

VOLUME THREE OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BERKELEY COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JESSIE WAYLON SAPP,

APPELLANT

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

) COURT OF GENERAL SESSIONS
) 02-GS-08-1146, 1683, 1685,
) 1687, 03-GS-08-686

STATE OF SC,

vs.

JESSE WAYLON SAPP,

DEFENDANT.

)
)
) TRANSCRIPT OF RECORD
) VOLUME III OF IV
)

ORIGINAL

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

B E F O R E:

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

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2	40 Caliber Glock	1023	1092
3	40 Caliber Glock	1023	1204
4	40 Caliber Glock	1023	1173
5	Sapp Bullet	1023	1214

1	6	Check	1023 1214
2	7	Casing	1023 1214
3	8	Casing	1023 1214
4	9	Casing	1023 1214
5	10	Casing	1023 1214
6	11	Casing	1023 1214
7	12	Casing	1023 1214
8	13	Casing	1023 1214
9	14	Casing	1023 1214
10	15	Casing	1023 1214
11	16	Casing	1023 1214
12	17	Casing	1023 1214
13	18	Casing	1023 1214
14	19	Casing	1023 1214
15	20	Casing	1023 1214
16	21	Casing	1023 1214
17	22	Casing	1023 1214
18	23	Casing	1023 1214
19	24	Casing	1023 1214
20	25	Casing	1023 1214
21	26	Casing	1023 1214
22	27	Casing	1023 1214
23	28	Casing	1023 1214
24	29	Casing	1023 1214
25	30	Casing	1023 1214

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2	32	Victim Bullet	1023 1214
3	33	Casing	1023 1214
4	34	Casing	1023 1214
5	35	40 Caliber Smith & Wesson	1023 1171
6	36	40 Caliber Clip	1023 1171
7	37	380 Magnum Clip	1023 1214
8	38	380 Magnum Clip	1023 1214
9	39	40 Caliber Clip	1023 1214
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16	46	Johnson Gunshot Residue Test	1023 1214
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19	49	Bag w/ Sapp's Jeans	1023 1214
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4	59	Pill Cutter	1023 1214
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20	132	Magazine	1722 1722
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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Photograph	1023	1191
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7	Bryan DeWitt's Statement	1160	
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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter	404	
2	Juror Summons & Questionnaire	1021	
3	Jury Note	1580	

All exhibits were retained by the Clerk of Court.

1 Wednesday, May 14, 2003

2 **THE COURT:** Good morning to everyone. Let the
3 record reflect that Mr. Sapp is present. We have had a
4 side bar concerning an issue that has been discussed
5 throughout this litigation concerning the patrol personnel
6 and their wearing uniforms in the courtroom thus far. And
7 I want to state now publicly and I will continue to state,
8 I appreciate their willingness to do that. I thank them
9 for that. They have every right generally to wear that
10 uniform. I know they're proud to wear that uniform. But
11 it's just to avoid the appearance of some problem or
12 concern. So thank you for cooperating in that respect.
13 It's my understanding there will be persons who will be
14 called to testify from the Highway Patrol. Those persons
15 when they appear will, in fact, be on duty; is that
16 correct?

17 **MR. HOISINGTON:** That's correct, Your Honor.

18 **THE COURT:** As I understand from our side bar,
19 Mr. Johnston, that you do not have objection to a person
20 testifying wearing a uniform if they are, in fact, on
21 duty?

22 **MR. JOHNSTON:** Yes, sir, that's correct.

23 **THE COURT:** You just, again, reiterate you do
24 not wish those persons present sitting with the family in
25 uniform?

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

2 **THE COURT:** And it's my understanding,
3 Solicitor, you agree that won't happen?

4 **MR. HOISINGTON:** That's correct. I have
5 instructed them if they've been released from the subpoena
6 and want to watch the rest of the trial, and there's no
7 objection, they have to have civilian clothes and put them
8 on to come in here.

9 **THE COURT:** Thank you very much, Solicitor. And
10 thank them as well for cooperating with the Court in that
11 regard.

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

13 **THE COURT:** What I would like to do and I'm
14 hoping and we were laughing and talking at lunch how nice
15 the panels were flowing and how many qualified jurors we
16 were obtaining per panel. And then suddenly, after lunch,
17 we hit a panel and we only were able to qualify two. I'm
18 always reluctant to say that, but given the basic average
19 that we've established, I would think by the 1:30 panel,
20 we'll have our pool without too much difficulty.

21 I know you would like to have an afternoon to
22 just regroup and collect yourselves and I'm going to try
23 to accomplish that. I would love to accomplish some of
24 the preliminary matters so that when we come tomorrow,
25 we're not rushing those, we can come and calmly start into

1 the trial. Because my intention would be to start the
2 trial or start the selection at precisely 9:30.

3 Obviously, we have jurors coming into the courtroom, so
4 the problem will be that once we get the jury then we have
5 to put them in the jury room and hear all these motions.
6 So I would love to take care of as many as we possibly
7 can. I understand the last minute things can always
8 arise. But by the same token, I'd like to do that and use
9 this afternoon to accomplish that as well. So be thinking
10 along those lines after we get them qualified.

11 **MR. HOISINGTON:** We were using the afternoon to
12 premark all the exhibits so we can agree on them and mark
13 the rest for ID.

14 **THE COURT:** And I'll be here if there's any
15 problems concerning the exhibits. We can certainly
16 address those and you can get a preliminary indication
17 from the Court, an in limine indication, if there are any
18 matters to which there may be an objection.

19 All right. Do we have our first panel present?

20 **THE BAILIFF:** Yes, sir.

21 **THE COURT:** We're ready to begin?

22 **MR. ARCHER:** Can I just ask a quick question?

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

24 **MR. ARCHER:** On the sequestering of the
25 witnesses, you've ruled on that already?

1 **THE COURT:** I have, that's correct.

2 **MR. ARCHER:** I can think of no other motions
3 that we have.

4 **THE COURT:** That's great. And like I say, if
5 something comes to mind this morning, that's not a
6 problem. And if something does come to mind at the last
7 minute, that will be okay. But I just want to try to get
8 out of the way all the preliminary matters that we can
9 today.

10 **MR. HOISINGTON:** Might I ask what you -- insofar
11 as striking the jury once we have the panel, I appreciate
12 the one last chance to look at them. I don't know what
13 Your Honor thinks of that, but I would typically call them
14 in the order and what say the State and what say the
15 defense.

16 **THE COURT:** I'm not going to do it that way.

17 **MR. HOISINGTON:** That's what I was afraid of.

18 **THE COURT:** I can do this. We can call the
19 roll. And what I have done -- what I do, because I do
20 this basic format in any trial, in any criminal trial. I
21 just think it's more juror friendly. I understand being
22 able to see them and that's important. This situation,
23 Mr. Sapp has had the opportunity to see them and ask
24 questions. What I will do so that we all can remember
25 those persons is ask them to stand, tell us what they do

1 for a living and then they can sit down, much like we've
2 done before. So we'll just call the roll. I've asked
3 Ms. Tucker to start -- because obviously the order -- the
4 panels, the order of qualification, that's the order they
5 will appear on the strike list and we will continue that
6 order.

7 **MR. HOISINGTON:** So typically, you'll be saying
8 as to Juror No. 1, what says the State?

9 **THE COURT:** I will tell them the numbers they
10 hear in this process are the numbers that appear on the
11 sheet and I will simply say, What says the State as to
12 Juror No. 1 and you'll answer. And I'll say, What says
13 the defendant as to Juror No. 1. And we'll say, Juror
14 No. 1 is seated and we'll go through it. And once we
15 identified the jury, we'll call them forward.

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

17 **THE COURT:** That also protects us should there
18 be any Batson motions, we don't have a problem with some
19 person worried, thinking what did I do or what was wrong
20 and creating a dilemma for either side that chooses to
21 raise that.

22 **MR. ARCHER:** Are you talking about after you
23 pick their number out or are you talking about when they
24 first come in?

25 **THE COURT:** I'm talking about when they come in,

1 we're going to have a list. We're preparing it right now
2 as we go. Because as they're qualified, obviously, the
3 first panel, No. 1 is the first juror drawn. And if No. 1
4 happened to be the first juror qualified, that first juror
5 would be No. 1 on your list.

6 **MR. ARCHER:** So you're going by the panel?

7 **THE COURT:** That's correct. I'm going by the
8 order of drawing. One through six, the first juror drawn
9 out of the hopper was Juror 1, No. 6. The seventh juror
10 drawn was No. 1 on the second panel.

11 **MR. ARCHER:** That was the panel?

12 **THE COURT:** By the panels. And what we're doing
13 is running a list based on their qualification, the order
14 of qualification because that's the order in which they
15 were drawn.

16 **MR. ARCHER:** And we'll get a copy of that?

17 **THE COURT:** Yes, sir. And what we will do is
18 once we have the list, we will call the names of all those
19 persons on the list, have them stand, that's a good way to
20 assure that they are present, and it will give you an
21 opportunity to see them again.

22 **MR. ARCHER:** Okay.

23 **THE COURT:** Are we ready?

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

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

1 Bring in the first juror which is Keith Thomas.
2 (WHEREUPON, Keith H. Thomas, a white male,
3 entered the courtroom.)

4 EXAMINATION

5 **BY THE COURT**

6 **Q** Mr. Thomas, good morning, sir. Have a seat. We have
7 to make sure -- do you have it?

8 **A** Yes, sir.

9 **Q** Very good. How are you this morning?

10 **A** Fine. How are you?

11 **Q** I'm well. Thank you very much. I hope you had a
12 good day or so, just a chance to get away from this
13 process. And I hope the process, you didn't find it
14 too unnerving on Monday.

15 **A** It was long, sir.

16 **Q** It was a long day.

17 **A** Yes, sir.

18 **Q** I appreciate very much your patience in this process.
19 I am sure you have seen and understand and appreciate
20 by now, as you remember with me on Monday, you heard
21 a number of times my asking jurors whether or not
22 that would affect their ability to be fair and
23 impartial.

24 **A** Yes, sir.

25 **Q** That's really the underlying purpose of all of this

1 process.

2 **A** Yes, sir.

3 **Q** Is just to simply to make that determination.

4 Because if you think about it, that's the ultimate
5 that any party involved in a dispute wants, is that
6 one of the judges, the judges of the facts, would be
7 fair and impartial. And that's what these questions
8 are designed to accomplish. Please understand that.
9 Remember that there are no right or wrong answers to
10 any of these questions.

11 **A** Yes, sir.

12 **Q** Also, I want to assure you -- because we're going to
13 ask you some questions today as well. I'll ask you
14 some and the attorneys may ask you some as well.

15 Don't consider any of the questions to be an invasion
16 of your privacy. Don't feel that you have to justify
17 or explain any answer. Because the questions that
18 will be asked of you are about you as a person. And
19 you're entitled to whatever opinions you wish to
20 maintain. You're entitled to feel however you want
21 to feel about any particular matter. And you don't
22 have a duty to explain a thing to us. Okay?

23 **A** Yes, sir.

24 **Q** I want you to feel comfortable in that.

25 **A** All right, sir.

1 **Q** Because the main thing that we're asking you to do
2 and I know you have done it thus far -- and I would
3 remind you that you are still under oath -- is to
4 tell us the truth and be truthful and candid with us.

5 **A** Yes, sir.

6 **Q** Will you do that?

7 **A** Yes, sir, I will.

8 **Q** First of all, let me ask you, since we were together
9 on Monday, have you talked with anybody about this
10 case or allowed anybody to talk with you about this
11 case, read any newspaper articles or watched any
12 television programs?

13 **A** No, sir.

14 **Q** Did you have an opportunity to review the sheet that
15 had the three types of jurors?

16 **A** Yes, sir, I did.

17 **Q** Looking at those types, which type most accurately
18 describes you?

19 **A** I would have to go with Juror No. 2, sir.

20 **Q** Juror No. 2?

21 **A** Yes, sir.

22 **Q** That's a juror, then, as I understand it, No. 1 being
23 the juror that always would vote for the death
24 penalty, Juror 2 says, I could never vote for the
25 death penalty.

1 **A** Yes, sir, that's correct.

2 **Q** Doesn't matter about the circumstances?

3 **A** That's correct, sir.

4 **Q** It doesn't matter the severity of the crime?

5 **A** That's correct, sir.

6 **Q** You would always be life imprisonment?

7 **A** That's correct, sir.

8 **Q** And that's your personal philosophy?

9 **A** Yes, sir.

10 **Q** Is that also a religious philosophy?

11 **A** Yes, sir.

12 **THE COURT:** Any questions from the State?

13 **MR. HOISINGTON:** No, sir, Your Honor.

14 **THE COURT:** Any questions?

15 **MR. JOHNSTON:** No, sir.

16 **THE COURT:** Thank you, sir. We appreciate that.

17 And as I told you, you do not have to be ashamed of any
18 philosophy. You will be excused and I hope you understand
19 it's not because you have that. It's because, obviously,
20 in this situation, a juror needs to be able to consider
21 both of them fairly and impartially.

22 **THE POTENTIAL JUROR:** Yes, sir.

23 **THE COURT:** And I appreciate your candor. Good
24 luck to you, sir. You do not have to come back. I would
25 ask you as a favor to the Court, I can't require you to do

1 this, but as a favor that you not discuss this case with
2 anyone until this case -- until the trial of this case has
3 been completed. Will you do that for me?

4 **THE POTENTIAL JUROR:** Yes, sir, I will.

5 **THE COURT:** Good luck to you, sir. Have a great
6 day.

7 **THE POTENTIAL JUROR:** Thank you.

8 **THE COURT:** Mr. Thomas not being able to
9 consider both possible sentences, obviously, is not
10 qualified to serve.

11 Any objection from the State?

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

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

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

15 **THE COURT:** Thank you very much.

16 Let's bring in Ms. Davidson.

17 (WHEREUPON, Emily B. Davidson, a white female,
18 entered the courtroom.)

19 EXAMINATION

20 **BY THE COURT**

21 **Q** Good morning, Ms. Davidson.

22 **A** Good morning.

23 **Q** How are you?

24 **A** I'm fine.

25 **Q** I hope you've had a chance to regroup after Monday.

1 I know it was probably quite an ordeal for you.

2 **A** Yes, sir.

3 **Q** It's not your normal day and very tedious day. I
4 thank you for your participation thus far and
5 appreciate the fact that you're here today. You
6 probably have figured out early on Monday when you
7 heard me keep asking jurors, will that in any way
8 affect your ability to be fair and impartial, that
9 that's really the intent and purpose of this entire
10 process.

11 **A** Right.

12 **Q** It's just to determine whether or not a person, a
13 juror, can be a fair and impartial judge of the facts
14 in this case. Nothing that we are doing is an
15 attempt to change your mind or to change your
16 opinions on anything. Do not feel that you have to
17 explain or justify any opinions that you may have.
18 You're entitled to those. That's your right.

19 **A** Yes, sir.

20 **Q** So please don't feel that we're invading your privacy
21 or feel any uncomfortable feelings about this process
22 because during this process today, I'm going to ask
23 you some questions. The attorneys may ask you some
24 questions. All that we need you to do is be truthful
25 and candid with your responses. And I'm confident

1 you'll do that. Is that agreeable with you?

2 **A** Yes, sir.

3 **Q** Okay. I would remind you, Ms. Davidson, that you are
4 still under oath in this matter. Have you had an
5 opportunity to review that sheet that described the
6 three types of jurors?

7 **A** Yes, sir.

8 **Q** Of the three types, which one most accurately
9 describes you?

10 **A** Three.

11 **Q** No. 3?

12 **A** Yes.

13 **Q** Let me run through them with you and see if I'm clear
14 on what you're stating. No. 1 is a juror that would,
15 if murder was proven, would always vote for the death
16 penalty. And that's not you?

17 **A** No, sir.

18 **Q** No. 2 is a juror, if murder is proven, would always
19 vote for life and only vote for life imprisonment, as
20 with No. 1, only the death penalty. And that's not
21 you?

22 **A** No, sir.

23 **Q** No. 3 is a person that could vote for the death
24 penalty or could vote for life imprisonment but,
25 frankly, it just depends on the facts of that

1 particular case; is that correct?

2 **A** That's correct.

3 **Q** And that's the way you are?

4 **A** Yes, sir.

5 **Q** Okay. You don't have any feeling or philosophy that
6 says one is more likely than the other. You just
7 simply say they're equally available and I just have
8 to hear it all before I can make a determination
9 which one I would apply --

10 **A** Yes, sir.

11 **Q** -- in a given case?

12 **A** I would have to hear the evidence, everything that's
13 presented.

14 **Q** Well, that's really -- that juror, if you think about
15 it, really is a continuation of what we just talked
16 about. Because what you're saying by that is you
17 have an open mind about that aspect of the punishment
18 with respect to a crime for murder. Is that a fair
19 statement for you?

20 **A** Yes, sir.

21 **Q** You see, the questions that we asked you on Monday
22 and those responses that you gave or when you didn't
23 find it necessary to respond, by your silence, you've
24 indicated that there is absolutely nothing about this
25 case or this dispute that would cause you to

1 predetermine any issue. Is that true?

2 **A** Yes, sir, that's true.

3 **Q** And as we sit here today, you have an open mind about
4 this dispute?

5 **A** I do.

6 **Q** You heard me say that in this state and in this
7 country, persons who are accused of criminal
8 violations, that's only what I just said. It's an
9 accusation. It doesn't mean anything. It just means
10 that the State's made an accusation and now they have
11 to prove it. Do you agree with that principle of
12 law?

13 **A** Yes, sir.

14 **Q** And do you agree that persons accused are and should
15 be presumed innocent until and unless the State
16 proves them guilty beyond a reasonable doubt?

17 **A** Yes, sir.

18 **Q** As Mr. Sapp sits here today then, you don't have any
19 problem, he's innocent of these offenses as far as
20 you're concerned; is that correct?

21 **A** I have to hear the evidence.

22 **Q** I understand. Well, the evidence would prove -- the
23 evidence -- the purpose of the evidence is to change
24 that presumption. You understand that? Because
25 that's what that law says, a person is presumed

1 guilty -- excuse me, innocent. Beg your pardon.
2 It's quite the contrary. Thank God. There are
3 countries where that is the case. And we are
4 fortunate in this country to have that. That's a
5 very valuable right. I hope you agree with that
6 statement.

7 **A** Yes, sir.

8 **Q** Because persons who are charged with criminal
9 offenses should never be required to prove anything
10 at all. Do you agree with that? That's the law.

11 **A** That's the law.

12 **Q** Do you agree with it?

13 **A** To a point. I mean --

14 **Q** Well, I appreciate that and I appreciate your
15 hesitation. Because one of the things that we want
16 to be sure about -- you know, a lot of people feel
17 certain things. And again, don't feel that you have
18 to -- you don't have to justify your explanation, I'm
19 just asking you, do you feel that Mr. Sapp is
20 responsible for anything at this point about any of
21 those charges for which he stands accused?

22 **A** What I read in the paper.

23 **Q** Well, do you believe that?

24 **A** It's -- I possibly do believe it, yes.

25 **Q** So basically, then, if you were on the jury, you

1 would be considering the evidence only to verify what
2 you've already concluded? So Mr. Sapp starts --
3 basically, you'll be looking for something to say
4 that he didn't do that; is that right?

5 **A** Yes.

6 **THE COURT:** Solicitor, do you have any
7 questions?

8 **MR. HOISINGTON:** Let me just explore this a
9 little bit if I could.

10 **THE COURT:** Sure.

11 EXAMINATION

12 **BY MR. HOISINGTON**

13 **Q** Jurors get drawn in here and it's a little bit
14 difficult to understand the legal terms that we deal
15 with.

16 **A** Yes, sir.

17 **Q** And sometimes a juror will say, look, he's either
18 guilty or he's innocent, you know, I don't know yet.
19 But the law puts what is called a presumption of
20 innocence on anybody charged with an offense. And
21 there's a lot that gets put in the newspaper that,
22 you know, people can look at. And I think what the
23 judge asked everybody to begin with is if you saw
24 anything, could you set that aside and give both the
25 State and the defendant a fair trial? And in order

1 to do that, you do have to set it aside.

2 **A** Yes.

3 **Q** I guess the question is, could you do that, to start
4 with a clean slate?

5 **A** I could.

6 **Q** And the other thing is he is presumed innocent.
7 Because until a jury hears the evidence that the
8 State has the burden of putting on, he would be found
9 innocent. Because absent evidence, there is nothing
10 to prove him guilty. So he is innocent as he sits
11 there, legally.

12 **A** Yes.

13 **Q** Does that distinction make some sense to you?

14 **A** Yes, sir.

15 **Q** So only if the State met its burden, and we're happy
16 to deal with that burden of proving him guilty beyond
17 a reasonable doubt, with competent evidence
18 admissible on that jury stand [sic] could a jury
19 override that presumption of innocence and find him
20 guilty, but they could then if they chose to. Does
21 that make sense to you?

22 **A** Yes, sir.

23 **Q** Now, having read about it and having an initial
24 opinion, could you set that aside totally and presume
25 him innocent and listen to the evidence and then make

1 up your mind?

2 **A** Well, I would like to think I could.

3 **Q** Do you have a doubt? Because if you have a doubt,
4 I'm not going to ask the Court to put you on the
5 jury. And it's fine if you do. If you don't
6 think -- I mean, if you have a nagging feeling that
7 you couldn't give him a fair trial, then we want a
8 fair trial.

9 **A** I understand. I couldn't.

10 **Q** You have that nagging feeling?

11 **A** I do.

12 **MR. HOISINGTON:** We have nothing further.

13 **THE COURT:** Thank you, Solicitor. And I
14 appreciate it. As I tell her, I more or less feel we're
15 in agreement because I want everybody to agree. We're not
16 asking these persons to change philosophies here today.
17 Because otherwise, I'm not going to say that to them if we
18 are going to continue to challenge these philosophies,
19 okay?

20 I appreciate it. You don't have to justify
21 that. In fact, I will just tell you now, my wife and I
22 had the same conversation last night. So I understand
23 that. And you do not need to feel one way or the other
24 about that. You have done exactly what I have asked you.
25 You are an example of why I believe in this jury system.

1 **THE POTENTIAL JUROR:** Right.

2 **THE COURT:** Because you were honest about it.

3 **THE POTENTIAL JUROR:** Yes, sir.

4 **THE COURT:** And I thank you for that. You are
5 excused from further participation in this matter. And I
6 would ask you, please, as a favor to the Court, I can't
7 make you do it, but as a favor, that you just simply not
8 discuss this case with anyone until the case has been
9 completed. Thank you very much.

10 **THE POTENTIAL JUROR:** Thank you.

11 **THE COURT:** You are free to leave.

12 I find Ms. Davidson has honestly indicated that
13 she starts from the premise that Mr. Sapp basically is
14 guilty of something and would have to show some evidence
15 or there would have to be evidence to disprove that or set
16 that aside. I find that that unfortunately taints her
17 from being the fair and impartial juror she's probably
18 very capable of being, but it just simply is a taint that
19 I think doesn't -- we have opportunities to have jurors.
20 And we've already heard others express that they don't
21 start in the same position. So the Court out of an
22 abundance of caution excuses that juror.

23 Any objection from the State?

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

25 **THE COURT:** Any objection from Mr. Sapp?

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

2 **THE COURT:** Okay. Bring in Ms. Bryant. Let's
3 hope and pray we'll get on a positive note.

4 (WHEREUPON, Sharon Bryant, a black female,
5 entered the courtroom.)

6 EXAMINATION

7 **BY THE COURT**

8 **Q** Good morning, Ms. Bryant.

9 **A** Morning.

10 **Q** How are you?

11 **A** Fine.

12 **Q** Good. Are you nervous?

13 **A** A little.

14 **Q** I understand that and that's normal. And I want to
15 assure you of one thing. You don't have a thing to
16 be nervous about. Because the beauty of this process
17 is there's nobody that knows the answers to these
18 questions anymore than you do. Because these are
19 questions about you and how you personally feel. And
20 the good thing about that is that in this process, as
21 I mentioned Monday, there really are no correct
22 answers. There's no wrong answer that you can
23 possibly give today. And the purpose of these
24 questions are simply to make sure before you are
25 selected to be a part of the pool that you are a

1 person who can be fair and impartial. And that's all
2 these questions are designed to do. Okay?

3 **A** Okay.

4 **Q** Do not feel that you have to justify or explain your
5 position on any issue. Because you're entitled to
6 feel however you want to feel about a given issue.
7 All right?

8 **A** Yes.

9 **Q** Is that agreeable with you?

10 **A** Yes.

11 **Q** I would remind you that you're still under oath in
12 this matter, Ms. Bryant. And I'm going to have some
13 questions to ask of you today and the attorneys may
14 have some follow-up questions as well. And please
15 remember that just simply -- we just simply ask you
16 to be candid and truthful in your responses. And
17 don't feel one way or the other about those
18 responses. You don't have to have that. Have you
19 had a chance, Ms. Bryant, to review the list that I
20 handed -- or the sheet that I gave you that depicts
21 the three types of jurors?

22 **A** Yes.

23 **Q** Which one most accurately describes you or depicts
24 you?

25 **A** Three.

1 **Q** No. 3?

2 **A** Uh-huh.

3 **Q** And that simply means that you're not a juror that
4 feels that the death penalty should always be granted
5 or that only life imprisonment should be granted.
6 But rather, you're a person that believes, I have to
7 hear the facts and circumstances of a murder case.
8 And I'll have to then -- once I hear it, then I can
9 make a decision as to whether it should be life or
10 whether it should be death. Is that true?

11 **A** Yes.

12 **Q** And you could impose either sentence depending on the
13 circumstances; is that right?

14 **A** Yes.

15 **Q** Okay. But you could not in any way make any
16 premature decision on that?

17 **A** No.

18 **Q** So you don't have a preference that would say, well,
19 if it's murder, most likely it would be life, but I
20 would consider death. It's just simply they both are
21 equally there available and you can't make a
22 determination until you hear the entire case. Is
23 that you?

24 **A** Yes.

25 **Q** Okay. Have you, since we were together on Monday,

1 allowed anybody to talk with you about this case or
2 talked to anybody about this case?

3 **A** No.

4 **Q** And have you reviewed any newspaper articles or any
5 news accounts about this case?

6 **A** No.

7 **Q** Thank you. Appreciate that. You understand Monday
8 that we were asking a number of questions. And it
9 was a long day, I'm sure, for you as well. You
10 remember, I kept asking persons, Would that in any
11 way affect you or influence you or make you unable to
12 be fair and impartial to both the State and to
13 Mr. Sapp. And that was really the underlying
14 question to each juror. You, by answering questions
15 if you did, or not answering questions by your
16 silence, have indicated to us at least thus far that
17 there is nothing about this dispute that you have
18 predetermined or that causes you any concern about
19 your ability to use and apply your common sense, your
20 sense of logic and reason fairly and impartially. Is
21 that true?

22 **A** True.

23 **Q** So you don't have any prejudgments in this case. Is
24 that true?

25 **A** True, uh-huh.

1 Q And you would have to hear the evidence before you
2 changed your mind. Is that true?

3 A Yes.

4 Q You understand, as I told you Monday, that when the
5 State brings these charges, the only person -- the
6 only party, excuse me, that has the burden of proving
7 anything is the State. That's the entity that makes
8 the accusations. You understand that?

9 A Yes.

10 Q Because that's the law in this state and this
11 country, that people who are accused of committing a
12 criminal offense don't have any burden of proof. Do
13 you have any problem with that principle of law?

14 A No.

15 Q And you understand that that means that persons
16 accused of criminal offenses don't have to prove
17 anything, they don't have to explain anything. They
18 aren't required to do anything at all. Do you
19 understand that?

20 A Yes.

21 Q In this particular case, then, you would have -- you
22 would never expect Mr. Sapp to prove anything to you,
23 would you?

24 A No.

25 Q As far as you're concerned right now today, in your

1 mind, Mr. Sapp is as innocent of these offenses as
2 anybody in this room. Is that true?

3 A Yes, sir.

4 Q And that wouldn't change in your mind until the State
5 convinced you beyond a reasonable doubt that he did
6 these things that they say he did. Is that true?

7 A Yes.

8 Q And they would have to present evidence that would
9 convince you beyond a reasonable doubt. Is that
10 true?

11 A Yes.

12 Q You understand that one of the things that I would
13 charge you if you were on this jury -- you see, what
14 you've just said when answering all those questions
15 is what we're looking for. What you've said is I
16 have a completely open mind about this matter. I
17 haven't made any decisions at all. Does that
18 accurately describe you?

19 A Yes.

20 Q And you've also said that I'm not going to change
21 that position until I hear the evidence. You
22 understand that?

23 A Yes.

24 Q Do you understand that when you would begin to change
25 that process or you would be expected to change that

1 position is only when I told you you can begin your
2 deliberations? Because until then, the jury -- a
3 juror has to keep and maintain that open mind. Will
4 you do that?

5 **A** Yes.

6 **Q** That first time would be in the first stage. You
7 know this proceeding could have two stages. The
8 first one, we'll hear evidence only about whether or
9 not Mr. Sapp did what he's accused of doing. In
10 other words, the State will be responsible for
11 proving that. And the evidence you will consider
12 will only be as to those crimes. Do you understand
13 that?

14 **A** Yes.

15 **Q** When we hear all the evidence -- and part of the
16 trial will be, of course, receiving the testimony.
17 And you know the evidence consists of testimony of
18 witnesses and exhibits, and nothing else. You
19 understand that?

20 **A** Yes.

21 **Q** When we hear all the -- when all the evidence has
22 been presented, then I would charge you on the law.
23 And at that time, I will define all of those crimes
24 for you. And I will tell you what elements, what
25 parts, what's required of the State to prove to be

1 entitled to a verdict. Will you listen to that
2 charge? Will you accept what I tell you is the law?
3 And will you apply that law fairly and impartially to
4 the facts that you will ultimately determine?

5 **A** Yes.

6 **Q** You could do that even if you heard a principle of
7 law that you may think, I don't agree with that law
8 or that law ought to be changed?

9 **A** Yes.

10 **Q** You would accept the law as I give it to you?

11 **A** (The witness nodded.)

12 **Q** You understand that's an important part of our
13 commitment because you will make a commitment to the
14 State and Mr. Sapp that you will fairly and
15 impartially be a judge of the facts of this case and
16 that you will consider only the evidence, and that's
17 the testimony and exhibits that you hear in the
18 courtroom and nothing else, and make a decision on
19 what you think is the truth or the true facts. And
20 then you'll take the law -- because my
21 responsibility, of course, is to give you the law
22 because I'm the judge of the law. As I mentioned to
23 you on Monday, our system has the judge of the facts
24 and the judge of the law and we work together to help
25 resolve this dispute. Do you understand that?

1 **A** Yes.

2 **Q** So you would do that? You would honor that
3 commitment. Is that true?

4 **A** Yes.

5 **Q** Do you understand that by -- when you say and make
6 that commitment to the State and to Mr. Sapp that
7 you're only going to consider evidence, that means
8 that anything that you hear or anything that occurs
9 outside of this courtroom can never be considered by
10 you. Do you understand that?

11 **A** Yes.

12 **Q** And you'll honor that commitment as well. Is that
13 true?

14 **A** Yes.

15 **Q** If -- when you reach that point in that first phase
16 you begin your deliberations, and I'll tell you when
17 you can start, and at that time is when you will be
18 making certain decisions. And until that time,
19 again, you must maintain that open mind. But once
20 the Court tells you you can start deliberating, then
21 both the State and Mr. Sapp expect that you will then
22 apply your common sense, your sense of logic and
23 reason fairly and impartially. And you'll do that;
24 is that right?

25 **A** Yes.

1 Q You will be deciding, basically, in the first stage,
2 am I convinced as to each of those elements that I
3 will define for you. Okay?

4 A Yes.

5 Q If you get to an element, one portion of a crime that
6 you say, I'm not convinced about that one, I'm not
7 convinced beyond a reasonable doubt, I would instruct
8 you that the State has to prove all of the elements.
9 And if they fail on any one, then they failed to meet
10 their burden of proof. Okay? And they would fail if
11 they don't establish it beyond a reasonable doubt.
12 Do you understand that?

13 A Yes.

14 Q So if you were to reach a point and you said, I don't
15 think I'm convinced on that one, would you return a
16 verdict of not guilty on that charge?

17 A Yes.

18 Q You would? Okay. If you found that they met that
19 burden and that means that they convinced you on each
20 element, would you have any hesitancy in returning a
21 verdict of guilty on this charge?

22 A No.

23 Q Because, you see, that's what it's about. You're
24 simply making the determination at the first stage is
25 whether or not the State meets its burden of proof.

1 You understand that?

2 **A** Yes.

3 **Q** Okay. If this jury -- and please understand, what I
4 have said to you today and throughout this trial
5 should never be considered in any way to be a
6 statement of how you are to resolve any factual issue
7 in this case. Do you agree with that?

8 **A** Yes.

9 **Q** If you got to -- through the first phase and the
10 jury's concluded the State met its burden of proof on
11 the charge of murder, then we would move into a
12 second phase. You understand?

13 **A** Yes.

14 **Q** And at that phase, that's when you would hear
15 evidence as a judge of the facts on the issue of what
16 penalty would be appropriate. Do you understand
17 that?

18 **A** Yes.

19 **Q** Some of that evidence that you will hear we call
20 mitigating circumstances and aggravating
21 circumstances. And I will define those for you at
22 the end of that phase in my charge. I will --
23 because, you see, both of those terms are well
24 defined by our legislature. I will give you -- in
25 fact, you will have it, the written charge in your

1 hand that will define those terms for you. Will you
2 accept that law and apply that law fairly and
3 impartially to the facts as well?

4 **A** Yes.

5 **Q** Once you've heard all the evidence, including
6 aggravating circumstances and mitigating
7 circumstances, and you've heard the charge, then you
8 will be asked to retire to make a decision in this
9 case concerning the penalty, if you get to that
10 point. Do you understand that?

11 **A** Yes, sir.

12 **Q** It's my understanding based on what you've told me
13 when we started about being a Type 3 juror, that in a
14 murder case, at that point, what you would do is then
15 determine what you find to be the true facts, apply
16 the law to it and the facts considering aggravating
17 circumstances, mitigating circumstances, and you
18 would make a decision. Based on those facts, it
19 could be life imprisonment without the possibility of
20 parole or it could be the death penalty. Is that
21 true?

22 **A** Yes.

23 **Q** But it just depends on the facts. And you don't know
24 those today; is that right?

25 **A** No.

- 1 **Q** Okay. You understand if -- Ms. Bryant, if this jury
2 should conclude the death sentence was the most
3 appropriate, that you with the other jurors would
4 have to sign a verdict form indicating that. You
5 have to actually sign the form?
- 6 **A** Uh-huh.
- 7 **Q** Could you do that as a juror?
- 8 **A** Yes.
- 9 **Q** With the other jurors, you could sign your name?
- 10 **A** Yes.
- 11 **Q** Ms. Bryant, one other thing, you've said that you
12 won't consider anything outside of the courtroom.
13 And I appreciate that and I believe you when you say
14 that. To help the jury in that regard, we will
15 sequester the jury during the trial of this case.
16 That sequestration could be up to 10 days in length.
17 Will that cause you any problem in being a juror and
18 exercising your common sense, your sense of logic and
19 reason? Will that affect you in any way?
- 20 **A** No.
- 21 **Q** You can still carry out your duties as a juror. Is
22 that true?
- 23 **A** Yes.
- 24 **Q** And you could be fair and impartial?
- 25 **A** Yes.

1 **THE COURT:** Thank you very much for answering my
2 questions. Please answer any questions that any of the
3 attorneys may have.

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

5 EXAMINATION

6 **BY MR. HOISINGTON**

7 **Q** Good morning, Ms. Bryant.

8 **A** Morning.

9 **Q** I'm Ralph Hoisington. And together with Deputy
10 Solicitor Blair Jennings, we will be presenting the
11 evidence for the State. As you heard and no doubt
12 understood, what both sides are looking for in this
13 case is a juror that could be fair to both parties.
14 And it's clear to me from the answers you gave to the
15 Court that you fit in that category so I won't ask
16 you many questions. One of the things I am curious
17 about, though, obviously, this is a potential death
18 penalty case. You have said you're a Type 3 juror
19 and that you could go either direction depending on
20 the facts and circumstances.

21 **A** (The witness nodded.)

22 **Q** Would you give us the benefit of thinking for a
23 second and telling me if there's anything in your
24 philosophical belief, in your religious belief, in
25 your past history that would cause you to hesitate or

1 favor one side or another?

2 **A** If we could prove that the crime was, you know,
3 intentionally -- that it was planned and it was
4 carried out as planned.

5 **Q** Well, I'm not asking, I guess, to speculate as to
6 what the level of proof will be. We'll get to that
7 when the time comes. I just meant is there anything
8 in your personal beliefs that would direct you in one
9 direction or another, either to life in jail or the
10 death penalty?

11 **A** No.

12 **Q** You're totally open minded about that?

13 **A** Yes.

14 **Q** In the Pentecostal faith, do Pentecostals have an
15 opinion? Some religions do and some don't.

16 **A** It varies to the individual.

17 **Q** It's up to the individual?

18 **A** Yes.

19 **Q** So there's no direction about theology?

20 **A** No.

21 **MR. HOISINGTON:** I appreciate it.

22 **MR. ARCHER:** I have no questions.

23 **THE COURT:** Mr. Bryant, thank you. I would ask
24 you if you would step down just for a few moments, we'll
25 be with you momentarily. If you will step with

1 Mr. Pontiff.

2 (WHEREUPON, the juror left the courtroom.)

3 **THE COURT:** Solicitor?

4 **MR. HOISINGTON:** Qualified, Your Honor.

5 **MR. ARCHER:** Qualified.

6 **THE COURT:** Very.

7 Ask her to come in.

8 (WHEREUPON, the juror entered the courtroom.)

9 **THE COURT:** Thank you, Ms. Bryant. You have
10 been found to be qualified and determined to be qualified
11 to continue to serve in the pool of jurors from which we
12 will ultimately select the trial jury in this case. That
13 will -- process will start in the morning at 9:30. I'm
14 going to need for you to be back here in the morning at
15 9:30. Please know that, again, you must continue not to
16 talk about this case with anyone or let anybody talk with
17 you about the case. Please do not read any newspaper
18 accounts or watch any news programs about this case.

19 Ms. Wiggins has a sheet that Ms. Brown has
20 prepared for you that gives you some instruction about
21 what you need to do and bring with you tomorrow. Because
22 obviously, if you are selected, we will sequester you at
23 that time. Just follow those instructions. Have a great
24 day and I'll see you at 9:30 in the morning. And you just
25 come directly to this courtroom. Thank you. You may exit

1 through the front door. Thank you very much and have a
2 good day, ma'am.

3 I'm going to shorten mine. I'm going to ask the
4 type and just real brief from here on in.

5 **MR. HOISINGTON:** That's fine.

6 **THE COURT:** Thank you all for your indulging me
7 the lengthiness of it. I hope I haven't overstated it or
8 bored you or burdened you unnecessarily. But thank you
9 for indulging me in that respect.

10 **MR. HOISINGTON:** Helps you cover it.

11 **THE BAILIFF:** What's the message for two to
12 three?

13 **THE COURT:** Two to three is tell them to report
14 in the morning and all other jurors to report in the
15 morning.

16 **THE BAILIFF:** All right.

17 **THE COURT:** And again, like I said, in the
18 morning when they come, we need to separate them.

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

20 **THE COURT:** Give us Ms. Gore.

21 (WHEREUPON, Vickie Gore, a white female, entered
22 the courtroom.)

23 EXAMINATION

24 **BY THE COURT**

25 **Q** Good afternoon, Ms. Gore.

1 **A** Hi.

2 **Q** How are you?

3 **A** Oh, fine. Nervous.

4 **Q** Nervous. You know what? That doesn't surprise me.
5 That says that you're a pretty human person. I tell
6 you what, because unless you do this every day, and
7 we don't even do this every day, thank the Lord, I
8 don't see how anybody couldn't be a little nervous
9 about it. So that's not a problem and that's okay.

10 **A** Good.

11 **Q** But let me tell you now that nothing that we're
12 saying or asking you today, you don't need to worry,
13 because your opinions are yours and you're entitled
14 to them. Okay?

15 **A** All right.

16 **Q** Thus far, Ms. Gore, you were placed in a pool because
17 as of Monday, in your answers to all of those
18 questions that we went through, you've indicated that
19 you can be a fair and impartial juror in this case.

20 **A** Right.

21 **Q** And there's nothing about this case that would cause
22 you any problem about being fair and applying your
23 common sense, your sense of logic and reason. Is
24 that true?

25 **A** No, so far not.

- 1 Q None at all?
- 2 A No.
- 3 Q You've -- you're under oath. I would remind you that
4 you're still under oath. Is that agreeable with you?
- 5 A Yes.
- 6 Q No one's talked with you since Monday or you haven't
7 read anything or reviewed any news programs, have
8 you?
- 9 A No, I haven't watched the news.
- 10 Q Good. Thank you. And that's what --
- 11 A My husband goes in the sunroom to watch the news.
- 12 Q And after this is over, y'all can return to that.
13 But I appreciate your honoring that very, very much.
14 Did you have a chance to review that sheet that had
15 the three types of jurors?
- 16 A Yes.
- 17 Q Which type most accurately describes you?
- 18 A Three.
- 19 Q Three?
- 20 A Uh-huh.
- 21 Q And 3, basically in a nutshell, is a juror that says
22 when a person is convicted of the crime of murder, I
23 have completely an open mind as to what the
24 punishment should be.
- 25 A Right.

1 Q That I am capable of considering the two punishments
2 provided by law of life imprisonment without the
3 possibility of parole or the death sentence. But I
4 cannot make a determination until I've heard all the
5 facts and circumstances.

6 A That's correct.

7 Q And that's you?

8 A That's me.

9 Q And there is nothing about this case or this process
10 that would cause you to change your position of
11 having an open mind about that, is there?

12 A No.

13 Q Do you understand as a juror that that's a very
14 important part of your duty?

15 A Yes.

16 Q And that on every issue, not just the penalty, but
17 even on the charges for which Mr. Sapp stands
18 accused -- and that's all that is. You agree with
19 that?

20 A Right.

21 Q He's just accused of that. He's innocent of that
22 just as much as you or I am.

23 A Okay, right.

24 Q You agree with that?

25 A Yes.

1 **Q** You would keep the open mind until I told you to
2 begin your deliberation on a particular issue?

3 **A** Yes.

4 **Q** Because that's when the jury is expected to change
5 that position. But until then, you've promised the
6 State and you've promised Mr. Sapp that you'll keep
7 that open mind. Would you do that?

8 **A** Yes, I would.

9 **Q** No problem doing it at all?

10 **A** No.

11 **Q** And once I told you to begin your deliberations, am I
12 to understand that it's then and only then that you
13 would carefully, deliberately, and conscientiously
14 apply your common sense, your sense of logic and
15 reason and decide what you believe to be the true
16 facts?

17 **A** Yes, I would.

18 **Q** And then once you determine those facts, you would
19 then take the law as I give it to you and fairly
20 apply that law?

21 **A** Yes, sir.

22 **Q** And so your decision then, you don't have any
23 hesitation of saying your decision would be -- your
24 personal decision would be fair to the State and to
25 Mr. Sapp?

1 **A** Yes, to the best of my ability.

2 **Q** I understand. And that's all anybody could ask you
3 to do. But you would make that commitment to them
4 and you would honor that commitment?

5 **A** Yes, I would.

6 **Q** And it would be in the first phase where we would
7 talk about the charges, where you will hear evidence
8 about that. Because we don't even get to the second
9 phase unless the State proves beyond a reasonable
10 doubt that Mr. Sapp's guilty of the offense of
11 murder. You understand that?

12 **A** Right.

13 **Q** And you'll have to deal with that issue at that time
14 because the State has the burden of proof. You agree
15 with that?

16 **A** Right, uh-huh.

17 **Q** If we got to the second phase, again, you would have
18 that open mind?

19 **A** Yes.

20 **Q** Because in the second phase you hear all the evidence
21 about the appropriate penalty.

22 **A** Right.

23 **Q** And when I gave you the instruction to begin your
24 deliberations, if you got to that part, you could go
25 out of this room, decide what you believe to be the

1 true facts, take the law that I give to you, apply it
2 and return a verdict and it could be either -- if we
3 get to that point, it could be either life or death,
4 but it would depend on the facts that had been
5 established beyond a reasonable doubt?

6 A Yes.

7 Q And you couldn't tell us what that would be now until
8 you hear it?

9 A No, not until I hear everything.

10 Q You're going to be sequestered if you're selected.
11 Do you understand that?

12 A Do you know how long it may be?

13 Q It could be as much as 10 days.

14 A Okay.

15 Q Would that affect --

16 A From now?

17 Q Well, yeah, 10 days from now.

18 A I have reservations in Disney World on the 27th.

19 Q On the 27th. I think you'll probably be able to meet
20 those.

21 A Okay.

22 Q Would that affect you in any way?

23 A No.

24 Q You could fulfill your duties?

25 A Yeah, I have grandparents that could take care of my

1 son.

2 Q Okay.

3 THE COURT: Answer any questions the State may
4 have.

5 MR. HOISINGTON: You have answered all the
6 questions that I may have. Thank you.

7 THE COURT: Mr. Archer?

8 EXAMINATION

9 BY MR. ARCHER

10 Q Ma'am, I noticed your husband's a security guard?

11 A Uh-huh.

12 Q Would that have any effect knowing that it was a
13 police officer killed in this case?

14 A He has really nothing to do -- he just guards
15 businesses, you know. No.

16 Q Have you discussed the case with him at all?

17 A No, not really. We don't --

18 Q If we go beyond the 27th, can you get a refund on
19 your Disney World?

20 A I hope so.

21 MR. ARCHER: I have no further questions.

22 THE COURT: Thank you, Mr. Archer.

23 Ms. Gore, I'm going to find that you're
24 qualified to continue to serve as a potential juror in
25 that pool of jurors. I need for you to report back here

1 in the morning at 9:30. It's then that we will make the
2 selection for the trial jury. Please remember that you
3 still are not permitted to talk with anybody or allow
4 anybody to talk with you about the case. Don't read
5 anything about it or watch any programs about it.

6 **THE POTENTIAL JUROR:** Okay.

7 **THE COURT:** Ms. Wiggins has some information
8 that will be helpful to you and what to bring with you
9 when you come. Because if you are selected, you'll be
10 sequestered tomorrow.

11 **THE POTENTIAL JUROR:** Tomorrow?

12 **THE COURT:** Yes, tomorrow. Have a good day and
13 you're free to leave. See you in the morning.

14 I'm trying to expedite the process, I went ahead
15 and did that. Any objection to the finding by the Court
16 from the State?

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

18 **THE COURT:** Any objection from Mr. Sapp?

19 **MR. ARCHER:** What was that, I'm sorry?

20 **THE COURT:** I found that she was qualified.

21 **MR. ARCHER:** Oh, yeah.

22 **THE COURT:** Any objection?

23 **MR. ARCHER:** No.

24 **THE COURT:** What I'm going to do now, I'm either
25 going to excuse them or find them and then I'll hear from

1 you and give you an opportunity to put your position on
2 the record after that rather than before.

3 **MR. ARCHER:** We've got to 35?

4 **THE COURT:** We are now at 36.

5 Let's bring in Barbara Mason.

6 (WHEREUPON, Barbara Mason, a white female,
7 entered the courtroom.)

8 EXAMINATION

9 **BY THE COURT**

10 **Q** Hello, Ms. Mason.

11 **A** Hello.

12 **Q** How are you today?

13 **A** Good. How are you?

14 **Q** I'm well, thank you, ma'am. I appreciate your
15 patience through this ordeal. And it won't be much
16 longer, I don't think. Please understand that this
17 whole purpose has been to just try to find a pool of
18 persons that are open and can be fair and impartial
19 in this process and could serve as a judge of the
20 facts of this case. And that's all we're trying to
21 do. Okay?

22 **A** Okay.

23 **Q** You're still under oath. Is that agreeable with you?

24 **A** Yes, it is.

25 **Q** Have you had a chance to read that sheet that

1 describes and depicts the three types of jurors?

2 **A** Yes, I did.

3 **Q** Which one most accurately describes you?

4 **A** Type 1.

5 **Q** That's a person that says absolutely, when murders
6 are proven, the only appropriate sentence is the
7 death sentence.

8 **A** Yes.

9 **Q** And that would never change?

10 **A** (The witness shook her head.)

11 **THE COURT:** I thank you, ma'am. One of the
12 things that I've been telling jurors and I will tell you
13 is you are entitled to your beliefs. And no one's going
14 to attempt to change that. I'm going to excuse you, and
15 not having that belief, please understand that, but
16 obviously in this situation, we have to have someone who
17 without doing any injury to their personal beliefs can
18 consider death or life. So that's the reason we do that.
19 Thank you, ma'am. You are excused.

20 I would ask you, Ms. Mason, to do me a favor. I
21 can't make you do it, but I would appreciate it very much,
22 if you would simply not talk about this case until this
23 trial has been completed.

24 **THE POTENTIAL JUROR:** I will do that.

25 **THE COURT:** Thank you. Good luck to you.

1 You're free to leave.

2 **THE POTENTIAL JUROR:** Thank you.

3 **THE COURT:** Any objection from the State?

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

5 **THE COURT:** Any objection from Mr. Sapp?

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

7 **THE COURT:** Bring in Ms. Tucker.

8 (WHEREUPON, Adeline Tucker, a white female,
9 entered the courtroom.)

10 EXAMINATION

11 **BY THE COURT**

12 **Q** Good afternoon, Ms. Tucker.

13 **A** Hi.

14 **Q** How are you?

15 **A** Fine.

16 **Q** Good. Thank you for being here and thank you for
17 participating in this process thus far. I appreciate
18 it. I know it's been somewhat of an ordeal and I
19 thank you for your endurance. You're still under
20 oath, I would remind you. Have you had a chance to
21 review the sheet that describes the three types of
22 jurors?

23 **A** Yes, sir.

24 **Q** Which one most accurately describes you?

25 **A** Three.

1 **Q** And basically, you're saying by that that you have an
2 open mind as to what the appropriate punishment
3 should be for a person who is convicted of the
4 offense of murder.

5 **A** Yes, sir.

6 **Q** And you can't make a determination and would not make
7 a determination as to which one would be the most
8 appropriate until you had heard all the facts and
9 circumstances.

10 **A** Right.

11 **Q** We have concluded, by placing you in this pool by
12 your response to my questions on Monday, that you
13 have an open mind about all aspects of this case. Is
14 that true?

15 **A** Yes, sir.

16 **Q** I think that's probably one of the most important
17 aspects of a juror serving, that they have an open
18 mind. Would you maintain that open mind at all
19 times?

20 **A** Yes, sir.

21 **Q** And until I give you an instruction to begin your
22 deliberations on a particular issue?

23 **A** Yes, sir.

24 **Q** When I give you that instruction, would you follow
25 the law and apply that law fairly and impartially to

1 the facts that you would determine?

2 A Yes, sir.

3 Q Would you consider only the evidence and apply your
4 common sense to that evidence, which is testimony of
5 witnesses and exhibits, and decide fairly and
6 impartially what you believe to be the truth?

7 A Yes, sir.

8 Q So your decision then on all aspects, including the
9 penalty, would be fair to both sides?

10 A Right. I would have to know the facts.

11 Q And you would do that, you would honor that
12 commitment? Because that's what you would commit to
13 do.

14 A Yes, sir.

15 Q You agree with that?

16 A (The juror nodded.)

17 Q So am I to understand if we were to get to the second
18 phase of this proceeding where you would hear
19 evidence -- and we wouldn't get there unless the
20 State proves Mr. Sapp is guilty of the offense of
21 murder. You understand that?

22 A (The juror nodded.)

23 Q And the State has the burden of proof, you agree?

24 A Yes, sir.

25 Q If we got there, you would consider all the evidence

1 that you've heard that was introduced at that phase,
2 consider the law and apply the law fairly and reach a
3 decision and you would consider both life
4 imprisonment and the death penalty and then make a
5 determination of what you believe to be the most
6 appropriate. Is that true?

7 **A** Yes, sir.

8 **Q** You're going to be sequestered if you're on the jury.
9 Would that affect your ability to be a fair and
10 impartial juror?

11 **A** No, sir.

12 **THE COURT:** Any questions from the State?

13 **MR. HOISINGTON:** No questions from the State.
14 We are satisfied.

15 **MR. ARCHER:** I would like to ask her a few
16 questions if I may?

17 **THE COURT:** Sure, Mr. Archer, absolutely.

18 EXAMINATION

19 **BY MR. ARCHER**

20 **Q** Good afternoon.

21 **A** Hi.

22 **Q** I see here on your questionnaire that there was a
23 breaking and entering. Was it your house, your
24 family's house?

25 **A** It was my house.

1 Q I see.

2 A It was -- they just said any crime, so that's what I
3 put. That's the only crime I have ever --

4 Q Were you home at the time?

5 A No.

6 Q And I noticed that nobody was arrested on that?

7 A They didn't know who it was.

8 Q Okay. Did that make you angry?

9 A Well, only because they didn't take the tape out of
10 my camcorder. They could have left me that. That
11 was --

12 Q So they took everything in your house?

13 A No. It was during the daytime when I had gone to
14 pick my boys up from school and came back. And I --
15 actually, that's the only thing that really upset me
16 was that I had my camcorder and my camera loaded
17 because it was my son's kindergarten graduation that
18 night. So they came in and they took all that stuff.
19 And I mean --

20 Q Do you hold any grudges against that because they
21 were never caught, etc.?

22 A No.

23 Q No?

24 A I wish they had, but they didn't.

25 Q But you wish they brought your tape back?

- 1 **A** Nobody was hurt and we were assured.
- 2 **Q** One other question, I notice here that you are a
3 close friend to a Richard, looks like Ingram? And
4 he's Charleston Airport Patrol?
- 5 **A** Yes, sir.
- 6 **Q** What does that mean?
- 7 **A** He retired -- when I met him, he had just retired
8 from -- he was in forensics down in Florida. His
9 girlfriend is actually a real good friend of mine.
10 And when he moved up here, he's now working at the
11 airport. It's actually the police department. I
12 don't know if it's Charleston Aviation Authority or
13 what, but he's on that patrol out there at the
14 airport.
- 15 **Q** And how close a friend is he to you?
- 16 **A** His girlfriend, more so. He's a neighbor. He's down
17 the street. But I don't see him as often as I do
18 her.
- 19 **Q** And have you discussed this case with him at all?
- 20 **A** No, sir, huh-uh.
- 21 **Q** And would it affect your opinion one way or the other
22 because your close friend is on the patrol and the
23 fact there was a police officer killed here?
- 24 **A** No, sir.
- 25 **Q** It wouldn't make your judgment any better?

1 **A** No, sir.

2 **Q** If the defendant was found guilty, you could still
3 return a verdict of life without the possibility of
4 parole?

5 **A** If he were found guilty?

6 **Q** Yes. And then if it were appropriate, you could come
7 in with a verdict of life without the possibility of
8 parole?

9 **A** Yes, sir.

10 **MR. ARCHER:** Thank you.

11 **THE COURT:** Anything further?

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

13 **THE COURT:** I find, Ms. Tucker, that you're
14 qualified to continue to serve in this pool of jurors in
15 which we will ultimately select the trial jury. That will
16 occur in -- that process will commence in the morning at
17 9:30. I need for you to be back here in the morning.
18 Please, until then, continue not to talk about this case
19 with anyone or read anything or watch any programs about
20 it.

21 Ms. Wiggins has some information that will help
22 you in what you need to bring with you because, obviously,
23 if you're selected, you'll be sequestered at that time.
24 So have a good day and I'll see you in the morning at
25 9:30.

1 **THE POTENTIAL JUROR:** Okay.

2 **THE COURT:** Thank you.

3 **THE POTENTIAL JUROR:** Yes, sir.

4 **THE COURT:** Any objection from the State?

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

6 **THE COURT:** Any objection from Mr. Sapp?

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

8 **THE COURT:** Thank you.

9 Bring in Mr. Green.

10 (WHEREUPON, Vincent Green, a black male, entered
11 the courtroom.)

12 EXAMINATION

13 **BY THE COURT**

14 **Q** Hello, Mr. Green.

15 **A** Good afternoon. How you doing?

16 **Q** I'm fine, sir. Thank you for your patience. I
17 appreciate your indulgence with this whole process.
18 We won't take much longer.

19 **A** Okay.

20 **Q** I would remind you, sir, that you're still under oath
21 in this matter. Have you had a chance to review that
22 sheet that had the three types of jurors?

23 **A** Yes, I have.

24 **Q** And which type most accurately describes you?

25 **A** Type 3.

1 **Q** Type 3, basically, as I understand, says simply this,
2 that you are a person that has an open mind about
3 what sentence -- which sentence would be appropriate,
4 whether it's life imprisonment or the death penalty
5 for someone convicted of murder; is that right?

6 **A** Exactly.

7 **Q** And that you couldn't change and wouldn't change that
8 position until you had an opportunity to hear all of
9 the evidence and receive the law. And then you would
10 be fair and impartial in applying your common sense,
11 your sense of logic and reason and make that
12 determination and could make that determination. Is
13 that true?

14 **A** That's correct.

15 **Q** And you could consider and would consider both of
16 them insofar as you just said, I'm going to consider
17 it and if the circumstances warrant it, I'll bring a
18 death sentence. But if I feel they warrant a life
19 imprisonment, then I would impose a life
20 imprisonment; is that correct?

21 **A** That is correct.

22 **Q** You've been placed in this pool of jurors thus far
23 because based on the answers to the questions Monday,
24 we had concluded that you are the type of juror who
25 has an open mind about all aspects of this case. And

1 now you've confirmed that you have an open mind about
2 the penalty aspect if we were ever to get to that
3 point. Is that true?

4 **A** That's true.

5 **Q** And you could maintain that open mind and would
6 maintain that open mind until I give you an
7 instruction that you may begin your deliberations on
8 a particular issue?

9 **A** That's true.

10 **Q** Because once you start that, both sides would expect
11 that you at that time would then apply fairly and
12 impartially your knowledge, your life's experience,
13 your common sense, and decide what you believe to be
14 the truth. Then you would take the law that I give
15 to you, apply that law fairly and impartially to
16 those facts and reach a decision. Is that what you
17 would do?

18 **A** Yes, sir.

19 **Q** And that decision then if you did that, you would
20 agree with me would be fair to the State and would be
21 fair to Mr. Sapp?

22 **A** Yes, sir.

23 **Q** And you could do that?

24 **A** Yes, sir.

25 **THE COURT:** Questions from the State?

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

2 **THE COURT:** Questions?

3 **MR. ARCHER:** Yes, just a few.

4 EXAMINATION

5 **BY MR. ARCHER**

6 **Q** Good afternoon.

7 **A** Good afternoon. How you doing?

8 **Q** I see on your questionnaire you stated that one of
9 your members or close friends were a victim of a
10 crime and you checked off yes. Could you just tell
11 us what that's about?

12 **A** Right, one of my friends had gotten shot. But he did
13 survive it. But it was -- it happened at a
14 nightclub. And I still don't know exactly what
15 happened. We don't know exactly what happened. But,
16 yes, he got -- he got shot.

17 **Q** This is a close friend of yours that was shot by
18 someone else, in other words?

19 **A** Yes.

20 **Q** Did they ever catch the man?

21 **A** No.

22 **Q** No. How do you feel about that, that they never
23 caught him?

24 **A** Well, of course, there's still openness about that, I
25 mean, because he was never caught. And well, I mean,

1 they just didn't never found out who did it.

2 Q Right. Do you feel a little angry about that, that
3 they couldn't catch him?

4 A In a way, yeah. Yes, sir.

5 Q Who would you be angry at?

6 A Well, no one specifically.

7 Q No one specific?

8 A Just angry at the person who got away with it.

9 Q The person who did the crime?

10 A Yeah, exactly.

11 Q The other thing here, I notice that you have a
12 Mr. Bucan, Charleston police officer, you've got a
13 relative and close friend. Could you just --

14 A Buncombe? Say that again now.

15 Q Well, you have checked off relative and close friend
16 and you have one person here.

17 A Buncombe.

18 Q Yes. Is he a relative or close friend?

19 A He's a relative.

20 Q What is your relationship?

21 A Cousin.

22 Q He's a first cousin?

23 A No, second cousin.

24 Q Second cousin. And he's still on the force?

25 A Yes, he is.

1 Q And who is the other one? Is there another one?

2 A No, that should be the only one.

3 Q That's it, okay. So he's a relative?

4 A Right.

5 Q And at this time you realize that a police officer
6 was killed in this situation?

7 A Yes, I do, I do.

8 Q And let me ask you this, did you -- how often do you
9 see him? How close are you to him?

10 A We might see each other once every two months or so.

11 Q Okay. Have you discussed the case with him at all?

12 A No, we never discussed this case.

13 Q Have you ever discussed any criminal cases with him?

14 A No.

15 Q No? All right. Let me ask you this, would that have
16 any influence on you because a police officer was
17 killed in a situation, the fact that your first
18 cousin is a police officer?

19 A No, it wouldn't have any influence on me.

20 MR. ARCHER: Thank you.

21 THE COURT: All right, sir, Mr. Green. Thank
22 you very much. I'm going to find that you're qualified to
23 be a member of the pool of jurors from which we will
24 select the trial jury. That process will begin in the
25 morning at 9:30. I'm going to need for you to be here in

1 the morning. Continue, please, to not talk about this
2 case. Don't discuss the case, allow anybody to talk with
3 you about it. Don't read any news articles or watch any
4 news programs about it. See you in the morning.

5 Ms. Wiggins has some information for you that
6 will be helpful in preparing to come tomorrow. Because
7 obviously, if you're selected, you will be sequestered.
8 You understand that?

9 MR. ARCHER: Your Honor, may I just interrupt
10 one second?

11 THE COURT: I will hear from you in one second
12 fully.

13 MR. ARCHER: Okay.

14 THE COURT: So just follow that instruction,
15 sir.

16 THE POTENTIAL JUROR: Okay.

17 THE COURT: Thank you, sir. Have a good day,
18 sir.

19 All right. The State have any objection?

20 MR. HOISINGTON: No, sir.

21 THE COURT: Mr. Archer, be happy to hear from
22 you.

23 THE CLERK: Yeah, I want to make a motion. I
24 feel, just to put on the record, he's not qualified.

25 THE COURT: I will permit you to do that, that's

1 not a problem.

2 **MR. ARCHER:** He's not qualified because his
3 second cousin is a police officer.

4 **THE COURT:** And you can use that for strike
5 purposes. But that doesn't affect his qualifications at
6 all. So that motion is denied. Thank you.

7 All right. That -- we have a panel -- a pool of
8 38, I believe. And that's -- I'm comfortable with that.
9 Are y'all comfortable with the 38 being a sufficient
10 number?

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

12 **THE COURT:** Anything further from the State at
13 this point?

14 **MR. JENNINGS:** One thing. Do you still have the
15 indictments?

16 **THE COURT:** I do.

17 **MR. JENNINGS:** I thought I heard you yesterday
18 when you were reading the possession of stolen vehicle, I
19 thought you said 1990. I just wanted to check because the
20 copy I had says '99.

21 **THE COURT:** I may have misspoken. That's very
22 possible. It is, it's '99.

23 **MR. JENNINGS:** Okay.

24 **THE COURT:** Do you all want to mark your
25 exhibits -- premark the exhibits if we can?

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

2 **THE COURT:** I would like for you to accomplish
3 that. Let me ask you, have you served the defendant with
4 the aggravating circumstances?

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

6 **THE COURT:** And are there -- is there more than
7 just the police officer?

8 **MR. HOISINGTON:** Yes, sir, there is the putting
9 the two or more people in danger of being killed.

10 **THE COURT:** And those have been served. Do you
11 acknowledge that, Mr. Archer?

12 **MR. ARCHER:** Yes.

13 **THE COURT:** Also, I would like to put -- and I
14 don't have it, but I would like to have a blank copy of
15 the summons and questionnaire marked as Court's Exhibit 2.
16 We've discussed these beforehand.

17 As I understand, there were no objections from
18 the State concerning the summons and the questionnaire; is
19 that correct?

20 **MR. HOISINGTON:** That's correct.

21 **THE COURT:** And none from Mr. Sapp; is that
22 correct?

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

24 **THE COURT:** They will become Court's Exhibit
25 No. 2.

1 (WHEREUPON, Court's Exhibit No. 2 was marked for
2 identification only.)

3 **THE COURT:** I mentioned to you at a side bar
4 concerning my discussions, Mr. Archer, with Mr. Sapp
5 concerning his right to testify as well as the right at
6 the appropriate times to make closing arguments. We will
7 discuss that tomorrow. But I will permit you and Mr. Sapp
8 to have further discussion about that this afternoon if
9 necessary.

10 Anything else from the State that you think we
11 need to place on the record at this point?

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

13 **THE COURT:** Anything else from Mr. Sapp,
14 Mr. Archer?

15 **MR. ARCHER:** No, sir. I think we discussed
16 this, we just need the TV for the VCR. We'd like the
17 chalkboard in here.

18 **THE COURT:** The chalkboard is right there.

19 **MR. ARCHER:** Okay. And I think -- no, we don't
20 need a little recorder. I'm trying to think of --

21 **MR. HOISINGTON:** We should have anything he's
22 going to need and, of course, we'll make that available to
23 him for any demonstrative purposes.

24 **THE COURT:** Absolutely.

25 **MR. ARCHER:** And the VHS, are we going to use

1 the original tapes or I can use my tapes? It doesn't
2 matter.

3 **THE COURT:** We'll put those into evidence --
4 well, it will be a Court Exhibit, but I assume -- yeah,
5 I'm going to treat those the same as depositions for
6 purposes if the jury wants to review it.

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

8 **THE COURT:** I don't think -- or y'all intend to
9 put it in as evidence?

10 **MR. HOISINGTON:** We were going to put them in as
11 evidence.

12 **THE COURT:** All right. I'll deal with that at
13 the time. I've done that before on surveillance tapes.
14 If you have any objection, I'll entertain it at that point
15 as to whether it should be evidence.

16 **MR. HOISINGTON:** They're not particularly
17 insightful, but we're putting them in just in case.

18 **THE COURT:** Very well. Somebody will be here to
19 identify them and explain --

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

21 **THE COURT:** Okay. Very good. Anything else?

22 **MR. HOISINGTON:** I don't believe so. The
23 evidence is coming up and we'll start marking.

24 **THE COURT:** Very good. We'll be in recess until
25 9:30 in the morning. They have been preparing and will

1 give you, hopefully before we leave, the list, the strike
2 list. And we will proceed by those numbers tomorrow. But
3 we'll talk about that in the morning. Thank you.

4 (WHEREUPON, State's Exhibits Nos. 1-88 were
5 marked for identification only.)

6 (WHEREUPON, Defendant's Exhibits Nos. 1-6 were
7 marked for identification only.)

8 (WHEREUPON, the proceedings were concluded for
9 the day to be reconvened on Thursday, May 15th,
10 2003.)

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1 Thursday, May 15, 2003

2 **THE COURT:** Good morning to you all.

3 Is the State ready to proceed with the selection
4 process?

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

6 **THE COURT:** Is Mr. Sapp ready to proceed?

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

8 **THE COURT:** Good morning Mr. Sapp.

9 **THE DEFENDANT:** Morning.

10 **THE COURT:** Ladies and gentlemen, those of you
11 that were selected in the pool, I believe you are seated
12 on my right; is that correct? Okay. I appreciate your
13 being here. We are going to call your names. I'm going
14 to ask Ms. Tucker to call your names. I need you to do
15 something. I know we've been together a great deal, but
16 it gives us another chance to put a name with a face. If
17 you would just stand where you are, tell us what you do
18 for a living, that's all you need to do. And if you're
19 retired, what you did before retiring. Then you can take
20 your seat. And this shouldn't take too terribly long.

21 For the purposes of this, ladies and gentlemen,
22 we have a list -- let me tell you this now, explain this
23 process as well. Again, maybe somebody will arrive by the
24 time I'm finished. Your names have been placed on a list.
25 This list is numbered 1 through 38. When we go through

1 the selection process in just a few moments, we will be
2 referring to the numbers on this list. You know that this
3 week, you've been asked what is your juror number. And
4 it's an important sort of cross-check, if you will, to
5 make sure we're talking with the correct person.

6 The numbers that you will hear during this
7 process are not your juror numbers. So I just wanted to
8 make you aware of that in case you happened to be -- and I
9 don't know whether we have anybody in the first 38, but if
10 you happen to have that number and you hear No. 38 and one
11 side says excuse that juror or strike that juror, you see,
12 each side has a right to excuse jurors, that's their right
13 and that's how we select the process -- I mean, that's how
14 we select the jury. And in this process, you may hear the
15 word strike. What that means simply is excuse that juror.
16 So please don't put any -- make any connection or try to
17 say, oh, great, what's the order that she's calling my
18 name. The order that she calls your name is not the order
19 on this list. Okay? Thank you very much.

20 Ms. Tucker, if you would.

21 **THE CLERK:** Juror No. 141, Vincent Green.

22 **THE POTENTIAL JUROR:** Vincent Green, outside
23 sales.

24 **THE CLERK:** Juror 369, Adeline Tucker.

25 **THE POTENTIAL JUROR:** Adeline Tucker, office

1 manager.

2 THE CLERK: Juror 134, Vickie Gore.

3 THE POTENTIAL JUROR: Stay-at-home mom.

4 THE CLERK: Juror 30, Angela Biggs.

5 THE POTENTIAL JUROR: General manager.

6 THE COURT: Juror 100, Kelly Eckert.

7 THE POTENTIAL JUROR: Dental assistant.

8 THE CLERK: Juror 288, Janice Petrilla.

9 THE POTENTIAL JUROR: Customer service rep.

10 THE CLERK: Juror 73, Lillie Copeland.

11 THE POTENTIAL JUROR: Women's apparels, fast
12 ticketing.

13 THE CLERK: Juror 154, Brad Harris.

14 THE POTENTIAL JUROR: Youth pastor.

15 THE CLERK: Juror 159, Marvin Henderson.

16 THE POTENTIAL JUROR: Mechanic.

17 THE CLERK: Juror 18, Barbara Baker.

18 THE POTENTIAL JUROR: Teller supervisor at a
19 bank.

20 THE CLERK: Juror 49, Sharon Bryant.

21 THE POTENTIAL JUROR: Child care worker.

22 THE CLERK: Juror 248, Mary Meadow.

23 THE POTENTIAL JUROR: Student.

24 THE CLERK: Juror 265, Matthew Mustach, Jr.

25 THE POTENTIAL JUROR: Facility manager.

1 **THE CLERK:** Juror 372, Kenneth Ullery.

2 **THE POTENTIAL JUROR:** Business systems
3 consultant.

4 **THE CLERK:** Juror 177, Sadie Jenkins.

5 **THE POTENTIAL JUROR:** Mail contractor, box
6 delivery.

7 **THE CLERK:** Juror 105, Richard Evans.

8 **THE POTENTIAL JUROR:** Service technician.

9 **THE CLERK:** Juror 204, Charles Lail.

10 **THE POTENTIAL JUROR:** Charles Lail, I'm a
11 construction worker.

12 **THE CLERK:** Juror 387, Cynthia White.

13 **THE POTENTIAL JUROR:** Nursing assistant.

14 **THE COURT:** Ms. White, you need to move over on
15 this side, please. Thank you very much.

16 **THE CLERK:** Juror 218, Ian MacDougall..

17 **THE POTENTIAL JUROR:** Student.

18 **THE CLERK:** Juror 258, Clarence Mitchell.

19 **THE POTENTIAL JUROR:** Truck driver.

20 **THE CLERK:** Juror 86, Alfred DeLeon.

21 **THE POTENTIAL JUROR:** Management.

22 **THE CLERK:** Juror 322, Bufford Rollins, Jr.

23 **THE POTENTIAL JUROR:** Aircraft maintenance
24 foreman.

25 **THE CLERK:** Juror 273, Priscilla Nixon.

1 **THE POTENTIAL JUROR:** Cashier.

2 **THE CLERK:** Juror 20, Linda Barnhill.

3 **THE POTENTIAL JUROR:** Housewife. I keep my
4 grandchildren.

5 **THE CLERK:** Juror 160, Anthony Hendriks.

6 **THE POTENTIAL JUROR:** Student.

7 **THE CLERK:** Juror 336, Barbara Simmons.

8 **THE POTENTIAL JUROR:** Customer service
9 associate.

10 **THE CLERK:** Juror 279, Daniel Page.

11 **THE POTENTIAL JUROR:** Operations supervisor.

12 **THE CLERK:** Juror 284, James Peak.

13 **THE POTENTIAL JUROR:** Senior mechanic.

14 **THE CLERK:** Juror 380, Charlene Ward.

15 **THE POTENTIAL JUROR:** Customer service
16 supervisor.

17 **THE CLERK:** Juror 165, Michele Hill.

18 **THE POTENTIAL JUROR:** Engineer.

19 **THE CLERK:** Juror 342, Sue Sisco.

20 **THE POTENTIAL JUROR:** Department manager, I work
21 in retail.

22 **THE CLERK:** Juror 119, Gregory Franciscus.

23 **THE POTENTIAL JUROR:** Over-the-road truck
24 driver.

25 **THE CLERK:** Juror 196, Samuel Kilgore, Jr.

1 **THE POTENTIAL JUROR:** Supervisor crane operator.

2 **THE CLERK:** Juror 203, Sarah Kouns.

3 **THE POTENTIAL JUROR:** I'm a gift sales
4 representative.

5 **THE CLERK:** Juror 206, Thomas Bowman, Jr.

6 **THE POTENTIAL JUROR:** I'm retired, ma'am.

7 **THE CLERK:** Juror 114, Lewis Flader.

8 **THE POTENTIAL JUROR:** Computer systems analyst.

9 **THE CLERK:** Juror 59, Deborah Carter.

10 **THE POTENTIAL JUROR:** I just graduated from
11 college on the third. I'm job hunting.

12 **THE COURT:** Good luck.

13 **THE CLERK:** Juror 361, Brian Taylor.

14 **THE POTENTIAL JUROR:** Service technician.

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

17 And those of you that were not in the pool,
18 thank you very much for being present this morning. And
19 if you will bear with me, we're going to start this
20 process in just a moment. After we've completed the
21 process, I will have an opportunity to speak to you as
22 well. But I thank you very much for your being punctual
23 and being here and your assistance with this entire
24 process.

25 Again, back to our panel of jurors from which we

1 will now select the trial jury, as you recall, we have
2 been observing a restriction of not allowing anyone to
3 talk with us about this case or talk about it in our
4 presence. Also, we have asked you not to read any
5 accounts of this case or watch any news programs.

6 And we need the phones, gentlemen, if they
7 are -- anybody have a phone? You need to turn it off. I
8 won't do what Justice Toal instructed me to do. I'm
9 supposed to put you in jail, but I need your help this
10 morning. So I won't do that. Please make sure it's off
11 from now on though.

12 First, I would ask if there is any juror who has
13 talked with anyone or allowed anyone to talk with them?
14 And I'm talking specifically to this panel to my right,
15 since we were last together, please stand.

16 (There was no response.)

17 **THE COURT:** There are none.

18 And let me also remind you that you are still
19 under oath in this matter. Are there any jurors who have
20 watched any news programs or who have read any newspaper
21 accounts? If so, please stand.

22 (There was no response.)

23 **THE COURT:** There are none.

24 Thank you very much. We'll start with the
25 selection process.

1 And gentlemen, as I mentioned to you, my
2 intention now is to go down the list in order starting
3 with No. 1. And I will just simply ask the State, What
4 says you as to No. 1 and then I will look to Mr. Sapp and
5 we'll receive your response as well. We will only
6 reference the numbers on the left-hand side, please, not
7 the juror number or the name.

8 (WHEREUPON, the jury was selected and a list of
9 the voir dire jury strike sheet is attached to
10 the back of the transcript.)

11 **THE COURT:** Ms. Tucker, if you would, now, I'm
12 going to ask Ms. Tucker to verify the numbers on our list
13 that she has that will be serving on our jury panel.

14 **THE CLERK:** Yes, sir. No. 2, No. 3, No. 4, 6,
15 11, 13, 17, 19, 20, 21, 23, 26, alternates, 28 and 30.

16 **THE COURT:** Is that correct from the State?

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

18 **THE COURT:** Is that correct from Mr. Sapp?

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

20 **THE COURT:** Are there any motions regarding the
21 selection from the State?

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

23 **THE COURT:** Are there any motions regarding the
24 selection from Mr. Sapp?

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

1 **THE COURT:** Thank you very much.

2 If you would, please, Ms. Tucker, I would ask
3 you to call the names of the jurors selected.

4 Ladies and gentlemen, when your name is called,
5 please bring with you now your personal effects and come
6 forward and take a seat in the jury box.

7 **THE CLERK:** Juror 59, Deborah Carter; Juror 114,
8 Lewis Flader; Juror 36, Thomas Bowman, Jr.; Juror 196,
9 Samuel Kilgore, Jr.; Juror 284, James W. Peak; Juror 336,
10 Barbara Simmons; Juror 322, Bufford Rollins, Jr.; Juror
11 258, Clarence Mitchell; Juror 218, Ian MacDougall; Juror
12 387, Cynthia White; Juror 105, Richard Evans; Juror 265,
13 Matthew Mustach, Jr.; alternates, Juror 49, Sharon Bryant;
14 Juror 159, Marvin Henderson.

15 **THE COURT:** Ms. Bryant, if you would, if you
16 don't mind, I'm going to switch y'all just for a second,
17 please. That will be the first chair there and the second
18 chair behind it.

19 Ladies and gentlemen, thank you very much. I
20 appreciate it. We will begin -- we will continue this
21 process in just a few moments. Let me talk with you about
22 a couple of matters at this point.

23 Ms. Bryant and Mr. Henderson, you are our
24 alternate jurors. That term means absolutely nothing at
25 this point. At the end of the trial when the jury will

1 begin its deliberations or, as we've talked, it could be
2 the two deliberations, the first 12, if they are able to
3 continue, will deal with that process. But if something
4 should happen along the way to one of the first 12, you
5 will be a part of that process. None of us know the
6 status of any juror at this time. So the fact that you
7 have been designated as an alternate juror should not in
8 any way affect your attention to this matter. I know that
9 you will pay close attention. Please don't even think
10 about that term. You're there and you may have to be, but
11 we don't know now. So just deal with it as if you were
12 going to be deliberating each time.

13 While you're the alternate, I would simply ask
14 that you occupy those chairs. And since we have a first
15 and second alternate, I would ask that our first
16 alternate, Ms. Bryant, if you will occupy the chair that
17 you are presently occupying as you come into the courtroom
18 from time to time. Mr. Henderson, I would ask if you
19 would occupy that seat as well as long as you are our
20 second alternate.

21 Ladies and gentlemen, the other jurors, are free
22 to occupy any of the remaining 12 seats that you like at
23 this point. The chair that Mr. Mustach is occupying at
24 this point is a chair that will be occupied by your
25 presiding juror, which is also the foreman, the forelady,

1 the foreperson. I refer to that juror as the presiding
2 juror. There has to be someone who has the responsibility
3 to sign any verdict forms that may be delivered to the
4 jury from time to time. Someone has to be responsible for
5 actually receiving exhibits that might be introduced
6 during the trial of this matter, and then once the jury
7 has completed its deliberations, returning those exhibits
8 to the Court. Someone has to be responsible for being
9 really what's tantamount to being the clerk of the jury.
10 If there are any written communications necessary from the
11 jury panel, it would be the responsibility of that person
12 to actually prepare that for submission to the Court.
13 Other than that, those are really the only additional
14 responsibilities.

15 Any of the first 12 of you are eligible to serve
16 in that capacity. The statute permits me to select that
17 person or you to select your presiding juror. I let the
18 jury panel select their presiding juror. Once you have
19 accomplished that, I would simply ask that that individual
20 occupy that seat for the balance of the trial. Until that
21 person has been selected, please feel free to occupy that
22 seat as you move into the courtroom from time to time.
23 And the time that you need to do that, if you haven't done
24 it by the time that we reach a certain stage in this, and
25 we'll talk about that in just a few moments, I'll remind

1 you you probably ought to take care of that item of
2 business.

3 But at this point, I'm going to let you go to
4 your jury room so you can become familiar with that room.
5 I need to speak to the remaining jurors for just a few
6 moments and then when you return we'll continue with this
7 process. Thank you very much. You may retire to your
8 jury room.

9 (WHEREUPON, the jury left the courtroom at
10 approximately 10:16 a.m.)

11 **THE COURT:** Those members of the entire panel
12 that were not selected, I want to thank you on behalf of
13 the State and Mr. Sapp for your participation in this
14 process. I assure you that I speak for them in saying it
15 could not have been accomplished but for your efforts.
16 And that's on both sides of this room. I know it's been a
17 long ordeal. And I thank you for your willingness to be
18 the type of citizen that truly makes me proud to be a part
19 of this process. Because every time I have this
20 opportunity, I truly leave this courtroom feeling pretty
21 good about where I live. And that's because I live with
22 some really dedicated people. Thank you for being that
23 type of person. Thank you for the service you've rendered
24 to this county and this state and, most of all, to me
25 personally, to this Court.

1 I wish you well. You're free to leave now.
2 You've earned your exemption for the next three years.
3 And I can understand that if I happen to be holding a term
4 of court in the next three years here and you happen to be
5 selected, don't worry about it. All you have to do is say
6 you remember me and I'll be happy to excuse you. You have
7 really done a yeoman's job in what you performed.
8 However, if on the other hand, by then, you've fully
9 recovered and you choose to work with us, then it will
10 truly be my honor to serve with you again. Good luck to
11 each of you. And Ms. Brown, our great clerk, I'll turn it
12 over to her. She has your certificates for you. But good
13 luck to each one of you. Thank you very much.

14 (WHEREUPON, the jury venire was excused from the
15 case at approximately 10:18 a.m.)

16 **THE COURT:** Are there any matters from the
17 State -- and let the record reflect Mr. Sapp is present.
18 Are there any matters from the State before we proceed
19 with swearing the jury?

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

21 **THE COURT:** Are there any matters from Mr. Sapp
22 before we proceed with swearing the jury?

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

24 **THE COURT:** Thank you, gentlemen. As I
25 mentioned to you, it would be my intention now to first

1 swear the custodians, then swear the jury. I'll make my
2 opening remarks and then turn it over to you for your
3 opening statements. After we have heard the opening
4 statements, we will recess until they are able to get
5 situated in their accommodations, have lunch and then
6 we'll return. Thank you very much.

7 Let's invite the jury to return, please.

8 (WHEREUPON, the jury came into open court at
9 approximately 10:30 a.m.)

10 **THE COURT:** Thank you very much, ladies and
11 gentlemen. As you know, when we were talking
12 individually, I mentioned to each of you that, of course,
13 you will be sequestered. The persons who will be with you
14 during this time are persons who are employed with the
15 South Carolina Law Enforcement Division. And I would like
16 to introduce them to you now.

17 First, I'd like to introduce Lieutenant Kenny
18 Mears, also Agent Rick McLeod, Agent Vance Boone, Agent
19 Buck Cockrell, Agent Reid Long, and Agent Blanche
20 McFadden.

21 And I'm not going to give you a quiz to see if
22 you can tell me who's who because I'm going to be doing
23 the same thing. I'm going to try to associate names with
24 faces. But you'll get to know them very, very well. And
25 I appreciate very much their willingness to assist us and

1 assist you in that regard.

2 I would ask Ms. Tucker, please, to administer
3 the oath to our jury custodians.

4 **THE CLERK:** Please raise your right hand. You
5 and each of you solemnly swear or affirm that you will
6 follow the instruction of this Court while this jury is in
7 your care, that you will not allow them to speak to anyone
8 nor anyone to speak to them nor will you speak to them
9 yourselves except in the course of your responsibility.
10 So help you God.

11 **THE SLED AGENTS:** We do.

12 **THE COURT:** Thank you very much. With regard to
13 that, ladies and gentlemen, I have had several meetings
14 with these persons. I have signed an order today dealing
15 with your sequestration. And they have gone over a list
16 that they will share with you of some of the so-called
17 rules and regulations and they will share those with you.
18 And I thank you for your willingness to work with them.

19 Ladies and gentlemen, I appreciate it. You may
20 take your seats now if you will and we'll proceed with the
21 swearing of the jury now.

22 Ladies and gentlemen, the next part of this
23 process is that I mentioned to several of you and that is
24 when you now will become the judge of the facts of this
25 case. As I mentioned to you, that is accomplished by the

1 oath that about to be administered to you now by
2 Ms. Tucker.

3 Ms. Tucker?

4 (WHEREUPON, the jury was sworn at 10:34 a.m.)

5 **THE COURT:** You now have become that judge that
6 I mentioned to you as we talked. You now have the sole
7 responsibility of deciding the true facts of this dispute.
8 You and you alone must make that decision and you have
9 each indicated to me in your conversations with the Court
10 and with the attorneys as well that you further promise
11 that you will make that decision only when directed by the
12 Court. And as we know, that will occur when I give you
13 the instruction to begin your deliberation on any
14 particular issue in this proceeding. Until that point,
15 ladies and gentlemen, I would remind you this morning that
16 the open mind that you brought into this courtroom, you
17 must maintain that open mind at all times throughout this
18 proceeding until the Court tells you to begin your
19 deliberations. I'm confident that each one of you will
20 honor the commitment that you've just made.

21 I want to make a few remarks to you to discuss
22 simply this process. Do not consider this to be the
23 charge on the law. As I mentioned to you, that will occur
24 at various times -- may occur at various times during this
25 process. As you know, the first part of this proceeding,

1 we will be dealing with these various charges that I have
2 shared with you. And this is the time when we will be
3 receiving evidence on those particular charges. And that
4 will take place later today. You know that it's that
5 evidence -- and the evidence, of course, consists of the
6 testimony of witnesses and exhibits and nothing else. My
7 remarks are not evidence. The attorneys remarks are not
8 evidence.

9 Now, the attorneys will have an opportunity --
10 just as I have an opportunity to speak with you, they will
11 have an opportunity to speak with you. They speak with
12 you on two phases of this proceeding. One will occur in
13 just a moment. It's called the opening statement. In the
14 opening statement, it's their first opportunity to discuss
15 this matter with you, to discuss some of the issues that
16 they believe you may hear or confront during the trial of
17 this matter. And again, remember that in the first stage
18 we're talking about only the issues concerning the
19 charges. And that's all the evidence that we will hear.
20 So those -- they will confine their remarks simply to
21 that. And you, of course, will direct your attention to
22 that aspect only.

23 They will have an opportunity in opening
24 statement, possibly, if they choose, to discuss some of
25 the legal principles that will be involved. And they, as

1 well, may give you an overview of the testimony that you
2 might like -- that they expect you will hear during the
3 trial.

4 They speak to you again in what we call closing
5 argument. And that stage follows the evidentiary stage.
6 In other words, at that point you will have heard all of
7 the evidence. And they will have a second opportunity to
8 now discuss the evidence with you as well as suggest
9 reasonable inferences which you may draw from that
10 evidence.

11 I will tell you now and will probably remind you
12 several times throughout this proceeding that the
13 attorneys' remarks in this process of dispute resolution
14 are very, very important. They are officers of this
15 court. And as I mentioned on Monday, they have a very
16 important responsibility in this process. They have a
17 duty, an obligation to present the evidence in this case
18 and argue the law in a fashion that will enable you and
19 enable me to make the decisions that we are called upon to
20 make. So, please, give them your undivided attention.
21 Their remarks are extremely important. But always
22 remember, like my remarks, they are not to be considered
23 evidence.

24 Of course, I will speak to you as well. I have
25 an opportunity to address you in this sort of preliminary

1 remarks before the first phase. And if necessary, it will
2 occur in the second phase. And of course, you know that
3 won't -- in this bifurcated proceeding, that will be
4 determined whether or not we have a second phase by what
5 occurs in this first phase. And you know, it's in that
6 evidentiary portion that will follow the opening statement
7 when you will have that opportunity to finally begin to
8 hear the evidence in this case. And the evidence will be,
9 of course, presented through the testimony of witnesses.

10 At the appropriate time, one of the decisions,
11 of course, that you will have to make is that you will
12 have to decide for yourself what you find to be credible
13 and believable. Now, I will discuss with you during the
14 charge portion, which will follow the evidentiary
15 proceeding what -- a number of factors. But I will tell
16 you now generally that that is a decision that each of you
17 have probably made many, many, many times in your life.
18 Probably most of the time, we make it subconsciously. But
19 certainly, there are times in our lives when we have had
20 to read something or we have heard something and we had to
21 decide, do I believe that? And if I do, how strongly do I
22 believe that?

23 Now, please remember, that's your sole
24 responsibility. No one here, nothing that I say, nothing
25 the attorneys should say should ever be taken or

1 considered by you as something that you have to accept in
2 resolving credibility. Now, I will tell you, they may
3 talk about some of those principles. You must listen to
4 them. They will be helpful to you when you begin the
5 process. But ultimately, that's your decision, what you
6 find to be credible and believable.

7 Now, also, you know during -- after the
8 evidentiary phase, you will receive the law from me. And
9 then, you know, it's my responsibility to be the judge of
10 the law. And of course, as we have discussed, that means
11 it's my duty to give you the law which you now by virtue
12 of that oath must accept and apply fairly and impartially
13 to those facts that you will ultimately determine once you
14 begin your deliberations.

15 The law, of course, is very important in this
16 process of dispute resolution. It's -- the charge portion
17 or instruction portion is an equally important phase of
18 this proceeding. I would submit to you that no phase,
19 opening statement, evidentiary phase, closing arguments,
20 charge phase is any more important than the other.
21 They're equally essential to this process, to this entire
22 process. And of course, in honoring the commitment that
23 you just made to the State and Mr. Sapp, and that is that
24 you would make and render a true decision here, a decision
25 that's fair to the State and fair to Mr. Sapp. So all of

1 them are important.

2 Of course, during that phase -- and we've talked
3 about these principles. I'm not going to continue to
4 discuss them at length with you now. But I will tell you
5 that, of course, you know that the burden rests solely on
6 the State in this process. The State will have to present
7 evidence that will persuade you when you begin your
8 deliberations and convince you beyond a reasonable doubt
9 that they have established every element of these crimes.

10 Of course, as I mentioned to you, these crimes,
11 I will define for you. I will give you the elements
12 during the charge phase. So don't worry about that now.
13 I will clearly define them for you. But always remember
14 in this entire process that you will look to the State to
15 prove those matters that the law requires them to prove.
16 And they have to prove those matters beyond a reasonable
17 doubt.

18 I look forward to trying this case with you. I
19 appreciate very much your attention to this process.
20 Please remember that our roles are separate. And your
21 role, of course, is -- your role is to decide the facts.
22 My role is to decide the law. As I mentioned, I think to
23 some, maybe to the whole, you decide those facts in the
24 confines of that jury room, out of the presence of all of
25 us. And that's the way the system was designed and it's

1 very important to this process. That should be where you
2 make those types of decisions or that decision.

3 Typically, the legal issues will be resolved out
4 of your hearing. Again, that's because they are solely my
5 responsibility. And it also is probably -- human nature
6 being what it is, you know you don't have anything to do
7 with it, but in the process of legal argument, it may
8 be -- it's sometimes necessary to discuss some of the
9 facts. So to avoid your having to hear that and then just
10 simply saying, oh, wait a minute, I'm not supposed to
11 consider that, we just simply do it out of your hearing.
12 So that's another reason. It, I think, keeps it cleaner
13 and clearer so you don't have to worry about it.

14 There's one exception, however, and I need to
15 mention it to you. Because it would not surprise me
16 during this trial because it's fairly common. Because as
17 I mentioned to you, the attorneys are officers of this
18 court. They have a duty to present the facts and they
19 have a duty to raise issues of law on behalf of their
20 clients as well. How they do that as the trial is
21 progressing, some of you may have served as a juror, some
22 of you may have witnessed trials before. You may hear an
23 attorney say, Objection, Your Honor. What I will ask
24 probably the attorney is to state succinctly, very -- just
25 narrowly their ground. If they need further argument,

1 we'll do that out of your hearing. But you may hear me
2 rule on that objection then. I may say sustained or I may
3 say overruled.

4 If I say -- if I sustain the objection, I've
5 said as a matter of law, I'm not going to permit you to
6 hear that question or answer. Please know that that's not
7 for your consideration. That means as a matter of law, I
8 have made a decision. You must make sure that you don't
9 allow yourself to step over that rail. Because if you
10 start thinking, well, I wonder why the objection was made
11 or I wonder what the person would have said or what was
12 the reason for that, you have now stepped over into my
13 area of responsibility. And you've promised that you
14 would not do that, that you will be the judge of the
15 facts.

16 On the other hand, if I overrule the objection,
17 I've said I'm going to permit that question and answer,
18 whichever it may be, and allow you to hear it. Now,
19 please understand, all I have done is said as a matter of
20 law that will be proper under our rules.

21 Now, you see, there are rules of evidence.
22 There are other decisions from case law, statutes, that
23 will be involved in my rulings. And there are reasons for
24 them. But you really don't need to involve yourself with
25 that because that's my responsibility. But please

1 understand that all I have said is it's okay with the
2 rule. It's proper. If you engage in any thought process
3 other than that, such as, well, the judge has allowed it,
4 I guess that's something I have to accept, then you know
5 what's happened? You've now let me step over into your
6 area of responsibility. Don't do that.

7 Because really and truly, I think it's probably
8 the best example of how we work together in mentioning to
9 you from time to time that our system has two judges that
10 serve together and help resolve these disputes. One judge
11 resolves the legal issues, one judge resolves the factual
12 issues. Simply stated, I have resolved the legal issue.
13 It's permissible. My responsibility stops at that point.
14 It shifts to you now. You have to decide whether you
15 believe it or not. And if so, how strongly you believe
16 it.

17 So you see, that's how we do work together.
18 You'll resolve those factual issues. I'll do my best to
19 resolve the legal issues. And then at the end, we combine
20 the two efforts and you will return a verdict that will
21 honor the oath that you just took and that is speak the
22 truth of this controversy.

23 Thank you for your attention. I ask you to
24 please now give that same attention to the attorneys as
25 they give their opening statements on behalf of their

1 clients.

2 Solicitor?

3 OPENING STATEMENT

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

5 Good morning, ladies and gentlemen. On the
6 afternoon of July the 6th, 2002, Jeff Johnson left his
7 wife and two children at home to go to work as a
8 lieutenant with the South Carolina Highway Patrol. A
9 shift that began no differently than the countless shifts
10 he had served in the 13 years that he had been with the
11 patrol ended tragically. You see, instead of Jeff coming
12 home the next morning and greeting his family, the end of
13 that shift was marked by a knock on the door. It's a
14 knock that every spouse of a law enforcement officer
15 dreads. It's a knock that notifies you that your loved
16 one has been killed in the line of duty. The man who is
17 responsible for that knock, ladies and gentlemen, is
18 sitting in the courtroom today and his name is Jesse Sapp.
19 Jeff Johnson encountered Mr. Sapp at about 2:30
20 in the morning on July the 7th of 2002. He and three of
21 his co-workers with the highway patrol were operating a
22 license check point on College Park Road. During that
23 check point, a green Dodge Dakota approached. There was
24 no way for the officers to know that the truck was stolen,
25 that there were drugs inside the car and that Jesse Sapp

1 was armed with a 40 caliber Smith and Wesson handgun.

2 As the officers dealt with the female driver and
3 Mr. Sapp, Jeff had Mr. Sapp's license and was
4 reapproaching the car to return it to him. Before he even
5 had a chance to speak with Mr. Sapp, Mr. Sapp got out of
6 that car and shot Trooper Jeff Johnson one time right
7 below his bulletproof vest with that 40 caliber Smith and
8 Wesson handgun. Jeff Johnson bled to death and died in a
9 ditch beside College Park Road.

10 As we were introduced -- we've been introduced
11 several times, ladies and gentlemen. My name's Blair
12 Jennings. I'm the Deputy Solicitor in the Berkeley County
13 Solicitor's Office. Myself, along with Solicitor
14 Hoisington, will be prosecuting this case on behalf of the
15 citizens of Berkeley County. Agent John Garrison with
16 SLED, he was the supervising agent in charge of this
17 investigation.

18 As the judge has told you and what I want to
19 emphasize to you, the opening statements are the
20 opportunities for the attorneys to sort of give you a road
21 map of where we're headed because many of you have never
22 served on juries and certainly, have not served on a death
23 penalty jury. And as you know, this is a unique process
24 that we're about to go through. So I'm going to spend the
25 remainder of my time in opening statement letting you know

1 where we're going.

2 First, as you know from several times, in a
3 death penalty trial, there are two processes. The first
4 process that we're beginning now is the guilt phase. The
5 question is simply is Jesse Sapp guilty of the charges
6 that we have presented to you? We're not concerned with
7 the punishment at this point. And you're not allowed to
8 consider any potential punishment until his guilt has been
9 proven to you beyond a reasonable doubt. At that point,
10 when we prove his guilt beyond a reasonable doubt, we will
11 shift to the second phase which concerns the penalty.
12 What is the appropriate penalty for his actions that
13 night?

14 He's charged, as the Judge told you on Monday,
15 with seven charges. He's charged with murder, the
16 unlawful carrying of a pistol, possession of a stolen
17 vehicle, possession with intent to distribute Ecstasy,
18 possession with intent to distribute Xanax, possession
19 with intent to distribute cocaine and possession with
20 intent to distribute morphine. Each of these charges has
21 elements and each element must be proven beyond a
22 reasonable doubt.

23 I want to start with murder and explain to you
24 what that is in the State of South Carolina because that
25 is, obviously, the most serious charge. Murder in our

1 state is the most serious offense and is the most serious
2 offense in this country that an individual can be charged
3 with. Although, it's the most serious offense, it has,
4 perhaps, the shortest definition. In South Carolina,
5 murder is defined as the unlawful killing of a human being
6 with malice aforethought. The two key terms in the
7 definition are malice aforethought. Suffice it to say, we
8 must prove that Jesse Sapp killed Jeff Johnson, that he
9 acted with malice aforethought when he committed the act,
10 and that Trooper Johnson died as the proximate result of
11 the defendant's actions.

12 What exactly does malice aforethought mean?
13 Malice is a legal term of art. It doesn't have a precise
14 definition, but it's been described as a person acting
15 with a dark and evil heart, a heart fatally bent on
16 mischief. Malice is said to spring from wickedness.
17 Aforethought simply means that the malice must exist a
18 split second before the fatal blow is struck. In South
19 Carolina, premeditation is not an element of murder. It
20 is sufficient if a second prior to that gun being fired
21 that Jesse Sapp had malice in his heart when he pulled
22 that trigger and shot Trooper Johnson.

23 The drug charges, he's charged with
24 possessing -- with possession with intent to distribute
25 those drugs. You will focus -- we will present to you

1 evidence, not only the weights of the drugs, but also
2 facts in this case that will show you that he possessed
3 those with the intent to distribute them. I submit to you
4 that the evidence will show when he was arrested after he
5 was shot, he had \$596 cash in his pocket. I submit to you
6 that in the car we will show was a scale, a pill cutter,
7 all the drugs with which he's charged as well as other
8 items of paraphernalia that are often used in the selling
9 of drugs.

10 You've heard many times throughout the selection
11 process the presumption of innocence. And I may have told
12 many of you and Solicitor Hoisington may have told many of
13 you, this is the tenet that our criminal justice system is
14 based on. Because every individual when they come into
15 this court of law is presumed innocent of the charges
16 they're facing. It is the burden of myself and Solicitor
17 Hoisington's to present proof to you beyond a reasonable
18 doubt that will convince you that Jesse Sapp is guilty of
19 these charges.

20 Ladies and gentlemen, please make no mistake
21 that in this case Solicitor Hoisington and myself relish
22 and embrace this burden. And I submit to you that the
23 evidence in this case will be both persuasive and
24 insurmountable.

25 What is proof beyond a reasonable doubt? It's

1 often easier to say what is it not? It is not proof
2 beyond any doubt or proof beyond any shadow of a doubt,
3 but just what it says, proof beyond a reasonable doubt.
4 What would cause a reasonable juror to hesitate to act?
5 At the conclusion of the trial, Judge Dennis will charge
6 you that if you are firmly convinced of the defendant's
7 guilt, then you must convict him. But as I have said, I
8 submit to you that the evidence in this case will leave
9 you much more than firmly convinced. You will be
10 convinced beyond any doubt that Jesse Sapp is guilty.

11 How exactly are we going to prove this? How are
12 we going to give you this proof that will enable you to
13 make this decision? I like to think of a trial as a
14 puzzle. Today, we're starting with the opening statements
15 and we have a clean table. We just have a box full of
16 puzzle pieces laid out on the table. Each witness that we
17 call and each piece of physical evidence is a piece to the
18 puzzle. And as we present it to you, all those pieces
19 will combine to create a complete picture, a complete
20 picture of the puzzle and a complete picture of the events
21 that happened on the morning of July the 7th of 2002.

22 I submit to you that this case is unique. It's
23 unique in both its completeness and in its strength.
24 Because over the next two days, we will present to you
25 both eyewitness testimony and scientific testimony which

1 will completely corroborate each other in proving the
2 defendant's guilt. And I say it's unique because it is
3 not in every case that you have both eyewitness and
4 scientific testimony corroborating each other. Sometimes
5 you may have one and not the other. But in this case,
6 both types of testimony will be presented to you that will
7 conclusively prove the defendant's guilt.

8 The eyewitness testimony that you will hear from
9 is three surviving troopers that were at that check point
10 that night. They will testify and tell you what they saw
11 as Jesse Sapp shot and killed their friend and co-worker.
12 They will tell you how they fired at him and how Jeff
13 Johnson fired at him as he fled trying to escape to a
14 wooded fence in an effort to get away from that scene.

15 You are also going to see the videos from their
16 cars. Unfortunately, none of the videos captured the
17 details of the shooting. But you will hear the gunshot
18 that took Jeff Johnson's life. And you will hear the
19 gunshots that followed as those three troopers tried to
20 stop a fleeing murderer. You're also going to hear from
21 two eyewitnesses, two civilians who happened to be at that
22 check point who saw Trooper Johnson approaching the
23 passenger side of that car, saw Jesse Sapp get out and
24 shoot him. And they will also tell you how he ran, firing
25 his weapon trying to escape.

1 You will also hear scientific evidence. You
2 will hear from an expert from the South Carolina Law
3 Enforcement Division who will tell you that the bullet
4 that was removed from the abdomen of Jeff Johnson was
5 fired by the 40 caliber Smith and Wesson handgun that
6 Jesse Sapp had that morning.

7 This is just some of the evidence that you're
8 going to hear, ladies and gentlemen. I submit to you
9 there will be much, much more. Every piece of evidence
10 will corroborate his guilt.

11 All I ask is that you keep an open mind.
12 Because just as this is an extremely important process for
13 Mr. Sapp, it's also an extremely important process for the
14 family of Jeff Johnson. Because just as it is Mr. Sapp's
15 day in court, it is also their day in court seeking
16 justice for the death of their loved one.

17 And I submit to you, once you have heard all of
18 the evidence, that veil of protection that is provided to
19 Mr. Sapp by his presumption of innocence will be shattered
20 by the weight of evidence that we have presented to you.
21 And there will be no doubt in any of your minds that Jesse
22 Sapp is guilty of the murder of South Carolina Highway
23 Patrolman Jeff Johnson. Thank you.

24 **THE COURT:** Thank you, Mr. Jennings.

25 Mr. Archer?

1 OPENING STATEMENT

2 MR. ARCHER: Morning, ladies and gentlemen. My
3 name is Paul Archer. I'm a criminal defense attorney. As
4 you know, I represent Jesse Sapp along with Robert
5 Johnston, who's sitting over there at the counsel table
6 with the silver hair. My job is to see that Jesse Sapp
7 gets a fair trial. As he sits there, he's presumed
8 innocent. The day he was arrested he was presumed
9 innocent. And he remains innocent until you, the jurors,
10 decide his fate.

11 Why is that? Sometimes you just can't prove
12 your own innocence. That is why the law says the
13 prosecution must prove him guilty beyond a reasonable
14 doubt. It's a tough burden of proof to convince all 12 of
15 you unanimously beyond a reasonable doubt that the
16 defendant did what the prosecution said they did. But
17 that's a good thing that it's a tough burden.

18 Many years ago, Justice John Harwin -- he was a
19 great U.S. Supreme Court Justice of the United States,
20 speaking about writing a decision about the burden of
21 proof. And he said -- and I don't quote him, but he
22 basically said that it's good that it's a tough burden,
23 because it's better to every once in a while let a guilty
24 man go free than to be a jury that makes a mistake and
25 finds an innocent man guilty. And that would be a

1 travesty of justice and that's why it's a tough burden.

2 Jesse Sapp is charged with the murder of Officer
3 Johnson along with other charges stemming from the police
4 traffic stop at approximately 2 a.m. on July 7th, 2002, at
5 College Park Road in Berkeley County. Murder is defined
6 as the killing of any person with malice aforethought.
7 It's a old term that's been used for years. Malice
8 aforethought either express or implied, it simply means
9 that he killed Trooper Johnson with some premeditation.
10 It doesn't have to be premeditated for months. It can be
11 premeditated, it was deliberate, it was planned. And
12 that's what the prosecution has to prove to you.

13 Now, this case is not that simple. And I'm
14 going to give you some facts here. There are many
15 conflicting statements in this case of what happened. And
16 there is much forensic evidence which conflicts with what
17 the witnesses saw. You're going to have to sift through
18 this and try to determine exactly what happened on that
19 tragic night.

20 The evidence is going to show that Jesse Sapp
21 fired his gun twice using 40 caliber bullets. We know
22 that Officer Johnson was hit once. That's all he had was
23 one bullet in him. That means that Jesse Sapp missed
24 once, obviously, but he may have missed twice. And I know
25 you're saying, well, if he didn't do it, then obviously,

1 who could have done it?

2 Well, Trooper Johnson was hit with a 40 caliber
3 bullet. However, the police officers at the scene were
4 also using 40 caliber bullets and they shot approximately
5 26 times. Jesse Sapp was hit three times in the back.
6 They missed. Bullets were flying all over the place.
7 Forty caliber bullets were flying all over. As a matter
8 of fact, one bullet even wound up in a trailer house all
9 the way across the way. A person was there wound up lying
10 in the sink.

11 The evidence is going to show that at Trooper
12 Johnson's autopsy they removed one 40 caliber bullet, but
13 it wasn't intact. It went in his stomach, but it hit the
14 back of his bones, the tailbone and it was splattered. It
15 was called fragmented. So this is not a perfect sample
16 that we have. Remember, everybody's shooting 40 caliber
17 bullets.

18 Trooper Johnson was hit with a 40 caliber
19 bullet. My question to you is was he hit with a 40
20 caliber bullet from Jesse's gun or was he hit with a 40
21 caliber bullet from another policeman's gun? You're going
22 to have to decide that. The burden again is on them to
23 prove that that 40 caliber bullet came from Jesse Sapp's
24 gun and that the killing was premeditated, deliberate and
25 planned.

1 Now, at the traffic stop there were three police
2 officers there besides Johnson, Officer Grainger, Officer
3 Sigwald and Officer Barwick. All three officers had their
4 video cameras on. They had put their video cameras on.
5 They just got there. They just set up this traffic stop.
6 So they're all ready and they're doing good police work.
7 They're putting the video cameras on in case somebody
8 comes out and staggers. They've got perfect evidence that
9 that person was drunk or somebody may claim police
10 brutality, they've got it right on video. So they did a
11 good job.

12 Officer Barwick's tape, Officer Grainger's tape,
13 you're going to hear the gunshots, but you can't see them.
14 Officer Sigwald's tape, you're going to hear the gunshots,
15 but it's very blurry. You can't see anything. But
16 Officer Barwick was in a perfect position. His tape shows
17 Jesse Sapp's pickup truck pulled right up to the stop.
18 You can see a police officer standing by the window where
19 he was going to be shot, right by this side window. Right
20 before the shots are fired, ladies and gentlemen, the tape
21 goes blank. Why? Why would the tape go blank? If it
22 didn't go blank, you could have seen this whole shooting.
23 You could have seen it all. Officer Sigwald and Officer
24 Grainger's tape didn't go blank. You can hear the shots.
25 Only Officer Barwick, you could have seen this whole

1 murder on tape, but his is shut off. You're going to hear
2 pow, pow, two shots. Then seconds later, you're going to
3 hear the 26 pow, pow, pow, pow, pow.

4 After that, 25 seconds goes by. You can time it
5 right on the tape. Twenty-five seconds is a long time.
6 One thousand one, one thousand two, one thousand three,
7 that's a long time. Jesse Sapp was shot three times.
8 He's already on the ground. And I'm going to play these
9 tapes to you. And in the tapes, 25 seconds later, you'll
10 hear pow. What was that? It was obviously a gunshot.
11 You're going to have to figure out what was that gunshot
12 about.

13 After the shooting stopped, obviously, he was on
14 the ground. If only Officer Barwick's tape did not go
15 blank, not only would you have seen Officer Johnson being
16 shot, you would have also had an explanation for that one
17 lone shot where there's no explanation for it. It would
18 have been right on tape.

19 Why did it go blank? He may claim he shut it
20 off. Better judgment, ladies and gentlemen, says that
21 that tape was erased. There is no doubt in your mind when
22 you see that tape, he just got there, he sets up his
23 camera, right before the shooting, what a coincidence, the
24 tape goes blank. Ladies and gentlemen, that tape didn't
25 go blank. They erased that tape. If we had that tape, we

1 wouldn't need eyewitnesses. We wouldn't need any of this.
2 You would see the whole thing for yourself on camera. You
3 would have seen it all.

4 This reminds me, I don't know if you remember a
5 number of years ago, a state trooper stopped a lady in
6 South Carolina. It was all over the national news. And
7 this little old lady said she was petrified. 6-foot-2
8 trooper standing there screaming at her to get out of the
9 car on 95. And you couldn't believe it. The trooper
10 reaches in and throws the old lady down on the ground. If
11 they had gone to court on this, who's going to believe
12 this lady? Nobody's going to believe this lady was pulled
13 out of the car by this big 6-foot-4 trooper who had a gun.
14 But ladies and gentlemen, he forgot his video camera was
15 on. His video camera recorded it all. There was the
16 perfect evidence. No better evidence than the video
17 camera.

18 And it's unfortunate, because you could have
19 seen this whole murder. You could have seen the 25 --
20 that 25-second shot, it would have all been on tape. And
21 there was absolutely no reason for him to shut that tape
22 off. That tape was erased.

23 In closing, please don't decide this case on a
24 hunch, on a guess or whim or whatever. Just listen to all
25 the evidence. The jury system in this country is part of

1 our democracy. And that's what makes this country so
2 great. And this is one of the things that this country
3 has that a lot of countries don't have. When a person is
4 accused of a crime, he's presumed innocent and people like
5 yourselves can sit in judgment. We don't take anybody out
6 in this country right away and say, He did it, and hang
7 them from a tree. We don't do that. This system is not
8 perfect, but it's been around for a hundred years. And
9 it's the best system we have and it's always proven to be
10 the best system we have. And I thank you and I think that
11 you should be very proud that you're serving on this jury
12 and being a part of this great country and the great
13 democracy and the great system we have called the jury
14 system. Thank you very much.

15 **THE COURT:** Thank you, Mr. Archer.

16 Ladies and gentlemen, at this point, obviously,
17 there are some matters that we need to take care of that
18 are not really related to the trial part or the testimony
19 part. The next part that you will proceed to will be the
20 testimony. I know it's 11:15, but this will work well.

21 I'm sure all of you -- I hope all of you have
22 your personal effects here with you. I'm going to now
23 excuse you from the courtroom. You'll be able to go with
24 your custodians to your temporary home for a while and get
25 settled there and then we'll go from there. From that

1 point, the plan is to go ahead and take you to lunch.
2 Arrangements have been made for lunch today for you. And
3 then once you have completed lunch, we'll return to resume
4 the trial at that time.

5 Please know that you are not to talk about this
6 case. And I will remind you of this, don't be offended by
7 it. I'll just remind you every time you leave not to talk
8 about it. I'm not suggesting by that that you are not
9 honoring that. But it's very important. As you know, no
10 deliberations begin until I give you that instruction. So
11 I would ask you, of course, not to begin your
12 deliberations in any fashion.

13 Mr. McLeod, do you think 1:30? Is that -- that
14 should do it? I mean, we can take longer. Do you think
15 1:30?

16 **AGENT McLEOD:** Yes, sir.

17 **THE COURT:** Two hours will be good?

18 **AGENT McLEOD:** Yes, sir.

19 **THE COURT:** Very well.

20 We will look forward to seeing you back at 1:30.
21 Have a good lunch. I hope you find the accommodations
22 suitable to you as well. You are now excused to leave
23 with your custodians. Thank you.

24 (WHEREUPON, the jury left the courtroom at
25 approximately 11:13 a.m.)

1 **THE COURT:** Anything from the State before we
2 recess?

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

4 **THE COURT:** And thank you for your patience and
5 interruption in this. We'll start back at 1:30 and,
6 hopefully, we'll go forward at that time. I'm going to
7 ask them to inquire over lunch what the jury's preference
8 would be about time to break for the evening, whether they
9 want to stop at 6 or 7, and get that matter resolved as
10 well so we'll have that.

11 Anything from Mr. Sapp at this point?

12 **MR. JOHNSTON:** No, Your Honor.

13 **THE COURT:** I want to take up one matter with
14 him in just a second. Let me deal with this.

15 Mr. Sapp, good morning to you, sir. And please
16 feel free to stay seated, sir. From time to time,
17 attorneys will stand and I'll allow you just to remain
18 seated. Because I will talk with you probably several
19 times directly as I have mentioned to your attorneys and
20 I'm sure they have discussed that with you. There are a
21 number of areas where you -- I need to communicate
22 directly with you concerning certain issues. And I want
23 to go ahead and broach some of those with you at this
24 point.

25 One deals with your right under our code of

1 laws, Section 16-3-28 provides that when a person is
2 facing a death penalty as you are here, you have the right
3 to address the jury in closing. Now, that right will
4 certainly -- it is your right in the first phase, the
5 guilt phase and then, of course, if necessary -- and I'm
6 not suggesting at this point that that will be necessary,
7 we'll talk about that should that happen, but you also
8 have the right in the penalty phase should it become
9 necessary. That right is not dependent upon whether you
10 decide to testify or not. And I'm going to talk to you
11 about that in just a moment and I'm sure your lawyers have
12 explained that to you.

13 The only thing that I would say to you that I
14 will -- is I will apply the law to the State and I will
15 apply the law to your attorneys, the rules. In closing
16 argument, of course, the argument has to be restricted to
17 the evidence and reasonable inferences that might be drawn
18 from the evidence. But with that limitation, you are free
19 to talk if you so desire. I'm not going to ask you to
20 make that decision at this point, sir. I will revisit
21 that with you later. But I will be asking you whether you
22 wish to discuss it or -- wish to exercise your right to
23 address the jury. And I will do it in this phase and as I
24 say, if necessary, the second phase.

25 Also, I will be discussing with you your right

1 to testify. And I'm sure you have had that conversation
2 with your lawyers. And feel free to talk with them
3 throughout about any matter, of course. And I want you to
4 especially talk about your right to address the jury and
5 your right to testify so that you resolve any questions
6 that you may have. Because I also will examine you
7 concerning that as well. Because they're very valuable
8 rights and I want to make sure that you fully understand
9 them and then you tell me what you want to do. Is that
10 agreeable with you, sir?

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

12 **THE COURT:** And you have not made the decision
13 now and I'm not asking you to, but before the case goes to
14 the jury, I will ask you to at least make that -- those
15 two decisions if you will, sir. Is that acceptable, sir?

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

17 **THE COURT:** Thank you very much, Mr. Sapp.

18 And thank you very much, gentlemen. We'll be at
19 ease now until 1:30.

20 (WHEREUPON, a lunch break was taken.)

21 (WHEREUPON, State's Exhibits Nos. 89 AND 90 were
22 marked for identification only.)

23 **THE COURT:** Let the record reflect Mr. Sapp is
24 present. The jury has not yet arrived. I wanted to talk
25 about a couple of other housekeeping matters. As I

1 understand and I appreciate you doing this yesterday, the
2 exhibits have been premarked and I have been provided a
3 list by the court reporter. The State, I believe, has 1
4 through 90, and 1 through 6 at this point for the defense.
5 Exhibit 88 is an exhibit, I think, that will be ID only --

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

7 **THE COURT:** -- in this phase and will not be
8 shown to the jury at any time. As I understand, all the
9 other exhibits, the parties agree those exhibits will be
10 admitted without objection. Is that correct for the
11 State?

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

13 **THE COURT:** Is that correct from Mr. Sapp?

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

15 **THE COURT:** What we will do then, rather than
16 admit them en masse, it will help us keep a record,
17 whenever you get to the point of the first time of using
18 that exhibit, if you would just simply offer it, I will
19 say it's in evidence without objection. And I won't look
20 to the opposing side to say otherwise if that's
21 acceptable.

22 Is that agreeable with the State?

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

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

25 **THE COURT:** Agreeable with Mr. Sapp? Thank you.

1 It will expedite matters somewhat. All right. We'll be
2 as ease, please, and as soon as they get here, we'll
3 resume the trial.

4 (WHEREUPON, a short break was taken.)

5 **THE COURT:** Let the record reflect Mr. Sapp is
6 present.

7 **THE BAILIFF:** They're ready, Your Honor.

8 **THE COURT:** Invite the jury to return, please.

9 (WHEREUPON, the jury came into open court at
10 approximately 1:39 p.m.)

11 **THE COURT:** I assume y'all haven't decided that
12 yet and everybody seems to steer away from that and that's
13 pretty normal. I've also -- some of the things that you
14 do when you sit where I am now, I didn't do it when I was
15 sitting out there as a lawyer, but I enjoy doing it
16 because it's interesting about human nature. You tell
17 jurors they can sit in any seat and it's funny how many
18 times a juror wants to get accustomed to a seat and they
19 want to get to that seat and they take that seat. And you
20 know what? That's fine. That's not a problem with that
21 either. I hope it doesn't cause any problem and y'all
22 will work through those, I'm sure. But I would ask you
23 this, if you are seated and you prefer a seat at the
24 end -- at this end, come in first so that you can get to
25 your seat. And if you're preferring a seat at this end,

1 come in last so that people don't have to crawl over you
2 because there really is not a lot of space there to work.

3 You needed to ask me something?

4 **THE POTENTIAL JUROR:** That light sitting there
5 on your bench --

6 **THE COURT:** It bothers you?

7 **THE POTENTIAL JUROR:** Yeah, it shines right at
8 us.

9 **THE COURT:** It bothers me, too.

10 **THE POTENTIAL JUROR:** Thank you.

11 **THE COURT:** Did that help?

12 **THE POTENTIAL JUROR:** Yes.

13 **THE COURT:** Thanks very much and I appreciate
14 that. I hope you found the accommodations satisfactory.
15 I hope your lunch was enjoyable. We're ready to continue.
16 Mr. McLeod has shared with me, I asked him to discuss with
17 you about the working hours. I, frankly, will stop at any
18 time that you want to stop. I would like to work, as I
19 said, until 6 o'clock, but if you want -- prefer 5:30,
20 we'll stop at 5:30. I just would remind you that,
21 obviously, that's an hour as you can imagine that you
22 won't hear testimony. You all are the ones who are
23 sequestered. And an hour doesn't make a difference
24 seemingly now. But as the days go on, they can tend to
25 accumulate. And, again, that's entirely up to you.

1 I also recognize as a human being and the older
2 I get, I enjoy breaking and a chance just to regroup and
3 think and relax for a minute. And I want to -- I respect
4 that as well. So I will probably at this point, we'll
5 start until I hear from you otherwise. We will stop
6 somewhere between 5:30 and 6. I will try to gauge it.
7 Sometimes it may be a little earlier, depending on the
8 length of a witness. Occasionally, we may have to go over
9 6, but we'll try to break at that time and see how that
10 works for a while. Thank you very much.

11 We're ready now to continue in this matter. I
12 ask you to please give your attention to the next witness.
13 Before calling that witness, let me also do what was just
14 done and thank you very much. If anything during this
15 trial, such as lights, bother you or affect your
16 performance of your duties in any way, such as you can't
17 hear a witness or you can't see some exhibit, please do
18 not hesitate to raise your hand and I will stop and try to
19 address that problem or concern. If I don't see any hands
20 raised, then I will assume that you can see everything and
21 everything's going fine with you.

22 Also, let me tell you now that, customarily, I
23 try to go about an hour to an hour and a half, usually
24 about an hour and a half before we take a break. And then
25 we'll take a break for about 15 minutes or so. And then

1 we'll go another hour, hour and a half, depending on where
2 we are in that particular day. But if someone needs a
3 break sooner than that, again, if you'll just raise your
4 hand, I'll be happy to accommodate you as well so that
5 we'll develop and work and I'll get a feel for what the
6 jury wants to do, but it would help me tremendously.

7 Insofar as being able to see, let me point out
8 one thing, sometimes it's not uncommon in a trial where a
9 witness may be showing the jury some exhibit. And many
10 times, they will start at this end. That doesn't mean
11 that you're not going to get to see it, they just work
12 their way down. So sometimes it just takes -- the process
13 may take a little longer, but be patient and that will
14 eventually come to you. Thank you very much and please
15 now give your attention to the first witness.

16 You may call your first witness, Solicitor.

17 **MR. HOISINGTON:** Thank you, Judge. We call
18 Trooper Patrick Sigwald to the stand.

19 PATRICK WAYNE SIGWALD, after being duly sworn,
20 testified as follows:

21 **THE CLERK:** Please be seated. State your full
22 name and spell your last name.

23 **THE WITNESS:** My name is Patrick Wayne Sigwald.
24 It's S-I-G-W-A-L-D.

25 ///

DIRECT EXAMINATION

BY MR. HOISINGTON

Q Trooper Sigwald, how old are you?

A Thirty-six.

Q Where did you grow up?

A Charleston.

Q Where did you go to school?

A West Ashley -- I went to St. Andrews High.

Q Are you married?

A Yes, sir.

Q Have a family?

A Yes, sir.

Q How many kids?

A Two.

Q Obviously, they can tell you're in the highway patrol. How long have you been with the highway patrol?

A Since 1990.

Q And tell us what got you into the highway patrol.

A My father was in law enforcement, still is with Charleston City Police Department. So I was around it all my life and it was a career I wanted to take up.

Q So just take us briefly through the training you get as a highway patrolman, please.

1 **A** Some people call it a boot camp. It's strict. They
2 take you to the Academy. You report on a Sunday.
3 You go home on a Friday. You rise at a certain time.
4 They teach you how to perform your duties. They
5 teach you how to -- if you suspect somebody of DUI,
6 they teach you how to go about that. They teach you
7 how to present a case in a courtroom to obtain a
8 conviction. They teach you how to use your common
9 sense on the job, that common sense is a major part
10 in police work. Use that and, usually, you'll make
11 your time to retire.

12 **Q** Now, you have been with the highway patrol for 13
13 years, I believe you said?

14 **A** Yes, sir.

15 **Q** Have you been in -- what county do you operate
16 primarily out of?

17 **A** Right now, Charleston/Berkeley. They've kind of
18 combined it into a troop system where we work both
19 counties.

20 **Q** Have you been in Charleston/Berkeley the entire 13
21 years in the highway patrol?

22 **A** No, sir.

23 **Q** Where did you start out?

24 **A** My first two years was in Allendale, South Carolina.

25 **Q** Where did you first meet Jeff Johnson?

1 **A** Patrol school.

2 **Q** So you were in the same class he was?

3 **A** Yes, sir.

4 **Q** Had you had an opportunity to work together over the
5 years?

6 **A** Yes, sir. He was in Hampton County, which is beside
7 Allendale. And we would visit and work together. We
8 had a social and a working relationship as soon as we
9 came out.

10 **Q** Did you -- when did you get transferred to Charleston
11 County?

12 **A** Late '92, early '93.

13 **Q** Do you remember when Jeff got in this area, Jeff
14 Johnson?

15 **A** He was before myself.

16 **Q** Were you around when he got married?

17 **A** No, no, he -- they had been together long before I
18 came along.

19 **Q** Let me go back and tell me something about your
20 general duties as a highway patrolman.

21 **A** The way I understand it, the duties of a highway
22 patrol is to reduce traffic collisions so we can
23 reduce our fatality rate. We want it to be if you
24 leave home to go somewhere, you get back home. So we
25 enforce traffic laws to try to make that possible.

1 **Q** All right. And give us some examples of how you
2 patrol. I mean, do you patrol the streets in a
3 moving vehicle? Do you stop them sometimes or how is
4 that?

5 **A** Yes, sir, we use moving radar. You're always
6 looking -- whether or not you have a radar unit,
7 you're always looking for violations of law. That's
8 what I get paid to do, so that's what I do. You can
9 use radar to do that. You can use your eyes and see
10 tag violations, equipment violations. You can stop
11 on a stationary radar. You can set up check points.
12 You can saturate an area where instead of just seeing
13 one highway patrolman working an area, you may have
14 three, four or five. And you just stay in that
15 general vicinity backing each other up and looking
16 for violations of law.

17 **Q** What would you say -- when you make an arrest or
18 issue a ticket, typically, what is it for?

19 **A** For a violation of traffic law.

20 **Q** And which ones require a defendant or a person
21 charged with a violation of a traffic law to go to
22 jail right away or post a bond or which ones are
23 given courtesy summons?

24 **A** Most can be given courtesy summons. Some of them
25 depends on the driving record as to whether or not

1 they would be incarcerated. Driving under the
2 influence would be incarcerated.

3 **Q** Now, on the day of July 6th of 2002, were you on duty
4 that day to begin?

5 **A** Yes, sir.

6 **Q** What time did you start work? Do you remember?

7 **A** I believe we started at 7 p.m.

8 **Q** When you say we, were there others on the same shift
9 as you were?

10 **A** Yes, sir.

11 **Q** Do you recall the names of the other officers?

12 **A** Myself, Todd Proctor, Jeff Johnson, Mitch Brown, I'm
13 sure I'm leaving somebody out right now.

14 **Q** To the extent you can remember the movements that you
15 had earlier that evening, do you remember what type
16 of patrol you were doing?

17 **A** I was doing routine patrol on the interstate.
18 Myself, Jeff Johnson and Todd Proctor, we went to
19 Arby's on 52 by Aviation and had dinner.

20 **Q** Was that before you started work or during the shift?

21 **A** That was during the work shift.

22 **Q** Okay. And what happened while you were having dinner
23 at Arby's?

24 **A** A decision was made to have a check point, a driver's
25 license check point.

1 **Q** Give us an overview of what a driver's license check
2 point entails.

3 **A** Well, we have some signs, it says driver's license
4 check point ahead. We place the signs out. You try
5 to have as many folks as you could there. Usually,
6 there's safety in numbers. You would check every
7 vehicle coming through. Some things you write
8 tickets for, some things you write warnings for,
9 sometimes people go to jail. It depends on the
10 degree of the infraction.

11 **Q** Where was -- how many of these check points did you
12 take part in that night?

13 **A** Two.

14 **Q** Where was the first one?

15 **A** At the 17-A exit ramp in front of, I believe's it's
16 McElveen's, the old ramp. Used to have to make a
17 hard right curve and you really couldn't see us until
18 you got around the curve. Then it was a long
19 straight away where you could see us.

20 **Q** Do you remember how many troopers were at that check
21 point?

22 **A** Four or five.

23 **Q** Anything out of the ordinary happen at that
24 particular check point?

25 **A** Not in particular.

1 **Q** How long -- well, let's see if we can narrow down the
2 time a little bit. What time do you think you set
3 that check point up?

4 **A** It would have been after 10:30, 11 o'clock, something
5 of that nature.

6 **Q** Approximately how long did you stay at that check
7 point?

8 **A** Usually it's an hour, hour and a half.

9 **Q** So there were no -- to your memory, you didn't make
10 any arrests that required anybody to be incarcerated
11 or go to jail?

12 **A** No, sir.

13 **Q** What caused you to leave that particular check point?
14 Do you remember?

15 **A** Well, I know a couple fellows were very shortly to
16 get off. We were going to the morning so we decided
17 to go to another point on College Park Road.

18 **Q** Who made the decision to go there? Do you recall?

19 **A** Jeff Johnson.

20 **Q** Who was the supervisor, if there was one, of the
21 group of troopers that were out that night?

22 **A** Jeff Johnson.

23 **Q** Describe the College Park Road area for us for those
24 who haven't been there and don't know it?

25 **A** It's a two-lane road that runs from 17-A back -- all

1 the way back to, I guess that's Ladson Road.

2 Q And where were you? The area where you were located
3 was closest to what?

4 A 17-A.

5 Q Do you know approximately how far it was from 17-A?

6 A No, sir. I didn't work that area a great deal before
7 this. I work it more now, but --

8 Q Approximately what time did you set up the check
9 point at that location?

10 A Somewhere around 2 o'clock.

11 Q To your knowledge, that location is in Berkeley
12 County?

13 A Yes, sir.

14 Q Describe the mechanism of setting up a check point,
15 how you place the cars and what notice you give to
16 the drivers that are coming.

17 A Right. We've got a sign in both directions advising
18 check point ahead. We have our reflective vests, our
19 flashlights, cars parked in the area. Maybe one or
20 two cars readily available to get people who may make
21 an infraction while turning around from a check point
22 that would be able to stop that vehicle.

23 Q Do you recall how long you had been at that location
24 before this event happened?

25 A Thirty, 45 minutes, something like that.

1 **Q** Do you know how many cars you might have stopped
2 prior to that?

3 **A** No, sir.

4 **Q** Had you made any arrests at that location?

5 **A** We had written several traffic citations, but we had
6 not arrested anyone at that point.

7 **Q** Please give us some information about what occurred
8 that night when you -- when this event happened.
9 Where were you standing?

10 **A** I was standing in the middle of College Park Road.
11 All the other units -- all the other people there,
12 including Roy Barwick and Steve Grainger -- there was
13 no systematic thing to it. If you were standing and
14 the car approached you, then you checked out the
15 vehicle. It just so happened at that time all the
16 other people at the check point were busy. So I was
17 the only one left. So a pickup truck approached from
18 the 17-A side. And as usual, I waited. The vehicle
19 stopped. I noticed that the window was rolled down
20 just enough for us to hear each other without having
21 to holler through the window. And I asked for the
22 driver's license.

23 **Q** Who was driving the vehicle at the time? Can you
24 describe the person?

25 **A** Yeah. When I approached, there was a white female

1 operator and a white male passenger in this pickup
2 truck.

3 Q You approached originally on the driver's side?

4 A Really, I didn't approach, they kind of just came up
5 to me.

6 Q Yes, sir.

7 A Yes, and I was on the driver's side.

8 Q Go ahead.

9 A And she did produce a driver's license, handed it to
10 me through the crack.

11 Q Do you remember the name on that driver's license?

12 A Last name was Boles.

13 Q What did you do following that?

14 A Walked to the rear of the truck to look for the tag,
15 to make sure there was a tag present, noticed what
16 looked like a handicapped tag, started walking back
17 up to the truck and I noticed a lot of alcoholic
18 beverage containers in the back of the truck.

19 Q What did you do following that?

20 A I approached the driver's side again and I asked the
21 driver if there was any alcohol in the truck. And
22 when she handed me the driver's license, she was
23 facing me. And she continued facing me until she
24 answered the question. Before she answered the
25 question with the word no, she looked down away from

1 me and looked straight ahead.

2 Q During this period of time, did you have your weapon
3 drawn or pistol drawn or anything?

4 A No, sir.

5 Q Are there general regulations regarding a weapon that
6 a highway patrolman follows?

7 A Yes, sir.

8 Q So typically, you would not have drawn a weapon in
9 that circumstance?

10 A That's correct.

11 Q All right. Did you have a flashlight out or could
12 you look in the vehicle?

13 A Yes, sir.

14 Q What did you do following that?

15 A I asked her to pull to the right shoulder, in which
16 she did.

17 Q And your next action was?

18 A I walked up to the pickup truck and I approached the
19 passenger side. That's an approach that's been
20 taught in the last few years, I guess, at the
21 Academy. They say it's a safer way to approach the
22 vehicle. I had some doubts about what was going on
23 in this truck, so I wanted to go to the opposite
24 side. I don't know if it would surprise them, but
25 just catch them off guard for a little bit until I

1 got a chance to get a feel for what was going on in
2 the truck.

3 **Q** What did you see when you got to the passenger side
4 of the vehicle?

5 **A** When I got to the passenger side, like I said, a male
6 was the passenger. And pickup truck and guys, I
7 figure that goes together, so I asked for the
8 registration and the insurance certificate from the
9 passenger who I thought may have been the owner of
10 the truck.

11 **Q** Did he produce one?

12 **A** No, he opened up the glove box and started looking
13 through the papers. There was a lot of -- my memory
14 says there was a lot of things in that glove box.
15 And he was looking around for it. And at that point,
16 while I had my flashlight out watching his hands in
17 the glove box, I noticed that there was a beverage
18 container on the floor board.

19 **Q** What kind of beverage container was it if you know?

20 **A** It was a bottle of beer.

21 **Q** What did you do as a result of that?

22 **A** I asked him to hand it to me.

23 **Q** Did he?

24 **A** Hesitantly. A lot of times, we have some people who
25 kind of look around and act like they don't know what

1 you're talking about. I have had it happen on more
2 than one occasion. Then he did pick it up and hand
3 it to me.

4 **Q** Did he say anything to you?

5 **A** No.

6 **Q** Did you have an opportunity to look at him in the
7 truck? Did you get a look at his face?

8 **A** Yes, sir.

9 **Q** Let me show you --

10 **A** And I also asked for his driver's license once I
11 found that.

12 **Q** Let me show you State's Exhibit No. 90 and ask if
13 that's -- does that appear to be the passenger in the
14 pickup truck?

15 **A** Yes, sir.

16 **MR. HOISINGTON:** Move that into evidence at this
17 time, Your Honor.

18 **THE COURT:** Without objection into evidence,
19 State's Exhibit 90.

20 (WHEREUPON, State's Exhibit No. 90 was admitted
21 into evidence.)

22 **Q** And I believe you said he gave you a driver's
23 license, State's Exhibit No. 64?

24 **A** Yes, sir.

25 **Q** That appears to be the driver's license that was

1 handed to you?

2 **A** Yes, sir.

3 **MR. HOISINGTON:** Thank you. Move that into
4 evidence as well.

5 **THE COURT:** State's Exhibit 64 into evidence
6 without objection.

7 (WHEREUPON, State's Exhibit No. 64 was admitted
8 into evidence.)

9 **Q** What happened after you got the beer bottle from the
10 defendant?

11 **A** Well, I got the beer bottle. I got his
12 identification and I asked him if it was his. And he
13 made no reply, whether it be yes or no, he made no
14 reply. That's when the driver spoke up and said,
15 That was my first one tonight.

16 **Q** Where was she at that time?

17 **A** She was still in the driver's seat.

18 **Q** What did you do then?

19 **A** I put my head inside the truck in full view of the
20 both of them and asked her to step to the rear of the
21 vehicle with me.

22 **Q** And that was from what side of the pickup?

23 **A** I was on the passenger side.

24 **Q** Okay. What did she do?

25 **A** She complied.

1 Q And what did you discuss with her, if anything?

2 A Well, we met back at the left rear of the pickup
3 truck. We started discussing about how much
4 consumption she had had. Like she said, it was her
5 first one. And at that time is when Jeff Johnson
6 walked up.

7 Q Now, what rank was Jeff?

8 A Corporal.

9 Q And again, just so we'll be clear, he was taking part
10 in this license check with you at that time?

11 A Yes, sir, he was the supervisor.

12 Q When he walked up, what was his role at that point?

13 A He was assisting me.

14 Q What did he do?

15 A He walked up and as the driver and myself were
16 discussing the matter, he picked up on it before I
17 did, that she looked to be younger than 21. Because
18 he asked her how old are you and she said -- I
19 believe she said 20. And Jeff said, well, you know,
20 that looks like an open container violation and a
21 minor in possession violation.

22 Q Okay. And what was the next thing that he did?

23 A Well, Jeff was standing to our left a little bit. I
24 had both identification cards. I handed Jeff that
25 driver's license of Mr. Sapp. And my comment to him

1 was, Well, where there's one, there's probably two.

2 **Q** What were you referring to?

3 **A** Open containers.

4 **Q** Okay.

5 **A** Jeff took the driver's license, walked around us.

6 And once he kind of made the bend on the truck, the

7 right corner of the truck, started walking straight

8 up to the side -- now, when I say straight up to the

9 side, I don't mean that he was out -- I don't know

10 how he was walking up the side of the truck. But I

11 know he was not in my vision and peripheral, I could

12 see him over here. That's when the driver asked for

13 a break on the minor in possession charge. She

14 didn't want the minor in possession charge. And as I

15 was about to respond to her is when I heard a very

16 loud noise.

17 **Q** When you say a loud noise, what do you mean?

18 **A** It sounded like a gunshot to me.

19 **Q** Okay. Did you hear any other noise following that?

20 **A** Yeah, I heard a sound like a -- like a -- it was like

21 somebody's getting -- if you get boxed in the stomach

22 and you lose your air, it's much louder than that. I

23 can't even begin to make that noise that I heard.

24 **Q** Did Jeff Johnson say anything?

25 **A** He said, You sorry bastard.

1 **Q** What did you then do?

2 **A** I completely forgot about the subject that was with
3 me -- well, let me say this, I left her after I
4 heard -- I heard the initial one and it kind of
5 stunned me for a second. Then I heard the noise, You
6 sorry bastard, and I heard another gunfire. I heard
7 many shots. I left --

8 **Q** Who was firing those shots at that point?

9 **A** When I went from the left rear of the truck to the
10 right rear of the truck, I saw Jeff firing at a
11 subject running down a driveway that they had kind of
12 catty-cornered into off of College Park Road.

13 **Q** What did you do?

14 **A** I began firing at the same subject.

15 **Q** How many shots do you remember firing or do you know
16 you fired?

17 **A** I don't recall.

18 **Q** What did the person running do?

19 **A** Eventually, he fell.

20 **Q** What was your next role after that?

21 **A** I holstered my weapon. I went back to the driver. I
22 handcuffed that subject, told her to stay there, went
23 back to the passenger side and that's --

24 **Q** Take a second. Do you need a cup of water or
25 anything? Sometimes that helps.

1 **A** No, sir. That's when I saw Jeff, Corporal Johnson,
2 laying face down perpendicular to College Park,
3 parallel with the driveway, which would have put
4 him -- excuse me, not at the driveway, parallel with
5 the driveway, a good distance away, facing College
6 Park Road.

7 **Q** What was his condition?

8 **A** He was laying down, not moving, not talking, not
9 making noise.

10 **Q** What did you do at that point?

11 **A** I ran over to Jeff and, number one, I couldn't
12 believe what I was seeing. I tried to talk with him
13 a second to see if he was talking to me. I didn't
14 want to move him. Seemed like I've always been
15 trained not to move anybody. I tried to talk with
16 him for a second. And then I told him, I said --
17 well, I knew that if something was going to happen,
18 he wasn't going to die face down in a ditch. So I
19 turned him over, parallel with the ditch in that
20 front yard by that mobile home.

21 **Q** Did you try to administer any kind of aid or were you
22 able to at that point?

23 **A** Two bystanders came up. And one -- one for some
24 reason, it got on that they were in the medical
25 profession. I don't want to say they were a doctor,

1 but they had some type of training in that. And one
2 person was checking -- well, before we go that far,
3 as soon as I saw him down, of course, we asked for an
4 ambulance. I yelled back to Steve on this --

5 Q Steve Grainger?

6 A Steve Grainger, right. I yelled back in that
7 direction. I didn't know who was standing there.
8 But I did see him once I started hollering for
9 somebody to get an ambulance. Then we started
10 tending with him. The two other folks came over.
11 Steve came over, said to undo his vest and keep some
12 pressure on the wound. So one subject was doing
13 that. One subject was checking the pulse and said he
14 still had a pulse. Everything was quiet, but for
15 some reason, we seemed to think everything was all
16 right.

17 Q Could you even tell where he had been hit at that
18 point?

19 A Yeah, when we opened up his shirt, we saw one hole
20 below the vest.

21 Q Was he bleeding badly?

22 A No, sir.

23 Q Did you stay with him until EMS came?

24 A Yes, sir.

25 Q Did he ever appear to gain consciousness while you

1 were with him?

2 **A** He never made -- no, sir.

3 **Q** So the only thing you heard him say was that initial
4 comment?

5 **A** Yes, sir.

6 **Q** When EMS got there, what were your responsibilities
7 regarding this event at that point?

8 **A** Of course, it was all theirs. I mean, I wanted to
9 give them space and let them work. I assisted any
10 way I could. They came and checked him for a few
11 moments and then they said that he was code and they
12 rolled him back over and then they started doing CPR.
13 And we got him on the gurney and put him in the
14 ambulance.

15 **Q** When did you find out he had not made it?

16 **A** They had taken us away from the scene and we were at
17 the local fire department. And it was -- I was in
18 constant contact with Todd Proctor, who was sent to
19 the hospital. And he told me an hour, hour and a
20 half, I couldn't give you an exact time.

21 **Q** Following an event of this nature, what happens? I
22 mean, when you have discharged a firearm and you are
23 a witness in a shooting, who investigates the case at
24 that point?

25 **A** SLED.

1 **Q** Did you have an occasion to turn over your weapon?

2 **A** Yes, sir.

3 **Q** Let me show you what's been marked State's Exhibit
4 No. 2.

5 **MR. HOISINGTON:** I think without objection, Your
6 Honor?

7 **THE COURT:** Very well. State's Exhibit No. 2
8 into evidence without objection.

9 (WHEREUPON, State's Exhibit No. 2 was admitted
10 into evidence.)

11 **Q** Look at that.

12 **A** 0309.

13 **Q** That's your firearm?

14 **A** Yes, sir.

15 **Q** And it's immediately turned over to SLED?

16 **A** Yes, sir.

17 **Q** Also, I show you a photograph marked State's Exhibit
18 No. 75.

19 Can you blow that up a little bit? Thank you,
20 Fred.

21 In that photograph, what appears to be three
22 objects? Can you identify what they are?

23 **A** The flashlight and the driver's license look to be
24 what Jeff had when he left me before he approached on
25 the passenger side.

1 **Q** And the hat you saw just lying on the ground?

2 **A** I saw it after the events.

3 **MR. HOISINGTON:** That's State's Exhibit No. 63
4 without objection and the flashlight is 42.

5 **THE COURT:** State's Exhibit 42 and 63 into
6 evidence without objection. Hold on just a second,
7 Solicitor. If you will pause just briefly while the court
8 reporter makes some marks.

9 (WHEREUPON, State's Exhibits Nos. 42 and 63 were
10 admitted into evidence.)

11 **Q** Now, I believe you said also that you took off his
12 bulletproof vest and his reflector vest; is that
13 right?

14 **A** Well, we undid it, the Velcro straps that keep it
15 tight on the bottom.

16 **Q** This is State's Exhibit 44. Is that --

17 **A** That's the reflective vest.

18 **Q** -- that he was wearing? And when EMS came, did they
19 have to take off his uniform?

20 **A** Yes, sir.

21 **Q** And we have all this marked together, but that
22 appears to be the uniform that was cut off of him?

23 **A** Yes, sir.

24 **MR. HOISINGTON:** We move that into evidence,
25 Your Honor.

1 **THE COURT:** Is all the items State's Exhibit 44?

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

3 **THE COURT:** The bag containing various items,
4 State's Exhibit 44, uniform and reflective vest, into
5 evidence without objection.

6 (WHEREUPON, State's Exhibit No. 44 was admitted
7 into evidence.)

8 **Q** And then State's Exhibit No. 43, can you identify
9 this?

10 **A** Yes, sir, that was Jeff's protective vest.

11 **Q** This has a marking on it saying O Negative. Do you
12 know what that is?

13 **A** That's his blood type. That's the first one I've
14 ever seen with a blood type marked on the vest.

15 **Q** And this flap here, what is the purpose of that?

16 **A** Just keeps it tucked into your shirt as far as I'm
17 concerned.

18 **Q** And in the middle of that flap is what appears to be
19 a hole?

20 **A** Yes, sir.

21 **MR. HOISINGTON:** Move that into evidence as
22 well, Your Honor.

23 **THE COURT:** State's Exhibit 43 into evidence
24 without objection.

25 ///

1 (WHEREUPON, State's Exhibit No. 43 was admitted
2 into evidence.)

3 **Q** Now, to get a little better idea of what you were
4 telling us about as far as the vehicle, does that
5 appear to be the pickup truck that you've been
6 describing?

7 **A** Yes, sir.

8 **Q** And there's a laser pointer right up by you. Do you
9 want to show where you were standing when you were
10 talking to Kathryn Boles? That might be of help.

11 **A** This position here.

12 **Q** Okay.

13 **A** She was more on the side of the truck and I was more
14 to the rear of the truck in that same corner.

15 **Q** And the direction that Jeff walked when he took the
16 driver's license from you?

17 **A** He left from this area, came around and proceeded up
18 that passenger side.

19 **Q** What's that on the back of the pickup truck?

20 **A** That is the beverage container I testified to.

21 **Q** When you heard the gunshot, which direction did Jeff
22 move to?

23 **A** I don't know where he moved to. I was over here. I
24 stopped here, saw Jeff over in this area and I saw a
25 subject running down this driveway.

1 Q Okay. And that's the direction you were firing?

2 A Yes, sir.

3 Q Do you ever recall after the first initial gunshot
4 whether Jeff was facing you at any time?

5 A He was not facing me.

6 Q Approximately how far down that driveway did Mr. Sapp
7 get?

8 A My memory says just before that trailer, somewhere in
9 that area.

10 Q I show you --

11 MR. HOISINGTON: That hasn't been introduced,
12 Your Honor, that's No. 73 that we just referred to.

13 THE COURT: State's Exhibit No. 73, a photo,
14 into evidence without objection.

15 (WHEREUPON, State's Exhibit No. 73 was admitted
16 into evidence.)

17 Q I show you State's Exhibit No. 71. I believe you've
18 had an opportunity to look at that picture in the
19 past. Those marking are where shell casings were
20 found?

21 A Yes, sir.

22 Q Would that indicate where your shell casings were
23 deposited from your firing?

24 A I believe so, yes, sir.

25 Q Show briefly if you can see it on there where your --

1 **A** Are you talking about that collection there?

2 **Q** Yes, sir. And Jeff's shell casings would have been
3 in what area, where?

4 **A** (The witness indicated.)

5 **Q** Roughly, where did he fall in that ditch?

6 **A** Right in that area where his vest and hat are.

7 **MR. HOISINGTON:** Thank you, Fred.

8 **Q** Let me show you a chart over here and let's see if we
9 can help acclimate the jury a little bit. You might
10 want to come down. And if you will take that little
11 marker.

12 **THE COURT:** Trooper, please make sure when
13 you're down that you keep your voice level elevated,
14 please, sir.

15 **THE WITNESS:** Yes, sir.

16 **Q** Now, if you'll look at that area, first thing I want
17 you to do is get yourself acclimated.

18 **MR. HOISINGTON:** This is State's Exhibit No. 89,
19 Your Honor, without objection.

20 **THE COURT:** 89 without objection into evidence.
21 Hold on just a second.

22 (WHEREUPON, State's Exhibit No. 89 was admitted
23 into evidence.)

24 **Q** If you will, mark with an S where your vehicle was
25 located.

1 **A** On it or above it?

2 **Q** Just somewhere near it. And just point out to the
3 jury -- don't mark it yet -- roughly where you were
4 standing when the pickup truck first came into --
5 when you first stopped the pickup truck.

6 **A** (The witness complied.)

7 **Q** And then show where the pickup truck is on this
8 chart.

9 **A** (The witness complied.)

10 **Q** Do you recall where the other officers -- troopers'
11 vehicles were parked? Which ones were which?

12 **A** Yes, sir. This would have been Steve Grainger's, Roy
13 Barwick's --

14 **Q** You will have to talk up a little bit.

15 **A** Steve Grainger, upper left; Roy Barwick; Corporal
16 Johnson's.

17 **Q** Would you put their two initials on each of those
18 vehicles somewhere near it?

19 **A** (The witness complied.)

20 **Q** All right. That's all I have. You can take your
21 seat again.

22 **A** (The witness complied.)

23 **Q** In the course of your making traffic stops, do you
24 have any facilities for videotaping a stop?

25 **A** Yes, sir.

1 **Q** Tell me how that works.

2 **A** Well, there's two ways you can turn the system on --
3 actually, three. Number one, it's just like a VCR.
4 The camera equipment is facing forward, of course.
5 You have a box in the trunk where the tapes are
6 inserted. And your control panel is in the front of
7 your vehicle. Different vehicles have them in
8 different locations, some are high and some are low
9 down by your knee.

10 **Q** When typically is that tape activated?

11 **A** Usually, it's activated when your blue lights come
12 on, when your front blue lights come on. Another
13 time it can be activated is just by pressing record,
14 say that happens a lot of times if you're following a
15 person that you think might be driving under the
16 influence, you would press record and get some of the
17 driving before the stop. Or if you're outside with
18 an event, like a disabled motorist or something like
19 that, and an event starts to take place, you can
20 reach on your body mic, flip it on and it will
21 activate the video system and turn the video on, plus
22 your audio.

23 **Q** And mechanically, where do you get the tapes to put
24 in the player in the trunk of the vehicle?

25 **A** They're issued to us.

1 Q Okay. And when they're issued, are they marked?

2 A Yes, sir.

3 Q And how long do you keep them in the player there?

4 A You put your name on it. You put the begin date,
5 which is the date you would be putting that tape in
6 the recorder. And then when it runs out of tape or
7 when it's close to running out, there's a flash that
8 tells you you have 30 minutes left. You usually like
9 to take it out then because you don't want to have an
10 event going on and run out of tape. So you would
11 replace it when that flash started going off. But
12 when you would eject it, you put the end date. But
13 that can vary.

14 Q And what do you do with it?

15 A You hold it until your court cases on that tape are
16 taken care of, either guilty or not guilty.

17 Q So you would -- the tape would not be running a
18 continuous loop of your activities for a full day; is
19 that right?

20 A No, sir.

21 Q Did you activate the tape that night?

22 A No, sir.

23 Q How would it have gotten activated?

24 A Some recorders, the body mics apparently are set at
25 the same frequency. So when they turn -- when one

1 person turns his on, if another camera in a close
2 vicinity is compatible with it, it will click on.

3 Q So your tape, if it was on, was not pointed at
4 anything or any particular object at that point?

5 A No, sir.

6 Q As a matter of fact, it was facing what direction?

7 A It was facing --

8 Q Between --

9 A -- that mobile home that I referred to earlier.

10 Q Facing this way?

11 A Yes, sir.

12 Q All right. After this event, did you take custody of
13 that tape or do anything with that tape?

14 A No, sir.

15 Q To your knowledge, who did?

16 A Either SLED or Lieutenant Colonel Chris Williamson.

17 MR. HOISINGTON: I'm going to go ahead and play
18 this, State's Exhibit No. 65, without objection, I
19 believe, Your Honor.

20 THE COURT: State's Exhibit 65, a tape, in
21 evidence without objection now being published.

22 (WHEREUPON, State's Exhibit No. 65 was admitted
23 into evidence.)

24 (WHEREUPON, the tape was played for the jury.)

25 Q If you need to point out anything with the laser

1 pointer, go ahead and tell us what we're seeing.

2 **A** Well, I will just start out with that was my call
3 number, my last name. That shows the date, and the
4 time usually is close to an actual time. For some
5 reason --

6 **MR. ARCHER:** Objection. May I just object for a
7 second?

8 **THE COURT:** Yes.

9 **MR. ARCHER:** Would you just allow them to play
10 the tape so we can hear what they're saying?

11 **THE COURT:** I sustain the objection. If you're
12 going to publish the tape, let's hear the tape.

13 **MR. ARCHER:** Without his talking.

14 **THE COURT:** Mr. Archer, if you will just make a
15 brief objection. If you care to argue, I will do it at
16 the side bar.

17 **MR. ARCHER:** I'm sorry.

18 (WHEREUPON, the tape was played for the jury.)

19 **Q** Whose voice is that?

20 **A** Steve Grainger's.

21 **Q** Why is it picking up his voice and not yours?

22 **A** My body mic was not activated.

23 **Q** But his would be recorded by your machine?

24 **A** Yes, sir, unbeknownst to me.

25 **Q** And that's what you were talking about, about one

1 person's radio would sometimes activate another?

2 **A** His microphone, yes, sir.

3 **Q** So you had not tried to activate yours? There was no
4 reason to?

5 **A** No, sir.

6 **Q** The audio comes and goes on that. Can you explain
7 that for us?

8 **A** I know the body mic, as far as I know, it depends on
9 the battery strength and your distance from your
10 vehicle.

11 **Q** One thing to clarify also, the weapon that was turned
12 over to SLED that we've introduced, your Glock --

13 **A** Yes, sir.

14 **Q** What types of weapons do highway patrolmen use?

15 **A** That's a 40 caliber Glock.

16 **Q** Anything else?

17 **A** We also have a 38 that we wear on our ankle.

18 **Q** But insofar as your standard weapon, your holster
19 weapon is what?

20 **A** The 40 caliber Glock.

21 **Q** Are you allowed to have a 40 caliber Smith and
22 Wesson?

23 **A** You're only allowed to use issued equipment.

24 **Q** How about special barrels or anything of that nature?

25 **A** You're not able to modify equipment.

1 Q What about special loads or different kinds of
2 bullets?

3 A You're supposed to use issued equipment.

4 Q So you're given the same thing, everybody's got the
5 same thing?

6 A Yes, sir.

7 Q That's what you had?

8 A Yes, sir.

9 MR. HOISINGTON: One second, Your Honor.

10 THE COURT: Yes, sir.

11 MR. HOISINGTON: If you would answer any
12 questions Mr. Archer or Johnston have.

13 A You may cross-examine, Mr. Archer.

14 CROSS-EXAMINATION

15 BY MR. ARCHER

16 Q Hello, Officer Sigwald. How are you?

17 A I'm well, thank you.

18 Q Just let me ask you a question just for my own
19 curiosity. You're a highway patrolman; is that
20 correct?

21 A Yes, sir.

22 Q Is that a state trooper or is there a distinction of
23 a state trooper?

24 A It's the same thing. We used to have highway patrol
25 on the side of the vehicle and they changed it to

1 state trooper.

2 Q I understand.

3 MR. ARCHER: Would you play that video for me
4 again, please?

5 (WHEREUPON, the video was played again.)

6 MR. ARCHER: You can stop it.

7 Q Sir, there were two shots, pow, pow. Is that what
8 you saw on there -- or heard on there?

9 A I heard several shots.

10 Q Pardon?

11 A I heard several shots.

12 Q There was first two shots, then there was a pause and
13 then there was a number of shots, correct?

14 A Yes, sir.

15 Q And then approximately 25 seconds later, there was a
16 single shot. Is that what you heard?

17 A I don't know what the time frame is.

18 Q Okay. But it wasn't right -- there was a pause and
19 then it was approximately -- I'm saying it was
20 approximately 25 seconds. Do you want to play it
21 again? I can count it for you.

22 A I'm not being difficult, sir. I just said I didn't
23 know the time frame.

24 Q But it was after all the other shots?

25 A Yes, sir.

1 Q Okay. Are you aware that Officer Johnson was hit
2 once with a bullet?

3 A That's what I saw when he was laying there.

4 Q He was hit once with a bullet. There were two shots
5 to begin with; is that correct?

6 A Correct.

7 Q So obviously, one shot didn't hit him, correct? He
8 was only hit with one bullet?

9 A I don't know who was firing the shots.

10 Q I didn't ask you that. I said there was two shots,
11 correct?

12 A Right.

13 Q We know that Officer Johnson had one bullet in him?

14 A Correct.

15 Q Okay. Do you know out of those two shots who shot
16 first?

17 A I did not see the actual shooting.

18 Q So you don't know who shot first?

19 A No, sir.

20 Q When you said that you heard a shot and then you saw
21 Officer Johnson bend over and he said, ugh, is that
22 what he said, or ooh?

23 A No, sir, that's not what I said.

24 Q What did you say?

25 A I said that he made a noise as if somebody had

1 punched him in the stomach and lost all his air.

2 Q When was that? In between those two shots or after
3 those two shots? When did he make -- you heard the
4 two shots. When did he make his noise?

5 A I recall it -- I recall it after the first shot.

6 Q After the first shot?

7 A Uh-huh.

8 Q Then he made a noise and then there was a second
9 shot?

10 A In close proximity to those shots.

11 Q Okay.

12 A I heard the noise. I heard, You sorry bastard,
13 walked over there in a hurried fashion and saw Jeff
14 fire.

15 Q And how long do you think that would take?

16 A For me to do what?

17 Q From the first shot and you heard ooh and then you
18 heard the second shot?

19 A Not -- I'm talking seconds, not long.

20 Q Seconds. That shot that was after all the other
21 shots, did you do that? Did you fire that shot?

22 A No, sir.

23 Q Do you know who did?

24 A I didn't know we had but two shooters until after we
25 had given our statements.

- 1 Q Okay. But you didn't fire that shot?
- 2 A No, sir.
- 3 Q Of all those shots, what shots did you fire?
- 4 A I don't know how many I fired.
- 5 Q Did you see anybody --
- 6 A I fired until the subject fell. When he fell, I
- 7 holstered my weapon.
- 8 Q Okay. After all those shots, the pow, pow, pow, pow,
- 9 how far did Mr. Sapp get from the truck?
- 10 A In exact distance, I can't give you. But I pointed
- 11 it out on the picture that the prosecution asked.
- 12 Q Right. 10 feet?
- 13 A Greater distance than that.
- 14 Q 20 feet?
- 15 A Are you saying that he got before I started shooting?
- 16 Q No. I'm just asking you, when he went down, how far
- 17 away was he from the truck?
- 18 A I don't have any exact measurement for you.
- 19 Q Estimate. From me to you?
- 20 A Greater distance.
- 21 Q Greater distance?
- 22 A Yeah, I'm thinking me to the, close to the double
- 23 doors back there.
- 24 Q Way over there?
- 25 A Yeah.

1 **Q** Okay. I think there's some exhibit pictures I'll
2 show you later.

3 **A** Let me also say this. I never went down that
4 driveway.

5 **Q** Please let me ask the questions, then you can answer
6 it.

7 **A** I answered your question, I was just going to
8 continue with my answer, that's all.

9 **Q** When you saw Johnson and you heard the shot, he was
10 about by the back wheel of the truck?

11 **A** As I stated, I focused my attention on the violator I
12 had with me. I can't swear where Jeff was.

13 **Q** Well, again, just approximately where was he? Was he
14 standing right next to Mr. Sapp? Was he on the side
15 of the truck? Was he --

16 **A** My estimation was and is that he made it to the rear
17 tire.

18 **Q** In your statement of July 19th -- well, let me ask
19 you this, first. You made a statement July 7th
20 first; is that correct?

21 **A** That day, yes, sir.

22 **Q** And then you amended it?

23 **A** SLED requested another interview and we went over in
24 more detail.

25 **Q** And you did that on July 19th, correct?

1 **A** If that's the day, yes, sir.

2 **Q** Did you view these tapes in between?

3 **A** The morning of the event, we came back to the scene
4 and the solicitor wanted to see the tape.

5 **Q** Did you view the tape?

6 **A** I put it in my player and played it.

7 **Q** And you played it. And then you made an amended
8 statement. In other words, the first statement is
9 July 7th and then the second statement is July 19th.
10 In between, did you view the tape?

11 **A** I was present when -- yes, sir.

12 **Q** You saw it?

13 **A** Yes, sir.

14 **Q** All right. Did you see the other police officers'
15 tapes?

16 **A** No, sir.

17 **Q** You just looked at your tape?

18 **A** Yes, sir.

19 **Q** So you were there all alone?

20 **A** Let me rephrase that, I did not look at my tape. If
21 my memory serves me right, I looked at Grainger's
22 tape because Grainger's tape was the only one we knew
23 was working at the time.

24 **Q** Let me show you a statement of July 19th. Is that
25 your signature on the bottom of it?

1 **A** Yes, sir.

2 **Q** And would you read to the Court what you said here on
3 the last line?

4 **A** He hadn't had time to get to the door and was
5 probably at about the rear wheel and I heard a loud
6 boom.

7 **Q** Okay. So he was -- you stated he was at the rear
8 wheel of the truck, correct --

9 **A** Yes, sir.

10 **Q** -- when you heard a loud boom?

11 **A** Yes, sir.

12 **Q** What do you think that is, between you and I? It's a
13 pickup truck?

14 **A** Yeah. Now, the distance between who? Between myself
15 and Jeff or --

16 **Q** No, no, no. I want to know where Johnson was when
17 you heard the boom. And you said in your statement
18 he was about at the rear wheel of the truck, correct?

19 **A** That's correct. On a small pickup truck, yes, sir.

20 **Q** Do you know how -- well, do you know how he was shot?
21 Do you know how he was shot? In the belly button
22 apparently, a little above or a little below?

23 **A** That's the area I described, yes, sir, just below the
24 vest.

25 **Q** Let me show you this --

1 **THE COURT:** Wait just a second, gentlemen. I
2 understand what's going on. I understand it's very
3 normal. But we're going to make this record -- I'm going
4 to be responsible for the record. We're going to let one
5 person finish talking before the other speaks, that way it
6 makes it easier for the record to be correct and it makes
7 it much easier on the court reporter.

8 **MR. ARCHER:** I'm sorry. There's no question
9 about that.

10 **THE COURT:** Thank you.

11 **Q** Let me just rephrase this. I'm standing here. Let's
12 assume I'm Officer Johnson standing at the rear of
13 the truck about this distance, correct?

14 **A** Okay.

15 **Q** Okay. And he was shot around the belly button,
16 correct?

17 **A** Yes, sir.

18 **Q** Let me read you -- this is part of the pathologist's
19 autopsy. Would you read that part right there?

20 **MR. HOISINGTON:** Judge, that's not relevant to
21 his -- I object to him --

22 **THE COURT:** Sustained in publishing it unless
23 you lay the foundation of how he could have knowledge of
24 its contents. It would be hearsay.

25 **Q** Sir, were you aware there was shot at a 45-degree

1 angle? That the bullet entered at a 45-degree angle?

2 **A** I've heard that degree after the event.

3 **Q** Right. So you heard he was shot -- the bullet went
4 in at a 45-degree angle?

5 **A** I've heard that, yes, sir.

6 **Q** Let's assume my finger's a gun, okay? Where would
7 that gun be at a 45-degree angle? Just
8 approximately, where would it be?

9 **A** Keep going. In that area.

10 **Q** Right there?

11 **A** In that area.

12 **Q** Let's reverse it, because actually, you would be
13 holding the gun. I'm Johnson. So let's kind of
14 reverse it. If I shot that gun right now, the bullet
15 would go into the ground, wouldn't it?

16 **A** Seems that might be the case.

17 **Q** Right. In other words, let's reverse it. If I'm
18 Sapp and I have the gun and I've got that at a
19 45-degree angle, okay, and you're Johnson, here's a
20 45-degree angle. You hear a bang, correct?

21 **A** (The witness nodded.)

22 **Q** That bullet would go in the ground, wouldn't it?

23 **A** Yes, sir. It would depend on the closeness of the
24 object, I guess.

25 **Q** Right. Right. Suppose I walk a little closer, am I

1 still at 45-degrees?

2 A Close.

3 Q Still go in the ground, wouldn't it?

4 A Uh-huh.

5 Q When you went to College Park, you're setting up a
6 stop for license checks and routine whatever you do.
7 You got there, what did you say, 30 minutes before?

8 A Before the event? 30 or 45 minutes.

9 Q So you just basically had set up?

10 A Yeah, we hadn't been there long.

11 Q It's good -- it would be good police work, wouldn't
12 it be, to have a video on in case somebody claims
13 police brutality or somebody was drunk or whatever?
14 A video would be pretty good evidence of what's going
15 on at the scene, wouldn't it?

16 A A video's usually helpful.

17 Q Right. So as far as your knowledge, Grainger put his
18 video on, you put your video on and Barwick put the
19 video on, correct?

20 A That's incorrect.

21 Q Okay. Who put the videos on?

22 A As I was stating earlier, we viewed Grainger's tape
23 because we thought that was the only one that had
24 taped anything because Grainger was arresting a DUI
25 suspect.

1 **Q** But his tape was on, though; is that correct?

2 **A** Yeah, his tape was on.

3 **Q** Okay.

4 **A** Your recorders stay on during the course of your
5 shift. There's a power button just like you have a
6 power button for everything else. You push the
7 button and it stays on and until you turn -- until
8 you push the bottom again, it goes off. Now --

9 **Q** Now, sir, I didn't ask you that. I asked you if -- I
10 have three videos here --

11 **MR. HOISINGTON:** Objection, he's answering that
12 question.

13 **THE COURT:** He can answer the question,
14 Mr. Archer. And please allow the witness to finish
15 answering the question. He was still consistent with the
16 question that was propounded to him, so don't interrupt
17 him, please.

18 You may continue.

19 **THE WITNESS:** Thank you.

20 **A** At the beginning of my shift, I turned it on. That
21 does not mean it's recording everything that's going
22 on. That means it's ready to record, which refers
23 back to my answer earlier that if I turn on my body
24 mic, it will activate. If I turn on my blue lights,
25 it will activate. Or if I press record, it will

1 activate. And that camera will stay in a ready mode
2 until I turn it off, which is usually done at the end
3 of a shift.

4 **Q** All right. Let me just ask you a specific question.
5 We just watched your videotape; is that correct?

6 **A** That's correct.

7 **Q** So your videotape was on during the shooting?

8 **A** That's correct.

9 **Q** Thank you. Now, as far as Barwick's tape is
10 concerned or as far as Grainger's tape is concerned,
11 you don't know whether their tape was on or not?

12 **A** Yeah, they were on.

13 **Q** They were on?

14 **A** I've seen them after the fact.

15 **Q** Okay. So in other words, to your knowledge, three
16 videotapes are on?

17 **A** That's what we have now. But that day, our knowledge
18 was one tape. They took my tape even though I told
19 them it wasn't recording. But apparently, it was
20 recording without my knowledge, which can happen when
21 it's activated by an outside source. Because I never
22 turned mine on and it's not required of us to tape
23 check points. So we don't.

24 **Q** All right. I don't want to beat a dead horse here,
25 but that was your tape we just saw, right?

1 **A** That's exactly right.

2 **Q** Was Officer -- did Officer Johnson have a car at that
3 scene?

4 **A** Yes, sir.

5 **Q** And did he have a video camera, do you know?

6 **A** I believe he was equipped with one. I'm not
7 positively sure.

8 **Q** Did you actually, physically see Jesse Sapp shoot
9 Officer Johnson?

10 **A** No, sir.

11 **Q** Just one last question. You made a statement on
12 July 7th of 2002, that was the night of the incident.
13 And then you amended your statement. Just give us a
14 brief explanation for that.

15 **A** SLED requested an interview to go over in more detail
16 what I had written in my statement. Apparently, it
17 wasn't detailed enough or they wanted to clarify what
18 was in my statement.

19 **Q** Do you recall what you clarified or what was the
20 difference in the two statements?

21 **A** No, sir. If you want me to read it, I could tell you
22 the difference. But I'm not sure what the difference
23 was.

24 **Q** There's nothing that stands out that was anything
25 major?

1 **A** Not to my memory.

2 **MR. ARCHER:** Okay. Thank you, sir.

3 **MR. HOISINGTON:** Couple follow-ups.

4 REDIRECT EXAMINATION

5 **BY MR. HOISINGTON**

6 **Q** Trooper Sigwald, you said you did not see what angle
7 Jesse Sapp shot Jeff Johnson?

8 **A** That's correct.

9 **Q** And you do not know how high he may have been holding
10 the gun?

11 **A** I do not.

12 **Q** And you do not know whether he was standing on the
13 floor board of the truck as he came out?

14 **A** I do not.

15 **Q** Or what direction he was even pointing the gun from?

16 **A** No, sir. My attention was on Boles.

17 **Q** Also, you don't know whether Jeff had reacted and
18 bent over?

19 **A** I do not know.

20 **Q** Now, in regard to your tape that's in the car, can
21 you erase those tapes yourself?

22 **A** Not in the car. Now, I've never tried to erase one
23 and I wouldn't say it couldn't be done if you take it
24 out of the car and take it to a VCR and try it. I
25 don't know. But in the car, it's not possible.

1 **Q** All right. The machine itself does not have an erase
2 feature?

3 **A** The machine itself does not have an erase feature.
4 Plus, if you rewind the tape and -- because sometimes
5 you will look back and look at an incident, not just
6 this incident, but it happens periodically. And if
7 that tape is in the car and you press rewind or you
8 press fast forward, before it will let the power turn
9 off, if you want it -- you've got to turn the power
10 off, open the key to get the tape out, to eject it.
11 Before it will let that tape eject, it will go back
12 to the spot where it last recorded.

13 **Q** So that you can't record over something?

14 **A** So I can't record -- to my knowledge, it can't be
15 recorded over in the vehicle.

16 **Q** And the tape itself is located where in your car?

17 **A** In the trunk.

18 **Q** And the trunk is locked?

19 **A** Correct.

20 **Q** And if you wanted to go to the trouble of getting
21 that out of the machine, you would unlock the trunk
22 and what, just pull it out?

23 **A** And you unlock the machine.

24 **Q** That requires a separate key?

25 **A** Yes, sir.

1 **MR. HOISINGTON:** Thank you, sir.

2 **THE COURT:** Recross?

3 RECROSS-EXAMINATION

4 **BY MR. ARCHER**

5 **Q** On your July 19th statement, you put in here, I saw
6 them cover him but I did not see either Graham [sic]
7 or Barwick touch him?

8 **A** Correct.

9 **Q** Right?

10 **A** Right.

11 **Q** That was not in your first statement?

12 **A** That's correct. That's one of the questions that had
13 to be answered.

14 **Q** Why would you even put that in if there was -- I
15 mean, was there some concern whether he was touched
16 or maybe shot when he was down? Maybe that 25-second
17 shot was directed at him?

18 **A** I was told there was some question on whether or not
19 I saw anybody touch him. And I told them no, I did
20 not see that.

21 **Q** You didn't put that in your first statement?

22 **A** It didn't come to mind because I knew those two
23 wouldn't touch him.

24 **Q** But you saw the tapes in between?

25 **A** What tapes?

1 Q The tapes that -- on July 7th, you saw the tapes, you
2 heard the shot 25 seconds later?

3 A Right.

4 Q Then on the 19th, you amend your statement to include
5 the fact that you never touched him?

6 A Steve Grainger's tape does not show them across the
7 street. So I could look at it a thousand times and
8 not come to a different conclusion.

9 Q So in other words, after you viewed the tape and you
10 heard that 25-second shot, then you amend the
11 statement?

12 A That 25-second shot was not a concern of mine.

13 Q Okay.

14 A I was not concerned about it. It was brought to my
15 attention in preparation for this trial. I did not
16 know about the 25-second shot.

17 Q So in the first statement, it wasn't a concern about
18 whether you touched him or didn't touch him or you
19 hurt him, only in the second statement --

20 A There was no question in my mind --

21 I apologize, Judge.

22 **THE COURT:** Thank you, sir.

23 Q So in the first statement, it wasn't a concern
24 whether you touched him or not? You viewed the tape
25 and all the sudden, it became a concern whether you

1 touched him or not, correct?

2 **A** That's not what I said.

3 **Q** I'm just asking you --

4 **A** It was a concern of somebody's. When I wrote my
5 statement, I put the facts. In my mind, there was
6 not a question if Steve or Roy touched the defendant.
7 There was no question about it. We don't do that. I
8 know -- I came out with Steve Grainger, just like I
9 came out with Jeff Johnson. I know them like the
10 back of my hand. Roy Barwick, I've worked here many,
11 many years with him. We do not function like that as
12 an organization. So I would not think to put that in
13 there because I would never think that would be an
14 option for us to do that.

15 When the SLED agent asked me about it, he wanted
16 clarification. I clarified it. I said -- that's why
17 I put it in my statement, no, I did not see them do
18 anything or however it's worded. That's the reason
19 for it --

20 **Q** I'm sorry, I didn't hear the last thing you said, I'm
21 sorry. What was the last thing you said?

22 **A** I don't know, can she read it back?

23 (WHEREUPON, the court reporter read back the
24 last answer.)

25 **Q** Right. So in other words, you put it in because SLED

1 asked you to do that, is that what it is?

2 **THE COURT:** Let's move on, Mr. Archer, please.

3 You're arguing with the witness now, please, sir.

4 **MR. ARCHER:** Thank you.

5 **THE COURT:** Thank you, sir.

6 You can come down, sir. Thank you.

7 **THE WITNESS:** Thank you.

8 **MR. HOISINGTON:** Move to relieve Trooper Sigwald
9 of his subpoena.

10 **THE COURT:** Any objection to Trooper Sigwald
11 being excused? Mr. Archer, any objection to Trooper
12 Sigwald being excused?

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

14 **THE COURT:** You're free to leave, sir. Thank
15 you.

16 Call your next witness.

17 **MR. JENNINGS:** Thank you, Your Honor, the State
18 calls Tony Canant.

19 TONY CANANT, after being duly sworn, testified
20 as follows:

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

23 **THE WITNESS:** Tony Canant, C-A-N-A-N-T.

24 ///

25 ///

DIRECT EXAMINATION

BY MR. JENNINGS

Q Good afternoon, Mr. Canant. Where do you live, sir?

A 3967 Daniel Island Avenue.

Q And that's in North Charleston?

A Yes.

Q How long have you lived there?

A About three years.

Q How long have you lived in Charleston?

A Fifteen years.

Q You're currently driving for Silver Fox?

A Right.

Q You're a truck driver?

A Yes.

Q How long have you been with Silver Fox?

A About a month.

Q Okay. And I think actually you moved to Charleston in 1986; is that correct?

A Right.

Q And you'd been in the Army prior to that?

A Yes, sir.

Q How long did you spend in the Army?

A Three years.

Q What was your job?

A I was in infantry.

1 **Q** I want to turn your attention to July of 2002. I
2 believe you were working with Excalibur Trucking at
3 that time?

4 **A** Yes, sir.

5 **Q** And in particular, turning your attention to July 6th
6 of 2002, do you remember that night?

7 **A** Yes, sir.

8 **Q** If you could, explain to the jury what you did on the
9 night of July 6th.

10 **A** Well, I was driving home. I was on a motorcycle and
11 got stopped and couldn't find my driver's license
12 right away, so they had me pull off to the side. And
13 while I was waiting, standing there waiting with a
14 girlfriend that was with me, a pickup truck pulled
15 up. And they were talking to them, had the doors
16 open. And a shot was fired from the truck and the
17 officer went down. And he was saying, I was hit, and
18 returning fire along with a couple other officers
19 returning fire. And, um, the suspect was running.
20 And when he stopped -- when he fell down, they
21 stopped firing. That was it.

22 **Q** Okay. You kind of ran through it a little quick.
23 I'm going to ask you some specific questions. I want
24 to make sure -- I want you to speak up, okay?

25 **A** Okay.

- 1 Q Make sure that the jurors on the way back can hear
2 you. Who were you with on the night of July the 6th?
- 3 A Vanessa Leeperrine.
- 4 Q Was she your girlfriend at the time, friend?
- 5 A Kind of, sort of.
- 6 Q She's in the Navy?
- 7 A Yes, sir.
- 8 Q And you're aware that she's been deployed for the
9 conflict --
- 10 A Right.
- 11 Q -- that's going on overseas?
- 12 A Right.
- 13 Q And she's not available to testify in this trial.
14 Where had you and Ms. Leeperrine gone on the night of
15 the 6th?
- 16 A We were with some friends.
- 17 Q And where did your friends live? What road did they
18 live off of?
- 19 A I don't even know the name of the road. Probably
20 about a mile on the other side of where we were.
- 21 Q Okay. Are you familiar with College Park Road?
- 22 A Yes.
- 23 Q Was that the area that you were in?
- 24 A That was the area of the license check.
- 25 Q Okay. When you left the friend's house with

1 Ms. Leeperrine, what way were you travelling to get
2 back to your house in North Charleston?

3 A We were travelling back towards the interstate, I
4 guess that's west.

5 Q And what road were you on?

6 A College Park Road.

7 Q Are you familiar with College Park Road?

8 A College Park Road.

9 Q What type of vehicle were you operating?

10 A A motorcycle.

11 Q And you and Ms. Leeperrine were on the motorcycle?

12 A Yes, sir.

13 Q As you were travelling on College Park Road, what did
14 you come across that you had to stop for?

15 A Came up on a license check.

16 Q And the highway patrol officers were operating the
17 check point?

18 A Right.

19 Q What did they ask you for as you got to the check
20 point?

21 A Just my driver's license. I'm not sure if they asked
22 for the registration, but they asked to see my
23 driver's license. And I didn't have it right
24 available. I was looking for it, so I was kind of in
25 the way. They asked me to pull off to the side.

1 Q Who was driving the motorcycle, you or
2 Ms. Leeperrine?

3 A Oh, I was driving. It's my motorcycle.

4 Q Had you been drinking?

5 A No, sir.

6 Q And they asked you to pull off to the side of the
7 road?

8 A Right.

9 Q Now, I believe you testified that you saw a pickup
10 approach? You saw a pickup approach the check point?

11 A Right.

12 Q Could -- you've seen State's Exhibit 89?

13 A Yes, I've seen that.

14 Q If you could, use this pointer. And if you would
15 point out to the jury if you can, which way you were
16 approaching and where you pulled off to the side.

17 A I was coming from this direction -- I was coming from
18 this direction and I pulled off right here to where
19 that car is.

20 Q And this was a highway patrol car?

21 A Yeah.

22 Q And you pulled in right behind it?

23 A Right.

24 Q Okay. I show you what's marked as State's Exhibit 73
25 in evidence. Do you recognize that?

1 **A** Uh-huh.

2 **Q** And what is that a picture of?

3 **A** That's the truck that they were driving.

4 **Q** This is the pickup that you saw pull in?

5 **A** Uh-huh.

6 **Q** Can you point out on State's Exhibit 89 where this
7 pickup pulled in?

8 **A** (The witness complied.)

9 **Q** Okay. From your position on your motorcycle, was
10 there anything blocking your view of that pickup
11 truck?

12 **A** No, there wasn't.

13 **Q** The trooper that you were dealing with who had asked
14 you for your license and registration, as you were
15 looking for those items, what did he do?

16 **A** He went back to checking the cars and stuff.

17 **Q** Was he dealing with the pickup truck?

18 **A** Yeah.

19 **Q** Okay. How many troopers, highway patrolmen did you
20 see at that pickup truck after it had pulled off the
21 road?

22 **A** Three.

23 **Q** Okay. Did you see who the occupants of the car were?
24 What their -- whether they were males or females?
25 Could you see who the driver was?

1 **A** I could -- yeah, I could see the driver. She was out
2 of the truck.

3 **Q** And she was a female?

4 **A** Yes, sir.

5 **Q** Could you see the troopers interacting with the
6 driver?

7 **A** Yes.

8 **Q** Talking with her?

9 **A** Yes, perfectly.

10 **Q** And they were talking to her at the back of the
11 truck?

12 **A** Yes, uh-huh.

13 **Q** Were any of the troopers raising their voices?

14 **A** No.

15 **Q** Were they acting in a hostile manner in any way?

16 **A** No.

17 **Q** Did any of the troopers have their guns drawn?

18 **A** Not at all.

19 **Q** Did there come a time when you saw one of the
20 troopers leave the back of the truck and approach the
21 passenger side of that pickup truck?

22 **A** Right.

23 **Q** Okay. Describe to the jury what happened as that
24 trooper walked up to the passenger side of the pickup
25 truck?

1 **A** He opened the door and they were talking just for a
2 minute. And then a shot was fired and a trooper went
3 down saying, I've been hit.

4 **Q** As that trooper was approaching the passenger side of
5 the pickup, did he have a gun in his hand?

6 **A** No.

7 **Q** Who fired the shot?

8 **A** Well, the shot came from inside the truck.

9 **Q** Okay. Did the trooper fire the shot?

10 **A** No, sir.

11 **Q** Could you see the trooper clearly?

12 **A** Yes, sir.

13 **Q** And what happened after the shot was fired?

14 **A** Trooper stepped back a few feet and fell down. And
15 the white male came out of the truck running. And
16 the trooper pulled his weapon and started firing at
17 him.

18 **Q** At the point when the shot was fired from the truck
19 and the trooper fell down, had any other shots been
20 fired?

21 **A** No, sir.

22 **Q** Was the trooper clearly shot at that point?

23 **A** Yes, sir.

24 **Q** And, in fact, you heard him yell, I've been hit?

25 **A** Yes, sir.

1 **Q** What position was Trooper Johnson as he returned fire
2 on the suspect as he ran away?

3 **A** He was laying down on his right side after he drew
4 his weapon and he rolled over on his right side to
5 return the fire.

6 **Q** From the point when you saw Trooper Johnson
7 approaching the passenger side of the pickup truck
8 and get shot by the passenger and fall down, did he
9 ever get back up on his feet?

10 **A** No, sir.

11 **Q** Did you have a chance then to also see other troopers
12 who were out at the scene shooting at the suspect as
13 he ran away?

14 **A** Yeah, I could see two other troopers return fire.

15 **Q** And if you could, use the pointer and point out on
16 State's Exhibit 89 what direction the white male ran
17 after he shot Trooper Johnson?

18 **A** He come out running this way.

19 **Q** Okay. And at some point did you see him fall down?

20 **A** Yes, sir.

21 **Q** Was there anything at all -- from where you were
22 sitting on your motorcycle behind this patrol car,
23 was there anything at all blocking your view of the
24 events that happened by the passenger door?

25 **A** No.

1 **Q** Anything at all that prevented you from seeing the
2 passenger shoot Trooper Johnson?

3 **A** No, sir.

4 **Q** When the suspect fell after running down the
5 driveway, could you see as the troopers approached
6 him?

7 **A** Repeat that question.

8 **Q** Could you see -- as the troopers walked up to him
9 after he was on the ground, could you see what
10 happened?

11 **A** Oh, yes.

12 **Q** Was he ever mistreated in any way?

13 **A** No, they stopped firing as soon as he fell down. And
14 then they ran over.

15 **Q** No shots were fired when he was on the ground?

16 **A** No.

17 **Q** Was he mistreated in any way while he was on the
18 ground?

19 **A** No, he wasn't.

20 **Q** While all this was happening, you were still on your
21 motorcycle behind --

22 **A** Well, I was standing right beside the motorcycle. I
23 wasn't sitting on it.

24 **Q** And once all the gunshots had stopped, what happened
25 after that? What happened to the female driver of

1 the pickup truck?

2 **A** They brought her over to where I was and to the car I
3 was standing beside and put her in the passenger side
4 and left the door open and asked me to stand there
5 and not let her go anywhere.

6 **Q** And did you do that?

7 **A** Yes, sir.

8 **Q** What did Ms. Leeperrine do?

9 **A** She went over to help the officers because she is in
10 the medical field.

11 **Q** Which officer did she go to help?

12 **A** The officer that was shot.

13 **Q** What time did you finally get to leave the scene that
14 night?

15 **A** It was about 6 o'clock the next morning.

16 **Q** And did you have an opportunity to supply the
17 officers with a written statement about what you had
18 seen?

19 **A** Yes.

20 **MR. JENNINGS:** That's all I have, Your Honor.

21 Thank you.

22 **THE COURT:** You may cross-examine, Mr. Archer.

23 CROSS-EXAMINATION

24 **BY MR. ARCHER**

25 **Q** How are you?

1 **A** Fine, just a little nervous.

2 **Q** I'm sorry, what?

3 **A** I said I'm fine, just a little nervous.

4 **Q** I think we're all nervous. I'm just as nervous as
5 you are. You testified you saw a truck pull up; is
6 that correct?

7 **A** Yes, sir.

8 **Q** I'm going to show you a video and could you identify
9 that truck?

10 **MR. ARCHER:** That would be the Barwick's video,
11 if would you put that in.

12 **MR. JENNINGS:** Objection, Your Honor, that's not
13 in evidence.

14 **MR. ARCHER:** We stipulated to all three videos.

15 **THE COURT:** You may have stipulated, but it
16 hasn't been introduced.

17 Do you object to it being introduced right now?

18 **MR. JENNINGS:** No, sir.

19 **THE COURT:** Very well. What's the number of it,
20 please? State's Exhibit 67 by agreement is into evidence
21 without objection.

22 (WHEREUPON, State's Exhibit No. 67 was admitted
23 into evidence.)

24 (WHEREUPON, the tape was played for the jury.)

25 **Q** Right there, is that the truck that you saw?

1 **A** Truck looks yellow on video.

2 **MR. ARCHER:** You can continue the tape.

3 (WHEREUPON, the tape was continued for the
4 jury.)

5 **A** That I believe's the truck there.

6 **Q** The second truck?

7 **A** Yep, that's the truck.

8 **Q** Is that the officer you saw walk up to the window?
9 Can you see that clearly?

10 **A** Obviously, that's his video of it.

11 **MR. ARCHER:** Your Honor, at this time we had
12 agreed to use the original tapes only because we were
13 marking them, but I received this in discovery and I
14 believe my tape is clearer than that tape. And I would
15 like to show my tape that I received in discovery.

16 **THE COURT:** Hold on a second. Approach.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury but out of the hearing of
19 the jury.)

20 **THE COURT:** We have had a side bar concerning
21 the tape and we'll, if necessary, place that on the record
22 at the first break.

23 **Q** I would like to now play the Grainger tape that was
24 stipulated to.

25 **THE COURT:** That is exhibit -- what number is

1 that, please?

2 **THE COURT REPORTER:** 66.

3 **THE COURT:** State's Exhibit 66, a tape, into
4 evidence now being published.

5 (WHEREUPON, State's Exhibit No. 66 was admitted
6 into evidence.)

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

8 **MR. HOISINGTON:** Your Honor, if we're going to
9 play the tape, we want to play the whole tape.

10 **THE COURT:** Let's be clear. We're going to be
11 fair with this. We're going to play the whole tape; is
12 that right? And then we'll come back and rewind it and
13 you can ask questions.

14 **MR. ARCHER:** I have no problem with that.

15 **THE COURT:** Okay. Play the tape.

16 (WHEREUPON, the tape was played for the jury.)

17 **MR. ARCHER:** You can stop it. Would you please
18 back it up to two minutes and 26 seconds? Well, 2:27:01
19 is actually when the shot was fired.

20 **Q** Sir, you testified that there was -- you heard one
21 shot; is that correct?

22 **A** Yes.

23 **Q** Now, on that tape there was fairly close together a
24 second shot. Did you see that shot?

25 **A** I think it was from the other officer falling down,

1 going back, backing up.

2 Q Is that what you saw or you just think?

3 A That's -- I don't remember it that way.

4 Q So in other words, you heard one shot?

5 A I heard one shot and then the other shot from the
6 officer.

7 Q Okay. If you noticed, there was a lapse after all
8 those other shots and there was one obvious gunshot.
9 Did you see that?

10 A No, I didn't. I was surprised to hear that myself.

11 Q Let me ask you a question, let's assume I'm Trooper
12 Johnson. And you said that he opened the door. How
13 close would we be together when you saw him get
14 shot -- well, let me start from here and you tell me
15 when to stop.

16 A He was right up against the door. He was right up in
17 the doorjamb. He was this close.

18 Q So he got shot like this?

19 A Almost that.

20 Q Okay. He didn't get shot back here, did he?

21 A No.

22 MR. ARCHER: Thank you. Appreciate it.

23 THE COURT: Redirect, Mr. Jennings?

24 MR. JENNINGS: Yes, sir. Thank you.

25 ///

REDIRECT EXAMINATION

BY MR. JENNINGS

Q There was a lot of gunshots, obviously, that you can hear on the tape?

A Yes.

Q It was chaotic out there that night?

A Yes, it was.

Q Did you see -- as Trooper Johnson was approaching the truck, could you see a muzzle flash from a gun?

A Yes.

Q Where was the gun that fired that first shot?

A It was coming from inside the truck.

Q No question about that?

A No question about that.

Q Any question that Trooper Johnson was shot by that gun that was fired from the passenger side of that pickup truck?

A He was.

Q And you don't know -- just by listening to that, you can't tell who's firing which shots?

A No.

Q There's no question who fired the first shot?

A No question.

MR. JENNINGS: That's all I have.

THE COURT: Recross, Mr. Archer?

RECROSS-EXAMINATION

BY MR. ARCHER

Q Well, there's also no question that they were standing right next to each other when they were shot; is that correct?

A I would say less than two and a half feet away.

MR. ARCHER: That's fine. Thank you.

THE COURT: All right, sir. You may come down. Do you wish this witness to be excused?

MR. JENNINGS: Please.

THE COURT: Any objection?

MR. ARCHER: No objection.

THE COURT: You're free to leave, sir. Thank you, sir.

At this point, ladies and gentlemen, we're going to take a break for 10 to 15 minutes, let you go to your jury room. Do not begin your deliberations. Don't discuss the case. We'll be with you probably about 3:45. Thank you. You may retire to your jury room.

(WHEREUPON, the jury left the courtroom at approximately 3:28 p.m.)

THE COURT: Please everyone else remain seated until the jury departs, please. Thank you. Before we go, just one second. And I didn't like it when I was sitting down there and the judge interrupted me and I will try not

1 to. But the record in this case is so critical that I
2 want -- and please forgive me. I'm not trying to intrude
3 or invade your styles at all. I have no problem with any
4 styles. It would just help us tremendously.

5 Mr. Hoisington, if you could pause long enough
6 and if you will look when she's back -- when you're
7 introducing something, that way we don't have a question
8 at the end somebody says that was in, no, it wasn't. And
9 I understand it's all stipulated, but it would just help
10 me tremendously and I would appreciate it.

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

12 **THE COURT:** And I'm sorry, I know it interrupts
13 the flow, and for both sides, if you would just please not
14 interrupt witnesses and help me.

15 **MR. ARCHER:** I'm sorry.

16 **THE COURT:** We'll take a short break...

17 (WHEREUPON, a short break was taken.)

18 **THE COURT:** Let the record reflect Mr. Sapp is
19 present.

20 State ready to continue?

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

22 **THE COURT:** Are y'all ready to continue, Paul?

23 **MR. ARCHER:** Yes.

24 **THE COURT:** Okay. Let's bring in the jury,
25 please.

1 (WHEREUPON, the jury came into open court at
2 approximately 3:44 p.m.)

3 **THE COURT:** Thank you very much, ladies and
4 gentlemen. Let me also say from time to time if you do
5 participate -- and please feel free to do so. I'm sure
6 they've explained to you there are soft drinks and
7 refreshments there in the jury room. If you need to bring
8 those into the courtroom with you, that's perfectly all
9 right with me as well. From time to time, you'll see me
10 drinking water. If you want to do that, that's quite all
11 right. And if anyone during the trial should need any
12 water, Ms. Wiggins is here, we'll be happy to make that
13 available to you. Thank you very much. We're ready to
14 continue.

15 You may call your next witness, Solicitor.

16 **MR. JENNINGS:** Thank you, Your Honor, may it
17 please the Court? The State calls Bryan DeWitt.

18 **BRYAN DEWITT,** after being duly sworn, testified
19 as follows:

20 **THE CLERK:** Please be seated and state your
21 name.

22 **THE WITNESS:** Bryan DeWitt, D-E-W-I-T-T.

23 DIRECT EXAMINATION

24 **BY MR. JENNINGS**

25 **Q** Good afternoon, Mr. DeWitt.

1 **A** Hi.

2 **Q** Where are you employed?

3 **A** United Cable Construction.

4 **Q** And what do you do for them?

5 **A** I run a boring machine.

6 **Q** And that's essentially laying fiber optic cable?

7 **A** Yeah, we put cable in the ground for Comcast.

8 **Q** I want to make sure because we've got jurors all the
9 way down at the end, I want to make sure that you
10 speak up, okay?

11 **A** Okay.

12 **Q** So that everybody down at the far end can hear you.
13 You live in Berkeley County?

14 **A** Yes, sir.

15 **Q** I believe at this time you're living in Carnes
16 Crossing?

17 **A** Yes, sir.

18 **Q** And getting ready to move into your own house?

19 **A** Yes, sir.

20 **Q** Your father's Wayne DeWitt?

21 **A** Yes, sir.

22 **Q** The Sheriff of Berkeley County?

23 **A** That's right.

24 **Q** Does that relationship have any effect on what you're
25 going to testify to today?

- 1 **A** No, sir.
- 2 **Q** In 2002, in July, you were married at that time?
- 3 **A** Yes, sir.
- 4 **Q** Correct? And what was your wife's name?
- 5 **A** Katherine Nicole Kelsey.
- 6 **Q** Where were the two of you living?
- 7 **A** We were living at her mom's house on Berkeley Farms
8 Road off of College Park Road.
- 9 **Q** So you were familiar with the College Park Road area?
- 10 **A** Yes, sir.
- 11 **Q** Who were you working with at that time?
- 12 **A** I had been working with American Pipe, but I had been
13 laid off. So I was currently laid off collecting
14 unemployment.
- 15 **Q** In July of 2002?
- 16 **A** Yes, sir.
- 17 **Q** And I want to turn your attention specifically to the
18 night of July the 6th into the early morning hours of
19 July 7th. Do you remember that night?
- 20 **A** Yes, sir.
- 21 **Q** And whose house were you at?
- 22 **A** I was at my wife's mother's house.
- 23 **Q** And at some point into the morning of the 7th, did
24 you and she have an argument?
- 25 **A** Yes, sir.

1 **Q** Do you recall about what time that was when you left
2 her mother's house?

3 **A** Somewhere between 1 and 2.

4 **Q** Where were you headed?

5 **A** I was headed to my friend -- where I live at
6 currently now in Carnes Crossing. I was walking to
7 his house.

8 **Q** So you were walking, you weren't in a car or
9 anything?

10 **A** Huh-uh.

11 **Q** And walking from that location on Berkeley Farms
12 Road, how did you walk to Carnes Crossing?

13 **A** Well, first, I walked to the Pantry and tried to call
14 my friend and nobody answered. So I proceeded to
15 walk down College Park Road towards 17.

16 **Q** And did you come across a check point where the
17 highway patrol was working that night?

18 **A** Yes, sir.

19 **Q** As you were walking down, you saw the highway patrol
20 cars that were out at the scene?

21 **A** Yes, sir.

22 **Q** I show you what's been marked as State's Exhibit 89.
23 Have you seen this diagram?

24 **A** Yes, sir.

25 **Q** If you would, use this -- that laser pointer and

1 point out to the jury what direction you were
2 walking.

3 A I was walking from this way down the road. And I got
4 about right there where that car was, but it was back
5 there a little more. And that's where I seen the
6 officers talking to the female on this side of the
7 truck. And the passenger, Mr. Sapp, was on this side
8 of the truck, still in the truck.

9 Q Okay. You're familiar with where this car dealership
10 is?

11 A Yes, sir.

12 Q And you were walking on College Park Road towards the
13 car dealership?

14 A Yes, sir.

15 Q I-26 is up in this direction?

16 A Yes, sir.

17 Q And if you kept going this way, you would eventually
18 come to 17-A?

19 A Yes, sir.

20 Q Okay. As you were walking, did you notice a pickup
21 truck pull up to the check point?

22 A No, it was already there.

23 Q It was already there?

24 A Uh-huh.

25 Q I show you what's been marked as State's Exhibit 33.

- 1 **A** Yes, sir.
- 2 **Q** And that's the pickup truck that you saw?
- 3 **A** Yes, sir.
- 4 **Q** If you would, point out to the jury on State's
- 5 Exhibit 89 where that pickup truck was parked.
- 6 **A** Right there.
- 7 **Q** And as you were walking down College Park Road, can
- 8 you describe to the jury what caught your attention
- 9 as you approached that area?
- 10 **A** All right. I seen the highway patrol check points
- 11 here and I noticed the truck over there pulled over.
- 12 When I was walking down, as I got about right there,
- 13 they were on this side of the truck talking to the
- 14 female. And one of the officers proceeded to come
- 15 around to this side of the truck. When he opened the
- 16 door, the defendant shot coming out of the truck. He
- 17 didn't even touch the ground good. He just opened
- 18 the door, fired a shot. One of the officers fell out
- 19 on the front yard somewhere out in there and the
- 20 other officers returned fire. I jumped in the ditch
- 21 on this side of the road because I didn't -- I just
- 22 heard all kind of gunfire.
- 23 **Q** You didn't know who was the passenger?
- 24 **A** No.
- 25 **Q** You saw two troopers talking with a white female at

1 the back?

2 A Yes, sir.

3 Q And as you were approaching this area, was there
4 anything blocking your view --

5 A Nothing.

6 Q -- from seeing what happened at the pickup truck?

7 A No, sir.

8 Q And you said that you saw one of the troopers walk
9 around the passenger side of the vehicle?

10 A Yes, sir.

11 Q You could see the troopers as they were interacting
12 with the female driver?

13 A Yes, sir.

14 Q Were any of their voices raised?

15 A No, sir.

16 Q Was -- any of the troopers have their guns drawn?

17 A No, sir, not at that time.

18 Q As the trooper walked around the passenger side of
19 the pickup truck, did he have his gun drawn?

20 A No, sir.

21 Q You could see his hands?

22 A Yes, sir.

23 Q And what did you see -- what did you see the
24 passenger do as Trooper Johnson approached the door?

25 A Um, I can't remember if he tried to open the door or

1 if he just got out of the truck. But as the door was
2 opening, he pulled his gun out from his waist or on
3 the seat and shot at the officer and got out of the
4 truck and proceeded to run across the front yard.

5 **Q** Who pulled his gun out, the trooper or the passenger?

6 **A** The passenger.

7 **Q** Did you actually see the gun fire?

8 **A** Yes, sir.

9 **Q** And what -- as he fired and Trooper Johnson was hit,
10 what did Trooper Johnson -- what was the reaction of
11 his body?

12 **A** He fell out backwards in the front yard.

13 **Q** Fell onto the ground?

14 **A** Yeah, on his back.

15 **Q** What did you do once all the gunfire started?

16 **A** Once the gunfire started, I ducked and kind of
17 crouched in the ditch, but constantly watching. I
18 never took my eyes off what was happening.

19 **Q** What did you see? What was your attention focused on
20 as you were watching?

21 **A** The -- everything, really. I mean, I was just
22 watching the whole situation. I watched the trooper
23 fall backwards into the yard and then the other
24 troopers returned fire. And when the firing stopped,
25 that's when I ran over to the trooper that fell down.

1 **Q** Okay. Referring again to State's Exhibit 89, you
2 said Trooper Johnson was approaching this side?

3 **A** Yes.

4 **Q** And the passenger as he was exiting, did his feet
5 even hit the ground before he started firing?

6 **A** I don't think so, no, sir.

7 **Q** And as Trooper Johnson was hit, he stumbled back a
8 few steps and fell over here?

9 **A** Somewhere over there on the road, yes, sir.

10 **Q** Was Trooper Johnson ever standing --

11 **MR. ARCHER:** I object, Your Honor. It's
12 leading.

13 **THE COURT:** Sustained. Rephrase your question.

14 **MR. JENNINGS:** Thank you.

15 **Q** Where did you see the other troopers fire from?

16 **A** The other troopers fired from behind the vehicle
17 somewhere in this area.

18 **Q** Okay. Did you see whether Trooper Johnson ever fired
19 his gun?

20 **A** No, sir, he didn't.

21 **Q** What did the passenger do after he shot Trooper
22 Johnson?

23 **A** He proceeded to run across the front yard of the
24 trailer that this all happened in front of.

25 **Q** Okay. And at some point, did you see where he ended

1 up?

2 **A** He ended up on the gravel road directly to the left
3 of the trailer. I could show you.

4 **Q** Okay. If you could, show on State's Exhibit 89.

5 **A** If this is the trailer, he was right about there.

6 **Q** Okay. And the trooper shot at him as he was running?

7 **A** Yes, sir.

8 **Q** What did you do once all the shooting stopped?

9 **A** I jumped up and ran over to the trooper that had been
10 shot and helped another trooper that got there about
11 the same time as I did. And we pulled off his
12 bulletproof vest and found the bullet hole and rolled
13 him up on the side and saw there was no exit wound.
14 And I took off my shirt and put it on his bullet hole
15 and held the pressure until EMS got there.

16 **Q** Had you ever met Trooper Johnson before?

17 **A** No, sir.

18 **Q** From the time as he was approaching the vehicle and
19 was shot and fell down, did he ever get back up on
20 his feet?

21 **A** No, sir.

22 **Q** I show you what's been marked as State's Exhibit 43.
23 Do you recognize that item?

24 **A** Yes, sir.

25 **Q** That's the bulletproof vest that Trooper Johnson was

1 wearing?

2 **A** Yes, sir.

3 **Q** When you took it off, could you notice the bullet
4 hole in the flap?

5 **A** I wasn't really looking at the vest too much. I was
6 looking at him.

7 **Q** After you took his clothes off, where did you notice
8 he had been shot?

9 **A** In the low abdomen, right underneath where the
10 bulletproof vest came up to.

11 **Q** Was he talking when you approached him?

12 **A** No, sir, he was just gasping for air the whole time.

13 **Q** Can you demonstrate that for me?

14 **A** He was just basically, huh, huh, short, trying quick
15 breaths and basically -- he basically just died when
16 I was -- had my hands on him holding pressure. The
17 EMS got there and he just -- I watched him take his
18 last breath.

19 **Q** I show you what's been marked as State's Exhibit 48.
20 Do you recognize that?

21 **A** Yes, sir.

22 **MR. JENNINGS:** Your Honor, we'd offer this into
23 evidence.

24 **THE COURT:** State's Exhibit 48.

25 **MR. ARCHER:** We're stipulating to it.

1 **THE COURT:** State's Exhibit 48 into evidence
2 without objection.

3 (WHEREUPON, State's Exhibit No. 48 was admitted
4 into evidence.)

5 **Q** Whose shirt was that?

6 **A** This was my shirt or is my shirt.

7 **Q** What were you doing with that?

8 **A** To hold pressure on the bullet wound.

9 **Q** And I believe you said that y'all checked his back to
10 see if there was an exit wound?

11 **A** Yes, sir.

12 **Q** Was there any?

13 **A** No, sir.

14 **Q** And at what point could you tell that Trooper Johnson
15 had died?

16 **A** It was after the EMS had arrived, before they put him
17 in the ambulance. I'm confident that he died --

18 **MR. ARCHER:** I object to that. I don't think
19 he's qualified to say that.

20 **THE COURT:** Sustain the objection.

21 **Q** At what point did you hear him take his last breath?

22 **MR. ARCHER:** I object to that, too. I don't
23 know if he knew when it was his last breath.

24 **THE COURT:** Sustained. Rephrase your question.

25 **Q** Did he continue gasping for air?

1 **A** No, sir.

2 **Q** At what point did he stop?

3 **A** He stopped prior to them putting him in the
4 ambulance.

5 **Q** Did you see -- once the suspect had run down the
6 driveway, did you see him get taken into custody?

7 **A** No, sir, I didn't. I never saw him get put in the
8 car.

9 **Q** Did you see the troopers approach him?

10 **A** Yes, sir.

11 **Q** Did you ever see them mistreat him in any way?

12 **A** No, sir.

13 **MR. JENNINGS:** Beg the Court's indulgence.

14 **THE COURT:** Take your time, sir.

15 **MR. JENNINGS:** That's all I have, Your Honor.

16 Thank you.

17 **THE COURT:** Hold on just one second. Now, you
18 may cross-examine.

19 CROSS-EXAMINATION

20 **BY MR. ARCHER**

21 **Q** Mr. DeWitt, how are you?

22 **A** All right.

23 **Q** Thank you for coming. I would like to show you a
24 statement that you signed.

25 **A** Okay.

1 **Q** This statement is dated July 7th, 2002. And is that
2 your signature at the bottom of it?

3 **A** Yes, sir.

4 **Q** And would you please read slowly so she can take it
5 down what this sentence says right here?

6 **MR. JENNINGS:** Objection, Your Honor, he can
7 have him review it.

8 **THE COURT:** Sustain the objection. Have him
9 review it.

10 **MR. ARCHER:** Okay.

11 **THE WITNESS:** (The witness reviewed the
12 document.)

13 **Q** You stated that you saw him being shot three times,
14 correct?

15 **A** I stated that the gunfire -- I heard three gunshots.

16 **Q** It says, As he was getting out, he fired three shots,
17 correct?

18 **A** That's right.

19 **Q** Okay.

20 **MR. ARCHER:** Could we play the tape, please?
21 Grainger. And we can move it up to...

22 (WHEREUPON, the tape was played for the jury.)

23 **MR. ARCHER:** All right. You can stop it.

24 **Q** Sir, what was those -- could you identify the three
25 shots that you just heard?

1 **A** No, sir. It sounds like the first shot was the one
2 that hit the trooper and then the other shots were
3 all returned from the other troopers.

4 **Q** Okay. But on the tape, you heard two shots, correct?

5 **A** Yes, sir.

6 **Q** And you're just assuming that that's what happened?
7 You don't know that for a fact, do you? Do you know
8 who shot first?

9 **A** Yes, sir.

10 **Q** How do you know that?

11 **A** Because I saw him.

12 **Q** But the shots were very close; is that correct?

13 **A** Yes, sir. The return fire was close to the fire that
14 hit him the first time, yes, sir.

15 **Q** Okay. And the third shot, where was that one?

16 **A** I guess there wasn't one.

17 **Q** Let's just go to that chart for a second, please,
18 sir. Can you see this?

19 **A** Yes, sir.

20 **Q** Okay. Where were you when you saw the shots?

21 **A** Right there.

22 **Q** Okay. And it was --

23 **MR. JENNINGS:** Your Honor, can he flip it around
24 so the jury can see him?

25 **THE COURT:** I appreciate that. He may have just

1 wanted to talk with the witness. However you want to do
2 it.

3 **MR. ARCHER:** I was looking for that stand.

4 **THE COURT:** It's right behind you, Mr. Archer.

5 **MR. ARCHER:** Oh. I know I'm getting old.

6 **Q** Can you see that?

7 **A** Yes, sir.

8 **Q** Just point that out. You're here --

9 **THE COURT:** If you want the jury to see it,
10 Mr. Archer, you need to turn it. Because I don't think
11 the ones down there can see it very well. And maybe if
12 you want Mr. DeWitt to come down to assist you.

13 **MR. ARCHER:** Yeah, why don't you come down.

14 **THE COURT:** Mr. DeWitt, just keep your voice
15 level raised when you're off the stand.

16 **Q** All right. Just show the jury where you were at the
17 time you saw the shots.

18 **A** I was right here. This car was not this close to the
19 road --

20 **THE COURT:** Hold on just a second.

21 Mr. Archer, you're going to need to move because
22 you're blocking their views. There we go. Thank you.

23 **A** This car was back off the road a little bit. I was
24 walking this way, right by the ditch, right in front
25 of that car, right before the used car lot.

1 Q Right. Was that a police car that you're pointing
2 at?

3 A I was told that that was an undercover car, but I
4 don't even remember seeing the car there.

5 Q And when you saw the shot, you saw it over here?

6 A Yes, sir.

7 Q Okay. This was nighttime, wasn't it?

8 A Yes, sir.

9 Q Did you see flashes or did you actually see --

10 A I watched him get out of the car, pull his gun out
11 and shoot.

12 Q Right. But what did you see?

13 A I saw --

14 Q I mean, you saw the flash of a bullet?

15 A I saw him getting out of the car.

16 Q And then you heard something?

17 A I heard and saw it. I was watching the whole time.

18 Q Well, what did you see?

19 A I saw the defendant get out of the car, pull his
20 weapon and shoot the trooper.

21 Q Okay. But this is at nighttime, so did you see a
22 flash coming out of gun?

23 A Yeah.

24 Q You saw a flash?

25 A Yes, sir.

1 **Q** I don't mean to confuse you. I'm only asking you a
2 question. It's nighttime. Was this well lit?

3 **A** Yes.

4 **Q** Okay.

5 **A** There are street lights and there was headlights.

6 **Q** How many feet do you think that is from here to here?

7 **A** Thirty feet.

8 **Q** So 30 feet in the dark, you saw a gun?

9 **A** Yes, sir.

10 **Q** Okay. I'm just asking you questions. What did you
11 see when you see a gun fired? We know you heard a
12 shot.

13 **A** I saw it discharge --

14 **Q** But what --

15 **THE COURT:** Hold on just a second. Mr. Archer,
16 again, allow the witness once he starts answering the
17 question to answer your question, please.

18 **MR. ARCHER:** Okay.

19 **THE COURT:** And please just ask the question and
20 don't argue with him.

21 **MR. ARCHER:** Okay.

22 **Q** Just tell the jury what you saw.

23 **A** I saw the trooper walk around to the passenger side
24 of the truck and attempt -- like I said, I don't know
25 if he opened the door or if the passenger opened the

1 door. When the passenger stepped out of the truck,
2 he pulled his gun and shot before his feet even hit
3 the ground.

4 Q All right. Just review this again, your statement.

5 A (The witness reviewed the document.)

6 Q Right where it's yellowed out.

7 MR. JENNINGS: If I can just ask one thing,
8 also, if he will mark that for identification just so it
9 will be clear.

10 THE COURT: Yes.

11 (WHEREUPON, Defendant's Exhibit No. 7 was marked
12 for identification only.)

13 Q In your statement, you stated there were three
14 officers, correct?

15 A Yes, sir.

16 Q At the passenger window?

17 A No.

18 Q Read it again.

19 A (The witness reviewed the document.) It said, There
20 were two officers standing on the side of the
21 passenger.

22 Q Right. So on the passenger side, there were two
23 officers standing there, not one officer?

24 A No, there was only one, but my statement is
25 incorrect.

1 Q So --

2 A There was two officers on the driver's side.

3 Q So your statement is incorrect that there were two
4 officers standing by the passenger side?

5 A There was only one officer approaching to get him out
6 of the passenger side.

7 Q Right. And then your statement is also wrong that
8 three shots were fired?

9 A Yes, sir.

10 Q Okay.

11 MR. ARCHER: Thank you.

12 THE COURT: You may take your seat, sir.

13 Redirect?

14 MR. JENNINGS: Thank you, sir.

15 REDIRECT EXAMINATION

16 BY MR. JENNINGS

17 Q Mr. DeWitt, it was chaotic out there that night?

18 A Yes, sir.

19 Q And in your statement you recollected things to the
20 best of your ability?

21 A Yes, sir.

22 Q Is there any doubt in that statement and in your mind
23 who shot Trooper Johnson?

24 A None.

25 Q Where was the shot fired from that hit Trooper

1 Johnson?

2 **A** From the truck.

3 **Q** By who?

4 **A** By the passenger.

5 **Q** By the passenger in that vehicle?

6 **A** Yes, sir.

7 **MR. JENNINGS:** Thank you.

8 **THE COURT:** Any recross?

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

10 **THE COURT:** You may come down.

11 Do you wish Mr. DeWitt to be excused?

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

13 **MR. ARCHER:** No objection.

14 **THE COURT:** You're free to leave, Mr. DeWitt.

15 Thank you very much.

16 Call your next witness.

17 **MR. HOISINGTON:** Trooper Roy Barwick.

18 ROY B. BARWICK, III, after being duly sworn,
19 testified as follows:

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

22 **THE WITNESS:** Roy B. Barwick, III.

23 DIRECT EXAMINATION

24 **BY MR. HOISINGTON**

25 **Q** Trooper Barwick, you go by Roy?

1 **A** Yes, sir.

2 **Q** You're with the highway patrol, obviously.

3 **A** Yes, sir.

4 **Q** How long have you been working with the patrol?

5 **A** August will be nine years.

6 **Q** Prior to that, did you have any --

7 **A** I worked with the State Probation and Parole for a
8 year. And a little while, I was reserve with the
9 sheriff's department.

10 **Q** Charleston or Berkeley sheriff?

11 **A** Berkeley County.

12 **Q** Where did you grow up?

13 **A** Pinopolis.

14 **Q** Are you married?

15 **A** Yes, sir.

16 **Q** And your wife's name?

17 **A** Lisa.

18 **Q** Do you have any children?

19 **A** I have three.

20 **Q** How old are they?

21 **A** Bryson just turned five. I have a -- my little boy,
22 he'll be two June 20th, and my little girl is 10.

23 **Q** Now, you've been with the highway patrol for nine
24 years. What are your principal responsibilities?

25 **A** Enforce traffic laws and investigate accidents.

1 Q What is your rank?

2 A Lance Corporal.

3 Q Were you on duty on the night of -- early evening of
4 July 6th and later into the night of July 7th of
5 2002?

6 A Yes, sir.

7 Q And who were you on duty with? Do you have a team
8 that you work with?

9 A Yeah, we rotate. But that night I was working with,
10 um, Corporal Johnson, Grainger, Sigwald and myself.

11 Q How long have you known these troopers?

12 A Steve and Jeff, probably about eight years.

13 Q That would be Steve Grainger and Jeff Johnson?

14 A Yeah, Steve Grainger and Jeff Johnson, about eight
15 years. And Patrick Sigwald, probably a couple years.
16 He worked in Charleston County.

17 Q So you knew Jeff's family?

18 A Yes, sir.

19 Q Now, what time did you start your shift on July 6th
20 of 2002?

21 A I believe 7.

22 Q Describe briefly what y'all did that evening. Each
23 patrolman has their own patrol car; is that correct?

24 A Yes, sir.

25 Q How did you get up with the other people?

1 **A** We were going to have some road checks that night.

2 **Q** Do you remember where the first one was?

3 **A** At the 199 exit ramp westbound, like in front of
4 Money Man.

5 **Q** What time did you set up that license check
6 approximately?

7 **A** I think about 10, 10 or 11.

8 **Q** Do you recall approximately how long you stayed at
9 that location?

10 **A** About an hour, hour and a half.

11 **Q** Anything out of the ordinary occur at that particular
12 location that you can recall?

13 **A** No, sir.

14 **Q** You don't recall making any arrests that required
15 anybody to go to jail or anything?

16 **A** No, sir.

17 **Q** Now, where did you proceed from that particular
18 license check?

19 **A** I went to College Park Road, went down the frontage
20 road to College Park.

21 **Q** And what was the reason you went over there?

22 **A** We were going to have another road check.

23 **Q** And the officers that were with you were the same
24 three that were with you before?

25 **A** Yeah, yes, sir.

1 **Q** Troopers, I mean.

2 **A** Yes, sir.

3 **Q** All right. Describe what happened when you got to
4 that location. Just give me sort of the set up.

5 **A** Located -- it was on -- we stopped there at --
6 because it was -- we had a parking lot where we could
7 pull cars into right there. It was like a little,
8 um, car dealership. And it had a little bit of
9 light, you know, with the car dealership.

10 **Q** So how would you arrange the officers -- the troopers
11 at that point? Where would you park your cars?

12 **A** On the side of the road.

13 **Q** Give me the mechanics of setting up a license check.

14 **A** Get them out the way where we can get the cars out of
15 the road. If we have to pull somebody over, we pull
16 the other vehicles into the parking lot out of the
17 road.

18 **Q** Do you know approximately what time you initiated
19 that license check at that location?

20 **A** I don't remember, 12, 1.

21 **Q** Now, what is -- did you stop anybody that evening at
22 that license check to speak with them?

23 **A** Yes, sir.

24 **Q** About how many?

25 **A** About 10, 15.

1 **Q** And give us a for instance. I mean, what would the
2 typical inquiry result in?

3 **A** Stop and ask them for their driver's license and
4 registration and see if you smell any alcohol or
5 marijuana or anything out of the vehicle.

6 **Q** And if there was no problem and they had a license,
7 what would happen?

8 **A** They just drove on.

9 **Q** Would you have bothered to run a check through the
10 computer system if everything seemed squared away?

11 **A** No, sir.

12 **Q** Now, getting closer in time to this incident, did you
13 have an occasion to stop and speak with a lady? Was
14 there a Hispanic lady that you were speaking with?

15 **A** Yeah, I stopped, I believe, it was a minivan with a
16 Hispanic woman that had a couple child restraint
17 violations. I don't believe she had a driver's
18 license.

19 **Q** Tell us about what happened after you made that
20 inquiry.

21 **A** I got her information and went back to my car and got
22 in my car. And when I got into my car, I noticed my
23 video camera had popped on and I cut it off. And
24 then I called for the driver number by the dispatch
25 and I started writing her the tickets.

1 **Q** Okay. You were still in your vehicle at that point?

2 **A** Yeah, I was sitting down.

3 **Q** Where was she?

4 **A** She was in her van.

5 **Q** What happened then?

6 **A** I was sitting there writing the tickets and I heard
7 noises that I thought was fire -- it sounded like
8 fireworks to me because it was around the Fourth of
9 July. And we was kind of used to hearing, you know,
10 fireworks at a distance. And I looked up and seen
11 muzzle flashes.

12 **Q** Where were these muzzle flashes coming from?

13 **A** In front of my car down the road, probably about 20
14 or 30 yards down the road.

15 **Q** What did you do at that point?

16 **A** I jumped out of my car and run to the front of my
17 car. And I pulled my weapon and I seen a subject
18 running down the driveway shooting behind him.

19 **Q** What did you do at that point?

20 **A** He was -- there was a trailer behind him. And when
21 he -- he was running and kind of stumbling a little
22 bit. As soon as he cleared behind the trailer, I
23 shot a couple rounds.

24 **Q** What did you do after that? Did the suspect fall?

25 **A** I went straight to the subject that I was firing at.

1 Q Could you tell if he had been hit or not?

2 A When I got there?

3 Q Well --

4 A I couldn't see. You know, when I shot, he fell.

5 Q Okay.

6 A And -- but when I got up there to him, he wasn't
7 moving. And I couldn't -- I -- my flashlight was
8 dead and it was dark.

9 Q What did you -- what were your responsibilities at
10 that point?

11 A I was covering the subject.

12 Q Anybody with you?

13 A Not at that time.

14 Q Okay. How soon did somebody arrive to help you cover
15 the suspect?

16 A Thirty seconds.

17 Q And who was that?

18 A Steve Grainger.

19 Q And he's another trooper?

20 A Yes, sir.

21 Q The suspect, do you see him in court today?

22 A Yes, sir.

23 Q Where is he?

24 A He's sitting over there at that table.

25 Q That's the person that you held there after he was

1 shot?

2 **A** Yes, sir.

3 **MR. HOISINGTON:** Let the record reflect he is
4 pointing out Jesse Sapp, Your Honor.

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

6 **Q** At that point, did you understand whether an officer
7 had been shot or not?

8 **A** When I first got to the subject on the ground, I was
9 covering, and then Steve got there. And when Steve
10 was walking up to me, he said that somebody had been
11 shot. And I called on my radio, on my repeater and I
12 went to the county frequency and called for help on
13 their frequency.

14 **Q** Okay. Did you have any other responsibility relative
15 to Mr. Sapp, to weapons or anything of that nature?

16 **A** When Steve got there, he shined the light. And
17 first, I think I handcuffed him. He told me to
18 handcuff him and I handcuffed him. And when he
19 shined the light around, the pistol was laying about
20 five yards from the subject.

21 **Q** Okay. What did you do in regard to that pistol?

22 **A** I stood over the pistol until somebody -- until the
23 sheriff's department got there.

24 **Q** I show you State's Exhibit No. 35 and ask for you to
25 look at that and see if this appears to be the pistol

1 that you --

2 **A** Yes.

3 **Q** Okay. And you would not have taken the clip out of
4 it, would you?

5 **A** No, I didn't touch it.

6 **Q** Okay. You just made sure it was secure?

7 **A** Yes, sir.

8 **MR. HOISINGTON:** Move these both into evidence,
9 Your Honor.

10 **THE COURT:** Both of them, the clip and the
11 firearm, are 35, Solicitor?

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

13 **THE COURT:** Together?

14 **MR. HOISINGTON:** 36 and 35, Your Honor.

15 **THE COURT:** State's Exhibits 35 and 36 are into
16 evidence without objection.

17 (WHEREUPON, State's Exhibits Nos. 35 and 36 were
18 admitted into evidence.)

19 **Q** Now, you fired your firearm; is that right?

20 **A** Yes, sir.

21 **Q** Do you recall approximately how many times?

22 **A** I couldn't tell you.

23 **Q** Do you know, if there was a last shot fired, which
24 trooper would have probably fired that shot?

25 **A** That was me. I shot all three rounds after all the

1 other shooting was done, a little while after all the
2 other shooting.

3 Q Was he still moving?

4 A Yeah, he was running down the road.

5 Q Approximately how far do you think you were from him
6 when you fired the last rounds?

7 A About 25 yards.

8 Q Now, the highway patrol is issued weapons?

9 A Yes, sir.

10 Q And you were issued what type of firearm?

11 A A Glock 40 caliber.

12 Q And the weapon -- the ammunition for that, where do
13 you get that?

14 A It's issued to me.

15 Q So it's standard highway patrol ammunition?

16 A Yes, sir.

17 Q And do you -- is this inspected or -- inspected on
18 the condition of your firearm?

19 A Yeah, monthly I get inspected on all my equipment.

20 Q Following this shooting, what is the standard
21 procedure for the investigations involving these
22 types of shootings?

23 A They take your weapon any time you fire your weapon.

24 Q Now, I want to show you what's been marked State's
25 Exhibit No. 4 without objection, Your Honor. And ask

1 if you can identify that.

2 **A** That's my gun.

3 **Q** Okay. And it would have -- the shells in it came out
4 of the clip?

5 **A** Yes, sir.

6 **Q** How many rounds are standard for a trooper Glock?

7 **A** Sixteen.

8 **Q** And --

9 **MR. HOISINGTON:** We'd move to introduce that if
10 we didn't already, Your Honor.

11 **THE COURT:** State's Exhibit 4 is into evidence
12 without objection.

13 (WHEREUPON, State's Exhibit No. 4 was admitted
14 into evidence.)

15 **Q** Following this, this -- that was the end of your
16 responsibility involving this case?

17 **A** Yes.

18 **Q** And I believe you gave a statement to the sheriff's
19 office or to SLED?

20 **A** Yes, sir.

21 **Q** Now, go back again to the videotape that was in your
22 vehicle. Had you activated that videotape?

23 **A** No, sir.

24 **Q** Why was it -- do you have any idea how it got on?

25 **A** I left it on when I drove to the scene, I left my car

1 running. And I left my air conditioner running and
2 everything.

3 Q Would that mean the videotape was running the whole
4 time?

5 A Well, no, not the camera. It's got to be -- I either
6 got to hit my blue lights to cut it on or the mic.

7 Q Had you done either of those?

8 A No, sir.

9 Q How would it have gotten cut on then?

10 A Somebody else's mic, microphone.

11 Q Okay. And so when you saw that it was on, were you
12 trying to record anything at that time?

13 A No, I didn't know it was on. I got in the car and I
14 cut it off to save my tape for later traffic stops.

15 Q Did you ever take custody of that tape following that
16 evening?

17 A No, sir.

18 Q Who was given the tape, do you know?

19 A They took it out of my car. When they took us to the
20 fire department, they left my car -- I gave them -- I
21 think I locked my car up and give the key to whoever
22 was left there.

23 Q And in order to get the tape out, what would you have
24 to have?

25 A They have to get in my trunk and then another key to

1 open the video camera.

2 **Q** But certainly, you had nothing to do with taking it
3 out?

4 **A** No, sir.

5 **Q** I guess I'm going to go ahead and show you that tape
6 and get that out of the way.

7 **MR. HOISINGTON:** Play that for us, Fred.

8 (WHEREUPON, the videotape was played for the
9 jury.)

10 **THE COURT:** By agreement, we're fast forwarding
11 this; is that right?

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

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

14 (WHEREUPON, the tape was played for the jury.)

15 **Q** Whose voice was that on the tape?

16 **A** Steve Grainger.

17 **Q** Could you even hear that when you were in your car?

18 **A** No, sir.

19 **Q** Were you paying any attention to what was happening
20 when you were in your car?

21 **A** No, sir.

22 **Q** Who was it that cut that tape off at that point?

23 **A** That was me that cut it off.

24 **Q** Step down here for a minute and let me make sure the
25 jury understands where you were located. There's a

1 laser pointer up there if you can find it. Come on
2 down here.

3 **A** (The witness complied.)

4 **Q** When you get yourself acclimated, have you had a
5 chance to see this one time before?

6 **A** Yeah.

7 **Q** Okay. Now -- Trooper Sigwald's car -- that's your
8 car right there?

9 **A** My car.

10 **Q** The camera was pointing in that direction?

11 **A** Yeah.

12 **THE COURT:** He needs to step back a little bit.

13 **Q** You need to step back a little bit. Now, you were in
14 this car when you heard the shots?

15 **A** That's my car, yeah.

16 **Q** Describe what you did at that point.

17 **A** I stepped out of my car and went to the front of my
18 car.

19 **THE COURT:** Hold on a second, Solicitor. I need
20 to hear him, too.

21 Mr. Barwick, if you could keep your voice raised
22 for me, please, sir.

23 **THE WITNESS:** I stepped out of my car and went
24 to the front of the car.

25 **Q** What did you see when you did that?

1 **A** When I got out to the front of my car, I seen a
2 subject running down the driveway shooting behind
3 him. I seen muzzle flashes going behind him.

4 **Q** He was shooting behind him?

5 **A** Yeah, he was shooting behind him.

6 **Q** What did you do?

7 **A** I let him clear the little -- the trailer because I
8 didn't want to shoot behind -- I didn't know if
9 anybody -- or who was hit. When he cleared the
10 trailer where it was safe for me to shoot, I shot. I
11 shot a couple rounds.

12 **Q** Okay. And then?

13 **A** And he fell down in the driveway.

14 **Q** And that's where you helped subdue him and recovered
15 the gun?

16 **A** Yeah. Yes, sir.

17 **Q** Thank you. You can take the stand again.

18 **A** (The witness complied.)

19 **Q** I show you State's Exhibit No. 80. I know this was
20 nighttime, but --

21 **MR. HOISINGTON:** See if we can get that a little
22 closer, Fred.

23 **Q** What does that appear to be?

24 **A** A handgun.

25 **Q** Was that in the location of the gun that you secured?

1 **A** Yes, sir.

2 **Q** All right. And I'm going to show you a close up. Is
3 that the condition it appeared in that night as far
4 as you can remember?

5 **A** As far as I can remember.

6 **MR. HOISINGTON:** I want to introduce No. 80 and
7 80 -- and 76 without objection.

8 **THE COURT:** You want them into evidence?

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

10 **THE COURT:** 76 and 80, each being a photograph,
11 into evidence without objection.

12 (WHEREUPON, State's Exhibits Nos. 76 and 80 were
13 admitted into evidence.)

14 **Q** And this is State's Exhibit 84. Does that appear to
15 be the area where his body -- where he fell?

16 **A** In the driveway, yes, sir.

17 **Q** Can you show with the laser pointer approximately
18 where he ended up?

19 **A** He was somewhere in the driveway.

20 **Q** Okay. Thank you very much.

21 **MR. HOISINGTON:** Beg the Court's indulgence a
22 second.

23 **THE COURT:** Yes, sir. Take your time,
24 Solicitor.

25 **Q** Do you remember approximately how much time passed

1 between you cutting off the tape and hearing these
2 shots start firing? .

3 **A** Couple minutes, two, three minutes.

4 **Q** Can you erase that tape from your car?

5 **A** No.

6 **Q** Did you erase that tape?

7 **A** No, sir.

8 **MR. HOISINGTON:** Thank you. If you would answer
9 any questions.

10 **THE COURT:** Cross-examine, Mr. Archer?

11 CROSS-EXAMINATION

12 **BY MR. ARCHER**

13 **Q** Sir, that's a VCR player, isn't it? That's a VCR you
14 have in your --

15 **A** They use a VCR tape.

16 **Q** That can be erased, correct? Just play over it?

17 **A** I don't know if you can or not. I've never done it.

18 **Q** Never done it?

19 **A** Not in a car. I've done it at home.

20 **Q** After this, you were going to go home. Is that what
21 you were going to do after this traffic stop? What
22 were you going to do?

23 **A** I didn't get off till 7 that morning.

24 **Q** And what were you planning to do afterwards?

25 **A** After?

1 Q After -- you just got there. It was 2 o'clock, 2:30.

2 A After we left the road check?

3 Q Yeah, what were you going to do after?

4 A We would have probably went and got something to eat.

5 Q You testified that you were saving your tape for
6 later?

7 A Yes, sir.

8 Q You were saving your tape to get something to eat?

9 A Saving my tape for future traffic stops. Could be
10 the next day.

11 Q Oh, could be the next day. All right. Are you aware
12 of how many minutes those tapes carry?

13 A I think it's either two or four hours.

14 Q Okay. It's in the thousands of minutes, though,
15 isn't it?

16 A I don't know.

17 MR. ARCHER: Can we play the tape, please?

18 THE COURT: Do we need to play the tape? Can we
19 stipulate that --

20 MR. HOISINGTON: We can stipulate if it's four
21 hours, it's 60 times four.

22 MR. ARCHER: I want to show the minutes on
23 there.

24 THE COURT: Well, it is what it is.

25 (WHEREUPON, the tape was played.)

1 Q You already had 349 minutes right there. See that?
2 Isn't that a thousand? That goes into the thousands
3 of minutes; is that correct? See the zero right
4 there?

5 A To tell you the truth, I don't know what that time --
6 it's so small on my VCR, I can't see it.

7 Q Well, some of the other tapes that we played had
8 thousands in there. You only have 357. So you were
9 saving your tape even though you only had 357 minutes
10 in it? I'm just asking you a question?

11 A Yes, sir, I was saving my tape.

12 Q You were saving your tape. Fine. You also testified
13 that when Mr. Sapp came down -- went down, officer
14 came up with a flashlight. It was pretty dark,
15 wasn't it?

16 A Yes, sir.

17 Q It was dark. Actually, as a matter of fact, it was
18 just a dealer, little small dealership across the
19 street, right?

20 A Yes, sir.

21 Q And that was about the only light that was in place?

22 A Pretty much, I believe so.

23 Q Right. So it was dark. When you set up a roadblock,
24 do you put your tapes on automatically to capture
25 evidence that might happen, say, for drunk driving or

1 --

2 **A** No, sir.

3 **Q** -- somebody claims abuse? You don't do that?

4 **A** If we get a drunk -- if we stop a person that we
5 think's been drinking too much, we can cut the video
6 on and then do the field sobriety tests.

7 **Q** Right. But, I mean, if a truck pulls up, you don't
8 know if that person's drunk or not. You see it all
9 the time on Cops TV. They put the video on.

10 **A** If they -- we don't do that every time.

11 **Q** You don't put the video on?

12 **A** Yeah, because I have wrote other tickets at that
13 traffic stop not in -- I didn't videotape them.

14 **Q** So you have to make sure they're drunk first and then
15 you put the video on?

16 **A** No, sir.

17 **Q** Oh.

18 **A** If I think they may be drinking, then I do their
19 field sobriety tests, I'll do it in a video.

20 **Q** So if he staggers out of the truck or whatever,
21 you're not going to tape any of that, correct?

22 **A** If possible I would, but...

23 **Q** So that would be a good idea to tape that, wouldn't
24 it?

25 **A** Yes, sir.

1 Q And your tape shut off right before something tragic
2 happened; isn't that correct?

3 A Yes, sir.

4 Q When you saw Jesse Sapp, did you actually see the
5 firing of the gun?

6 A Yes, sir.

7 Q How far away were you?

8 A Probably 25, 30 yards, 40 yards.

9 Q And you were behind him; is that correct? You were
10 -- well --

11 A When I stepped out of my car, I walked to the front
12 of the car and seen him running down the driveway.

13 Q I'll do that later. Let me ask you a question. You
14 testified that you were shooting and you were
15 shooting and then you found out a trooper was shot?

16 A No, after the subject was shooting, running down the
17 driveway, I fired. And then when I got up there to
18 him, then I realized that a trooper had gotten hit.

19 Q So you don't know what this man did before you
20 started shooting?

21 A I knew he was shooting a gun.

22 Q Right. But you didn't know if -- you didn't know he
23 was shooting at a trooper?

24 A I had a pretty good idea he was shooting at one of
25 us.

1 Q Well, there were other witnesses there, weren't
2 there? There was a whole bunch of people at that
3 stop.

4 A Yes, sir.

5 Q Isn't it possible he could have been shooting at one
6 of those witnesses? Yes or no?

7 A Yes, sir.

8 Q You made a statement on July 7th and then you made a
9 statement on July 19th; is that correct? You made
10 two statements, correct?

11 A I know I made a statement and then we met and went
12 over the statement.

13 Q Right. Who did you meet with?

14 A SLED agent.

15 Q You met at a Holiday Inn, didn't you?

16 A It was a restaurant -- it was a hotel, but I don't
17 remember what --

18 Q And do you remember who was present at that meeting?

19 A It was me and Matt Ford.

20 Q And any other police officers there?

21 A Steve Grainger and Sigwald.

22 Q So all three of you officers met at a restaurant
23 after July 7th?

24 A We met at the hotel in the lobby.

25 Q The hotel in the lobby. And then you amended your

1 statement on the 19th after you had that meeting?

2 A No, we did that the morning that we was meeting -- we
3 was waiting on the SLED agent to get there.

4 Q Okay. So in other words, on July 19th, after you had
5 the meeting, then you signed a new statement; is that
6 correct?

7 A We did the initial statement at --

8 Q No, the initial statement was July 7th.

9 A Yeah.

10 Q I know that, okay. Then you met with Steve Grainger,
11 the other police officers with SLED after July 7th?

12 A We did that on our own. We didn't go in there at the
13 same time if that's what you're asking.

14 Q No, I'm asking, you had a meeting together?

15 A No, we didn't have a meeting.

16 Q What did you have?

17 A We waited on the SLED agent, then we went into the
18 room and did our statement separately.

19 Q Right. And that's when you amended it, after that --

20 A Again, when we --

21 Q -- meeting?

22 A A week or so later we met with -- it was actually a
23 different SLED agent and we went over the statement
24 and did --

25 Q And then you made another --

1 **A** We did the other statement.

2 **Q** In between July 7th and July 19th, did y'all view
3 these videos?

4 **A** No, sir.

5 **Q** So in other words, the trooper was shot and you
6 didn't have any curiosity to see what was on the
7 video?

8 **A** They took my video. That morning, they took my
9 video.

10 **Q** On the 7th?

11 **A** Yes, sir.

12 **Q** And you never saw that video until when?

13 **A** Until at the solicitor's office.

14 **Q** When was that?

15 **A** Couple weeks -- maybe a couple weeks ago.

16 **Q** Like the 19th?

17 **A** No, it wasn't the 19th.

18 **Q** It was after the 19th?

19 **A** Yes, sir.

20 **Q** You had no curiosity what was on that video?

21 **A** I didn't know what was on it. I didn't know that...

22 **Q** Let me show you a couple pictures. These would be
23 Defendant's Exhibits 1, 2, 3 and 4. Just take a look
24 at them.

25 **A** (The witness reviewed the documents.)

1 **MR. ARCHER:** Let me see if I can get this right
2 this time. How's that? Can y'all see it? No?

3 **Q** Would you step down, please?

4 **A** (The witness complied.)

5 **Q** All right. This is the Sapp truck, correct?

6 **A** Yes, sir.

7 **Q** And the door is open this way?

8 **THE COURT:** A juror can't see.

9 **MR. ARCHER:** Oh, a juror can't see?

10 **THE COURT:** Thank you. Y'all stand behind it
11 and it will work, I think.

12 **MR. ARCHER:** Okay.

13 **Q** So this is the Sapp truck and this is the passenger
14 side door; is that correct?

15 **A** Yes, sir.

16 **Q** And the door is open, correct?

17 **A** If you say it is. I didn't --

18 **Q** Okay. And now, where is your car?

19 **A** Right here.

20 **Q** So you're right here. You're right in the line of
21 that door, aren't you?

22 **A** The --

23 **Q** You're behind -- you're right there and you're behind
24 --

25 **A** Right.

1 Q So Sapp is here somewhere and Johnson is here
2 somewhere?

3 A Yes, sir, somewhere.

4 Q Let me show you this picture, which is Defendant's
5 Exhibit No. 1. That's an entrance bullet hole, isn't
6 it, in the car?

7 A I don't know.

8 Q You don't know?

9 A If you say it is, I'll...

10 Q Well, let me show you another one. What does that
11 look like? This is Defendant's Exhibit 4, the
12 outside of the door. That's an exit hole, isn't it?

13 A I don't know what it is.

14 Q Well, do they --

15 THE COURT: Keep your voice level up because the
16 court reporter needs to hear you, Mr. Barwick. And I know
17 you're standing right by Mr. Archer, it's difficult to do
18 that, but if you will do that, that would help.

19 THE WITNESS: I'm sorry.

20 Q You've gone to the police academy?

21 A Yes, sir.

22 Q Do you know the difference between an exit hole and
23 an entrance hole from a bullet?

24 A I could tell a difference. But, I mean, you're
25 asking me if that looks like a hole, but it don't

1 even look like a hole, it looks like a light flash on
2 the door. What I'm saying is, if you say it's a
3 hole, then I believe you there's a hole there.
4 That's what I'm saying.

5 Q Oh, okay. This hole obviously looks different than
6 this hole, correct? This is perfectly round, the
7 other has got like -- well, just explain to the jury
8 what an exit hole looks like and what an entrance
9 hole looks like.

10 A Well, an entrance hole, a lot of times -- the exit
11 hole would be expanded out. And then where it goes
12 in, a lot of times, it's either smaller or --

13 Q So if you shot a gun through this cardboard, there
14 would be a round hole here and on the other side, it
15 would be kind of expanded out?

16 A Yeah.

17 Q Okay. So now, let me show you these three pictures
18 again. This is the inside of the door. That's a
19 round hole, correct?

20 A Yes, sir.

21 Q And this is the outside of the door. And that's
22 obviously an expanded hole?

23 A If you say it is. It's the lights -- the light thing
24 is right where the hole is.

25 Q That's not a light, that's a hole.

1 **THE COURT:** Mr. Archer, he's not been able to
2 identify it, sir. You can move on to something else.
3 He's going to have to speculate.

4 **MR. ARCHER:** Okay. Thank you, sir.

5 **Q** But you do admit that this is an entrance hole on the
6 inside of the door?

7 **A** It's a hole in the door.

8 **Q** Okay. So if that door is open and you started to
9 shoot, that line of bullet is exactly -- could have
10 gone right through that car door, couldn't it?

11 **A** If I shot that way.

12 **Q** Right. And that's where Officer Johnson was and
13 that's where the defendant was, correct?

14 **A** I didn't start shooting until the subject was down
15 there.

16 **Q** Well, I didn't ask you that. I said if you did, you
17 would be right in the line --

18 **MR. HOISINGTON:** Judge, he's already stated he
19 didn't --

20 **THE COURT:** Hold on a second. Mr. Archer,
21 again, I'm going to remind you, please do not cut off the
22 witness when he's answering your question, please, sir.

23 **MR. ARCHER:** Okay.

24 **Q** Hypothetically, if you shot from here to here, that's
25 in direct line of where that car door is.

1 **A** Okay.

2 **Q** Yes?

3 **A** Yes.

4 **Q** Thank you. You may sit down.

5 **A** (The witness complied.)

6 **MR. ARCHER:** I would like to offer these into
7 evidence, Your Honor.

8 **THE COURT:** Without objection, Defendant's
9 Exhibits 1 through 4 admitted into evidence, each being a
10 photograph.

11 (WHEREUPON, Defendant's Exhibits Nos. 1 through
12 4 were admitted into evidence.)

13 **Q** I moved that chart a little too quickly. I'm getting
14 pretty good at this. Could you come down again?

15 **A** (The witness complied.)

16 **Q** All right. You testified -- did you see Jesse Sapp
17 shoot the second time?

18 **A** No, sir.

19 **Q** Only one time?

20 **A** I seen a couple shots.

21 **THE COURT:** Hold on just one second.

22 Mr. Archer, if you're going to use it and bring him down
23 there, then please don't block the jury's view because
24 there's no need for him to be down there.

25 **MR. ARCHER:** Right. I'm sorry. What was my

- 1 question?
- 2 Q Did you see Jesse Sapp shoot more than one time?
- 3 A Yes, I did.
- 4 Q Okay. And exactly -- could you just point out to the
- 5 jury where he was when he shot?
- 6 A When he shot, he was running down the driveway.
- 7 Q Okay. There was two times. Let's do one at the
- 8 time. The first time he shot, where was he?
- 9 A Well, when I seen him, he was going down the driveway
- 10 shooting behind him.
- 11 Q Well, you're moving that all over the place.
- 12 A Yeah, well, that's where he was -- when I was in my
- 13 car, I got out my car, went to the front of my car,
- 14 he was running down the driveway shooting behind him.
- 15 Q Okay. But where did you see him shoot?
- 16 A Somewhere in here, down the driveway.
- 17 Q But you're going about 50 yards. I mean, from here
- 18 to here? Just point out.
- 19 A It was between -- he was in the driveway running down
- 20 the driveway. I couldn't pinpoint exactly where he
- 21 was when I seen him shooting. But he was running
- 22 down the driveway.
- 23 Q Okay. And how close would he be to the car that he
- 24 just left when he shot?
- 25 A He was probably 15, 20 yards from the truck.

1 Q And how about the second time?

2 A About the same, a couple yards when I saw the muzzle
3 flashes.

4 Q So he shot two times?

5 A Two or three times.

6 Q Two or three times?

7 A I mean, I can't tell you exactly how many times he
8 shot. But he was shooting going down the driveway.

9 Q All right. So he was how far away from the truck,
10 good 25 yards?

11 A Probably 15, 20 yards, 25 yards. I wasn't paying
12 attention how far away from the truck he was. All I
13 was paying attention to was he was running down the
14 driveway shooting.

15 Q Okay.

16 A That was --

17 Q So when he got out of the truck, you didn't see him
18 shoot?

19 A When he got out the truck?

20 Q Right.

21 A No, sir.

22 Q Thank you.

23 A (The witness took his seat.)

24 MR. ARCHER: That's all I have, Your Honor.

25 THE COURT: Very well.

1 Redirect, Solicitor?

2 MR. HOISINGTON: Thank you, Judge.

3 REDIRECT EXAMINATION

4 BY MR. HOISINGTON

5 Q Mr. Archer said, hypothetically, if you were shooting
6 in the direction of the truck, could you have hit the
7 door. Let's talk actually. Did you shoot in the
8 direction of the truck?

9 A No, sir.

10 Q Who were you shooting in the direction of?

11 A I was shooting at the subject running down the
12 driveway.

13 Q And if he had been shooting at civilians instead of
14 police officers, would you still have shot at him?

15 A Yes, sir.

16 MR. HOISINGTON: Nothing further.

17 THE COURT: Recross?

18 MR. ARCHER: No, sir.

19 THE COURT: Do you wish Trooper Barwick to be
20 excused?

21 MR. HOISINGTON: Yes, sir.

22 THE COURT: Any objection?

23 MR. ARCHER: No, sir.

24 THE COURT: Trooper Barwick, thank you very
25 much. You are free to leave.

1 **MR. HOISINGTON:** We call Steve Grainger to the
2 stand.

3 STEVE GRAINGER, after being duly sworn,
4 testified as follows:

5 **THE CLERK:** Please be seated. State your name
6 and spell your last name for the record.

7 **THE WITNESS:** Steve Patrick Grainger,
8 G-R-A-I-N-G-E-R.

9 DIRECT EXAMINATION

10 **BY MR. HOISINGTON**

11 **Q** Trooper Grainger, where did you grow up?

12 **A** I'm a son of a Navy sailor, so I spent most of my
13 time all over, from Florida to Virginia to California
14 to Illinois. But I would say most of my life was
15 spent in Conway, South Carolina.

16 **Q** You settled in South Carolina when you got to Conway?

17 **A** Yes, sir.

18 **Q** When did you get with the patrol?

19 **A** In February of 1990.

20 **Q** So you've been a patrolman 13 years?

21 **A** Yes, sir.

22 **Q** Have any law enforcement experience prior to that?

23 **A** No, sir.

24 **Q** That particular class, did any of the people involved
25 in this case go to the same class with you?

1 **A** Corporal Sigwald and Corporal Johnson were also
2 classmates of mine.

3 **Q** So you knew Corporal Johnson for 13 years now?

4 **A** Yes, sir.

5 **Q** Or did?

6 **A** Yes, sir.

7 **Q** What was your relationship with him?

8 **A** Besides working with him, you know, we had done
9 several things together as couples between my wife
10 and I and his wife, going to cruises, going out to
11 eat, just spending time together. A lot of time
12 besides the work place was spent with him.

13 **Q** In the highway patrol, you're a lance corporal; is
14 that right?

15 **A** Yes, sir.

16 **Q** And your responsibilities, in general, are what?

17 **A** To assist younger troopers with their job duties, to
18 maintain and enforce the laws of South Carolina.

19 **Q** Now, on the night of July 6th and later, the early
20 morning hours of July 7th, 2002, were you on duty
21 then?

22 **A** Yes, sir.

23 **Q** Do you remember what time you -- your shift started?

24 **A** I want to say it started at 7 o'clock.

25 **Q** And who were you -- you worked together with other

1 troopers sometimes?

2 **A** Yes, sir.

3 **Q** Was that the case on that night?

4 **A** Yes, sir, we were working with several that night.

5 **Q** Who else were you working with?

6 **A** To start the night off with I had worked with a
7 Trooper Brown, Corporal Johnson, Lance Corporal
8 Sigwald at the time, Lance Corporal Barwick. There
9 might have been other troopers out there, but I don't
10 remember them. And Proctor. There was a Trooper
11 Proctor also out there that night.

12 **Q** What was the nature of your duties that evening?

13 **A** To begin with, I want to say I was working on the
14 interstate, Berkeley Interstate. And we went to a
15 license check on 17-A and I-26 at the ramp by
16 McElveen's.

17 **Q** Anything eventful happen that you remember at that
18 license check?

19 **A** Um, yes, yes, myself and Brown had a van come up and
20 I remember talking with him. And we got him out the
21 van and we found some weapons and some drugs in that
22 van.

23 **Q** So were the people in that van arrested?

24 **A** I want to say Brown took care of them because he was
25 getting off a few hours earlier than me.

1 **Q** Okay. Following that, did you have an occasion to go
2 to any other location?

3 **A** Yeah, we left that after, I don't know, probably an
4 hour, hour and a half there and left and decided to
5 leave there and go to College Park Road and have a DL
6 check there, also.

7 **Q** You say DL check, you mean driver's license check?

8 **A** Yes.

9 **Q** Just for those of us --

10 **A** I'm sorry, a driver's license check.

11 **Q** And I think that's already been described what that
12 is. But can you sort of give us an overall picture
13 of how y'all set up when you got there?

14 **A** We'll pick a safe spot that we can get out of. And
15 what you want to do is to be able to have enough room
16 to pull people over, violators, have a safe area, a
17 well-lit area, as safe as possible. You'll put your
18 signs up, your DL check ahead. You'll cut blue
19 lights on to let people know there's police cars
20 that's coming up in traffic. You'll put your vest
21 on. If it's at night, get your flashlight out. And
22 we'll check every car. And what we're doing is
23 checking your driver's license, tags, insurance.

24 **Q** And that's what y'all were in the process of that
25 evening?

1 **A** Yes, sir.

2 **Q** What time were you out at College Park Road, do you
3 recall?

4 **A** Probably started a little after 2 in the morning,
5 around that time.

6 **Q** Now --

7 **A** Actually, Sunday.

8 **Q** Now, during that process of that, is your -- do you
9 have cameras in your car?

10 **A** Yes, sir.

11 **Q** Are they -- do they run the entire time that you're
12 on duty?

13 **A** Just in traffic stops do I use my camera.

14 **Q** And how do you activate it?

15 **A** I could cut it on manually inside the car, or if I
16 was to cut this mic on on my belt, it will also cut
17 the camera on and start recording.

18 **Q** All right. Now, does it have an effect on anybody
19 else's vehicle if there's any other ones around?

20 **A** If another patrol car has the same frequency as your
21 mic is set on, it will cut their camera on also.

22 **Q** Now, we've heard a number -- we've seen two tapes
23 already and we're going to look at yours. There
24 seems to be one voice in all of these. Is that your
25 voice?

1 **A** Yes, sir.

2 **Q** And what are you -- who are you talking to when we
3 hear you talking?

4 **A** To a suspected DUI driver.

5 **Q** And he was stopped there at the check point?

6 **A** Yes, sir, he come through the check point.

7 **Q** Tell us about that then. Just kind of give us an
8 overview of that.

9 **A** We were checking the vehicles out. I don't know if
10 it was my first or second car I checked. He pulled
11 up, I got a strong odor of alcohol from the vehicle,
12 pulled him over onto the shoulder, started talking to
13 him, interviewing him. He stated he had come from, I
14 don't know if it was the office or Chalker's or some
15 club on College Park Road and he had been drinking.
16 And I pulled him over, got him out the car and
17 started doing my interviewing. And at that time I
18 asked him to walk over to my car because my car was
19 in a used parking lot -- used car parking lot that
20 was well lit and I could put him in front of my
21 vehicle and record everything being said between me
22 and him.

23 **Q** Is that, in fact, what you did?

24 **A** Yes, sir.

25 **Q** Now, what was going to be the outcome of that stop?

1 **A** I had already -- he was going to be placed under
2 arrest for driving under the influence. There was no
3 doubt in my mind he was under the influence.

4 **Q** And you were -- there was some talk about giving
5 money to somebody. How -- what was going on?

6 **A** He had got on his cell phone. I guess he realized he
7 was going to take the same route or assumed he was
8 probably going to. And he called his wife and she
9 came up to the scene at that time. And you'll hear
10 her on the tape as well.

11 **Q** Now, from that point on, describe what happened that
12 evening.

13 **A** I'm explaining to his wife -- or counting money. He
14 checked his wallet, get his ID. I want to say he's
15 got like \$25 in his pocket, in his wallet, a bunch of
16 change. I give all that to his wife. I even count
17 it and you'll hear me counting it on the tape and
18 giving it to him -- giving it to her, I'm sorry. And
19 as I'm getting ready to do the field sobriety test,
20 you start hearing, you know, gunfire on the tape.

21 **Q** What were you hearing? I mean, did you hear it
22 yourself in person?

23 **A** Yes, sir, I heard it. And I want to say I hollered,
24 Get down... You know, that's my first reaction, get
25 everybody down, try to be as -- because it's not

1 something you hear every day. And I told them to get
2 down. And that's when I ran and left them there. To
3 the gunfire is where I went to.

4 Q You were actually across the street from where the
5 gunfire was?

6 A Yes, sir.

7 Q When you ran across the street, what did you see?

8 A I saw somebody running away towards the woods,
9 towards two mobile homes. And it was like he had a
10 gun in his hand. He was running at an angle, like he
11 was turning to the side while he was running. And
12 the shooting, I want to say as I'm running, it's all
13 ending. It's real fast. You're only talking just a
14 few seconds. And after that happens, I run over to
15 the fellow that's laying down on the ground. Just
16 bear with me for a second.

17 Q Sure.

18 A We cover him, get him secured, handcuffed. Trooper
19 Barwick comes over, get his hands out, get him
20 handcuffed. I leave Barwick there with him. And
21 that's when I go back to Trooper Johnson -- or
22 actually go back to the car and start -- you hear me
23 on the tape calling for help, Need EMS out here, what
24 has happened, we have an officer down. And I go back
25 again after I get help on the way and I do my best to

1 render aid to Trooper Johnson.

2 Q Now, did you see the initiating shots of this event?

3 A No, sir.

4 Q And insofar as your own weapon, you never fired it,
5 did you?

6 A No, sir.

7 Q Was it pretty much over by the time you got into that
8 area?

9 A Yes, sir.

10 Q Did you have a responsibility to take Officer
11 Johnson's weapon into custody?

12 A Yes, sir, I took his 40 and his 38 that was on his
13 ankle.

14 Q I ask you to look at this. I don't know if you
15 actually know the serial number. But this is what's
16 marked State's Exhibit No. 1.

17 A Yeah, I don't know his actual serial number, but this
18 is -- fits the description.

19 Q That's an issued ankle weapon?

20 A Yes.

21 MR. HOISINGTON: Move that into evidence, Your
22 Honor, without objection.

23 THE COURT: Without objection. State's Exhibit
24 No. 1 into evidence without objection.

25

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

3 Q And I'll show you what's marked State's Exhibit 3
4 without objection. Ask if you could identify that,
5 what it appears to be?

6 A Yes, sir, it does appear to be the one I took off of
7 him.

8 Q Trooper Johnson's weapon that you took, and it would
9 have had a clip in it marked State's Exhibit 45?

10 A Yes.

11 MR. HOISINGTON: Move both those into evidence,
12 Your Honor.

13 THE COURT: State's Exhibit 3, the firearm, is
14 admitted into evidence. And State's Exhibit 45, the clip,
15 is admitted into evidence without objection.

16 (WHEREUPON, State's Exhibits Nos. 3 and 45 were
17 admitted into evidence.)

18 Q Actually, I think to make it clear, 45 is the extra
19 clip that's carried that you took into custody also.
20 Following that responsibility, what did you do?

21 A After I -- after I called for help --

22 Q Yes, sir.

23 A -- is when I went back to him. And I started taking
24 his shirt off, his patrol shirt. I felt like he was
25 having a hard time breathing so I undid his vest.

1 Our vest is very tight on our chest. And I figured
2 that would relieve pressure and make it easier for
3 him to breathe and took that off of him. And we
4 kept -- I kept pressure with, like, my hand over
5 his -- where he had got shot, right by his belly
6 button. And we just, you know, did as much as we
7 could. Because at the time he still had a pulse and
8 we were just waiting for EMS. And Roy -- Trooper
9 Barwick, my apologies, Trooper Barwick, he was
10 covering the suspect while myself and Patrick was
11 trying to render aid the best we could.

12 **Q** Did he ever say anything when you were trying to help
13 him? Did he seem conscious?

14 **A** No.

15 **Q** Insofar as your tape is concerned, did you ever take
16 it, take custody of that tape after it was -- after
17 the event?

18 **A** I just opened my trunk, unlocked my camera and I
19 don't know who, if SLED took the tape out of my trunk
20 or a supervisor of mine on the patrol. At no time
21 did I have it in my possession.

22 **Q** If you can come down here and just very briefly show
23 us where your car was and what your point of
24 observation was. This is a little laser pointer.
25 Just make sure all the jury can see you because it's

1 pretty easy to block them.

2 **A** (The witness complied.) This is College Park Road
3 going towards the interstate. My patrol car --
4 there's a used car lot right here and this car was
5 parked near used cars. And there was street lights.
6 So this is my patrol car here and I had him right in
7 front of it and my camera pointing straight at
8 Trooper Johnson's vehicle. And I'm using the added
9 light to get better visibility for my -- the DUI
10 arrest. That's why I pulled my car around there.
11 It's also a safer area. You've got somebody under
12 the influence, you don't want them walking around the
13 highway to possibly get hit by a vehicle.

14 **Q** When you went running to the scene, what route did
15 you take?

16 **A** I ran just like this right here. At the light, I go
17 by the front of Jeff's car, right by the truck into
18 where the suspect was laying.

19 **Q** Did you say you saw Jeff as you went by?

20 **A** Yes.

21 **Q** He was already down?

22 **A** Yes.

23 **Q** Did you see anybody -- any of the officers shoot or
24 was it already over?

25 **A** It was over. I just saw the fellow, like, running

1 and falling.

2 **Q** All right. One other thing to clarify. The part of
3 the tape where we see the person that you're talking
4 to is not very clear. Is there an explanation for
5 why we can't see him clearly?

6 **A** It's a very hot night. And you've got condensation
7 on the windshield from where my car was running with
8 the air conditioner on. So it gives you kind of a
9 blurred vision if you're not driving your vehicle.

10 **MR. HOISINGTON:** If you would answer any
11 questions Mr. Archer has.

12 **THE COURT:** You may cross-examine, Mr. Archer.

13 CROSS-EXAMINATION

14 **BY MR. ARCHER**

15 **Q** Officer Grainger?

16 **A** Yes, sir.

17 **Q** I understand if you're upset and I do understand, so
18 I do apologize. Let me just show you your statement.

19 **A** Okay.

20 **Q** I'll ask you questions. Just read it so it refreshes
21 your memory.

22 **A** All right. (The witness reviewed the document.)

23 **MR. HOISINGTON:** Is he refreshing a recollection
24 or --

25 **THE COURT:** I don't know, Solicitor. He's

1 showing him his statement for some reason.

2 **MR. ARCHER:** I just asked him to read it so he
3 can refresh his recollection.

4 **MR. HOISINGTON:** He hasn't said he didn't
5 remember.

6 **THE COURT:** Why don't you ask him the question
7 first and if he needs to refresh his recollection, he can.

8 **MR. ARCHER:** Okay.

9 **THE COURT:** Thank you, Mr. Archer.

10 **Q** Officer Grainger, in your statement it says that you
11 saw Jeff Johnson shooting and then you saw him buckle
12 over. Is that what you wrote in here, sir?

13 **A** That's not my handwriting there, I don't believe.

14 **Q** Well, is this your signature? Let me ask you --

15 **A** Okay. Yeah, that is my signature, but that's -- I
16 did not write that.

17 **Q** Well, I don't really understand. Did you put your
18 signature on somebody else's statement?

19 **A** No, sir, that's my signature and that's what I told
20 him.

21 **Q** Okay. Fair enough.

22 **A** I just didn't write it, if you're with me.

23 **Q** All right. Thank you. So in other words, Jeff
24 Johnson shot first is what you're saying here?
25 That's what it says, doesn't it?

1 **A** I --

2 **Q** It says, I saw Jeff Johnson shooting and then saw him
3 buckle over?

4 **A** Okay, I didn't see -- when I was running over to
5 them, they were -- action was going on because you
6 could see on the tape all the shots are -- you could
7 hear all the shots fired as I'm running. So he might
8 have had it out and he might have been doing some
9 motion. But I'm -- all the shots are fired as I'm
10 running towards him. Because I'm still with the DUI
11 suspect when you hear all the shots being fired, then
12 I run over. And it stops as I'm running.

13 **Q** All right.

14 **MR. ARCHER:** Can you just play that tape for a
15 minute? You can just run it right to the two -- I should
16 know this by heart by now.

17 **THE COURT:** You need to put the exhibit on the
18 ground, please. Thank you.

19 (WHEREUPON, the tape was played for the jury.)

20 **Q** Those are the two shots. Did you see those shots or
21 heard those shots?

22 **A** Heard those shots.

23 **Q** Do you know who shot first?

24 **A** No, sir.

25 **MR. ARCHER:** Could you speed it up again?

1 **THE WITNESS:** I didn't see nobody shoot.

2 (WHEREUPON, the tape was played for the jury.

3 **Q** Right there, did you hear that shot?

4 **A** Right then?

5 **Q** Yes.

6 **A** Yes.

7 **Q** Did you see anybody shoot that shot? I'm just asking
8 the question. Just answer truthfully.

9 **A** Did I see anybody -- there were several -- as I'm
10 running, it's hard to remember actually everything to
11 the tee, especially after I see that there. I want
12 to say I saw Roy coming, shooting from my right. And
13 I don't know whether Jeff was already finished
14 shooting, but he had -- his gun was out.

15 **Q** I'm sorry, who is Roy?

16 **A** I'm sorry, I'm bad about that. Trooper Barwick. My
17 apologies.

18 **Q** Let me ask you a question. Is that the first time
19 you heard that shot at the end of there? Have you
20 seen --

21 **A** Yes, I've heard that.

22 **Q** You heard that?

23 **A** Yes.

24 **Q** Did you ever notice that shot at the end or is this
25 the first time you've noticed it?

1 **A** I've heard it before.

2 **Q** You've heard it before. And you can't possibly
3 identify who shot that or at whom or whatever; is
4 that correct? You can't positively tell the jury who
5 shot that shot, can you?

6 **A** Which trooper?

7 **Q** Yes.

8 **A** No, I can't.

9 **MR. ARCHER:** Thank you, I have no further
10 questions.

11 **THE COURT:** Redirect?

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

13 REDIRECT EXAMINATION

14 **BY MR. HOISINGTON**

15 **Q** There's seems to be some gaps and lapses in the audio
16 of your tape. What causes that sort of problem?

17 **A** That's the wire. The wire is probably about 6-foot
18 long and it runs from my belt to -- and you have to
19 tuck it in your pants and your shirt and it gets
20 kinks in it. And your distance from your camera,
21 also. Your camera's designed to pick up in front of
22 your patrol car, DUI arrests, traffic stops. In my
23 opinion, it's not designed to pick up, you know, 50,
24 80 feet away or 50 yards away. It's designed to pick
25 up traffic stops.

1 **Q** And that's why we don't see --

2 **A** So you have gaps in the reception. It could be a
3 deader battery. A fresher battery might pick up a
4 greater distance than, you know...

5 **Q** And clearly, I think you stated this, but you didn't
6 see the initiating shots of this?

7 **A** No.

8 **Q** You heard them, but you didn't see them?

9 **A** I heard them.

10 **MR. HOISINGTON:** Thank you.

11 **THE COURT:** Recross?

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

13 **THE COURT:** Do you wish Mr. Grainger to be
14 excused?

15 **MR. HOISINGTON:** Please, sir.

16 **THE COURT:** Any objection?

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

18 **THE COURT:** Officer Grainger, thank you very
19 much. You're free to leave, sir.

20 **THE WITNESS:** Thank you, sir.

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

22 **MR. JENNINGS:** We have a quick witness that
23 would take us right up to 5:30.

24 **THE COURT:** And then the next one would be
25 lengthy?

1 **MR. JENNINGS:** No, sir.

2 **THE COURT:** Why don't we take a break, ladies
3 and gentlemen, and see if we can take a few more
4 witnesses. Let's take about a 10-minute break and we'll
5 hear witnesses until you tell me to stop. Retire to your
6 jury room. Don't begin your deliberations, of course, and
7 don't discuss this case. Thank you.

8 (WHEREUPON, the jury left the courtroom at
9 approximately 5:15 p.m.)

10 **THE COURT:** Hold on a second. Let me -- and you
11 all -- we haven't had the pleasure of working together
12 before. One of the things that I do when the jury leaves,
13 it's an opportunity that I think -- probably one of the
14 most important to me as a trial judge, because if
15 something happens during a witness that you need to
16 clarify or put something on the record, I like to use this
17 time for that. So that's one of the reasons I would ask
18 everybody please just hold tight.

19 Anything from the State before we recess?

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

21 **THE COURT:** Anything from Mr. Sapp?

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

23 **THE COURT:** Thank you very much. We'll be at
24 ease. And gentlemen, I appreciate it, but it would just
25 help me with this record if you'd just work with me.

1 Thank you.

2 (WHEREUPON, a short break was taken.)

3 **THE COURT:** All of the exhibits with the
4 exception of 88 and Defendant's Exhibit 7 are admitted
5 into evidence without objection. We won't have to refer
6 to them anymore. They are now exhibits and now we can
7 move on. Thanks.

8 (WHEREUPON, State's Exhibits Nos. 5-34, 37-41,
9 46, 47, 49-62, 68-72, 74, 75, 77-79, 81-87 were
10 admitted into evidence.)

11 (WHEREUPON, Defendant's Exhibits Nos. 5 and 6
12 were admitted into evidence.)

13 **THE COURT:** I would ask you to do this, too.
14 It's tough to tell them and get them to do it because
15 you're standing right next to the person and you know
16 that, but they don't and they tend to forget it. But if
17 you would please help us, when you take the witness down
18 to keep their voices up. Because it's so important for
19 her and she really is having a hard time hearing it and
20 she's sitting right next to them. So if you would keep
21 that in mind as the witness is down there, I would
22 appreciate it very much. Thank you.

23 State's ready?

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

25 **THE COURT:** Defense ready?

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

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

3 (WHEREUPON, the jury came into open court at
4 approximately 5:29 p.m.)

5 **THE COURT:** Thank you very much, ladies and
6 gentlemen.

7 And Mr. Mustach, that's the second time you've
8 occupied that chair. Is that by just happenstance or have
9 you won the election?

10 **THE POTENTIAL JUROR:** I have not won the
11 election, but I'm not afraid of the chair.

12 **THE COURT:** That's fine. As soon as you do, if
13 you'll just let me know I need to put it on the record.
14 Thank you very much, sir.

15 Let me ask the jurors, too, because this
16 courtroom sometimes does create a problem with using
17 exhibits and it's going to be necessary from time to
18 time -- and I know the frustration that might be for you
19 all as the trial lawyers. Those jurors at the far end,
20 can you see that board if it's placed at this end of the
21 jury box facing you? Can you see it all right from where
22 you are?

23 **THE POTENTIAL JUROR:** Yes, sir.

24 **THE COURT:** It may facilitate, just help, and
25 this comes from the court reporter as well that she can

1 see it as well and it would be extremely helpful. But
2 again, wherever you want, but that may be a position that
3 might work. However you want to do it is up to y'all. I
4 just wanted to find out if you could see that all right.
5 Okay. Good.

6 Solicitor?

7 **MR. JENNINGS:** Thank you, Your Honor. May it
8 please the Court?

9 **MR. JOHNSTON:** Can we approach, please?

10 **THE COURT:** Sure.

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury but out of the hearing of
13 the jury.)

14 **THE COURT:** Before that witness comes, we have
15 had a side bar concerning some really housekeeping matters
16 as much as anything about use of some equipment. And I
17 think we have resolved that, but if we need to place any
18 of that on the record, we will at the first break.

19 **MR. ARCHER:** Let's approach.

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

23 **MR. JENNINGS:** The State calls John Tuttle.

24 JOHN TUTTLE, after being duly sworn, testified
25 as follows:

1 **THE CLERK:** Please be seated and state your name
2 for the Court and spell your last name.

3 **THE WITNESS:** Okay. My name is John Tuttle,
4 T-U-T-T-L-E.

5 DIRECT EXAMINATION

6 **BY MR. JENNINGS**

7 **Q** Good afternoon, Mr. Tuttle. Where do you live, sir?

8 **A** It's a Ridgeville mailing address, but it's actually
9 Cottageville.

10 **Q** And that's on the way to Walterboro?

11 **A** Yes, sir.

12 **Q** Down 17-A?

13 **A** Yes, sir.

14 **Q** Outside of Summerville, just kind of by Cottageville?

15 **A** Right, just inside the Colleton County line.

16 **Q** I'm going to show you a photo that's been marked as
17 State's Exhibit 72. Do you recognize that pickup
18 truck?

19 **A** Yes, sir, I do.

20 **Q** Whose pickup truck is that?

21 **A** That was mine.

22 **Q** And you're a Dale Earnhardt fan?

23 **A** Yes, sir.

24 **Q** When did this truck stop being yours? When was it
25 taken from your house?

1 **A** It was taken sometime between the evening of May 31st
2 and June 2nd, approximately 8 o'clock that Friday
3 night, which is -- I think it was the 31st and
4 between the hours of 10 o'clock on Sunday morning
5 when I went out there to get in it.

6 **Q** The last time you saw it on the 31st, were you gone
7 from your house that weekend?

8 **A** That morning -- the next morning, on June 1st, we had
9 a graduation to attend. And we were gone all day.
10 And when we got back that night about 9 or 9:30, we
11 didn't even go outside. We went straight to bed.

12 **Q** When you went to the graduation, where did you leave
13 your pickup truck?

14 **A** It was parked out behind my privacy fence on the
15 backside of my property because I was going to load
16 it up that morning, that Sunday to take some stuff
17 back to Lowe's with it.

18 **Q** I'm also going to show what's been marked as State's
19 Exhibit 73 in evidence. What type of -- you can't
20 see it very clearly in this picture. What type of
21 license plate was on the back of that truck?

22 **A** It was a handicapped.

23 **Q** When did you notice that your truck was gone?

24 **A** Approximately 10 o'clock on Sunday, June 2nd.

25 **Q** Was the registration in your vehicle when it was

1 stolen from your house?

2 **A** No, sir.

3 **Q** Where was it?

4 **A** I had cleaned the truck out because I had been
5 working, constantly working at it for about three
6 months and hadn't had a chance to detail it or
7 anything. So I took everything out of my truck, the
8 gas receipts, everything, and put them in a box and
9 took it in the house.

10 **Q** And when you noticed that your car had been stolen,
11 did you file a report?

12 **A** Yes, sir, I did with the Colleton County police.

13 **Q** And from June the 1st of 2002, did you ever see your
14 truck again?

15 **A** No, sir.

16 **Q** I want to show you some items and see if you
17 recognize any of these that were found in your -- a
18 green book bag that's marked State's Exhibit 60.
19 Have you ever seen this?

20 **A** No, sir.

21 **Q** You did not place this in your truck?

22 **A** No, sir.

23 **Q** State's Exhibit 61?

24 **A** No, sir.

25 **Q** You've never seen this?

1 **A** No.

2 **Q** State's Exhibit 62?

3 **A** Nope.

4 **Q** I show you a green fanny pack that's marked State's
5 Exhibit 56. Did you ever place that in your truck?

6 **A** No, sir.

7 **Q** State's Exhibit 59, which is a pill cutter, did you
8 ever have that item in your truck?

9 **A** No, sir.

10 **Q** State's Exhibit 58, was a pill divider?

11 **A** Nope.

12 **Q** And State's Exhibit 57, which was an electric scale,
13 any of those items ever in your truck?

14 **A** No, sir.

15 **Q** Any illegal drugs, any Xanax, cocaine would have been
16 in your truck?

17 **A** No, sir.

18 **Q** That's State's Exhibit 55. Do you know a gentleman
19 by the name of Jesse Sapp?

20 **A** No, sir, I don't.

21 **Q** Ever met him in your life?

22 **A** No, sir.

23 **Q** On June 1st, would there have been any reason for
24 State's Exhibit 6 to be in your car, a check made out
25 to Mr. Sapp?

1 **A** No, sir.

2 **Q** Did you ever give Jesse Sapp permission to drive your
3 truck?

4 **A** No, sir.

5 **MR. JENNINGS:** That's all I have, Your Honor.
6 Thank you.

7 **THE COURT:** Cross-examination?

8 **MR. ARCHER:** I have no questions for the
9 gentleman.

10 **MR. JENNINGS:** May he be excused, Your Honor?

11 **THE COURT:** Any objection?

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

13 **THE COURT:** You're free to leave, sir.

14 **THE WITNESS:** Thank you, sir.

15 **THE COURT:** Call your next witness.

16 **MR. JENNINGS:** The State calls Sergeant Dean
17 Kokinda.

18 **DEAN KOKINDA,** after being duly sworn, testified
19 as follows:

20 **THE CLERK:** Please be seated. State your name
21 and spell your last name.

22 **THE WITNESS:** Dean Robert Kokinda. Spelling of
23 the last name, K-O-K-I-N-D-A.

24 ///
25 ///

DIRECT EXAMINATION

BY MR. JENNINGS

Q Good afternoon, Sergeant Kokinda. Where are you employed, sir?

A With the Berkeley County Sheriff's Office.

Q And in what capacity?

A I'm a sergeant in the forensic services unit.

Q Can you describe for the jury what some of your duties and responsibilities are?

A To respond to crime scenes, document and process for evidence, to secure evidence for the sheriff's office from the deputies and to transport evidence to be analyzed to the State Law Enforcement Division.

Q And the State Law Enforcement Division is commonly known as SLED?

A Yes, sir.

Q Let me turn your attention to the morning of July 7th of 2002. Were you notified that morning about an incident involving the shooting of a highway patrolman?

A Yes, sir, on College Park Road.

Q Did you have an opportunity to respond to the scene?

A Yes, sir.

Q About what time was that?

A I don't recall the exact time, but it was in the

1 early morning hours.

2 **Q** Were you going to be in charge of processing the
3 scene or another agency?

4 **A** SLED came down to process the scene.

5 **Q** And did you assist Agent Bodie?

6 **A** Yes, sir.

7 **Q** And you're familiar with who Agent Diane Bodie is?

8 **A** Yes, sir.

9 **Q** She's with SLED?

10 **A** Yes, sir.

11 **Q** Did you help in inventorying the truck that's
12 identified in State's Exhibit 72?

13 **A** Yes, sir, I did.

14 **Q** And that was at the scene of the shooting --

15 **A** Yes, sir.

16 **Q** -- out on College Park? I want to show you several
17 items. I show you what's been marked as State's
18 Exhibit 56. Do you recognize that green fanny pack?

19 **A** Yes, sir.

20 **Q** And that was recovered out of that pickup truck?

21 **A** Yes, sir.

22 **Q** Do you remember the general location within the
23 truck?

24 **A** It was in the front seat.

25 **Q** Okay. Is that a bench seat?

1 **A** Yes, sir.

2 **Q** I show you what's been marked as Item 57 in evidence.
3 Do you recognize that?

4 **A** Yes, sir, that's a scale that was inside the fanny
5 pack.

6 **Q** I show you what's been marked as State's Exhibit 58.
7 Do you recognize that?

8 **A** Yes, sir, it's a plastic container that was also
9 inside the fanny pack.

10 **Q** And were there items inside of that container?

11 **A** Yes, sir, various tablets.

12 **Q** What type of tablets? Like aspirin or --

13 **A** Just like pharmaceutical-type, prescription-type
14 tablets.

15 **Q** Did you take control of those items?

16 **A** Yes, sir.

17 **Q** I show you what's been marked as State's Exhibit 59.
18 Do you recognize that?

19 **A** Yes, sir, that's a pill cutter that was also inside
20 the fanny pack.

21 **Q** Okay. Each of those items was within State's Exhibit
22 56?

23 **A** Yes, sir.

24 **Q** Would you have had an opportunity to take photographs
25 to document these items?

1 **A** Yes, sir.

2 **Q** This is State's Exhibit 79.

3 **A** That's a photograph that I took of the plastic
4 container as I removed it from the fanny pack.

5 **Q** Those are the pills that you were referring to?

6 **A** Yes, sir.

7 **Q** I show you what's been marked as State's Exhibit 55.
8 Do you recognize that?

9 **A** Yes, sir, these are the pills that were inside that
10 plastic container in the Best bag that I had sealed
11 them up in when I removed them from the plastic
12 container.

13 **Q** What is the Best bag number?

14 **A** It's B, as in Bravo, 139125.

15 **Q** And why would you have taken drugs that was in the
16 pill divider and placed them into that Best bag?

17 **A** To be analyzed at the State Law Enforcement Division
18 forensic lab.

19 **Q** You would not have done that testing yourself?

20 **A** No, sir.

21 **Q** I show you what's marked as State's Exhibit 78, those
22 additional drugs that were in the fanny pack.

23 **A** Yes, sir.

24 **Q** And I believe that you -- the drugs that were in the
25 Best bag you placed into evidence on July the 8th of

1 2002?

2 A Yes, sir.

3 Q And I believe took to SLED on July the 10th of 2002?

4 A Yes, sir, July 10th.

5 Q And what did you do with them once you got to SLED?

6 A They were logged in at the law enforcement division
7 lab and put in a drop box.

8 Q Did anybody tamper with those drugs in any way while
9 they were in your custody?

10 A No, sir.

11 Q And to the best of your knowledge, when you dropped
12 them off at SLED on the 10th of July, had they been
13 altered in any way?

14 A No, sir, they were in a sealed bag.

15 Q Were there also two magazines with ammunition in the
16 fanny pack? Do you recall?

17 A Yes, sir.

18 Q I show you what's been marked as State's Exhibit 37
19 and 38. Do you recognize those?

20 A Yes, sir, these are the two magazines that Agent
21 Bodie took with her.

22 Q She kept these in her possession?

23 A Yes.

24 Q But they were also taken out of State's Exhibit 56?

25 A Yes, sir.

1 Q Did you have an opportunity to look in the back seat
2 of that pickup truck and itemize the items that were
3 there?

4 A Yes, sir.

5 Q I show you what's been marked as State's Exhibit 86.

6 A Yes, sir, that's a photograph of the jump seat area
7 or the extended cab area of the pickup truck.

8 Q And you took custody of those items?

9 A Yes, sir.

10 Q I show you what's marked as State's Exhibit 60. Is
11 this the green bag that's depicted in that
12 photograph?

13 A Yes, sir.

14 Q And I believe -- did you have an opportunity to look
15 on the inside and see what items were there?

16 A Yes, sir.

17 Q Can you describe -- there were a number of clamps?

18 A Yes, sir, and pipes and various toiletry items.

19 Q That type of pipe?

20 A Yes, sir.

21 Q Were these pipes forwarded to SLED?

22 A Yes, sir, they were.

23 Q For testing?

24 A (The witness nodded.)

25 Q What was the purpose that those pipes were sent to

1 SLED to be tested?

2 A They were to be tested for any type of drug residue.

3 Q And in your experience, have you known pipes of that
4 nature to be used for drug related --

5 A Not in my experience.

6 Q Okay. And I show you State's Exhibit 61. Is that
7 also a book bag depicted in the photograph?

8 A Yes, sir.

9 Q And that had two more of the clamps in it?

10 A Yes, sir.

11 Q I show you what's marked as State's Exhibit 62. Do
12 you recognize this?

13 A Yes, sir, that's the other book bag.

14 Q And you had an opportunity to inventory each of these
15 book bags?

16 A Yes, sir.

17 Q Inside State's Exhibit 62 was a coffee grinder?

18 A Yes, sir.

19 Q Did you have an opportunity to examine that?

20 A Yes, sir, there was residue inside the grinder part
21 that field tested positive for cocaine.

22 Q What color is the residue?

23 A It's white.

24 Q And, in fact, can you still see it?

25 A Yes, sir.

1 Q And explain what a field test is.

2 A It's just a presumptive test, reactionary test to
3 determine if an item is a drug or not to give you a
4 little further cause to have it analyzed at a lab.

5 Q And the white substance in that coffee grinder field
6 tested as what?

7 A Cocaine.

8 Q I show you what's marked as State's Exhibit 6. Do
9 you recognize that item?

10 A Yes, sir, it's a South Carolina Electric & Gas
11 Company check that was also removed from the back of
12 the truck.

13 Q And who was that check made out to?

14 A Jesse Sapp.

15 Q And that check was removed from the area where the
16 book bag was?

17 A Yes, sir.

18 MR. JENNINGS: Thank you very much, Your Honor.
19 Please answer any questions Mr. Johnston may
20 have.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. JOHNSTON

24 Q Good afternoon, Sergeant.

25 A Good afternoon.

1 **Q** I didn't hear the first part of your testimony. What
2 was your purpose in coming out to the scene?

3 **A** I was directed by the dispatcher to go out there
4 initially. They didn't know what was going on. I
5 knew there was a crime scene. When I arrived there,
6 it was involving a state trooper. So usually when we
7 have police officer involved shootings, we usually
8 have SLED work those.

9 **Q** Did you go out there to investigate?

10 **A** Initially, I went out there with the thought of
11 processing the crime scene.

12 **Q** Processing, what does that mean?

13 **A** Documenting the crime scene as it was and collecting
14 any evidence that might be there.

15 **Q** Would that include looking for evidence?

16 **A** Yes, sir.

17 **Q** Okay. What is your title?

18 **A** Sergeant.

19 **Q** And your basic duties with -- you're with?

20 **A** The Berkeley County Sheriff's Office.

21 **Q** Okay. And your basic duties with the sheriff's
22 department?

23 **A** I'm the sergeant over the Forensic Services Division.
24 I process crime scenes. I'm a latent print examiner.
25 And I'm over the evidence unit.

1 Q Okay. Did you take a real good look at this truck?

2 A As far as -- you mean, at the scene?

3 Q Yes, sir.

4 A Initially, no.

5 Q What did you initially do?

6 A When I arrived at the scene, it had been secured and
7 it had been determined to have SLED process the crime
8 scene. So I remained outside the crime scene until
9 SLED asked for any assistance.

10 Q Okay. So would it be correct in saying that you
11 looked at the truck after the crime scene had been
12 secured?

13 A I looked at the truck after Agent Bodie asked me to
14 help her when she was inventorying the truck.

15 Q So you were there when it was inventoried?

16 A Yes, sir, I was standing outside the truck.

17 Q Okay. Did you investigate the truck itself? I
18 mean -- I'll reword that for you.

19 A Okay.

20 Q You're there to look for evidence, correct?

21 A Well, I was there to assist SLED if they needed any
22 help. SLED was the primary agency in processing the
23 crime scene.

24 Q Did you personally look for evidence?

25 A No, sir.

1 Q You didn't look for evidence at all?

2 A No, sir, not at the scene.

3 Q Then in what way did you assist SLED?

4 A When they asked me for any assistance on that, when
5 they were inventorying the vehicle.

6 Q Did you render assistance to SLED?

7 A When they inventoried the vehicle, yes, sir.

8 Q Can you tell us what that assistance involved?

9 A I accepted the fanny pack from Agent Bodie after she
10 had went through the truck.

11 Q Did you personally inspect the truck?

12 A No, sir, not at the scene.

13 Q Okay. Did you inspect the truck not at the scene?

14 A Yes, sir, I've looked through the truck afterwards.

15 Q Where did you look at the truck?

16 A The interior.

17 Q Okay. Let's back up. I'm confused. You did look at
18 the truck, you didn't inspect the truck?

19 A What do you mean by inspect?

20 Q Well, I got the impression that you investigate crime
21 scenes.

22 A Yes, sir.

23 Q Did you look at the truck from that standpoint?

24 A In a limited fashion, yes, sir.

25 Q Could you tell us what fashion that was?

1 **A** To inspect the interior contents of the truck, the
2 book bags and the fanny pack. As far as anything
3 else like any bullet holes or things like that, that
4 was something that SLED would have done.

5 **Q** Why do you say bullet holes?

6 **A** Because this is a shooting incident.

7 **Q** Did you see any bullet holes?

8 **A** If I recall, I think there is one inside the truck.

9 **Q** Okay. Would that be part of your training to look
10 for bullet holes?

11 **A** If that was what I'm instructed to do as far as
12 processing the crime scene, yes, sir.

13 **Q** But if you weren't instructed to do it, you wouldn't
14 look for it?

15 **A** Not necessarily, no, sir.

16 **Q** And you don't recall seeing a bullet hole?

17 **A** I believe there is one in the truck, yes, sir.

18 **Q** Did you see it?

19 **A** I can't recall. I don't want to say -- I'm going off
20 my memory.

21 **Q** Fair enough. Did you take any of these photographs?

22 **A** Yes, sir, the ones that were shown, some of them,
23 yes, sir.

24 **Q** Did you take any photographs that were not shown?

25 **A** Yes, sir.

1 Q How many photographs do you think you took?

2 A Probably 20, 25.

3 Q Did you take any photographs of the exterior of the
4 truck?

5 A No, sir.

6 Q All on the inside? Did you take any pictures of the
7 front interior of the truck?

8 A No, sir.

9 Q None?

10 A No, the photographs of the interior of the truck are
11 SLED photographs.

12 Q Okay. Did you notice any evidence in the front
13 interior of the truck?

14 A Other than the fanny pack?

15 Q Where was the fanny pack found?

16 A In the front seat.

17 Q Okay. Other than that?

18 A I don't recall seeing anything, no, sir.

19 Q If I had been there, would you have seen it?

20 A I would assume so, yes, sir.

21 Q Did you do a report on your investigation, your
22 assistance?

23 A Yes, sir.

24 Q Okay.

25 MR. JOHNSTON: Thank you, sir.

1 **THE COURT:** Redirect, Solicitor?

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

3 REDIRECT EXAMINATION

4 **BY MR. JENNINGS**

5 **Q** Did you actually process the interior of the car?

6 **A** No, sir.

7 **Q** So photographs, State's Exhibit 81, photograph
8 showing the cell phone and a shell casing, did you
9 take that photograph?

10 **A** No, sir, that SLED's photograph. I can see the SLED
11 lab number on it.

12 **Q** Did you process those items?

13 **A** No, sir.

14 **Q** Did you take those items into evidence?

15 **A** No, sir.

16 **Q** Who would have collected those items?

17 **A** I would imagine Agent Bodie. She was the primary
18 agent for the crime scene.

19 **Q** And State's Exhibit 82, which is a closer picture of
20 the shell casing off of the front passenger seat, you
21 did not process that item?

22 **A** No, sir.

23 **Q** And you did not take that into evidence?

24 **A** No, sir.

25 **Q** SLED would be the agency to testify about those

1 items?

2 **A** Yes, sir.

3 **MR. JENNINGS:** Thank you.

4 **THE COURT:** Recross, Mr. Johnston?

5 RECROSS-EXAMINATION

6 **BY MR. JOHNSTON**

7 **Q** Sir, have you ever seen this photograph before?

8 **A** No, sir.

9 **Q** Have you ever seen any of those objects before?

10 **A** No, sir.

11 **Q** Had they already begun to inventory the car when you
12 got there?

13 **A** They may have collected those out before they
14 inventoried the car. That may have been a process of
15 the actual evidence. I mean, there's two processes.
16 You inventory the car and you collect evidence to the
17 incident, or at least that's the way I would do it.

18 **Q** Were those items there when you got there?

19 **A** When I saw the interior of the car? I don't recall
20 seeing them, no, sir.

21 **Q** So they had been removed?

22 **A** Yes, sir. Like I say, I don't recall seeing them.

23 **Q** Who would have removed them?

24 **A** It would probably be Agent Bodie with SLED.

25 **MR. JOHNSTON:** Thank you.

1 **THE COURT:** You may come down, sir.

2 **MR. JENNINGS:** May he be excused?

3 **THE COURT:** Any objection, Mr. Johnston?

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

5 **THE COURT:** You're free to leave Officer
6 Kokinda.

7 **THE WITNESS:** Thank you.

8 **THE COURT:** Ladies and gentlemen, we're close to
9 your time. A little over 6. We'll break now and take our
10 recess for the evening. Please remember that you're not
11 permitted to talk about this case with anyone, permit
12 anyone to talk with you about this case. Do not discuss
13 the case among yourselves. We'll see you in the morning
14 at 9:30. Have a good evening.

15 (WHEREUPON, the jury was excused for the day at
16 approximately 6:00 p.m.)

17 **THE COURT:** Anything from the State before
18 recessing?

19 **MR. HOISINGTON:** No, Judge, thank you.

20 **THE COURT:** Anything from defense?

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

22 **THE COURT:** Thank you, gentlemen. Have a good
23 evening.

24 **MR. JOHNSTON:** Your Honor, what time tomorrow?

25 **THE COURT:** 9:30. And the reason -- we're off

1 the record.

2 (WHEREUPON, the proceedings were concluded for
3 the day to be reconvened on Friday, May 16th,
4 2003.)
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1 Friday, May 16, 2003

2 (WHEREUPON, State's Exhibit No. 91 was marked
3 for identification only.)

4 **THE COURT:** Good morning, everyone. Let the
5 record reflect that Mr. Sapp is present.

6 Good morning, Mr. Sapp.

7 Let me briefly chat with you. I've been talking
8 with Mr. Agent McLeod. He indicated everything is fine
9 with the jury. There are no problems. I wanted to give
10 that report to you. He said they were very, very focused
11 and seemed to be very cooperative with everything. So
12 that's a good sign as well.

13 They have indicated for today that they would
14 prefer -- apparently now, they're beginning to perceive
15 the situation that if they're in here and we're working
16 then they can expedite matters. So they have indicated
17 they want to plan today to take their lunch here, for us
18 to order it and bring it rather than to break for the time
19 to transport them. I just mention that to you for
20 planning purposes today. It appears that we're not going
21 to have -- and I'm not going to take an hour and a half,
22 obviously, if we bring in lunch.

23 Also, a juror has made an inquiry concerning
24 note taking. I know there are different schools of
25 philosophies about note taking. I encountered mine in

1 1994 when a judge in Florida asked me when I said no, I
2 don't think they should be able to take notes, he said do
3 you? And I said well, yeah, but it's a different
4 situation. He said why don't you trust them to make their
5 determination. I permit it. If one asks for it, all will
6 have the paper. I will make sure that the bailiff will
7 take up the note pads at the end of the day. They will
8 not carry them with them to their rooms. They will have
9 them here in the courtroom. And while they're there, I
10 will give instructions about what the notes mean insofar
11 as the record is concerned. But I wanted to give each
12 side an opportunity if they wish to place any objection on
13 the record to any juror being permitted to take notes.

14 **MR. HOISINGTON:** We wouldn't object.

15 **MR. ARCHER:** I would leave it up to Your Honor,
16 whatever you decide.

17 **THE COURT:** Thank you, Mr. Archer. I appreciate
18 that.

19 Also, I'm going to mention to the jury this
20 morning, I have given the statement about wanting to have
21 Kentucky Fried Chicken brought in. I think I can probably
22 guess what the answer is going to be, but I was going to
23 offer to them for them to make a determination of what --
24 assuming that if we're trying this case on Sunday, whether
25 they wanted to treat Sunday as a work day or whether they

1 wanted to have the day off. And I'm going to leave that
2 to their determination as to what they wish to do in that
3 regard. But I would imagine they are probably going to
4 treat it as a work day.

5 **MR. HOISINGTON:** It will be a day off anyway --

6 **THE COURT:** I'm going to state if it's a work
7 day. I'm not going to suggest whether it will or won't
8 because there are circumstances where it might not be
9 under the law. And I'm going to tell them that. But --
10 well, on second thought, I don't think I need to broach
11 that subject with them right now. I'm just going to ask
12 them whether they want -- if the trial is continuing at
13 that time, I think it's the best thing for me to say do
14 they want to treat Sunday as a work day or would they wish
15 to take Sunday off? I will explain to them they will be
16 sequestered all day Sunday if they do.

17 Anything else from the State before we bring in
18 the jury?

19 **MR. HOISINGTON:** No, Your Honor. Just for your
20 planning purposes, somewhere this morning, we'll have a
21 quick Jackson v. Denno hearing on a very brief statement,
22 also.

23 **THE COURT:** Very well.

24 Anything further from Mr. Sapp this morning?

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

1 **THE COURT:** Thank you. We're ready to bring in
2 the jury, please.

3 (WHEREUPON, the jury came into open court at
4 approximately 9:29 a.m.)

5 **THE COURT:** Let me look and see. I don't notice
6 anyone with any bags predominant or noticeable under their
7 eyes. I hope you rested and were able to rest in your new
8 surroundings. I know when we're travelling, it takes a
9 couple of nights to get adjusted to those things. But I
10 hope you found your accommodations acceptable to you. I
11 thank you very much, ladies and gentlemen. We're ready to
12 continue. But before we start, I want to take care of a
13 couple of matters.

14 Number one, it's my understanding -- Agent
15 McLeod indicated this morning that you had suggested that
16 your preference would be to have Kentucky Fried Chicken
17 ordered for you and brought here for lunch purposes. We
18 will do that. And I appreciate that. And, of course, we
19 will work -- we'll go ahead and take the order at some
20 point in time. We'll work and when they bring it, then
21 we'll recess for you to do that. And when you finish, you
22 let us know when you're ready to start and we'll resume it
23 at that point. The time I will leave up to you. We'll
24 work accordingly.

25 In that regard -- and I don't know whether

1 Sunday will be a work day or not. But if the trial is
2 continuing and if it is a work day, I want you to think
3 about today whether you want to treat that as a day off
4 for you or whether you plan to work. I will tell you now
5 that I'm ready to work. I've already told everybody that
6 if the jury wants to work, plan to work. We'll do that
7 because my view of it, when you're sequestered, you're
8 working as far as I'm concerned. And so that's the way I
9 treat that. But I recognize as well that you may choose
10 to want time just to be away from this for a while. But
11 I'll leave that to you. You just talk about it among
12 yourselves and then let me know something today what your
13 plans are. Because obviously, I need to make sure that
14 both sides know that for planning purposes insofar as
15 potential witnesses are concerned.

16 Also, as I understand, there has been a request
17 by a juror who would like to take some notes. There are
18 varying schools about note taking. I'm one judge,
19 however, that permits jurors to take notes if they wish.
20 Before doing that, however, I would want to say to you
21 always remember that what I'm having the pleasure of
22 having brought up on my computer screen, that can be
23 played back for you at any time after you begin your
24 deliberations should there ever be a question about what a
25 witness said or didn't say. Because this -- what

1 Ms. Croft is doing now is the record of this case. A
2 juror's notes should never, ever be considered the record
3 of this case.

4 However, I do understand that persons may want
5 to make notes to help them. And that's certainly -- they
6 are your notes. If one person does, I'm going to make
7 pads available to everybody. That doesn't mean you have
8 to take notes. It's just up to you. Also, if we do have
9 note taking, what I will ask you to do is to write your
10 name, please, on the first sheet inside the cover.

11 Because at the close of the day, you will need to give
12 those to the bailiff. We will put them under lock and key
13 and then return them to you in the morning. You may not
14 take them with you from the courtroom because, again,
15 they're your notes for purposes of this proceeding and
16 should not leave this courtroom and leave the control of
17 this process. So that's the reason for that. Again, they
18 will be handed to you the next day and you may continue.

19 But before I do that, some persons are better
20 note takers than others. You know and I know that
21 sometimes it's not only what someone says but how they say
22 it. And if you're taking a note, you may miss a body
23 expression or facial expression that may be very important
24 to you in making a decision on the credibility of a
25 witness. And I think that's one of the reasons that some

1 judges do not allow jurors to take notes. So having said
2 that, is there a juror or jurors that wish to have a
3 notepad, please just indicate that. Okay. If that should
4 change, we have the pads here, let me know. It's not a
5 problem. Thank you very much. And again, thank you and
6 we're ready to now resume.

7 Solicitor, if you would, call your first
8 witness.

9 **MR. JENNINGS:** Michael Lewis.

10 MICHAEL LEWIS, after being duly sworn, testified
11 as follows:

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

14 **THE WITNESS:** Michael Lewis, L-E-W-I-S.

15 DIRECT EXAMINATION

16 **BY MR. JENNINGS**

17 **Q** Good morning, Mr. Lewis. Where are you employed,
18 sir?

19 **A** Berkeley County EMS.

20 **Q** And that's Emergency Medical Services?

21 **A** Correct.

22 **Q** And what is your occupation with EMS?

23 **A** I'm a paramedic.

24 **Q** And how long have you been performing that job?

25 **A** I've been an EMS for 15 years.

1 Q I'm going to make sure -- make sure you speak into
2 the microphone loud enough so all the jurors on the
3 back row can hear you.

4 A Fifteen years.

5 Q And what are your duties and responsibilities?

6 A I'm a senior crew chief, senior paramedic on the
7 ambulance working in the field.

8 Q So you'd actually be in an ambulance?

9 A Correct.

10 Q Transporting injured people?

11 A Right.

12 Q Were you working on July 6th of 2002?

13 A Yes, I was.

14 Q What time did you come on duty that Saturday?

15 A I came on at 8:30 a.m.

16 Q And what time were you going to get off?

17 A 8:30 a.m. the next morning, it's a 24-hour shift.

18 Q So how does that work when you're on a 24-hour shift?
19 Do you have to stay up for the whole 24 hours?

20 A We have down time and we're able to sleep if we can.
21 But if we get a call, we have to go on it.

22 Q Do you have like a headquarters where you can rest?

23 A Right, it's right off of I-26 in Summerville.

24 Q Who were you working with on July 6th?

25 A Tom Caraby, he was a part-time employee.

1 **Q** And the two of you were operating an ambulance?

2 **A** Correct.

3 **Q** Did you receive a call at about 2:30 on the morning
4 of July the 7th?

5 **A** Yes, I did.

6 **Q** And where were you -- what was the nature of the call
7 that you were responding to?

8 **A** It was a shooting. That came out as a shooting.

9 **Q** Okay. Did you respond to the call?

10 **A** Right, once we got into the truck, they said it was
11 an officer down and we responded to the call.

12 **Q** And where did you respond?

13 **A** To College Park Road.

14 **Q** And College Park Road is in Berkeley County?

15 **A** Right, on the Ladson/Summerville area.

16 **Q** And where did you -- once you arrived at the scene,
17 what did you find?

18 **A** When we arrived at the scene, there was a lot of
19 lights flashing, police cars. And I noticed that
20 they pointed to the officer that was laying kind of
21 off of the road in the -- like not really a ditch,
22 but where the water would run in the low area on the
23 side of the road.

24 **Q** Do you remember what time you arrived at the scene?

25 **A** It wasn't long after we got dispatched out, less than

1 10 minutes, I believe.

2 Q And as part of your duties, after you make a run,
3 will you prepare a report to document your
4 information?

5 A Yes, I do.

6 Q Would that help refresh your memory?

7 A Yes, sir.

8 MR. JENNINGS: Mark that for identification,
9 please.

10 (WHEREUPON, State's Exhibit No. 92 was marked
11 for identification only.)

12 Q I show you what's been marked as State's Exhibit 92
13 and see if that helps you refresh your memory. And
14 what time did you arrive?

15 A At 0237.

16 Q And what time did the call go out?

17 A The call went out at 2:30.

18 Q What did you do once you determined where the victim
19 was laying?

20 A First, I looked at -- did a quick look of what was
21 going on and realized that the trooper was in cardiac
22 arrest due to the first responders doing CPR.

23 Q Did you know the trooper?

24 A Yes, I did.

25 Q And what was his name?

1 **A** Trooper Johnson, Jeff Johnson.

2 **Q** Had you had the opportunity to work with him in the
3 past?

4 **A** On several occasions.

5 **Q** What did you do for Jeff once you got up to the site?

6 **A** I immediately assessed his airway and intubated him
7 by placing a tube into his trachea.

8 **Q** And when you say that Jeff was in arrest, what does
9 that mean?

10 **A** It means he had no pulse and no respirations.

11 **Q** Was he showing any signs of life at that point?

12 **A** None.

13 **Q** What was the effect of intubating him?

14 **A** It was just maintaining and opening an airway. It
15 was giving us a good patented airway to be able to
16 breathe with a BVM device.

17 **Q** And what else did you do at the scene?

18 **A** They continued CPR. And they told me there was
19 another person shot. So I had to go see who that
20 person was because I had a paramedic on the scene
21 also who was off duty who was able to help put
22 Trooper Johnson on a backboard and get him to the
23 ambulance while I went and checked on the other
24 victim.

25 **Q** What was his condition?

1 **A** He appeared to be pretty much stable. He was in
2 police custody.

3 **Q** Could you tell had he been shot?

4 **A** Yes, sir, I could.

5 **Q** While you were at the scene were you ever able to
6 restore any signs of life to Jeff Johnson?

7 **A** No, sir.

8 **Q** What did you -- what did y'all do with him next?

9 **A** Once they got him to a unit, that's when I met them
10 back at the unit and we continued CPR. And I
11 started -- we had obtained an IV line to give fluids
12 through a vein and started giving him cardiac drugs
13 following ACLS protocol, which is Advanced Cardiac
14 Life Support.

15 **Q** Were you able to see on Jeff any wounds?

16 **A** Yes, I was.

17 **Q** And what wounds did you document?

18 **A** It was a gunshot wound to the -- right near the navel
19 on the right side, abdomen.

20 **Q** Did you see if there was an exit wound?

21 **A** I didn't notice an exit wound, no, I didn't.

22 **Q** Describe Jeff's appearance at the scene as far as any
23 characteristics of his body, coloration, those types
24 of things?

25 **A** He was about as white as that screen, looked too far

1 gone to really do anything from my experience.

2 **Q** Did y'all do everything you possibly could for him?

3 **A** Yes, we did.

4 **Q** And once Jeff was in the ambulance, did y'all
5 continue working on him?

6 **A** Yes, we did.

7 **Q** And where did you take him?

8 **A** To Trident Hospital on Highway 78 in North
9 Charleston.

10 **Q** At any point on the ride from College Park Road to
11 Trident Hospital were you able to restore any blood
12 pressure or any pulse?

13 **A** No, we didn't.

14 **Q** Did he have any vital signs?

15 **A** None.

16 **Q** Did he ever -- while you were with him at the scene
17 or in the hospital, did he ever speak or regain any
18 consciousness?

19 **A** No, he did not.

20 **Q** What time did you leave the scene?

21 **A** We left the scene at 0249.

22 **Q** And what time did you arrive at Trident Hospital?

23 **A** We arrived at the hospital at 0253.

24 **Q** Are you familiar with a Dr. Smith?

25 **A** Yes, I am.

1 **Q** Where does she work?

2 **A** She works at the Trident ER.

3 **Q** Describe what happened when you arrived with Jeff at
4 the emergency room.

5 **A** They basically continued what we were doing. And
6 once they seen that the fluid and the drugs really
7 hadn't done anything, they ordered up to bring some
8 blood and they started administering blood. And they
9 opened his chest.

10 **Q** At any point any signs of life restored?

11 **A** None. We had some, what we call interventricular,
12 some electrical heartbeats that you would see on a
13 monitor, but we never got a pulse with that that I
14 could feel. I never felt any pulse. But that's
15 normal in that type of -- or any type of an arrest to
16 see electrical activity sometimes.

17 **Q** But you were never able to regain any blood pressure
18 and no pulse?

19 **A** No, no.

20 **MR. JENNINGS:** Thank you very much. Please
21 answer any questions that Mr. Sapp's attorneys may have.

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

23 **MR. ARCHER:** Mr. Lewis, thank you for coming. I
24 have no questions for you.

25 **THE WITNESS:** Thank you.

1 **THE COURT:** You may come down.

2 Do you wish him to be excused?

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

4 **THE COURT:** Thank you. You're free to leave.

5 **MR. HOISINGTON:** We call Dr. Susan Smith to the
6 stand, please.

7 SUSAN SMITH, after being duly sworn, testified
8 as follows:

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

11 **THE WITNESS:** My name is Susan Smith, S-M-I-T-H,
12 Susan.

13 DIRECT EXAMINATION

14 **BY MR. HOISINGTON**

15 **Q** Dr. Smith, you're an emergency room doctor?

16 **A** Yes, I am.

17 **Q** Where did you graduate from?

18 **A** I graduated from Pennsylvania State University in
19 Pennsylvania.

20 **Q** How long have you been an emergency room physician?

21 **A** Since 1984.

22 **Q** Where do you presently practice?

23 **A** Trident Hospital, main hospital.

24 **Q** Briefly describe for us, if you would, what an
25 emergency room doctor does. What type cases do you

1 get?

2 **A** Basically, we see everything from a minor cold to
3 major emergencies, heart attacks, gunshot wounds,
4 trauma. We see kind of everything.

5 **Q** Did you have an occasion to be on call or on duty the
6 night of July 7th of 2002?

7 **A** Yes, I did.

8 **Q** And that was at Trident Hospital?

9 **A** Yes.

10 **Q** Did you -- were you given the responsibility of
11 caring for Jeff Johnson?

12 **A** Yes, I was.

13 **Q** Please detail the condition he came in and what you
14 did.

15 **A** Basically, EMS alerted us that he was -- that
16 somebody was coming. We didn't know it was actually
17 a trooper coming with a gunshot wound. And we all
18 got prepared. And when he arrived, he basically had
19 no blood pressure or pulse. EMS had him intubated
20 and had IV access. And he came to our ER.

21 **Q** Intubated is having --

22 **A** Basically that we have a tube into his lung that was
23 breathing for him and they had a bag to give him
24 oxygen.

25 **Q** How many people would be trying to assist him?

1 **A** There were probably about eight people in the room.

2 **Q** And what did y'all do in trying to resuscitate him?

3 **A** Basically, they do CPR, which is you compress the
4 heart, you bag him for the air and then you give
5 fluids, and we got blood. We got O negative blood,
6 which is the fastest blood you can get. That you can
7 get immediately. Otherwise, it takes 30 minutes to
8 really type and cross somebody. We got about seven
9 or eight units of O negative blood and started giving
10 that to him to resuscitate him.

11 **Q** And a unit is how much?

12 **A** A liter.

13 **Q** And how many units are in a human being's body,
14 generally.

15 **A** About five liters.

16 **Q** So you gave him more?

17 **A** Right.

18 **Q** And what did that indicate to you?

19 **A** Well, we were basically trying to give him his entire
20 blood volume back to see if we got any response at
21 all.

22 **Q** What response did you get?

23 **A** Occasionally, we got a little very weak pulse, but
24 then it would just be no pulse at all.

25 **Q** Basically, what is your opinion of his condition when

1 he arrived at the emergency room?

2 A I think he had exsanguinated.

3 Q And tell the jury what that means.

4 A Basically, you just totally lose all the blood in
5 your body. And I think basically there was a major
6 blood vessel that had been penetrated.

7 Q Is it your opinion that he was deceased when he came
8 into the emergency room?

9 A Yes, I do.

10 Q What else did y'all do trying to resuscitate him?

11 A Well, during CPR, we also give drugs to stimulate the
12 heart, Atropine, Epinephrine, to see if we get any
13 response, plus the blood volume and we got nothing
14 with that. We called a surgeon in immediately upon
15 his arrival who takes about 20 minutes to get in.
16 And he suggested we cross-clamp the aorta to give him
17 some time to get there, which we opened up his chest
18 and did that. And that gives us more oxygen to the
19 brain to give us more time to see if we can
20 resuscitate him.

21 Q Obviously, none of that worked?

22 A And we did direct cardiac massage, too.

23 Q Did you have an occasion to x-ray him also?

24 A Yes, we did.

25 Q I want to show you State's Exhibit 69 and see if that

1 appears to be what you observed.

2 **A** That is a bullet at the right mid-sacral area.

3 **Q** Is that consistent with the condition that you found
4 him in when he came in?

5 **A** Yes.

6 **Q** Did you notice any external wounds at all?

7 **A** There was just one bullet wound to the right
8 mid-abdomen, kind of right below the umbilicus.

9 **Q** How long did the procedures attempting to resuscitate
10 him take?

11 **A** I think we were worked on him for -- from my notes, I
12 think it was about 45 minutes or so.

13 **Q** And following that, what is the next procedure?
14 Would y'all call in anybody?

15 **A** The surgeon did arrive and he tried to find the
16 aorta, which he cross-clamped, and basically we got
17 no response with that.

18 **Q** And after that who is called?

19 **A** We called the coroner.

20 **MR. HOISINGTON:** Thank you very much. If you
21 would answer any questions the defense has.

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

23 **MR. ARCHER:** Dr. Smith, thank you for coming. I
24 have no questions.

25 **THE COURT:** Do you wish her to be excused?

1 **MR. HOISINGTON:** Thank you.

2 **THE COURT:** No objection?

3 **MR. ARCHER:** No.

4 **THE COURT:** You're free to leave, Dr. Smith.

5 Thank you.

6 **MR. HOISINGTON:** Thank you, Dr. Smith.

7 We call Dr. Allan Bennett.

8 ALLAN BENNETT, after being duly sworn, testified
9 as follows:

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

12 **THE WITNESS:** My name is Dr. Allan Bennett,
13 B-E-N-N-E-T-T.

14 DIRECT EXAMINATION

15 **BY MR. HOISINGTON**

16 **Q** Where are you employed?

17 **A** Medical University of South Carolina.

18 **Q** And what are your responsibilities with the Medical
19 University?

20 **A** I'm a forensic pathologist.

21 **Q** Can you give the jury a brief idea of what that is?

22 **A** Forensic pathology is a branch of medicine that deals
23 with the medical and legal investigation of death.
24 And through that, we perform autopsies to determine
25 why somebody died and also to make a ruling as to

1 that death. And our choices would be a homicide, an
2 accident, a natural death like a heart attack, or a
3 suicide. Or if we don't know, we have to call it
4 undetermined.

5 **Q** And other than being an M.D. -- where did you get
6 your M.D.?

7 **A** Medical University of South Carolina.

8 **Q** And do you take follow-up training in order to be a
9 forensic pathologist?

10 **A** Yes. After medical school, I completed an internship
11 year at MUSC, which was basically six months of
12 surgery and six months of medicine. After that, I
13 stayed in Charleston, MUSC, where I completed a
14 four-year residency in pathology. After I left --
15 finished my residency, I moved to Atlanta, Georgia,
16 where I did a one-year subspecialty training or
17 fellowship, so to say, at forensic pathology at Emory
18 University in the Fulton County Medical Examiner's
19 Office.

20 **Q** And you're board certified in forensic pathology?

21 **A** Yes, I am.

22 **Q** How many autopsies have you performed as a result of
23 your duties?

24 **A** Approximately 500.

25 **MR. HOISINGTON:** We'd move to have him certified

1 as an expert in forensic pathology, Your Honor.

2 **THE COURT:** Do you care to examine him?

3 **MR. ARCHER:** No objection.

4 **THE COURT:** He will be permitted to render
5 opinions in that area.

6 **Q** Did you have an occasion to perform an autopsy on
7 Trooper Jeff Johnson?

8 **A** Yes, I did.

9 **Q** Who requested that autopsy?

10 **A** The Berkeley County Coroner's Office notified us,
11 Mr. Wade Arnett requested that we perform an autopsy.

12 **Q** Do you recall what time that was performed?

13 **A** We did it approximately 10 a.m. on the 7th of July,
14 2002.

15 **Q** Briefly tell us what that entails.

16 **A** Initially, what we do is we want to document clothing
17 and personal effects. Once we do that, we perform
18 what is called the external part of an autopsy where
19 we do things like demonstrate eye color, how long is
20 the hair, what color is the hair, are there any
21 tattoos or scars. After that general part is done,
22 we move on to look at are there any external injuries
23 on the body. And we document those with drawings and
24 photographs.

25 Once we've done the external exam, we move to

1 the internal exam, which we examine all internal
2 organs including the brain. Now, we look at them and
3 we also take sections to look at under the microscope
4 as well. And then we dictate a report from that
5 autopsy.

6 Q What did your external exam reveal in this case?

7 A There was a single gunshot wound just above the belly
8 button to the right on the abdomen.

9 Q And your internal exam, what did that tell you?

10 A The internal exam showed that this wound tract went
11 through the skin of the abdomen, went through the fat
12 in your abdomen, went through your muscles in your
13 abdominal wall and then went into the abdominal
14 cavity where it transected or kind of split in half a
15 major vein in your abdominal cavity called the right
16 external iliac vein. After it cut that vein in half,
17 we recovered a projectile and some fragments within
18 the sacrum, which is the bone at the bottom of your
19 vertebral column in your back.

20 Q How did you go about recovering that projectile?

21 A We don't touch the projectile with any metal so as we
22 don't cause a problem with who's going to examine the
23 bullet afterwards. Basically, what we have to do is
24 sometimes use a saw or a chisel to free it up and
25 allow us to take it out with our gloved fingers.

1 Q Did you recover this bullet? Did you recover a
2 bullet?

3 A Yes, we did.

4 Q I show you what's been marked State's Exhibit No. 32
5 and ask if you can identify that?

6 A That looks like the projectile recovered and that's
7 the canister I placed it in.

8 Q What did you do with that once you recovered it?

9 A I took a picture of it, placed it in that canister
10 and it was signed over to a SLED agent.

11 Q I show you State's Exhibit No. 70. Can you identify
12 that from that picture?

13 A That is our autopsy case number at the top and that
14 is the major projectile to the left and the three
15 little fragments on the right that I recovered.

16 Q From looking -- with your experience at gunshot
17 wounds, are you able sometimes to determine how close
18 the gun was to the person shot?

19 A Yes, we can.

20 Q And what do you look for? What factors do you look
21 for when determining that?

22 A When we think about gunshot wounds, we think about a
23 contact gunshot wound, which is where it's held right
24 next up against you as tight as could be. The next
25 range of fire would be a near or close range where

1 it's probably within a couple of inches. And as the
2 powder ignites in a weapon, some of these unburned
3 particles of powder and soot come out of the barrel
4 of the gun and they can actually end up on the skin.
5 So if we see soot, we're thinking this is probably a
6 close range gunshot wound.

7 As you get a little further out, maybe 6 inches
8 up to roughly 18 inches, and those are all just rough
9 approximations, some of the unburned powder actually
10 hits the skin and does what's called a powder tattoo.
11 It actually just kind of goes underneath the surface
12 of the skin and it's like a tattoo, you can't rub it
13 off. And we refer to that as an intermediate range
14 of fire.

15 Now, if you get further out than roughly 18
16 inches, it really depends on the weapon used, there
17 will be no soot, there will be no powder. There will
18 be no searing around the entrance wound. And those,
19 we refer to as distant or indeterminate.

20 Indeterminate meaning probably is a distant range.
21 But if we don't receive clothing to examine, you
22 know, do we see this on the clothing, it's probably
23 the best thing to do is just say it's indeterminate,
24 which is what I did here.

25 Q So that was your determination?

1 **A** Yes, sir.

2 **Q** No indication of close contact?

3 **A** Correct.

4 **Q** You mentioned that a major vein was transected?

5 **A** Yes.

6 **Q** Physiologically, what does that do to a person as
7 that happens?

8 **A** If you think about the way the blood vessels work in
9 the body, arteries take blood from the heart to all
10 your tissues, okay? And basically, the job of blood
11 is to supply oxygen. Veins bring it back to the
12 heart and into the lungs so it can get refilled with
13 oxygen again. Arteries are kind of a high pressure
14 system, high pressure hose. It's got to force that
15 blood into the tissues. The veins is a low pressure
16 system and it just kind of slowly makes its way back
17 up to the heart. When you cut a vein or any blood
18 vessel in half, you've broken the circuit. Now,
19 instead of the blood coming back to the heart, it's
20 going to pool and fill up whatever cavity it's in.

21 **Q** Now, comparing the tri-section of a major artery and
22 a major vein, which one would cause the quickest loss
23 of consciousness?

24 **A** I would say an artery because it's higher pressure
25 and the blood is going to be pumped out faster,

1 whereas a vein is lower pressure and it's really not
2 going to pump out as fast.

3 **Q** Would it be possible to know how long a person with
4 this type of injury would be conscious?

5 **A** I'd probably estimate less than five minutes.

6 **Q** And would this be a painful injury?

7 **A** It probably would.

8 **Q** Now, as a result of your position, you were asked to
9 determine the cause of death and the manner of death?

10 **A** Yes.

11 **Q** What determination did you make in this particular
12 case as the cause of death?

13 **A** A single, indeterminate range gunshot wound to the
14 abdomen because of the right external iliac vein
15 transection.

16 **Q** And as to the manner of death?

17 **A** Homicide.

18 **MR. HOISINGTON:** Thank you very much, sir. If
19 you would answer any questions the defense has.

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

21 CROSS-EXAMINATION

22 **BY MR. ARCHER**

23 **Q** Doctor, in your pathology report, you said that the
24 bullet entered at a 45-degree angle; is that correct?

25 **A** Going downward at that angle.

1 Q Yes, I'm sorry. 45-degree angle going downward. I'd
2 like to show you an exhibit, Defendant's 5. Would
3 that be a fairly close representation of a 45-degree
4 angle bullet entry? Let's just use the one on the
5 right.

6 A The one on the right?

7 Q Yes.

8 A I would say so.

9 Q That's pretty close?

10 A Yeah.

11 Q Thank you. Could you step off the stand for a
12 minute, please?

13 A (The witness complied.)

14 Q Just stand right there. Let's assume that I'm the
15 defendant, Jesse Sapp, and my finger is a gun.

16 A Okay.

17 Q Okay. And would you tell me to stop when you think
18 that gun is pointed at a 45-degree angle?

19 A Go back up a little bit. I would probably say right
20 there.

21 Q Right there. Okay. If I shot right here, that
22 bullet would probably go into the floor; is that
23 correct?

24 A From that angle, yes, sir.

25 Q Well, let me get it just a little bit closer. Okay?

1 Let's assume that's a 45-degree angle. That bullet
2 would still go into the floor, wouldn't it?

3 **A** Probably would.

4 **Q** Okay. So how close would I have to be to, let's
5 assume, for that bullet to go in and that diagram at
6 a 45-degree angle?

7 **A** Well, if we've a 45-degree angle right here --

8 **Q** This is the gun.

9 **A** But we're trying to line it up here. If we've got a
10 45-degree angle here -- do we have a straight rod or
11 something?

12 **Q** Yeah, I do, actually. I forgot. I had a hunch you
13 were going to ask for that. I do have one.

14 **A** It's better than my finger. If we're looking at a
15 45 --

16 **THE COURT:** Keep your voice up.

17 **THE WITNESS:** Oh, I'm sorry.

18 **THE COURT:** That's no problem.

19 **A** If we're looking at this is basically 90 and we cut
20 the distance in half to about 45, I would say that's
21 probably a rough approximation.

22 **Q** So the gun would be approximately?

23 **A** Along this track.

24 **Q** Right. This close to you? This is all I'm trying to
25 get at.

1 **A** Assuming that the victim that was shot was standing
2 straight up.

3 **Q** Yes. So I would have to be about this close?

4 **A** Or any distance -- yes, sir.

5 **Q** Approximately, what would that be, a foot?

6 **A** Foot and a half, two feet.

7 **Q** Okay. About a foot, foot and a half. Thank you.
8 You may be seated.

9 **A** (The witness complied.)

10 **Q** Now, I'd like to show you Defendant's Exhibit No. 8,
11 sir. Is that a fair depiction of the picture you
12 took of the entrance wound of the bullet?

13 **A** Yes, it is.

14 **Q** And do you see any powder burns on that picture?

15 **A** I do not.

16 **Q** Thank you. I would like to show you -- this is just
17 another picture but a little further away. Do you
18 see any powder burns on that?

19 **A** I do not.

20 **Q** Thank you, sir. I would like to show you Defendant's
21 Exhibit 6. Is it correct to say that that's the
22 bullet that you removed from Officer Johnson?

23 **A** Yes, sir.

24 **Q** And when they use the term fragmented, that means
25 that the bullet is not intact completely. Well, let

1 me ask you this, would you explain to the jury what a
2 fragmented bullet is?

3 **A** A fragmented bullet to me would be one that has come
4 apart into multiple pieces or several little pieces
5 have come off.

6 **Q** And that would be because it hit his, using layman's
7 term, tailbone? Am I close to correct when I say
8 tailbone?

9 **A** That's right.

10 **Q** Okay. So in other words, if the forensic people were
11 going to test that bullet, that is not a full bullet
12 to test. It's a fragmented, distorted bullet; is
13 that correct?

14 **A** I am not an expert in ballistics. I have had a
15 little training. The majority of what they need is
16 at the bottom and on the sides of that piece on the
17 left.

18 **Q** All right. But my answer to you is that's not a
19 complete bullet as far as a perfect example would be
20 of a complete bullet?

21 **A** It's not intact.

22 **Q** Okay. If somebody fired a shot as close as I did to
23 you on that foot and a half, you would normally see
24 some sort of powder residue, wouldn't you, or powder
25 burns in layman's terms?

1 **A** At a foot and a half?

2 **Q** Yes.

3 **A** Maybe. It really depends on the length of the
4 barrel. Longer barrelled weapons will deposit soot
5 and powder to a greater distance. Shorter barrelled
6 weapons, they don't go as far. So it really would
7 depend on the weapon.

8 **Q** All right. Can you give me -- if I showed you the
9 weapon, could you then make an estimate on that?

10 **A** I'm a little out of my area of expertise on that and
11 I'm just giving ballpark figures.

12 **Q** Okay. I appreciate your honesty on that. So in
13 other words, you feel that being that close there
14 could be powder burns?

15 **A** There could be.

16 **Q** Okay. But you're not saying there should be?

17 **A** Correct.

18 **Q** Oh.

19 **MR. ARCHER:** Thank you, sir.

20 **THE COURT:** Redirect?

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

22 REDIRECT EXAMINATION

23 **BY MR. HOISINGTON**

24 **Q** Dr. Bennett, did you examine the clothes in this case
25 for powder burns?

1 **A** I did not.

2 **Q** So were you even aware of how many levels or layers
3 of clothing the bullet may have gone through?

4 **A** I was not.

5 **Q** And that would affect the amount of powder that may
6 appear on a wound, anyhow, wouldn't it?

7 **A** It would.

8 **Q** If you would step down for one second, please.

9 **A** (The witness complied.)

10 **Q** It is possible for you to recreate where a shooter --
11 the position of a shooter based on the direction of
12 the bullet in the body?

13 **A** If we use like with the yardstick before, we can --
14 and it's an approximation. And if you just follow
15 that stick, a weapon will be at the end of that
16 stick.

17 **Q** Okay. So depending on how high the shooter may have
18 been shooting would indicate how far he might have
19 been back, right?

20 **A** It could.

21 **Q** And also, the angle of the victim could have an
22 effect of how far back he might be?

23 **A** Yes, it could.

24 **Q** In other words, if the victim had crouched seeing a
25 gun, he may -- that could affect the distance of the

1 bullet?

2 **A** Yes, it could.

3 **Q** Well, let me ask you this, under any scenario, if a
4 highway trooper was 10 or 15 or 20 feet back, how
5 high would he have to be up to make a shot that would
6 go down at a 45-degree angle?

7 **A** He'd have to be up in the air a pretty good ways.

8 **MR. HOISINGTON:** Thank you.

9 **MR. ARCHER:** I'm sorry, I didn't hear the
10 answer.

11 **THE WITNESS:** He would have to be up in the air
12 a pretty good ways.

13 **MR. HOISINGTON:** That's all I have.

14 **THE COURT:** Recross?

15 RECROSS-EXAMINATION

16 **BY MR. ARCHER**

17 **Q** If two people were standing like we are, forget
18 crouching or anything else, and the subject was
19 basically about the same height as Trooper Johnson
20 and they're both standing erect, your testimony is
21 they'd have to be about this close; isn't that what
22 you testified to?

23 **A** Is that about a foot and a half, two feet?

24 **Q** Yes.

25 **A** Yes.

1 **MR. ARCHER:** Thank you.

2 **THE COURT:** All right, sir.

3 **MR. HOISINGTON:** May Dr. Bennett be released?

4 **THE COURT:** Any objection, Mr. Archer?

5 **MR. ARCHER:** No.

6 **THE COURT:** Dr. Bennett, you're free to leave,
7 sir.

8 **THE WITNESS:** Thank you.

9 **THE COURT:** Call your next witness, Solicitor.

10 **MR. JENNINGS:** Sergeant Mark Tillman.

11 MARK TILLMAN, after being duly sworn, testified
12 as follows:

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

15 **THE WITNESS:** My name is Sergeant Mark Tillman,
16 T-I-L-L-M-A-N.

17 DIRECT EXAMINATION

18 **BY MR. JENNINGS**

19 **Q** Good morning, Sergeant Tillman. Where are you
20 employed, sir?

21 **A** I'm with the Berkeley County Sheriff's Office, sir.

22 **Q** In what capacity?

23 **A** I'm a patrol sergeant at the south end of the county.

24 **Q** What are your duties and responsibilities as a patrol
25 sergeant?

1 **A** Some call volume, supervision of my PFCs and
2 corporals and whatever duties may come about that
3 need to be handled through the sheriff's office.

4 **Q** So when somebody calls the police department,
5 sheriff's department and says they need somebody to
6 come to their house, you're the person in a marked
7 patrol car that responds?

8 **A** Yes, sir, I could be.

9 **Q** And you supervise your shift, essentially?

10 **A** Yes, sir.

11 **Q** How long have you been with the sheriff's office?

12 **A** I believe since '99.

13 **Q** Was that your beginning in law enforcement or were
14 you with another agency prior to that?

15 **A** No, sir, I started my law enforcement career in 1993
16 with the Hanahan Police Department.

17 **Q** What shift were you working on July the 6th of 2002?

18 **A** Our second shift, which is a 12-hour shift, from 5 in
19 the afternoon to roughly 5:30 in the morning.

20 **Q** So you would have began at 5 o'clock on the 6th?

21 **A** Yes, sir.

22 **Q** And supposed to get off at 5 a.m. on the 7th?

23 **A** Yes, sir.

24 **Q** At about 2:30 in the morning of the 7th, did a call
25 go out regarding shots fired on College Park Road?

1 **A** Yes, sir.

2 **Q** And that's within your jurisdiction?

3 **A** Yes, sir.

4 **Q** What did you do when you heard the call go out?

5 **A** I was at the present time on Crowfield Boulevard and
6 responded to the scene to do whatever I could in
7 assisting whatever needed to be done with any kind of
8 aid or apprehension or anything, you know, to assist
9 the highway patrol.

10 **Q** About how long did it take you to get there?

11 **A** It took three or four minutes, I believe, give or
12 take a minute or so.

13 **Q** Can you describe what you found when you got to the
14 scene?

15 **A** Yes, sir. When I arrived, of course, I could tell
16 there had been a check point taking place. When I
17 first arrived, I focused my attention to the large
18 crowd of people that was gathered around Trooper
19 Johnson when he was laying, I don't want to say in
20 the ditch area off to the side of the road. And I
21 saw there was medical personnel in there
22 administering aid and began just to scan the scene.
23 And that's when I noticed Trooper Barwick standing
24 over an individual that appeared to be handcuffed and
25 lying on his stomach. And knowing that there was not

1 much I could do at that point, I walked over to
2 Trooper Barwick and let him know that I was there.
3 And kind of knowing the situation that had taken
4 place, I advised him that he could, you know, go do
5 what he needed to do, that I was with this gentleman
6 and that he was in my custody for the time I was with
7 him.

8 Q You mentioned some troopers names. Do you work
9 closely being with the sheriff's office with the
10 South Carolina Highway Patrol?

11 A Yes, sir, we see them quite often on traffic stops,
12 check points and in our county. We do not work
13 accidents and, therefore, they do work a lot of
14 accidents that we get called to. Or if there's an
15 accident and we can get there quicker and we will
16 kind of help out with them and work along with them
17 in any capacity they need. We work real well
18 together with the highway patrol.

19 Q In the past, did you have an opportunity to work with
20 Trooper Jeff Johnson?

21 A Yes, sir, quite often.

22 Q And Trooper Roy Barwick?

23 A Yes, sir.

24 Q Do you work with Trooper Patrick Sigwald?

25 A A few times, a few times, I have. Not as much as the

1 other two, but I am familiar with him.

2 Q And Steve Grainger, are you familiar with him?

3 A Yes, sir.

4 Q I want to show you what's been marked as State's
5 Exhibit 71. Does that picture depict the area that
6 you responded to that morning?

7 A Yes, sir.

8 Q There's a laser pointer to your right. If you could,
9 point out to the jury where you encountered the
10 suspect and Trooper Barwick?

11 A Over in this area here. He was on the -- lying on
12 his stomach handcuffed in the rear.

13 Q And did Trooper Barwick, when you saw him, did he
14 have his weapon out or what condition was it?

15 A I believe he had already reholstered his weapon, if
16 he had had it drawn at the time and was standing over
17 him as he was already secured and already in custody.
18 And the gentleman was just laying there. There was
19 no conversation, nothing was being said. He just saw
20 him standing over him.

21 Q Did you have an opportunity to see the person that
22 Trooper Barwick had in custody?

23 A Yes, sir, I did.

24 Q I show you what's been marked as State's Exhibit 90.
25 Do you recognize that person?

1 **A** Yes, sir.

2 **Q** And who is that?

3 **A** That's Mr. Sapp.

4 **Q** Is that the person that was on the ground in that
5 driveway?

6 **A** Yes, sir, that was the man that was in custody when I
7 got there.

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

9 **A** Yes, I do.

10 **Q** Can you point him out to the jury, please?

11 **A** (The witness complied.)

12 **Q** Can you just describe where he's sitting for the
13 record?

14 **A** Sitting on the first row next to his attorneys.

15 **MR. JENNINGS:** Let the record reflect he
16 identified Mr. Sapp.

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

18 **Q** What -- when you came into contact with Mr. Sapp,
19 describe what he was doing. He was handcuffed.

20 **A** He was handcuffed behind his back. And as I
21 approached both of them, Trooper Barwick and
22 Mr. Sapp, Mr. -- Trooper Barwick made the comment
23 that he seemed to be fidgeting with the back of his
24 waistband of some kind and didn't know if any kind of
25 weapon or anything or whatever was -- could have been

1 there or whatever. And I went ahead -- and I knew
2 that he had been -- I knew that he was injured and I
3 went ahead and did a pat down for knowing that also
4 that I was going to be with him for my safety as well
5 as Mr. Barwick's request that there may have -- there
6 was something in his waistband or something. And I
7 patted him down and removed some property from his
8 pockets.

9 **Q** And when you say patting him down, what does that
10 entail?

11 **A** I patted his waistband, his pockets. A normal frisk
12 for weapons and whatnot.

13 **Q** Did you find anything in his pockets?

14 **A** Yes, sir. There was -- I believe it was \$596 in cash
15 was in his, I believe his left front pocket if I'm
16 not mistaken.

17 **Q** I show you what's been marked as State's Exhibit 87.
18 Does that photograph depict the money that you took
19 out of Mr. Sapp's pocket?

20 **A** Yes, sir.

21 **Q** Did he have any weapons on him?

22 **A** No, sir.

23 **Q** Did you find a weapon in close proximity of where he
24 was laying?

25 **A** Yes, sir, a few feet away, as I was knelt down beside

1 Mr. Sapp, to my right I saw a black and chrome in
2 color handgun lying in the grass, in a little grass
3 area a few feet away.

4 Q I show you what's been marked as State's Exhibit 80.
5 Do you recognize that item?

6 A Yes, sir.

7 Q And is that the handgun that you're referring to?

8 A Yes, sir, it is.

9 Q I show you what's been marked as State's Exhibit 35.
10 Do you recognize that?

11 A Yes, sir.

12 Q Is that the handgun that's depicted in the picture?

13 A Yes, sir, it is.

14 Q Approximately how far was this handgun laying from
15 Mr. Sapp?

16 A Four or five feet, give or take a foot or two.

17 Q Did you --

18 MR. ARCHER: I'm sorry, sir, could you just
19 repeat that answer.

20 THE COURT: He said four or five feet, give or
21 take a foot or two.

22 MR. ARCHER: Thank you.

23 Q Did you touch that gun?

24 A No, sir, I did not.

25 Q Who did you turn the money over to that you took off

1 of Mr. Sapp's person?

2 **A** It was turned over to Sergeant Kokinda, who is our
3 crime scene forensic investigator.

4 **Q** Did you have any role in processing the scene or
5 collecting any other evidence?

6 **A** Only thing I did is when I noticed the weapon, I did
7 ask a deputy to stand near the weapon and make sure
8 it wasn't bothered, you know, that part of that crime
9 scene wasn't disturb.

10 **Q** So to the best of your knowledge, nobody disturbed
11 that gun in any way?

12 **A** Best of my knowledge, nobody touched that weapon.

13 **MR. JENNINGS:** Please answer any question
14 Mr. Johnston may have for you.

15 **THE COURT:** You may cross-examine, Mr. Archer.

16 CROSS-EXAMINATION

17 **BY MR. ARCHER**

18 **Q** Good morning.

19 **A** Morning, sir.

20 **MR. ARCHER:** Could we put that exhibit on that
21 shows the further distance? I don't know the number.

22 **Q** Sir, could you point out with the pointer where the
23 defendant was lying?

24 **A** He was lying in this area around in here.

25 **Q** Okay. And you said that the gun was about four or

- 1 five feet away from him?
- 2 **A** Give or take a foot or two to the right.
- 3 **Q** Could you point that out to the jury so we can get a
- 4 better perspective of the whole scene?
- 5 **A** Yes, sir. He was lying around in this area here.
- 6 Right around where the grass met the gravel is where
- 7 the weapon was lying.
- 8 **Q** I know it's hard to keep that thing steady, but just
- 9 do it again where he was.
- 10 **A** He was around in this area here.
- 11 **Q** Okay.
- 12 **A** From my knowledge, and maybe about right in there
- 13 where the grass and the -- where the gravel turns to
- 14 the grass or there's some -- looks like some brown
- 15 grass or something right there. Right around that
- 16 area is where the weapon was.
- 17 **Q** And your testimony is it would be about four or five
- 18 feet away?
- 19 **A** Give or take a foot or two.
- 20 **Q** When he was lying down, he was lying face down?
- 21 **A** Yes, sir.
- 22 **Q** Now, was that on the grass or on the gravel?
- 23 **A** It was in the gravel area.
- 24 **Q** Was any part of his body on the grass?
- 25 **A** Not that I can recall.

1 Q Okay. Also in this, there's sort of a wooden
2 railing. I don't know what you call it, a railroad
3 tie or something there.

4 A All right.

5 Q Do you see where it separates the grass? See this,
6 it's like a wooden --

7 A Yes, sir.

8 Q Do you recall seeing that?

9 A Yeah, I seen that, vaguely remember seeing that.

10 Q Was his body completely on the driveway or was part
11 of his body --

12 A As far as I can remember, he was -- his body was on
13 the gravel.

14 Q Completely on the gravel?

15 A From what I can recall, yes, sir.

16 Q When you got there, did you hear the defendant scream
17 at all?

18 A He did moan and moan and take some deep breaths from
19 time to time. Other than that, he did moan as in he
20 was in some bit of pain, yes. .

21 Q And also, did you -- did you notice that -- was he
22 conscious at all times when you saw him?

23 A He appeared to be. He was breathing. I could tell
24 he was breathing. He did -- you know, when he moaned
25 he did give out a good -- did move a little bit. And

1 I could tell that he was breathing because with his
2 face on the ground, I could see his -- you know, he
3 would blow up some of the dust from the gravel
4 driveway.

5 Q Right. Well, my question is, did you see him go in
6 and out of consciousness?

7 A Not that I could tell.

8 Q Okay. And the only thing you heard was a moan?

9 A Yes, sir. He made no -- we had no conversation.

10 Q Okay.

11 A He didn't make any conversation.

12 MR. ARCHER: Thank you, sir.

13 THE COURT: Redirect?

14 MR. JENNINGS: No, sir. May he be excused?

15 THE COURT: Any objection, Mr. Archer?

16 MR. ARCHER: No, sir.

17 THE COURT: You're free to leave, sir. Thank
18 you.

19 Call your next witness.

20 MR. JENNINGS: We call Agent Jill Clark.

21 JILL CLARK, after being duly sworn, testified as
22 follows:

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

25 THE WITNESS: Jill Clark, C-L-A-R-K.

DIRECT EXAMINATION

BY MR. JENNINGS

Q Good morning, Agent Clark. Where are you employed, ma'am?

A I'm employed at the South Carolina Law Enforcement Division.

Q That's commonly known as SLED?

A Yes, sir, it is.

Q What are your duties and responsibilities with SLED?

A My primary duty is to analyze drug evidence submitted to SLED by various agencies throughout the state.

Q How long have you been with SLED?

A Since December of 1999.

Q And have you had the opportunity to testify in state court since 1999?

A Yes, I have.

Q Have you been qualified as an expert in the field of drug analysis?

A Yes, I have.

Q How many times has that taken place?

A I've testified 13 times now.

Q Can you describe for the jury briefly what training you have in the area of drug analysis?

A I have a Bachelor's Degree in Chemistry, also attended graduate school for one year. I received

1 training through the South Carolina Criminal Justice
2 Academy and I've also received training at SLED
3 through the drug analysis department and some
4 training with the Drug Enforcement Agency.

5 **MR. JENNINGS:** Your Honor, I would offer her as
6 an expert in the field of drug analysis and
7 identification.

8 **THE COURT:** Do you care to examine her as to her
9 qualifications?

10 **MR. ARCHER:** I have no objection.

11 **THE COURT:** Very well, she will be permitted to
12 render opinions in those areas.

13 **MR. JENNINGS:** Thank you.

14 **Q** Explain the process of how a local law enforcement
15 agency would bring drugs to SLED so that you could
16 test them?

17 **A** When they bring drug evidence to SLED, we have what
18 is called a log in area where all the evidence is
19 brought into and it's logged in there in the computer
20 system. And then normally, they will put it into a
21 secure drug box which has a lock on it from which we
22 get the evidence out of.

23 **Q** And the term -- the local agency will bring it and
24 place it in a Best bag?

25 **A** Yes, the evidence itself that they use to put most

1 drug evidence in as long as it will fit in there is
2 called a Best bag.

3 Q And what's the purpose of putting it in a Best bag?

4 A Best bags are tamper evident bags. So they're a
5 secure way of handling drug evidence; that once it's
6 put in there and the bag is sealed, that if someone
7 tampers with it, it will cause distortions in the
8 lines on the bag so that you can tell that someone's
9 tried to tamper with it.

10 Q I want to show you what's been marked as State's
11 Exhibit 55 and see if you recognize that item?

12 A Yes, I do.

13 Q And is that the bag that contains the Best bag?

14 A It is.

15 Q What's the Best bag number?

16 A It is Best Kit B-139125.

17 Q And are you familiar with Sergeant Kokinda of the
18 Berkeley County Sheriff's Department?

19 A I don't know him well, but I know he submits evidence
20 to SLED.

21 Q And he submitted that Best bag to SLED on July 10th
22 of 2002?

23 A Yes.

24 Q And I believe that you removed it from the drop box
25 on July 12th of 2002?

1 **A** That is correct.

2 **Q** Had it been tampered with or altered in any way when
3 you took possession of it?

4 **A** No, it had not.

5 **Q** What will you do when you take possession of drugs as
6 you did in this case? How will you go about doing
7 your testing?

8 **A** In this case, I took the drugs out of the drug box
9 and they were stored into the drug vault until it was
10 time for me to test it. And then when I test it, I
11 take the evidence out. And I did analyze the
12 evidence through various tests.

13 **Q** And did you do that in this case?

14 **A** Yes, I did.

15 **Q** When did you take it out of your evidence vault?

16 **A** It was July 30th of 2002 is when I started working on
17 the case.

18 **Q** And had they been tampered with in any way between
19 the 12th and the 31st?

20 **A** No, it had not.

21 **Q** Were you able to analyze and determine what the items
22 were that were in that Best bag?

23 **A** Yes, I did.

24 **Q** And can you explain to the jury what you found?

25 **A** Yes, I can. In this particular case there were

1 several items. The first item was gray tablets and
2 that was 34 methylene dioxin methamphetamine, which
3 is MDMA, was found, 40 tablets, and it's a Control I
4 drug.

5 **Q** Does that have a common street name?

6 **A** The street name is Ecstasy for that.

7 **Q** And there were 40 tablets of Ecstasy?

8 **A** Yes, in the first item.

9 **Q** Okay.

10 **A** Second item were some blue-green tablets and they
11 were 34 methylene dioxin methamphetamine, MDMA,
12 found. And there were 18 tablets of that kind and
13 they're Schedule I also.

14 **Q** And that's also --

15 **A** Eighteen tablets.

16 **Q** The MDMA is what drug?

17 **A** Street name is Ecstasy.

18 **Q** So how many tablets total of Ecstasy were there?

19 **A** In those two items, there was a total of 58 tablets.

20 **Q** Are you familiar are the drug Ecstasy?

21 **A** I see it submitted regularly.

22 **Q** And that's an illegal drug?

23 **A** Yes, it is. It's a Control Schedule I drug.

24 **Q** Were you able to identify any other drugs in that
25 packet?

1 **A** Yes. The third item were some blue tablets. And
2 that was morphine sulphate was indicated and there
3 were 10 tablets. And that's a Schedule II drug.

4 **Q** Is morphine sulfate different from morphine?

5 **A** It's just a form of morphine.

6 **Q** Is that also an illegal drug?

7 **A** Well, yes, it's a Schedule II drug. You have to have
8 a prescription in order to use it.

9 **Q** And what else did you find?

10 **A** The fourth item was white tablets and Trazodone was
11 indicated. There were 12 tablets and it's a
12 prescription drug.

13 **Q** And that's also illegal to have absent a
14 prescription?

15 **A** Correct, you have to have a prescription for that.

16 **Q** And if you could continue with what else you
17 identified?

18 **A** Item 5 was white tablets and it was Promethazine was
19 indicated. There were 19 tablets. And again, that's
20 a prescription drug.

21 **Q** Did you also find some blue tablets?

22 **A** Yes, Item 5 was blue tablets, Alprazolam indicated 19
23 of those tablets and it's a Controlled IV schedule
24 drug.

25 **Q** Did Alprazolam have a more common name that people

1 may have heard?

2 **A** One of the trade names this is sold under is Xanax.
3 Item 7 were white tablets and it was Cyclobenzaprine
4 indicated. There were 28 tablets and it's a
5 prescription drug.

6 **Q** How many total tablets of Xanax did you find?

7 **A** Well, there were 19 tablets in Item 6, but I also had
8 two more items of the Alprazolam and each of those
9 items had one tablet a piece. So it would be 21
10 total tablets.

11 **Q** And was there also cocaine submitted?

12 **A** Yes. The last item, Item 9, was powder substance and
13 cocaine was found, 1.28-grams, which is 19.75-grains,
14 and it's a Schedule II drug.

15 **Q** And that did test positive for cocaine?

16 **A** Yes, it did.

17 **Q** And each of the -- all the pills that you're
18 referring to are contained inside of State's Exhibit
19 55?

20 **A** Yes, they are.

21 **Q** Okay. And you have no idea where these drugs came
22 from or where they were found?

23 **A** No, they were just submitted in a drug box to me.

24 **Q** At a later date were some metal pipes also submitted
25 to you?

1 **A** Yes, they were. I received those on August 14th,
2 2002.

3 **Q** Who submitted those?

4 **A** Mr. William Salisbury brought those to SLED.

5 **Q** I show you a pipe that's within State's Exhibit 60
6 and see if you recognize this?

7 **A** Yes, that's one of the pipes that was submitted to
8 me.

9 **Q** In fact, are your initials on this?

10 **A** Yes, I put the case number and my initials on it.

11 **Q** Did you perform any testing on these?

12 **A** Yes, I did.

13 **Q** Can you describe for the jury what you tested and how
14 you did that?

15 **A** Right. Since I didn't visibly see drugs in them, I
16 rinsed them with a chemical called methylene
17 chloride. And then I further tested it and it came
18 out to have cocaine was found, no weight obtained.
19 It's a Schedule II drug.

20 **Q** So there was cocaine on these pipes?

21 **A** There was residue, yes.

22 **Q** Was just one pipe submitted or how many?

23 **A** There were six total pipes. And again, since I
24 didn't see anything inside them, I just rinsed all
25 six of them together and concentrated the liquid and

1 did an instrumental test and found cocaine.

2 **Q** Thank you.

3 **MR. JENNINGS:** Thank you. Please answer any
4 question Ms. Sapp's attorneys may have.

5 **THE COURT:** Cross-examine, Mr. Johnston?

6 **MR. JOHNSTON:** Thank you.

7 CROSS-EXAMINATION

8 **BY MR. JOHNSTON**

9 **Q** Good morning, ma'am.

10 **A** Good morning.

11 **Q** Could you tell us again what your credentials are?

12 **A** I have a Bachelor's Degree in Chemistry. I was in
13 graduate school for one year in chemistry. I also
14 received training from the South Carolina Criminal
15 Justice Academy, training within SLED's own drug
16 analysis department and from the Drug Enforcement
17 Agency.

18 **Q** Did you receive training or education on the effect
19 that different drugs have on a person?

20 **A** In drug analysis, we identify the drugs and give a
21 weight out. We know generally what kind of drugs
22 they are, but as far as their physiological effects,
23 that's not part of our job.

24 **Q** In your experience, have you learned any of that
25 information?

1 **MR. JENNINGS:** Objection, Your Honor. She said
2 she can't answer that.

3 **MR. JOHNSTON:** I didn't ask her if she can
4 answer it.

5 **THE COURT:** I overrule it at this point. You
6 may continue.

7 **Q** Are you capable of testifying as to the effects of
8 any drugs on a person?

9 **A** Well, I can tell you what kind of drug it is. But as
10 far as the physiological effects, no, I would not
11 consider myself an expert in that.

12 **MR. JOHNSTON:** Okay. Thank you, ma'am.

13 **THE COURT:** Redirect?

14 **MR. JENNINGS:** No, sir.

15 **THE COURT:** You may come down.

16 Do you wish her to be excused?

17 **MR. JENNINGS:** Please.

18 **THE COURT:** Any objection?

19 **MR. JOHNSTON:** No, sir.

20 **THE COURT:** Feel free to leave. Thank you very
21 much.

22 Ladies and gentlemen, at this point, we will
23 take a break. Please do not begin your deliberations. Do
24 not discuss the case. We'll be with you in about 10, 15
25 minutes. Thank you.

1 (WHEREUPON, the jury left the courtroom at
2 approximately 10:38 a.m.)

3 **THE COURT:** Anything from the State before we
4 recess?

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

6 **THE COURT:** Anything from Mr. Sapp?

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

8 **THE COURT:** We'll be at ease for 10 or 15
9 minutes.

10 (WHEREUPON, a short break was taken.)

11 **THE COURT:** Let's go back on the record.
12 Defense ready to begin?

13 **MR. ARCHER:** I know Mr. Johnston was going to do
14 this part of it. Can we give him a minute?

15 **THE COURT:** I will give him one and a half.
16 I'll give him until five minutes to 11.

17 **MR. ARCHER:** Fair enough.

18 **MR. HOISINGTON:** Next witness will be Charles
19 Sciarotta.

20 **THE COURT:** And this is the one we need?

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

22 **THE COURT:** Come forward, please, sir.

23 CHARLES SCIARROTTA, after being duly sworn,
24 testified as follows:

25 **THE CLERK:** Please have a seat. Tell us your

1 name and spell your last name please.

2 **THE WITNESS:** My name is Charles Sciarrotta,
3 S-C-I-A-R-R-O-T-T-A.

4 DIRECT EXAMINATION

5 **BY MR. HOISINGTON**

6 **Q** Officer Sciarrotta, you obviously are working for
7 North Charleston right now?

8 **A** Yes, sir.

9 **Q** How about in July of 2002? Who did you work for?

10 **A** Charleston County Detention Center.

11 **Q** Did you have any responsibilities relative to the
12 defendant, Jesse Sapp, at that time?

13 **A** Yes, sir, I was in charge of his safety and safety of
14 others around him.

15 **Q** On an occasion -- when you say you were in charge of
16 his safety, were you actually with him on occasion?

17 **A** Yes, sir.

18 **Q** How about on the night, and I'll check that, I
19 believe it was July 12th?

20 **A** Yes, sir.

21 **Q** Was it nighttime or daytime, do you remember?

22 **A** It was daytime, sir.

23 **Q** Did you have an occasion to have him speak with you
24 at that time?

25 **A** Yes, sir.

1 Q What initiated that conversation?

2 A Mr. Sapp himself did.

3 Q Did you question him in any fashion?

4 A No, sir.

5 Q Where was he when he began the conversation?

6 A I was helping him off the toilet.

7 Q He was in a hospital room at that time?

8 A Yes, sir.

9 Q And briefly tell the Court what he stated to you?

10 A He stated, I know everybody thinks I'm a monster, but
11 they don't know the whole story. I was going to be
12 in a lot of trouble. I had a stolen truck, stolen
13 gun and a bunch of drugs. So they were going to put
14 me away for a long time. At that time I told him
15 that he needed to speak to his attorney, not me.

16 MR. HOISINGTON: Your Honor, that's the
17 substance of that conversation and the background behind
18 it.

19 THE COURT: You may cross-examine, Mr. Johnston.

20 MR. JOHNSTON: Thank you.

21 CROSS-EXAMINATION

22 BY MR. JOHNSTON

23 Q Officer, may I see the statement you're reading from,
24 please?

25 A Yes.

1 **MR. HOISINGTON:** Good luck with that.

2 **MR. JOHNSTON:** Let the record reflect I'm moving
3 under the light.

4 **THE COURT:** Very well. It must be difficult.

5 **Q** Thank you, Officer. Could you please read the last
6 three lines for us?

7 **A** I told him, I'm sorry to hear that, but you need to
8 speak to your attorney. I have rounds to finish.

9 **Q** Okay. And where were you with him?

10 **A** In his room. There's a small toilet area in the
11 medical rooms for the inmates.

12 **Q** So were you in a room with him or the bathroom with
13 him?

14 **A** It's all one big room.

15 **Q** Okay. Did you walk him to the room?

16 **A** Sir, he was already in the room. I just helped him
17 to the toilet and from the toilet back to his chair.

18 **Q** Did he appear nervous to you?

19 **A** A little depressed, not really nervous.

20 **Q** Did he have an IV?

21 **A** No, sir.

22 **Q** Do you know what an IV is?

23 **A** Yes, sir.

24 **Q** Was he in a wheelchair?

25 **A** No, sir.

- 1 Q Was he walking?
- 2 A Yes, sir, that's why we had to help him. They wanted
- 3 him to walk around.
- 4 Q Was he wearing handcuffs?
- 5 A No, sir.
- 6 Q Was he wearing leg shackles?
- 7 A No, sir.
- 8 Q Was he restrained in any way?
- 9 A No, sir.
- 10 Q Was he in normal clothing?
- 11 A No, sir, he was in a hospital gown.
- 12 Q Do you understand -- you're aware of Miranda rights?
- 13 A Yes, sir.
- 14 Q And the requirement that a statement be voluntary?
- 15 A Yes, sir.
- 16 Q And what was the date of this?
- 17 A 7/12/2002.
- 18 Q Okay. Did you ask him any questions?
- 19 A No, sir.
- 20 Q Did you identify yourself?
- 21 A I was only -- he knew who I was as far as I worked in
- 22 the detention center as his corrections officer.
- 23 Q Okay. When you first saw him, did you identify
- 24 yourself?
- 25 A As far as just telling him who I was?

1 Q Yes, sir.

2 A I don't remember if I did or not to be honest with
3 you, sir.

4 Q Okay. But you did speak to him?

5 A On occasion, to tell him his food was there or ask
6 him if he needed any assistance with anything.

7 Q And a conversation ensued?

8 A He started talking to me, yes, sir, while I was
9 trying to help him off the toilet.

10 Q And he talked to you?

11 A Yes, sir.

12 Q And you responded?

13 A All I said to him was that he should talk to his
14 attorney.

15 Q I'm sorry, I couldn't hear you.

16 A All I said to him was that he needs to talk to his
17 attorney, not me, that I had rounds to finish.

18 Q So whenever he started to talk to you, your immediate
19 response was you need to talk to your attorney?

20 A Yes, sir.

21 Q How many times --

22 A It wasn't my place to have -- to be told any of that
23 stuff.

24 Q How many times did you say that?

25 A I only said it once, sir, and then he stopped

1 talking.

2 Q Did you say anything else other than you need to talk
3 to your attorney?

4 A No, sir.

5 Q Would you read the last three lines of that statement
6 again, please?

7 A I told him that he needed to speak to his attorney,
8 that I have rounds to finish.

9 Q Okay. All right. Do you know where he was taken
10 from to this room where you can go to the bathroom?

11 A From his room, which is all one big room. The way
12 the detention center medical department is set up,
13 there are sleeping quarters, sitting quarters and
14 bathroom is all one big area. There's a small, like,
15 indentation in the room where the toilet and shower
16 and sink are.

17 Q So did he come from his bed to this location?

18 A He was in a chair in his room. The nurses had him
19 sitting up.

20 Q It's just difficult to visualize. I'm just trying to
21 picture this. And this is July 15th, correct?

22 THE COURT: 12th.

23 A July 12th, sir.

24 Q 12th? You're aware that he was shot on the 7th?

25 A Yes, sir.

1 Q And are you aware that he had an operation?

2 A Yes, sir.

3 Q Are you aware that he was in intensive care?

4 A Yes, sir.

5 Q Did you consult with any of the hospital physicians
6 regarding Mr. Sapp?

7 A No, sir.

8 Q Did you see any?

9 A I saw a couple of them come in to check on him when
10 he was in the hospital.

11 Q Okay. Do you know what medications he was on?

12 A No, sir. The medical department handles all that.

13 Q Why were you helping him to use the bathroom?

14 A There wasn't a nurse available to help him. So part
15 of my job is to help the inmates.

16 Q Because he was physically incapable?

17 A He couldn't get up out the chair and walk by himself.
18 They were afraid he might fall down.

19 Q Do you know why they were afraid he might fall down?

20 A I believe it was because of the wounds in his stomach
21 and his legs.

22 Q Do you also believe it could have been because of the
23 medication he was on?

24 A I can't speculate on that, sir. I'm not sure. I
25 never questioned the nurses as far as his medical

1 care.

2 **Q** Okay. One last question -- well, almost one last
3 question. It's so hard for me to visualize this and
4 I'm not trying to beat a dead dog here, but when you
5 went in the room, he was in a chair?

6 **A** Yes, sir.

7 **Q** But not a wheelchair?

8 **A** No, sir. They're -- it's hard to explain. It's a
9 medical chair that they have which allows them to be
10 able to sit upright and have a tray so that they can
11 eat.

12 **Q** Was this next to his bed?

13 **A** Sort of like a high chair.

14 **Q** Was this next to his bed?

15 **A** Actually, it was in the middle of the room not too
16 far from the bed. The cells aren't that large.

17 **Q** Okay. Okay. And he seemed depressed?

18 **A** Yes, sir.

19 **Q** Did he seem despondent?

20 **A** I wouldn't say despondent, just a little under the
21 weather, so to speak.

22 **Q** He seemed emotionally affected?

23 **A** Like he had a lot on his mind.

24 **Q** Possibly stress?

25 **A** Possibly. I'm not a medical person, so I can only

1 tell you what I saw.

2 Q But from a layperson's standpoint?

3 A Yeah, it looked like he had something on his mind.

4 Q But from a layperson's standpoint, you observed
5 something was wrong with him?

6 A Yeah, he looked like he had a lot on his mind.

7 Q Maybe preoccupied?

8 A Yes.

9 Q Maybe confused?

10 A I don't know about confused. He didn't really talk
11 all that much. And I, you know, just did my job
12 while I was up there.

13 MR. JOHNSTON: Thank you, sir.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. HOISINGTON

17 Q Did you initiate this conversation?

18 A No, sir.

19 Q Who initiated it?

20 A Mr. Sapp.

21 Q Did you question him in any way?

22 A No, sir.

23 Q And as a matter of fact, you stopped the
24 conversation?

25 A Yes, I did, sir.

1 **MR. HOISINGTON:** Thank you.

2 **THE COURT:** Any recross?

3 **MR. JOHNSTON:** No, Your Honor.

4 **THE COURT:** All right. Be happy to hear from
5 you. Any motions on behalf of Mr. Sapp concerning the
6 alleged statement? Anything you wish to say concerning
7 it?

8 **MR. JOHNSTON:** Yeah, we would move to exclude
9 these statements.

10 **THE COURT:** Based on what?

11 **MR. JOHNSTON:** Based on there not being a clear
12 showing if these are voluntary statements. Mr. Sapp was
13 shot on the 7th. He had a serious operation. It's clear
14 that he was on serious medications, including, from my
15 understanding, morphine. He was not in good physical
16 condition. He couldn't even go to the bathroom without
17 assistance. The officer's already testified that he was
18 emotionally affected. We don't even know to what extent.

19 The officer works for the State of South
20 Carolina and this is the State of South Carolina vs. Jesse
21 Sapp. I think that's inherently fair for the officer to
22 be there to retrieve these statements. I mean, I can't go
23 back in time and say, you know, they should have had
24 medical personnel do this. But I don't think there is a
25 clear showing that Mr. Sapp was cognizant of what he was

1 doing.

2 **THE COURT:** Okay. Response, Solicitor?

3 **MR. HOISINGTON:** Thank you, Judge. Obviously,
4 the witness believes he was aware of what he is doing. He
5 had been released from the hospital and taken back to the
6 jail. This is where that location was. This gentleman
7 was simply assisting him when he gave a contemporaneous
8 statement, clearly voluntary. And as far as being on any
9 medication, there's no evidence he was on medication.

10 **THE COURT:** Yes, sir?

11 **MR. JOHNSTON:** I don't think the witness is
12 qualified to state whether or not he was cognizant. The
13 witness has stated he saw something wrong with him from a
14 mental standpoint. And I think that should be of great
15 concern.

16 **THE COURT:** As to the threshold necessary at
17 this stage, obviously, as I've already indicated
18 concerning all other statements, I'm going to charge the
19 jury they're the ones that ultimately have to make a
20 determination as to the voluntariness. Clearly, this
21 particular statement while he was certainly in custody is
22 no interrogation. It is simply this person stating
23 whatever it was he allegedly stated. It's for the jury to
24 assess as to whether they -- and I will instruct them, if
25 they feel it was not voluntary or that it was influenced

1 by anything, obviously, they have the right to ignore
2 that. But from the standpoint of the testimony and
3 whether or not the testimony should be permitted, I think
4 the officer did not in any way interrogate Mr. Sapp.

5 And furthermore, I think you have the officer's
6 response was I think, considering the totality of all of
7 the circumstances shown, he was doing exactly what he
8 should have done and that is he advised him you don't need
9 to be talking to me. And immediately, he stopped and that
10 was the end of it. I don't believe there's any law
11 that -- of which I'm aware except as to the effect of
12 drugs and those types of things as to the voluntariness.
13 But the fact that he was in custody never would prevent
14 his voluntary statements from coming into evidence. And
15 like I said, if the jury wishes to conclude that they were
16 voluntary, that will be their decision. On the other
17 hand, all those other matters that you discussed with him
18 on cross-examination are very relevant and very pertinent
19 to a determination as to if the statement is voluntary.
20 Certainly, I would expect that you would explore that with
21 him in the jury's presence. Thank you very much.

22 **MR. JOHNSTON:** Thank you.

23 **THE COURT:** I will permit the testimony
24 concerning the alleged statement.

25 **MR. HOISINGTON:** Thank you, Judge. One just

1 little housekeeping thing. Officer Sciarotta was
2 interested in watching a couple of the SLED agents
3 testify. I've already spoken to Mr. Archer about him
4 sitting in the back because he didn't bring a change of
5 clothing.

6 **THE COURT:** Any objection, Mr. Archer?

7 **MR. ARCHER:** No.

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

9 (WHEREUPON, the jury came into open court at
10 approximately 11:04 a.m.)

11 **THE COURT:** Thank you very much, ladies and
12 gentlemen. You notice that there is a witness who is
13 seated in the witness chair. While you were on your
14 break -- and I understand some of you are smokers and were
15 taking advantage of that. I indicated to Agent McLeod
16 that we would go ahead with a matter of law then that I
17 needed to take up. That's why he's here. I'm sure the
18 solicitor's going to ask him his name.

19 But, Officer Sciarotta, I would remind you, sir,
20 that you still are under oath in this matter, sir --

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

22 **THE COURT:** -- now that the jury is present.

23 Ladies and gentlemen --

24 And Solicitor, excuse me just one second before
25 you commence so that everyone knows.

1 I have also been advised by Agent McLeod that
2 you talked about it among yourselves and you wish, if
3 necessary for Sunday, Sunday is to be treated by the Court
4 as another potential work day for however long we need to
5 work on that particular day. Thank you very much for your
6 input in that and we will certainly honor that, assuming
7 it can be honored.

8 You may proceed.

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

10 DIRECT EXAMINATION

11 **BY MR. HOISINGTON**

12 **Q** Officer Sciarrotta, state your full name, please.

13 **A** Charles Sciarrotta.

14 **Q** And you're an officer with North Charleston?

15 **A** Yes, sir.

16 **Q** How about in July of 2002, where did you work?

17 **A** I was a detention officer with Charleston County
18 Detention Center.

19 **Q** And what were your responsibilities with the
20 detention center?

21 **A** The care and security of inmates.

22 **Q** Now, the detention center is the jail?

23 **A** Yes, sir.

24 **Q** During that period of time, did you have any
25 responsibility relative to the defendant in this

1 case, Jesse Sapp?

2 A Yes, sir, I did.

3 Q Calling your attention to July 12th, was Mr. Sapp --
4 had Mr. Sapp been released from the hospital at that
5 point?

6 A Yes, sir.

7 Q And where was he located in the jail?

8 A The medical department in the jail.

9 Q Is that a confined area?

10 A Yes, sir.

11 Q And who attends to people who are in that particular
12 area of the jail?

13 A That would be the nurses and one physician that they
14 have on staff.

15 Q As far as guards are concerned, who would that be?

16 A That would be the Charleston County Detention
17 officers.

18 Q And you were on duty that day?

19 A Yes, sir.

20 Q Did you have an occasion to have Mr. Sapp address you
21 in any fashion that day?

22 A Yes, sir.

23 Q Tell me the circumstances of that.

24 A While I was helping him off the toilet back to his
25 chair, he engaged me in conversation where he said

1 that he knows that people think of him as a monster,
2 but he was going to be in a lot of trouble. He had a
3 stolen gun, drugs and a stolen truck and that if he
4 was caught, he was going back to jail for a long
5 time. At that time I told him he needed to speak to
6 his attorney and that I had rounds to complete.

7 **Q** Now, that conversation, did you initiate it by any
8 type of questioning at all?

9 **A** No, sir, I did not.

10 **Q** In your opinion, did he seem to be -- did he
11 understand who you were?

12 **A** Yes, sir.

13 **Q** Did he seem to be alert as to where he was?

14 **A** Yes, sir.

15 **MR. HOISINGTON:** If you would answer any
16 questions the defense has.

17 **THE COURT:** You may cross-examine, Mr. Johnston.

18 CROSS-EXAMINATION

19 **BY MR. JOHNSTON**

20 **Q** Hi, Officer. Who asked you to go help Mr. Sapp?

21 **A** Whenever an inmate calls to the desk and needs
22 assistance with something, that's my job.

23 **Q** Where are you stationed?

24 **A** At the desk that's right in front of his room. All
25 the rooms are around the desk.

1 Q Bear with me. I'm having a little problem hearing
2 you. Were you there for the sole purpose of Mr. Sapp
3 or --

4 A No, sir, I had other inmates that were in the medical
5 ward at the time.

6 Q Okay.

7 A He was just one of the ones under my care.

8 Q Okay. So someone told you to go on down to
9 Mr. Sapp's room?

10 A Mr. Sapp called and asked for assistance.

11 Q Okay. Did you speak with Mr. Sapp and ask for
12 assistance?

13 A I said, What can I do for you? Same thing I say to
14 all the inmates when they call.

15 Q And what did he tell you?

16 A I need help going to the bathroom.

17 Q Okay. Did you immediately leave at that point?

18 A Yes, sir.

19 Q And when you entered the room, what did you see?

20 A Mr. Sapp sitting in the chair.

21 Q Okay. Could you describe the chair?

22 A It's a blue chair that has a large back for comfort
23 that goes up to about the head area with a tray table
24 on the front for his meals.

25 Q It's not a dining room chair?

- 1 **A** No, sir.
- 2 **Q** It's not a living room chair?
- 3 **A** No, sir.
- 4 **Q** Is it a specially designed chair?
- 5 **A** It's a specially designed chair for people who are in
6 medical care, who have injuries.
- 7 **Q** Who have injuries? Okay. And what did he ask you to
8 help him with?
- 9 **A** To get up and go use the bathroom.
- 10 **Q** Okay. How did he seem emotionally to you?
- 11 **A** Seemed like he had a lot on his mind, kind of
12 depressed.
- 13 **Q** He seemed depressed?
- 14 **A** Yes, sir.
- 15 **Q** Possibly under a lot of stress?
- 16 **A** Possibly.
- 17 **Q** Possibly distracted?
- 18 **A** He didn't really seem distracted. I mean, he seemed
19 to know what was going on. He just seemed like he
20 was under a lot of pressure.
- 21 **Q** Was he in intensive care at this point?
- 22 **A** No, sir.
- 23 **Q** So he had already been out of intensive care?
- 24 **A** Yes, sir, he was already released from the hospital.
- 25 **Q** Do you know how long after they removed part of his

1 colon this was?

2 A No, sir.

3 Q So you don't know how long it was after his
4 operation?

5 A No, sir, I don't.

6 Q And did you observe the IV of morphine?

7 A No, sir, there was no IV.

8 Q So you helped him go to the bathroom?

9 A Yes, sir.

10 Q How did you help him? Could you describe what you
11 did for him, please?

12 A I allowed him to put his arm around my neck and I put
13 my arm around his back and I helped him up, walked
14 him to the bathroom, sat him on the toilet and then
15 walked back some so that he could have at least a
16 little privacy. Allowed him to do his business
17 and --

18 Q Is it fair to say he couldn't walk then?

19 A Unassisted, no, he probably would have fell down.
20 And that's what they were concerned with. They
21 didn't want him to be injured.

22 Q Okay. What did you do while he was in the bathroom?

23 A Just stood there.

24 Q Do you recall how long he was in the bathroom?

25 A Probably not that long, a few minutes.

- 1 Q No more than 10 minutes?
- 2 A No, it was less than that.
- 3 Q Five minutes?
- 4 A Probably around five minutes, yeah.
- 5 Q Could be five to 10 minutes?
- 6 A Probably more around five, sir.
- 7 Q Okay. But you didn't time it, it's just a rough
- 8 guess?
- 9 A I didn't time it.
- 10 Q Okay. And then he signaled you that he was finished
- 11 using the restroom?
- 12 A Yes, sir. He says, I'm done, can you help me back
- 13 up?
- 14 Q Okay. And obviously, you helped him back?
- 15 A Yes, sir.
- 16 Q Okay. And you helped him back to his chair?
- 17 A Yes, sir.
- 18 Q And did you help him get in the chair?
- 19 A Yes, sir.
- 20 Q Then what did you do?
- 21 A Well, that's -- the conversation happened while I was
- 22 walking him from the toilet to the chair. After I
- 23 was done putting him in the chair, I walked out of
- 24 the room.
- 25 Q Okay. Well, after you got him in the chair, what did

1 you do then?

2 **A** That was when I went back and finished my rounds and
3 sat back down at the desk and did my little report to
4 log in that I checked the inmates.

5 **Q** What was that?

6 **A** They keep a log on the suicidal inmates and medical.
7 And I have to log every time I check them. So what I
8 do is I log them and then go in and put in my notes
9 that I did my rounds for the whole unit.

10 **Q** How often do you have to do this log?

11 **A** I have to do the suicidal inmates every 15 minutes.

12 **Q** Every 15 minutes. So how many people do you have to
13 report on?

14 **A** It depends. It varies on how many people are in
15 medical at that time.

16 **Q** And basically, this is for the purpose of documenting
17 the suicide inmates?

18 **A** That's what it's supposed to be for. But you're
19 already up, so you might as well check and make sure
20 everybody's okay.

21 **Q** How many people did you have to monitor on July 12th?

22 **A** Sir, I don't remember.

23 **Q** Could you give us a range, a minimum?

24 **A** I would say maybe there was five in the unit.

25 **Q** Okay. What kind of information did you have to enter

1 in this log?

2 **A** Just that I checked, my initials and the time.

3 **Q** And the what?

4 **A** And the time.

5 **Q** Well, did it ask you what your observations were?

6 **A** Yes, sir, it does.

7 **Q** And does that require checking a box or actually
8 putting in a comment?

9 **A** You just write in -- if everything's okay, you write
10 okay.

11 **Q** Was everything okay?

12 **A** Everything was fine on the floor that day.

13 **Q** Where do you keep this log?

14 **A** They keep it in medical.

15 **Q** I'm sorry, help me. I'm not familiar with the
16 facility. They keep it where?

17 **A** In the medical department.

18 **Q** And you sit in the medical department?

19 **A** Yes, sir.

20 **Q** Do you keep it at your desk?

21 **A** Yes, sir.

22 **Q** So basically, you sat down and pulled this out?

23 **A** After I did my rounds, yes, sir.

24 **Q** Okay. What do you do when you finish it?

25 **A** Just sit there.

1 Q Okay. Do you run a copy of it or anything?

2 A I don't know what they do with it once I leave the
3 medical department. It's left there for the next
4 oncoming shift.

5 Q What did you do then?

6 A After I was done with the log?

7 Q Yes, sir.

8 A Just sit there and wait for someone to need help or
9 until it's time for my next rounds.

10 Q How much do they get you up out of your chair?

11 A I have to get up every 15 minutes.

12 Q Okay. So after doing your log, you just sat there
13 until the next 15 minutes?

14 A Right.

15 Q Okay. And then you did your checks again?

16 A Yes, sir.

17 Q All right. And basically, that's a repeat of
18 everything we just discussed?

19 A Yes, sir.

20 Q Okay. So just to summarize, you left Mr. Sapp, you
21 went back to your desk, you pulled out your suicide
22 log. You reported on all the suicide individuals,
23 stated that you checked them, stated the time,
24 checked off that there was no problems and you just
25 sat there.

1 **A** Yes, sir.

2 **Q** And when the 15 minutes was up, you went and did your
3 rounds again?

4 **A** Yes, sir.

5 **Q** How long does it take to do your rounds?

6 **A** About a minute and a half.

7 **Q** Okay. And when you go back, you just sit there?

8 **A** Yes.

9 **Q** And when you went back this day, did you just sit
10 there?

11 **A** Yes, sir.

12 **Q** Okay.

13 **A** I may have done a crossword puzzle.

14 **Q** Okay. You probably do a lot of those?

15 **A** Yes, it can be very boring, sir.

16 **Q** Could you read this sentence for us again, please?

17 **A** I told him that he should speak to his attorney and
18 that I had rounds to finish.

19 **Q** Okay. Would you read his sentence, please?

20 **A** I know I'm thought of as a monster. But the people
21 do not understand. They don't know the whole story.
22 I was going to be in a lot of trouble. I had a
23 stolen truck, stolen gun and a bunch of drugs. So
24 they would have put me away for a long time. So you
25 see, it's not as simple as people think. And that's

1 when I told him to go and speak to his attorney.

2 **Q** Did you write this statement?

3 **A** Yes, sir.

4 **Q** I see that you've used quotation marks.

5 **A** Yes, sir.

6 **Q** You're very specific in your language.

7 **A** Yes, sir.

8 **Q** Is this the correct language?

9 **A** Yes, sir.

10 **Q** You wrote it down as you heard it?

11 **A** Yes, sir.

12 **Q** Did you write it down verbatim?

13 **A** Yes, sir.

14 **Q** Exactly as it was said?

15 **A** To the best of my recollection, yes.

16 **Q** Okay. After you got back to your desk, you pulled
17 out the suicide log and you filled it out. Then you
18 put it down and then you just sat there. Then you
19 went and did your rounds and you came back and you
20 filled out your log again, maybe did a crossword
21 puzzle. Then you just sat there. Then 15 minutes
22 went by, then you did it again. When did you fill
23 out your statement?

24 **A** That afternoon when my relief came up.

25 **Q** Okay. When did your relief come up?

- 1 **A** I think I got my break roughly 2 o'clock, that's when
2 I went down and spoke with my supervisor.
- 3 **Q** Someone actually comes up to the physical location
4 you're at?
- 5 **A** They have to, sir, I'm by myself. So in order to be
6 relieved, there has to be another officer present.
- 7 **Q** Okay. And when you were relieved, was that for the
8 whole shift or was that a break?
- 9 **A** That was just a break, sir.
- 10 **Q** Where did you go on break?
- 11 **A** Down to my lieutenant's office.
- 12 **Q** Okay. And you were relieved at what time?
- 13 **A** It was about 2 o'clock, I guess.
- 14 **Q** About 2 o'clock?
- 15 **A** Yes.
- 16 **Q** So it's not exactly at 2 o'clock?
- 17 **A** It's usually around that time.
- 18 **Q** And you went down to your lieutenant's office?
- 19 **A** Yes, sir.
- 20 **Q** What did you do down there?
- 21 **A** I let him know what was said upstairs and I asked him
22 what I'm supposed to do.
- 23 **Q** And what did he tell you?
- 24 **A** That I have to write a statement.
- 25 **Q** So what did you do?

1 **A** I wrote a statement.

2 **Q** In his office?

3 **A** Actually, he brought me to the captain's office and
4 that's where I wrote the statement.

5 **Q** Then you went to the captain's office?

6 **A** Yes.

7 **Q** What time did you return to your post?

8 **A** I guess it was about 2:30.

9 **Q** Okay. About 2:30. What time does it state on this
10 statement that Mr. Sapp made this statement?

11 **A** Twenty after one.

12 **Q** Twenty after one. And you filled this out over an
13 hour later?

14 **A** I filled it out a little over half hour later, sir.

15 **Q** I thought you just told me that --

16 **A** Two o'clock and 20 after one --

17 **Q** I'm sorry?

18 **A** I went down to see the lieutenant at 2 o'clock when I
19 was relieved for my break.

20 **Q** Sir, I'm very sorry, I don't know what my problem is,
21 but could you speak up a little bit for me?

22 **THE COURT:** If you would sit forward, the mic
23 doesn't pick it up. There you go. Thank you, sir.

24 **Q** Could you repeat that, sir?

25 **A** The statement was made at approximately 1320. My

1 statement to my lieutenant was approximately
2 2 o'clock after -- when I was relieved from my break.

3 Q Right. I understand what time you said it to your
4 lieutenant. But you just told me that you went to
5 your captain's office and sat down and wrote this
6 statement about 2:30.

7 A No, sir, I returned to my post at about 2:30.

8 Q Okay. So sometime between the lieutenant's office --
9 what time did you write this statement?

10 A The statement was probably written around 10 after
11 two.

12 Q At 10 after two. So almost an hour later?

13 A Yes, sir.

14 Q So almost an hour later, you remembered all of this
15 dialogue exactly, verbatim, every word?

16 A Yes, sir.

17 Q Every single word?

18 A Every single word, sir.

19 Q Can you tell us exactly what Mr. Sapp said that day?

20 A That I know I'm looked at as a monster.

21 Q No, from beginning to end, without looking at that.

22 A Sir, it's been 10 months now.

23 Q It's been 10 minutes?

24 A Ten months now.

25 Q I know, but you just read it two or three times.

1 Mr. Sapp only said it once. You've read it two or
2 three times in the last five minutes. So tell us
3 what he said, please.

4 **A** I know I'm thought of as a monster, but people just
5 don't understand. I was going to be in a lot of
6 trouble. I was carrying a stolen gun, drugs and I
7 had a stolen truck. They were going to send me up --
8 send me to jail for a long time.

9 **Q** Would it surprise you if I told you that that is not
10 verbatim?

11 **A** (There was no response.)

12 **MR. JOHNSTON:** I have no further questions.
13 Thank you, Officer.

14 **THE COURT:** Redirect?

15 **MR. HOISINGTON:** Nothing further. We'd release
16 Officer Sciarotta.

17 **THE COURT:** Any objection, Mr. Johnston?

18 **MR. JOHNSTON:** No.

19 **THE COURT:** You are free to leave, sir. Thank
20 you.

21 Call your next witness.

22 **MR. JENNINGS:** Agent Diane Bodie.

23 **DIANE BODIE,** after being duly sworn, testified
24 as follows:

25 **THE CLERK:** Please be seated and state your name

1 and spell your last name for the record.

2 **THE WITNESS:** My name is Diane Watts Bodie,
3 B-O-D-I-E.

4 DIRECT EXAMINATION

5 **BY MR. JENNINGS**

6 **Q** Good afternoon, Agent Bodie. Where are you employed,
7 ma'am?

8 **A** I'm employed with the South Carolina Law Enforcement
9 Division, commonly referred to as SLED.

10 **Q** In what capacity?

11 **A** I'm a special agent assigned to the crime scene
12 latent print department.

13 **Q** Can you explain to the jury what some of your duties
14 and responsibilities are, please?

15 **A** Our duties include assistance of local and state and
16 federal agencies with crime scene processing as well
17 as in our department, we're responsible for the
18 examination of impression evidence as it refers to
19 fingerprints, footwear, bloodstain pattern analysis
20 and fabric.

21 **Q** And within those duties and responsibilities, will
22 you sometimes respond to crime scenes and process
23 that scene and collect evidence?

24 **A** Yes, sir. Our unit is the unit that will respond to
25 the crime scenes and collect the evidence at the

1 scene.

2 Q And my understanding, SLED exists to assist local law
3 enforcement agencies?

4 A Yes, sir. We will respond to a crime scene as we are
5 requested by that local agency.

6 Q And will you also investigate officer-involved
7 shootings?

8 A Yes, sir, we investigate officer-involved shootings
9 for the agency.

10 Q Would the murder of a South Carolina Highway
11 Patrolman fall within your duties of crime scenes
12 that you would investigate?

13 A Yes, sir, it does.

14 Q You also said that you are involved in latent
15 fingerprint processing. Can you explain what that
16 is?

17 A When we collect items at a crime scene, in our
18 department, we are examining them to examine
19 fingerprint evidence, which latent -- the word latent
20 in the dictionary means hidden. We have certain
21 processes, either through powders or chemical
22 processes, where we can develop different type items
23 and try to find those hidden prints in an attempt to
24 individualize those prints to one individual.

25 Q Have you received training in that process?

1 **A** Yes, sir, I have been a fingerprint examiner for 31
2 years.

3 **Q** And have you also received training in not only
4 lifting the latent fingerprints, but then comparing
5 those to a known fingerprint?

6 **A** Yes, sir. We receive numerous hours of training. I
7 probably have approximately 3,000 hours in latent
8 print, fingerprint identification processing.

9 **Q** In your 31 years of experience, I would assume you
10 have processed countless crime scenes?

11 **A** Well, I have 31 years experience in the fingerprint
12 identification area. I have processed crime scenes
13 in the last five years. However, I have worked close
14 to 300 plus crime scenes, the majority of those
15 things being death investigations.

16 **Q** Have you had the opportunity to testify in state
17 court as an expert in fingerprint analysis?

18 **A** Yes, sir, I have.

19 **Q** How many times?

20 **A** Approximately 15 times.

21 **Q** And you were qualified as an expert?

22 **A** Yes, sir.

23 **MR. JENNINGS:** Your Honor, I would offer her as
24 an expert in the area of fingerprint analysis.

25 **THE COURT:** Do you care to examine her as to her

1 qualifications?

2 **MR. ARCHER:** She's qualified, Your Honor.

3 **THE COURT:** Very well. I will permit her to
4 render opinions in that area, Solicitor.

5 **MR. JENNINGS:** Thank you.

6 **Q** Your unit, crime scene unit operates on an on-call
7 basis?

8 **A** Yes, sir, we do.

9 **Q** And how will that work when you're the agent on call,
10 if you could explain that process.

11 **A** Yes, sir. We're on call for a week at a time.
12 There's two individuals that will respond to a scene.
13 One of the agents are assigned the primary role and
14 the other agent is the backup role. At this
15 particular scene, I was the primary agent and I would
16 receive the call. We're on call 24 hours for seven
17 days during that -- the entire week. And so at any
18 time either night or day the call comes in, if I'm
19 not in the office, they can reach me via pager at my
20 home. And they would call me and give me the
21 information and I would call my backup partner and we
22 would respond to the scene wherever it might be.

23 **Q** Were you on call for work -- for a week that
24 encompassed the morning of July 7th of 2002?

25 **A** Yes, sir, I was.

1 **Q** And were you notified of an incident that had
2 occurred in Berkeley County?

3 **A** Yes, sir, I was notified approximately 3:45 in the
4 morning of the 7th by our officer on duty at
5 headquarters in Columbia.

6 **Q** And what were you notified of?

7 **A** A police officer-involved shooting. And at the time
8 the officer and another -- and a subject were sent to
9 the hospital.

10 **Q** At that point did you know that the trooper had been
11 killed?

12 **A** I was notified the trooper had died in conversation
13 with one of the officers. I can't say if it was
14 right -- the very first time I talked to someone, but
15 before -- as I was coming to the scene, I did know
16 that he had died.

17 **Q** Do you live in Charleston or in another city?

18 **A** I live in Columbia, South Carolina area.

19 **Q** How did you get from Columbia to where the incident
20 occurred?

21 **A** I actually flew in a helicopter from Columbia to the
22 area of the scene. And the other agent working with
23 me drove our vehicle with all of our equipment.

24 **Q** Who was the other agent working with you?

25 **A** Special Sergeant Jeff Parrot.

1 **Q** You were the lead investigator for processing the
2 crime scene?

3 **A** Yes, sir, I was.

4 **Q** Did a representative from SLED's ballistics
5 department also come to the scene?

6 **A** Yes, sir, we had an agent from the firearms section,
7 Vello Paavel, respond to the scene.

8 **Q** And was there an agent from the trace department?

9 **A** Yes, sir, the lieutenant over the trace department,
10 Lieutenant Joe Powell, who -- all of our units in
11 forensic are on an on-call basis, so whoever would
12 have been on call that week would have been who would
13 have responded.

14 **Q** And what time did you arrive at the scene?

15 **A** Approximately 5:55 that morning.

16 **Q** Was the scene secure when you arrived?

17 **A** Yes, sir, the scene was secure.

18 **Q** Can you explain what that means to the jury, please?

19 **A** That basically means no one's allowed in the scene
20 that doesn't have business to be in the scene. And
21 they had roped -- they had traffic stopped as well as
22 tape around the crime scene area.

23 **Q** And to your knowledge, had anybody tampered with the
24 scene in any way?

25 **A** Not to my knowledge, no, sir.

1 Q And when you arrived on the scene, did you have an
2 opportunity to speak with representatives of the
3 South Carolina Highway Patrol?

4 A Yes, sir, I did.

5 Q Were the troopers who survived the incident still at
6 the scene?

7 A At that time they were not at the scene. But I did
8 talk with them during the processing of the scene.

9 Q At that time were weapons turned over to SLED's
10 custody, the weapons of the troopers?

11 A Yes, sir, a trooper had collected the weapons and
12 turned it over to our firearms agent.

13 Q Mr. Paavel?

14 A Yes, sir.

15 Q Were you also aware that the videos from the
16 troopers' cars, what happened to those?

17 A I believe the videos from the troopers' cars was
18 turned over to another representative from SLED.

19 Q To your knowledge, have those videos been altered in
20 any way?

21 A Not to my knowledge.

22 Q And they've remained in SLED's custody from that
23 morning until they were turned over for trial?

24 A To my knowledge, yes, sir.

25 Q Were you able to get a general narrative of what had

1 happened in the incident when you arrived at the
2 scene?

3 **A** Yes, sir, I did.

4 **Q** When you get to the scene, if you could describe for
5 the jury, what's sort of the process that you will go
6 through in documenting items of evidence that are
7 there?

8 **A** Well, the first thing we do, of course, is speak with
9 someone on the scene that can apprise us of what has
10 taken place. And we will try to do what we call a
11 walk-through just trying to see evidence that might
12 be on the ground or in vehicles or in homes or
13 whatever we're processing, trying to determine what
14 all we have to collect and what type collection is
15 required. But the very first thing that we would do
16 before we do anything is to photograph the scene, so
17 that it will represent the scene as it was when we
18 arrived.

19 **Q** And I know on TV shows you see when they go and
20 process the scene, they will put out markers and
21 things showing where items of evidence are. Will you
22 photograph the scene prior to that process?

23 **A** We photograph the scene prior to putting down
24 evidence markers. And then we will photograph them
25 with the markers before we collect the items.

1 **Q** Will you move an item of evidence from one location
2 to another?

3 **A** No, sir.

4 **Q** And then you will begin marking the items?

5 **A** Yes, sir.

6 **Q** Is that the process that you followed on this
7 incident?

8 **A** Yes, sir, I did.

9 **Q** I show you what's marked as State's Exhibit 71. Is
10 this a photograph that generally depicts the area of
11 the crime scene?

12 **A** Yes, sir.

13 **Q** And how will you pick where you start labeling items?

14 **A** We will start in one area and try to be consistent
15 among that area. There are times when the, perhaps,
16 marking or labeling won't go in total order. Because
17 sometimes evidence isn't found all at the very first
18 glance.

19 **Q** And in this case, there were lots of shell casings at
20 the scene?

21 **A** Yes, sir, there was. And we basically just started
22 marking in the groups that we found them. We'd mark
23 one area, move to the next area, mark the items of
24 evidence in that area and move to another area and
25 mark those items.

1 **Q** Do you have any way of telling which casing came
2 first or any sequence of how the shots were fired?

3 **A** Any sequence of how the shots were fired?

4 **Q** Yes, sir.

5 **A** No, sir, I just know how the casings, where they came
6 from.

7 **Q** You pick an arbitrary point and start from there?

8 **A** Uh-huh.

9 **Q** I show you several items of evidence and see if you
10 can identify them. There's a laser pointer to your
11 right. I'll show you the item of evidence and if you
12 could point on the picture and show the jury
13 generally where it came from. State's Exhibit 43 is
14 the bulletproof vest of Trooper Johnson?

15 **THE WITNESS:** Your Honor, may I refer to my
16 notes?

17 **THE COURT:** You may. I assume you're referring
18 to them for the purpose of refreshing your recollection;
19 is that correct?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** Very well.

22 Do you care to examine the notes before she
23 reviews them?

24 **MR. JOHNSTON:** I'm not sure which notes they
25 are.

1 **THE COURT:** They're her personal notes.

2 **MR. JOHNSTON:** Not as long as we can see them
3 before we cross her.

4 **THE COURT:** Very well. Okay.

5 **THE WITNESS:** Okay.

6 **A** In this general area -- and it's actually Marker 1.
7 So right in here was the bulletproof vest that said O
8 negative.

9 **Q** Marked as State's Exhibit 44, the reflective vest and
10 uniform of Trooper Johnson, were those in the same
11 general area?

12 **A** Yes, I have victim's clothing was at Marker 3.

13 **Q** And there were also a number of shell casings in that
14 area?

15 **A** Yes, sir.

16 **Q** Were you aware based on items of evidence that were
17 at the scene where the suspect, Mr. Sapp, fell after
18 being shot?

19 **A** Yes, sir.

20 **Q** I show you what's marked as State's Exhibit 84.

21 **A** Right in here is where the suspect was. There's a
22 Marker No. 7 and then a Marker 6 where a gun was
23 located.

24 **Q** And if you could point out, where was Marker 7?

25 **A** Over in here.

1 Q What did that marker represent?

2 A It was suspect's clothing.

3 Q And to your knowledge that was where EMS cut his
4 clothing off?

5 A Yes, sir.

6 Q What was marked with Marker 6?

7 A Marker 6 was a gun in the driveway near the suspect,
8 which is right in here.

9 Q I show you what's marked as State's Exhibit 35. Do
10 you recognize that item and State's Exhibit 36?

11 A Yes, sir. I recognize these. My initials and the
12 lab number is on the bag.

13 Q What are those items?

14 A This is -- was the gun at Marker 6.

15 Q Okay.

16 A The gun that was located at Marker 6.

17 Q And State's Exhibit 36, the magazine with bullets,
18 how was that in relation to State's Exhibit 35?

19 A Oh, the magazine was removed from the gun that was at
20 Marker 6.

21 Q But as you processed the scene that morning, that
22 clip was inside State's Exhibit 35?

23 A Yes, the magazine was removed by the firearms
24 examiner to check on how many cartridges was left in
25 the magazine.

1 **Q** Okay. But when you took possession of it that
2 morning, this clip was inside this gun?

3 **A** Yes, sir.

4 **Q** I show you what's marked as State's Exhibit 75.
5 Obviously, that's Marker 8. What items were you able
6 to recover from that area?

7 **A** Marker 8 was the officer's flashlight, driver's
8 license belonging to the suspect and a visor.

9 **Q** All those items were taken into evidence?

10 **A** Yes, sir.

11 **Q** And then there were a number of shell casings; is
12 that correct?

13 **A** Yes, sir.

14 **MR. JENNINGS:** Your Honor, we would offer
15 State's Exhibit 91 into evidence.

16 **THE COURT:** Without objection, State's 91 is
17 into evidence, a diagram mounted to a board.

18 (WHEREUPON, State's Exhibit No. 91 was admitted
19 into evidence.)

20 **Q** If you could, do you recognize this is a diagram of
21 the crime scene?

22 **A** Yes, sir.

23 **Q** And labeled on that are the shell casings that were
24 removed?

25 **A** Yes, sir and other items of evidence.

1 Q Okay. And begin with Marker 9. Could you describe
2 to the jury what that was? I show you what's marked
3 as State's Exhibit 34.

4 A Okay. It's a cartridge case located at Marker 9.

5 Q If you can just point generally where that was found?

6 A Right in here.

7 Q Okay. And you took this item into evidence?

8 A Yes, sir.

9 Q I show you what are State's Exhibits 7 through 14,
10 which were delineated in your report as Exhibits A
11 through H. Look at that and see if you recognize
12 those casings, please.

13 A I have written on the front of each container
14 containing the cartridge casings at what marker I
15 collected these casings at. And these should all be
16 A through H. As soon as I get them lined up, I will
17 verify that. Yes, sir, these are markers A through
18 H.

19 Q And if you could point out to the jury the general
20 location where those markers were recovered.

21 A These are all in this circle here at the back of the
22 truck, that one big circle there, that marks where --
23 all of those markers were collected in that general
24 area. Right here.

25 Q If I could refer you to State's Exhibit 71, if you

- 1 could also point it out.
- 2 **A** Back it up. So it's this area right in here.
- 3 **Q** And based on your investigation -- I'm sorry?
- 4 **A** The back of the truck is here and all these casings
- 5 were collected in this general area.
- 6 **Q** Okay. Markers I through V and Marker Z, those also
- 7 shell casings?
- 8 **A** I through V?
- 9 **Q** Yes, ma'am.
- 10 **A** And Z, yes, sir, they are cartridge casings.
- 11 **Q** And if you could point out on the map where those --
- 12 what location those were found?
- 13 **A** This large area here is where all of these were
- 14 located.
- 15 **Q** If you could also point it out on State's Exhibit 71?
- 16 **A** This -- all in here.
- 17 **Q** And those were concentrated around where the body of
- 18 Jeff Johnson fell?
- 19 **A** Yes, sir, these are -- items of his clothing were
- 20 also intermingled in there.
- 21 **Q** And Marker X, I believe, was the last shell casing?
- 22 **A** Yes, sir. And it was located up by the bush near the
- 23 trailer, which is up here.
- 24 **Q** Okay.
- 25 **A** And here.

1 Q And that was the last shell casing that was recovered
2 -- I'm sorry, there was one more?

3 A No -- yes.

4 Q W?

5 A Yes, sir.

6 Q Where was that recovered, ma'am?

7 A W was recovered on the passenger seat of the truck.

8 Q I show you what's marked as State's Exhibit 81, and
9 State's Exhibit 82 is a close-up. And that is the
10 shell casing?

11 A Yes, sir.

12 Q What seat was that in, the driver seat or the
13 passenger seat?

14 A The passenger seat.

15 Q I show you what's marked as State's Exhibit 33. Do
16 you recognize that?

17 A Yes, sir. The tin reads, Cartridge casing at Marker
18 W, passenger seat Dodge truck, the date and my
19 initials and the SLED lab number.

20 Q This is the shell casing retrieved from the passenger
21 seat?

22 A Yes, sir.

23 MR. JOHNSTON: Excuse me, it would be far easier
24 to mark right now. Could I get the exhibit numbers for
25 the casings found in the truck and the others --

1 **THE COURT:** W was the one in the truck.

2 **MR. JENNINGS:** Yes, sir, W was in the truck and

3 --

4 **MR. JOHNSTON:** No, the exhibit numbers.

5 **MR. JENNINGS:** Thirty-three is the casing in the
6 passenger seat and --

7 **MR. JOHNSTON:** There may have been two by the
8 bush.

9 **MR. JENNINGS:** Twenty-nine.

10 **MR. JOHNSTON:** Twenty-nine was by the bush?

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

12 **MR. JOHNSTON:** Thank you.

13 **Q** Were all those shell casings readily apparent to the
14 naked eye or did you use some device to help you find
15 others?

16 **A** Some were very apparent, you could see them, but we
17 used a metal detector to find numerous ones.

18 **Q** Is it unusual in your experience to not find all the
19 shell casings at a crime scene?

20 **A** No, sir.

21 **Q** What are some of the things that can affect how a
22 shell casing flies out of the gun?

23 **A** Well, what it hits or what's going on at the time the
24 gun is being shot, whether the person's moving or
25 standing or sitting down, where the cartridge case

1 would actually go and what it would hit. And then a
2 lot of times, we don't find them just because of
3 where they might land. If they land in an area that
4 might be a bush or a ditch-type area with a lot of
5 grass or something like that, we may still not find
6 them.

7 Q Did you have an opportunity to go to the home at 887
8 College Park Road?

9 A The agent that worked with me did.

10 Q Was a projectile recovered from that address?

11 A Yes, sir, it was.

12 Q And can you point out on that diagram where that home
13 was?

14 A Right here.

15 Q I show you what's marked as State's Exhibit 72. Did
16 you have an opportunity to process that truck?

17 A Yes, sir.

18 Q And Exhibit W, the shell casing was taken out of
19 passenger seat of that vehicle?

20 A Yes, sir.

21 Q Were you also able to retrieve other items of
22 evidence from the inside of that truck?

23 A Yes, sir.

24 Q I show you what's marked as State's Exhibit 83.
25 What's shown in that picture?

1 **A** It's a holster with a magazine.

2 **Q** I show you what's been marked as State's Exhibit 40.

3 Do you recognize that?

4 **A** Yes, sir, this is the holster I collected. It has
5 our state lab number on it and the date that I
6 processed it.

7 **Q** And State's Exhibit 39?

8 **A** This also represents an item number and my case
9 report and a SLED lab number relating to this case.

10 **Q** And State's Exhibit 39 was inside State's Exhibit 40?

11 **A** Yes, sir, the magazine was removed from the black
12 holster collected from the Dodge Dakota.

13 **Q** I show you what's marked as State's Exhibit 41.

14 **A** Yes, sir, one sidekick black holster.

15 **Q** Was that also in the center console?

16 **A** Yes, sir.

17 **Q** I show you what's marked as State's Exhibit 56. Do
18 you recognize that item?

19 **A** I know a green fanny pack was collected from the
20 truck.

21 **Q** From the interior or the exterior of the truck?

22 **A** From the interior of the truck.

23 **Q** In the front seat area or the back seat?

24 **A** I'm not real sure which area it came from.

25 **Q** Did you turn this over to another law enforcement

1 agency?

2 **A** Yes, sir, Berkeley County actually collected the
3 holster -- I mean the fanny pack, I'm sorry.

4 **Q** I show you what's marked as State's Exhibit 37 and
5 38. Do you recognize those two clips?

6 **A** Yes, sir, this item is reflected in my report as a
7 Bersa magazine caliber -- 38 caliber with seven 380
8 auto cartridges that were collected from the green
9 fanny pack in the Dodge Dakota. And this is a Bersa
10 magazine with 38 autos in it as well.

11 **Q** So both of those clips were inside State's Exhibit
12 56?

13 **A** Yes, sir.

14 **Q** Thank you. Did you also have an opportunity to
15 examine the exterior of the pickup truck?

16 **A** Yes, sir, I did.

17 **Q** I show you what's marked as State's Exhibit 34. Did
18 you document a bullet hole to the passenger side
19 door?

20 **A** Yes, sir, we did.

21 **Q** Was any bullet recovered associated with that bullet
22 hole?

23 **A** No, sir.

24 **Q** I show you State's Exhibit 71. Based on your
25 examination of the crime scene, which set of casings

1 is consistent with that -- which set of casings is
2 consistent from having been in the position from
3 where that bullet was fired?

4 **A** The casings A through H here that were behind the
5 Dodge Dakota, we determined that the door had to have
6 been open at the time because the hole goes through
7 the side part of that door and it did not go into the
8 passenger area.

9 **Q** And is the mobile home that was struck with the
10 bullet pictured in this photograph?

11 **A** Yes, sir, it's right here.

12 **Q** Thank you. Did you also have an opportunity to
13 respond to a home at Lot 56 on Miami Road?

14 **A** Yes, sir, we did.

15 **Q** What did you recover from that location?

16 **A** We recovered a bullet fragment or bullet collected on
17 the kitchen counter of that home.

18 **Q** If you could just point out generally in State's
19 Exhibit 71, where was that home?

20 **A** If you go straight through these trees here, the
21 street behind that at the back of that trailer was
22 there.

23 **Q** That's a residential area behind those trees?

24 **A** Yes, sir, it is.

25 **Q** While you were in Charleston processing the scene,

1 did you also have an opportunity to go down to the
2 Medical University?

3 **A** Yes, sir, when I departed the scene, I went down to
4 MUSC.

5 **Q** And what was the purpose for going down there?

6 **A** I went to collect the bullet that was recovered from
7 the trooper as well as blood from the trooper and
8 other items from the autopsy.

9 **Q** I show you what's marked as State's Exhibit 32. Do
10 you recognize that?

11 **A** Well, I recognize this because it's the MUSC
12 container. I did not actually examine the evidence.

13 **Q** But that is the container you retrieved?

14 **A** That is the container, yes, sir.

15 **Q** Who did you give this item to?

16 **A** I would have logged those items into our log-in
17 section at SLED and it would have been submitted to
18 Vello Paavel for examination.

19 **Q** Was this item, State's Exhibit 32, altered in any way
20 while it was in your custody?

21 **A** No, sir, it wasn't.

22 **Q** Once you got back to SLED after processing the scene,
23 did you have an opportunity to process any of the
24 items of evidence that you had retrieved?

25 **A** Yes, sir, I did.

1 **Q** And if you could explain to the jury briefly, how do
2 you go through that process?

3 **A** Most of the items that I brought back are what I
4 would call a nonporous item. In other words, when
5 you touch something with your hands, you exude sweat
6 out of -- you exude out of your fingertips residue
7 which will leave your print on a surface. Or during
8 the day, you rub your head or you touch items, you
9 can contaminate that residue that comes out of your
10 pores as well. So when you touch an item, your
11 fingerprint or your feet will leave this impression
12 on that item. And what we do as examiners is we have
13 ways to process all kind of items according to
14 whether they are porous or nonporous items.

15 In this particular scene, most of the items I
16 processed were a nonporous item. In other words, the
17 ridge detail is actually sitting on the surface of
18 that item, and chemically we can process to enhance
19 that ridge detail so as examiners we can look at the
20 detail and be able to, hopefully, identify the person
21 who has actually touched the item through the detail
22 that is left by that residue.

23 In this particular case, the majority of these
24 items were processed with what we -- first of all, we
25 always do a visual examination of the item. Then we

1 can place these items in -- basically, it's like a
2 fish tank and we place the items in the tank and we
3 have a fuming method which actually will put a
4 blue-like, white clear residue on top of the
5 fingerprint residue to harden that residue so that we
6 can process it further without contaminating or
7 destroying the evidence. And this is what we call a
8 cyanoacrylate process (phonetic).

9 In this process, we'll actually -- it's similar
10 to smoke in the area or fog, say fog, as it falls
11 down on things. This would lay on top of that
12 residue and will turn the prints that are left on the
13 item a whitish color. And then I would -- I, in this
14 case, would go back and powder that area with a black
15 powder to make it visible to my eyes as well as to
16 anyone else who might look at it.

17 At that point in time, I will make a lift of
18 that fingerprint that is left on the item with just
19 plain lifting tape and put it on a white paper card.
20 At that point, I can take the card and compare it
21 with any known standards of the inked impressions to
22 try to identify those ridges and to identify them to
23 only one individual.

24 Q And as you've already identified, State's Exhibit 35
25 is the Smith and Wesson handgun of Mr. Sapp's,

1 State's Exhibit 36 was the clip from that gun. Did
2 you perform that test on State's Exhibit 36?

3 **A** Yes, sir. I would have put this magazine into the
4 tank and I would have actually, what we call
5 supergluing or fuming this item. And then I would
6 apply black powder and then visually examined it
7 again. At all these stages, I will visually examine
8 them to see if any ridge detail has become visible to
9 me. I would put black powder on the item and then if
10 I do locate ridge detail, I made a lift of it for
11 examination purposes.

12 **Q** Were you able to lift an area of ridge detail from
13 this clip?

14 **A** Yes, sir, I did.

15 **Q** I show you what's marked as State's Exhibit 54. Do
16 you recognize that?

17 **A** Yes, sir. As I explained a moment ago, when we put
18 black powder on the surface, we take this tape and I
19 would actually lay it on top of the magazine, lift
20 the tape up and apply it to this backer. This is
21 what we call a latent lift backer. And on this
22 impression -- on this lift represents ridge detail
23 that was left on that item. And then on back of my
24 backer, I write the item that I have processed and a
25 general description of the item and the case number

1 as well as the date that I did this process. And
2 then I will use this lift to compare with any known
3 standards in an attempt to individualize these
4 prints.

5 Q And were you provided with known standard
6 fingerprints for Jesse Sapp?

7 A Yes, sir, I was.

8 Q I show you what's marked as State's Exhibit 53. Do
9 you recognize that?

10 A Yes, sir, this also has on each page my lab number as
11 well as my item number and my initials.

12 Q And whose fingerprints are those?

13 A And these prints belong to last name Sapp, Jesse
14 Waylon.

15 Q Were you able to make a comparison to determine whose
16 fingerprint that was on the clip?

17 A Yes, sir. I compared my latent exhibit here and I
18 identified it to the right hand of the impressions
19 with the name of Sapp, Jesse Waylon on this card
20 right here. And it's actually this -- this area
21 right here was the ridge detail that I identified
22 that was left on the magazine.

23 Q That's the location on Mr. Sapp's hand that left the
24 ridge detail on this State's Exhibit 54?

25 A Yes, sir.

1 **Q** Thank you. You have somebody -- you make your
2 conclusion that that was Mr. Sapp's fingerprint, did
3 you have anybody review that?

4 **A** Our policy at SLED, everything that we do, we have
5 another court-qualified examiner go behind us and
6 agree with all of our findings whether we identify
7 someone or not identify someone. So the other agent
8 who responded with me to the scene would have gone
9 through my entire case and reviewed every process
10 that I attempted on all items I collected. And he
11 would have had to agree with everything I did before
12 he would have signed off on my case. And that
13 includes the identification that I made on the latent
14 print to the fingerprint evidence.

15 **Q** And that process was followed in this case?

16 **A** That process was followed in this case.

17 **MR. JENNINGS:** Thank you. Please answer any
18 question Mr. Johnston has.

19 **THE COURT:** You may cross-examine, Mr. Johnston.

20 **MR. JOHNSTON:** Thank you.

21 CROSS-EXAMINATION

22 **BY MR. JOHNSTON**

23 **Q** Hi, ma'am.

24 **A** Good morning.

25 **Q** Give me one second, please. How are you?

1 **A** Fine.

2 **Q** Good.

3 **MR. JOHNSTON:** Your Honor, I want to take a look
4 at the exhibit over here.

5 **THE COURT:** Sure. That would be fine.

6 **MR. JOHNSTON:** I might as well start from right
7 here.

8 **THE COURT:** That would be fine.

9 **Q** Let me know if I'm not talking loud enough or if I'm
10 in anybody's way, please. Were you part of putting
11 this together?

12 **A** That actual exhibit --

13 **THE COURT:** Mr. Johnston, he can't see.

14 **MR. JOHNSTON:** I'm sorry.

15 **THE COURT:** Maybe if you turn it just a hair
16 that way maybe it may assist insofar as --

17 **MR. JOHNSTON:** Sure. Can you see it, ma'am?

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

19 **THE COURT:** Let me just use this opportunity, of
20 course, ladies and gentlemen, you probably have gleaned by
21 now, but let me just remind you, any of these matters that
22 are introduced into evidence, they will be with you in the
23 jury room for a closer examination should that become
24 necessary.

25 **Q** Okay. Were you part of putting the -- collecting the

1 information so that they could create this exhibit?

2 **A** I was present when they were creating this, yes, sir.

3 **Q** Did you participate?

4 **A** As -- I don't exactly know what you mean. I was
5 present and I asked them to do a diagram to represent
6 all the markers that I had and the different areas
7 and the vehicles and the road and the auto express
8 place and the two trailers. So I did direct them on
9 everything that I needed to show in the diagram.

10 **Q** In your opinion, is this a fair and accurate
11 depiction of the crime scene?

12 **A** Yes, sir.

13 **Q** And you don't have any disagreement with the
14 placement of all these vehicles?

15 **A** That is a close representative of where the
16 vehicles -- to what I was told were found.

17 **Q** Were the vehicles still at the scene when you got
18 there?

19 **A** All the vehicles were pretty much exactly how he's
20 showing that. The trooper -- the red vehicle here
21 had been moved to another area in the auto express
22 place.

23 **Q** Okay. Do you know what reference measure is right
24 here?

25 **A** Sir, I don't.

1 Q Okay. That's fine. And you stated earlier that
2 Exhibit X right here was found next to this bush
3 right here?

4 A Yes, sir.

5 Q Okay. I've never seen this before.

6 A Okay.

7 Q The -- Exhibit No. 33, the shell casing that was
8 found in the truck, was it --

9 A Marker W?

10 Q Well, I don't have the marker numbers, I'm using the
11 exhibit numbers.

12 A Okay.

13 Q I can find it for you.

14 A Could you let me look at it to make sure the marker
15 is W?

16 Q Sure. In fact, I think it is W.

17 THE COURT: It's 33, isn't it?

18 MR. JOHNSTON: It's Exhibit 33, but she wanted
19 to know what the marker number was.

20 THE WITNESS: I don't know the exhibit number so
21 I'm just making sure I know what you're asking me.

22 THE COURT: W is 33.

23 Q Let me make it easier for you, was there a shell
24 casing in the car when you got there?

25 A Yes, sir, there was.

1 Q Okay.

2 A In the truck.

3 Q And where in the truck was it?

4 A In the passenger seat.

5 Q And you participated in identifying that casing?

6 A I participated in the collection of that casing.

7 Q What can you tell us about that casing again?

8 A That casing was found in the front passenger seat of
9 the truck.

10 Q Okay. And what type of casing was it?

11 A My item number reflects it's 15 cartridge casing,
12 container marked W.

13 Q Is that the same type -- do you know if that's the
14 same type of casings that police are using?

15 A I collect the firearms evidence, put it in the
16 container that I marked with the markers where I
17 collected them. I am not the firearms examiner. I
18 don't determine what --

19 Q If you don't know, that's fine.

20 A I just do the latent prints on them.

21 Q In other words, is your answer no?

22 A Could you ask again?

23 Q Actually, I'll do you a favor and withdraw the
24 question.

25 THE COURT: Thank you.

1 **Q** Okay. Marker No. X, tell us again what that was,
2 please.

3 **A** It was a fired cartridge case that was found by the
4 bush.

5 **Q** By the bush?

6 **A** Yes, sir.

7 **Q** Okay. What type of casing was that?

8 **A** I don't have that in my notes. I have a fired
9 cartridge case.

10 **Q** Okay. Other than fingerprints, what is your primary
11 objective when you go to a scene like this?

12 **A** To collect all the evidence at the scene and then --
13 I collect all the evidence at the scene and I bring
14 the evidence back to log in. And the evidence that I
15 am responsible for the examination of, I will retain
16 in my possession. Any other evidence, I will send to
17 the different areas of the lab where the qualified
18 examiners there will do the examination of that
19 evidence.

20 **Q** Okay. At the scene, your job is to basically just
21 pick the evidence up and put it in the bag and put on
22 the little sticker? I'm just trying to understand.

23 **A** And to evaluate what I have, yes, sir.

24 **Q** As far as identifying the tangible object itself?

25 **A** Yes, sir.

1 Q Okay. Did you place these flags at the scene?

2 A The flags or the markers?

3 Q Markers.

4 A Yes, sir.

5 Q You did?

6 A Yes, sir.

7 Q Did anyone help you?

8 A I'm sure others helped me, yes, sir.

9 Q Do you remember?

10 A Well, the agent that responded to the scene with me
11 would have helped me as well as the two other agents
12 from SLED.

13 Q Do you recall if you were the one who placed marker X
14 and marker W?

15 A Do I recall if I actually placed that marker down
16 there?

17 Q Those two markers, yes, ma'am?

18 A No, sir, I do not recall if I actually was the one
19 who placed those two markers there.

20 Q Okay. Mr. Jennings asked you some questions earlier
21 about casings -- well, first of all, how many casings
22 was found -- were found?

23 A I haven't added them up. I know our firearms agent
24 was present on the scene with us. And he was keeping
25 that information and trying to figure out how many we

1 should be looking for.

2 **Q** I'm not real concerned with how many you're looking
3 for, I'd like to know how many you found.

4 **A** Well, I can count them.

5 **Q** Would you, please?

6 **A** Yes, sir. (The witness complied.) Twenty-six.

7 **Q** Okay. Thank you. And were you involved in
8 inspecting or investigating any of these residences
9 that were struck by bullets?

10 **A** I went inside the trailer on the other -- on the
11 other street. I did not go into the home of the
12 trailer, and I demonstrate that here. This trailer
13 actual -- and I have in my notes exactly who went in
14 there. Would you like for me to read it?

15 **Q** No, that's not necessary.

16 **A** The agent that was with me responded inside there to
17 check on the incident in that trailer.

18 **Q** How many residences are you aware of that were struck
19 by bullets?

20 **A** Three.

21 **Q** Three residences?

22 **A** Yes, sir.

23 **Q** How many automobiles are you aware of that were
24 struck by bullets?

25 **A** One.

1 Q Only one?

2 A That I recall, yes, sir.

3 Q Do you know where that car was when it was struck by
4 the bullet?

5 A The car was at the trailer that was also struck by
6 the bullet, this trailer.

7 Q What else was struck by bullets other than people?

8 A Fences.

9 Q Fences?

10 A Uh-huh, yes, sir.

11 Q Anything else?

12 A The vehicle, the Dodge truck.

13 Q So you've got three residences, you've got two
14 vehicles, you've got fences. Okay. You say that the
15 area that we call the crime scene was inspected with
16 a metal detector?

17 A Yes, sir, it was.

18 Q And did you also testify that it's unusual for there
19 to be any casings that are not found?

20 A I said it's not unusual that we don't find everything
21 when this many shots have been fired.

22 Q Okay. But that would depend on certain factors,
23 wouldn't it?

24 A Yes, sir.

25 Q It would depend on exactly what the terrain was like?

1 **A** Yes, sir.

2 **Q** It would depend on whether there was other metallic
3 objects on the ground?

4 **A** Well, if our metal detector reacts to something, we
5 search that area pretty well to try to find
6 something.

7 **Q** Right. And if you're in an area where there used to
8 be buried refuge and there's 2,000 pieces of metal,
9 it would be difficult to find a shell casing,
10 couldn't it?

11 **A** It could be. But, as I said, if our metal detector
12 were to go off, we are usually down there trying to
13 find it.

14 **Q** What you had here was basically a lawn; is that
15 correct?

16 **A** Yes, sir.

17 **Q** A flat lawn?

18 **A** Yes, sir -- well, somewhat flat.

19 **Q** Would that have been a difficult piece of ground to
20 search for casings?

21 **A** Not necessarily.

22 **Q** Is there anything about that piece of terrain that
23 strikes you as being difficult to use a metal
24 detector for finding casings?

25 **A** Well, there's bushes.

1 Q Well, other than bushes?

2 A Well, bushes could have them right now.

3 Q Other than the bushes?

4 A I have been in an open field and not been able to
5 locate.

6 Q I would like to stay with the question.

7 A Yes, sir.

8 Q Other than the bushes, was there anything remarkable
9 about this particular piece of ground that would
10 present a problem using a metal detector to find
11 casings?

12 A Not to my knowledge.

13 Q And even around the bush, you can still get the metal
14 detector up underneath it, can't you?

15 A Yes, sir.

16 Q You can turn a metal detector sideways?

17 A Yes, sir.

18 Q It doesn't have to be horizontal?

19 A Yes, sir.

20 Q Can you think of any reason why this ground couldn't
21 have been thoroughly searched for casings?

22 A We felt like we did search the ground for casings.

23 Q I'm not asking if you did. I'm asking if you see any
24 reason why these grounds couldn't have been
25 thoroughly searched for casings?

1 **A** No, sir.

2 **Q** Thank you. Can you tell us -- I'd like to use this
3 other chart for a second, this other sketch, what
4 we've been using for the last few days. Have you
5 seen this one, ma'am?

6 **A** No, sir.

7 **Q** Well, I'll let you look at both of them at the same
8 time. They look pretty similar, don't they?

9 **A** Yes, sir. This one has all my evidence marked in it
10 and this one does not.

11 **Q** But just the layout, just the general layout of the
12 scene?

13 **A** Oh, yes, sir.

14 **Q** Okay. So on this one, this represents the bush where
15 marker X was, correct?

16 **A** Yes, sir.

17 **Q** And this represents the car in question, the car the
18 defendant was in?

19 **A** Yes, sir.

20 **Q** And inside this passenger door is where marker W was?

21 **A** Yes, sir.

22 **Q** Are you of the opinion that the person who shot the
23 bullet that ejected this casing by this bush was
24 standing right here?

25 **A** Near that area.

1 Q And you don't feel anything was moved prior to your
2 arrival?

3 A I don't think anything was moved intentionally. I
4 don't -- in that particular area, no, I don't think.

5 Q And in your opinion, where was the person standing
6 who fired the bullet that ejected the casing into
7 this car right here?

8 A Where was the person that ejected the casing into the
9 car? Right near where the casing was ejected.

10 Q Thank you. Thank you. Did you spend a lot of time
11 here at the scene?

12 A We arrived at 5:55 in the morning and the time I
13 departed was five o'clock in the afternoon.

14 Q So you were there all day?

15 A Basically. That probably includes my time to MUSC.

16 Q A few minutes ago, you said this lawn wasn't
17 completely flat. What were you referring to?

18 A Right near the road line, there was like a trench
19 area, a lower area that went down and came back up.
20 It's actually where, in the other diagram, the large
21 amount of evidence was collected.

22 Q This roadway?

23 A This roadway here and right in here is a little
24 trench in the front yard kind of where the ground
25 went down and out.

1 Q And which direction does it run?

2 A Straight across the yard.

3 Q And could you estimate how deep it is?

4 A It's not real deep. No, I mean --

5 Q Is it 10 feet deep?

6 A No, no, sir.

7 Q Is it two inches deep? Just get us close.

8 A Probably if I stood in it, it would come up halfway
9 to my knee maybe in areas, maybe not that -- even
10 that deep.

11 Q Okay. About like that?

12 A Maybe.

13 Q Thank you. Okay. Okay. You've got the pointer.
14 Refresh my memory, did you participate in the search
15 for these shell casings?

16 A Yes, sir.

17 Q Okay. Show us where you searched, please?

18 A We searched -- we searched both sides of the road,
19 all around the vehicle, down the road, all in here,
20 all the way over to -- past this trooper vehicle
21 here. We did all of this with the metal detector,
22 from the front of the house here, all way back, all
23 the way across to -- there was kind of some little
24 bushes or trees over here that we searched through.

25 Q So you -- this right here was Officer Barwick's car?

- 1 **A** Yes, sir.
- 2 **Q** And you searched behind Barwick's car?
- 3 **A** Yes, sir, we went --
- 4 **Q** How far back behind Barwick's car?
- 5 **A** I'm not sure. We just searched a large area.
- 6 **Q** Were you looking for more than just casings?
- 7 **A** I'm looking for anything that can help me to
- 8 determine what's happened.
- 9 **Q** Including bullets?
- 10 **A** Including bullets, yes, sir.
- 11 **Q** Did you search up here by Sigwald's car?
- 12 **A** We searched across the street, yes, sir.
- 13 **Q** Did you search behind Sigwald's car?
- 14 **A** We actually searched this auto express building and
- 15 found a hole that we photographed and determined it
- 16 was probably a bee that had bore the hole because we
- 17 actually saw some, looked like matter inside.
- 18 **Q** So you actually entered this fenced in area and
- 19 searched here?
- 20 **A** It wasn't fenced in, the area I entered.
- 21 **Q** Okay.
- 22 **A** There was an auto express. We searched from probably
- 23 in front of that store all the way back to this
- 24 house.
- 25 **Q** Okay. Correction. I called this Sigwald's car. I

1 believe this was Grainger's. And then did you search
2 behind Sigwald's car?

3 **A** Well, Sigwald's car had been -- actually was over
4 right in here.

5 **Q** Did you search behind Sigwald's car?

6 **A** We searched -- we looked over in that entire area.

7 **Q** Okay. Did you search on this -- on the south side of
8 the driveway?

9 **THE POTENTIAL JUROR:** Your Honor?

10 **MR. JOHNSTON:** I'm sorry, I forget.

11 **Q** You understand this direction is north?

12 **A** Yes, sir.

13 **Q** So did you search on the -- show us how far past the
14 driveway on the south side you searched, please.

15 **A** I know that Agent Parrot searched -- he was involved
16 in the search of this trailer. I can't tell you
17 exactly how far past this car we searched. But I
18 know that he searched in this area and that's how we
19 came upon, you know, talking about the trailer and
20 talked with someone about something he had in his
21 trailer. They went in there and searched that area
22 and they would have searched out here.

23 **Q** Well, you're speculating. Did you search on the
24 south side of the driveway?

25 **A** Did I do the search? No, sir.

1 **Q** Okay. But you were satisfied this had been searched?

2 **THE COURT:** Mr. Johnson, you have asked her
3 where she searched. Now, let's -- you're asking
4 her -- she's speculating. Let's move on to something
5 else.

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

7 **A** Sir, I was satisfied we searched every area we felt
8 we needed to search in order to find bullets or
9 cartridge casings.

10 **Q** Well, I've only got a couple more questions. Finding
11 all these casings and all these bullets, that
12 evidence does not lead you to who shot any of the
13 guns, correct, or does it?

14 **A** To lead me to who shot any of the guns?

15 **Q** Well, actually, I didn't phrase that well. It
16 doesn't tell you which firearms were discharged
17 first, second, and third?

18 **A** No, sir.

19 **Q** So you don't have any evidence to that effect?

20 **A** No, sir.

21 **Q** Okay. What possessed you to go over to the car lot
22 and search?

23 **A** What possessed me? Because I know a lot of shots
24 were fired and I'm looking for shots in any
25 direction.

1 **Q** And you have personally looked at the hole in the
2 truck door?

3 **A** Yes, sir, I did.

4 **Q** Okay. And the entrance hole on that truck door was
5 on the inside of the door or the outside of the door?

6 **A** It appeared to me to be on the inside of the door
7 going through the door.

8 **Q** And it completely went through the door; is that
9 correct?

10 **A** Yes, sir, it did.

11 **Q** And do you have any evidence of the exact position of
12 that door when it was struck?

13 **A** No, sir.

14 **Q** Okay.

15 **A** Other than the door was open. I can assure you the
16 door was open because it did not have a hole through
17 the truck. If the door had been closed, there would
18 be a hole in the truck.

19 **Q** Right. Okay.

20 **MR. JOHNSTON:** That's all I have. Thank you,
21 ma'am.

22 **MR. JENNINGS:** No questions, Your Honor.

23 **THE COURT:** You may come down.

24 Do you wish her to be excused?

25 **MR. JENNINGS:** Please.

1 **THE COURT:** Any objection, Mr. Johnston?

2 **MR. JOHNSTON:** No, Your Honor.

3 **THE COURT:** You're also free to leave. Thank
4 you.

5 **THE WITNESS:** Thank you.

6 **THE COURT:** What will be the length do you think
7 of the next witness?

8 **MR. JENNINGS:** Your Honor, he should be fairly
9 short.

10 **THE COURT:** Because I'm advised that lunch will
11 probably arrive about 1 o'clock. So why don't we go ahead
12 and call -- does any juror need a break for a few minutes?
13 Okay.

14 Call your next witness, please.

15 **MR. JENNINGS:** Thank you, Your Honor. The State
16 calls Agent Ken Bogan.

17 KENNETH L. BOGAN, after being duly sworn,
18 testified as follows:

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

21 **THE WITNESS:** My name is Kenneth L. Bogan. My
22 last name is spelled B-O-G-A-N.

23 DIRECT EXAMINATION

24 **BY MR. JENNINGS**

25 **Q** Good afternoon, Agent Bogan. Where are you employed,

1 sir?

2 **A** I work with -- at the South Carolina Law Enforcement
3 Division in Columbia.

4 **Q** And in what department are you employed with SLED?

5 **A** DNA analysis.

6 **Q** How long have you worked at SLED?

7 **A** A little over 19 years.

8 **Q** Have you been in the same department for that entire
9 period of time?

10 **A** Yes, I have. I started in 1984 in the serology
11 section. That section, eventually, we developed DNA
12 technology.

13 **Q** Can you explain briefly what the DNA and serology
14 department at SLED does?

15 **A** Serology is the field of science in forensics which
16 deals with the identification of body fluids,
17 identification of body fluids such as blood, semen,
18 saliva. In the early days of serology, we did
19 characterization of blood stains, which would be
20 genetic markers such as the ABO blood type. When DNA
21 came along, we dropped most of the characterization
22 tests that were done in serology and began doing DNA
23 comparisons.

24 **Q** Have you had an opportunity in your 19 years of
25 experience to be qualified in the State of South

1 Carolina as an expert in the field of forensic
2 serology and DNA analysis?

3 **A** Yes, I have.

4 **Q** How many times?

5 **A** Been qualified as an expert in forensic serology in
6 excess of a hundred times, been qualified as an
7 expert in forensic DNA analysis approximately 45
8 times.

9 **Q** And on those occasions, you gave your expert opinion?

10 **A** Yes, I did.

11 **MR. JENNINGS:** Your Honor, I would offer him as
12 an expert in the field of forensic serology and DNA
13 analysis.

14 **MR. JOHNSTON:** No objection.

15 **THE COURT:** Very well, he will be permitted to
16 render opinions in those areas.

17 **Q** Agent Bogan, if you would, please describe for the
18 jury what forensic serology is.

19 **A** As I stated earlier, forensic serology is the science
20 which deals with the identification of body fluids.
21 In our -- in my department, I receive evidence from
22 law enforcement agencies throughout the State of
23 South Carolina. The evidence might include such
24 things as clothing items, swabs. These items would
25 be visually examined for the presence of body fluids.

1 Some presumptive tests might be performed that would
2 indicate the presence of, say, blood or semen. Then
3 confirmatory tests would be performed on those to
4 confirm the presence of a suspected stain as a human
5 body fluid.

6 **Q** In this case are you aware of who Agent Vello Paavel
7 is?

8 **A** Yes, I am.

9 **Q** And he's employed with your agency?

10 **A** Yes.

11 **Q** Were you aware that in conjunction with this case he
12 processed a 40 caliber Smith and Wesson handgun?

13 **A** Yes.

14 **Q** Did he submit to you several swabs that he removed
15 from that handgun?

16 **A** Yes, he did.

17 **Q** I show you what's marked as State's Exhibits 50 and
18 51 and see if you recognize those two items.

19 **A** Yes, I do. State's Exhibit 50 is a heat-sealed
20 envelope that contains another envelope. It's marked
21 with my identification number, 37.2. It also bears
22 my initials.

23 **Q** And 37.2 represents one swab that was taken off of
24 that gun?

25 **A** Yes. I think 37.2 may have been collected by Agent

1 Bodie. Yeah, State's Exhibit 50, which is swab 37.2,
2 was collected by Agent Diane Bodie.

3 **Q** Where was that swab removed from?

4 **A** Behind the trigger guard on a Smith and Wesson 40
5 caliber.

6 **Q** And State's Exhibit 51, what items are within that
7 exhibit?

8 **A** Okay. State's Exhibit 51 also bears my case number
9 and my initials. It contains three separate
10 envelopes. Inside the envelopes are swabs that were
11 collected by Agent Vello Paavel. They were also
12 collected from the same Smith and Wesson 40 caliber
13 handgun.

14 **Q** And could you describe the location where those swabs
15 were taken?

16 **A** The swabs are numbered for my laboratory purposes,
17 Item 37.3 was swabbed from the left side of the
18 trigger guard, 37.4 was swabbed the right side frame
19 above the trigger guard, 37.5 was swabbed the right
20 side of the trigger guard.

21 **Q** And all four of those swabs were removed from the 40
22 caliber Smith and Wesson?

23 **A** That's correct.

24 **Q** When you get those swabs into your possession, what
25 tests will you perform on them?

1 **A** I did some analysis. I observed the swabs visually.
2 Then I did an analysis to determine if there was
3 human blood on those swabs. I performed that
4 analysis and did determine that there was human blood
5 on each of those swabs.

6 **Q** When you took possession of those swabs, had the
7 heat-sealed bags been altered in any way?

8 **A** No.

9 **Q** And to your knowledge, had any of the swabs been
10 altered in any way prior to your getting custody of
11 them?

12 **A** No, the heat-sealed bags were sealed when I received
13 them.

14 **Q** And the serology tests that you performed on each of
15 those swabs revealed human blood was present?

16 **A** That's correct.

17 **Q** Once you make that determination, what's the next
18 step in your testing?

19 **A** I perform what's known as a DNA extraction. I
20 extract DNA from the blood that was contained on
21 those swabs and develop what's known as a DNA profile
22 from the human blood that was on the swabs.

23 **Q** And were you able to do that with each of those
24 swabs?

25 **A** Yes, I was. On two of the swabs, I was able to

1 develop what I refer to as a full profile, a full
2 panel result. On two of the swabs, I got some
3 partial results.

4 Q What -- I'm sorry. Once you have that DNA profile
5 then, obviously, you would need somebody's blood to
6 compare those to?

7 A That's correct.

8 Q Were you provided with the blood standard for a Jesse
9 Sapp?

10 A Yes, I was.

11 Q I show you what's marked as Exhibit 52. Do you
12 recognize that?

13 A Yes, State's Exhibit 52 is a heat-sealed pouch that
14 bears my case number and initials and item number.

15 Q And that was the blood standard of Mr. Sapp?

16 A Yes, it was.

17 Q Were you able to develop a DNA profile for Mr. Sapp's
18 blood?

19 A Yes.

20 Q That DNA profile in conjunction with the DNA profiles
21 from the four swabs, were you able to make a
22 comparison between those?

23 A Yes.

24 Q And as to Item 37.2 and Item 37.5, what determination
25 were you able to make as to whose DNA profile that

1 was?

2 **A** Okay, the DNA profile developed on Item 37.2 and
3 37.5, which are swabs from the 40 caliber Smith and
4 Wesson handgun, matched the DNA profile of Jesse
5 Sapp.

6 **Q** What would be the probability of randomly selecting
7 an unrelated individual having the same DNA profile
8 as Jesse Sapp?

9 **A** Approximately one in 28 trillion.

10 **Q** Based on your conclusions, the blood that was on
11 State's Exhibit 35 was whose blood? That's the 40
12 caliber Smith and Wesson.

13 **A** DNA profile that was found on State's Exhibit 35
14 matched the DNA profile of Jesse Sapp.

15 **MR. JENNINGS:** Thank you. That's all the
16 questions I have.

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

18 CROSS-EXAMINATION

19 **BY MR. ARCHER**

20 **Q** Sir, you testified that the blood on Jesse Sapp's gun
21 was his, is that correct, within this one in a
22 trillion whatever?

23 **A** What I testified to was that the blood on State's
24 Exhibit 35, I think it was, the DNA profiles matched
25 Jesse Sapp.

1 Q Right. And that is Jesse Sapp's gun; is that
2 correct?

3 A I don't know.

4 Q Well, if I told you it was Jesse Sapp's gun, you
5 would have no reason to not believe me, correct?

6 A No.

7 Q All right. Within your knowledge, do you have any
8 idea how that blood got on that gun?

9 A No, I do not.

10 Q Would you have any idea within your knowledge of why
11 Jesse Sapp's blood would be on his own gun?

12 A Only that he was bleeding and it was transferred from
13 his body to the gun. Other than that, I don't have
14 any other knowledge of it.

15 Q Of how it got there?

16 A That's correct.

17 MR. ARCHER: Thank you.

18 THE COURT: Redirect, Solicitor?

19 MR. JENNINGS: No, sir.

20 THE COURT: All right. Do you wish him to be
21 excused?

22 MR. JENNINGS: Please.

23 THE COURT: Any objection, Mr. Archer?

24 MR. ARCHER: No, sir.

25 THE COURT: Agent Bogan, thank you very much.

1 You're free to leave, sir.

2 **THE WITNESS:** Thank you.

3 **THE COURT:** All right, ladies and gentlemen, at
4 this point, we're going to recess for lunch. By the time
5 you stretch and relax, your lunch should be here. Let's
6 plan to resume, if everyone has completed their lunch,
7 about 1:30 or so. And if you need a little bit longer, if
8 any of you wish to walk outside and stretch, that's
9 perfectly all right. We'll try to be back and ready to go
10 about 1:30. Thank you. You may retire to your jury room.
11 Do not begin your deliberations.

12 Everyone else remain seated while the jury
13 exits.

14 (WHEREUPON, the jury left the courtroom at
15 approximately 12:44 p.m.)

16 **THE COURT:** Anything from the State before
17 recessing?

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

19 **THE COURT:** Anything from the defense?

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

21 **THE COURT:** We'll be at ease until about 1:30 or
22 so.

23 (WHEREUPON, a lunch break was taken.)

24 **THE COURT:** Let the record reflect Mr. Sapp is
25 present. Is the defense ready to continue?

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

2 **THE COURT:** State ready?

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

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

5 (WHEREUPON, the jury came into open court at
6 approximately 1:41 p.m.)

7 **THE COURT:** Thank you very much, ladies and
8 gentlemen. I hope you had a good lunch. We're ready to
9 continue.

10 Solicitor, you may call your next witness.

11 **MR. JENNINGS:** Thank you, Your Honor. May it
12 please the Court? The State calls Agent Joe Powell.

13 JOSEPH D. POWELL, after being duly sworn,
14 testified as follows:

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

17 **THE WITNESS:** My name is Joseph D. Powell,
18 P-O-W-E-L-L.

19 DIRECT EXAMINATION

20 **BY MR. JENNINGS**

21 **Q** Agent Powell, where are you employed, sir?

22 **A** I'm currently employed as a supervisor of the trace
23 evidence section at the South Carolina Law
24 Enforcement Division.

25 **Q** That's commonly known as SLED?

1 **A** That is correct.

2 **Q** And can you explain to the jury trace evidence, what
3 your department is responsible for?

4 **A** Yes, sir. Trace evidence, the discipline of
5 forensics where we deal with analysis of items such
6 as fibers, hairs, explosives, gunpowder, gunshot,
7 paints, other types of things such as building
8 materials, things such as that. When something is
9 involved in a crime scene, that evidence is
10 collected. It may be collected by us or by an
11 officer at the scene. It's submitted to our
12 laboratory. And we then send it through a series of
13 tests, instrumental tests and other types of tests to
14 see if we can determine what it is, what's going on
15 with it. We will then issue a report of our findings
16 and then come to court to testify as to those
17 results.

18 **Q** Have you had the opportunity in the past to testify
19 in State court regarding trace evidence and gunpowder
20 and gunshot residue?

21 **A** Yes, sir, I have.

22 **Q** How many times have you been qualified as an expert?

23 **A** I have testified in total over 600 times, of that
24 approximately 250 in the area of trace evidence.

25 **MR. JENNINGS:** Your Honor, I would offer him as

1 an expert in the field of trace evidence and gunpowder and
2 gunshot residue.

3 **THE COURT:** Care to examine him as to his
4 qualifications?

5 **MR. JOHNSTON:** No, Your Honor. I find this
6 individual qualified.

7 **THE COURT:** Very well. He will be permitted to
8 render opinions in those areas.

9 **Q** You were at the scene of Trooper Johnson's murder?

10 **A** Yes, sir. I had received a call to go respond to a
11 crime scene. I responded to that crime scene and was
12 at the scene where I collected some evidence while
13 there and also went and collected some samples from
14 Officer Johnson.

15 **Q** And you saw that there were items of evidence at the
16 scene such as Officer Johnson's uniform, bulletproof
17 vest and reflective vest?

18 **A** Yes, sir, there were several pieces of evidence which
19 were at the scene. There were also other pieces of
20 evidence which had already been collected. Once we
21 had finished with our initial work, those various
22 items were brought to me and I collected those and
23 took them with me to the South Carolina Law
24 Enforcement Division.

25 **Q** And that's located in Columbia?

1 **A** That is correct.

2 **Q** Once you got back to Columbia, did you have an
3 opportunity to examine those items?

4 **A** Yes, sir, I did.

5 **Q** Start with State's Exhibit 44. Did you examine
6 Trooper Johnson's reflective vest?

7 **A** Yes, sir, I did. The item's listed as my Item 57,
8 but it was submitted to me and I brought it to SLED.
9 I did examine that for the presence of gunpowder.
10 And after I finished my examination, I then placed it
11 into the paper bag which bears my initials.

12 **Q** Did you make any forensic findings of significance in
13 relation to this item?

14 **A** Well, I found a hole in the garment, in the vest, in
15 the front part of the it, which is consistent with
16 the other garments which was underneath it. As far
17 as looking to see if I could find any type of
18 material, there was nothing to be found on the vest
19 as it is very fibrous or since it's very open and not
20 very much material to collect on that.

21 **Q** Did the hole in the vest, his shirt, undershirt and
22 bulletproof vest, did those holes all correspond
23 together?

24 **A** Yes, sir, they were all lined up. However, the vest
25 had been twisted and the shirt was also in a twisted

1 form, but all the holes did line up once all the
2 garments were placed in proper orientation.

3 Q And that fact all corroborated a single gunshot
4 wound?

5 A I was only able to find one gunshot so it would be
6 consistent with one shot.

7 Q Explain to the jury if you would what testing you did
8 to those garments.

9 A Each one of those items, I examined to see if I could
10 find gunpowder residue. Gunpowder residue is a
11 material which is produced when you discharge your
12 weapon, inside of that weapon there's a cartridge
13 case. That cartridge case has in it gunpowder. Once
14 that gunpowder has been ignited, it builds up enough
15 pressure to be able to push the bullet out of the
16 weapon towards a target. Along with that bullet will
17 come out many, many of the particles that was inside
18 the cartridge case. If you're standing fairly close
19 to that weapon those particles will stick or adhere
20 to you. And we'll run a test to see if we can find
21 those particles. In this case, I ran a test on all
22 the garments to see if I could find any of these
23 gunpowder particles and I did not find any particles.

24 Q What, if anything, did that signify to you in your
25 expert opinion?

1 **A** What that meant was that these garments were far
2 enough away from this weapon that the materials had
3 fallen away or dropped to the ground, they had not
4 made it to the garment. I did find one garment which
5 had a ringlet of lead, which was consistent with just
6 the passage of a bullet. But there was nothing there
7 which told me anything other than the fact that there
8 was a hole.

9 **Q** And based on the absence of the gunpowder, what is
10 the shortest distance that that bullet could have
11 been fired from Trooper Johnson?

12 **A** In this case, the shortest distance that someone
13 could be and not be able to have this material would
14 be approximately 4-foot out to a mile and a half.
15 Any closer than that, you're going to begin to pick
16 up a lead cloud, you're going to begin to pick up
17 gunpowder particles which will stick to this
18 material.

19 **Q** So he could have been as close as 4 feet to Mr. Sapp?

20 **A** Yes, out to a mile and a half. Now, that 4 feet is
21 measured from the end of the barrel to the person,
22 not where that person is standing. So if you push
23 the weapon out, you could actually be 5 or 6 feet
24 away. But from the end of that barrel to a person,
25 the closest it would have been would have been 4 foot

1 out to a mile and a half.

2 **Q** I believe you also performed a gunshot residue test
3 on Trooper Johnson?

4 **A** That is correct.

5 **Q** Can you explain to the jury what exactly a gunshot
6 residue test is?

7 **A** When a weapon is fired, along with the gunpowder,
8 there is also materials called gunshot residue. This
9 material, when it comes out, it's like a gray cloud,
10 a very fine, cloudy material which comes out of a
11 weapon. It will envelope or wrap around the weapon,
12 getting on the hands, face and clothing of someone.
13 This test is performed to be able to see if we can
14 pick any of this material off.

15 The first part of it is using a flattened piece
16 of aluminum with a sticky adhesive. You then place
17 it -- I'm actually demonstrating with the back of my
18 left hand, where you actually pick up the particles
19 with this sticky adhesive, kind of like you would
20 with a piece of tape to pick up lint.

21 After you finish with using the lift, you would
22 then follow back up with a cotton swab wetted with a
23 diluted acid solution to actually wipe up any
24 material that might not be picked up by the first
25 test. You will do this same testing on all four

1 areas of the hand, the right palm, right back, left
2 palm and left back.

3 Q Trooper Johnson was deceased when you performed that
4 test?

5 A Yes, sir, he was.

6 Q I show you what's marked as State's Exhibit 46. Is
7 this the actual -- does that contain the test?

8 A Yes, sir. This is the kit that I performed at the --
9 in Charleston on Officer Johnson.

10 Q And what were the results of that test?

11 A I found gunshot residue on the left palm. I also
12 found round lead particles on the back of the right
13 hand. Round lead particles are one of the components
14 of gunshot residue. Along with these particles, I
15 found some nonround particles on the palm of the
16 right hand and back of the left hand. These
17 particles may also be associated with gunshot
18 residue.

19 Q What does that indicate to you?

20 A That he fired a weapon.

21 Q Okay. Did you also have an opportunity to examine
22 the pair of jeans that were worn by Mr. Sapp?

23 A Yes, sir, I did.

24 Q I show you what's marked as State's Exhibit 49. Do
25 you recognize that item?

1 **A** Yes, sir, I recognize that item because it's
2 contained within the bag bearing my initials as well
3 as I believe I saw initials on the pants as you were
4 bringing them up. These jeans were brought to me. I
5 sat down here and analyzed them and looked again to
6 see if I could find gunpowder on what I found to be
7 three holes in the back of the jeans.

8 **Q** And what was the location of the holes?

9 **A** My apologies, I said three, I meant to say two.
10 There are two holes found in the blue jeans. They
11 were in the left back lower buttock region of the
12 blue jeans.

13 **Q** And were you able to make any forensic findings in
14 relation to those holes?

15 **A** All I could find, again, was lead around the edges of
16 one of the holes, which is consistent with the
17 passage of a bullet. It doesn't give me a distance
18 other than to say whoever shot at these jeans were
19 far enough away that none of the material reached
20 him. And it would just indicate a bullet had passed
21 through the jeans.

22 **Q** And based on your prior testimony, he would not have
23 been shot within a 4-foot range?

24 **A** Correct. He had to be 4 foot or out to a mile and a
25 half.

1 **Q** Okay. Did you also perform a gunshot -- or gunshot
2 residue test on Mr. Sapp?

3 **A** A kit was submitted to me for examination, yes, sir.

4 **Q** I show you what's marked as State's Exhibit 47. Do
5 you recognize that?

6 **A** Yes, sir, what's listed as State's Exhibit 47 is also
7 a gunshot residue kit which bears my initials.
8 Contained within here are samples taken from Jesse
9 Sapp.

10 **Q** Did you perform a test on this?

11 **A** Yes, sir, I did.

12 **Q** And what were the results of that?

13 **A** In the results from his hands, the quantity of the
14 metal detected did not indicate the presence of
15 gunshot residue.

16 **Q** In your opinion or in your experience, what are some
17 outside factors that can affect the presence of those
18 metals.

19 **A** These materials that I was looking for are very
20 fragile. If someone washes their hands, these
21 materials are very easily removed. If someone is
22 worked on in a hospital where they sit down and swab
23 their hands with isopropanol or something to clean up
24 their hands. If someone is sweating or someone is
25 doing a lot of wiping of their hands, this material

1 is very easily removed. I have found in cases where
2 someone has fired a weapon, over a period of time
3 this material will just be brushed off by normal
4 activity. On someone who's alive, this material will
5 not reside on the hands over six hours. It is
6 completely gone after six with someone not even
7 having anything done to their hands. The more you do
8 to your hands, the more material is lost.

9 Q You were aware the shooting occurred at about 2:30 in
10 the morning?

11 A Yes, sir.

12 Q And were you aware that the samples were taken from
13 Mr. Sapp at about 5 o'clock?

14 A Yes, sir.

15 Q Were you aware that he was handcuffed at the scene?

16 A That is correct, yes, sir, I was aware of that.

17 Q And received medical treatment from EMS?

18 A Yes, I was informed that at the scene.

19 Q And you were also informed that he was taken to the
20 hospital and treated?

21 A That is correct.

22 Q And all that was done prior to the test being taken?

23 A That is what I was informed of, yes, sir.

24 Q All those factors would have an effect on the washing
25 away and the dilution of any materials?

1 **A** Yes, sir. Everything that was described will
2 diminish the material. In this case, the samples
3 taken are not negative, meaning there's -- you can't
4 say there's nothing there, it did not meet our
5 threshold. There is some material there, there's
6 just not enough for me to make a call.

7 **Q** And based on your experience, somebody who had been
8 handcuffed, treated by EMS and treated at the
9 hospital, would you be surprised to find their levels
10 had been lowered by those?

11 **A** Actually, it's very common. The more that I find out
12 that something's happening, the lower their levels
13 tend to be.

14 **MR. JENNINGS:** Thank you. Please answer any
15 question Mr. Johnston has.

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

17 **MR. JOHNSTON:** Thank you.

18 CROSS-EXAMINATION

19 **BY MR. JOHNSTON**

20 **Q** Good afternoon, sir.

21 **A** Good afternoon, sir.

22 **Q** How are you?

23 **A** Just fine.

24 **Q** Good. Appreciate you being here.

25 **A** Thank you, sir.

1 Q You generate a lot of paperwork when you do your
2 examinations?

3 A Yes, sir.

4 Q I would like to touch base with you briefly on some
5 of this, please. Do you have your own copies of what
6 you generated?

7 A Yes, sir, I have my report and all the documents I
8 have generated.

9 Q Okay. Good. Good. What I have here is a SLED
10 laboratory case note cover sheet.

11 A Yes, sir.

12 Q You do this with all your examinations?

13 A Yes, sir, it's our normal policy. Every time we
14 create a case, we will create what is called a case
15 note cover sheet. It is this sheet here. This sheet
16 is for us to be able to identify certain functions
17 that we do on a case, such as peer review, which is
18 where someone examines my work to validate that they
19 agree with my results. It also contains notes,
20 meaning that if I have a conversation with someone, I
21 will document a brief synopsis of this conversation
22 so that later on if a question is posed, I will have
23 a record of that.

24 Q That's good. So you can pretty much go back at any
25 time and figure out exactly what you did?

1 **A** Yes, sir, that is the idea. Due to the number of
2 cases that we deal with and sometimes for myself, I
3 tend to forget. So I need all the information and
4 help I can get.

5 **Q** Okay. Bear with me, there's a lot of paperwork here
6 and this is not my area. Did you fill out an
7 inventory sheet?

8 **A** Yes, sir. You will find an inventory sheet --

9 **Q** I have a copy.

10 **A** Yes, sir. Yes, there is an inventory sheet beginning
11 with my No. 57 and ending at my No. 72. It will be
12 also listed under any numbering system as my page
13 three.

14 **Q** May I see yours? I think we're on the same page, so
15 to speak.

16 **A** Yes, sir, we're on the same page.

17 **Q** Okay. So you had all of Officer Johnson's clothing
18 when you did your tests?

19 **A** Yes, sir, all the clothing that I'm aware of, yes,
20 sir.

21 **Q** You had a vest, a reflective vest, a gray uniform
22 shirt, fragment of a shirt, tee-shirt, underwear?

23 **A** That is correct.

24 **Q** And you examined all that material?

25 **A** Yes, sir, each one of those items I opened to look to

1 see if I could find any evidence of a bullet or any
2 other types of forensic evidence on those items.

3 Q Okay. I'm looking at something here that doesn't
4 have a caption or any kind of a title on it. Can I
5 just show you what I'm holding?

6 A Yes, sir.

7 Q Could you tell what this is, please?

8 A This is our actual printout when I ran the samples on
9 one of our instruments. This is the printout from
10 the data from that instrument.

11 Q Okay. Thank you. You entered this into a computer?

12 A Actually, it's being generated where the instruments
13 are attached to a computer. It then takes it and has
14 it in a form that I can convert it to a format that
15 you have there so that we can then look at the data
16 and make a determination as to what it is. ..

17 Q Does that program help you to conclude on these
18 findings?

19 A Actually, it does not. I wrote the program. And
20 what the program is designed to do is to go in and to
21 present the data in a form that's easy to read. And
22 then the analyst will look at that data and make a
23 determination based upon protocols that we have
24 written.

25 Q Very good. And would you have -- let me show you

1 something else, please. There's quite a number of
2 these, maybe 8, 12 or so. Could you tell us what
3 these are, please?

4 **A** Yes, sir. What these are are information taken off a
5 separate instrument called an electron microscope.
6 And what it allows us to do is to take a sample and
7 look to see if we can find individual particles of
8 gunshot residue on these particle lifts I mentioned
9 earlier. If I find them, I will then document them
10 and take a picture of those, so that way I will have
11 a record of what I found.

12 **Q** Thank you. When you say individual particles, these
13 particles can actually come in different forms and
14 shapes and sizes and weights, can't they?

15 **A** Yes. The material inside of a weapon, once it's been
16 disbursed out, can be any size, shape and all types
17 of things may be going on. In our case, we're
18 specifically looking, however, for those that are
19 perfectly circular or global or perfectly round and
20 containing certain elements.

21 **Q** Is it common to look for what is termed in the field
22 as balls, disks and flakes?

23 **A** That is gunpowder. Various types of gunpowder can
24 have various shapes is what you're describing. Yes,
25 sir, we do look for those, but not with a microscope,

1 not this type of microscope. We look at those with
2 some type of a stereoscope or maybe even with the
3 naked eye.

4 Q And isn't it true that a ball will travel further
5 than a flake?

6 A It is true that a ball can travel further than a
7 flake generally due to the way it's designed, that is
8 correct.

9 Q Its configuration?

10 A Yes, sir.

11 Q Aerodynamic principles and all that?

12 A That's correct.

13 Q Okay. And could you explain this sheet for us,
14 please?

15 A This is our -- one when we were initially opening up
16 the evidence, this is our -- what we saw, writing
17 down notes as far as we was going through the pieces
18 of evidence.

19 Q Done at the same time as the other inventory document
20 we looked at?

21 A Well, no, sir. When the first inventory document was
22 submitted, it was brought into our evidence log in.
23 There it was still inside bags. We just take it
24 based upon what is stated as is. This is actually a
25 physical inventory when we open up all components

1 outside, lay them out on a table, perform our tests
2 as well as document what is in there.

3 Q Very good. Thank you. Could you identify this for
4 us, please.

5 A Yes, sir. This is one of my sheets showing the
6 fragment of the officer's shirt. I believe that when
7 he was being administered to, they took and cut his
8 shirt open so they could be able to aid him
9 medically. And what happened is the shirt had become
10 separate. There was a larger part of the shirt and
11 then a smaller part of the shirt. And this is just a
12 drawn diagram of the smaller piece.

13 Q Okay. Thank you. And the rest of this, I'll be
14 brief with. We have a form called a detail trace
15 information sheet. Did you generate this?

16 A You'll have to show me, sir. I'm not sure what
17 you're talking about.

18 Q Actually, that's my mistake. This didn't come from
19 your agency. All right. Now, when someone fires a
20 gun, the closer the gun is, the narrower the place of
21 the residue powder burns and so forth will be,
22 correct?

23 A Yes, sir. The materials that's coming out of the
24 weapon will come out much like a cone of debris or
25 material. What we're looking for is not a few single

1 particles. We're actually looking for a large group
2 of particles which has a defined pattern. In my
3 case, I actually found a couple particles on
4 Mr. Sapp's jeans. But those could have been
5 following behind the bullet for 25 or 30, 40 feet.
6 But what we're looking for is a pattern, a pattern to
7 these particles that we can sit down and use as to
8 make a determination how far away a weapon is.

9 **Q** Okay. Just for clarity purposes, I hear different
10 terms and I would like to know myself. We're talking
11 about residue, we're talking about powder burns.
12 Could you explain the distinction between those
13 terms?

14 **A** Yes, sir. The gunpowder is going to be the flakes
15 and materials inside the cartridge case which will
16 burn and cause a bullet to leave the cartridge casing
17 through the weapon. The residue is actually the
18 material that's found in the very back of the
19 cartridge case. This is what the hammer strikes.
20 When you pull the trigger and the shock of the hammer
21 striking the back will cause these chemicals to
22 actually explode. When they're exploding, they will
23 now ignite the gunpowder and all this material will
24 be projected out of the weapon. So there are
25 actually two different proponents of what happens

1 when you fire a weapon.

2 **Q** Depending on where in the casing these materials came
3 from?

4 **A** Yes, sir. Because the gunpowder is found inside the
5 large opening inside of the cartridge case whereas
6 the residue, what's called the gunshot residue, is
7 found in a little small cap at the very back of a
8 bullet.

9 **Q** Do they both travel relatively the same distance?

10 **A** No, sir. The gunpowder will travel further because
11 it is a larger particle, larger size. The primer or
12 the what we call gunshot residue, because we actually
13 have debris that may be rubbed off on a bullet or
14 other things, will stop very quickly once it leaves
15 that weapon. It's very, very tiny particles and it
16 will just stop in the air and fall away.

17 **Q** Okay. Thank you. Residue can also be admitted from
18 other areas of a firearm, correct?

19 **A** Yes, sir, from such as a cylinder gap from a
20 revolver, maybe from the trigger mechanism. Any
21 place where this material can escape, because it's
22 under very high pressure, you can have a small amount
23 of debris being expelled.

24 **Q** And just for purposes of communication --
25 communicating today, when we say barrel, when we say

1 muzzle, we're referring to the same thing, correct?

2 **A** Yes, sir. In my terminology, what I mean by barrel
3 and muzzle is going to be what the bullet travels
4 down. It has a hole with usually some type of
5 indentations inside to be able to cause the bullet to
6 spin. We will call that the muzzle and/or barrel.

7 **Q** I will try to use the word barrel. Probably more
8 people are probably familiar with that. Now, the
9 length of the barrel, will that have an influence on
10 the distance these things can travel?

11 **A** It can. As the barrel is longer, you tend to have
12 more efficient burning so you may not have as much
13 material. I've actually seen weapons with very long
14 barrels have a shorter range in which this material
15 can be found.

16 **Q** So that would also stand to reason that a short
17 barrel could possibly send this material even
18 further?

19 **A** It could, depending upon the weapon. I have seen
20 just the reverse, though. It's not a hard, fast
21 rule. Every weapon has its own characteristics and
22 its own mannerisms and it has to be tested to see
23 what its actual characteristics are.

24 **Q** Generally speaking, though, if you had some sort of a
25 rifle, say a 30, 32-inch barrel, as opposed to a

1 handgun with a 4-inch barrel, what you're saying
2 then, if I'm interpreting you correctly, is that it's
3 likely that the 4-inch barrel will actually travel
4 further than the 30-inch barrel?

5 **A** The particles from the firing, yes, sir. The
6 gunpowder particles can travel further. Now, another
7 inverse of that would be the lead. In a rifle, you
8 tend to get the material of lead and other things
9 being pushed further than you would on a short
10 handgun.

11 **Q** And are you aware of the Smith and Wesson
12 semi-automatic in this case?

13 **A** I'm aware of weapons from the point of view of how I
14 use them in my testing. I'm not that familiar with
15 specific brands as far as nuances of them.

16 **Q** No, I didn't mean it that way. Have you looked at
17 it?

18 **A** The weapon particular in this case, no, sir, I have
19 not.

20 **Q** May I? Can you identify what type of firearm that
21 is?

22 **A** This weapon is listed on the handle as a Smith and
23 Wesson. It is what's called a semi-automatic,
24 meaning the bullets are fed through a magazine, in
25 this case at the base, and by depressing the trigger,

1 it will then fire and then eject out the spent
2 casing. And each time you pull the trigger, it will
3 then fire an additional round until it is empty.

4 **Q** Can you estimate the length of that barrel?

5 **A** That barrel is approximately three and a half inches
6 long.

7 **Q** Okay. Thank you, sir. If a barrel is three and a
8 half inches long, do people commonly call it a 4-inch
9 barrel?

10 **A** They could.

11 **Q** Like a two-by-four is not really two-by-four?

12 **A** People can round off because halves are not something
13 people like to speak of, so they could round it up.

14 **Q** So this particular gun, the residue within this
15 particular gun could travel further than the 30-inch
16 rifle we talked about.

17 **A** Yes, sir, it could.

18 **Q** Okay. And the caliber and the grain of the bullet,
19 could that make a difference?

20 **A** Yes, sir. The larger the caliber weapon -- and the
21 word caliber means, it's an old English phrase
22 meaning portion of an inch. If you have a 50
23 caliber, that's a half-inch bullet is what that would
24 refer to. The larger the caliber, the more
25 gunpowder, the more power you normally have. So

1 more, you would tend to push out debris and materials
2 from that weapon.

3 Q Okay. Could you answer the question in regards to
4 the caliber of this gun?

5 A As far as the caliber of that weapon?

6 Q Yes, sir.

7 A I believe it's around 38 caliber, but I have to
8 look -- I did not look at it real closely.

9 Q I'll just tell you, it's a 40 caliber?

10 A The difference between a 38 caliber and 40 caliber is
11 very close.

12 Q But generally speaking, this is considered a rather
13 powerful handgun, isn't it?

14 A Yes, sir, it is a large caliber weapon and will
15 definitely kill you.

16 Q And what's the range of grains that go in the bullets
17 for handguns?

18 A I can't speak on that. I have another one of my
19 associates from SLED who's much more qualified to
20 speak on weapons like that.

21 Q Sure. Okay. Now, if a gun like this was fired
22 within, say, 12 inches of a target, is it fair to say
23 that you would have heavy concentrations of the
24 residue we spoke of?

25 A You would have very heavy concentration of gunpowder

1 particles. It would be a pattern and you would also
2 have a heavy layer of lead cloud. It would be lead
3 that was also formed there.

4 **Q** Would it be fair to say that 18 to 24 inches would
5 result in considerable concentrations?

6 **A** At 18 and 24 inches, the pattern is beginning to
7 thin. It's actually spreading out, but it's
8 beginning to thin. The lead itself would begin to
9 fall away, so we would have just the gunpowder
10 particles and they will not be as thick or dense, but
11 they would be further out.

12 **Q** Okay.

13 **MR. JOHNSTON:** Could I have the witness step
14 down here for a second, please?

15 **THE COURT:** You may.

16 **Q** Why don't you hold this up to your chest anywhere you
17 like right there. This is 36 inches, so this is
18 three feet?

19 **A** Yes, sir.

20 **Q** And I'm not going to measure it out, but maybe
21 another foot, would you agree? So we're about four
22 feet apart, would you agree?

23 **A** Well, we would be three foot apart at the end of the
24 ruler and then another foot, four foot, yes, sir.

25 **Q** And if you would just continue to hold that for a

1 second. For someone to shoot at a distance of four
2 feet, they would actually have to hold their gun
3 right here, wouldn't they?

4 **A** If they shot a distance of 4-foot from where we're
5 standing, yes, sir, because the end of the barrel is
6 what we measure from.

7 **Q** That's a little unusual, isn't it?

8 **A** Very much so because you would be burned or harmed
9 usually by shooting it in that fashion.

10 **Q** Would it be a little more likely that maybe from
11 there?

12 **A** Yes, sir, that would be a much more normal way of
13 firing a weapon if you're shooting from 4-foot to me.

14 **Q** And if it's four feet to here, would you like to
15 guess how many additional feet it is to me?

16 **A** You're looking at an additional two and a half feet.

17 **Q** Okay. Thank you. So six and a half feet was our
18 little demonstration. Bear with me one second,
19 please, sir?

20 **A** Yes, sir.

21 **Q** Okay. You testified earlier that -- go back and
22 re-explain for me, please, when you testified about
23 four feet to one and a half miles?

24 **A** Yes, sir. What I was explaining is that because I
25 have no gunpowder on the garments, I have nothing to

1 tell me that it was a close shot, then that means
2 that that gun had to be far enough away from the
3 target so that none of the materials are deposited on
4 there. So I'm saying that it has to be out from
5 where I would normally find the weapons to end at,
6 which would be four foot out to a mile, mile and a
7 half, which is the maximum range that most bullets
8 will travel.

9 Q Are you saying that that residue can travel a mile
10 and a half?

11 A No, sir. I'm actually saying because there is no
12 residue then that means that that weapon had to be
13 further away so it could not reach the person. And
14 anywhere between four foot and a mile and a half,
15 that weapon could have been and we would have seen
16 these same results.

17 Q Okay. Just a few more questions. You testified that
18 in your opinion whatever gun that was fired was at
19 least four feet away from Officer Johnson?

20 A Yes, sir.

21 Q Quite possibly further?

22 A Yes, sir, could be up to a mile, mile and a half.

23 Q Okay. If the gun that was fired was a foot and a
24 half from Officer Johnson, are you confident what you
25 inspected would have reflected that?

1 **A** Yes, sir. If someone had been a foot and a half away
2 when they fired it from the end of the barrel to that
3 person, I would have seen the materials on the
4 garment.

5 **Q** And two feet away?

6 **A** Two feet away, I would have still seen the material,
7 I would have seen the gunpowder particles.

8 **Q** So you're absolutely sure that that gun was in excess
9 of four feet away?

10 **A** I'm saying yes, I'm definitely sure it's in excess of
11 four feet away.

12 **Q** Thank you, sir. Just to make this perfectly clear --

13 **A** Yes, sir.

14 **Q** -- can you show us -- put the path on this --

15 **MR. JENNINGS:** Your Honor, we've been through
16 this once already.

17 **THE COURT:** I don't know what the question is.

18 **MR. JOHNSTON:** No, we didn't.

19 **THE COURT:** Go ahead and ask the question.

20 **Q** This is a different distance, sir. Could you point
21 out one and a half feet on this ruler, please?

22 **A** One and a half feet would be listed as 18 inches,
23 which would be in the middle part of this ruler. It
24 would be from here to here.

25 **Q** Okay. From here to here?

1 **A** It would be the same distance.

2 **Q** If that gun had been this distance to the victim,
3 there would have been powder burns residue?

4 **A** Yes, sir, there would have been gunpowder particles.
5 Now, the lead would have disappeared by that time,
6 but there would have been sufficient gunpowder
7 particles.

8 **MR. JOHNSTON:** Thank you, sir.

9 **THE COURT:** Redirect?

10 **MR. JENNINGS:** No, sir.

11 **THE COURT:** All right, sir. You may come down,
12 sir.

13 Do you wish him to be excused?

14 **MR. JENNINGS:** Please.

15 **THE COURT:** You're free to leave.

16 **THE WITNESS:** Thank you, sir.

17 **THE COURT:** Do you have any objection to him
18 being excused, Mr. Johnston?

19 **MR. ARCHER:** No.

20 **THE COURT:** Thank you.

21 **THE WITNESS:** Thank you, sir.

22 **THE COURT:** Call your next witness.

23 **MR. JENNINGS:** The State calls Agent Vello
24 Paavel.

25 **VELLO PAAVEL,** after being duly sworn, testified

1 as follows:

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

4 **THE WITNESS:** My name is Vello Paavel, spelled
5 V-E-L-L-O, P-A-A-V-E-L.

6 DIRECT EXAMINATION

7 **BY MR. JENNINGS**

8 **Q** Good afternoon, Agent Paavel.

9 **A** Good afternoon, sir.

10 **Q** Where are you employed, sir?

11 **A** I work for the South Carolina Law Enforcement
12 Division, which is commonly known as SLED.

13 **Q** In what capacity?

14 **A** I work in the forensic services laboratory in the
15 firearms department where I'm a firearm and tool mark
16 examiner.

17 **Q** Can you explain to the jury briefly what your duties
18 and responsibilities are in that department?

19 **A** Yes, sir. My main duties and responsibilities
20 involve the examination of firearms and
21 firearms-related evidence, such as fired bullets or
22 fired cartridge casings, and trying to determine
23 whether or not those bullets and cartridge casings
24 were fired by particular guns.

25 I also examine firearms to see if they're

1 working properly. We also do serial number
2 restorations.

3 And I'm also responsible for the general work in
4 tool mark identification. For instance, if you have
5 a burglary and somebody's used a pry bar or
6 screwdriver or something like that to pry something
7 open, I will look at the bar and look at the object
8 that's been attacked and try to determine whether
9 that tool has been used.

10 Also, occasionally, we're called to assist the
11 crime scene people in assisting processing crime
12 scenes. And in general, I do any sort of physical
13 type of examination that involves firearms.

14 **Q** How long have you been with SLED?

15 **A** I have been at SLED just over 16 years.

16 **Q** Have you been in the firearms department for that
17 entire time?

18 **A** Yes, sir, I started in the firearms department. When
19 I first started in firearms, the department had the
20 responsibility of latent print, crime scene and
21 firearms identification. In 1989, when the new
22 laboratory was built, we split those departments.
23 And the firearms department became strictly the
24 department that works on firearms and
25 firearms-related evidence. And I've been there since

1 then.

2 **Q** Can you briefly describe the training and background
3 that you have in firearms identification?

4 **A** Yes, sir. One of the requirements to work in the
5 forensic services laboratory is you have to have some
6 sort of college degree. I attended the University of
7 South Carolina and I majored in chemistry and have a
8 Bachelor of Science degree. I've also attended the
9 South Carolina Criminal Justice Academy and I'm a
10 certified officer through the academy. I've had the
11 opportunity to take numerous courses in crime scene
12 processing, latent fingerprint identification and
13 firearms identification.

14 However, the bulk of my training in firearms
15 identification, which involves the actual examining
16 of bullets and cartridge casings to tell whether or
17 not they were fired by a particular gun, came from a
18 training program that I took during my initial
19 employment at SLED. What I had to do was work under
20 the supervision of other court-qualified examiners.
21 I was given projects to work on. I was given tests
22 on information. I had extensive reading I had to do.
23 And I had to prepare cases under the supervision of
24 these other examiners. I was tested on this
25 information. And after I successfully completed my

1 training program, I was allowed to work cases on my
2 own and to testify in court in the area of firearms
3 identification.

4 Also, during that training program, I had the
5 opportunity to visit several firearms manufacturers
6 and take some of their armorers courses which did
7 teach me the various problems and intricacies with
8 various types of firearms.

9 Q Have you had the opportunity to testify as an expert
10 in the courts of South Carolina?

11 A Yes, sir. I have testified in South Carolina General
12 Sessions Court or in federal court approximately 250
13 times as an expert in firearms identification or tool
14 mark identification.

15 Q Have you worked on countless other cases? Those are
16 just the ones that went to court?

17 A Yes, sir, those are the ones I just testified on. I
18 work anywhere from 150 to 250 cases per year on
19 average, but not all of those go to court, obviously.

20 Q Over your 16-year career?

21 A Yes, sir.

22 MR. JENNINGS: Your Honor, I would offer him as
23 an expert in the field of firearms and tool mark
24 identification.

25 THE COURT: Do you care to examine him as to his

1 qualifications?

2 **MR. JOHNSTON:** No, Judge.

3 **THE COURT:** Very well, he will be permitted to
4 render opinions in those areas.

5 **Q** Agent Paavel, if you could, explain to us how you
6 came to be involved in this case in the murder of
7 Trooper Johnson?

8 **MR. JOHNSTON:** Objection.

9 **THE COURT:** What's the basis of your objection?

10 **MR. JOHNSTON:** There's been no findings of a
11 murder.

12 **THE COURT:** Sustained. Rephrase your question.

13 **Q** How did you come to be involved in the case involving
14 the death of Jeff Johnson?

15 **A** I received a phone call from the SLED duty officer
16 advising me that a shooting had occurred in Berkeley
17 County involving a state trooper. I was the person
18 that was on call from the firearms department at the
19 time. And I was given directions as to where to go.
20 And normally, what my job is in that capacity is to
21 assist the crime scene personnel with any technical
22 firearms related problems. And if they didn't have
23 any, just to generally help them on their crime
24 scene.

25 **Q** You're familiar with Agent Diane Bodie?

1 **A** Yes, I am.

2 **Q** You were on scene of this incident to assist her?

3 **A** Correct.

4 **Q** She's already testified this morning and testified to
5 a number of shell casings and the term projectile was
6 used. Could you explain to the jury what exactly
7 those terms are and what they make up?

8 **A** Yes, sir. Projectile is another term for a bullet.
9 Sometimes people confuse the term bullet and
10 cartridge. A bullet or a projectile is the part of
11 the ammunition that comes out the end of the barrel
12 and travels toward the target. A cartridge is the
13 piece of ammunition before it is fired. It is
14 sometimes called an unfired cartridge, it's sometimes
15 called a shell. Many people, however, will call that
16 a bullet. In my area, normally, a bullet is the
17 projectile and that's probably what Ms. Bodie was
18 referring to. Again, cartridge is the whole piece of
19 ammunition which is composed of a bullet, a cartridge
20 case, gunpowder and a primer.

21 **Q** Did you take custody that morning of July 7th with
22 several firearms that were associated with this case?

23 **A** Yes, sir, I did.

24 **Q** I show you what's marked as State's Exhibit 3. Do
25 you recognize that?

1 **A** Yes, sir, I do recognize this particular firearm.

2 **Q** Whose firearm is that?

3 **A** This is the one that was given to me at the scene and
4 was indicated as being Trooper Johnson's firearm.

5 **Q** Okay. I show you what's marked as State's Exhibit 2.
6 Do you recognize that?

7 **A** Yes, sir, I recognize this one, also. This is
8 another of the firearms that was given to me that
9 morning.

10 **Q** Whose firearm was that?

11 **A** This was Trooper Sigwald's.

12 **Q** Okay. And State's Exhibit 4?

13 **A** Yes, sir, I recognize this firearm, also. This is
14 another of the firearms that was given to me that
15 morning. And this one was indicated as being Trooper
16 Barwick's.

17 **Q** Thank you. State's Exhibits 2, 3 and 4, what type of
18 firearms are these?

19 **A** These are semi-automatic pistols. They are Glock
20 brands. They are all model 22 Glocks and they are
21 all in 40 Smith and Wesson caliber, which indicates
22 the type of cartridge they fire.

23 **Q** I show you State's Exhibit No. 1. Do you recognize
24 that gun?

25 **A** Yes, sir, I recognize this particular revolver. This

1 is another one of the handguns that was given to me
2 that morning.

3 Q And whose handgun was that?

4 A This was indicated as being Trooper Johnson's backup
5 revolver.

6 Q Were there any bullets in this gun?

7 A That particular firearm, when I received it had five
8 cartridges with it. And the gun holds five
9 cartridges. There were five unfired cartridges or
10 pieces of ammunition with it and it is capable of
11 holding five in the cylinder.

12 Q You use the term associated with State's Exhibit 1 as
13 a revolver and with State's Exhibits 2, 3 and 4 as
14 semi-automatic handguns. Can you explain to the jury
15 the difference?

16 A Yes, sir. The basic difference in the two types of
17 firearms is that the revolver uses a cylinder, a
18 rotary device that has holes drilled into it that is
19 a part of the handgun. And the cylinder has these
20 holes called chambers that are designed to hold the
21 cartridges in place in the firearm so you can shoot
22 it. As you shoot a revolver, the cartridge casing
23 that is left over stays in the firearm until someone
24 removes it.

25 In the case of a semi-automatic pistol such as

1 these Glock's, the Glock's have a separate piece which
2 is called a magazine. Sometimes it's called a clip.
3 That particular piece, the magazine is designed to
4 hold cartridges. You place the loaded magazine into
5 the firearm, you prepare the firearm in order to fire
6 it. When you fire it the bullet comes out the end of
7 the barrel and travels towards the target and the
8 fired shell casing or cartridge case is ejected or
9 thrown out of the firearm to land out on the ground
10 or wherever you are shooting it. It also
11 automatically loads a new cartridge from the magazine
12 into the back of the barrel so it is ready to fire
13 again. So every time you fire a semi-automatic
14 pistol and it properly fires, a bullet comes out of
15 the barrel and a fired cartridge case ends up
16 somewhere. And it is continually loading itself in
17 preparation for the next shot as long as you have
18 cartridges in the magazine.

19 **Q** With 26 shell casings being found at the scene,
20 that's indicative of what type of weapon being used?

21 **A** Usually if you find fired cartridge casings at a
22 scene, it's usually indicative of someone firing some
23 sort of semi-automatic firearm or some sort of
24 repeating firearm in which the cartridge case is
25 being removed out of the gun by the action of the gun

1 or the action of the shooter. If someone shoots a
2 revolver empty at a scene and then reloads it, you
3 could potentially have cartridge casings from a
4 revolver. But generally, what I have found in my
5 experience, if I find cartridge casings at a scene,
6 they're usually from some sort of auto-loading-type
7 firearm or repeating-type firearm.

8 Q I show you what's marked as State's Exhibit 35 and
9 see if you recognize that firearm.

10 A Yes, sir, I recognize this handgun also.

11 Q Whose handgun is that?

12 A This is the handgun that was indicated as being the
13 suspect's handgun. It was found at the scene and was
14 in position or at the scene when I was shown the
15 location of the scene. It was laying in the driveway
16 near the vehicle that had been stopped.

17 Q And State's Exhibit 36. Can you explain how that
18 clip was in conjunction with State's Exhibit 35 when
19 you found it?

20 A When I was shown this particular handgun, it was
21 loaded, meaning the chamber or the barrel had a
22 cartridge in it. The magazine which is in this
23 particular bag here was also inside the firearm. And
24 there were seven cartridges in the magazine. So when
25 I was shown this handgun at the scene, there were

1 eight cartridges in the firearm, one in the barrel
2 and seven in the magazine which was in the firearm.

3 Q Thank you. And I don't know if you said, what type
4 of make is this handgun?

5 A This particular firearm is a Smith and Wesson brand.
6 It is a semi-automatic pistol. It also fires the 40
7 Smith and Wesson caliber cartridge.

8 Q This is a different brand than the three guns used by
9 the troopers?

10 A That's correct.

11 Q If you would, please, explain to the jury what
12 firearms identification is.

13 A Yes, sir. Firearms identification is a discipline or
14 field in forensic science in which the main job of
15 the examiner is to try to determine whether or not
16 bullets or cartridge casings or shotgun shells or
17 wads were fired by a particular gun. That's what I
18 do most of the time. I'm trying to determine whether
19 or not a bullet was fired by a particular gun.

20 Also, firearms identification involves comparing
21 evidence bullets to evidence bullets or casings to
22 casings. It doesn't just involve comparing these
23 components to guns. But that's mainly what I do.
24 And this is accomplished by microscopic examinations
25 of the markings that are left on the bullets in the

1 cartridge casings as a result of them being fired
2 from a particular gun.

3 **Q** When you are attempting to identify a projectile
4 having been fired from a particular gun, will you
5 focus on general class characteristics of a firearm?

6 **A** Generally, in doing an examination, if I'm trying to
7 determine whether or not a particular bullet was
8 fired by a particular gun, obviously, when I get it,
9 I'll document the condition of the gun and document
10 the condition of the bullet and what I have. And
11 then I start looking at, first, what are known as
12 general characteristics. What caliber is the bullet?
13 How many lands and grooves are in the bullet? What
14 is the direction of twist and what type of rifling is
15 present on the bullet.

16 Now, explaining these things, what caliber is
17 the particular bullet, that's simply determined by
18 measuring the diameter of the bullet, looking at the
19 weight of the bullet and construction of the bullet.
20 And if necessary, by comparison with knowns, you can
21 determine what caliber it may be.

22 Looking for the type of rifling, there are two
23 general types of rifling that you find in rifle
24 firearms. You have what's known as conventional
25 rifling and you have polygonal rifling. And we'll

1 talk a little bit more about that, but those are the
2 two types of rifling that I find in most of the
3 firearms that I deal with that have rifling in them.

4 Lands and grooves, explaining that a little bit
5 further, when the barrels are manufactured for most
6 pistols and most rifles, rifling is placed inside the
7 barrel by the manufacturer. Now, rifling is a series
8 of parallel spiralling grooves that are formed or cut
9 into the inside of the barrel. Now, when these
10 grooves are formed, the raised areas that are left
11 between the grooves are called lands. So that's
12 where the term lands and grooves come from.

13 Now, the purpose of the rifling in the barrel as
14 put there by the manufacturer is for that rifling to
15 grip the bullet and cause that bullet to spin. And
16 the reason the bullet will spin is because you have
17 what's known as twist. That rifling can either go
18 clockwise or counterclockwise or right hand or left
19 hand. And as you -- if you were to fire them and
20 were able to watch that bullet as it goes through the
21 barrel, it is spinning, it is being rotated by the
22 rifling because the rifling grips or cuts into the
23 outside surface of the bullet and forces that bullet
24 to rotate in the barrel.

25 Now, the manufacturer wants that bullet to

1 rotate so that it will travel more accurately. Most
2 of you here have either thrown a football or seen a
3 football thrown. And if you have a good spiral or
4 good rotation on that football, it will travel fairly
5 well. However, if it goes end over end or wabbles,
6 it won't travel that good. So the purpose of rifling
7 is to spin the bullet and cause that bullet to travel
8 more accurately.

9 Now, the benefit of this rifling to me in
10 firearms identification is that I look at the
11 markings, in some cases microscopic markings, that
12 were left on outside of that bullet as a result of
13 that bullet being scratched or engraved by the
14 rifling. And the reason I looked at that is in the
15 history of firearms identification, examiners have
16 found that each gun barrel leaves unique markings on
17 a particular bullet. So you can link a particular
18 bullet to a particular gun barrel and that's done by
19 individual markings as opposed to general markings.

20 So briefly, I looked at -- getting back to what
21 I was talking about. When I get a bullet and a
22 firearm, I look at class characteristics, caliber,
23 type of rifling, lands and grooves, the number and
24 direction of twist. And then if I have the same type
25 of rifling and same characteristics in a particular

1 suspect firearm, then I will have to do a microscopic
2 comparison to look for individual markings to
3 determine whether or not that particular bullet was
4 fired by that particular gun.

5 Q Of the two types of rifling, conventional and
6 polygonal, which type leaves the most distinct
7 markings on a projectile?

8 A In my experience, the conventional type rifling will
9 leave better markings or engrave a bullet better than
10 the polygonal rifling. And the reason for that is
11 the polygonal rifling is much smoother. The inside
12 of the barrel is much smoother and the raised areas
13 or lands are rounded instead of being sharp and
14 square.

15 Q Do you have some diagrams that document this?

16 A Yes, sir, I have a couple of representations of
17 polygonal and conventional rifling that simply show
18 in cross-section what rifling may look like and shows
19 the difference in the two.

20 (WHEREUPON, State's Exhibits Nos. 93 AND 94 were
21 marked for identification only.)

22 THE COURT: They are just marked for ID only at
23 this point.

24 Q State's Exhibit 93, if you would, Agent Paavel,
25 please describe what that is to the jury?

1 **A** Ladies and gentlemen, if you were to take a firearm
2 barrel -- and let's pretend this little marker is a
3 firearm barrel -- and simply slice a section off of
4 it and look at the end of it like this, this is a
5 representation of this.

6 And this shows the conventional type of rifling.
7 You notice that there are six segments in there. If
8 you will start at the top and count, there are six
9 similar segments. And the raised segments are the
10 ones that are pointed toward the inside: This one,
11 this one, this one, this one, this one, and this one,
12 those are lands. Those are the raised portions that
13 are left inside the barrel when the rifling is placed
14 in the barrel. The sections between here are the
15 grooves. These wider sections, these are grooves.

16 Now, this particular representation shows six
17 lands and six grooves. Remember, I was talking about
18 class characteristics. So this one has six lands and
19 six grooves conventional. The reason this is
20 conventional, if you look over here, you see that
21 this rifling is very sharp and square at these
22 corners. It has very sharp angles. And conventional
23 rifling has these sharp angles. And when a bullet is
24 forced through a conventionally rifled barrel, if
25 that bullet fits it properly, it will be engraved and

1 scratched very heavily by the lands and potentially
2 the grooves.

3 Now, in polygonal rifling --

4 Q State's Exhibit 94.

5 A -- it's a little bit different. This also has six
6 lands and grooves, but notice the lands are rounded,
7 very, very round. They don't have the sharp angles
8 that you saw in the conventional rifling. So what
9 happens, when a bullet is forced through this type of
10 barrel, it receives less marking and less damage on
11 its outside surface as compared to the conventional
12 rifling.

13 Q Thank you. I show you what's been marked as State's
14 Exhibit 32. Do you recognize that item?

15 A Yes, sir, I do.

16 Q And what is that projectile from?

17 A This particular projectile was in a container that
18 indicated the name of Kenneth J. Johnson. It had a
19 forensic autopsy number and indicates bullet and
20 fragments. It has some doctors' names on them. It's
21 in a container that I typically see from an autopsy.

22 Q And you said bullet and fragments. Describe how a
23 bullet -- how fragments would come off of a bullet.

24 A Yes, sir. Depending on the construction of the
25 bullet and depending on what a bullet will strike, a

1 bullet will not necessarily stay intact or in one
2 piece. For instance, if you have a solid bullet
3 that's designed to penetrate and it has a very heavy
4 metal coat on it, that sort of bullet may stay in one
5 piece. However, any sort of soft point bullet or
6 hollow point bullet that is designed to fragment or
7 expand when it strikes a target may have fragments of
8 the bullet actually tear off as it passes through the
9 tissue. In this case, when it's passing through meat
10 or blood, water, whatever it's passing through, it
11 will tear off fragments of the bullet.

12 Q If having the tip of this bullet fragment, does that
13 in any way affect your ability to compare this bullet
14 with another firearm?

15 A No, sir. In this particular case, only small
16 portions of the nose of the bullet have expanded or
17 mushroomed or fragmented off of here. The area of
18 the bullet that has the land and groove impressions
19 or the markings that were made by the inside of the
20 barrel, that area is substantially intact and is in
21 excellent condition for microscopic examination.

22 Q Thank you. If you would, of the general class
23 characteristics that you were just discussing, what
24 characteristics were you able to determine
25 corresponded with State's Exhibit 32?

1 **A** State's Exhibit 32, this fired bullet, again, was a
2 40 caliber bullet, number one. Let's look at general
3 characteristics. It's a 40 caliber bullet and that's
4 determined by measuring the diameter at its base. It
5 has six lands and grooves. It has left-hand twist
6 and it has conventional rifling.

7 **Q** So the bullet that was removed from Jeff Johnson's
8 body was what caliber?

9 **A** It's a 40 caliber.

10 **Q** And how many lands and grooves did it have?

11 **A** Six.

12 **Q** What type of rifling did the gun have that fired that
13 bullet?

14 **A** The gun that fired that particular bullet would have
15 to have conventional rifling. This particular bullet
16 has conventional rifling impressions on it.

17 **Q** And to what direction did that bullet rotate when it
18 was fired?

19 **A** It has left-hand twist.

20 **Q** Of the five -- given that it's a 40 caliber gun -- or
21 it was a 40 caliber bullet, of the five guns that you
22 had associated with this case, did that fact
23 automatically exclude one of those guns?

24 **A** Yes, sir, the revolver was immediately excluded
25 because it is a 38 caliber, which is much smaller

1 than the 40. The 40 caliber bullet could not have
2 been fired from this particular revolver. It's
3 simply too large in diameter. It will not fit down
4 the barrel.

5 **Q** And that would be Trooper Johnson's backup revolver?

6 **A** That's correct.

7 **Q** Of the four remaining guns, three were what type of
8 weapon?

9 **A** Three were Glock semi-automatic pistols.

10 **Q** And those were the guns of the troopers?

11 **A** That is correct.

12 **Q** What caliber were those weapons?

13 **A** Those are 40 Smith and Wesson caliber or 40 caliber.

14 **Q** How many lands and grooves does the 40 caliber Glock
15 have?

16 **A** These particular pistols have six lands and grooves
17 in the barrel.

18 **Q** What type of rifling does the 40 caliber Glock have?

19 **A** It has polygonal rifling. And these particular
20 pistols had polygonal rifling.

21 **Q** And a bullet fired from a 40 caliber Glock will
22 rotate in what direction?

23 **A** These have right-hand twist.

24 **Q** State's Exhibit 35, the 40 caliber Smith and Wesson
25 of Mr. Sapp, is what caliber of weapon?

1 **A** It also is a 40 caliber.

2 **Q** How many lands and grooves does that Smith and Wesson
3 have?

4 **A** Six.

5 **Q** What type of rifling does that 40 caliber Smith and
6 Wesson have?

7 **A** It has conventional rifling.

8 **Q** And when a bullet is fired from that 40 caliber Smith
9 and Wesson, in which direction will it rotate?

10 **A** It is left hand.

11 **Q** Based on these general class characteristics of the
12 four guns remaining that could have possibly fired
13 that bullet that killed Jeff Johnson, what is the
14 only weapon that could have fired that bullet?

15 **A** Of the four that you have there, only the Smith and
16 Wesson pistol is capable of firing that particular
17 bullet.

18 **Q** Is it possible under any set of facts that the three
19 Glocks used by Trooper Barwick, Trooper Sigwald or
20 Trooper Johnson could have fired the bullet that
21 killed him?

22 **A** No, sir, that particular bullet could not have come
23 out of any of the three Glock pistol barrels.

24 **Q** They have the exact opposite type of rifling?

25 **A** Correct.

1 **Q** And rotate in the exact opposite direction of that
2 bullet?

3 **A** That's correct, sir.

4 **Q** We automatically know that Mr. Sapp's gun fired that
5 bullet. Did you take your examination another step
6 further to further corroborate the fact that this, in
7 fact, is the gun that fired that bullet?

8 **A** Well, I have to do microscopic comparison to
9 determine positively whether or not a bullet was
10 fired by a particular gun. I would do that in any
11 case in trying to determine positively whether it was
12 fired by a particular firearm.

13 In this particular case, what I had to do was
14 test fire all these firearms. I actually test fired
15 every one of these firearms, collected test specimens
16 for microscopic comparison. And in doing the
17 microscopic comparison, again, I'm looking at
18 markings that are left on the outside of the bullet
19 as a result of that bullet travelling through that
20 barrel. And if you remember, I said that these
21 markings have been found to be unique to a particular
22 barrel, which means every barrel marks the bullets
23 that were fired through that barrel uniquely. And
24 those bullets can link back to that barrel assuming
25 that the evidence bullet is in good enough shape and

1 that the barrel marks those bullets consistently.

2 And in this particular case, I did a microscopic
3 comparison of the bullet that was taken outside of
4 Trooper Johnson's body and compared them to the
5 Glock's. I compared them to the 38 revolver and I
6 compared them to the Smith and Wesson pistol. And I
7 concluded that the bullet that was taken out of the
8 trooper's body was fired by the Smith and Wesson 40
9 caliber pistol.

10 **Q** State's Exhibit 35?

11 **A** That's correct, sir. This particular Smith and
12 Wesson brand pistol that I hold in my hand fired the
13 bullet that was removed from the trooper's body.

14 **Q** And that conclusion's based not only on the general
15 class characteristics of the gun, but also on your
16 microscopic examinations?

17 **A** Yes, sir. Again, in order to have a conclusion that
18 a bullet was fired by a particular gun, a microscopic
19 comparison has to be done in our discipline. And by
20 microscopically comparing the evidence bullet to test
21 bullets that I fired from this particular pistol,
22 again, I concluded that that bullet was fired by this
23 particular pistol.

24 **Q** You were aware of all the shell casings that were
25 removed from the scene?

1 **A** Yes, sir.

2 **Q** In your field, is there -- are you able to compare
3 shell casings and determine what gun fired those
4 particular shell casings?

5 **A** Yes, sir, in a similar manner as looking at bullets,
6 I can also microscopically compare fired cartridge
7 casings and look for the markings that are left on
8 those cartridge casings as a result of being fired in
9 a particular firearm. When you take a handgun such
10 as these and fire them, the firing pin may leave
11 markings, the breech face, which is the front of the
12 slide, may leave markings. The inside of the barrel
13 may leave markings and the extractor and ejector may
14 leave markings. And normally, I can look at
15 cartridge casings, and if they are suitably marked
16 and the gun reliably marks the test, I can determine
17 whether or not those cartridge casings were fired by
18 a particular gun.

19 **Q** I'll take -- you were able to group these shell
20 casings into really four groups. If you would refer
21 to your notes, the shell casings that were labeled
22 markers A through H, which if you recall, were found
23 at the rear of the truck?

24 **A** Yes, sir.

25 **Q** Whose gun were you able to determine fired those

1 shell casings?

2 **A** These cartridge casings that were found near the rear
3 of this particular truck were fired by Trooper
4 Sigwald's pistol.

5 **Q** And items I through, looks like T and Exhibit Z?

6 **A** There were 15 cartridge casings that were found in
7 this area here. These were fired by Trooper
8 Johnson's pistol.

9 **Q** And Exhibit X, which was by the bush, whose gun fired
10 that?

11 **A** Marker X, there was another cartridge casing that was
12 fired by Trooper Barwick's pistol.

13 **Q** I believe there were 26 total shell casings recovered
14 from the scene?

15 **A** That's correct, sir.

16 **Q** And you have accounted for 24 of those at this point?

17 **A** Correct.

18 **Q** What type of ammunition were all of those shell
19 casings?

20 **A** Those were all 40 Smith and Wesson caliber. And they
21 were all Winchester brand.

22 **Q** Okay. That leaves two shell casings at the scene?

23 **A** Correct.

24 **Q** You were aware marker W was a shell casing found on
25 the front passenger seat?

1 **A** That's correct, sir.

2 **Q** Were you able to determine whose gun fired that shell
3 casing?

4 **A** Yes, sir, the shell casing that was at marker W,
5 which was actually inside the truck itself, was fired
6 by the Smith and Wesson 40 caliber pistol that was
7 identified or indicated to me as being the suspect's
8 pistol or defendant's pistol.

9 **Q** And what type of shell casing was that?

10 **A** That also was a 40 caliber cartridge casing, but this
11 particular one was marked FC, which means Federal
12 Cartridge. It was a Federal brand of cartridge.

13 **Q** And you're familiar with that type of brand of
14 ammunition?

15 **A** Yes, sir.

16 **Q** And Exhibit 9, which firearm fired that shell casing?

17 **A** The cartridge casing from marker 9 was also fired by
18 the Smith and Wesson pistol, which was indicated as
19 being Mr. Sapp's pistol.

20 **Q** What type of cartridge was that?

21 **A** That was also a 40 Smith and Wesson, but it was
22 marked RP, which is a Remington Peters brand of
23 cartridge.

24 **Q** State's Exhibit 32, which is the bullet that was
25 removed from Trooper Johnson, were you able -- based

1 on looking at this bullet, are you able to see
2 characteristics that may be consistent or
3 inconsistent with one type of ammunition?

4 **A** This particular bullet was consistent with being a
5 Federal brand of bullet or a bullet that will be
6 found in Federal brand of ammunition. The reason I
7 can tell that, this particular bullet has an unusual
8 construction in that in the bottom of the hollow
9 point cavity, it has a lead post that sticks up into
10 the cavity. This particular type of bullet is
11 marketed by Federal under the name of a Hydroshock.
12 This is a specific type of bullet that is patented by
13 Federal and sold by them under the name of Hydroshock
14 and it is quite an unusual looking projectile
15 compared to other hollow points.

16 **Q** Of the 26 shell casings that were at the scene, how
17 many of them were Federal brand ammunition?

18 **A** There was only one fired cartridge case that was
19 found at the scene that was Federal brand. And that
20 is the one that was at marker W, which was found in
21 the front seat of the pickup truck.

22 **Q** I show you what's marked as State's Exhibit 33. Do
23 you recognize that?

24 **A** Let me cut this open. Yes, sir, I do recognize this
25 particular cartridge case. This is the one that was

1 found at marker W.

2 Q That was on the passenger seat of the vehicle?

3 A That's correct.

4 Q And based on your testimony, both that cartridge
5 casing and the bullet removed from Jeff Johnson were
6 fired by State's Exhibit 35?

7 A That's correct, sir.

8 Q Is that bullet or the projectile removed from Trooper
9 Johnson consistent in any way with the Winchester
10 ammunition that the troopers were firing?

11 A Only by its diameter. Only by its caliber. Its
12 construction is wrong, it is an entirely different
13 type of bullet as the Winchester. It is consistent
14 with being a Federal Hydroshock. It is not
15 consistent with being a Winchester brand of bullet.

16 Q Are you also aware that a projectile had been
17 recovered from Mr. Sapp's body?

18 A Correct.

19 Q And what were the characteristics of that bullet?

20 A That particular bullet was also a 40 caliber. It had
21 polygonal rifling, six lands and grooves with right
22 twist.

23 Q So of the four 40 caliber weapons that we have, which
24 could have potentially fired that bullet?

25 A The bullet that was removed from Mr. Sapp could have

1 been fired by any three of the Glock pistols, but
2 could not have been fired by the 38 revolver or the
3 Smith and Wesson pistol.

4 **Q** Were you able to determine which firearm in
5 particular fired that bullet?

6 **A** No, sir, I could not.

7 **Q** And what is it about the polygonal rifling that
8 affects your ability to compare it conclusively back
9 to a particular firearm?

10 **A** As I explained earlier, when we had the little
11 diagram of the polygonal and conventional rifling up
12 on the screen, the polygonal rifling is more rounded
13 compared to conventional rifling. The lands are
14 rounded. It is much smoother. And as a result of
15 that, when the bullets travel through that barrel,
16 they are marked very poorly compared to
17 conventionally rifled barrels.

18 And as a result of that, we rarely are able to
19 identify positively whether a polygonally rifled
20 bullet was fired by a particular barrel. It does
21 happen occasionally. Some of the polygonally rifled
22 barrels will mark bullets better than others. But
23 overall, a polygonally rifled barrel does not mark
24 bullets as well as a conventionally rifled barrel.

25 **Q** The fact Mr. Sapp's gun had conventional rifling,

1 does that aid in your certainty as to that
2 identification?

3 **A** Yes, sir, it does.

4 **Q** And the bullet we were talking about is State's
5 Exhibit 5?

6 **A** Yes, sir, this is the bullet that was indicated to me
7 as being removed from Mr. Sapp.

8 **Q** Thank you. Were you able to -- with State's Exhibit
9 35, Mr. Sapp's weapon, were you able to get the
10 serial number off of this weapon?

11 **A** Yes, sir. The serial number when I received this gun
12 showed some evidence of scratching or marking or some
13 sort of scribing. I was able to clear up that area
14 with some sandpaper and the normal techniques that we
15 use for serial number restoration. And the number
16 was relatively clear and legible at that point.

17 **Q** Did it appear as if that gun had been struck by a
18 bullet?

19 **A** Yes, sir. When I first saw the firearm and later
20 when I received it in the laboratory again, the
21 firearm, this particular firearm had a portion of a
22 bullet stuck underneath the slide stop or this area
23 right here. It appeared to me that this particular
24 firearm had been struck by a bullet of some type.

25 **Q** Thank you. I show you what's marked as State's

1 Exhibit 76. You can use that laser pointer. Does
2 that picture reflect what you were just referring to?

3 **A** Yes, sir, you can see this is the slide stop, this
4 dark-looking device. This is the device that's
5 designed to hold a slide back when you're working the
6 firearm. This particular item here that the dot is
7 on and I'm kind of moving it around and this
8 particular material here, this is part of a bullet
9 that is wedged underneath this slide stop. This
10 slide stop has moved out away from the firearm
11 apparently as a result of the impact of the bullet.
12 And some fragments of bullet material were wedged
13 underneath that slide stop.

14 **Q** Agent Bogan has already testified you lifted swabs of
15 blood off of this gun?

16 **A** In the course of my examination of the firearm, when
17 I received it in the laboratory for my examination, I
18 did note that there was material on the firearm that
19 appeared to be blood. I checked with Ms. Bodie and
20 she said she had swabbed some of it. I went ahead
21 and did take additional swabs of blood from the
22 firearm before I went further with my examination.

23 **MR. JENNINGS:** Thank you very much, Agent
24 Paavel. Please answer any questions Mr. Johnston may have
25 for you.

1 **THE COURT:** Hold on.

2 At this point, ladies and gentlemen, we're going
3 to take a break. Do not begin your deliberations, do not
4 discuss the case. We'll be with you in about 15 minutes.
5 You may retire to your jury room.

6 (WHEREUPON, the jury left the courtroom at
7 approximately 3:11 a.m.)

8 **THE COURT:** First of all, Agent Paavel, during
9 this break, I'm going to instruct you not to have any
10 conversation with any attorney, with anyone -- in fact,
11 with anyone, just separate yourself from the rest. I
12 would appreciate it.

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

14 **THE COURT:** Anything from the State before we
15 recess?

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

17 **THE COURT:** Anything from defense?

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

19 **THE COURT:** We'll be at ease for about 15
20 minutes.

21 (WHEREUPON, a short break was taken.)

22 **THE COURT:** Let the record reflect Mr. Sapp is
23 present. Solicitor, as I understand, of course, there's
24 no -- you're not held to this, but just for guidance and
25 what I need to do, it's my understanding when the

1 cross-examination and redirect or recross, if necessary,
2 of Agent Paavel is completed, the State will be resting
3 with the stipulation that I will advise the jury that the
4 vehicle had a value in excess of \$5,000. The State will
5 not be calling any additional witnesses; is that correct?

6 **MR. HOISINGTON:** That's correct, Your Honor.

7 **THE COURT:** Mr. Sapp, we've reached the point
8 when we first started I told you there would come a point
9 when I needed to talk with you. Do you feel all right
10 today?

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

12 **THE COURT:** Are you under the influence of any
13 alcohol today?

14 **THE DEFENDANT:** No, Your Honor.

15 **THE COURT:** Under the influence of any
16 medication?

17 **THE DEFENDANT:** I take Elavil for depression and
18 anxiety.

19 **THE COURT:** How long have you taken that drug?

20 **THE DEFENDANT:** Approximately seven months now.

21 **THE COURT:** All right. Have you -- while you
22 have been taking that, have you noticed it affecting your
23 abilities to think or reason?

24 **THE DEFENDANT:** No, Your Honor.

25 **THE COURT:** Do you feel comfortable with your

1 ability to make decisions concerning your life?

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

3 **THE COURT:** Because that's -- and I understand
4 that when a person's facing the potential death penalty,
5 that's what this case is ultimately all about.

6 **THE DEFENDANT:** I'm a little confused here
7 lately today. But --

8 **THE COURT:** Well, that's why you have two able
9 attorneys with you, Mr. Johnston and Mr. Archer. And what
10 I want to do now is ask you some questions. At any point,
11 if you want to stop and say, Judge, I need to confer with
12 my attorneys, please do so. If you don't understand any
13 of my questions, stop. Say, Judge, please rephrase it or
14 tell me -- please explain what you're asking me because
15 I'm not sure I understand it. Is that agreeable with you?

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

17 **THE COURT:** I'm going to ask you to raise your
18 right hand. Do you solemnly swear or affirm that your
19 responses now to my questions will be the truth and
20 nothing but the truth so help you God?

21 **THE DEFENDANT:** I do.

22 **THE COURT:** You can put your hand down. Am I to
23 understand then, if you answer my questions today that
24 your answers now will be truthful?

25 **THE WITNESS:** Yes, Your Honor.

1 **THE COURT:** First of all, as I have been saying
2 and you have heard me say over and over, probably tired of
3 my saying it to the jurors, that persons who are charged
4 with criminal violations in this country are never
5 required to prove anything. Do you understand that?

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

7 **THE COURT:** And that, of course, applies to you.
8 Is that your understanding?

9 **THE DEFENDANT:** Correct.

10 **THE COURT:** In that regard, persons who are
11 accused of violating our criminal laws have the absolute
12 right, the constitutional right to remain silent at all
13 times. Do you understand that as well?

14 **THE DEFENDANT:** I do.

15 **THE COURT:** You understand that you have the
16 right, however, notwithstanding the fact that you're
17 charged with a criminal violation, you, as anyone else
18 that's come into this courtroom and taken that witness
19 stand, have the right to testify in this case if you want
20 to. Do you understand that?

21 **THE DEFENDANT:** I do.

22 **THE COURT:** If you choose to testify, of course,
23 you will answer questions just as you've observed
24 witnesses doing throughout this process. Your attorneys
25 will ask you questions. And then you will be subject to

1 cross-examination by the State. Do you understand that?

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

3 **THE COURT:** Of course, if you choose not to
4 testify, have your attorneys advised you that I would
5 instruct the jury that they cannot consider that against
6 you?

7 (WHEREUPON, the defendant and his attorneys
8 spoke privately.)

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

10 **THE COURT:** Do you have any question about what
11 that means?

12 **THE DEFENDANT:** No.

13 **THE COURT:** Let me elaborate so that -- and make
14 sure that your understanding and mine, what I'm asking
15 you, are consistent. My charge is this, in essence, I
16 tell them that persons who are charged in general with
17 criminal violations are never required to prove anything
18 and they have the right not to testify. And then I take
19 it to you and I simply say -- and I don't know what you
20 are going to do, but if you choose not to testify, I would
21 say, The fact that Mr. Sapp has not testified in this case
22 cannot, must not in any way be considered by you in any
23 way whatsoever. If you do, you will violate your oath
24 that you took when you started this. The State has the
25 burden of proving Mr. Sapp's guilt. He has -- each of you

1 have acknowledged in questions that he has absolutely no
2 responsibility. So you may not consider it. You may not
3 talk about it at all when you go to the jury room. That's
4 the essence of my charge. Now, do you understand that
5 right of yours?

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

7 **THE COURT:** As we've discussed thus far?

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

9 **THE COURT:** Have you had a chance to consider
10 whether or not you want to testify or not testify?

11 **THE DEFENDANT:** I have. And I choose not to.

12 **THE COURT:** You choose not to?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Do you need any additional time now
15 to talk about that decision with your lawyers?

16 **THE DEFENDANT:** No, sir, that's been determined
17 already.

18 **THE COURT:** All right, sir. You have had
19 sufficient opportunity to discuss that with them; is that
20 correct?

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

22 **THE COURT:** For all purposes -- and I don't want
23 you to explain one thing about that because that's between
24 you and your attorneys. But you have discussed that with
25 them; is that correct?

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

2 **THE COURT:** And as I understand it, you do not
3 need any additional time to talk with them?

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

5 **THE COURT:** Are you comfortable with your
6 decision?

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

8 **THE COURT:** You understand that it's your
9 decision?

10 **THE DEFENDANT:** I do.

11 **THE COURT:** This is your call. You understand?

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

13 **THE COURT:** And you're telling me that you,
14 having full opportunity to consider all aspects and to
15 consider and fully understand and appreciate your
16 understanding of your constitutional rights, you have made
17 a conscious decision not to testify in this case. Is that
18 true?

19 **THE DEFENDANT:** That's correct, Your Honor.

20 **THE COURT:** And there is nothing today that's
21 affecting your ability to make that type of decision?

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

23 **THE COURT:** Thank you very much, Mr. Sapp. I do
24 find, sir, that you have had the benefit of competent
25 counsel in this matter. And you have indicated that

1 you're satisfied -- very satisfied with the manner in
2 which they have discussed this particular issue with you.
3 You have no additional questions. You have truthfully
4 responded to my questions stating that you are not under
5 the influence of any alcohol, any type of medication. And
6 you further stated that there is absolutely nothing that's
7 affecting your ability to make this type of decision. I
8 find, therefore, that your decision is one that you make
9 freely, voluntarily, knowingly and intelligently.

10 And now I will say to you, if between now and
11 the time that I turn to Mr. Archer or Mr. Johnston and
12 ask, what says the defense, are you ready to proceed and
13 they tell me the defense rests, until that point you may
14 decide and change your mind. And I will -- we'll have
15 this discussion again. But I want you to understand, if
16 between now and then you change your mind, you will let
17 your attorneys know of that desire and I will excuse the
18 jury and we'll go through this discussion again. Is that
19 acceptable and agreeable with you?

20 **THE DEFENDANT:** That's fine, sir.

21 **THE COURT:** And if I do not hear from you, I'm
22 going to assume that your decision to not testify is still
23 your decision when the defense rests. Is that agreeable?

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

25 **THE COURT:** Okay. Now, we mentioned when we

1 started this case that under our law, since you are facing
2 a potential death sentence, our law gives you the right to
3 close, meaning the jury will last hear from the defense in
4 closing arguments. That means your attorneys -- your
5 attorney or attorneys will have the chance to make a
6 closing argument on your behalf.

7 You also have a right to address the jury in
8 closing argument. Now, of course, as I mentioned to you
9 when we started, it is precisely that at this point it
10 will be closing argument. And you can make any argument
11 you wish concerning the evidence that has been introduced
12 and any reasonable inference that may be drawn from that
13 evidence. Have you talked with your attorneys about this
14 particular right?

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

16 **THE COURT:** Okay. Have you had time to make a
17 decision about your desire concerning your right to
18 actually address the jury personally? And please
19 understand, I'm not referring now to Mr. Johnston and/or
20 Mr. Archer. They will speak to the jury on your behalf.
21 I'm talking about Mr. Sapp's right individually.

22 **THE DEFENDANT:** Just one second?

23 **THE COURT:** Sure.

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

1 **MR. JOHNSTON:** Your Honor, would you clarify
2 which phase you're talking about?

3 **THE COURT:** I'm talking about right now because
4 this conversation will take place and I don't know whether
5 we'll have to do it again. We might not have to do it
6 again. But if the jury returns a verdict of guilty. Then
7 of course, as you know, Mr. Sapp, there will be a second
8 phase of this proceeding. We'll have this conversation
9 again. And I'm going to go through it again just like
10 this. So right now, the only thing we're talking about is
11 the one that may be about to occur very shortly, the guilt
12 phase, specifically, this phase. Okay?

13 I am not asking you -- I will revisit this at
14 that time. You are not waiving any rights if there is a
15 second phase. I will place that on this record right now.
16 This decision deals solely and specifically with your
17 right to speak to the jury in closing argument in the
18 guilt phase only. Okay? You haven't waived anything.
19 And the reason for that, Mr. Sapp, is quite obvious.
20 Because as you and I are speaking right now, in my mind,
21 notwithstanding the evidence that I've heard, you're
22 innocent. There's no need for a second phase. There's no
23 need for me to discuss that with you because you're not
24 guilty at this point.

25 **THE DEFENDANT:** I'm just a little confused.

1 **THE COURT:** I understand. And that's a
2 perfectly legitimate question. Have I answered that
3 question sufficiently?

4 **THE DEFENDANT:** Yeah, I understand now.

5 **THE COURT:** All right, sir. Have you made a
6 decision then of your desire to speak to the jury
7 individually during the guilt phase?

8 **THE DEFENDANT:** No, sir, I do not wish to speak
9 to them.

10 **THE COURT:** You do not wish to speak?

11 **THE DEFENDANT:** No.

12 **THE COURT:** And that, again, is a decision that
13 you make fully understanding your right; is that correct?

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

15 **THE COURT:** And you have -- your lawyers have
16 talked with you about this and you're satisfied with their
17 advice on this matter, on this issue?

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

19 **THE COURT:** You know of anything that's
20 affecting your ability to make this decision; that is
21 specifically, the decision to waive the right to
22 personally speak to the jury during the closing argument
23 in the guilt phase?

24 **THE DEFENDANT:** No, Your Honor.

25 **THE COURT:** Very well. Thank you very much,

1 Mr. Sapp.

2 I find that Mr. Sapp on this particular issue
3 has received the benefit of competent counsel's advice.
4 He's totally satisfied with their advice. Again, I find
5 there is nothing from his responses, he's indicated he's
6 not under the influence of any alcohol, any medication.
7 He's indicated that there's nothing that affects his
8 ability to make this decision. I find this decision
9 likewise to be his decision and one that he makes freely,
10 voluntarily, knowingly and intelligently. And we will
11 accept his decision.

12 Now, Mr. Sapp, again, if during the closing
13 arguments of the State and after they've completed this
14 you change your mind, just let your lawyers know. I will
15 revisit this with you. And if you choose to speak, I will
16 give you the opportunity after we have talked about it.
17 But if I'm satisfied that's what you really want to do,
18 then I'll be happy and we can revisit it and we'll let you
19 speak. If I don't hear from you through your attorneys
20 and they complete their arguments, and then I start with
21 my charge, I'm going to assume that your decision remains
22 as you have indicated now on the record. Is that a
23 fair -- is that fair?

24 **THE DEFENDANT:** That's more than fair, Your
25 Honor.

1 **THE COURT:** Very well. Thank you, sir.
2 Anything further from the defense?

3 **MR. ARCHER:** Your Honor, I don't know if you
4 want to address this now or later. But I would just like
5 to put on the record that I would like you to charge
6 voluntary manslaughter. And you can make your decision,
7 but at least I got it on the record.

8 **THE COURT:** You got it on the record, your
9 request, and I will make that determination once everybody
10 rests. I think it's still premature. I will hear the
11 last witnesses and we'll see where we go with that.

12 **MR. ARCHER:** Okay.

13 **THE COURT:** But your request for voluntary
14 manslaughter charge is noted. Thank you, sir.

15 **MR. ARCHER:** Thank you.

16 **THE COURT:** State ready to resume?

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

18 **THE COURT:** And defense ready to resume?

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

20 **THE COURT:** Agent Paavel, thank you very much
21 for your patience, sir.

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** Sorry to keep you waiting.

24 **THE WITNESS:** That's all right, sir.

25 **THE COURT:** And we're ready now to return the

1 jury.

2 (WHEREUPON, the jury came into open court at
3 approximately 3:46 p.m.)

4 **THE COURT:** Thank you very much, ladies and
5 gentlemen. Appreciate your patience. We were taking care
6 of several matters of law. I thank you for allowing us to
7 complete that. We're now ready to continue the
8 examination of this witness.

9 You may cross-examine.

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

11 CROSS-EXAMINATION

12 **BY MR. JOHNSTON**

13 **Q** Good afternoon, sir.

14 **A** Good afternoon.

15 **Q** How are you?

16 **A** Fine.

17 **MR. JOHNSTON:** If you will indulge me a second,
18 I would like to get a little organized here.

19 **THE COURT:** Take your time.

20 **MR. JOHNSTON:** Thank you.

21 **Q** Agent, I caught everything you said. I'm not sure I
22 understood everything you said. I would like to
23 clarify some things and then I have some questions on
24 some matters I don't think you were asked earlier.
25 You were tendered and accepted by the Court as a

1 witness. Your experience that qualifies you for a
2 witness goes beyond firearm tool mark examinations
3 into other areas of firearms.

4 **A** Such as?

5 **Q** Well, we had someone here earlier who gave some
6 testimony on gun residue and powder burns and things
7 like that.

8 **A** I'm not qualified to render opinion on gunshot
9 residue or anything like that.

10 **Q** Okay. What do they call the firearm expert that goes
11 to a crime scene and kind of reconstructs where
12 people were standing and distances and all that?

13 **A** The SLED crime scene personnel generally do
14 reconstruction of crime scenes, if necessary, yes,
15 sir.

16 **Q** A reconstructionist. Do you have experience in that?

17 **A** I have limited experience in it, yes, sir.

18 **Q** What guidelines did you use in conducting the
19 examinations which you testified to today?

20 **A** You mean like protocols or --

21 **Q** Yes, standards in the industry.

22 **A** The laboratory has a training and protocol manual
23 that is a general guideline to conduct examinations.
24 Also, the -- most firearms examiners are members of
25 AFTE, which is the Association of Firearm and Tool

1 Mark Examiners. And the AFTE organization has some
2 guidelines that are used by examiners also in the
3 area of ethics, in the area of responsibility in
4 doing scientific analysis of evidence.

5 Q Did you bring any of those guidelines with you today?

6 A No, sir, I was not asked to.

7 Q Okay. Did you know that we'd be asking you about
8 your tests and the procedures that you did?

9 A I did not know you would be asking me about my
10 guidelines. I suspected you would be asking me about
11 my examination and how I conduct an examination.

12 Q Sir, are you an expert on -- are you an expert as to
13 make and models of firearms?

14 A I may have expert information on some makes and
15 models, yes, sir, I may. If you'll ask me the
16 question I may be able to --

17 Q You may have some information?

18 A It depends on what you're asking.

19 Q Would you consider yourself an expert as to all the
20 firearms made by the Ruger Company?

21 A If you'll clarify what you mean by expert. Do you
22 mean do I know every single model they made or do I
23 know how many cartridges they hold or how they're
24 manufactured precisely, no, sir, I would not know all
25 that information.

1 Q Okay. Nor would you know it for the Glock Company?

2 A No, sir, I would not know every single piece of
3 information about all the firearms that are produced
4 by Glock or any company.

5 Q Okay. Do any other manufacturers have barrels
6 similar to Glocks?

7 A Yes, sir, there are a few manufacturers that use
8 polygonal rifling.

9 Q Okay. COuld you name one or two of them?

10 A There is a company called HK that uses polygonal
11 rifling, a company known as Kahr, K-A-H-R, uses
12 polygonal rifling. Some of the Desert Eagle pistols
13 use polygonal rifling. And those are the ones that
14 I'm relatively familiar with.

15 Q HK would that be Heckler and Koch?

16 A That's correct.

17 Q Do experts have trouble distinguishing a bullet fired
18 from one Glock to another Glock?

19 A Yes, sir. As we talked about earlier, it is
20 difficult to determine which bullets are fired
21 through polygonally rifled barrels. It is difficult
22 to determine whether a bullet is fired out of one
23 Glock or another Glock. You can look at a bullet
24 that has polygonal rifling and say it could have been
25 fired by a Glock or another firearm that has

1 polygonal rifling, but generally, it is very
2 difficult to positively identify polygonally rifled
3 bullets to the barrel from which it was fired. We do
4 it on a limited basis because some of the barrels for
5 whatever reason mark the bullets a little bit better.
6 But most of time, I cannot identify or determine
7 whether a particular bullet that's polygonally rifled
8 was fired by a particular polygonally rifled barrel.

9 **Q** And you used the microscope for your examination in
10 this case?

11 **A** Yes, sir, I used what's known as a comparison
12 microscope.

13 **Q** Did you use a stereoscope?

14 **A** Yes, sir, I do.

15 **Q** Did you use a stereoscope on this case?

16 **A** Yes, sir, I would have used a stereoscope to
17 generally examine items of evidence in this case.

18 **Q** Okay. I'm a little confused. I think you said I
19 would have. Did you use a stereoscope in this case?

20 **A** Yes, sir, I did.

21 **Q** So you used both scopes in this case?

22 **A** Yes, sir. Again, to tell you the difference, in a
23 stereoscope, a stereoscope just allows you to look at
24 items at lower power. It has a binocular headpiece
25 and it allows you to look at an item and look at a

1 gross area on an item. A microscopic examination is
2 done under much higher power and a much limited field
3 or area is being looked at.

4 Q How big is one of those things?

5 A What things, sir?

6 Q The microscopes.

7 A The stereoscope, the one that I use has a head, say
8 the size of a football. It has a large articulating
9 arm on it, which is quite large, which is maybe two
10 and a half feet by two and a half feet, and it's
11 attached to my table. The actual comparison
12 microscope, I'm looking to see, is approximately this
13 wide, roughly this tall, maybe this deep and is
14 relatively heavy.

15 Q Did you bring either one of those scopes in with you?

16 A No, sir. Typically, I don't bring a comparison
17 microscope or stereoscope into a courtroom.

18 Q What magnification did you use on your comparison
19 scope?

20 A Anywhere from 10 up to 40 power.

21 Q Do you know what magnification you used to conduct
22 this examination?

23 A Which particular comparison?

24 Q Any of them?

25 A Bear with me.

1 Q Would that be your range then, from 10 on up?

2 A Bear with me a moment and I'll be glad to try to give
3 you that information. It appears that I did most of
4 the examinations from 10 up to approximately 30 power
5 in the comparison microscope.

6 Q Isn't 10 relatively low?

7 A Not in a comparison microscope, no, sir. Generally,
8 what you do is you start looking at 10 power or your
9 lower power because you don't want to look at too
10 high a power because your field of view gets narrower
11 and you can miss things. So first, you look at items
12 at a lower power to see what you may be looking for.
13 And if you see areas that require further examination
14 under a higher power, you may increase the
15 magnification up to 20, 30 or 40 power. And those
16 are the powers that are typically used in the
17 comparison microscopes that I've used for years.

18 Q Do you always use a comparison microscope?

19 A I use a comparison microscope to do any sort of
20 microscopic comparison to determine whether a bullet
21 or cartridge case was fired by a particular gun, yes,
22 sir.

23 Q Was it necessary to do it? Could you have made the
24 same determination visually?

25 A Well, I did it visually, but I used a comparison

1 microscope as an aid. I cannot do the comparison
2 without using the comparison microscope. The
3 markings that I look at are very small. You have to
4 look at them under some magnification to see the fine
5 markings that I use to determine whether or not the
6 bullet or the cartridge case was fired by a
7 particular gun.

8 Now, the class characteristics that I was
9 talking about earlier, like the number of lands and
10 grooves, the direction of twists and conventional
11 versus polygonal rifling, you may see under -- with a
12 hand magnifier and you can actually see them with the
13 naked eye.

14 **Q** Okay. Sir, I'm going to hand you a photograph.
15 Could you tell us what this is, please?

16 **A** Yes, sir. This appears to be a photograph that I
17 took for you of some items. In particular, this is a
18 photograph of test bullets and the fired bullet -- a
19 correction, these are just -- this is a photograph of
20 just the test bullets from the five firearms that I
21 examined in this case.

22 **Q** That being four semi-automatics and a 38 caliber
23 revolver?

24 **A** That's correct. There is one test bullet in this
25 photograph from each of the firearms that were

1 examined in this case.

2 Q And you're sure that's the photograph?

3 A Sir, it's a Polaroid photograph that I took.

4 Q Could you point out to me, please, which one was the
5 item 34 bullet?

6 A Neither, these are test bullets. These are all test
7 bullets.

8 Q Okay. Test bullets. I misunderstood.

9 A Yes, sir, those are test bullets.

10 Q So all five of these were taken for you to conduct
11 your comparison?

12 A That photograph was taken for you at your request.

13 Q Well, okay. But all five of these were shot for you
14 to conduct your comparison?

15 A Those -- correct, those particular bullets were fired
16 from these particular firearms in order to conduct an
17 examination.

18 MR. JOHNSTON: Your Honor, I move to have this
19 marked and admitted, please.

20 THE COURT: Any objection?

21 MR. JENNINGS: If I can just see it?

22 THE COURT: Sure.

23 MR. JENNINGS: Without objection.

24 THE COURT: Defendant's 8, a photograph, into
25 evidence without objection.

1 (WHEREUPON, Defendant's Exhibit No. 8 was marked
2 for identification and received into evidence.)

3 Q So you did five test bullets?

4 A Actually, I shot more than five, sir. I shoot
5 multiple test bullets from each firearm so I can
6 examine those test bullets against each other with
7 the comparison microscope to see whether or not the
8 markings that are on the bullet are consistent. You
9 simply have a photograph of one from each firearm.

10 Q I'm confused when you say from each firearm. Maybe
11 we need to back up. All five of these were conducted
12 to make the comparison photograph against the Item 34
13 bullet, correct?

14 A No, sir. All of these firearms were fired to have
15 test specimens, whether they were bullets or
16 cartridge casings, for potential comparison against
17 the evidence bullet.

18 Q I did misunderstand you. So each one of those
19 bullets were fired from five different firearms?

20 A Yes, sir. If you'll look, it has, like, Test No. 1,
21 Test No. 2, Test No. 3, Test No. 4. Those
22 are -- that is one bullet from each of these five
23 firearms.

24 Q I've got you. I'm sorry, I don't mean to be dense,
25 it's been a long week. Can you tell us which one of

1 these you fired from this gun right here?

2 **A** Yes, sir. This particular pistol right here fired --
3 this is one of the bullets that was fired out of it,
4 the one that says Test Item No. 37.

5 **Q** Okay.

6 **A** That refers to the item number on the SLED firearms
7 report.

8 **Q** How many bullets did you fire out of this gun?

9 **A** Bear with me, sir. I fired a total of eight
10 cartridges, which gave me eight bullets.

11 **Q** Where are those bullets? Do you have them with you?

12 **A** I believe I have five of them with me. Three of them
13 were submitted for entry into the IBIS computer
14 system at SLED and those are with the IBIS computer
15 itself. The remaining test bullets are here.

16 **Q** May I see them, please?

17 **A** Yes, sir.

18 **Q** I won't drop them. If I promise to give them back,
19 can I walk over there under the light with them?

20 **A** Yes, sir, with --

21 **THE COURT:** You gave him five?

22 **THE WITNESS:** Yes, sir, there are five fired
23 bullets.

24 **THE COURT:** Okay.

25 **Q** Okay. When you do these comparison tests, it's a

1 pretty reliable test?

2 **A** Yes, sir, the reliability of the test has been proven
3 over the almost 100 years that this type of
4 examination has been used.

5 **Q** Then why do you do it eight times?

6 **A** Why do I do it eight times? I fired five projectiles
7 for my comparison and three for the IBIS computer.
8 And as I stated earlier, when I do test firing, I
9 fire multiple bullets or multiple cartridge casings
10 so I can examine the tests versus each other to make
11 sure that the markings that I see on those specimens
12 are repetitive and consistent. I will not rely on
13 one test bullet or one test cartridge casing. I want
14 to see at least two. I may shoot three or four or
15 more.

16 And in the case of the IBIS entry, those
17 particular bullets are sent out of the firearms
18 department into the IBIS computer room where the IBIS
19 operator enters those specimens into the computerized
20 database for further examination or comparison.

21 **Q** If it's that reliable, wouldn't one test be
22 sufficient?

23 **A** No, sir. You don't seem to understand. You're
24 talking about reliability versus consistency of
25 markings. When I'm looking at these test bullets,

1 again, I want to know that the markings that I'm
2 looking on here, these microscopic markings, are
3 being consistently placed on that bullet or on that
4 cartridge casing so I know as an examiner I can use
5 those markings and have -- and that they're reliable.

6 Q Okay. Were all five reliable?

7 A Yes, sir, I was able to intercompare these particular
8 bullets to each other. And the markings that are on
9 these bullets are consistent and they are reliable
10 for comparison.

11 Q You've examined the Item 34 bullet in this case?

12 A Yes, sir, I have. Item 34, you mean which -- my Item
13 34?

14 Q No, sir, I call it Item 34. It's actually --

15 A Are you referring to the bullet out of the body --

16 Q Yes, sir.

17 A -- of the trooper?

18 Q Yes, sir.

19 A That is State's No. 32, which is my Item 34.

20 Q Well, does it say that on there?

21 A It's State's Exhibit 32 and it has I-34.

22 Q You're familiar with that bullet?

23 A Yes, sir, I examined it, yes, sir.

24 Q Okay. Are you familiar with the manufacturer of that
25 bullet?

1 **A** I am familiar enough with this projectile to tell
2 that it is a bullet consistent with being a Federal
3 Hydroshock-type bullet, and that's based on its
4 construction.

5 **Q** Okay. Is that the same type of bullet that the
6 police officers were using?

7 **A** No, sir, it is not.

8 **Q** Okay. So it's a different type of ammunition?

9 **A** Yes, sir, it is a different brand and a different
10 construction of ammunition as was used by the police
11 officers.

12 **Q** Okay. Does different types of ammunition ever affect
13 the markings fired from the same gun?

14 **A** In certain circumstances, you may run into a
15 situation where different ammunition does not mark as
16 well when it's being fired from the same gun.

17 **Q** So to assure that you're going to achieve maximum
18 reliability, you should use the identical type
19 bullets, shouldn't you?

20 **A** Well, generally, what happens is when the examiner
21 test fires a firearm, an examiner tries to use
22 ammunition of the same type or brand and type that
23 was used in the crime or that person is going to be
24 actually comparing it.

25 **Q** Is that a yes?

1 **A** It means yes, you should try to use the exact type of
2 ammunition.

3 **Q** That's a yes?

4 **A** Yes.

5 **Q** Okay. You should actually use the same brand, not
6 just the same type. I mean, everything --

7 **A** Yes, sir, you should try to use the same --
8 obviously, the same caliber, the same brand and the
9 same type of ammunition. And typically, that's what
10 I try to do.

11 **Q** Not just similar, but for ideal results you should
12 have identical ammunition, shouldn't you?

13 **A** As close as you can. Rarely do you ever find
14 identical ammunition. Sometimes you may have enough
15 ammunition that was with the gun, with a suspect gun,
16 that is the same type ammunition. And you may have
17 to use that in some circumstances. However, when I
18 test fire with the laboratory ammunition, again, I
19 look at the bullets and compare them microscopically.
20 And if I see that the markings are consistent and I'm
21 able to identify the bullet, the suspect bullet, and
22 render a conclusion, then there generally is no need
23 to fire the same type of ammunition. And in this
24 particular case, I did fire some of the Federal
25 Hydroshock-type tests in this particular pistol.

1 Q Don't different brands actually have very minute
2 differences in diameter?

3 A You may have differences in diameter in properly
4 constructed bullets that are minor, yes, sir.

5 Q All right. This particular bullet, the Item 34
6 bullet, you've stated this diameter was .399 to .042.
7 Do you agree with that?

8 A Yes, sir, that is the measurement that I had at the
9 time when I measured that particular bullet. Let me
10 confer with my notes here just to be sure. Yes, sir.

11 Q And variances in diameter, even that minute, can
12 affect the markings on a bullet, correct?

13 A Not really. Diameters of that degree generally do
14 not create any sort of problem.

15 Q Okay. I'm not looking for a problem. I want to know
16 if it can affect the markings.

17 A In my opinion, variances in diameter of this amount
18 will not have an adverse bearing on the markings that
19 are on a particular bullet. If you had considerably
20 more diameter variation, you could. Plus, there's
21 one other thing you're forgetting here, sir, I'm
22 measuring a fired bullet. This is a bullet that's
23 already been fired through a gun. It has struck a
24 target and it already has been damaged to some
25 extent. When I measure that diameter, it may not be

1 exactly the same as the diameter of the bullet before
2 it was fired. Because in that -- most manufacturers
3 try to maintain the diameters of the bullets as close
4 as they possibly can in order to have consistency in
5 the ammunition. However, when I'm measuring the
6 diameter of a fired bullet, there will be some
7 variation in that diameter from its original
8 diameter.

9 Q Does age affect a bullet?

10 A In what way, sir?

11 Q In any way that would result in a variance in the
12 markings.

13 A If you're talking about the bullet itself, generally
14 no. Unless you have a bullet that's made out of
15 steel and it age hardens and gets a little bit
16 harder. I don't think it would affect any markings
17 that would be found on a bullet. A copper bullet
18 like this or a copper-jacketed bullet such as this, I
19 don't think the age of the bullet would have any
20 effect on the markings that were left on the bullet.

21 Q Did you measure the test bullets?

22 A For diameter?

23 Q Yes, sir.

24 A No, sir, I typically do not measure the diameters of
25 test bullets, especially when I'm doing a comparison

1 under the microscope where I can see what the
2 diameter is compared to the evidence specimen.

3 **Q** I'm going to hand you Item 37, gun, again, please.
4 Generally speaking, I know you're not an expert on
5 manufacturers and so forth, but can you tell us in
6 what direction that gun ejects?

7 **A** Generally, when this particular gun fires, the
8 cartridge casing ejects out of the ejection port, a
9 little bit up and to the right, depending on how
10 you're holding it, how you're angling the gun,
11 depending on the type of ammunition you're using,
12 also, the orientation of the firearm.

13 **Q** Okay. They make guns that it actually comes out a
14 hole on the side where it actually will go over your
15 shoulder, don't they?

16 **A** What do you mean a hole on the side, sir?

17 **Q** Well, I don't have your terminology.

18 **A** This particular port, ejection port, yes, sir, you
19 could conceivably have a cartridge case that could
20 come up over your shoulder.

21 **Q** Okay.

22 **A** Again, the ejection of these cartridge casings is not
23 firm. They may land in one position one time, land
24 in another position another time. It depends on the
25 ammunition. It depends on how clean the gun is. It

1 depends on how well someone holds that firearm, how
2 firmly they hold that firearm. That can have a great
3 bearing on where that particular cartridge case may
4 land.

5 Q Some of them actually come out of that port and
6 actually go around to the left of the gun, don't
7 they?

8 A I'm not familiar with any that come out to the right
9 and then back to the left. There are some guns where
10 the cartridge casing will actually come straight up
11 or go to the left. I'm not familiar with any that
12 actually change direction or reverse directions.

13 Q Okay. Thank you. Are you personally familiar with
14 this firearm? I'll take it back if you want.

15 A Yes, sir, I'm somewhat familiar with it as a matter
16 of make, model, caliber, how it works.

17 Q Okay. What model was this gun?

18 A That particular pistol should be a Smith and Wesson
19 model 410.

20 Q Do you know what the 410 stands for?

21 A That is a code I believe that Smith and Wesson uses
22 to designate the type of finish the gun has, what
23 it's made out of and potentially, it's caliber. I
24 don't have the code sheet here with me today to tell
25 you what their exact determination of the 410 is.

1 **Q** I hand you three photographs. I'm handing you three
2 8 and a half by 11 photographs. Can you tell what
3 you see there, please?

4 **A** These are photographs of what appears to be three
5 different Smith and Wesson model 410 pistols.

6 **Q** Do you know what the differences are between the
7 three?

8 **A** Well, obviously, by serial number, they're three
9 different pistols. In looking at them, one of them
10 has what appears to be a stainless steel slide and a
11 brushed aluminum bottom. One of them has a blued
12 steel slide and a regular anodized lower frame. The
13 third one has a blued steel slide and it looks like
14 the regular anodized lower frame. Any other
15 differences in it, the sights look like they're about
16 the same that I can tell, although on two of them, it
17 looks almost like the sights -- I don't know whether
18 it's in the photograph, whether it's a defect, one of
19 them may have a different front sight. The main
20 difference I see in these pistols is they're -- have
21 different finishes or different colors.

22 **Q** The main difference -- I'll take those, thank you.
23 Other than the subtle differences that you just
24 described, the sights and the finish and the
25 stainless and so forth, are you aware of any other

1 way that a Smith and Wesson 410 may vary?

2 **A** Again, I'm not familiar with all the variations of a
3 Smith and Wesson 410. No, I don't.

4 **THE COURT:** I've given you a little leeway.
5 Let's move on to something else, Mr. Johnson.

6 **Q** Well, I have to ask this, are you familiar with a
7 Smith and Wesson 410-S?

8 **A** No, sir.

9 **Q** Would it surprise you if I told you the S is not
10 engraved on the gun?

11 **A** That may be, sir. I'm not familiar with that
12 particular model.

13 **THE COURT:** Mr. Johnson, move on, sir.

14 **MR. JOHNSTON:** Okay. Court's indulgence?

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

16 **Q** This bullet was fragmented, the Item 34, sir?

17 **A** There was a substantially whole portion of the bullet
18 and then there were several small fragments. In
19 fact, there were two small jacket fragments, one
20 small lead or core fragment, and then there was one
21 substantially whole piece of the bullet.

22 **Q** And were the fragments useful for identification?

23 **A** No, sir. The fragments had no markings on them that
24 were usable for identification purposes. Mainly
25 because the fragments came from the nose area of the

1 projectile or the bullet that didn't come in contact
2 with the rifling inside the barrel.

3 **Q** Would it have made a better comparison if it had been
4 a whole, intact bullet?

5 **A** No, sir, it would not. As I stated earlier, the land
6 and groove impressed area on this bullet or that
7 portion of the bullet that came in contact with the
8 inside of the barrel is substantially intact. And
9 the markings are in very good shape. In my opinion,
10 it would not have made any difference whether or not
11 that bullet would not have had the fragments come off
12 of it or whether it would have just stayed as it was
13 now.

14 **Q** Okay. I'd like to show you another photograph. Do
15 you recognize this?

16 **A** Yes, sir. This is something that I produced at your
17 request. This is a scanned photograph of a Polaroid
18 photograph that I took.

19 **Q** Did you bring that Polaroid photograph?

20 **A** Yes, sir.

21 **MR. JOHNSTON:** While he's doing that, I'm going
22 to have this marked and admitted.

23 **MR. JENNINGS:** Which bullet is that?

24 **MR. JOHNSTON:** That's his comparison photograph.

25 **MR. JENNINGS:** Is this the test bullet or the

1 evidence bullet?

2 **THE WITNESS:** What that has -- since you're
3 going to ask, that particular photograph that you have has
4 an image of a Polaroid photograph that I took which
5 actually has the Item 34 evidence bullet versus a test
6 bullet that was fired from the Smith and Wesson pistol.

7 **Q** May I see that photo, please?

8 **A** (The witness complied.)

9 **MR. JENNINGS:** I just ask to put his Polaroid
10 in, I think that would be a clearer picture.

11 **THE COURT:** Do you have any objection, Agent
12 Paavel? We can substitute at the conclusion of the trial
13 with a copy.

14 **THE WITNESS:** Either that or if I could have the
15 scanned one.

16 **MR. JOHNSTON:** I'm happy with this one. This
17 one looks file.

18 **THE WITNESS:** As long as I can have something
19 for the file to get it back.

20 **THE COURT:** Well, approach, please.

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

24 **THE COURT:** Without objection, I think
25 Defendant's Exhibit 9.

1 (WHEREUPON, Defendant's Exhibit No. 9 was marked
2 for identification and received into evidence.)

3 Q When the photograph was taken, these bullets were
4 magnified, correct?

5 A That one, it was not magnified. This is a
6 magnified -- in fact, this one was taken at 30 power.
7 The one you have in your hand, which is a scanned
8 image, should be virtually the same size as this.
9 Let's make sure. There may be some magnification.
10 No, this is the same.

11 Q My question is, I see a bullet that's that wide on
12 the paper. Obviously, it's blown up. It's
13 magnified, sir?

14 A Yes. In this original photograph, again, this is a
15 30-power magnification of a particular area on those
16 two bullets.

17 Q And 30 power is sufficient to make a comparison?

18 A Yes, sir, it's quite sufficient.

19 Q Thank you. Sir, when you say you tested those
20 Glocks, did you run test shots on those Glocks?

21 A Yes, sir, the Glocks were also test fired.

22 Q You have a worksheet that you produced, a bullet
23 projectile worksheet?

24 A For?

25 Q When you conducted these tests?

1 **A** For which bullet?

2 **Q** How about if I just show you what I have? Item 34
3 bullet.

4 **A** Yes, sir, you should have a copy of my bullet
5 worksheet, yes, sir.

6 **Q** Okay. Just a couple more minutes, sir. Okay. Just
7 about finished with you. And I appreciate your
8 bearing with me. I have so many pieces of paper.

9 **THE COURT:** Take your time, Mr. Johnston.

10 **Q** What's a Hydroshock?

11 **A** Hydroshock is a trade name used by Federal for that
12 type of bullet I described earlier. It is a jacketed
13 hollow point bullet that has a lead post in the
14 hollow point itself. And the purpose of that post is
15 to aid in the expansion or damage to that bullet when
16 that bullet travels through tissue. It's designed to
17 cause the nose of that bullet to expand or mushroom
18 as it's called as it travels through tissue. And
19 again, it is a trademark name that's currently used
20 by Federal in their Hydroshock brand ammunition.

21 **Q** Okay. You have -- do you have a copy of your case
22 notes, sir?

23 **A** Yes, sir.

24 **Q** Did you -- do you have a weapons case notes and
25 bullet case notes?

1 **A** For which? I have --

2 **Q** For Item 36 and Item 37?

3 **A** 37. Yes, sir, I have them for both.

4 **Q** Do you do all these at the same time?

5 **A** I did them in the course of examination which
6 started -- let's see, the examination was conducted
7 between July the 8th and July the 11th and 12th.

8 **Q** Okay. Great. And lastly, isn't the crux of your
9 examination to look at the bullet visually and make
10 an informed decision?

11 **A** Correct. I'm visually looking at it whether it's
12 with the naked eye or whether some sort of
13 magnification. I'm looking at a bullet or a
14 cartridge case and the markings that are left on them
15 by being fired in a firearm. And I compare those to
16 markings that are left on tests that I fire or were
17 fired from a particular firearm.

18 **Q** Okay. And I know experience goes into it. But it's
19 just visually looking to see if this thing looks
20 similar to this thing?

21 **A** Well, it's actually more than just similar. The
22 examination entails looking for patterns of lines or
23 striated markings that are found on bullets. On
24 cartridge casings, you may be looking at striated or
25 scratched markings, you may be looking at impressions

1 or small little shapes that are left by various
2 portions of the firearm.

3 And I'm looking for more than similarity. I'm
4 looking for very strong agreement in those markings.
5 I have to be sure that my class characteristics are
6 correct. Remember, we talked about caliber,
7 direction of twist, number of lands and grooves, type
8 of rifling. If those are all similar, then I start
9 looking for what are individual markings that are
10 left on the bullet as a result of being fired through
11 a particular barrel.

12 And that's why, again, I shoot multiple test
13 bullets and look at the tests versus each other with
14 the microscope to see whether or not the markings are
15 consistent. And then I'll look at the evidence
16 versus the tests. And if I see what I consider to be
17 substantial or strong agreement in the markings that
18 are left on the evidence and the test, based on my
19 experience and training and looking at literally
20 hundreds of thousands of different comparisons over
21 the years, I can render a conclusion or an opinion as
22 to whether that bullet was fired by that gun.

23 Q Can you do that with the same degree of accuracy as,
24 say fingerprints and DNA?

25 A Yes, sir. The conclusions that we have in the area

1 of firearms identification are as strong as
2 fingerprint identification. When a fingerprint
3 examiner says that fingerprint was made by that
4 particular person, they're saying no other person
5 could have done it. When I say a particular bullet
6 was fired by a particular gun, I'm saying it was
7 fired by that particular gun and no other gun.

8 Q We had a DNA person in here who said that the
9 likelihood of -- he made the connection and he said a
10 trillion to one.

11 A DNA uses some sort of statistical database and you
12 would have to talk to a DNA analyst about that to
13 render their conclusions. In the fingerprint field,
14 which I used to do, and in the firearms field,
15 firearms identification, there is no statistical
16 database that's being used to do these
17 identifications at this time.

18 Q Is a trillion to one a reasonable amount for you?

19 A I don't know, sir. Again, I don't have any
20 statistical data that I can tell you.

21 Q Okay.

22 MR. JOHNSTON: Thank you, sir.

23 THE COURT: Redirect?

24 ///

25 ///

REDIRECT EXAMINATION

BY MR. JENNINGS

Q Of the four guns, the four 40 caliber guns that were on the scene that morning, how many of those guns could have possibly fired the bullet that killed Jeff Johnson?

A Only one, sir.

Q And whose gun is that?

A That is a Smith and Wesson pistol that was found in the driveway that was indicated to me as being Mr. Sapp's pistol or found where Mr. Sapp was apprehended.

Q Is that State's Exhibit 35?

A That is correct, sir.

Q Is there any possibility that Trooper Barwick's gun or Trooper Sigwald's gun could have fired the bullet that killed Jeff Johnson?

A No, sir.

MR. JENNINGS: That's all I have, Your Honor.

THE COURT: Recross?

MR. JOHNSTON: No questions, Your Honor.

THE COURT: Do you wish him to be excused?

MR. JENNINGS: Please.

THE COURT: Any objection to Agent Paavel being excused?

1 **MR. JOHNSTON:** No, sir.

2 **THE COURT:** Agent Paavel, you're excused. Thank
3 you, sir.

4 **THE WITNESS:** Thank you, sir. Let me get my
5 stuff together.

6 **THE COURT:** Take your time, sir. Any
7 additional -- keeping with our discussion off the record,
8 I believe the State had indicated we had one matter and
9 I'm about to announce that.

10 **MR. HOISINGTON:** Yes, sir, that's the last.

11 **THE COURT:** With the exception of the
12 stipulation, that would be the State's case at this point?

13 **MR. HOISINGTON:** Yes, with the stipulation, the
14 State would rest.

15 **THE COURT:** The stipulation, ladies and
16 gentlemen, is this, that the vehicle, the truck, had a
17 value greater than \$5,000. Both sides stipulate as to the
18 value of that particular vehicle.

19 At this point, ladies and gentlemen, I'm going
20 to ask you to retire to your jury room for a few moments.
21 There are some matters that I need to take up out of your
22 presence, some matters of law. Do not begin your
23 deliberations. Don't discuss the case. We'll be with you
24 in about, I would say, maybe five to 10 minutes at the
25 most.

1 (WHEREUPON, the jury left the courtroom at
2 approximately 4:34 p.m.)

3 **THE COURT:** Any motions on behalf of the State
4 at this point?

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

6 **THE COURT:** Any motions on behalf of Mr. Sapp?

7 **THE CLERK:** No, sir.

8 **THE COURT:** Okay. No motions?

9 **MR. ARCHER:** Well, the only one, I want to bring
10 up the voluntary manslaughter charge.

11 **THE COURT:** Are you sure you don't want to make
12 a motion for a direction of verdict for acquittal?

13 **MR. ARCHER:** I will put it on the record if you
14 would like.

15 **THE COURT:** The record notes the motion for
16 directed verdict of not guilty of the State's failure to
17 prove its case beyond a reasonable doubt as to all
18 indictments. That motion is denied. I think considering
19 the light most favorable to the State, as I'm required to
20 do, we -- it's a matter for the jury at this point.

21 Now, as I understand, you still intend to rest
22 at this point and not call any witnesses?

23 **MR. ARCHER:** If the prosecution has rested, the
24 defense has rested.

25 **THE COURT:** Very well, then we will renew the

1 motions. I assume the State has no motions?

2 **MR. HOISINGTON:** Correct, Your Honor.

3 **THE COURT:** And your motions are renewed and
4 they are denied. What I'm going to do is bring in --

5 And again, Mr. Sapp, I'm assuming that you still
6 desire to not -- it is still your desire not to testify;
7 is that correct, sir? And you are still under oath in
8 this matter.

9 **THE DEFENDANT:** That's right, Your Honor.

10 **THE COURT:** Very well. Thank you so much,
11 Mr. Sapp. And I assume it is still your desire not to
12 address the jury. But again, if you change your mind
13 after the closings on the part of the State, I'll hear
14 from you.

15 Yes, Mr. Johnston?

16 **MR. JOHNSTON:** Given they have just rested, the
17 jury just left, you just asked about the motions and
18 involuntary manslaughter and everything, it's just sort of
19 bulleting. He would like a few minutes with us.

20 **THE COURT:** I'm going to do a lot of things. I
21 want to bring the jury back first because I want to start
22 a process now. I'm going to tell the jury probably -- and
23 I'm not going to limit you, but I'm going to say that
24 probably the earliest that we could complete the arguments
25 and charge, it would -- my guess is it would be 6:30 or

1 quarter to seven thereabouts because we would take a break
2 that I'm going to give. So if you could wait with me just
3 one minute. They may decide they want to go forward, they
4 may decide they don't want to go forward. They may want
5 to break and recess for the evening. I'm going to allow
6 them -- I'm going to bring them in, have you formally rest
7 and then I'm going to make some statements to them.

8 Yes?

9 **MR. ARCHER:** If we're going to get to final
10 arguments, do we have that equipment available?

11 **THE COURT:** You'll have all the things that you
12 need when you get to final argument. We'll have time to
13 set all those things up. So don't worry about that. I'm
14 not going to go into final arguments immediately. Okay?

15 Bring in the jury, please.

16 (WHEREUPON, the jury came into open court at
17 approximately 4:37 p.m.)

18 **THE COURT:** Thank you very much, ladies and
19 gentlemen. We've completed the State's case and we have
20 had some discussions.

21 Mr. Archer, as I understand it, at this point
22 the defense rests; is that correct?

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

24 **THE COURT:** Ladies and gentlemen, that will
25 conclude then the evidentiary portion of this proceeding.

1 That means you've heard now all the evidence you're going
2 to hear on this particular issue. There still remains,
3 obviously, as we've talked about and I know you know,
4 closing arguments, which is the second opportunity that
5 the attorneys will have to speak to you and, of course, my
6 charge or instruction on the law. It is about quarter to
7 five. There are some matters of law that I'm going to
8 have to take up now. And we probably would not be able to
9 get started with the closing arguments until, I'm guessing
10 around 5 o'clock. Those arguments and charge will
11 probably take somewhere between an hour and a half to an
12 hour and 45 minutes. It could be longer, it could be a
13 little bit less, but that's about the ballpark. That
14 means that you would not receive this case for
15 deliberations until about 6:30, quarter to seven,
16 somewhere in that neighborhood. I know it doesn't matter
17 to you because you're going -- whether you start and
18 complete -- if you complete them tonight and, of course,
19 if the verdict is the State's failed to meet the burden of
20 proof, then that's it, obviously.

21 But if you do -- should find a verdict of guilty
22 and that should conclude -- and please understand, I'm not
23 suggesting one way or the other what your decision should
24 be. And I'm confident that you've honored the commitment
25 that each of you have made to the State and Mr. Sapp and

1 to me with our discussion that you still have that open
2 mind and you haven't even begun to process, haven't even
3 commenced, even thought about the process of changing that
4 position, how long that will take no one knows. I'll do
5 whatever you want to do. We're prepared to go forward if
6 you want to go forward. Or we're prepared to recess, get
7 some rest, come back in the morning and start and we'll do
8 closing arguments and charge and then you may begin your
9 deliberations. Whatever you wish to do, just talk about
10 it among yourselves. If you will just let us know that.
11 Have you selected your presiding juror?

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

13 **THE COURT:** Mr. Mustach, you are that person?

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

15 **THE COURT:** Thank you very much.

16 And thank you, ladies and gentlemen.

17 I would ask that you continue to occupy that
18 chair then for the balance of the trial. If you will let
19 us know, Mr. Mustach, what the jury's desire is, we'll
20 abide by your wishes.

21 You may retire to your jury room. But I repeat,
22 do not begin your deliberations. Don't discuss the case
23 among yourselves. If you decide that you want to stop,
24 then I'm going to let you go ahead home -- go ahead to
25 your temporary home at this point. I would remind you

1 that if you do decide, please remember, you're not at
2 liberty to talk about this case among yourselves at home,
3 don't speculate about it. Do not begin your deliberations
4 in any fashion whatsoever. And if you do decide, then I
5 look forward to seeing you in the morning at 9:30. On the
6 other hand, if you want to go forward, we'll be with you
7 probably in about 15 minutes. Thank you. You may retire.

8 (WHEREUPON, the jury left the courtroom at
9 approximately 4:42 p.m.)

10 **MR. ARCHER:** I was just thinking if we go
11 through all this tonight and say they start their
12 deliberation at 7 o'clock and they reach a verdict in say
13 two hours, we'd all have to come back here. If we start
14 tomorrow, I think they'd reach a verdict tomorrow.

15 **THE COURT:** Paul, I appreciate it. Mr. Archer,
16 I appreciate it. And maybe one day when you get up here,
17 you can call it like you want. But I'm going to call this
18 one, sir.

19 **MR. ARCHER:** Okay. It's just a suggestion.

20 **THE COURT:** Mr. Archer, I appreciate it. I've
21 been doing it about nine and a half years. And I promise
22 you, I don't have all the answers. But I learned early on
23 the best person to let determine what they want to do are
24 those 12 -- those 14 people that are making the tremendous
25 sacrifice. Because everybody in this room is being

1 compensated for what's going on in this process inside
2 this rail insofar as your involvement. But those folks
3 are not in my opinion. They're paid, but -- so I'll do
4 what they want to do. Probably given their position, they
5 probably will want to go on home, I think. But if they
6 want to stay and do it, obviously, I'm going to tell them
7 they don't have to complete it tonight. They can go home
8 and come back tomorrow. I'm not going to make them rush
9 through and be tired. I will give them the option. I
10 will tell them I would like for them to start, but they
11 under no circumstances have to complete. I appreciate
12 your observations and I'm not trying to be flippant with
13 you.

14 **MR. ARCHER:** All right.

15 **THE COURT:** But I will try to try and you try to
16 do what you do.

17 **MR. ARCHER:** I've never been flippant with you.

18 **THE COURT:** But thank you very much, sir.

19 All right. Anything now from the State at this
20 point that we need to address? Any requests to charge?
21 I'm going to charge, obviously, possession with intent to
22 distribute along with possession of the drug charges. I'm
23 going to charge receiving stolen goods. I'm going to
24 charge -- it would be unlawful possession. I am going to
25 include the -- because they conclude that -- again, that

1 process is if it was in the glove compartment or in the
2 console, then that's illegal under the law, they'll have
3 to make a determination as to where it was. Obviously, at
4 one point, the gun was not where it should have been under
5 the law. But I'll let them have to -- I think -- I don't
6 think I can conclude nor do I wish to conclude that there
7 is not -- that I shouldn't charge that one exception. I'm
8 going to include that in my charge concerning the unlawful
9 possession. Receiving stolen goods, you have to prove
10 that they were stolen and that they were in and knew or
11 should have known that they were stolen. Basically,
12 that's I think the essence.

13 I'm going to charge -- your request to charge
14 for voluntary manslaughter now is on the record. I
15 believe considering all of the evidence, I can't find any
16 evidence that would warrant or justify the charging of
17 voluntary manslaughter. However, I've done it before. If
18 the State thinks there's any basis or --

19 State desire me to charge voluntary
20 manslaughter?

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

22 **THE COURT:** Very well. The Court didn't find
23 any factual basis to support it. And consistent with the
24 law, I believe it would be improper to charge that. So I
25 will not charge that.

1 Any other requests to charge, Mr. Archer and
2 Mr. Johnston?

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

4 **THE COURT:** Thank you very much. We will be at
5 ease for just a few minutes and maybe they will tell us
6 what they want to do.

7 (WHEREUPON, a short break was taken.)

8 **THE COURT:** The jury informs me they wish to
9 recess for the night and come back in the morning to hear
10 closing arguments and the charge. I've dismissed them for
11 the night. We'll resume here in the morning at 9 a.m. to
12 conclude this portion of the trial. Have a good night
13 everyone.

14 (WHEREUPON, the proceedings were concluded for
15 the day to be reconvened on Saturday, May 17th,
16 2003.)
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