretty much, pretty much.

8 Q. Right.

9 A. There's some inmates, some that comprehend and some
10 that don't, pretty much, and he does that.

11 Q. So he's aware of what's going on?

12 A. Pretty much.

13 Q. He knows about the visitation privileges and how
14 you get people on a list and the visitation rules and all of
15 that?

16 A. As far as I can tell, yes, sir.

17 Q. He knows the rules or the changes every day, he's a
18 spokesman.

19 A. Yes.

20 Q. And he knows if somebody wants somebody on a
21 visitation list, and he knows -- he's the spokesman, he can
22 tell others about the rules and regulations; isn't that
23 right?

24 A. Pretty much.

25 Q. And as a matter of fact, he wrote a letter -- you

1 know who Mr. Montgomery is?

2 A. Yes. Yes, I do.

3 Q. If he wrote a letter to Mr. Montgomery trying to
4 get visitation privileges for Ms. Judie Hardee, he would know
5 the rules about doing that, wouldn't he? How to write
6 Mr. Montgomery about getting somebody on his visitation list?
7 He would know that, he knows the rules, doesn't he?

8 A. Yes, sir.

9 Q. And would it be right or wrong for him to write a
10 name saying he was Ms. Hardee? That would be wrong, wouldn't
11 it?

12 A. Say again now.

13 Q. Suppose he wanted a woman named Ms. Judie Hardee to
14 be on his visitation list and he wrote Mr. Montgomery a
15 letter and he didn't put his name down, he put it down as if
16 Ms. Hardee was writing the letter. That would be wrong,
17 wouldn't it?

18 A. Yes, sir.

19 Q. As a matter of fact, that would be a forgery,
20 wouldn't it?

21 A. It would be wrong.

22 Q. Yes, sir. He knows all the rules and regulations,
23 doesn't he? And in doing that -- do you know who Judie
24 Hardee is?

25 A. I have no clue, sir. No, sir.

1 Q. Have you seen his visitation list since April of
2 this year?

3 A. I don't monitor inmate visitation lists?

4 Q. They haven't told y'all who Judie Hardee is?

5 A. No, sir.

6 Q. Do you know that he was having sex with Judie
7 Hardee while he was on the Edisto unit?

8 A. I know nothing of that, sir.

9 Q. Y'all didn't know that?

10 A. Edisto, is not down in Lieber.

11 Q. But is it right for an inmate in Edisto or Lieber
12 to have sex with a visitor? Is that within the rules?

13 A. No, sir.

14 Q. And do you know he and Judie Hardee had sex while
15 he was on the Edisto unit, '96 and '97, on a good many
16 occasions?

17 A. No, sir.

18 Q. And did you know she was put back on his visitation
19 list just April of this year, just a couple of months ago?

20 A. No, sir.

21 Q. And you know she can now come down to see him at
22 Lieber now; did you know that?

23 A. No, sir. If she's on the list then -- we don't
24 have contact with her, sir.

25 Q. And nobody had told y'all about the history of him

1 and Judie Hardee?

2 A. Nobody has told me, sir.

3 Q. Well, you're the captain of the unit?

4 A. Yes, sir, I am.

5 Q. And he knows the system, doesn't he?

6 A. He knows the rules and regulations.

7 Q. He knows it real good. And he knows coming back to

8 court that whatever goes in his case jacket can be used in

9 court against him, he knows that, too, doesn't he?

10 A. Yes, sir.

11 MR. MYERS: Thank you, Captain.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. YOUNG:

15 Q. Captain Sanders, you stated that Mr. Bennett knows
16 the rules, correct?

17 A. Yes.

18 Q. In fact, he's tried to help others to understand
19 the rules, correct.

20 A. Yes, sir.

21 Q. Mr. Bennett has not broken any of those rules, has
22 he?

23 A. No, sir, not since I've known him.

24 Q. Did you know that when Mr. Bennett was in the fifth
25 grade, that he got suspended from school?

1 A. No, sir.

2 Q. As a correction officer, is it your job to know the
3 background of every inmate?

4 A. No, sir.

5 Q. If somebody being on a visitation list was a threat
6 to the security of your facility, would you know about it?

7 A. Say again, sir.

8 Q. If somebody was added to an inmate's visitation
9 list that poses a threat in any way, would you as the captain
10 be made aware of that?

11 A. Yes, sir.

12 Q. When a person comes to visit an inmate at your
13 facility, do they have any contact with that visitor?

14 A. No, sir.

15 Q. In fact, isn't it true that they would have to
16 speak with that visitor behind a piece of plexi-glass?

17 A. Plexi-glass, yes, sir.

18 Q. They can't touch that person?

19 A. No, sir.

20 Q. Can't hug that person?

21 A. No, sir.

22 Q. Can't even feel the breath of that person's mouth,
23 can they?

24 A. No, sir.

25 MR. YOUNG: No further questions.

1 THE COURT: Any recross, Mr. Myers?

2 MR. MYERS: Nothing.

3 THE COURT: You can step down. Thank you, sir.
4 You're to go if you'd like.

5 MR. FLOYD: Gloria Bell, please.

6 GLORIA BELL, after having been duly sworn,
7 testified as follows:

8 THE CLERK: Have a seat and state your name for the
9 record, please.

10 DIRECT EXAMINATION

11 BY MR. FLOYD:

12 Q. Would you please state your name for the jury.

13 A. Okay. Gloria Bell.

14 Q. And, Gloria, where do you work?

15 A. At Lieber Correctional Institution.

16 Q. And what is your position there?

17 A. I'm a sergeant.

18 Q. And how long have you been employed with the
19 Department of Corrections?

20 A. 13 years.

21 Q. And how long have you been at Lieber?

22 A. 12 years.

23 Q. And do you know Johnny Bennett?

24 A. Yes, sir.

25 Q. How long have you known Johnny?

1 A. Since May of 1997.

2 Q. And how often do you see Johnny?

3 A. Basically, on a daily basis when I'm working.

4 Q. In the whole time that you have known Johnny, has
5 he ever shown any disrespect to you?

6 A. No, sir.

7 Q. Have you ever seen him show disrespect to any of
8 the correctional officers or employees at Lieber?

9 A. No, sir.

10 Q. Have you ever seen him show --

11 MR. MYERS: Objection to the leading. We'd like
12 the witness to testify.

13 MR. FLOYD: I don't think I'm leading, Judge, just
14 asking her a question. It's a yes or no question.

15 THE COURT: Well, just rephrase the question a
16 little bit.

17 MR. FLOYD: Okay.

18 Q. Have you ever told Johnny to do anything?

19 A. All the time, yeah.

20 Q. And when you tell him to do something, what does he
21 do?

22 A. He complies, he does it.

23 Q. And what is his attitude when he complies with your
24 request?

25 A. (Pause.)

1 Q. Does he give you a hard time?

2 A. No.

3 Q. And is he active in the church services?

4 A. Yes, he is.

5 Q. Could you tell the jury anything about that.

6 A. Usually, he attends church service and all every
7 week. He was very close with our Chaplain Brown. He tried
8 to encourage the other inmates to go to church. Usually,
9 when like someone, one of the inmates have a death in the
10 family or something, he counsel with them or try to comfort
11 them. He was just like a good person, you know, in the
12 inmate population.

13 Q. He tries to help his other fellow inmates?

14 A. Yeah.

15 Q. And does he try to assist y'all in your jobs, the
16 correctional officers, assist you in any way he can?

17 A. Yeah.

18 MR. FLOYD: Thank you, Sergeant Bell.

19 MR. MYERS: No questions.

20 THE COURT: Step down. Thank you, ma'am. And
21 you're free to go if you'd like to.

22 If some of you would like to stand and stretch,
23 feel free to do that too. After about the next witness or
24 two we'll take a break, okay.

25 Go ahead.

1 MR. YOUNG: Your Honor, we would call Sergeant
2 Buncumb.

3 JOHNNY BUNCUMB, after having been duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat and state your full name
6 for the record.

7 THE WITNESS: Johnny Buncumb.

8 DIRECT EXAMINATION

9 BY MR. YOUNG:

10 Q. Spell your last name for the record.

11 A. B-U-N-C-U-M-B.

12 Q. Sergeant, where are you employed?

13 A. South Carolina Department of Corrections, Lieber
14 Correctional Institution.

15 Q. How long have you been in the field of corrections?

16 A. Five years.

17 Q. Your entire five years, has it been at Lieber?

18 A. Yes, sir.

19 Q. You had an occasion to come in contact with Johnny
20 Bennett?

21 A. Yes, sir.

22 Q. How long have you known Johnny Bennett?

23 A. Maybe since May of '97.

24 Q. Maybe since May of '97?

25 A. Yes, sir.

1 Q. Was that around the time that he was first moved to
2 your facility?

3 A. Yes, sir.

4 Q. In your contacts with Mr. Bennett, how often do you
5 have contact with him?

6 A. Once, twice a week.

7 Q. Have you had an occasion to sit down and talk to
8 him?

9 A. Yes, that's basically the only time I see him, when
10 I go talk to him.

11 Q. How would you describe Johnny Bennett?

12 A. Well, he has a positive attitude any time you go to
13 talk to him. He always has something positive to say to you,
14 make your day go by a little easy. Tell you it's going to be
15 all right even sometime when you're stressed out, because
16 it's a stressful area. He'd always say, Hey, slow it down a
17 little bit and you'll be all right.

18 Q. Have you had an occasion to see Mr. Bennett
19 interact with the other inmates?

20 A. Yes.

21 Q. Tell us about how he interacts with the other
22 inmates.

23 A. He basically is more like a mediator. He basically
24 set things straight. You know, like the Captain was saying
25 with these changes, he can always explain what is going on

1 and ask a few questions, the why questions, why is it like
2 this, and then he can relate it back to the inmates on what's
3 actually going on.

4 Q. Does the other inmates look up to Johnny?

5 A. Yes.

6 Q. Has Johnny ever been, to the best of your
7 knowledge, violent towards any of the other inmates?

8 A. No.

9 Q. Has he ever been disrespectful to them?

10 A. No.

11 Q. To the best of your knowledge, has Mr. Bennett ever
12 been written up for any rule infractions?

13 A. No, not to my knowledge.

14 Q. To the best of your knowledge, has he ever broken
15 the rules while he was under your watch?

16 A. No.

17 Q. Now, there -- was there one incident that you were
18 telling me about, about Mr. Bennett banging on a door?

19 A. Yes, sir.

20 Q. Tell us about that.

21 A. Well, he was banging on the door to get some
22 attention. What happened, some other inmates got moved
23 before he did. It was during the time when they were moving
24 inmates around in the cells. And he put in a request to be
25 moved two or three weeks before and the ones that put it in

1 after him got moved first, and he really wanted to know why.
2 And once we told him that it would be taken care of and the
3 why was answered, we never heard anything else about it.

4 Q. At this point in time, were all the inmates locked
5 down?

6 A. Yes.

7 Q. Was the -- the guards, were they further down the
8 hallway or in a different area from him at that time?

9 A. There was always someone there.

10 Q. Did you have an occasion to ask him or to go talk
11 to him about that incident?

12 A. Yes.

13 Q. And why did he tell you he was banging on the door?

14 A. He was banging on the door because everybody got
15 moved before he did and he wanted to know why he didn't get
16 his turn to be moved.

17 Q. When he was banging on this door, was it in a
18 violent and aggressive manner or --

19 A. No.

20 Q. How was it?

21 A. It was basically banging on the door. All the
22 inmates do it just to get attention or get someone to come
23 and see what they want. And it wasn't violent, because as
24 soon as he seen the person coming he wanted to see, it was
25 gone.

1 Q. Prior to that person going to talk to him, did
2 another correctional officer go to him and ask him to stop or
3 something?

4 A. I'm unaware.

5 Q. Have you seen Mr. Bennett interact with other
6 correction officers?

7 A. Yes.

8 Q. Have you ever seen him to be disrespectful to them?

9 A. No.

10 Q. How does he act around them?

11 A. Calm, basically he's just boisterous, that's all.

12 Q. Does Mr. Bennett get any rec time?

13 A. Yes. He get approximately an hour, hour and a half
14 a day.

15 Q. Have you observed him with other inmates during
16 this rec time?

17 A. Yes, sir.

18 Q. During this rec time, did he, him and the other
19 inmates, get into fights or anything?

20 A. No, just play basketball.

21 Q. In your five years of corrections experience and in
22 the three years that you've known Mr. Bennett, is Mr. Bennett
23 the worst inmate that you've come in contact with?

24 A. No. No.

25 Q. Is Mr. Bennett someone that is beyond the control

1 of the Department of Corrections?

2 A. No, he can be controlled.

3 MR. YOUNG: Thank you. Please answer any questions
4 that the State may have.

5 MR. MYERS: No questions.

6 THE COURT: All right, sir. You can step down.
7 You're free to go if you'd like. Thank you, sir.

8 MR. FLOYD: Your Honor, we call Mr. Albert Mack.

9 ALBERT MACK, after having been duly sworn,
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MR. FLOYD:

13 Q. Would you state your name for the jury.

14 A. Sure. Albert Mack, M-a-c-k.

15 Q. And, Mr. Mack, where are you employed?

16 A. Lieber Correctional Institution.

17 Q. And how long have you been employed there?

18 A. About three years.

19 Q. And what is your position?

20 A. Normally, a wing officer.

21 Q. And in your capacity there, do you know Johnny
22 Bennett?

23 A. Yes.

24 Q. How long have you known Johnny?

25 A. Approximately two years.

1 Q. And how often do you see Johnny?

2 A. During a 12-hour shift, 12 hours.

3 Q. Is that the way you work, 12-hour shifts?

4 A. Correct.

5 Q. How many days a week do you work?

6 A. Three or four.

7 Q. Kind of a swing shift?

8 A. Yes.

9 Q. And during that whole time you are there, you are
10 in -- pretty much in the presence of Johnny Bennett or close
11 by?

12 A. Yes.

13 Q. During those years that you've known Johnny
14 Bennett, has he ever shown disrespect to you?

15 A. No.

16 Q. How does he treat you and the other correctional
17 officers?

18 A. I can only speak about me, I haven't had any
19 problems.

20 Q. Do you see him around other inmates?

21 A. Yes.

22 Q. And how does he interact with them?

23 A. I haven't seen any negative whatsoever.

24 Q. So the whole time you're there, you've never seen
25 any negative activity from Johnny at all?

1 A. No, I have not.

2 Q. Now, do they have church services there?

3 A. Yes, sir, they do.

4 Q. And when are the church services?

5 A. On Wednesday about 1:30.

6 Q. Now, if an inmate decides to go to church, do they
7 have to give up something else?

8 A. Depending on what -- yes.

9 Q. What would that be?

10 A. If it conflicts with rec or something like that.

11 Q. So sometimes if they go to church, they give up
12 their rec time?

13 A. Correct.

14 Q. Is that right?

15 A. Correct.

16 Q. How often does Johnny go to church?

17 A. He's never missed any that I've seen.

18 Q. So even if he has to give up his rec time, he
19 goes?

20 A. That's correct.

21 Q. And does he participate actively in the church
22 services, to your knowledge?

23 A. To my knowledge, yes.

24 Q. Are there any other studies that he participates in
25 on a weekly basis?

1 A. You mean Friday, Bible studies?

2 Q. Right.

3 A. Yes.

4 Q. When do they have the Bible studies?

5 A. That's every Friday about 1:45.

6 Q. Does Johnny attend that regularly?

7 A. Yes, he does.

8 Q. Is Johnny Bennett the type of inmate that you can
9 control?

10 A. Haven't had any problems.

11 Q. And you've seen him on pretty much a daily basis
12 for about two years?

13 A. Correct.

14 MR. FLOYD: Thank you.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. MYERS:

18 Q. You said now they also have religious things on
19 Friday? I thought I heard they had it on two nights. Are we
20 talking about the same thing?

1 A. I don't know what you're referring to. Church is
2 on Wednesdays and Bible studies on Fridays.

23 Q. Okay. And you're telling me in a facility where
4 people get an hour of rec a day, they schedule those church
25 services at the same time; is that what you're telling me?

1 A. That's -- yes, sir.

2 Q. That's what they do?

3 A. Well, it alternates. If rec is on one wing a
4 certain day, church is on the opposite wing.

5 Q. Isn't it true that he can either stay in the cell
6 or go to church services; that's pretty much what it is,
7 isn't it? They can either stay in the cell or they can go to
8 church service; that's pretty much what it is, isn't it?

9 A. That's an option, of course.

10 MR. MYERS: Thank you.

11 THE COURT: Any redirect?

12 MR. FLOYD: No.

13 Thank you, Mr. Mack.

14 THE COURT: You can step down. Thank you, sir.

15 You're free to go.

16 Jury, you want to get one more witness before break
17 or go ahead and take a break now?

18 THE FORELADY: One more.

19 THE COURT: One more. All right.

20 MR. YOUNG: We call Sergeant Adcox.

21 SHARON ADCOX, after having been duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat and state your full name,
24 please.

25 THE WITNESS: Sharon Adcox, A-D-C-O-X.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Sergeant, where are you employed?

A. Lieber Correctional Institution.

Q. And how many years have you been in the field of corrections?

A. About 14 plus.

Q. Have all of those been at Lieber?

A. Yes, sir.

Q. What are your duties at the department?

A. I'm a supervisor over S. M. U.

Q. In your capacity, have you had an occasion to come in contact with Johnny Bennett?

A. Yes, sir, every day I'm on duty.

Q. How would you describe Johnny Bennett as an inmate?

A. Respectful.

Q. You heard Sergeant Buncumb talking about the incident of him banging on the door?

A. Right.

Q. Were you the first officer who responded to that?

A. Yes, sir.

Q. After that incident occurred, the next day or so, what, if anything, did Johnny Bennett do?

A. He didn't do anything else, he was moved.

Q. Did he ever come to you or another officer and

1 apologize for anything?

2 A. Yes, sir.

3 Q. What did he apologize for?

4 A. He just wanted to let us know that it wasn't
5 directed to us to be disrespectful, if he was, he apologized
6 for it. He was just trying to get his point across.

7 Q. During that incident, did he cause any type of
8 damage or anything to the door or the cell?

9 A. No, sir.

10 Q. Did he cause any damage or injury or anything to
11 any person?

12 A. No, sir.

13 Q. When the officer -- or when you responded, did he
14 act irate or aggressive or violent towards you about it?

15 A. No, sir.

16 Q. Have you ever seen Mr. Bennett act in a violent or
17 aggressive manner towards you?

18 A. No, sir.

19 Q. Towards any other officers?

20 A. No.

21 Q. Have you seen him act in such a way towards any
22 other inmates?

23 A. No.

24 Q. Is Mr. Bennett a vocal-type person?

25 A. Yes, he is.

1 Q. How would you describe him, as far as being vocal?

2 A. Mr. Bennett, he just wants things to be done right.
3 We change policies all the time, we change procedures all the
4 time. And if we -- a lot of the inmates will not understand
5 it because we have a lot that's illiterate, don't know how to
6 read, don't know how to write. Bennett will go around and
7 talk to them.

8 Q. So when he's asking these questions regarding the
9 changes and things of that nature --

10 A. Right.

11 Q. -- is he asking those to overtake the prison?

12 A. No, sir. He's just trying to get an understanding
13 of why they were changed.

14 Q. When he asked these questions, is he asking them in
15 a way that he is being disrespectful to the authority?

16 A. No, sir.

17 Q. Are you personally, are you aware of any rules that
18 Mr. Bennett would have disobeyed?

19 A. No.

20 Q. In your opinion, based on your years of experience,
21 based on your involvement with Mr. Bennett, is he an inmate
22 who could be controlled?

23 A. Yes, sir.

24 Q. An inmate -- do you believe that he adjusts well in
25 prison life?

1 A. Yes, sir.

2 Q. Has he given you any indications -- scratch that.
3 I don't want to ask that. Have you observed Mr. Bennett in
4 a way that he's helpful to the other inmates or to the
5 guards?

6 A. Not necessarily to the officers, but with other
7 inmates, yes.

8 Q. Outside of explaining the changes and things to
9 them, does he do anything else to help them?

10 A. Like I said earlier, we have a few that don't know
11 how to read or write. And he'll go around, if they get a
12 letter from home, he'll read it to them. He'll write letters
13 to their family because they don't know how.

14 Q. So he does what he can to help out?

15 A. Yes, sir.

16 MR. YOUNG: Thank you. Please answer any questions
17 the State may have.

18 THE COURT: Cross?

19 CROSS-EXAMINATION

20 BY MR. MYERS:

21 Q. Sergeant Adcox, I think Mr. Bennett is on the
22 A-Unit or A-Wing; is that right?

23 A. Yes, sir.

24 Q. Now, they gave me a schedule from the Department of
25 Corrections on Friday, and they say that the first recreation

1 for A-Wing is from 8:15 to 9:20 in the morning; is that
2 right?

3 A. That's true.

4 Q. And the second recreation for A-Wing is 9:30 to
5 10:30?

6 A. That's our lockup rec.

7 Q. And the third recreation for A-Wing is at 10:30,
8 that's right?

9 A. No, sir.

10 Q. So what --

11 A. It's been revised.

12 Q. When was it revised because they just sent me that
13 last week?

14 A. About a month ago.

15 Q. So you're telling me, too, that they have
16 recreation at 1:30 when the Bible studies are going on?

17 A. Yes, sir. We pull rec out at 1 o'clock and they
18 have it from 1:00 to 2:00, to 1:00 to 2:30.

19 Q. So if this is what the Department of Corrections
20 sends out, they've changed it since last week since they sent
21 it to me?

22 A. They have.

23 Q. So they do change daily; is that correct?

24 A. They do..

25 Q. Well, they just changed that last week, the

1 recreation time?

2 A. No, sir, it's been the same.

3 Q. And also, you agree with me, like some of the
4 others said, Mr. Bennett, he knows the rules and he's a
5 spokesman?

6 A. Yes, sir.

7 Q. And he knows that if he does anything, y'all are
8 looking at it?

9 A. Right.

10 Q. And he came and apologized to you for banging on
11 the door or something and he knew that was a -- he
12 specifically apologized to you, didn't he?

13 A. Yes, sir, he did.

14 Q. And if anything was in his jacket, he would know it
15 was coming to court, wouldn't he?

16 A. No.

17 Q. Y'all don't put things in his jacket for us to use
18 against him in court?

19 A. If he does something to get charged for, if we
20 charged the inmate. Like, if I were to charge Mr. Bennett
21 for kicking on his door because he wanted to see someone
22 higher than me, I could have charged him and that would have
23 been put into his jacket. But I didn't go that route with
24 Mr. Bennett because he's never disrespectful. He started
25 kicking on the door, I told him to stop. The lieutenant come

1 down, Buncumb came down, they spoke to him and that was it.

2 Q. If Mr. Bennett wrote to a prison official and says
3 I want to make sure about my file jacket because it can go
4 against me in court, he would know about it?

5 A. Yes, sir, he knows it.

6 Q. And he would know what would be bad against him in
7 court and what is good against him in court; isn't that
8 right?

9 A. (Nodded.)

10 Q. And he came directly and apologized to you?

11 A. Yes, he did.

12 Q. When did that happen?

13 A. Same day.

14 Q. What day?

15 A. I don't remember when it was.

16 Q. You don't know when it was?

17 A. No, sir.

18 Q. But you're in court testifying for him, right?

19 A. Uh-huh.

20 MR. MYERS: Thank you.

21 THE COURT: Any redirect?

22 REDIRECT EXAMINATION

23 BY MR. YOUNG:

24 Q. If you intended to write Mr. Bennett up for banging
25 on those doors --

1 A. No, sir.

2 Q. No, if you would have, would you have written him
3 up still even if he did apologize to you?

4 A. Yes, sir.

5 Q. The Solicitor asked you about the schedule on
6 Fridays, at the current time -- now, you're on the special
7 management unit?

8 A. Yes, sir.

9 Q. What is the schedule for the inmates? What time do
10 they wake up?

11 A. Whenever -- well, we start showers at 7:30 in the
12 morning. Everybody has to get up and take a shower at 7:30,
13 we start at 7:30. Eight o'clock, we pull our first rec,
14 which is either the A-Wing or the B-Wing, whichever week it
15 is for that wing. They go out from about 8:00 to 9:15. Then
16 we bring them back in. And the inmates that don't go out
17 with the regular population goes out at 10:00. We bring them
18 back in at 11:00. And then our third rec would be from 1:00
19 to 2:00, or 1:00 to 2:30.

20 Q. If they're not in rec, where are they?

21 A. In their cells.

22 Q. In the cells?

23 A. Uh-huh.

24 MR. YOUNG: Thank you. That's all the questions I
25 have.

1 MR. MYERS: No questions.

2 THE COURT: Thank you. You can step down. You're
3 free to go if you'd like.

4 Are you ready for a break, Jurors? There's almost
5 a majority of jurors squirming now, so I assume that means
6 it's time for a break. We'll take a short break. Be sure we
7 don't talk about the case, okay.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 2:55 p.m.)

10 THE COURT: All right. We'll stand in recess for a
11 few minutes.

12 (WHEREUPON, a brief recess was taken.)

13 THE COURT: Let's bring the jury in.

14 (WHEREUPON, the jury enters the courtroom at
15 approximately 3:25 p.m.)

16 THE COURT: All parties and attorneys are in the
17 courtroom and all jurors have returned.

18 Defense, call your next witness.

19 MR. FLOYD: Thank you, Your Honor. We call
20 Lieutenant Clark.

21 TIMOTHY CLARK, after having been duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat and please state your name
24 for the record.

25 THE WITNESS: Timothy Clark.

DIRECT EXAMINATION

BY MR. FLOYD:

Q. And where do you work, Lieutenant Clark?

A. Lieber Correctional Institution.

Q. And what's your position there?

A. I'm a lieutenant.

Q. How long have you worked for the Department of
Corrections?

A. Approximately ten years.

Q. And how long have you worked at Lieber Correctional
Institution?

A. The entire time.

Q. Do you know Johnny Bennett?

A. Yes, sir.

Q. And how long have you known Johnny?

A. Since April of '97.

Q. And how often do you see Johnny?

A. Probably two to three times a week.

Q. Do you have people that work under you, also?

A. Sure.

Q. How many correctional officers work under you?

A. Approximately 14.

Q. And would you describe for the jury what type of
inmate Johnny Bennett is.

A. Bennett, he's not a problem. I don't have a

1 problem with Johnny when I'm dealing with him. Any order
2 that's given to him by myself, he complies, and I don't have
3 a problem with him.

4 Q. Has he ever showed you any disrespect?

5 A. No.

6 Q. Now, you have 14 officers who work under you, I
7 believe?

8 A. Yeah.

9 Q. And if they have problems with an inmate, do they
10 come to you about it?

11 A. Most of the time, yeah.

12 Q. And have any of them ever come to you with any kind
13 of problems about Johnny Bennett?

14 A. Only -- I think it was that one incident when he
15 was on the door.

16 Q. That's the one we heard about?

17 A. Right.

18 Q. About the door?

19 A. Right.

20 Q. Now, is that the way the inmates communicate
21 sometimes, knocking on that door?

22 A. Yeah.

23 Q. They don't have telephones, do they?

24 A. No.

25 Q. So when he knocked on the door, that problem was

1 resolved?

2 A. Right. Right.

3 Q. And do you ever see him interacting with the other
4 inmates?

5 A. Yeah, I've seen him play basketball.

6 Q. Does he have any kind of problems dealing with the
7 other inmates?

8 A. No, I haven't seen any.

9 MR. FLOYD: Thank you, Lieutenant Clark. Mr. Myers
10 may have some questions.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. MYERS:

14 Q. Lieutenant Clark, where you're assigned, anybody
15 working down there today?

16 A. Excuse me?

17 MR. MYERS: I'll withdraw that. No questions.

18 THE COURT: You can step down.

19 MR. YOUNG: We call Sergeant Craggs.

20 CANDACE CRAGGS, after having been duly sworn,
21 testified as follows:

22 THE CLERK: Have a seat and please state your full
23 name on the record.

24 THE WITNESS: Candace Craggs.

25 DIRECT EXAMINATION

1 BY MR. YOUNG:

2 Q. Could you spell your name for her.

3 A. C-a-n-d-a-c-e C-r-a-g-g-s.

4 Q. Okay. You're a little soft-spoken, so I need for
5 you to speak up so everybody can hear you, okay. Where are
6 you currently working?

7 A. Lieber Correctional Institution.

8 Q. And how long have you been in corrections?

9 A. 13 years.

10 Q. 13 years. How long have you been at Lieber?

11 A. 13 years.

12 Q. You have an occasion to get to meet Johnny Bennett?

13 A. Yes, sir.

14 Q. In what capacity do you know Johnny Bennett?

15 A. I'm a supervisor, so I supervise inmates and
16 employees at the same time.

17 Q. Do you have other correction officers working
18 underneath you?

19 A. Yes.

20 Q. How many works underneath you?

21 A. Usually two or three in that wing.

22 Q. Two or three?

23 A. Yeah.

24 Q. And if they had any problems or any write-ups with
25 any inmates, they would submit their write-up forms to you?

1 A. Yes, sir.

2 Q. The area where you supervise Mr. Bennett at, is
3 that unit or that area noisier than the other?

4 A. Yes, it is.

5 Q. Is it what you would consider to be the noisiest
6 wing?

7 A. Yes, very.

8 Q. Tell the jury about Mr. Bennett's behavior on that
9 wing.

10 A. A lot of times the inmates are noisy on that wing
11 for whatever reason. Some of them have had bad news from
12 their families or whatever. And Mr. Bennett is -- I always
13 address him as a mediator because he's very compassionate for
14 other people and he will talk to these guys and make them
15 feel better. Whether he feels upbeat or not, he's always
16 talking to other people and making them feel better about
17 where they're at or what's happened at home.

18 Q. Have you had the occasion to observe an incident
19 where the hall was loud and Mr. Bennett got them to quiet
20 down?

21 A. Yes, sir.

22 Q. What exactly did he do?

23 A. He just told that, you know, guys, some of us do
24 want to sleep, and they just hushed right up.

25 Q. In your observations of Mr. Bennett, have you ever

1 seen him confront another inmate in a violent way?

2 A. Never.

3 Q. Have you ever seen him get aggressive to any other
4 inmates?

5 A. No, I haven't.

6 Q. To any correction officers?

7 A. No.

8 Q. Have any of your officers ever reported that
9 Mr. Bennett did something against the rules of the
10 institution?

11 A. No, sir.

12 Q. Have any of your officers who you supervise, have
13 they ever reported to you that Mr. Bennett did something when
14 he was told not to do it?

15 A. No.

16 Q. Have you personally had the opportunity to order
17 Mr. Bennett to do something?

18 A. Yes.

19 Q. What did you have him to do?

20 A. Close his window.

21 Q. How did he respond to you?

22 A. He was very compliant.

23 Q. Prior to him closing the window, did he yell
24 anything disrespectful to you?

25 A. No.

1 Q. Did he make any smart remarks back to you?

2 A. No.

3 Q. Has Mr. Bennett ever been aggressive or
4 disrespectful to you?

5 A. No, sir.

6 Q. Are you aware of any rules that Mr. Bennett may
7 have disobeyed?

8 A. None on my shift.

9 Q. Now, you work the night shift, correct?

10 A. Yes.

11 Q. So you would come in after most of the other guys
12 who have come up here, correct?

13 A. Yes.

14 Q. Do you recall the incident where Mr. Bennett was
15 knocking on the door?

16 A. That didn't occur on my shift.

17 Q. Didn't occur on your shift?

18 A. No.

19 Q. Do you recall when you came to work hearing about
20 that incident?

21 A. Yes.

22 Q. After hearing about that incident, did anything
23 continue into your shift regarding that incident?

24 A. We moved -- we were supposed to move him that
25 night. And as luck would have it, two inmates were assigned

1 to the same room. And since we'd already moved one inmate,
2 we couldn't move Johnny. So he just said, Okay. He wasn't
3 upset.

4 Q. Okay. Have you -- by the time you come on,
5 everybody is pretty much winding down their day?

6 A. Yes.

7 Q. Do you believe out of your 13 years of experience
8 -- well, out of your 13 years of experience, tell the jury
9 what kind of inmate Johnny Bennett is compared to other
10 inmates you've dealt with.

11 A. He's very upbeat --

12 MR. MYERS: Objection. What other inmates do is of
13 no consequence.

14 THE COURT: All right. Counsel, I'll give you a
15 little bit of room to do it, but don't go too far into it,
16 okay.

17 BY MR. YOUNG:

18 Q. Allow me to rephrase the question. Describe to the
19 jury what type of inmate Mr. Bennett is based on your
20 experience with him.

21 A. He's very upbeat and positive. He's very
22 compassionate. He's very outspoken in that he likes to know
23 what things are -- he's very straightforward. He wants to
24 know what's going on and not just for his benefit, but for
25 the benefit of all.

1 He has an air about him that's very pleasant
2 sometimes to be around because he's not -- he's always
3 upbeat. Even if he feels bad, he's going to try to be
4 upbeat. And we all appreciate that in people because where
5 we work is not an upbeat place.

6 Q. Sergeant, is Johnny Bennett beyond the control of
7 the South Carolina Department of Corrections?

8 A. Absolutely not.

9 Q. Can he, in your opinion, adjust well to prison
10 life?

11 A. Yes, sir.

12 MR. YOUNG: Thank you. Please answer any questions
13 that the State may have.

14 CROSS-EXAMINATION

15 BY MR. MYERS:

16 Q. Sergeant Craggs, you said you worked the night
17 shift?

18 A. Yes, sir.

19 Q. I'm not familiar with the shifts, what hours is
20 that?

21 A. Six p.m. to six a.m.

22 Q. Six p.m. to six a.m. And you said Mr. Bennett, you
23 call him the mediator. He's always talking to other inmates,
24 making them feel better, always wants to know what's going
25 on. So from six p.m. to six a.m., he's out of his cell going

1 around talking to all these inmates?

2 A. No, sir. They talk amongst themselves when they're
3 in cells.

4 Q. So it's cell-to-cell?

5 A. Uh-huh.

6 MR. MYERS: Thank you, ma'am.

7 THE COURT: Any redirect?

8 MR. YOUNG: No further questions, Your Honor.

9 THE COURT: You can step down. Thank you, ma'am.
10 You're free to go.

11 MR. FLOYD: Officer Stewart.

12 ROGER STEWART, after having been duly sworn,
13 testified as follows:

14 THE CLERK: Have a seat and state your full name
15 for the record, please.

16 THE WITNESS: Roger Stewart.

17 DIRECT EXAMINATION.

18 BY MR. FLOYD:

19 Q. Officer Stewart, where do you work?

20 A. Lieber Correctional Institution.

21 Q. And what's your position there?

22 A. I'm operations officer. I kind of control the
23 movement of inmates to their dentist appointments, medical
24 appointments, visits with attorneys, personal visits.

25 Q. And do you know Johnny Bennett?

1 A. Acquainted.

2 Q. And how long have you been at Lieber?

3 A. 14 years.

4 Q. And would you tell the jury what your impression of
5 Johnny Bennett is.

6 A. Well, everybody has watched TV, He's a model
7 prisoner. You've heard it from too many people, you don't
8 have no problem out of him.

9 Q. What do you call him? About his appearance, what
10 do you call him?

11 A. Big teddy bear.

12 Q. He's a big guy?

13 A. He's a big guy.

14 Q. But he's more of a teddy bear than anything else?

15 A. 14 years of experience, some of the littlest guys
16 are the meanest, and size don't really mean much.

17 MR. FLOYD: Thank you. Answer any questions --

18 MR. MYERS: No questions.

19 THE COURT: You can step down, sir.

20 MR. YOUNG: We call Sergeant Perry.

21 JOYCE PERRY, after having been duly sworn,
22 testified as follows:

23 THE CLERK: Have a seat and state your name please,
24 ma'am.

25 THE WITNESS: Joyce Perry.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Sergeant Perry, where are you employed?

A. Lieber Correctional Institution.

Q. And how long have you been in the corrections field?

A. 13 years.

Q. Do you know Johnny Bennett?

A. Yes, sir.

Q. How long have you known him?

A. Approximately ten months.

Q. Your contact with him is in your capacity as a correctional officer?

A. Yes, sir.

Q. Describe to the jury what type of person you know Johnny Bennett to be.

A. Well, just like I said, I known Johnny Bennett the little while I was working at S. M. U. And he's known to be a respectful person. He obeyed orders as given. He never showed any violence of any type as long as I was in the area.

Q. Are you aware based on -- are you aware of any incidents where Mr. Bennett would have been violent towards anybody?

A. No, sir.

Q. Were you aware of Mr. Bennett being involved with

1 the church services or something?

2 A. Yes. He shows very much high spirit in
3 churchgoing. Church and Bible study. Just like I said,
4 I've, you know, just been in the area for a short period of
5 time, but he's always shown a high spirit of going to church
6 and his Bible study.

7 Q. Does he have a role or a title regarding his
8 participation in those church services?

9 A. Yes. He tends to take on -- you know, to carry on
10 the service when he have the chance to.

11 Q. Have you had an occasion to observe those services?

12 A. Few of them.

13 Q. He actively participated in them?

14 A. Yes, he also like to sing.

15 Q. How does Mr. Bennett interact with the other
16 inmates?

17 A. He -- Mr. Bennett likes to keep things calm.
18 Anything that he can help out with, you know, with the
19 inmates, he help them. But he pretty much like to keep
20 things in a calm manner.

21 Q. Are you aware of any incidents where Mr. Bennett
22 may have taunted or picked on any other inmates?

23 A. No, sir.

24 Q. Do you have any -- well, Mr. Bennett is a big guy,
25 right?

1 A. Yes, sir.

2 Q. Now, you have referred to him in a certain way
3 regarding his size. How have you described him as far as his
4 size?

5 A. He's a pretty big guy, but usually when I'm making
6 my rounds, coming around to his cell, you can tell -- well,
7 you can't tell that he's a real big guy because he's, you
8 know, leaning -- whenever he's in the window area, he's
9 leaning, so you can mostly tell like he's kind of small in
10 the capacity of being large when you're opening doors and
11 letting him out.

12 Q. And the doors to the cells is pretty much like
13 steel doors?

14 A. Yes, sir.

15 Q. Just have a little window in it?

16 A. Yes, sir.

17 Q. How would you describe Mr. Bennett's interaction
18 with the security -- with the correction officers?

19 A. Very respectful, carried himself with lots of
20 manners.

21 Q. Are you aware of any incidents where he had been
22 disrespectful to any of the officers?

23 A. No, sir.

24 Q. In your 13 years of correction experience, do you
25 believe that Mr. Bennett is the type of inmate that could

1 adjust to prison life?

2 A. Yes, sir.

3 Q. Do you believe that he's the type of inmate that
4 the Department of Corrections could house?

5 A. Yes, sir.

6 Q. Do you believe based on your experience and your
7 involvement with Mr. Bennett that he's the type of inmate
8 that will disrupt the purposes of the Department of
9 Corrections?

10 A. I've never seen -- no, he wouldn't cause no
11 disruptions.

12 MR. YOUNG: Thank you. Please answer any questions
13 that the State may have.

14 CROSS-EXAMINATION

15 BY MR. MYERS:

16 Q. It sounds like you me y'all are housing him now; is
17 that right?

18 A. Excuse me?

19 Q. He asked you is Mr. Bennett a type of person that
20 y'all can house in the future in the Department of
21 Corrections, you said yes. Sounds like to me y'all pretty
22 much housing him in the Department of Corrections right now;
23 is that right?

24 A. Yes, sir.

25 Q. He asked you do you think Mr. Bennett will adapt to

1 prison in the future. It sounds like to me he's kind of
2 adapted down there now?

3 A. Yes, sir.

4 Q. And you said that you don't think he'll disrupt in
5 the future. Sounds like to me, he's not disruptive with you
6 in the last ten months?

7 A. No, sir.

8 Q. Do you know how long he's been preparing to come
9 back into this courtroom before a jury?

10 A. No, sir.

11 MR. MYERS: Thank you.

12 THE COURT: Any redirect?

13 MR. YOUNG: No further questions, Your Honor.

14 THE COURT: Step down, please.

15 MR. FLOYD: Your Honor, last, but not least, Bryant
16 Fuller.

17 BRYANT FULLER, after having been duly sworn,
18 testified as follows:

19 THE CLERK: Have a seat and state your full name,
20 please.

21 THE WITNESS: Bryant Fuller.

22 DIRECT EXAMINATION

23 BY MR. FLOYD:

24 Q. And, Mr. Fuller, where are you employed?

25 A. Lieber Correctional Institution.

1 Q. And what's your position there?

2 A. I'm an officer.

3 Q. How long have you worked there?

4 A. Approximately four years.

5 Q. And how long have you known Johnny Bennett?

6 A. About a year and a half.

7 Q. And what shift do you usually work?

8 A. B-1 shift.

9 Q. And what time is that?

10 A. That's from 6 a.m. to 6 p.m.

11 Q. And how often do you see Johnny Bennett?

12 A. Probably daily.

13 Q. And how is his attitude toward you and the other

14 correctional officers?

15 A. He has a positive attitude towards everything.

16 Q. Does he show you respect?

17 A. Yes, sir.

18 Q. How about his interaction with the other inmates

19 that you observed?

20 A. Me, personally, I think he's more of a big brother

21 type. He tries to keep those guys with a positive attitude

22 and to help them with whatever they need or their assistance.

23 Q. How about his church activities?

24 A. He's outgoing in that.

25 Q. And does he encourage the others to participate in

1 that, also?

2 A. Yes, sir.

3 MR. FLOYD: Thank you, Officer Fuller. I have no
4 further questions.

5 MR. MYERS: Come down.

6 THE COURT: You can step down. Thank you, sir.

7 MR. FLOYD: Your Honor, we call Ms. Canada Knotts.

8 CANADA KNOTTS, after having been duly sworn,
9 testified as follows:

10 THE CLERK: Have a seat, then state your full name,
11 please.

12 THE WITNESS: Canada Knotts.

13 DIRECT EXAMINATION

14 BY MR. FLOYD:

15 Q. Ms. Knotts, where do you live?

16 A. I live in Calhoun County.

17 Q. And do you know the defendant?

18 A. Yes.

19 Q. Johnny Bennett?

20 A. Yes, I do.

21 Q. How long have you known Johnny?

22 A. Probably three or four years.

23 Q. How do you happen to know him, Nada?

24 A. I'm in a prison ministry, and we visit once a
25 month.

1 Q. So you get to see Johnny about once a month?

2 A. Yes, once a month.

3 Q. And will you tell the jury what you know and have
4 observed about Johnny.

5 A. He's a leader and a good leader. He has a positive
6 effect on the young people there, the younger people. He
7 seems to know how to settle them down, and he's also become a
8 good prayer warrior. He loves to pray for people. He loves
9 to have the opportunity for you to give him people to pray
10 for, and he's just really become like a gentle giant there.

11 Q. And do you have an opinion as to whether he's
12 sincere?

13 A. Absolutely. Absolutely.

14 MR. FLOYD: Thank you, Ms. Knotts.

15 MR. MYERS: No questions.

16 MR. FLOYD: Thank you ver much, Ms. Knotts.

17 MR. YOUNG: We call Mr. Andrew Jeffcoat.

18 ANDREW JEFFCOAT, after having been duly sworn,
19 testified as follows:

20 THE CLERK: Have a seat and state your full name,
21 please.

22 THE WITNESS: Andrew Jeffcoat.

23 DIRECT EXAMINATION

24 BY MR. YOUNG:

25 Q. Mr. Jeffcoat, could you tell the jury where do you

1 live?

2 A. I live in the Gaston area.

3 Q. Gaston area, is that close to the Swansea area?

4 A. Close to the Swansea area.

5 Q. Do you know Johnny Bennett?

6 A. Yes, I do.

7 Q. What capacity do you know Johnny?

8 A. From the neighborhood and the church.

9 Q. Did you grow up in the neighborhood that he grew up
10 in?

11 A. Yeah.

12 Q. When y'all were growing up, were your houses close
13 together?

14 A. Yeah, we're neighbors.

15 Q. How would you describe your relationship to Johnny
16 Bennett?

17 A. Uncle. My relationship to him, I would be
18 considered his uncle.

19 Q. Okay. Did you and Johnny have an opportunity to --
20 did y'all go to the same church?

21 A. Yes, we did.

22 Q. Did y'all participate in any activities together?

23 A. All the youth activities at the church. I was the
24 choir director.

25 Q. Johnny Bennett was on your choir?

1 A. Yes, he was.

2 Q. How long had you been the choir director?

3 A. Ages. I -- by numbers, I don't want to say because
4 I may be wrong, but a long time.

5 Q. Are you still the choir director?

6 A. Not -- no.

7 Q. Do you remember approximately what age it was that
8 Johnny became involved in your choir?

9 A. What age for Johnny or --

10 Q. What age he was?

11 A. Oh, I don't -- he had to be -- according to our
12 church rules, he had to be at least 12 to be a member of the
13 choir that I directed.

14 Q. How well or how actively did he participate?

15 A. He was very active and he participated very well.

16 Q. During the times that he was at choir practice, do
17 you remember whether or not he was disobedient during the
18 practice?

19 A. Disobedient?

20 Q. Did he do his own thing or did he do what he was
21 supposed to do at practice?

22 A. He did what he was supposed to do at practice.

23 Q. During the time that he was practice -- I mean, was
24 that practice on the choir, was he ever disrespectful to you
25 as the director or any other choir members?

1 A. Not that I can recall.

2 Q. How would you describe Johnny based on your
3 exposure to him, as person?

4 A. As a person?

5 Q. Yes, sir.

6 A. He's a good person. He has potential. He wants --
7 he likes order, and if it's not order or not the way he's
8 think it should be he's the type person he's going to ask why
9 not or why certain things.

10 Q. Does Johnny -- or do you think that Johnny likes to
11 debate and figure things out with people?

12 A. I don't know about with people, but as far as with
13 my experience with him, no, it wasn't debatable.

14 Q. So if he was told to do something, he would do it?

15 A. Yes, sir.

16 Q. Do you recall in a particular anniversary service
17 that Johnny may have been involved with or helped you with as
18 part of the choir?

19 A. He helped me with all of them.

20 Q. He helped with all of them?

21 A. As long as he was a member -- he was a member of a
22 choir, he helped me with all of them. He helped me in any
23 capacity that he always could.

24 Q. What types of things would he do to help you get
25 them ready?

1 A. To help me, well, he was a promoter for the guys.
2 If -- I mean, I liked the way he sung. He -- when we were
3 practicing, he -- I depended on his volume for the tenors. I
4 mean, if I need something moved or done or an activity
5 carried out, I could ask Johnny to assist someone else and
6 that was no problem. Even if the order wasn't assigned to
7 Johnny, just to help, it was no problem.

8 Q. Would you say that Johnny was cooperative during
9 the times that you knew him?

10 A. Yeah.

11 Q. Was he ever disrespectful?

12 A. Disrespectful to?

13 Q. To any rules that you may have laid out for the
14 choir?

15 A. As with that group, they all were disrespectful to
16 some degree, but it wasn't to the magnitude that I couldn't
17 control it, or put it back in prospective.

18 Q. Safe to say it was kids being kids?

19 A. Kids being kids.

20 Q. How long did you have contact with Johnny outside
21 of the church just there in the neighborhood?

22 A. How long did I have contact with him?

23 Q. Yes, sir?

24 A. He was my neighbor. He lived like a house -- there
25 was only a house between us. So we had daily contact.

1 Q. So you were able to see how he interacted with
2 other kids and things of that nature?

3 A. Right.

4 Q. Did he -- what type of child did you observe?

5 A. Rambunctious. Typical. I mean, he was curious as
6 a child, as my children are. He -- typical child, I mean.

7 Q. Was that a close-knit neighborhood?

8 A. Yeah, as far as I could tell.

9 Q. Everyone knew each other?

10 A. Everyone knew each other.

11 Q. If Johnny got out of line in the neighborhood and
12 one of the adults told him to do something, would he respond
13 to them?

14 A. He would respond.

15 Q. Did he ever, like, disrespect them in any way?

16 A. Not that I can recall -- well, I couldn't answer
17 that because I'm not -- you know, not that I can remember
18 anything disrespectful about him.

19 Q. That's all I'm asking, is just what you remember.

20 A. Okay.

21 Q. Is it your opinion that Johnny was a good person?

22 A. Yes.

23 Q. Cooperative?

24 A. Yes.

25 Q. And respectful?

1 A. Yes.

2 MR. YOUNG: Thank you. Please answer any questions
3 that the State has?

4 MR. MYERS: No questions.

5 THE COURT: Step down. Thank you, sir.

6 MR. FLOYD: Dave Martin.

7 DAVID WENDELL MARTIN, after having been duly
8 sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FLOYD:

11 Q. Would you state your name for the record.

12 A. David Wendell Martin.

13 Q. And, David, where do you live?

14 A. In Columbia, South Carolina.

15 Q. And where did you grow up?

16 A. In Happy Town, little small town called Happy Town.

17 Q. And did you know Johnny Bennett growing up?

18 A. Yes, I do.

19 Q. And are y'all the same age, a little older or --

20 A. I'm older than he is.

21 Q. How much older are you?

22 A. I would say about seven years older.

23 Q. Could you tell us about Johnny growing up and how
24 you happen to know him.

25 A. Well, he was like my neighbor, too. You know, just

1 like the witness just said. He was like -- we was all grow
2 up in the same neighborhood and he was any neighbor, too. It
3 was like houses right beside each other. And we was boys,
4 that's what we called it, you know, I call it the boys.

5 Q. And how would you interact with them?

6 A. Well, we would come in contact, like, you know, I
7 would work, and after I get off of work, you know, I get
8 together because I like sports. And I would get with some
9 guys and, you know, we would go play basketball.

10 Q. And was Johnny one of those guys?

11 A. Oh, yeah, he was my main man for the center, being
12 the center. He was -- that was it.

13 Q. For how many years did you have this relationship
14 with him and the other guys?

15 A. I can't really recall. Well, it was a long time,
16 that's all I can say, you know, it was a long time.

17 Q. And so how many guys were in this group that would
18 play basketball together?

19 A. Seven of us.

20 Q. Did y'all sometimes maybe go play other teams?

21 A. Yes. We would go over to like Fort Jackson and
22 play, we would go to Columbia, Friarsgate. We would go
23 basically all over the place and play guys.

24 Q. You would play other communities --

25 A. Yes.

1 Q. And how was Johnny as far as with --

2 A. Like any other guy, you know, you play to win.
3 When you playing a game, you play to win. It's like when you
4 play and you want to win and you on inside, you got to win it
5 in your heart. You know, you go to win, and that's how he
6 was, he liked to win. When I didn't give him ball, you know,
7 he'd say, hey, man, I want the ball, give it to me. And, you
8 know, I'd give it to him and he'd do his job.

9 Q. And the seven guys, all these were guys from like
10 the Happy Town area?

11 A. Yes. Yes.

12 Q. And did this group -- how often would they get
13 together?

14 A. Like every weekend. I would get them together like
15 every weekend. Because I couldn't basically do it through
16 the weekdays because I worked. But on the weekends, we would
17 get together and play ball, we would go to movies, we would
18 go to the bowling alley, we would go out to eat, and after
19 that, that's it.

20 Q. Were you like a big brother to them?

21 A. Yes, sir.

22 Q. And was Johnny respectful to you?

23 A. Yes, he was. You know, it's like every other guy,
24 I mean, you know, we get into it. I mean, you know, but then
25 after the game we talk about it and go on about our business,

1 you know. That's anybody.

2 MR. FLOYD: Thank you, David. Answer any questions
3 that the Solicitor may have.

4 MR. MYERS: No questions.

5 THE COURT: You can step down. Thank you, sir.

6 MR. FLOYD: Bobby Johnson.

7 BOBBY SAMUEL JOHNSON, Jr., after having been
8 duly sworn, testified as follows:

9 THE CLERK: Have a seat and state your full name,
10 please, sir.

11 THE WITNESS: Bobby Samuel Johnson, Jr.

12 DIRECT EXAMINATION

13 BY MR. FLOYD:

14 Q. Would you state your name for the jury.

15 A. Bobby Samuel Johnson, Jr.

16 Q. And where do you live, Bobby?

17 A. Happy Town.

18 Q. And how long have you lived there?

19 A. The majority of my life.

20 Q. And do you know Johnny Bennett?

21 A. Very well.

22 Q. Are you Johnny's age or are you older?

23 A. I think we're about the same age.

24 Q. About the same age. Did you used to play ball with
25 him and David?

1 A. Yes, sir.

2 Q. And who's the better basketball player?

3 A. No comment.

4 Q. So would you tell the jury what your
5 neighborhood -- you boys were like growing up?

6 A. Well, with me and Johnny, it was personal because
7 he was always my basketball partner, so I can't say who was
8 the better player. But he and I had a real good
9 relationship, we had a real close neighborhood, I would say,
10 and we did a lot of things together.

11 Q. Did all of y'all used to go to each other's houses
12 and so forth?

13 A. All the time.

14 Q. Did you ever go eat at Johnny's house?

15 A. Just about every Sunday.

16 Q. Was his mom a good cook?

17 A. Excellent cook.

18 Q. What did she used to call y'all?

19 A. The clean-up group.

20 Q. And did y'all used to get together in the
21 neighborhood and play every weekend?

22 A. Yes, sir.

23 Q. Got out and play other communities like David said?

24 A. Yes, sir.

25 Q. What can you tell this jury about Johnny?

1 A. I think he's a good guy. He's a real good friend
2 of mine. Can't really say what, you know, happens in life,
3 but Johnny is a real good guy, a real good friend of mine.
4 He's like a brother, actually. And like I said, me and him
5 did just about everything together. We kind of lost contact
6 after I went into the military. So, you know -- Johnny's my
7 friend.

8 Q. Is there some good in him?

9 A. Yes.

10 MR. FLOYD: Thank you. Answer any questions that
11 Mr. Myers has.

12 MR. MYERS: Come down.

13 MR. YOUNG: Your Honor, may we approach?

14 THE COURT: Yes, sir.

15 (WHEREUPON, a bench conference was had.)

16 THE COURT: Ladies and gentlemen, at this point,
17 we're in a posture -- in speaking with all of the attorneys,
18 there are some witnesses who were not available today and
19 wouldn't be available until in the morning. What I'd like to
20 do -- what I've told the attorneys is I would like to -- if
21 we do go ahead and finish for the day, I'd like to start
22 early in the morning. Would you have any problem with
23 starting around eight o'clock in the morning? Would that be
24 too early to get started? I see a lot of shaking heads which
25 is --

1 THE FORELADY: That's fine.

2 THE COURT: You're fine with eight o'clock?

3 Everybody okay with eight o'clock?

4 Now, if there's anybody that's got a problem with
5 eight o'clock, please tell me.

6 Okay. Why don't we shoot for eight o'clock. And
7 we're stopping a little early today and that will give all of
8 you a chance just to get some rest this evening, maybe lay
9 around in your rooms for probably the first time all week.
10 Okay. We'll do that then. Thank you.

11 We'll stand in recess until eight o'clock in the
12 morning.

13 Everyone remain in place, please.

14 Did you want to take something up before we let the
15 jury go?

16 MR. MYERS: After the jury leaves.

17 THE COURT: Remember we don't talk about the case.
18 I'll see you tomorrow morning at eight.

19 (WHEREUPON, the jury leaves the courtroom at
20 approximately 4:20 p.m.)

21 THE COURT: Counsel, now the jury is secured.
22 Anything before we recess for the day?

23 MR. MYERS: Yes, sir. Since we're recessing this
24 early, are there any legal motions that we can take up now
25 that the defense might anticipate so we can get that out of

1 our way before we start the testimony tomorrow?

2 THE COURT: Well, that's one thing I was going to
3 ask about if you have any -- and we can take this up in a
4 minute, I'll see what the defense has got, if you have any
5 request of charge, particularly, and any other motions can be
6 taken up.

7 Mr. Floyd, do you know of anything?

8 MR. FLOYD: Your Honor, I don't want to foreclose
9 myself, but I don't know of any other motions that we haven't
10 already made, which we'll, of course, renew.

11 As to request of charge, I guess we'll meet on that
12 tonight. We don't have any right now and I don't know of any
13 special ones that you probably don't already have.

14 THE COURT: Yes, sir. As you note, most of the
15 charges in this particular phase of the trial are pretty well
16 the same except for the aggravating and mitigating
17 circumstances, and I'll expect both parties to give me what
18 they want to use before we do that. That shouldn't be any
19 problem to work out.

20 And I don't know if -- I assume a Norris charge
21 wouldn't be involved. You might think about that and let me
22 know in the morning. A Norris charge is just a few lines, so
23 it's not a problem.

24 The main thing I want to do -- I do tend to agree
25 that if we come in at eight I want to be able to get started

1 right at eight.

2 MR. FLOYD: We'll be ready.

3 MR. MYERS: Do they have any legal issues that will
4 be taken up with any witnesses out of ordinary, like the 911
5 tapes, third party stuff, things we've already gone through,
6 anything similar to that we can take up?

7 THE COURT: Yes, sir. Well, I know Mr. Aiken, as I
8 understand, is going to be an expert witness. Is there going
9 to be any legal issues regarding his testimony, that you know
10 of?

11 MR. MYERS: Yes, sir.

12 THE COURT: Do you want to take that up now or
13 would you rather do that then?

14 MR. MYERS: Take it up now.

15 THE COURT: Would you like to do that, Mr. Floyd?
16 Can you handle that now? Let's go on and try and see what we
17 can do with it.

18 MR. MYERS: Your Honor, and they can correct me if
19 I'm wrong, but the normal thing that Mr. Aiken testifies to
20 is comparing death row to general population. Comparing
21 death row to the general population was not testimony in the
22 last trial, and Mr. Aiken didn't testify in the last trial.
23 If I'm wrong and that's what he intends to testify to then we
24 don't need to go any further. I'd kind of like some guidance
25 from the defense on that.

1 THE COURT: What about that, Counsel?

2 MR. YOUNG: Your Honor, Mr. Aiken did not testify
3 at the last trial and I do not plan to question him regarding
4 a comparison of death row and general population. The reason
5 being for that is because I was of the understanding that the
6 Court ruled that we should not offer testimony along those
7 lines on the 30th or 31st, when we had motion hearings and we
8 made the request of the Court to allow the jury to view the
9 tape or in the alternative to allow photos, and I believe the
10 State at that point in time made the argument that that was
11 an issue that was legislatively decided and not an issue for
12 the jury to decide -- or to consider. Therefore, we're not
13 offering any testimony regarding the comparisons of the two.

14 MR. MYERS: And I think he's right because we
15 argued fully those cases on June the 30th, including the
16 United States Supreme Court case that cited South Carolina,
17 it said that the jury doesn't need to know when they can take
18 showers and under what conditions, I'll agree to that. And
19 then since that's what he normally testifies to, then I would
20 move that his testimony would have to be irrelevant.

21 MR. YOUNG: His testimony, Your Honor, will be
22 going to the issue of adaptability to prison. Mr. Aiken has
23 20 some odd years of experience as to the operations of
24 correctional facilities, is now in the business of consulting
25 as far as correctional facilities. He has reviewed the

1 reports regarding Mr. Bennett and his past incarceration
2 violations or infractions, and Mr. Aiken will be testifying
3 regarding the predictability of Mr. Bennett adapting to
4 prison life.

5 THE COURT: Okay. The only caution I would note on
6 it is that a few years ago I tried the case of The State vs.
7 Lavar Bryant. At that time, the defense brought Dr. Aiken as
8 a witness. In essence, what he did was he testified as to
9 the ability of the prison to adapt to Mr. Bryant, not
10 Mr. Bryant to the prison, and basically went through, in
11 essence, millions of dollars that the prison could do in
12 order to take care of one inmate. I assume that's not going
13 to be --

14 MR. YOUNG: As accommodating as that sounds, Your
15 Honor, we do not plan to offer anything along those lines.

16 THE COURT: I see, okay. As long as we kind of be
17 sure we get it in the right order. And I would note that I
18 was affirmed on that issue by the Supreme Court too. So I
19 don't thing that issue -- In fact, as I recall, the issue
20 wasn't even briefed. So there is some precedent for that.

21 MR. YOUNG: Yes, sir. And, Your Honor, I would
22 again renew our objection to the Court's denial of our motion
23 regarding the comparison of death row and general population.
24 The Court ruled that we could not get into that based on the
25 cases that Mr. Myers cited.

1 And it was our position that the cases that he
2 cited went towards the issue of the actual manner in which
3 execution was taken -- is taken out or carried through. And
4 what we wanted to do was basically expose the jury to the
5 general life of death row, the general life of general
6 population without going into the manner in which executions
7 are taken out in order to allow the jury to be able to make a
8 decision as to the issue of the appropriate punishment, being
9 life or death, as opposed to rather he is executed by lethal
10 injection or by the electric chair, which my reading of those
11 cases, that's what they went to, when other defendants wanted
12 to bring in the electric chair and explain how it worked and
13 things of that nature. We did not intend or wanted to get
14 into anything along those lines.

15 THE COURT: I've had a case where the defense tried
16 to introduce the electric chair. Obviously, any of those --
17 any approach such as that is just not appropriate under the
18 opinions from our Supreme Court because, in essence, what it
19 does is gets into the effect of the sentence in terms of the
20 daily life, and the jury is not allowed to get into that. So
21 I would have to basically just reaffirm that particular
22 ruling, can't get into a comparison between the two.

23 Mr. Myers, anything else?

24 MR. MYERS: Since they said Mr. Aiken, during the
25 bench conference up there, that he wouldn't be here until

1 tomorrow, I don't know what other witnesses they're going to
2 have, but anything of that nature that may be a legal
3 question that we can get out of the way today I would
4 respectfully request that we do that.

5 THE COURT: Yes, sir.

6 MR. FLOYD: We don't know of any other --

7 THE COURT: After you had left, Mr. Myers, I
8 shushed Mr. Riddle away and I had an ex parte discussion with
9 defense counsel --

10 MR. MYERS: That was a smart thing to do.

11 THE COURT: -- as to what sort of witnesses they
12 would call, and they went over them with me. And from their
13 summary and based on their word to me of what they would call
14 and the nature of the testimony, I can tell you that, based
15 on that, we would very clearly get to the jury tomorrow.
16 Probably approximately early in the afternoon, I would think.

17 MR. MYERS: Okay. The only request for charge that
18 the State would have is under State vs. Donald Jones, and a
19 follow-up case that was out of Anderson. I forgot the name
20 of it now, it was just overturned on PCR, about the
21 aggravating circumstances, that they don't have to occur
22 simultaneously with the murder, that part of it was in the
23 same area, time frame, not separated by any substantial lapse
24 of time. And I've got one in the office I can bring to you,
25 but I think you know which one I'm talking about.

1 THE COURT: Yes, sir. I believe I've used that
2 charge.

3 MR. MYERS: Yes, sir, you have, and that's the only
4 one. You probably have it included, but that's the only one
5 we would request.

6 THE COURT: Yes, sir.

7 MR. MYERS: And as far as aggravating
8 circumstances, we would rely on the kidnapping, armed
9 robbery, larceny with the use of a deadly weapon and physical
10 torture. Those are the ones that the jury returned in the
11 last trial.

12 THE COURT: Okay, let me get it straight.
13 Kidnapping, armed robbery, grand larceny and torture?

14 MR. MYERS: Yes, sir.

15 THE COURT: Okay. Did you want -- Mr. Floyd, at
16 this point, did you want to give -- tell me what mitigating
17 circumstances you want to use or do you want to wait until
18 your testimony is complete?

19 MR. MYERS: And just for the record, Your Honor,
20 whatever mitigating circumstances they request, I don't
21 object to anything. I'll leave that between the Court and
22 the defense attorneys.

23 MR. FLOYD: Your Honor, we'd like to kind of look
24 at that, if we could. Your Honor, would it be asking too
25 much -- and if you don't do this, that's fine, if it's not

1 your practice, do you have your instructions that you give to
2 the Court, do you provide those for the attorneys to look at?

3 THE COURT: Yes, sir. I've used different sets of
4 instructions in different cases. One thing I do, I did this
5 in the James Michael Sharp, it was a retrial. In that case,
6 the Supreme Court had sent that case back for retrial on both
7 guilt and sentencing issue. I retried the case when it was
8 sent back, and what I did there, found it to be a very viable
9 procedure, was basically used the charge that the previous
10 trial judge had used, because it had already been affirmed by
11 our Supreme Court. I probably will use the charge very
12 similar to what Judge Anderson did previously in this case.
13 Because, again, that's been -- and correct me if I'm wrong, I
14 don't think that was touched by the Supreme Court.

15 MR. MYERS: It was not.

16 MR. FLOYD: I don't think it was even briefed.

17 THE COURT: That was left intact. And, obviously,
18 if something has already been affirmed in the case by them,
19 anything I can do that's close to that, you know, obviously,
20 keeps it from being sent back again. So I can tell you, it's
21 going to be pretty close to what Judge Anderson -- if you've
22 got a copy of it, he can probably look over it and it's going
23 to be pretty close to that.

24 MR. FLOYD: Thank you, Your Honor.

25 THE COURT: Anything else?

1 MR. MYERS: Nothing I can think of, unless the
2 defense can think of something.

3 THE COURT: Can you think of anything, Defense?

4 MR. FLOYD: We'll be thinking tonight, Judge.

5 THE COURT: All right. Eight o'clock in the
6 morning. See you then. Have a good evening.

7 (WHEREUPON, the trial of this case was
8 recessed for the day.)

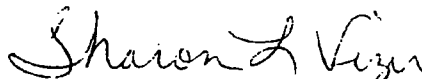
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10 ** END OF VOLUME VI **
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C E R T I F I C A T E

I, Sharon L. Vizer, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Family Court on the 15th day of July 2000.

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

May 19, 2004



SHARON L. VIZER

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) 11TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
-VS-) 93-GS-32-2354
JOHNNY O. BENNETT,) ** VOLUME VII **
DEFENDANT.)

JULY 16, 2000

LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE MARC H. WESTBROOK, JUDGE.

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

DONNIE MYERS, SOLICITOR

DAYTON RIDDLE, DEPUTY SOLICITOR

SHAWN GRAHAM, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

WAYNE FLOYD, ESQUIRE

HERVERY YOUNG, ASSISTANT PUBLIC DEFENDER

ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

VOLUME VII

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BYRON KEITH COLLINS (DW) :

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JAMES EVANS AIKEN (DW) :

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1955

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1	LETTER ABOUT DR. AIKEN AND REPORT	-1056	
2	WITNESS LIST	-1056	
3	911 TAPE	-1816	
4	INVESTIGATION REPORT	-1817	
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2	STATEMENT	-1252	
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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
1 -	SUMMARY CHART		--925
2 -	SUMMARY CHART		--952
3 -	SUMMARY CHART		--962
4 -	MAP		--987
5 -	LARGE PHOTOGRAPH		-1015
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7 -	LARGE PHOTOGRAPHS (2)	-1035	-1036
8 -	DOCUMENT - EXTENSION LETTER		-1089
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NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
23	- CANE WITH BRASS DUCK HEAD		-1144
24	- COPY OF CHECK		-1172
25	- COPY OF CHECKS		-1177
26	- CAMERA		-1233
27	- STATEMENT/RECEIPT		-1242
28	- BENCH WARRANT		-1272
29	- MAP		-1290
30	- MAP		-1298
31	- STATEMENT		-1304
32	- AUDIOTAPE		-1309
33	- HANDWRITTEN STATEMENT		-1317
34	- STATEMENT		-1321
35	- AUDIOTAPE		-1321
36	- MESSAGE/NOTE		-1328
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38	- PHOTOGRAPH		-1443
39	- PHOTOGRAPH		-1443
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41	- PHOTOGRAPH		-1448
42	- PHOTOGRAPH		-1448
43	- FINGERPRINT CARD		-1454
44	- PHOTOGRAPH		-1458

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
45 -	PHOTOGRAPH		-1458
46 -	PHOTOGRAPH		-1458
47 -	PHOTOGRAPH		-1458
48 -	PHOTOGRAPH		-1458
49 -	PHOTOGRAPH		-1458
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59 -	MEMO NOTICE/LETTER		-1555
60 -	MEMO NOTICE/LETTER		-1559
61 -	MEMO NOTICE/LETTER		-1560
62 -	LETTER		-1564
63 -	STATEMENT		-1626
64 -	REQUEST LETTER		-1628
65 -	REQUEST LETTER		-1632
66 -	REQUEST LETTER		-1644

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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
67	REQUEST LETTER		-1648
68	LETTER		-1660
69	LETTER		-1660
70	LETTER		-1662
71	LETTER		-1663
72	PHOTOGRAPH		-1668
73	PHOTOGRAPH		-1668
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75	PHOTOGRAPH		-1683
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82	PHOTOGRAPH		-1683
83	CHART/DIAGRAM OF WOUNDS		-1714
84	AUTOPSY DIAGRAM		-1716
85	PHOTOGRAPH		-1741
86	AWARD		-1745
87	CERTIFICATE		-1745
88	PHOTOGRAPH		-1748

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EXHIBITS

NO.	DESCRIPTION	ID.	EV.
<u>FOR THE STATE:</u>			
89	- PHOTOGRAPH		-1748
90	- BOOKING PHOTOGRAPH		-2004

Sunday, July 16, 2000

THE COURT: Anything from the State before we begin?

MR. MYERS: No, sir.

THE COURT: Defense?

MR. FLOYD: No, Your Honor.

THE COURT: All right. Let's bring in the jury.

(WHEREUPON, the jury enters the courtroom at
approximately 8:20 a.m.)

THE COURT: All parties and attorneys are in the
courtroom and all jurors are here bright and chipper this
morning.

Counsel, call your next witness.

MR. YOUNG: May it please the Court. We would call
Kenneth Tager.

KENNETH SCOTT TAGER, after having been duly sworn,
testified as follows:

THE CLERK: Have a seat and state your full name for
the record.

THE WITNESS: My name is Kenneth Scott Tager.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Mr. Tager, where do you live?

A. I live in Irmo, South Carolina.

Q. That's in Lexington County?

A. Yes.

1 Q. Mr. Tager, tell the jury, have you been convicted of
2 any crimes before?

3 A. Yes, sir, I have.

4 Q. In fact, have you been convicted of distribution of
5 crack cocaine before?

6 A. Yes, sir.

7 Q. You been convicted of robbery?

8 A. Yes, sir.

9 Q. You been convicted of failure to stop for a blue
10 light?

11 A. Yes, sir.

12 Q. Purse snatching?

13 A. Yes, sir.

14 Q. And you were convicted on a federal level for bank
15 robbery?

16 A. Yes, sir.

17 Q. Are you currently employed now?

18 A. Yes, sir.

19 Q. Where are you employed?

20 A. Employed in the fast food industry.

21 Q. And what position do you hold?

22 A. Assistant manager.

23 Q. Keep your voice up, if you would. Did you have an
24 occasion to be in the Lexington County Detention Center in
25 1991?

1 A. Yes, sir.

2 Q. During what time frame were you there? What months
3 were you there?

4 A. March the 5th of '91 until December the 16th of '91.

5 Q. During the time that you were in the Lexington
6 County Detention Center, did you have an occasion to meet or
7 get to know Johnny Bennett?

8 A. Yes, sir, I did.

9 Q. In fact, were you all housed on the same wing?

10 A. Yes, we were.

11 Q. Were your cells somewhere close to each other?

12 A. Yes, sir.

13 Q. During the time that you were at the Lexington
14 County Detention Center in 1991, did you have the occasion to
15 observe or witness a suicide attempt?

16 A. Yes, I did.

17 Q. Tell the jury what you remember about that day.

18 A. It was late, after approximately nine or ten o'clock
19 at night. And I was in my cell reading a letter or something
20 to that effect, maybe I was drawing, but there was a loud
21 voice, a whole bunch of ruckus and somewhere down on the tier,
22 on the tier. And I went to my door to see what was going on
23 and across the hallway, there was a voice that came out and
24 said someone was killing theirself.

25 And few seconds went along and the person was asking

1 for help, you know, get the correctional officer. And so I
2 started hollering for a correctional officer. I don't know
3 how much time elapsed, but they got there and attempted to get
4 into the cell to see what was going on, basically see what the
5 status of the situation was. And what it was is there was a
6 guy that was hanging himself across the way, right directly
7 across from my room.

8 And some officers tried to, you know, go in and get
9 the guy down. And the guy's roommate, as I remember it, was
10 pretty much stuck with holding the guy up. And the guy was
11 kind of fighting him, trying -- he really was serious about
12 killing himself, so it seemed. And he -- they couldn't get
13 him down because he was a pretty big fellow.

14 And as I remember it, Johnny had come to the door
15 and was saying something to the effect of hey, let me out,
16 I'll help you out, help you get him down. And they did, they
17 went down there and let him out. And he went into the room,
18 and Johnny being as big as he is, he, you know, pretty much
19 was a big assistance in getting the guy down because of the
20 weight and everything.

21 When they got him down, the guy still had the bed
22 sheet on his neck pretty tight still. They may have cut it
23 down or snatched it down or something. But he had pretty much
24 -- seemed to me as if he wasn't really all there at that
25 point. He was on the ground. They laid him out on the

1 ground, Johnny did, and he basically came to and tears and
2 stuff was in his eyes.

3 And he ended up just laying there for a second or
4 two and shaking his head. And Johnny was kind of like --
5 well, actually, what he told him exactly was, it's not worth
6 it, you know, hang in there. And, basically, at that point,
7 they had a stretcher brought up and took him away from the
8 tier, the guy that was trying to hang himself.

9 Q. Who would have let Johnny out of his cell?

10 A. A correctional officer.

11 Q. And that was for the purpose of Johnny helping him
12 with this incident?

13 A. Yes, sir.

14 Q. Now, you were there from March of '91 until December
15 of '91?

16 A. Yes, sir.

17 Q. During that time frame, you got to know Johnny?

18 A. I feel like I got to know him pretty well.

19 Q. In fact, initially, when you first met him, you and
20 Johnny didn't really care for each other a lot, right?

21 A. No.

22 MR. YOUNG: Thank you, Mr. Tager. Please answer any
23 questions they have.

24 MR. MYERS: Can I see his rap sheet, please?

25 MR. YOUNG: I don't have it.

1 MR. MYERS: See, now, we had to give them our rap
2 sheets for our witnesses --

3 THE COURT: Wait, Mr. Solicitor, no.

4 Ladies and gentlemen, let me ask you to step to the
5 jury room, please, okay. Be sure you don't talk about the
6 case.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 8:25 a.m.)

9 THE COURT: The jury is secured. Let's be sure we
10 don't do that in front of the jury.

11 MR. MYERS: Well, I'm just saying, we had to give
12 them our rap sheets and we should be entitled to theirs.
13 There's something about this guy, I know, I just can't put my
14 thumb on it.

15 THE COURT: Yes, sir. Well, you're entitled to the
16 rap sheet, no question about it.

17 MR. MYERS: See, we don't know who their witnesses
18 are.

19 THE COURT: I thought we understood that was
20 something both sides have to do. Now, you don't have to give
21 them the rap sheet until the witness testifies.

22 MR. YOUNG: Your Honor, we don't have access to
23 pulling rap sheets. The way I know about his record is from
24 him telling me.

25 THE COURT: Well, the way the most of them do it is

1 just -- usually -- and, of course, I guess the way we did it
2 in this case, you couldn't do it because we didn't give either
3 side the witness list. Normally, the defense would give their
4 witness list to the State when they start their case and tell
5 who they needed to get the rap sheets from.

6 Mr. Solicitor, you want to just take a break and see
7 if you can get some rap sheets?

8 MR. MYERS: We're ready to go.

9 THE COURT: We're going to have this problem
10 possibly on other witnesses, too. What are we going to do
11 about that?

12 MR. MYERS: They've got a terminal, they can get rap
13 sheets. They do rap sheets all the time. But if they'll just
14 give me the information, I'll get somebody to run over to my
15 office and make them.

16 MR. YOUNG: Mr. Tager, could you please give the
17 Solicitor --

18 MR. MYERS: I don't need it for him.

19 THE COURT: Do you want to hear what other
20 convictions he's got and have him testify to them?

21 MR. MYERS: No, I'm going to ask him in front of the
22 jury.

23 THE COURT: I'm sorry?

24 MR. MYERS: I'm going to ask him in front of the
25 jury.

1 THE COURT: Now, you can't ask him all convictions
2 he's got.

3 MR. MYERS: Well, see, that's what I don't know.

4 THE COURT: I understand.

5 MR. MYERS: So I'm just going to have to ask him.

6 THE COURT: Well, what you can do is we can proffer
7 it here and let him testify and I can determine whether or not
8 any others are admissible other than the ones he's admitted
9 to.

10 MR. YOUNG: Your Honor, what I was going to do was
11 ask Mr. Tager to provide his social security number and date
12 of birth so that rap sheets could be ran. Like I say, we
13 don't have access to running rap sheets on people. I have no
14 objections to Mr. Tager providing his information -- I mean,
15 his social security and identifiers so that a rap sheet could
16 be obtained.

17 THE COURT: Do you want to do that, Mr. Solicitor?

18 MR. MYERS: I'm go to ask him what he brought out on
19 direct. And then I'm going to ask him in the last ten years
20 what other crimes he was convicted of that carried more than a
21 year.

22 THE COURT: Okay. That's appropriate.

23 All right. Have the jury come back.

24 MR. YOUNG: Your Honor, before the jury come in --

25 THE COURT: All right, one second.

1 MR. YOUNG: If I could put the Solicitor on notice
2 that we also have an inmate by the name of Byron Collins, who
3 will be testifying, also.

4 MR. MYERS: We got some information on him, date of
5 birth, social security, race, sex?

6 THE COURT: You say you've got it or you want it?

7 MR. MYERS: No, could we have that?

8 THE COURT: Is he here?

9 MR. YOUNG: If you'll give me a second, I'll get
10 that information and provide it to him.

11 THE COURT: All right.

12 [PAUSE.]

13 MR. YOUNG: Your Honor, Mr. Collins' date of birth
14 is 5-22-57, social security number is 240-02-9935. He is a
15 black male.

16 MR. MYERS: And what's his name?

17 MR. YOUNG: Byron Collins, C-o-l-l-i-n-s.

18 MR. MYERS: B-y-r-o-n?

19 MR. YOUNG: B-y-r-o-n.

20 MR. MYERS: Thank you.

21 MR. YOUNG: I'm sorry, it's 5-27, not 5-22.

22 MR. MYERS: We're ready.

23 THE COURT: All right. Bring them in.

24 (WHEREUPON, the jury enters the courtroom at
25 approximately 8:30 a.m.)

1 THE COURT: All right. All parties and attorneys
2 are in the courtroom and all jurors have returned.

3 Mr. Solicitor?

4 CROSS-EXAMINATION

5 BY MR. MYERS:

6 Q. Mr. Tager, March of '91 the first time you've been
7 in the Lexington County Jail?

8 A. No, sir.

9 Q. And you said what now, distribution of crack
10 cocaine?

11 A. Distribution of cocaine.

12 Q. And what did you get on that sentence?

13 A. A one to six youthful offender sentence.

14 Q. And robbery, what did you got on the robbery?

15 MR. FLOYD: Your Honor, we're going to object.

16 MR. MYERS: I can ask him what sentence he got.

17 MR. FLOYD: Your Honor, I don't think that's
18 appropriate. I think he can ask him about -- we've alerted
19 him to the convictions. They can use that for credibility
20 only.

21 MR. MYERS: I can ask him what sentence he got and
22 what he was convicted of, I cannot go into the details.

23 THE COURT: Counsel, I think that's correct. I
24 don't think the rules specifically says. I recall that the
25 cases indicate that they can ask what the sentence was. But,

1 again, as the Solicitor indicated, he certainly can't go into
2 the details of the case itself. He can ask the date and time
3 -- the date of the conviction, what the conviction was and
4 what the sentence was, and it's limited to that.

5 Go ahead, Mr. Solicitor.

6 BY MR. MYERS:

7 Q. What did you get on the robbery charge?

8 A. Ten years, sir.

9 Q. When was that?

10 A. This same time when I got the time for -- when I
11 spent it with Johnny Bennett. In other words, I had a federal
12 -- some federal charges and state charge. All that stuff
13 happened at the same time.

14 Q. When was that, when you came to court to get
15 sentenced?

16 A. Excuse me?

17 Q. When were you brought into court and sentenced? Do
18 you understand that?

19 A. Yes, sir. I think it was November of '91.

20 Q. In this courtroom?

21 A. Yes, sir.

22 Q. What did you get on failure to stop?

23 A. A year, I believe it was.

24 Q. You don't know what you got?

25 A. There was a whole bunch of charges all thrown

1 together pretty much. It all happened at basically the same
2 time and I received a sentence that -- the overall sentence is
3 what I did.

4 Q. What did you get on the purse snatching?

5 A. I believe it was five years. To be honest with you,
6 I don't remember. I don't remember exactly what I got for
7 each charge. I just know what the overall sentence was.

8 Q. What did you get on bank robbery?

9 A. Five years.

10 Q. Did you go to federal court on that?

11 A. Yes, sir.

12 Q. So not all of them were here, some of them were in
13 federal court?

14 A. Exactly.

15 Q. And all this happened at the same time?

16 A. Same time period.

17 Q. Robbery, bank robbery, distribution of crack
18 cocaine, failing to stop for police officers, purse snatching?

19 A. No, sir. No, sir. It was separate incidents. It
20 was two separate incidents where I got in trouble. And I got
21 one to six for the drug charges. And I ended up getting a
22 five-year federal sentence and a ten-year state sentence,
23 which was running concurrent. Those were two separate
24 incidents.

25 Q. When did you get out of prison?

1 A. June of '96.

2 Q. Now, your testimony is a big man tried to hang
3 himself in the Lexington County Jail?

4 A. Yes, sir.

5 Q. And they brought in a big man to cut him down?

6 A. Yes, sir, that's what happened.

7 Q. Pretty much it?

8 A. Yes, sir.

9 Q. And Mr. Bennett was the big man to come help bring
10 him down?

11 A. Yes, sir.

12 Q. And Mr. Bennett told the fellow that tried to hang
13 himself he was against suicide, Johnny Bennett was against
14 suicide, it ain't worth it?

15 A. He said that -- he was trying to encourage him, you
16 know. The situation was bad -- this is the way I saw it. His
17 situation was bad. I guess both of their situations were real
18 bad. My situation was bad. And, you know, killing yourself
19 isn't the answer, I mean.

20 Q. Then you agree with me; Johnny Bennett, in effect,
21 told the guy that Johnny Bennett was against suicide, it ain't
22 worth it? Is that a fair statement or not?

23 A. I'd say it was a fair statement.

24 MR. MYERS: Thank you. No further questions.

25 THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. YOUNG:

Q. Mr. Tager, did you hear Johnny Bennett say he was against suicide?

A. No, sir.

MR. YOUNG: Thank you. No further questions.

MR. MYERS: No further questions.

THE COURT: You can step down. Thank you, sir. And you're free to go.

MR. YOUNG: Your Honor, we would call Mr. Byron Collins.

BYRON KEITH COLLINS, after having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name, please.

THE WITNESS: My name is Byron Keith Collins.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Mr. Collins, where do you currently reside?

A. In prison in Edgefield, North Carolina -- South Carolina.

Q. Tell this jury what you've been convicted of.

A. Oh, man, I've been convicted of second degree murder, conspiracy to distribute cocaine and crack cocaine, armed robbery, common law robbery, breaking and entering,

1 burglary, that's about -- receiving stolen goods, yeah.

2 Q. Mr. Collins, were you ever housed in the Lexington
3 County Detention Center the year of 1991?

4 A. Yes, sir.

5 Q. Do you recall when it was that you first went to
6 Lexington County Detention Center?

7 A. June 11th, '91.

8 Q. And were you being held there as a result of federal
9 charges?

10 A. Yes, sir.

11 Q. You just heard the witness testify regarding a
12 suicide incident?

13 A. Yes, sir.

14 Q. Could you tell this jury what, if anything, you
15 recall of that incident.

16 A. Okay --

17 Q. Well, let me ask you this. Were you the person
18 trying to commit suicide?

19 A. Yes, sir, I was.

20 Q. Tell this jury what you remember about that
21 incident.

22 A. Well, what I remember is I was very depressed during
23 this time. I was facing a life sentence with a fear for life
24 without parole and for drug conspiracy. I was facing a
25 capital punishment in North Carolina for murder, first degree

1 murder. And I was very depressed, and it was just a long
2 story about that situation. So I decided to commit suicide.

3 And I waited until my roommate was asleep and I tied
4 the sheet up and I hung myself. And when I came to -- because
5 I really don't remember a lot about this hanging, but when I
6 came to, John Bennett is the face I seen taking me down and I
7 was -- well, he was all over me, you know. And he was
8 talking, but I really couldn't say what he was saying at that
9 time because, you know, I was kind of had been passed out.
10 And that's what I can tell you about this situation there.

11 Q. Did you learn by way of correction officers or your
12 cellmates telling you --

13 MR. MYERS: Objection, hearsay.

14 THE COURT: If it's for the truth of what they said.
15 If it's for what he -- you want to just ask him what he did,
16 basically?

17 MR. YOUNG: I'm asking him based on what -- I'm
18 trying to find out if he were ever told who got him down and
19 how it occurred.

20 THE COURT: I think that would be hearsay.

21 BY MR. YOUNG:

22 Q. After this incident occurred, were you taken to a
23 hospital?

24 A. Yes, sir.

25 Q. Were you at some point in time returned to the

1 Lexington County Jail?

2 A. Yes, sir.

3 Q. When you returned to the Lexington County Jail,
4 where did they place you?

5 A. In the -- I was later placed in the cell with John
6 Bennett.

7 Q. And was that for a short period of time?

8 A. Yes, it was.

9 Q. And shortly after that is when you into the federal
10 system?

11 A. Yes, sir, but not right after that. From right
12 there, I left there and went to Richland County Jail. Then
13 after my proceedings there, I came back to Lexington County
14 and was later transferred to the federal prison.

15 Q. During the time that you were in the cell with
16 Mr. Bennett, were you still feeling signs of depression?

17 A. Yes, sir, I was.

18 Q. What, if anything, did Johnny Bennett do to or for
19 you?

20 A. Well, John was very instrumental into my recovery
21 from the depression. He used to encourage me that there was a
22 lot to live for, that life wasn't over. And that I have my
23 family and friends, you know, to look forward to in life. And
24 that maybe this situation wasn't as bad as it was.

25 And he used to encourage me to read the Bible and,

1 you know, have faith in God and to exercise and keep my mind
2 off of, you know, my situation. So he was very instrumental
3 in -- and I got real depressed again afterwards and John went
4 to the officers and they had me placed into a cell where they
5 could watch me.

6 MR. YOUNG: Thank you, Mr. Collins. Please answer
7 any questions that the State may have.

8 CROSS-EXAMINATION

9 BY MR. MYERS:

10 Q. Did he encourage you to be disruptive at the
11 Lexington County Jail?

12 A. No, he didn't.

13 Q. Did he encourage you to refuse to obey the officers
14 over there?

15 A. No, he didn't.

16 Q. Did he encourage you to have shanks in your cell?

17 A. I never had none.

18 Q. Did he encourage you to have contraband in your
19 cell?

20 A. No.

21 Q. Did he ever sell you cigarettes?

22 A. No.

23 Q. Did he ever share any marijuana with you?

24 A. No.

25 Q. Ever share any crack cocaine with you?

1 A. No, sir.

2 Q. You ever help him beat up other people?

3 A. No, sir.

4 MR. MYERS: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. YOUNG:

7 Q. Did you ever see Johnny Bennett beat up anyone else?

8 A. No, sir.

9 Q. Did you ever see Johnny Bennett possess crack
10 cocaine or marijuana?

11 A. No, we never possessed none of that.

12 Q. Did you ever see Johnny Bennett be disruptive in the
13 jail?

14 A. All the guards and everybody in the prison loved
15 John Bennett?

16 Q. Did you ever see Johnny Bennett disrespectful to
17 anyone?

18 A. No, John's a big guy, but he's a real nice guy.

19 MR. YOUNG: Thank you.

20 RECROSS-EXAMINATION

21 BY MR. MYERS:

22 Q. There was one guard that loved Johnny Bennett and
23 that was Judie Hardee, you remember her?

24 A. The real big lady?

25 Q. Judie Hardee, you remember her, the blonde-headed

1 lady?

2 MR. FLOYD: Your Honor --

3 A. She was a real big lady.

4 THE COURT: Wait a minute. Don't answer the
5 question. If you know who she was, you can answer the
6 question.

7 A. It's been a long time.

8 THE COURT: Listen to me. If you don't know, you
9 can say you don't know.

10 A. I don't remember.

11 MR. FLOYD: Your Honor, we move for a mistrial on
12 prosecutorial misconduct.

13 THE COURT: Denied.

14 Any other questions?

15 MR. MYERS: No further questions.

16 MR. FLOYD: Your Honor, I'd like to put that on the
17 record sometime.

18 THE COURT: Thank you, sir. Step down.

19 What we'll do -- Counsel, I know why you're making
20 the motion. We'll put it on the record during the next break.

21 Call your next witness, please.

22 MR. YOUNG: We call Mr. Jim Aiken.

23 JAMES EVANS AIKEN, after having been duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat and state your name for the

1 record.

2 THE WITNESS: James Evans Aiken, A-i-k-e-n

3 DIRECT EXAMINATION

4 BY MR. YOUNG:

5 Q. Would you please tell us where you are currently
6 employed.

7 A. I am president of James E. Aiken and Associates.

8 Q. And what capacity -- well, what type of business is
9 James E. Aiken and associates?

10 A. It is a correctional consulting and cost containment
11 firm.

12 Q. How many years of experience do you have in the
13 field of corrections?

14 A. I started in corrections profession in 1971, so I
15 would say approximately 28 plus years.

16 Q. Tell the jury from 1971 what positions you held in
17 the field of corrections.

18 A. I started off in the South Carolina Department of
19 Corrections in the capacity of a psychiatric social worker in
20 a substance abuse program. From there, I became
21 administrative assistant to the warden at the Manning
22 Correctional Institution, which is a medium security young
23 offender facility located in Richland County. From there, I
24 became deputy warden of that same facility.

25 I became deputy warden of the Centrical Correctional

1 Institution, the state penitentiary, CCI. From there, I
2 became the warden of the Women's Correctional Center in
3 Richland County, South Carolina. And from there, I became the
4 warden of CCI. From there, I became a deputy regulational
5 administrator, which encompasses about 16 facilities at that
6 time, providing direct supervision and guidance and selection
7 of wardens of those facilities.

8 From there, I became commissioner of corrections for
9 the State of Indiana, which encompasses approximately 46
10 facilities and locations within the State of Indiana, to
11 include juvenile, adult corrections as well as community-based
12 services, parole, etcetera. And from there, I became director
13 of corrections for United States Virgin Islands.

14 And then from there, James E. Aiken and Associates,
15 Inc., was started and I've worked in Puerto Rico, as well as a
16 number of other countries as well as approximately -- in all,
17 I would say approximately 50 jurisdictions, internationally as
18 well as nationally.

19 Q. What are your educational experiences?

20 A. I was born and raise in Camden, South Carolina. I
21 was educated in the school systems there. I attended Benedict
22 College and received a degree from there, Bachelors of Arts
23 degree. And from there, I became -- I received a Master's
24 Degree in criminal justice from the University of South
25 Carolina.

1 Q. Have you had the occasion to teach courses in
2 corrections?

3 A. Yes, I have. I have taught on a technical college
4 level. I've taught at the university level. And I also serve
5 as a consultant for the United States Department of Justice
6 and I provide lectures as well as on-site consultations for
7 the National Institute of Corrections, National Academy of
8 Corrections in Colorado as well as on-site consultations
9 throughout the nation.

10 Q. Have you had the occasion to offer testimony as an
11 expert in cases before?

12 A. Yes, I have.

13 Q. Approximately, how many times have you been
14 qualified as an expert in State Court?

15 A. At least a dozen times, I would say, in a number of
16 jurisdictions.

17 Q. Would that have been in the areas of corrections in
18 general?

19 A. That's correct; corrections, criminal justice,
20 prenology, yes.

21 Q. Focusing on prison adaptability?

22 A. As part of that, yes.

23 Q. Have you also testified regarding predictability of
24 inmate management?

25 A. Yes, sir, I have. During the course of the