

VOLUME I of II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Oct 17 2022

Appeal from Richland County
Honorable DeAndrea G. Benjamin, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MARK ROBERT VOLSTROMER,

APPELLANT.

APPELLATE CASE NO. 2021-000676

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 2016-GS-40-02355

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Mark Volstromer,)
8 Defendant.)

9 June 14-18, 2021
10 Columbia, South Carolina

11
12 B E F O R E:

13 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a
14 jury.

15
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1 of the Defendant's guilt in any way. It is a means
2 of bringing this matter to court. What I will read
3 to you are allegations, and they have to be proven
4 by the State beyond a reasonable doubt. The burden
5 is upon the State to prove the Defendant guilty
6 beyond a reasonable doubt.

7 The indictment that I have before me is
8 Indictment 2016-GS-40-2355, The State of South
9 Carolina versus Mark Robert Volstromer. This is an
10 indictment for murder. The indictment reads
11 that -- the allegations in the indictment read
12 that:

13 Mark Robert Volstromer did, in Richland
14 County, on or about December 27th, 2015, kill the
15 alleged victim in this case, Keith Pruitt, Jr.,
16 with malice aforethought, either express or
17 implied, by means of a gunshot, and the victim did
18 die as a proximate result thereof, all in violation
19 of Section 15-3-10 of the South Carolina Code of
20 Laws, 1976, as amended.

21 As I will remind you again, as I stated
22 earlier, these are allegations against the
23 Defendant that have to be proved beyond a
24 reasonable doubt by the State.

25 Ladies and gentlemen of the jury, there is a

1 to revoke, or any of that, due to his -- anything
2 on his part with -- we haven't had any motions, but
3 specifically we haven't had any on this particular
4 issue with his monitor, so there is none of that
5 issue either.

6 THE COURT: All right, yes, ma'am.

7 MS. SAMPSON: The other things from the State,
8 Your Honor, in terms of -- we would ask to
9 sequester the witnesses. I would ask for my, on my
10 State's side, that Investigator Holdorf be allowed
11 to stay, as he is my lead investigator, and Connie
12 Pruitt, as the wife of the victim, be allowed to
13 stay. Otherwise, we would ask that all other
14 witnesses be sequestered.

15 THE COURT: All right.

16 MS. ZMROCZEK: We are in agreement with that,
17 and we understand it will be reciprocal as well as
18 the lead investigator and the wife of the decedent
19 under the Victims' Bill of Rights.

20 THE COURT: All right.

21 MS. SAMPSON: And then lastly, I had two other
22 matters on my motion to -- I mean, on my list of
23 motions, Your Honor. It is my understanding, as I
24 stated, there are some evidence or some things that
25 Ms. Zmroczek may or may not want to introduce, and

1 we talked about this earlier so I just wanted to
2 put it on the record. There are police reports
3 about prior disputes and altercations -- I will use
4 that word -- some of them between Mr. Volstromer
5 and Mr. Pruitt -- or the Volstromer family and the
6 Pruitt family, for lack of a better word, and some
7 not. And so it was the State's position that if
8 she wants to introduce any evidence to that, we
9 would have to have a motion about that or an
10 argument about that. She has relayed to me that
11 she doesn't plan on speaking about this in opening
12 so there is no reason to discuss it now.

13 Furthermore, she states before she tries to
14 introduce any evidence of those disputes she would
15 let me know that she was going to do it and we
16 could take it -- address it at that point. I just
17 wanted to put that on the record that any
18 information or incidents -- any information or
19 facts about incidents between the Volstromers and
20 Mr. Pruitt or where the police were called to their
21 residence for some sort of issues, we would ask
22 that that not be brought up until we could have a
23 motion in limine about that.

24 MS. ZMROCZEK: And --

25 MS. SAMPSON: The specifics.

1 MS. ZMROCZEK: That expands it a little bit,
2 but in opening what I told her as an officer of the
3 court that I would do is say, they will hear about
4 a back story and they will hear about background,
5 but that is it.

6 MS. SAMPSON: And I will be honest --
7 Ms. Taylor and I have already talked about this --
8 we understand that there might be information about
9 prior disputes. That is literally how we were
10 going to word it. And I would just -- because I
11 don't know that the details of the prior
12 disputes -- what will actually come out and when,
13 so I have asked her to only say prior disputes or
14 prior difficulties. Ms. Zmroczek, I don't have any
15 problem with her saying prior difficulty, prior
16 disputes. I just don't want any of that addressed
17 in opening and then we have to deal with it later
18 when we haven't dealt with it pretrial.

19 THE COURT: All right.

20 MS. ZMROCZEK: Okay, thank you. And I
21 think -- two more things. One, Mr. Volstromer and
22 our trial team, which apparently is anything now,
23 we have discussed it, Your Honor, and we at this
24 time, for strategic reasons, are waiving any claim
25 of his statement being involuntarily taken.

1 Obviously, I think that we can't waive the jury
2 charge, but -- and we are not waiving any jury
3 charge about it, but we are waiving any hearing
4 regarding statements made to Investigator Holdorf
5 and the initial responding -- and I can't say his
6 name either, Vadasz or -- I'm not quite sure --

7 MS. SAMPSON: You can just say the responding
8 officers.

9 MS. ZMROCZEK: The first guy.

10 THE COURT: Yes, okay.

11 MS. ZMROCZEK: And then the last thing, Your
12 Honor -- and I didn't even think about it -- I
13 didn't think about it until you read the indictment
14 because this indictment was done, I think it was
15 presented to the Grand Jury in 2016, and so
16 obviously the laws have changed significantly,
17 especially with inferred malice.

18 MS. SAMPSON: I wasn't going to -- are you
19 saying inferring malice from the use of a deadly
20 weapon?

21 MS. ZMROCZEK: So the way that it read -- and
22 it just may be something that maybe we need to look
23 at. I didn't even think about it, but -- and I'm
24 not quite sure what it said. All I heard was
25 express and implied -- no, I heard express and

1 implied malice and then a buzzer went off in my
2 head because of the most recent cases.

3 THE COURT: It just says --

4 MS. SAMPSON: Either express or implied
5 malice. It doesn't say --

6 MS. ZMROCZEK: It didn't go on to say because
7 of the use of a weapon?

8 MS. SAMPSON: No.

9 MS. ZMROCZEK: That's why I wrote it down to
10 ask.

11 MS. SAMPSON: No, it just literally says
12 malice is either express or implied.

13 THE COURT: It says by means of a gunshot.

14 MS. ZMROCZEK: That's -- and that's -- but
15 following that -- I didn't want to bring it up in
16 front of the jury because they don't even -- it
17 doesn't matter to them at that point, but I think
18 that that is something that we have to do before
19 the jury is sworn so I don't mess up.

20 MS. SAMPSON: I guess we could amend it, but,
21 I mean, I think it is a language amendment, not --

22 MS. ZMROCZEK: We would not object to an
23 amendment. We would waive any time issues, because
24 I'm the one who brought it up and, like I said, the
25 law has changed, I think it was just like in 2019,

1 so.

2 MS. SAMPSON: Recently.

3 THE COURT: So what is the amendment? You are
4 going to put the amendment on? You wanted the
5 amendment in front of the jury?

6 MS. ZMROCZEK: Yes, we can talk -- I think if
7 we want to talk about it so we are not just
8 haphazard, and then before we read it --

9 THE COURT: All right. So you want me --

10 MS. SAMPSON: I think this would clarify it,
11 if we just took out "by means of a gunshot," but I
12 need to go check the case law to make sure I'm not
13 misquoting what needs to be said, but I think what
14 I'm understanding is if it says "with malice
15 aforethought, either express or implied, and the
16 victim did die as a proximate result thereof"
17 Ms. Zmroczek would be okay with that, instead of it
18 saying "either express or implied by means of
19 gunshot" because of the case law. But I need to
20 check and make sure I'm not doing something I
21 shouldn't be doing.

22 THE COURT: All right. So let's -- and I can
23 re-read it to the jury the correct way.

24 MS. ZMROCZEK: I didn't want to draw attention
25 to it even more. And, honestly, I hadn't even

1 thought about it until you read it out loud. I
2 read the indictment.

3 THE COURT: I didn't think about it either,
4 because, I mean, I guess -- because I just
5 interpreted it to mean it was a gunshot, but not
6 the inference that it was an express --

7 MS. ZMROCZEK: That malice comes from --

8 MS. SAMPSON: Yes. And I'm not --

9 THE COURT: Yes. The way it is structured in
10 the text you can infer it that way.

11 All right, so if you all will just get me the
12 language, and when I give them the instructions in
13 the morning I will read the charge -- I'll read the
14 indictment.

15 MS. SAMPSON: And I guess we'll just have to
16 figure out -- normally -- well, I guess it depends
17 on the judge. Some judges send the indictment back
18 with them.

19 THE COURT: I don't.

20 MS. SAMPSON: Okay, you don't? So then we
21 don't have to worry about it.

22 THE COURT: Who sends it back?

23 MS. SAMPSON: I think Judge Hood sent the --
24 the last one I did, he sent the indictment back
25 with them.

1 MS. ZMROCZEK: I have had it done several
2 different cases.

3 MS. SAMPSON: I think Judge Hood sent it back.
4 The last trial I did with him, he sent the actual
5 indictment back.

6 THE COURT: I just send the verdict form back.

7 MS. SAMPSON: Fine by me.

8 And then lastly, I don't know -- there has
9 been allegations that -- about Mr. Pruitt having a
10 prior record. I don't again know if Ms. Zmroczek
11 plans on bringing that up.

12 MS. ZMROCZEK: I won't present it until we
13 have -- I'm not going to say anything in opening.
14 Again, that is -- I'm well aware of what the rules
15 are. If that is -- it may come up and it may come
16 in, I believe it will, Your Honor, but obviously
17 we'll be able to have discussion about it. I think
18 I need to see how the testimony is going to go from
19 the State's presentation. But I will not ask about
20 it, I will not say it, more importantly, until the
21 Court has ruled on it.

22 THE COURT: Yes, ma'am.

23 MS. SAMPSON: I have an objection to bringing
24 up victim's prior record, and so I'm putting that
25 on the record, but Ms. Zmroczek has said that she

1 doesn't plan on using -- stating it in opening or
2 bringing it up with the witness until we can have
3 that fleshed out if she plans on doing it at any
4 point. And so we have already discussed this, but
5 I need to put it on the record in case there is an
6 issue, that we did discuss it, she wasn't going to
7 bring it up. I do object to it.

8 THE COURT: All right. And so with those
9 issues let me just say, because of last week.
10 Y'all know I don't like to leave jurors sitting in
11 the jury room. If there is an issue -- I will ask
12 at the end of the day if there is an issue to take
13 up before -- like tonight. And let me go back and
14 preface that. I know there are some things that
15 come up overnight that you all cannot predict, but
16 if there is anything that we need to -- if there is
17 anything we need to take up, let me know and I will
18 bring the jurors in later, but especially with
19 COVID, you know, the least amount of time they stay
20 in the jury room the better off. And so if there
21 is some issue you think you are going to have, go
22 ahead and let me know so I can plan accordingly.

23 MS. ZMROCZEK: I don't.

24 THE COURT: I don't mind us hashing out the
25 issue, but, you know, maybe we will do it in the

1 evening where we can stay later or in the morning
2 we will start a little bit earlier as opposed to
3 the jury coming in at 9:30 and then we have to have
4 a 2-hour hearing.

5 MS. ZMROCZEK: And, Your Honor, I think if it
6 comes in, it is going to come in through my case in
7 chief, so I believe that I will be able to -- so I
8 can work on that and email everybody and we can do
9 it maybe tomorrow after -- at the end of the day or
10 something.

11 THE COURT: Sounds good.

12 MS. SAMPSON: I just wanted to put it on the
13 record in case --

14 THE COURT: No, that is fine. Last week the
15 jurors just, you know, every step of the way, every
16 morning there was a different issue we had to
17 handle.

18 MS. ZMROCZEK: And then just out of curiosity,
19 do you give Judge Hood's new implicit bias charge
20 at the beginning?

21 THE COURT: I don't know what you are talking
22 about.

23 MS. ZMROCZEK: I have a copy of it. He has
24 been -- all the trials I have had with him, which
25 was the last -- I think I just had one with him --

1 and he said that he started doing it, and so it
2 just -- I thought it was something that helps the
3 jury experience. I will send you a copy, of
4 course, and the State. I got it from his law
5 clerk.

6 MS. SAMPSON: I was in trial two weeks ago. I
7 don't remember what he said, so I would need to --
8 I just don't remember -- I would just need to see
9 it too.

10 THE COURT: So he gives it in his introduction
11 or what does --

12 MS. ZMROCZEK: It just talks about that we as
13 humans have implicit biases and not -- I think he
14 put it together from several law review articles
15 and Court Administration, so I'm not doing it
16 justice, which is why I will email it to you, but
17 it says just -- reminding jurors, again, to keep an
18 open mind and listen to the evidence. It is just
19 more artfully done than I would -- or the -- so I
20 will just forward it.

21 THE COURT: Send it to the other --

22 MS. TAYLOR: He said he had never heard of
23 implicit bias before, so that is why he started
24 giving the instruction.

25 MS. SAMPSON: You're right, he did say that,

1 in your case.

2 THE COURT: All right. Anything else?

3 MS. SAMPSON: I don't know of anything else.

4 THE COURT: Like I said, I know some things
5 come up overnight.

6 MS. ZMROCZEK: I think we have been able to
7 communicate pretty well.

8 THE COURT: All right.

9 (WHEREUPON, court adjourned for the
10 evening at 4:59 p.m.)

11 JUNE 15, 2021

12 (WHEREUPON, the trial resumed at
13 10:05 a.m.)

14 THE COURT: All right. Are we ready to bring
15 them in? Is there anything we need to take up?

16 MS. SAMPSON: Just a couple of matters, Your
17 Honor. I don't believe -- and just for the record,
18 I just want to make sure, I don't believe
19 Ms. Zmroczek renewed her Rule 5 for the record, but
20 we have turned over all discovery that we had. We
21 have continually given her everything that we had.
22 And I know I gave her my Reciprocal Rule yesterday.

23 The only other matter is Ms. Zmroczek had
24 requested to use some demonstratives in opening. I
25 believe one of them is a map.

1 MS. ZMROCZEK: And we are actually going to
2 move it into evidence.

3 MS. SAMPSON: Well, if she is going to move
4 the map in evidence, I don't have problem with that
5 one.

6 Then there were two other exhibits she wants
7 to use. One is a photograph of her client. The
8 other two are just some photographs of her client
9 with his child and the wife with the child. They
10 are from probably 20 years ago. And it would be
11 the State's position they are irrelevant. They can
12 see the Defendant. I understand she may want them
13 to see his actual family, but they are on the
14 witness list, so they are either going to be
15 called, and if they are not called, then they will
16 be in the courtroom. So it would be inflammatory
17 to show pictures of the birth of a child when she
18 is an infant when now she is 20 something years
19 old. It has nothing to do with this case. So we
20 would object to these photos.

21 MS. ZMROCZEK: Thank you. Sorry. So, Your
22 Honor, at this point I would like to go ahead
23 and -- I had it marked, the map, as Defense ID 1,
24 but since we are going to be using it during the
25 course of the trial -- and I understand the State

1 does not have an objection -- I would like to go
2 ahead and move it in.

3 THE COURT: All right. You said no objection
4 to Defendant's 1?

5 MS. SAMPSON: I mean, I don't -- I guess she
6 can move it into evidence at this point. I think
7 it probably has to come in through a witness or
8 something.

9 THE COURT: Yes. You probably need to bring
10 it in -- why don't you just leave it as ID?

11 MS. ZMROCZEK: Just leave it as ID?

12 THE COURT: And then we'll enter it in through
13 a witness.

14 MS. ZMROCZEK: Okay. Perfect.

15 THE COURT: But there is no objection to it
16 being used for demonstrative?

17 MS. SAMPSON: Correct, Your Honor.

18 MS. ZMROCZEK: And then I just labeled them 2
19 and 3 because I knew she had an ID. I just labeled
20 them 2 and 3 for ID.

21 THE COURT: All right. And how is this
22 relevant to --

23 MS. ZMROCZEK: Well, Your Honor, it is
24 relevant to the entire scene of his family and what
25 he was doing to protect his family.

1 THE COURT: Was the daughter there?

2 MS. ZMROCZEK: Yes.

3 THE COURT: At the time?

4 MS. ZMROCZEK: Yes.

5 MS. SAMPSON: But she wasn't an infant, Your
6 Honor. Those are pictures of her as an infant.

7 THE COURT: I mean, you don't have a more
8 recent picture with him and his daughter?

9 MS. ZMROCZEK: I don't, but I can bring them
10 in through him later.

11 THE COURT: All right.

12 MS. ZMROCZEK: But I just wanted to get these
13 marked, Your Honor.

14 THE COURT: I mean, she clearly doesn't look
15 anything like that any more, so. All right.

16 MS. ZMROCZEK: No, I understand. And then I
17 just wanted to make sure that you did make that
18 change on the indictment, right?

19 MS. SAMPSON: I don't know that we ever
20 confirmed what we needed to do with the indictment,
21 so I have not changed anything. However Your Honor
22 wants us to do it. I have a copy here, but I don't
23 actually have a stamped copy.

24 THE COURT: I have a stamped copy. So you
25 want me to just read to the jury that, crime of

1 murder. The indictment reads that: Mark Robert
2 Volstromer did, in Richland County, on or about
3 December 27, 2015, kill the victim, Keith Pruitt,
4 Jr., with malice aforethought, either express or
5 implied, and the victim did die as a proximate
6 result thereof?

7 MS. SAMPSON: I think that is fine, Your
8 Honor. The only thing you are leaving out is, By
9 means of gunshot, because there is no implication
10 just by using a gun that is malice. I think that
11 was the issue. And I don't have a problem with
12 that since the language changed after the
13 indictment was made.

14 THE COURT: All right. And then she also
15 asked me to give the implicit bias charge. I have
16 it from Judge Hood. Have you seen it?

17 MS. SAMPSON: I have not.

18 THE COURT: It basically says: Do not decide
19 the case based on implicit biases. Everyone,
20 including me, has feelings, assumptions,
21 perceptions, fears, and stereotypes, that is
22 implicit biases, that we may not be aware of.
23 These hidden thoughts can impact what we see and
24 hear, how we remember what we see and hear, and how
25 we make important decisions. Because you are

1 making very important decisions in this case, I
2 strongly encourage you to evaluate the evidence
3 carefully and to resist jumping to conclusions
4 based on personal likes or dislikes,
5 generalizations, gut feelings, prejudices,
6 sympathies, stereotypes, or biases. The law
7 demands that you return a just verdict, based
8 solely on the evidence, your individual evaluation
9 of that evidence, your reason and common sense, and
10 these instructions.

11 MS. SAMPSON: The State has no objection to
12 that, Your Honor.

13 THE COURT: All right. I think we are ready
14 to bring them in.

15 MS. SAMPSON: The only thing, I did not
16 provide the Court with a signed copy of my
17 requested voir dire and pretrial motions. I
18 forgot. I don't know if you want to make them
19 Court Exhibits or just give them to the clerk. I
20 don't really care.

21 THE COURT: You can give them to the clerk.

22 MS. SAMPSON: That would be it from the State,
23 Your Honor.

24 THE COURT: All right. Anything else prior to
25 bringing them in?

1 MS. ZMROCZEK: Nothing further, Your Honor.

2 THE COURT: All right. Let's bring them on
3 in.

4 And, Ms. Sampson, I understand you are not
5 wearing a mask, but your other people need to put
6 on masks.

7 MS. SAMPSON: Oh, I can put it on. We are all
8 vaccinated, but we can put them on.

9 THE COURT: Yes, I know, but the problem is, I
10 can't get into asking the jurors to wear them if
11 y'all don't have them on.

12 MS. SAMPSON: I will say this. When we were
13 in trial before, Judge Hood just told them that we
14 were allowed not to wear masks while were at the
15 table.

16 THE COURT: Yes, but I am not talking about
17 you and the lawyers, I'm talking about everybody
18 else sitting behind you.

19 MS. SAMPSON: I thought you meant lawyers.

20 THE COURT: No. I don't want the jurors to be
21 saying, Why is she making us wear them and these
22 others aren't?

23 MS. SAMPSON: So we can not wear them is what
24 you are saying? We are good to not wear them?

25 THE COURT: I would rather if you did wear

1 them, but if you all are talking, you can take them
2 down. I'll let them know.

3 MS. SAMPSON: It is just hard to whisper.

4 THE COURT: No, no, you can take them off when
5 you are speaking.

6 (WHEREUPON, the jury came into open
7 court at 10:12 a.m.)

8 THE BAILIFF: The jurors are all present, Your
9 Honor.

10 THE COURT: All right, thank you.

11 Good morning, ladies and gentlemen of the
12 jury. I hope that you had a restful evening.

13 At this time we are ready to begin the case of
14 the State of South Carolina v. Mark Volstromer.

15 Ladies and gentlemen of the jury, just a
16 couple of housekeeping things before I give you
17 your introductory charge. The witnesses, you'll
18 see them, I explained everybody has to keep their
19 mask on over their face and their nose. You will
20 see the witnesses take their mask off so you can
21 hear them and see them as they testify. Also, the
22 attorneys will be working at their table and
23 talking to each other, so you will see them take
24 their masks off. And you will see me take it off
25 when I'm speaking or up here working with my law

1 clerk.

2 So, but we will take a break -- you are
3 probably saying, When do we get to take ours off --
4 we'll take break in the morning and then we'll take
5 a break in the afternoon. If anyone needs to go
6 downstairs and get some fresh air, just let the
7 bailiffs know. And I don't know if we have any
8 smokers, but we will take that morning break and
9 afternoon break, and then we'll take a lunch break.
10 And obviously then you can take your mask off when
11 you need to go to lunch. But if anyone needs an
12 opportunity just to take the mask down and breathe,
13 because I know if you are sitting here for a long
14 period of time it is a bit much. So just let the
15 bailiff know when you take a break and they'll let
16 you do that. But you'll see, like I said, you'll
17 see the lawyers pulling theirs down when they are
18 talking. And they are not violating any of the
19 court rules.

20 But at this time we are ready to start. I
21 will ask the clerk to swear the jurors.

22 THE CLERK: Ladies and gentlemen, please stand
23 and raise your right hand to be sworn. After this
24 oath, please acknowledge by answering, I do.

25 Do you swear or affirm that you shall well and

1 truly try and true deliverance make between the
2 State of South Carolina and the Defendant at bar,
3 whom you will have in charge, and a true verdict
4 give, according to the law and evidence, so help
5 you God?

6 THE JURY: I do.

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

8 (WHEREUPON, the jury was seated.)

9 THE COURT: All right, ladies and gentlemen of
10 the jury, what I now say is intended to serve as an
11 introduction to the trial of this case. These
12 remarks are not a charge on the law in this case.
13 I will instruct you on the law applicable to this
14 case at the end of the trial before you retire to
15 consider your verdict. This is merely an
16 explanation of the procedure that we will follow in
17 this trial of this case so that you may better
18 understand what may be happening. You are not to
19 take any notes during the trial.

20 The Defendant in this case is charged by
21 indictment and filed in this court with the crime
22 of murder. And I will read this to you again.

23 The allegations in this indictment, the State
24 of South Carolina, County of Richland, Court of
25 General Sessions. The indictment number is

1 2016-GS-40-2355. And it reads -- the allegations
2 read that:

3 Mark Robert Volstromer did, in Richland
4 County, on or about December 27, 2015, kill the
5 victim, Keith Pruitt, Jr., with malice
6 aforethought, either express or implied, and the
7 victim did die as a proximate result thereof, all
8 in violation of Section 16-3-10, as amended.

9 Ladies and gentlemen of the jury, the elements
10 of the crime of murder will be explained to you
11 later. Once again, the indictment is simply the
12 charge by which the case is brought into court, and
13 it is not in any sense evidence of any of the
14 allegations it contains.

15 The Defendant in this case has pled not guilty
16 to this indictment. The State therefore has the
17 burden of proving each of the elements of the
18 indictment beyond a reasonable doubt. And it will
19 be your duty, ladies and gentlemen of the jury, to
20 decide whether the State has met that burden.

21 Your purpose as jurors is to find and
22 determine facts. You are the sole judges of the
23 facts. If at any time I make any comment regarding
24 the facts, you must disregard it. You are to
25 determine the facts from the testimony you hear and

1 the other evidence introduced in court. It is up
2 to you to determine the emphasis which you feel may
3 properly be drawn from the evidence. It is
4 especially important that you perform your duty of
5 determining the facts diligently and
6 conscientiously, because ordinarily there is no way
7 to correct an erroneous determination of the facts
8 by a jury.

9 On the other hand, and with equal emphasis,
10 the same law that makes you the judges of the fact
11 makes me the judge of the law. The law as given by
12 the Court is the only law you may consider. You
13 must accept and follow the law even though you may
14 disagree with it. I cannot tell you what the facts
15 are, and you cannot disagree with me about what the
16 law is or what the law should be. Your job is to
17 take the law as I give it to you and apply it to
18 the facts as you find them from the testimony of
19 the witnesses and any other evidence that is
20 introduced. After doing that, you will render your
21 verdict, a verdict under the solemn oath that you
22 just took as jurors.

23 Ladies and gentlemen of the jury, until I tell
24 you that you may begin to deliberate, you must not
25 discuss this case with anyone, including your

1 fellow jurors, friends, family members, and anyone
2 involved in this case. The attorneys and parties
3 in this case have been advised they are not to talk
4 to you at all. So if you see anyone involved in
5 the case and they do not even say hello, they are
6 not being rude or unfriendly, they are just
7 following my instructions.

8 You must decide this case solely on the
9 evidence presented here in this courtroom. That
10 means that during the trial you must not conduct
11 any independent research about this case, the facts
12 of the case, the evidence presented in the case, or
13 the people or organizations involved in any way in
14 the case.

15 Please do not try to find out information from
16 any source outside the courtroom. In other words,
17 you must not look at dictionaries or other
18 reference materials, search the internet, websites,
19 or blogs, or use any other electronic tools to get
20 information about this case or to help you decide
21 the case. You may not use computers, telephones,
22 cell phones, smart phones, tablets, the internet,
23 or other tools of technology with communication
24 capabilities at any time while you are in the
25 courtroom or during your deliberations.

1 During a break for meals and overnight, if
2 necessary you may use these devices, however, you
3 must not use these devices to communicate with
4 anyone about the case until the case is over.

5 This means you must not use phone calls,
6 e-mails, text messages, instant messages, Twitter,
7 or any blog, chat room, or website, including
8 Facebook, Instagram, Google Plus, MySpace -- I
9 don't think it is still around, but maybe so -- or
10 any other social media, websites, to send or
11 receive information about this case. This includes
12 information about a party, a witness, an attorney,
13 or a court officer, news accounts about the case,
14 research, or any topics raised, any topics you may
15 think will be helpful in deciding the case, or any
16 testimony presented by any witness.

17 Once again, please do not read, listen to, or
18 watch any news report about this case. This
19 includes anything that may be in the newspaper or
20 on the internet, the radio, or television. You
21 must not consider anything you may have read or
22 heard about the case outside the courtroom, whether
23 before or during the trial. Information on the TV
24 and the radio and the internet or from other
25 sources might be wrong or incomplete. In our

1 judicial system it is important that you are not
2 influenced by anything or anyone outside of this
3 courtroom. If you become aware of another juror's
4 violation of these instructions, please let the
5 bailiff know immediately. It is important that you
6 keep an open mind and not decide any issue in this
7 case until all of the evidence has been presented,
8 the parties have made their closing arguments, and
9 I have instructed you on the law in this case. It
10 is your solemn responsibility to determine the
11 guilt or innocence of the Defendant. And your
12 verdict must be based solely on the evidence as it
13 is presented to you in this trial and the law as I
14 instruct you during and at the close of this trial.

15 In just a moment the Solicitor will make what
16 is called an opening statement in which the
17 Solicitor will explain to you the issues in the
18 case, or at least what the Solicitor believes are
19 the issues in the case. The attorney for the
20 Defendant may also make an opening statement,
21 although she is not required to do so. What the
22 attorneys tell you during their opening statements
23 is not evidence in this case, it is only their
24 contention as to what the issues are. The evidence
25 in this case will be presented to you by the

1 testimony of sworn witnesses from the witness stand
2 and/or exhibits that may be introduced into
3 evidence.

4 From time to time during the trial, you may
5 hear one of the lawyers say something like, Your
6 Honor, I believe we have a question of law or a
7 matter of law to discuss with you. Or, Your Honor,
8 may we approach the bench? Or sometimes I myself
9 might find it necessary to excuse you from the
10 courtroom for a short while so the attorneys and I
11 can discuss a matter of law. The reason for this
12 is because you are the judges of the facts in this
13 case, and sometimes when I am discussing matters of
14 law with the attorneys, it may be necessary for me
15 to make some comment as to the facts in connection
16 with ruling on whether a particular law applies or
17 not.

18 I am not supposed to tell you what I think the
19 fact are, so I will excuse you from the courtroom
20 while these discussions take place so that you will
21 not be influenced by anything that I may say or do
22 in connection with the facts. You must decide
23 whether or not the testimony of the -- ladies and
24 gentlemen of the jury, you must decide whether or
25 not the testimony of the witnesses is believable.

1 It is my responsibility to rule as a matter of law
2 as to whether certain testimony is admissible at
3 all or not. But once the testimony is admitted,
4 whether or not you believe it is solely for you to
5 determine.

6 In deciding whether to believe a witness, you
7 have the right to consider the interest of any
8 witness, the bias of any witness, the prejudice of
9 any witness, the opportunity for the witness to
10 have seen the matters and things about which the
11 witness may testify, and the way the witness acts
12 on the witness stand. You have a right to consider
13 anything that is in the record that will help you
14 evaluate the testimony of the witnesses. That
15 means it is your duty to pay close attention to
16 these witnesses, to observe the witnesses, to
17 listen to the witnesses and pay close attention to
18 the Court and the attorneys.

19 Please do not let your thoughts wander, but
20 give strict attention to the testimony in this case
21 so that at the end of all of the testimony, after
22 the arguments of counsel and the charge on the law
23 by the Court, you will be able to apply the law to
24 those facts and thus render a verdict.

25 Ladies and gentlemen of the jury, I'd like to

1 discuss with you -- I'm sure some of you have heard
2 of implicit biases. And implicit biases, everyone,
3 including me, has bias, assumptions, perceptions,
4 fears, and stereotypes, that is, implicit biases,
5 things that we may not be aware of. These are
6 hidden thoughts that could impact what we see and
7 hear, how we remember what we see and hear, and how
8 we make important decisions. Because you are
9 making very important decisions in this case, I am
10 strongly encouraging you to evaluate the evidence
11 carefully and to resist jumping to conclusions
12 based on personal likes or dislikes,
13 generalizations, gut feelings, prejudices,
14 sympathies, stereotypes, or biases. The law
15 demands that you return a just verdict based solely
16 on the evidence, your individual evaluation of that
17 evidence, your reason and common sense, and these
18 instructions.

19 Ladies and gentlemen, at this time I will, in
20 order to preserve everyone's rights, I will give
21 the parties an opportunity to object to anything
22 that I have said.

23 Any objections or exceptions from the State?

24 MS. SAMPSON: No, ma'am.

25 THE COURT: Any objections or exceptions from

1 Defense?

2 MS. ZMROCZEK: None, Your Honor.

3 THE COURT: All right, thank you.

4 Ladies and gentlemen of the jury, at this time
5 we will begin with opening statements. Please turn
6 your attention to the attorneys as they open, and
7 then I think we are going to hear first from
8 Ms. Taylor, on behalf of the State, and then you
9 will hear from Ms. Zmroczek, on behalf of the
10 Defendant.

11 MS. TAYLOR: May it please the Court?

12 THE COURT: Yes, ma'am.

13 OPENING STATEMENT

14 MS. TAYLOR: I'm done. I told you, I'm done.

15 Those were the words of the Defendant, Mark
16 Volstromer, seconds before and after he shot and
17 killed his neighbor on a Sunday afternoon on
18 December 27th, 2015.

19 This is a case about boundaries. This case
20 centers around actual physical property boundaries
21 and societal and legal boundaries that are crossed
22 when a person decides to unlawfully take matters
23 into his own hands and inflict vigilante justice
24 onto another person.

25 The definition of a vigilante is a person who,

1 without legal authority and unlawfully, takes the
2 law into his own hands.

3 The Defendant, Mark Volstromer, decided to act
4 as a vigilante when he unlawfully and without legal
5 justification shot and killed his own neighbor,
6 62-year-old Keith Lanny Pruitt during a verbal
7 argument over property boundaries.

8 Ladies and gentlemen, my name is Stephanie
9 Taylor, and I am an Assistant Solicitor at the
10 Fifth Circuit Solicitor's Office. And a Solicitor
11 is what we call a Prosecutor here in South
12 Carolina. Along with my co-counsel, Deputy
13 Solicitor April Sampson, it is our job to prosecute
14 crimes that happen in Richland County. We
15 represent the State of South Carolina in this case.

16 And we will prove to you beyond a reasonable
17 doubt that on the afternoon of December 27th, 2015,
18 two days after Christmas, the Defendant, Mark
19 Volstromer, committed the crime of murder when he
20 armed himself with a gun, exited his house,
21 inserted himself into a verbal argument that his
22 wife was already having with the victim and the
23 victim's friend over a property boundary dispute.

24 The Defendant then started arguing with these
25 two men, and the Defendant reaches in his back

1 pocket, he pulls out that gun, and he walked
2 towards the victim, and he shoots and kills the
3 victim who was standing in the road.

4 The Defendant had no legal justification to
5 use deadly force against the victim that day.

6 Now, over the next few days you will hear from
7 a number of witnesses. Now, this case is not
8 heavily built around forensic science like you may
9 see on TV shows like Law and Order and CSI. The
10 majority of the evidence in this case will be in
11 the form of witness testimony. And it is your job
12 as the jury to judge the credibility, the biases,
13 and the motive of the witnesses that testify in
14 this trial.

15 And the evidence that we will present to you
16 in this trial will show that on the afternoon of
17 December 27th, 2015, the Defendant's wife, Barbara
18 Volstromer, was outside in their yard taking
19 pictures while the Defendant was inside of their
20 house.

21 The victim, 62-year-old Keith Pruitt, who went
22 by the nickname of Lanny, was a passenger in his
23 friend Rick Holten's truck. The victim and Rick
24 were driving down this road called Megan Court that
25 bordered the Volstromers' property.

1 Now, the victim lived on this road. So the
2 victim and the Volstromers were neighbors in this
3 rural area in Eastover. And this is one of those
4 country roads where there is one way in and one way
5 out. So in order for the victim to get to his
6 house, he always had to drive past the Volstromer
7 property. And in order to leave from his house, he
8 always had to drive down this road and pass the
9 Volstromers' property.

10 Now, the victim and the Volstromers did have
11 some prior disputes centered around petty issues
12 like most neighbors have. And it was clear that
13 neither of them liked each other, but none of those
14 prior disputes ever ended like what happened on
15 this particular day.

16 Rick, who was driving the truck, stopped the
17 truck in the road and he begins to talk to Barbara
18 Volstromer. Well, Barbara and Rick get into an
19 argument about who owns a part of the road.

20 And the Defendant, who was inside the house,
21 hears this verbal argument. He gets a .380 pistol
22 from inside the house and he arms himself with that
23 pistol, he walks outside, and he joins his wife in
24 the yard. The Defendant then starts arguing with
25 the two men in the truck and whether they paid

1 property tax or not on this particular road, as if
2 it is any of his business whether they do or they
3 don't. I mean, who does he think he is, the
4 gatekeeper of this particular road?

5 The victim then gets out of the truck and
6 walks to the back of the truck and stands in the
7 road. And this argument between the Defendant, the
8 Defendant's wife, and the victim continues. And
9 photos will show that the location where the victim
10 was standing in the road was bordered by this strip
11 of grass, and the strip of grass was bordered by a
12 tall and long white fence that was owned by the
13 Volstromers. And the Volstromers were standing on
14 the other side of this white fence while they were
15 having this argument with the victim.

16 The Defendant says to the victim, Come on,
17 walk over here. And, remember, the Defendant is
18 armed with that .380 gun. The victim's reaction to
19 the Defendant telling him to come over there is the
20 victim reaches into a cooler in the back of the
21 truck and gets a beer. The victim never tries to
22 come across that fence onto the Volstromers'
23 property.

24 The argument continues. Barbara Volstromer,
25 the Defendant's wife, starts marching towards this

1 white fence closer to where the victim is standing
2 in the road, and she continues to argue with them.
3 And, oh, yes, by the way, she is also armed with a
4 gun.

5 While Barbara is marching towards the fence
6 and arguing with the victim and carrying on, the
7 Defendant reaches in his back pocket and he pulls
8 out that .380 gun. He points it at the victim, who
9 was still standing in the road and has not tried to
10 come across that fence. The Defendant walked
11 towards him pointing that gun, says to the victim,
12 I'm done, and shoots him. And immediately after
13 the Defendant shoots the victim, he says to the
14 victim, I told you, I'm done.

15 Then the Defendant turns to his wife and
16 calmly says to her, Yeah, I shot his ass, like he
17 was talking about a fly that had been buzzing
18 around and he finally killed this fly.

19 The Defendant walked back into his house and
20 started drinking a beer. The Defendant never comes
21 back outside to check on the victim. The Defendant
22 never comes back outside to try to give aid to the
23 victim to try to save his life. Mark Volstromer
24 wanted Keith Pruitt dead, and he accomplished that.

25 What I forgot to tell you guys, this entire

1 sequence of events was captured on video. It was
2 recorded on a video surveillance system that was
3 owned by the Volstromers. And this video
4 surveillance system also had a microphone on it
5 that provides audio for what is seen in this video.
6 And you all will get to watch and hear what is on
7 this video. There are two people who tells
8 witnessed the shooting and the verbal argument that
9 led up to the shooting. And you will hear these
10 two people's names throughout this trial, but you
11 won't actually see them testify. One of those
12 witnesses is Rick Holten, who was the victim's
13 friend and whose truck the victim was riding in on
14 this day. Unfortunately, Mr. Holten has died since
15 this incident from matters unrelated to this
16 particular case. The other witness that you will
17 not see testify here today is the victim, Keith
18 Pruitt, because the Defendant killed him.

19 Members of law enforcement that interacted
20 with and interviewed the Defendant the day of the
21 incident will testify. You will hear from Joseph
22 Vadasz, who was the first deputy to respond to the
23 scene. And he can tell you what he observed about
24 the Defendant and the Defendant's wife, that he
25 observed them acting nonchalant right after this

1 shooting had just happened. He will also tell you
2 that the victim freely and openly confessed to him
3 that he shot the victim. And he will also tell you
4 that when he talked to the Defendant, the Defendant
5 never said to him that the victim was armed with
6 any type of weapon during this incident, that the
7 Defendant never said that the victim physically
8 threatened him or his wife during this incident.

9 You will also hear from Investigator Travis
10 Holdorf, who is sitting right there. He was the
11 lead investigator on this case. And he formally
12 interviewed the Defendant and got a written
13 statement from him a few hours after the shooting
14 happened. And in this written statement the
15 Defendant says, quote: I had my gun in my back
16 pocket. I pulled it out. He said, What are you
17 going to do, shoot me? He was just cocky. I think
18 he said something to me, and I shot him.

19 Those are the Defendant's own words about the
20 reason he shot the victim that day.

21 And he also tells Investigator Holdorf that
22 the victim didn't do anything to threaten him
23 during that incident, all the victim did was reach
24 into a cooler.

25 The Defendant is charged with murder. South

1 Carolina law defines murder as the killing of
2 another -- of a person, with malice aforethought,
3 either express or implied. Well, that sounds like
4 a short definition, but what does malice mean?
5 Malice is hatred, ill will, or hostility towards
6 another person. It is the intentional doing of a
7 wrongful act without just cause or excuse with the
8 intent to inflict an injury or under circumstances
9 where the law will infer an evil intent. Malice
10 can be inferred from conduct and circumstances that
11 are so reckless as to indicate a total disregard
12 for human life.

13 Now, malice aforethought does not have to
14 exist in the Defendant's mind for any particular
15 amount of time. Malice has to exist right before
16 the act is committed and at the time the act is
17 committed. Although the Defendant may not look
18 like an evil person, he became evil when he made up
19 his mind and decided to kill his neighbor because
20 he was done dealing with him.

21 Earlier I mentioned to you that, as the State,
22 it is our job to prove this case to you beyond a
23 reasonable doubt. Well, what does that mean?
24 Proof beyond a reasonable doubt is proof that
25 leaves you firmly convinced of the Defendant's

1 guilt.

2 Now, the law does not require us to prove the
3 Defendant's guilt beyond all doubt or any doubt or
4 every doubt, just a reasonable doubt, because there
5 are very few things in this world that we can prove
6 with absolute certainty. But if after hearing and
7 considering all the evidence presented in this
8 trial you are firmly convinced that the Defendant
9 is guilty of the crime that he is charged with, you
10 must find him guilty.

11 At the end of the trial, after all the
12 evidence has been presented, you all will have to
13 decide the Defendant's guilt or innocence. And I
14 submit to you that the evidence will show that the
15 Defendant was annoyed and he was tired of having
16 Keith Pruitt as his neighbor. So he decided to act
17 as a vigilante and fix this problem himself and
18 remove this nuisance neighbor from his life.

19 The Defendant's actions that day were not
20 lawful. They had -- they were not justified. The
21 Defendant had no legal justification to use deadly
22 force against the victim that day. Verbal
23 arguments, words, and disagreements do not justify
24 murder.

25 I ask that you hold the Defendant, Mark

1 Volstromer, responsible for the decisions he made
2 on that Sunday afternoon on December 27th, 2015,
3 and find him guilty of the murder of Keith Lanny
4 Pruitt.

5 MS. ZMROCZEK: Thank you, Your Honor. May it
6 please the Court?

7 THE COURT: Yes, ma'am.

8 OPENING STATEMENT

9 MS. ZMROCZEK: To label the tragic events of
10 that day as a property dispute is to call the
11 events of September 11th a plane crash. Trauma,
12 terror, and threats. I want to say that to you
13 again. Trauma, terror, and threats.

14 Ladies and gentlemen, what you are going to
15 learn about over the next few days that we are
16 together is the trauma suffered by Mark, his wife
17 of at that time 20 years -- 19 years, and his
18 16-year-old daughter. You are going to hear how
19 they were terrorized by not just Mr. Pruitt, but
20 his whole army in that neighborhood.

21 One of the things as jurors we show a lot of
22 pictures and videos and especially every -- each
23 and every one of you individually is important.
24 And I'm trying not to run over the court reporter.
25 And so it is hard for me to really interact to make

1 sure that everybody sees and hears and understands
2 why we are here. So I'm going to show you what has
3 already been marked for ID as Defendant's Number 1.
4 This is one of the many pieces of evidence that
5 you'll get to take back there. Also the video,
6 the surveillance system that Mark and his family
7 were forced to put up because the police weren't
8 helping them.

9 The area that we are talking about, 193 feet
10 between houses. We are talking about big areas of
11 property. In 1995, Mark bought this land. And
12 that land doesn't become his property. He built it
13 into a home. You'll hear how Mark and his wife got
14 married in the room that they now eat dinner inside
15 on that property. How **Daughter** at the time, their
16 16-year-old daughter, was born, and that is the
17 only home she has ever known. They played croquet.
18 They had a pool. They had a beautiful yard. And
19 in 2015 all of that started to change. Eight
20 months of terror, eight months of threats,
21 traumatizing, traumatizing the family. And you'll
22 get to hear them. Thankfully the video doesn't
23 just catch portions of words, you'll get to hear
24 all the words. You'll get to hear the threats.
25 You'll got to feel what it sounds like when someone

1 said, I got something for you. I'm the devil.
2 You'll get to hear it.

3 When you hear how quickly that changes and
4 this working class American dream now had become a
5 nightmare in the matter of eight months boiled down
6 into 49 seconds -- 49 seconds. When you hear that
7 gunshot the first time, as you jump, it is
8 shocking. It is jarring. And then once you can
9 get past that gunshot and you can listen to the
10 words and you can listen to the evil. Ms. Taylor
11 and I agree on one thing, there was evil that day.
12 But I think you'll be surprised to hear where it
13 comes from.

14 Mark Volstromer, you'll get to hear from him.
15 This man never had a speeding ticket, never been
16 arrested, and is now facing a murder charge for
17 defending himself, his wife, and his 16-year-old
18 daughter from the evil that was attacking them.

19 We don't need gunshot residue. We don't need
20 a pathologist. We don't -- let me be very clear.
21 Mark did pull that trigger. And he pulled that
22 trigger one time to stop the threat of Lanny Pruitt
23 and his partner Ricky Holten.

24 Judge Benjamin is going to provide you with
25 the law on self-defense, the Defense of others, the

1 defense of habitation. In this case, the others
2 being his wife of now 25 years and his daughter
3 **Daughter**. And you'll learn about the events, the
4 timeline of terror that comes, culminates in 49
5 seconds.

6 You'll also hear that there was a property
7 issue. The property issue was between Barbara and
8 the county. This road, one way in, one way out, a
9 country road, Megan Court, a 12-foot road, and it
10 serviced seven driveways. And it was a private
11 road. And it was a private road that when it
12 rained would flood and people would come flying
13 down. And, yes, she was out there taking pictures
14 to show the county why they needed to take over the
15 road and maintain it because the potholes were
16 devastating to this road. And you'll hear foul
17 language from Barbara because this was her -- this
18 was her issue. Mark owned and continues to own his
19 own garage business since 1988. He installs garage
20 doors. That is what he does for a living. She
21 helped with the paperwork, and she raises their
22 daughter. She loved tending to the yard and
23 building her property, making this land a home.

24 There is no property dispute. This is not
25 about a property dispute. You'll get to hear --

1 you'll get to hear how those neighbors knew how
2 passionate she was about it and how they could push
3 her buttons and how they could say things to her
4 like, That is my fence. That is my fence. They
5 knew that that would upset her.

6 Some of the questions I hope you ask yourself
7 and the State is, if they use that road every day
8 and just minding their own business going home,
9 then why did they stop and why did they start
10 terrorizing her?

11 Ms. Austin and I will bring you credible
12 evidence that can be corroborated with surveys,
13 with photos, with videos. Again, Judge Benjamin
14 has told you, and she will tell you again, we don't
15 have the burden, we don't have to do that. She
16 told you the State has to prove their case beyond a
17 reasonable doubt. But not only that, they have to
18 disprove self-defense beyond a reasonable doubt.
19 So what they have to prove to you, they have to
20 prove to you beyond a reasonable doubt that this
21 action was not in self-defense or the defense of
22 others or their habitat.

23 When you hear and see all the evidence, there
24 will be no doubt. There will be many reasons to
25 doubt that Mark had malice in his heart. Malice is

1 a legal word for a depraved heart, ill will,
2 hatred. We challenge you to look for it, to find
3 it. And where you find it will surprise you
4 because there was evil, and you'll hear about the
5 devil in this case, and when you see it and you
6 hear it, you remember where it came from, because
7 it is not from Mark.

8 Judge Benjamin will tell you that if there is
9 no malice, there is no murder. She will tell you
10 the State has the burden of proving it. Make them
11 prove it. Make them show you where the malice is,
12 because it is not there. And then make them tell
13 you that the terror and the trauma and the threats
14 weren't justified by Mark's actions.

15 On that day, he was protecting himself, his
16 wife and his child in the home that they had built
17 and lived on for 19 years. He faced the devil.
18 Common sense tells you that there are at least two
19 sides, at least two sides to every story. Common
20 sense tells you that we need to examine the
21 totality of the circumstances. And that is why a
22 lot of this evidence will be presented. Not just
23 the 49 seconds.

24 Reason and common sense. And you are going to
25 hear the word reason a lot. What is reasonable?

1 What is reasonable doubt? What would a reasonable
2 person do? You will hear me ask the officers about
3 how they make their decisions and their reasons for
4 doing them.

5 Ms. Austin and I are confident in your ability
6 to do this, which is why we were carefully choosing
7 you yesterday, because each and every one of you
8 bring your own common sense to this case.

9 You'll hear about the reasonable steps that
10 the Volstromers took to make this stop. And you'll
11 hear how those steps were ignored. They are the
12 ones that put the camera system up there because
13 they had to because no one would listen to the
14 terror and the threats.

15 Ask yourselves these questions and just
16 imagine that this tragedy could have been avoided.
17 No doubt it is a tragedy. Any time there is a loss
18 of life it is tragic. And Mark has to live with
19 that every day. And you'll get to hear about that
20 from the stand.

21 But two words don't make murder. Forty-nine
22 seconds and eight months of trauma, of terror, and
23 threats.

24 And then you'll get to evaluate the evidence.
25 That is why our jury system is so, so precious,

1 because you get to look at that evidence.

2 The State tells you they are going to show you
3 and prove to you that Lanny was just reaching a
4 cooler in the back of the truck to get a beer.

5 When the judge instructs you about credibility
6 and bias, and things like that, look at that
7 evidence. You'll get to see it, get to see it for
8 yourself. And you'll get to see Mark getting out
9 of that truck. I guarantee he reaches for
10 something in the back of the truck box, it is not a
11 cooler, and put it right in his back pocket as he
12 is telling Mark, Remember what I told you last time
13 I saw you? And you'll get to hear what he tells
14 him. And then you see Mark just standing there
15 watching his wife. Watching his wife. And then
16 you'll see her go forward and you'll see Mark go
17 sideways to step in front of her.

18 And when Lanny tells him that he has something
19 for him, darn right he takes out his lawfully owned
20 gun. And then when Lanny makes that move around --
21 you'll see it, we will show it to you -- when he
22 makes that move, not only was he justified in that
23 49 seconds, but for the 8 months leading up to it.
24 You will see that malice, the evil intent existed
25 with Lanny Pruitt and his partner Rick when they

1 drove up onto that fence and they started
2 threatening Barbara, with their 16-year-old
3 daughter inside windows of their property looking
4 out watching all of this transpire.

5 We are going to ask you to evaluate all of
6 these things to understand the trauma and the
7 terror. And you'll hear the threats that Mark and
8 Barbara and **Daughter** endured. And when you do
9 that, we will ask you in a few days to reach the
10 legal, the just, the proper verdict, and find Mark
11 not guilty.

12 Thank you.

13 THE COURT: All right. Are you ready to call
14 your first witness?

15 MS. SAMPSON: Yes, ma'am. The State calls
16 Sampson Parker.

17 THE BAILIFF: Come forward and be sworn.

18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, raise your right, and face the clerk for me,
21 sir.

22 (Witness complies.)

23 THE CLERK: Do you swear or affirm the
24 testimony you shall give this court to be the
25 truth, the whole truth, and nothing but the truth,

1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. Please have a seat in
4 witness stand, and state your full name for the
5 record.

6 (Witness seated.)

7 THE WITNESS: Sampson Lindburg Parker, III.

8 SAMPSON L. PARKER, III,

9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. SAMPSON:

12 Q Good morning.

13 A Good morning.

14 Q Where are you currently living?

15 A Harriman, Tennessee.

16 Q And how long you lived there?

17 A Just over four years.

18 Q What do you do there?

19 A I work in a wood mill now. We make oriented strand
20 boards, products for the building industry.

21 Q And prior to that where did you work?

22 A Columbia Fire Department.

23 Q How long did you work for the fire department?

24 A Just over 12 years.

25 Q And can you tell the jury kind of how you

1 progressed through the fire department?

2 A I started as a firefighter downtown fire station on
3 Station 13 in Eau Claire. I went out to Station 29
4 off of Garners Ferry Road out behind Mr. Bunky's.
5 Then Northeast Columbia, Station 27, driving an
6 engine. And then I went back to Station 29 behind
7 Mr. Bunky's, where I remained for the remainder of
8 my time with the Columbia Fire Department.

9 Q And what was your position?

10 A On the date of the call?

11 Q Yes?

12 A I was captain of Rescue 4.

13 Q How do you get to be captain? You didn't just
14 start as captain?

15 A No, I started as a firefighter. You do your time
16 as a firefighter. You have to do the training and
17 have the signature of your captain and your chief
18 that you are ready to move up to senior
19 firefighter. Once you completed all the training,
20 you have those signatures, they made you senior
21 firefighter, which meant you were ready to start
22 driving fire apparatus, pumping engines on calls.
23 Then at that point you were able to fill in for an
24 engineer if he was off or if there was an opening
25 somewhere else you could be moved to a location

1 where it would be your responsibility to check the
2 apparatus, drive it, pump it, operate it.

3 Then you go to engineer. You go to engineer.
4 There is training classes. There is a written
5 test. There is an oral interview board and a pump
6 test that everybody has to go through. They give
7 you pump calculations that you have to figure.
8 There are scenarios that they give you. You have
9 to figure out calculations, you have to set your
10 truck up correctly for the scenario that you were
11 given. It is just an opportunity to prove that you
12 have the ability to operate the equipment.

13 Q And then after you became an engineer, the next
14 step is captain?

15 A The next step captain. It is a lot of the same.
16 A lot of training classes that you have to have
17 taken, successfully pass. There is a written test,
18 oral interview boards. And I believe that is it.

19 Q Did you receive any type of medical training while
20 you are a firefighter?

21 A Yes.

22 Q Can you tell the jury about that?

23 A When I -- when we started, it was the -- I'm trying
24 to remember what they call it. It is -- I mean, it
25 is basic first aid. It is basic life support, CPR,

1 Heimlich maneuver, bandaging. It is nothing that
2 is too in-depth. First Responder. That is the
3 name of it. First Responder training is what they
4 call it. We did have some people with the fire
5 department that had been certified as medics. Not
6 paramedics, but medics. They had actually gone and
7 done all the training. They were doing in service.
8 So there were two levels that somebody at the fire
9 department could have.

10 Q So why would a fireman need any kind of medical
11 training?

12 A There are a lot more firetrucks than there are
13 ambulances or police officers on the road. So a
14 lot of times accidents, you know, domestic
15 disputes, there is any number of times that the
16 fire department could be the first on scene and
17 there is somebody or people that need medical
18 attention.

19 Q So is it fair to say that firemen are sent to
20 things other than fires?

21 A Oh, yes.

22 Q How do you receive a call? How do know to go
23 wherever you are going?

24 A We at the fire department get what we refer to as
25 we get a tone. So when somebody calls 9-1-1, that

1 goes to central dispatch here in Columbia. Central
2 dispatch receives that call, takes that
3 information, and their computer system is going to
4 tell them, You need to send, you know, this many
5 units from here. It is going to tell them what to
6 send. They hit the button on the computer. It
7 comes through the speakers at the station. The
8 dispatcher tells us what unit, where to go, and
9 what we are going to.

10 Q I want to take you back to December of 2015. Is
11 that what happened back then? Is that how it
12 works?

13 A Yes.

14 Q So can you tell this jury how you got involved in
15 this particular case?

16 A We were at the station. We received a call, to the
17 best of my memory, I want to say -- I know it came
18 in as a gunshot wound. I believe we received it as
19 a gunshot wound to the head and were given an
20 address.

21 Q So to the best of your memory, you got a call of a
22 gunshot wound to the head?

23 A Yes.

24 Q Based on that, what did you do?

25 A We hopped on the truck and we responded to the

1 address that we were given.

2 Q And what -- where were you going when you -- did
3 you -- were you planning on going straight to the
4 incident location?

5 A Yes.

6 Q And so what happened when you went there?

7 A We arrived at -- we stopped on Antioch Amez Church
8 Road.

9 Q Why did you stop there?

10 A It is department policy that on a call of this
11 nature where we are responding to a shooting, we
12 are not supposed to put ourselves on the scene of
13 the call until the Sheriff's Department, City
14 Police, whatever we are working with at the moment,
15 has arrived on scene and they declare the scene as
16 being safe.

17 Q So because it is a gunshot wound, was that the
18 issue or?

19 A Yes. We were going to stop -- we stopped where we
20 could see down Megan Court, and that was where we
21 were able to see people.

22 Q And what happened when you got there and could see
23 the people?

24 A Everybody was there waving the fire truck that way.
25 So we knew that that was the location of the call.

1 And being the captain, I told my crew, I said, I'm
2 all right with going. I said, It doesn't look
3 dangerous. I said, If y'all do not want to go,
4 tell me.

5 Q And did anyone indicate that they were
6 uncomfortable going?

7 A No, ma'am.

8 Q So what did you do based on that?

9 A We made a turn onto Megan Court and we went on
10 scene.

11 Q And what happened when you got on scene, as you
12 said?

13 A Yes. We got on scene. I got off of the truck, and
14 the first thing I asked was, What is the location
15 of the shooter? Where is the shooter?

16 Q And what information were you provided?

17 A I was told that he went back into his house.

18 Q Okay. So based on that, what did you do?

19 A I got a good look around of what was going on with
20 the patient, who was there. I positioned myself
21 where I could keep an eye on my guys, the other
22 people that were on scene, and the house that they
23 indicated the shooter went back to.

24 Q And I am going to kind of break it down a little
25 bit.

1 A Okay.

2 Q Where was the patient?

3 A When we arrived, the patient was facedown, and I
4 would say the lower three-quarters of his body was
5 off the side of the road, the top quarter of his
6 body was in the road.

7 Q So would it be fair to say part on the road and
8 part off the road?

9 A Yes.

10 Q Any of it behind the white fence?

11 A No, ma'am.

12 Q So were any of the bystanders -- where were they?

13 A So when Richland 4 pulled on scene, you had Rescue
14 4 stopped on Megan Court. In front of us would
15 have been the body, another pickup truck, and the
16 fence on Megan Court, around the house there at
17 Megan Court. And the bystanders were mostly around
18 the other pickup that was in front of Rescue 4, the
19 other side of the body.

20 Q And did anyone come out of the home?

21 A Yes.

22 Q And what happened when that person came out of the
23 -- or who came out of the home?

24 A It was a female. That is all I know for certain.
25 She came back down to the fence where we were. My

1 understanding from when we got on scene was that
2 everything stemmed from an argument. And the way I
3 saw everything, she was just restarting the
4 argument. She was getting a little loud.
5 Bystanders were arguing back. They were getting
6 loud. It was a distraction that I didn't need, my
7 crew didn't need, so I walked right up to her and I
8 looked her in the face and said, You need to shut
9 your mouth and go the fuck back in your house.

10 Q So you cursed?

11 A I did.

12 Q Was anybody else cursing?

13 A I don't know. I can't say for certain. But I
14 needed to make my point clear.

15 Q And did she leave after you did that?

16 A She did exactly as I asked. She turned around, she
17 walked back to her house, and she did not come back
18 out.

19 Q And were you all able to work on the patient?

20 A Yes.

21 Q All right. And you said she -- could you tell
22 where she was? Was she behind the fence or did she
23 come through --

24 A She never crossed the fence. She stayed on the
25 house side of the fence.

1 Q And was anyone else on the house side of the fence?

2 A No.

3 Q And did you -- so he was facedown. What did you do
4 with the patient when they started treating him?

5 A They -- my crew got hands-on. Of course they had
6 to roll the patient over. His whole head was
7 covered in blood. A lot of blood on the ground.
8 They moved his body because of the amount of blood
9 around him. They needed a clear spot to be able to
10 work. So they moved the body away from the blood.
11 I remember my engineer had a bandage or something
12 and was wiping the patient's face off trying to
13 locate a bullet wound. He was unable to do so. He
14 then either -- I don't remember if it was my
15 engineer or a firefighter, but somebody lifted the
16 patient's shirt, and that is when we found a bullet
17 wound on the left side of the chest.

18 Q And when you all were looking at the patient, did
19 you see any weapons?

20 A No, ma'am.

21 Q Did y'all ever find a weapon on him?

22 A No, ma'am.

23 Q And let's be clear, is that your job?

24 A No, ma'am.

25 Q Did at any point the EMS arrive?

1 A Yes.

2 Q And what happened once they arrived?

3 A EMS arrived. And they are the higher medical care.
4 And that is exactly what our patient needed. So
5 they arrived on scene. A paramedic and whoever was
6 with her, they got off the truck and they got their
7 gear. They came over. They took over the patient
8 care. My crew assisted, backed off, and assisted
9 them however the paramedics requested.

10 Q And did they take the patient or did you all take
11 the patient?

12 A Paramedics took the patient.

13 Q What did you all do once that had occurred?

14 A Once that occurred, the patient was transported.
15 We stayed on scene for a little while. I think --
16 honestly, after loading the patient and them
17 leaving, I don't know why we remained on scene as
18 long as we did. There is nothing in my notes that
19 say why, but.

20 Q You weren't doing anything?

21 A No. We were there, that was it.

22 MS. SAMPSON: Beg the Court's indulgence.

23 (Pause.)

24 BY MS. SAMPSON:

25 Q And you stated you worked Columbia Fire Department.

1 What county was this located in?

2 A Richland County.

3 MS. SAMPSON: No further questions, Your
4 Honor.

5 THE COURT: Thank you. Please answer any
6 questions that the Defense has.

7 CROSS-EXAMINATION

8 BY MS. ZMROCZEK:

9 Q Do you mind if I call you Trey?

10 A That's fine.

11 Q You and I have spoken before?

12 A Yes.

13 Q And I thank you for being here. I know that you
14 need to get back to your work.

15 A Not a problem.

16 Q But you were captain?

17 A Yes.

18 Q Of the fire department?

19 A That's correct.

20 Q And you received a lot of training to get to that
21 point?

22 A Yes, ma'am.

23 Q Am you said that you checked your report because
24 one thing that you also do is write reports for
25 every incident that you respond to, right?

1 A Yes, ma'am.

2 Q And you put things of importance, things that stand
3 out in there?

4 A (Nods affirmatively.) Yes, ma'am.

5 Q And you -- y'all were the first ones there, is that
6 correct?

7 A That is correct.

8 Q And they were a little -- it is a rural area, it is
9 not in town, right?

10 A Correct.

11 Q And tell the jury how it is that you can remember
12 these things from so long ago?

13 A Twelve plus years with the fire department is quite
14 a long time, and there are a lot of calls that
15 admittedly I do not remember. When you start
16 talking about structure fires, which I ran a lot
17 of, vehicle entrapments, which I run a lot of,
18 there have been so many I can't recall them all.
19 But when it comes to gunshot wounds, I ran exactly
20 two in the 12 plus years with the fire department.

21 Q And that is how you were able to just remember that
22 because it was something unique, right?

23 A Exactly.

24 Q And so you -- and you are not driving the fire
25 truck, right?

1 A No, ma'am.

2 Q Okay. So tell the jury where you are sitting and
3 how you are able to see what you are able to see.

4 A I am sitting in the front passenger side of the
5 rescue.

6 Q So you are right up in the front?

7 A Yes, ma'am.

8 Q And so, as I understood it, dispatch, they have a
9 system to alarm y'all that y'all -- your services
10 are needed?

11 A Yes.

12 Q And then I like to imagine that you slide down the
13 pole, you hop on a truck, and you get to work,
14 right?

15 A Something like that.

16 Q And then it really kicks in and you are focused on
17 doing your job when you get there, right?

18 A Correct.

19 Q And Barbara, you said you didn't know who she was?

20 A Uh-huh.

21 Q She was coming out of the house and she is yelling,
22 right?

23 A She is still upset, yes.

24 Q She is still upset. And, in fact, she was saying,
25 Can you please help him, right?

- 1 A I do not recall what she was saying.
- 2 Q Okay. She was cussing?
- 3 A I do not recall.
- 4 Q You don't remember?
- 5 A I remember -- because I'm trying to watch my guys
6 and keep an eye and keep them safe. It was getting
7 loud. She had come out. She was getting loud, so
8 the bystanders were getting loud. I just needed it
9 to stop.
- 10 Q And she complied?
- 11 A Absolutely she did.
- 12 Q Get inside. And that's where she went, right?
- 13 A That's exactly what she did.
- 14 Q And then I want to talk about the location --
- 15 A Uh-huh.
- 16 Q -- of the body, because obviously that's what I
17 asked you about --
- 18 A Yes, ma'am.
- 19 Q -- when we spoke on the phone. And I know that
20 y'all -- part of your medical training, you have to
21 assess what the injury is or may be, right?
- 22 A Correct.
- 23 Q And of course in doing that, you had to move him
24 and turn him over, right?
- 25 A Correct.

1 Q You picked up that beer can?

2 A I do not remember a beer can.

3 Q I'm going to show you what has been marked for

4 ID --

5 A Okay.

6 Q -- as Defendant's 1. Do you recognize that area?

7 A Yes.

8 Q And does that fairly and accurately represent the
9 area as it appeared?

10 A The truck -- is that supposed to be the vehicle
11 that my patient---

12 Q No, no, that is simply somebody that was on Google
13 while they were taking the picture.

14 A Got you. Makes sense.

15 Q So other than that truck -- other than the vehicle?

16 A Antioch AME?

17 Q Yes.

18 A Okay. Yes, that's it.

19 MS. ZMROCZEK: Your Honor, at this time we
20 would move Defendant's 1 into evidence.

21 THE COURT: Any objection?

22 MS. SAMPSON: No objection, Your Honor.

23 THE COURT: Defendant's 1 will be admitted
24 without objection.

25

1 (WHEREUPON, Defendant's Exhibit No. 1
2 was marked for identification and
3 received into evidence.)

4 BY MS. ZMROCZEK:

5 Q Do you mind -- and I know we are a little cramped
6 and crowded -- do you mind coming down and showing
7 the jury exactly where y'all turned off of and how
8 you --

9 A I don't mind.

10 Q Okay. Let me get -- I know it is around here, I
11 just say it. The easel. And when you get off the
12 stand, of course please keep your voice up. Since
13 you are right there I think they will be able to
14 hear you.

15 A Got you.

16 (Witness steps down.)

17 A So coming from our fire station behind Mr. Bunky's
18 we would have come down 378, made a right-hand turn
19 on Antioch AME Church Road, Megan Court, ran to the
20 left off that Antioch AME. So upon our arrival, we
21 stopped here on Antioch AME Church Road where we
22 can see down Megan Court until we pulled onto Megan
23 Court and went on through.

24 Q Okay. And then you -- then I'm going to put you to
25 the Google part.

1 A Uh-huh.

2 Q So this lighter area, that is the dirt road?

3 A Yes.

4 Q Okay. And where I'm indicating on 1 where the red
5 dot is, that was the house that -- the address
6 actually is Antioch Road because their driveway is
7 off Antioch Road, correct?

8 A Yes. I don't know.

9 Q Okay. The point being, the house where Barbara
10 lived and where you told her to go back --

11 A Uh-huh.

12 Q -- there is a fence, right?

13 A Yes.

14 Q And when you say that Lanny was three-fourths off
15 the road, was it over here?

16 A No, ma'am.

17 Q Okay. So where was it?

18 A He would have been between Megan Court and the
19 fence around their residence.

20 Q Okay.

21 A So their side of the road.

22 Q Their side of --

23 A Yes.

24 Q And it was actually like the leaves part? He
25 wasn't -- part of his head was in the road, I think

1 you said?

2 A That is how I remember it, yes.

3 Q Perfect. You can have a seat. Thank you.

4 (Witness returns to witness stand.)

5 MS. ZMROCZEK: Thank you. I have no further
6 questions.

7 THE COURT: Any redirect?

8 MS. SAMPSON: No, ma'am. Can this witness be
9 excused from all subpoenas?

10 MS. ZMROCZEK: Absolutely. Please travel
11 safely back to Tennessee.

12 (Witness steps down and excused.)

13 THE COURT: Call your next witness.

14 MS. SAMPSON: The State calls Carl Cox.

15 THE BAILIFF: Sir, come forward to be sworn.

16 (Witness approaches.)

17 THE BAILIFF: Place your left hand on the
18 Bible, raise your right, and face the clerk.

19 (Witness complies.)

20 THE CLERK: Do you swear or affirm the
21 testimony you shall give in this case will be the
22 truth, the whole truth, and nothing but the truth,
23 so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Have a seat in the

1 witness stand, and state your full name the record.

2 (Witness seated.)

3 THE WITNESS: Carl James Cox, III.

4 CARL JAMES COX, III,

5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SAMPSON:

8 Q All these thirds. Mr. Cox, where are you employed?

9 A With the Columbia Fire Department.

10 Q And how long have you worked there?

11 A Eleven and a half years.

12 Q And what is your current rank?

13 A Senior firefighter.

14 Q The jury kind of already heard how you go through
15 that, so I won't ask you all that. Do you have any
16 specific medical training?

17 A We have EMR training.

18 Q What is EMR?

19 A Basically First Responders. Not to the level of an
20 EMT, but a little bit better than what you get on
21 normal Red Cross stuff, basic emergency trauma,
22 CPR, and basic life support.

23 Q And back in December of 2015, what was your
24 position?

25 A I believe I was just a straight firefighter at that

1 time.

2 Q And how did you become involved in this case?

3 A I was on the Rescue 4, riding the back of Rescue 4.

4 We were the first unit on the scene.

5 Q And the jury has kind of heard, but do you remember
6 how you all got the call?

7 A I remember it being for a gunshot wound, and I
8 remember it was obvious because it was originally
9 dispatched to the back of Megan Court. We had the
10 wrong address.

11 Q And the jury has already seen this map, but when
12 you say the back of Megan Court, this is Megan
13 Court?

14 A No, I believe that --

15 Q That is Megan Court and Antioch is right there?

16 A Oh, okay, I was looking at it sideways.

17 Q So what did you mean by the back of it?

18 A The address we were originally given was further
19 down toward the end of Megan Court. I can't
20 remember which number, I think 8 or so, but I can't
21 swear to it. But the address was originally
22 further down. And when we came up to the corner
23 our initial plan was, because of the gunshot wound,
24 to stage at the church across the street.

25 Q And why -- what is staging?

1 A When we are -- our guidelines are if there is an
2 active-- possibly an active shooter or unknown
3 safety on scene, we stage close to the scene but
4 away from it where we are ready and available, we
5 wait on the Sheriff's Department to come in to make
6 sure the scene is safe.

7 Q And were you able to stage in this instant?

8 A We were not.

9 Q Why not?

10 A Because the scene happened to be where we were
11 planning to stage, or right across from the street.

12 Q So what did you do instead?

13 A We were immediately waved -- we were planning to
14 stage at the church directly across the street.
15 When we pulled up, we pulled up onto the scene.
16 People were waving us in. The patient was right
17 there. So my captain made the decision to move on
18 in, and we pulled onto Megan Court beside the
19 victim and immediately began doing medical aid.

20 Q And where -- was anyone around the victim or
21 patient when you got there?

22 A There was a couple of people on the street and
23 there was one person in the yard on the other side
24 of the fence.

25 Q And what was the person in the yard doing?

1 A She was yelling and hollering at us.

2 Q Do you remember what she was yelling and hollering?

3 A Some of it. Some of it was that we were
4 trespassing, telling us to get off the property.

5 Q She was telling you that you were trespassing?

6 A Yes.

7 Q And where were you?

8 A We were on the side of the road.

9 Q And so what happened? When she is yelling at you,
10 what happened?

11 A When we came off the truck, my Captain Parker, he
12 was -- said he would take crowd control basically,
13 and so me and Steve Bieber, the engineer of the
14 truck, immediately went to patient assessment.
15 Steve went straight to the patient, and I grabbed
16 the medical bags and met them at the patient.

17 Q And where did your captain go?

18 A He was right over us standing around us, but he was
19 basically keeping everyone back from us giving us
20 room. His job more or less when we do stuff like
21 that is he protects us, keeps everybody out of our
22 way and lets us work, and we focus on our patient
23 so we don't have to worry about what -- everything
24 that is going on around us.

25 Q And where was the patient when you got there?

1 Physically where was he?

2 A He was on the edge of the road. As far as I know,
3 he was part in the road and part out, because we
4 set the bags down. There was a lot of blood and we
5 moved, had to move him a little bit, but the exact
6 orientation as far as where his head exactly was
7 and feet were, I can't swear to.

8 Q Let me ask you this. Was he on the inside of the
9 fence near the property or on the outside?

10 A No, he was on the road side of the fence.

11 Q And what did you do to the patient?

12 A When we initially assessed, we were dispatched, I
13 believe to a head wound is what we were looking at.
14 When we first saw him that is what it looked like.
15 He was coughing or had spit up blood in his face,
16 his mouth, his whole chest. There was a lot of
17 blood on the ground. So we checked his head and
18 didn't find the wound. We opened up the shirt and
19 we had to move him because we found one wound just
20 below the bottom of the chest, and then we checked
21 for an exit and made sure that was the only wound.
22 And then we gauzed it and did an occlusive
23 dressing.

24 Q And what is an occlusive dressing?

25 A An occlusive dressing, any time there is a wound to

1 the chest, it can create what is called a suction
2 chest wound. And it is common with gunshots or any
3 puncture to the chest, and that will pull air and
4 collapse the lungs, so we use a method of taking a
5 petroleum gauze wrapper, it is plastic so it can't,
6 or it is aluminum, and the air can't get through.
7 Put that around and velcro makes a flat valve over
8 the wound so if something needs to get pressed out
9 it can, but it keeps air or anything to be able to
10 suck in and it just -- I remember it clearly
11 because that was the only time I have ever done
12 that.

13 Q I was going to ask you, why do you remember this?

14 A That is something they stress in training, they
15 push like it is going to be common, but it is a
16 rare thing to use. We began CPR and suctioning on
17 him and we were pulling -- when we were doing
18 suctioning to clear his airway, I remember vividly
19 we had a lot of trouble clearing the area because
20 we were constantly getting clots and blood, pieces
21 of flesh, and stuff coming out. So we were having
22 a lot of trouble maintaining an airway while we
23 were doing CPR.

24 Q And when you arrived, I believe you said this
25 already, but you said you had to move the body at

1 some point?

2 A Well, we had to reposition to check, because once
3 we checked, we found the one wound, the entry
4 wound -- immediately, but we needed to make sure
5 there wasn't a second one or an exit wound to make
6 sure because we did have to roll him up to check
7 his back and lay him back down, so I can't
8 guarantee the position, the final position when we
9 were working exactly where he was.

10 Q Did you move anything in the area around where you
11 found the patient?

12 A No. The only thing we moved on the patient is
13 where we cut his shirt off.

14 Q Did you remove a weapon?

15 A No.

16 Q And I think you just said this, but the only thing
17 you removed was his shirt?

18 A I believe -- that is the only thing I specifically
19 remember at that time was removing the shirt.

20 Q Why did you remove the shirt?

21 A To access where the gunshot wound was. We cut it
22 off to make room so we could work and do CPR.

23 MS. SAMPSON: Beg the Court's indulgence.

24 (Pause.)

25

1 BY MS. SAMPSON:

2 Q Were you given -- well, were you given any
3 indication on who the shooter was?

4 A Not at first. At first we honestly weren't sure if
5 the woman that was behind the fence was or wasn't.
6 We didn't know. There was a lot of hollering. And
7 so I left it to my captain. He said we were
8 dealing with the people. It wasn't until after the
9 person was transported that we were told --

10 MS. ZMROCZEK: Objection, Your Honor.

11 MS. SAMPSON: I won't go into what they were
12 told.

13 THE COURT: Sustained.

14 BY MS. SAMPSON:

15 Q That's fine.

16 A We weren't given any indication on that.

17 Q Okay. How long did you stay on the scene?

18 A We were there for quite a while because we were
19 stuck until they finished doing the investigation.

20 Q Why were you stuck?

21 A Where we had pulled the truck to was by the
22 patient, so once they set up the crime scene, our
23 truck was basically in it, or behind it, so we had
24 to stay until they finished all the collecting and
25 photoed everything before we left.

1 Q So was there any way to get off Megan Court without
2 going back to Antioch?

3 A No.

4 MS. SAMPSON: No further questions.

5 THE COURT: Yes, ma'am.

6 MS. ZMROCZEK: Thank you. May it please the
7 Court?

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q Good morning.

11 A Good morning.

12 Q You were riding on the back of the truck, correct?

13 A Yes, ma'am.

14 Q And so when y'all leave the station, what do y'all
15 turn on?

16 A Lights and sirens.

17 Q Sirens and lights, right? So y'all had your sirens
18 running?

19 A Uh-huh.

20 Q Standard protocol, trying to get there fast, right?

21 A Yes, ma'am.

22 Q Okay. So the sirens were running?

23 A Yes, ma'am.

24 Q And when you got there, you said there were people
25 in the road?

1 A Yes, ma'am.

2 Q Okay. And were they trying to apply pressure to
3 the wound or were they trying -- was anybody
4 assisting the patient?

5 A I believe so, but I can't -- I don't know exactly
6 where everyone was.

7 Q Okay. Sometimes when time passes it is hard to
8 remember things, right?

9 A Yes.

10 Q So if a video was had at the scene, then we would
11 be able to see exactly what happened, right?

12 A Yes, ma'am.

13 Q Okay. And then you moved that beer can out of the
14 way when you moved his body?

15 A I don't remember seeing a beer can.

16 MS. ZMROCZEK: Thank you. No further
17 questions.

18 THE COURT: Any redirect?

19 MS. SAMPSON: No, ma'am. May this witness be
20 excused?

21 THE COURT: All right, you may step down.

22 MS. SAMPSON: Thank you.

23 THE COURT: You are free to leave.

24 (Witness steps down and excused.)

25 THE COURT: Call your next witness.

1 MS. TAYLOR: The State calls Joseph Vadasz.

2 THE BAILIFF: Come forward and be sworn, sir.
3 Down this way.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, raise your right hand, and face the clerk
7 right there for me.

8 (Witness complies.)

9 THE CLERK: Do you swear or affirm the
10 testimony you shall give in this case will be the
11 truth, the whole truth, and nothing but the truth,
12 so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Thank you. Please have a seat in
15 the witness stand, and state your full name for the
16 record.

17 (Witness seated.)

18 THE WITNESS: My name is Joseph Carl Vadasz.

19 JOSEPH CARL VADASZ,

20 after being duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. TAYLOR:

23 Q Okay. Mr. Vadasz, where do you currently work?

24 A I currently work for the United States Army. I'm a
25 military police officer.

1 Q And are you reserve or active duty?

2 A I'm active duty.

3 Q And where are you currently stationed?

4 A I'm stationed at Fort Stewart, Georgia.

5 Q And how long have you served in the United States
6 Army?

7 A I started working in the United States Army in
8 March of 2019.

9 Q How long have you served in that role in law
10 enforcement in the military?

11 A So I started in the United States Marine Corps in
12 2017. I got out, went to college.

13 After college, in 2013 I worked for Richland
14 County Sheriff's Department from September 2013 to
15 just after Thanksgiving of 2018. And then at that
16 time I started transitioning to active duty army.

17 Q So back on December 27, 2015, you worked for the
18 Richland County Sheriff's Department?

19 A That's right.

20 Q And what was your job title back then?

21 A I was a patrol deputy.

22 Q And what were some of your duties as a patrol
23 deputy?

24 A So my duties were to respond to calls for service,
25 just patrol my work area, and, you know, just

1 generally, you know, maintain order and public
2 safety and, you know, serve the citizens of
3 Richland County.

4 Q And on that date, back in December of 2015, how
5 long had you been working as a patrol deputy?

6 A I started working patrol in the summer of 2015, so
7 probably a year and a half, I guess.

8 Q Okay. Based on your experience in law enforcement,
9 about how many months or years is a deputy
10 considered a rookie in law enforcement?

11 A That depends on the person, I guess. Probably
12 about maybe -- maybe six months.

13 Q Six months?

14 A Most people pick it up pretty quickly.

15 Q Okay. So would you consider yourself a rookie back
16 on that date?

17 A I would not, no.

18 Q Okay. But you didn't have that much experience as
19 a deputy?

20 A I suppose, yes, in the grand scheme of things.

21 Q Okay. Are Richland County Sheriff's Department
22 deputies assigned to areas of the county called
23 regions?

24 A Yes, they are.

25 Q And can you explain what being assigned to a region

1 means?

2 A So, being assigned to a region just means that
3 primarily you answer calls for service within that
4 region and that you are responsible for patrolling
5 areas within that region, interacting with the
6 public. Just like I said, generally, you know,
7 serving the citizens of Richland County within that
8 region.

9 Q And what region were you assigned to back on
10 December 27?

11 A I was assigned to Region 1.

12 Q And what notable areas of the road does Region 1
13 cover?

14 A So it is primarily the Garners Ferry Road area,
15 just the lower side of Richland County all the way
16 out to where it meets Sumter County.

17 Q Okay. So Hopkins, is that included?

18 A Right.

19 Q Eastover?

20 A Yes.

21 Q And back at that time, based on your assignment to
22 those areas in your region, were you familiar with
23 the majority of the roads and streets in this part
24 of the county?

25 A I was. You know, if you mentioned the road, I

1 would probably know where it was. I had a map in
2 my head at that time.

3 Q And would you characterize the majority of Region 1
4 as urban, suburban, or rural?

5 A It was primarily rural. A decent amount of
6 suburban as you get closer on the west, northwest
7 side close to the city.

8 Q Okay. And you said during your -- some of your
9 duties as a road deputy you respond to incidents or
10 calls?

11 A Yes, ma'am.

12 Q And back on December 27th, 2015, did you respond to
13 the incident that we're here for today?

14 A I did.

15 Q And did you document your responses to the incident
16 by writing a report?

17 A I did.

18 Q Do you remember your involvement in this incident
19 overall?

20 A I do.

21 Q And what was it about this particular incident that
22 made it memorable to you?

23 A So, it was a few things. For one, it was very few
24 times when I showed up to an incident where someone
25 had been shot. And then one of the other things

1 that made it very memorable was the demeanor of the
2 Defendant in this case. I just -- it just stuck
3 with me because it seemed to me that --

4 MS. ZMROCZEK: Objection, Your Honor.

5 THE COURT: What is the objection?

6 MS. ZMROCZEK: I'm not quite sure they have
7 established the Defendant's demeanor.

8 MS. TAYLOR: We will get to that part.

9 THE COURT: The objection is overruled. He
10 can testify to what he observed.

11 A I just -- so, as I was saying, I just remember the
12 conversation that I had with people on scene stuck
13 with me. I mean, because a man had been shot and
14 it was just all very matter of fact, and it just
15 seemed odd.

16 Q Okay. How did you get notified to respond to this
17 incident?

18 A So I was notified by central dispatch. The call
19 came over my -- the CAD system, the in-car
20 computer, and also came over the radio.

21 Q So how does the in-car computer notify you about
22 the incident?

23 A So basically right in the center console between
24 the driver's seat and the passenger's seat there is
25 a computer screen, and it makes a ring like a

1 telephone ring, and then it is a black screen with
2 green text on it. And it will immediately pop up
3 and you get a call and it will go right to it and
4 it will say the address in big bold letters, and
5 right underneath that it will say the type of
6 incident, and then at the bottom there is all these
7 notes that the dispatcher types in. So usually it
8 comes over the computer first, you will see the
9 address, the type of incident, and right after that
10 it will start coming over the radio. So I saw the
11 address and the incident, started driving that way,
12 and the information came over the radio.

13 Q What time did you receive the notification to
14 respond to the incident?

15 A So I was notified at approximately 4:30 p.m.

16 Q Okay. And what was the address of the incident
17 location that you responded to?

18 A It was 1129 Antioch Amez Church Road.

19 Q What county is that located in?

20 A That is in Richland County.

21 Q And what town is that incident location located in?

22 A I believe it is in Hopkins. Either Hopkins or
23 Eastover.

24 Q Okay. What type of incident -- well, going back to
25 that, Hopkins and Eastover are close together,

1 right?

2 A Correct.

3 Q What type of incident were you responding to on
4 that particular day?

5 A So it came out as a shooting hit.

6 Q And what does a shooting hit mean?

7 A It means that someone shot and someone got hit,
8 someone was struck with a round from a firearm.

9 Q And what time did you arrive at the incident
10 location?

11 A I arrived at approximately 4:56 p.m.

12 Q And what time did you finally leave the location?

13 A I left right about 7:00 p.m. that evening.

14 Q So you stayed on the scene for about two hours?

15 A Yes, ma'am.

16 Q And is Antioch Amez Church Road located near where
17 you were going?

18 A Yes, ma'am.

19 Q Were you familiar with this road, Antioch Amez
20 Church Road in general, not for this particular
21 incident location address, but were you familiar
22 with that road and the road that -- or close
23 proximity to this incident prior?

24 A Yes, ma'am.

25 Q Okay. And what is the name of a road that is close

1 in proximity to 1129 Antioch Amez Church Road?

2 A Megan Court.

3 MS. TAYLOR: Beg the Court's indulgence.

4 (Pause.)

5 BY MS. TAYLOR:

6 Q Okay. I want to show you what has been marked as
7 State's Exhibit 43, and I want you to look at it
8 and tell me if you recognize what this photo shows.

9 A Yes, I do.

10 Q And what does it show?

11 A So this shows Antioch Amez Church Road with the
12 intersection of Megan Court, and it shows the
13 incident location that I responded to that day.

14 Q Okay. And it fairly represents the incident
15 location you responded to that day?

16 A Yes.

17 MS. TAYLOR: The State requests to move
18 State's Exhibit Number 43 into evidence.

19 THE COURT: All right, 43 will be entered
20 without objection.

21 (WHEREUPON, State's Exhibit No. 43 was
22 marked for identification and received
23 into evidence.)

24 MS. TAYLOR: Permission to publish, Your
25 Honor?

1 THE COURT: Yes.

2 MS. TAYLOR: Permission for the witness to
3 step off of the witness stand?

4 THE COURT: Yes, ma'am.

5 (Witness steps down.)

6 BY MS. TAYLOR:

7 Q And can you point out to the jury on this map where
8 Antioch Amez Church is located?

9 A Sure. So Antioch Amez Church Road runs right here,
10 this 2-lane road right here.

11 Q And can you point out where Megan Court is in
12 relation to Antioch Amez Church Road?

13 A It is the intersection right here, and it runs this
14 way.

15 Q And can you point out the incident location that
16 you responded to on December 27, 2015?

17 A It was this house right here that is right on the
18 corner of Antioch Amez and Megan Court.

19 Q So when you arrived at the location, were you able
20 to see the driveway, what road the driveway -- the
21 house, what road it was on?

22 A So I don't remember. I don't remember where the
23 driveway was, but I remember I pulled in here.

24 Q Uh-huh.

25 A And there was a sort of like walkway and a bench

1 here. I remember being in this area.

2 Q Okay. And can you give a physical description of
3 the road that is Megan Court? Like what does it
4 look like physically?

5 A So from what I remember, it was a narrow dirt road.

6 Q Okay. You said a dirt road?

7 A Yes.

8 Q Okay. And how many ways are there to get to Megan
9 Court and leave Megan Court?

10 A From my understanding, there is only one way in and
11 out. It is right here at this intersection.

12 Q Okay. And based on your familiarity with these two
13 roads, in order to drive down Megan Court, would
14 you have to pass the incident location?

15 A Yes.

16 Q Okay. You can go back and have a seat. Thank you.
17 (Witness returns to witness stand.)

18 Q Okay. So I'm going to show you a couple of things.
19 I'm going to show you what has been marked as
20 State's Exhibit Number 16, 15, 14, 17, 25, 27, 28,
21 29, 30.

22 MS. ZMROCZEK: If I able to review them I may
23 be able to agree.

24 THE COURT: Go ahead.

25 (Pause.)

1 MS. ZMROCZEK: Your Honor, I have no objection
2 to those, and we can skip the foundation questions.

3 THE COURT: What numbers again?

4 MS. TAYLOR: That is going to be 16, 15, 14,
5 17, 25, 27, 28, 30, and 29. We are requesting to
6 introduce them into evidence and permission to
7 publish.

8 THE COURT: All right, those will be entered
9 without objection and permission to publish.

10 (WHEREUPON, State's Exhibit Nos. 14-17
11 were marked for identification and
12 received into evidence.)

13 (WHEREUPON, State's Exhibit Nos. 25,
14 27-30 were marked for identification and
15 received into evidence.)

16 BY MS. TAYLOR:

17 Q I show you these pictures. Okay. I am going to
18 show you what has been marked as State's Exhibit
19 Number 16. Can you kind of describe what this
20 shows?

21 A Yes, ma'am. So that just shows the intersection of
22 Antioch Amez Church Road and Megan Court.

23 Q Okay. So then we go to the next one. This is
24 State's Exhibit -- this is State's Exhibit Number
25 14. What does this picture show?

1 A So this shows -- this is looking at the incident
2 location, the residence, from Megan Court from the
3 road.

4 Q Okay.

5 A It shows the fence bordering the property and then
6 the home there.

7 Q Okay. And what -- looking at Exhibit Number 15,
8 what does this show?

9 A So that is another angle. There also from Megan
10 Court looking from the road toward the home. And
11 you can see the fence that borders the property and
12 the front yard and the home there in the
13 background.

14 Q And what is this yellow stuff right here?

15 A That is crime scene tape.

16 Q And what is the purpose of that?

17 A The purpose of the crime scene tape is to secure
18 the crime scene so that no one that is not
19 authorized can enter the crime scene and disturb
20 it, and no one is allowed to leave the crime scene
21 basically until, you know, law enforcement has
22 gotten what they need from them or that, you know,
23 we get their information so that, you know, we can
24 contact them later.

25 Q Okay. And as the responding deputy on the scene,

1 what are some types -- some of the main objectives
2 and information that you try to obtain when you
3 first arrive on a scene?

4 A So specifically to this type of call you want to --
5 when you arrive on scene, you want to figure out
6 where everyone is, because you want to establish
7 order and safety. And then generally you just want
8 to find out what is going on. It is not always,
9 you know, dispatched, you know, whoever called it
10 in may be partially or fully accurate, so, you
11 know, my main concern was just establishing order
12 and safety and at that point find out where
13 everybody is and then, you know, if you do believe
14 a crime has taken place, you set up a crime scene
15 and secure the scene so that, you know, nothing
16 gets tampered with and we can properly process it.

17 Q Okay. And when you arrived on scene, did you
18 observe any other First Responders on scene?

19 A I did. So when I first showed up, I saw an EMS
20 vehicle and I saw some EMT's working on the victim.

21 Q Okay. And where did you observe or where was EMS
22 located when they were working on the victim?

23 A So I can use this picture to show. So when I
24 showed up the sun was still up. These pictures are
25 taken later after the sun went down, it is dark,

1 but the EMS truck is right there and then sort of
2 off to the left there --

3 Q You can come down here and point.

4 A Okay, sure.

5 (Witness steps down.)

6 A So what I saw when I first showed up -- again, the
7 sun was up. But I remember looking down here, and
8 you can see right where all this stuff is, the
9 victim was right here. He had a lot of blood on
10 him. And there were EMT's working on him right
11 here. You know, something like that doesn't leave
12 your memory. Even me working at the Sheriff's
13 Department for five years, I didn't see stuff like
14 that all that often, only a couple of times. So I
15 remember I was right here, right between the fence
16 and the road.

17 Q Okay. Was -- did you observe him anywhere over
18 this white fence?

19 A No, ma'am.

20 Q Okay.

21 A He was laying in the leaves right here where all
22 this stuff is.

23 Q Okay. And you can sit back down. Thank you for
24 getting up.

25 (Witness returns to the witness stand.)

1 Q And regarding any other law enforcement deputies --
2 you may have already answered this -- did you
3 observe any other deputies on scene when you got
4 there?

5 A No, ma'am.

6 Q So you were the first one there?

7 A Yes, ma'am, I was the first one on scene.

8 Q Okay. I'm going to show you what has been labeled
9 State's Exhibit Number 17, kind of a zoomed up
10 picture of one we just showed.

11 A Okay.

12 Q So, once again, can you just kind of tell the jury
13 where you saw the victim located?

14 A Yes, ma'am. So he was right there in the leafy
15 portion right there where all those leaves are
16 between the fence and the dirt part of the road.
17 And there were EMT's working on the victim.

18 Q So is this the medical equipment that the EMT's
19 were using?

20 A I believe so, ma'am.

21 Q Okay. All right, so when you -- did you come into
22 contact with anyone else at the scene when you got
23 there other than the victim?

24 A Yes, ma'am.

25 Q Who did you first come in contact with?

1 A So I believe I first came in contact with the
2 witness, let's see, his name was Mr. Rick Holten.

3 Q And did you have a conversation with him?

4 A So I believe that he was standing in the road and,
5 if anything, it was a brief conversation. And he
6 just, you know, directed me towards the house.

7 Q Okay. So as a result of that conversation with
8 him, did you make contact with anyone else at the
9 location?

10 A I did.

11 Q And who did you make contact with?

12 A So I went onto the property up to the home, and
13 Ms. Volstromer, Barbara Volstromer, was standing on
14 the front porch of the house.

15 Q Okay. And what is Barbara Volstromer's
16 relationship to the Defendant?

17 A That is the Defendant's wife.

18 Q And what is the address of the road that the
19 Volstromers' house is located on?

20 A It is 1129 Antioch Amez Church Road.

21 Q When you first approached her, what did -- what was
22 she doing?

23 A She was talking on the phone.

24 Q And when you saw her on the phone, what did you ask
25 her to do?

1 A I just asked her to get off the phone and talk to
2 me.

3 Q And did she?

4 A She did.

5 Q Okay. And did you tell her the reason that you
6 wanted to talk to her?

7 A Yes, ma'am. So I told her that dispatch had told
8 me that her husband had shot someone.

9 Q Uh-huh.

10 A And I asked her to talk to me.

11 Q And can you describe her willingness at that point
12 to discuss the incident with you?

13 A Yes, ma'am. She was very open. You know, she was
14 describing, you know, something about the men in
15 the road. And I just asked her to come outside.

16 Q And she indicated that she witnessed the shooting?

17 A Yes.

18 Q What, if anything, did you ask her about the
19 location of the gun used in the shooting?

20 A So I just -- I asked -- and I believe she and the
21 Defendant were both present -- I just asked, you
22 know, Where is the weapon?

23 Q Uh-huh.

24 A From my understanding someone had been shot. I
25 just, you know, I saw the Defendant, you know,

1 bloody. It was clear to me at that point that
2 someone had been shot. I just wanted to know where
3 the weapon was just so that I could make sure that
4 nobody else had access to it. It was a high stress
5 situation, so.

6 Q So I think you just said the Defendant was bloody.
7 Did you mean the victim.

8 A I'm sorry. I'm sorry, Mr. Pruitt, the victim, had
9 blood on him in the street. That was my mistake.

10 Q And you said the Defendant was present when you
11 asked the location of where the weapon was. Did
12 you observe any blood on him?

13 A No.

14 Q Okay. And where did the Defendant, Mr. Volstromer,
15 say that the weapon was located?

16 A I believe they said it was inside and they just
17 pointed towards the front door, I believe.

18 Q Did Ms. Volstromer mention anything about a
19 surveillance system?

20 A Yes, she did. That was one of the first things
21 they said. They pointed out the cameras on the
22 outside of the house. I don't remember exactly
23 what they said, but it was clear to me that they
24 had a surveillance system on the house.

25 Q Okay. And while she was talking to you about the

1 shooting that had just occurred, can you describe
2 what her demeanor was like?

3 A So I remember that she was a little, you know, a
4 little nervous, but, you know, she was very matter
5 of fact, like she wanted me to understand what had
6 gone on before I showed up.

7 Q Okay. And during -- well, during your interaction
8 with Ms. Volstromer, what, if anything, did she say
9 about whether the victim was armed with a weapon
10 during the incident?

11 A I don't remember having heard anything about the
12 victim being armed.

13 Q And if she had said something about the victim
14 being armed, how would you have continued your
15 presence on the scene? What would you have done if
16 she had said that?

17 A Well, if it came to my attention that, you know,
18 the man that was shot, you know, potentially had a
19 weapon on him, that is definitely something that we
20 would have searched for. I know crime scene
21 investigators showed up and investigators showed
22 up. That is something that they would look for
23 also. That is something key to the investigation.
24 So, you know, we would have gone and asked EMT's,
25 you know, what he had on him, any weapon, search

1 the area where he was. You know, his vehicle
2 was -- well, the vehicle that he came there in was
3 still there when I got there. We would have
4 searched that, but we didn't do any search on that
5 because nothing about Mr. Pruitt was armed ever
6 came to our attention.

7 Q And would you have documented that in your incident
8 report?

9 A Yes, ma'am, absolutely.

10 Q Okay. Where was the Defendant -- you said the
11 Defendant eventually came out. Where was he
12 located when you were talking to his wife
13 initially?

14 A So when I first came up, she was on the front porch
15 on the phone and the Defendant was somewhere inside
16 the house.

17 Q Okay. And did you make contact with him?

18 A I did.

19 Q How were you able to make contact with him?

20 A So I asked Ms. Volstromer to have her husband come
21 outside. And, you know, we gave command for him to
22 come out with his hands up. He came outside with
23 his hands up.

24 Q And he was compliant?

25 A He was very compliant.

1 Q Okay. And when he came out of the house, what did
2 you do to him?

3 A So I just standard, you know, asked him to turn
4 around, put his hands behind his back, and I put
5 handcuffs on him. He did everything that we asked
6 him.

7 Q Was he officially under arrest at that time?

8 A No, ma'am.

9 Q Okay. So what do you call his detention status?

10 A Well, we just call it, you know, being detained or
11 investigative detention.

12 Q Okay. And after you detained him, where did you
13 take the Defendant?

14 A I took him to my patrol car and sat him in the
15 back.

16 Q While he was detained in handcuffs, did you explain
17 to him his Miranda rights?

18 A Yes, ma'am, I did.

19 Q And can you briefly explain to the jury what
20 Miranda rights are?

21 A Sure.

22 Q Like what their purpose is?

23 A So Miranda rights are basic rights under the
24 constitution that people have against
25 self-incrimination and just, you know, being sure

1 that they are given their constitutional rights,
2 you know, when they are placed under arrest.

3 Q Okay. And where did you explain these rights to
4 him?

5 A At my vehicle.

6 Q And what did you use to read his rights to him?

7 A So I used my little Miranda rights card, which I
8 actually still have. So we all have these handy
9 dandy little cards. But, you know, this being a
10 serious case, I read it to him right off the card.

11 Q Okay. And what rights did you read off the card?

12 A Well, I told him:

13 Before we talk to you about this, you know, I
14 want you to make sure you understand your rights.

15 You have the right to remain silent. Anything
16 you say can and may be used against you in a court
17 of law. You have the right to speak to an attorney
18 before any questioning. If you cannot afford an
19 attorney, one will be provided for you at no cost
20 to you. You know, you have a right to talk to your
21 attorney before any questioning and have an
22 attorney present during any questioning. And if
23 you decide at any point that you don't want to be
24 questioned anymore, you don't have to talk to us
25 anymore.

1 And then I told him, you know: Do you
2 understand your rights as they have been explained
3 to you?

4 And he said, Yes.

5 Q And did he waive those rights and agree to talk to
6 you?

7 A Yes, ma'am.

8 Q And what does waiving your rights mean?

9 A So waiving your rights just means that you
10 understand your rights and, you know, you have made
11 your own judgment, that, you know, I don't need my
12 right to silence, I'm going to talk to you.

13 Q And did he talk to you about the shooting?

14 A He did.

15 Q Describe his willingness to discuss this incident
16 with you.

17 A So I didn't sense any hesitation in him. You know,
18 I briefly asked, you know, my standard questions.
19 I'm talking to people on scene. I just say, Hey,
20 so what happened?

21 Q Uh-huh.

22 A I don't remember exactly what he said, but it was,
23 you know, he told me that he shot the victim.
24 There was some sort of argument and he shot him.
25 So.

1 Q And can you describe the length of the conversation
2 that you had with him?

3 A It was very short.

4 Q Okay. And without going into particular detail,
5 what did he say about the relationship between he
6 and the victim prior to the particular incident?

7 A So, from my understanding, they had ongoing
8 disputes. I wasn't aware of any reports being made
9 between them because usually, you know, you
10 recognize an address if there are reports are being
11 made. But from my understanding, they had ongoing
12 disputes and they didn't like each other, is what I
13 came to understand.

14 Q And can you describe his demeanor when he was
15 telling you about these prior disputes with his
16 neighbor?

17 A Yes, ma'am. So he was just calm and very matter of
18 fact.

19 Q And what, if anything, did he ever mention about
20 the victim being violent during these prior
21 incidents?

22 A I don't remember hearing anything about that.

23 Q Okay. And regarding the shooting incident that
24 day, what type of gun did he say he shot the victim
25 with?

1 A I don't think he --

2 THE COURT: Hold on.

3 A -- said what type of weapon he used.

4 THE COURT: She has an objection. Hold on.

5 MS. ZMROCZEK: No, I don't have an objection,
6 Your Honor, it is just that -- sorry -- one of the
7 jurors was talking and I didn't want them to miss
8 what was going on.

9 THE COURT: Do you need to stand up, sir?
10 Okay, that's fine.

11 MS. ZMROCZEK: Okay. I just wanted to make
12 sure.

13 THE COURT: We are going to take a -- after
14 she finishes, we are going to take a break.

15 BY MS. TAYLOR:

16 Q What type of gun did he say he shot the victim
17 with?

18 A I don't remember him telling me what type of weapon
19 he used.

20 Q Okay. Did he mention anything about a cooler?

21 A I don't remember.

22 Q Okay. What, if anything, did he say about the
23 location of where the victim was standing when he
24 shot him?

25 A I don't remember if he said anything about where

1 the victim was standing. I just remember him
2 mentioning they were having an argument.

3 Q Okay. And can you describe his demeanor when he
4 was talking about shooting the victim?

5 A Yes, ma'am. So he was just -- he was very matter
6 of fact. He, you know, didn't try to deny
7 anything. He just plainly told me, Yes, you know,
8 we were having an argument and I pulled out my gun
9 and I shot him.

10 Q Did he mention anything about a video surveillance
11 system?

12 A He did.

13 Q What did he say?

14 A He said something along the lines of, you know, The
15 whole thing is on video. I have audio and video
16 surveillance of my whole house and the whole thing
17 is recorded.

18 Q Okay. And regarding the shooting incident, what,
19 if anything, did he say about the victim
20 threatening him or his wife?

21 A I don't recall anything being said about threats.

22 Q And what, if anything, did he say about whether the
23 victim was armed with any kind of weapon during the
24 incident?

25 A I don't recall anything about the victim being

1 armed.

2 Q And like you indicated earlier with your
3 conversation with Ms. Volstromer, if the Defendant
4 had mentioned that the victim was armed, how would
5 that have changed your investigation or handling
6 the situation?

7 A We absolutely would have told the crime scene
8 investigators and the investigators on scene, and
9 even before they showed up we would have, you know,
10 either myself or one of the other deputies on scene
11 would have immediately started looking for that
12 weapon, you know, but we weren't told anything
13 about that.

14 Q Okay. When you were interacting with the
15 Defendant, did you smell any -- what, if anything,
16 did he smell like?

17 A He had the odor of alcoholic beverage on his
18 breath.

19 Q Okay. And did you observe of any indications that
20 he was too drunk to understand the conversation
21 between you two?

22 A No, ma'am. You know, usually, so, you know,
23 working in law enforcement, you know, you interact
24 with intoxicated individuals fairly often. You
25 know, it is one of the most, you know, one of the

1 simplest, you know, skill sets you get in law
2 enforcement, but I didn't notice a whole lot of
3 indicators like slurred speech, bloodshot eyes, or
4 anything like that. I just remember I smelled
5 alcoholic beverage on his breath, that's it.

6 Q Okay. And at some point during your time on the
7 scene, did you go in the Volstromers' house?

8 A I did.

9 Q And did you have permission to go inside the house?

10 A Yes, ma'am.

11 Q Who gave you that permission?

12 A So Ms. Volstromer invited me in.

13 Q And it is verbal permission?

14 A Yes, ma'am.

15 Q Who all was inside the house when you went in and
16 where were they located in the house?

17 A So, from what I remember, Barbara Volstromer and --
18 her and the Defendant's daughter were in the living
19 room, and myself and I believe my supervisor,
20 Deputy Scott Hunger, were in there. I don't
21 remember who all was in there, I just remember
22 those people.

23 Q But the Defendant's daughter and wife were located
24 inside the house?

25 A Yes, ma'am.

1 Q And when you entered the house, did you observe any
2 weapons?

3 A Yes, ma'am.

4 Q And where did you observe a weapon, or what type of
5 weapon did you observe?

6 A So it was a pistol. It was a black .380 pistol.

7 Q Okay. And where did you observe that pistol
8 located?

9 A It was -- it was in the kitchen on the kitchen
10 counter.

11 Q And when you observed the gun, do you remember
12 doing anything with it?

13 A I don't. I remember like bending down to get the
14 make, model, and serial number off of it, but I
15 don't remember anything beyond that. I don't
16 remember manipulating that. There were other
17 deputies there, so, you know, I think we had the
18 house secure enough where we didn't really have to
19 manipulate it and nobody was going to have access
20 to it.

21 Q Okay. So do you remember if you actually moved the
22 gun from the kitchen table to anywhere?

23 A I don't. I don't remember picking it up. I don't
24 think that I did. I definitely remember bending
25 down and reading it, copying down the serial number

1 and everything. I don't remember anything beyond
2 that.

3 Q All right. And I guess based on your experience in
4 law enforcement, if a weapon is found somewhere out
5 open like a kitchen table --

6 A Uh-huh.

7 Q -- and there are people inside the house, how does
8 officer safety factor into whether you move -- you
9 may move that weapon?

10 A So it depends on the amount of officers that we
11 have on scene. And it depends on the demeanor of
12 the people.

13 Q Uh-huh.

14 A You know, how they are reacting, like are they
15 nervous, twitching, tapping their foot, like how
16 they respond to us. And then their proximity to
17 the weapon, is it still loaded. So all those
18 things factor in. You know, what is the
19 likelihood, you know, on your best guess that
20 somebody is going to get up and try to touch a
21 loaded weapon. Obviously we don't want any
22 violence.

23 Q Okay. So I want to show you what has been
24 marked -- well, I already showed you, so I will
25 show you what has been marked as State's Exhibit

- 1 Number 25. What does this picture show?
- 2 A That is the front of the house and the front porch.
- 3 Q And is that where you first came in contact with
- 4 Barbara Volstromer?
- 5 A Yes, ma'am.
- 6 Q Okay. And I'm showing you State's Exhibit Number
- 7 27. What does this area show?
- 8 A That looks like the living room and the kitchen.
- 9 Q Okay. And is this where Ms. Volstromer and her
- 10 daughter were located?
- 11 A Yes, ma'am.
- 12 Q Okay. And I'm showing you Number 28. What does
- 13 this picture show? What can you see in this
- 14 picture?
- 15 A So in this picture I can, you know, see part of the
- 16 kitchen and then the weapon there on the kitchen
- 17 counter there to the right.
- 18 Q And this is State's Exhibit Number 29. What is
- 19 shown in this picture?
- 20 A That is the weapon right there that I was directed
- 21 to. So I asked, Where is the weapon? And they
- 22 directed me to this weapon right here.
- 23 Q Okay.
- 24 A And it is right there in the kitchen.
- 25 Q Okay. And when you looked at this, did you take

1 this to be a table?

2 A That to me, I mean, I took it to be like part of
3 the kitchen counter.

4 Q Okay. And then this is that same gun?

5 A Yes, ma'am.

6 Q And what is this, this item right here?

7 A So, on the right there, that is the magazine that
8 would go in the weapon to load it and then the one
9 single round there off to the right would have been
10 one that was in the chamber.

11 Q Okay. So you testified the Defendant and his wife
12 both told you that they had surveillance cameras?

13 A Yes, ma'am.

14 Q Did you ever see the video from the camera system?

15 A I did not.

16 Q When she --

17 MS. ZMROCZEK: I just want to make sure. Did
18 you say did not?

19 MS. TAYLOR: He did not.

20 Q Did she -- did Barbara Volstromer ever tell you
21 like where -- or how she could pull up the video?

22 A Yes, ma'am. She -- so she showed me the
23 surveillance system, like where they had access to
24 it, but she didn't pull up the video and have me
25 watch it.

1 Q Okay. So you never watched the video?

2 A No, ma'am.

3 Q Okay. And after this -- so you said initially when
4 you talked to Ms. Volstromer she was open to
5 talking to you?

6 A Yes, ma'am.

7 Q Did you attempt to have another conversation with
8 her?

9 A Yes, ma'am. So she was very open and engaging out
10 on the front porch. And then later on, you know,
11 when we had people calmed down and she and her
12 daughter were in the living room, she was very
13 quiet.

14 Q Okay. And while you were on scene, did any
15 investigators also arrive to the location?

16 A Yes.

17 Q And who were those investigators?

18 A So, it was the crime scene investigator, McClary,
19 and then from CID was Investigator Holdorf, and I
20 believe Investigator Carter.

21 Q And when you say CID, what does that stand for?

22 A Criminal Investigations Division.

23 Q And what is the difference between a road deputy
24 and an investigator with CID?

25 A So the road deputies, their primary job is to just

1 respond to calls from dispatch and patrol the areas
2 and, you know, process and handle minor crimes.
3 And then the investigators, their primary job is to
4 handle the more major crimes, process, you know,
5 more in-depth evidence and take written statements,
6 and things like that.

7 Q And did the investigators that you just mentioned,
8 did they take over investigating this incident
9 further?

10 A Yes, ma'am.

11 Q Okay. And do you see the person that you told --
12 that you told us -- that told you he shot the
13 victim on that day in the courtroom right now?

14 A Yes, ma'am.

15 Q And can you describe what he is wearing?

16 A He is wearing a light blue polo shirt.

17 MS. TAYLOR: Let the record reflect that the
18 witness has identified the Defendant.

19 THE COURT: So noted.

20 BY MS. TAYLOR:

21 Q And one final question. When the Defendant was
22 talking to you about just shooting his neighbor,
23 can you describe any remorse or any regret that he
24 expressed --

25 MS. ZMROCZEK: Objection, Your Honor.

1 THE COURT: The objection is sustained.

2 Please rephrase the question.

3 BY MS. TAYLOR:

4 Q What did the Defendant -- what, if anything, did
5 the Defendant say about whether he was remorseful
6 or regretful for shooting the victim?

7 A I never heard anything like that.

8 Q Okay. What, if anything, did the Defendant tell
9 you about whether the victim was drunk or had been
10 drinking at the time of the incident?

11 A I don't remember. I don't remember hearing
12 anything about that.

13 Q Okay. And what did the Defendant tell you about
14 whether he shot the victim because he was defending
15 his wife or his house or himself?

16 A I don't remember hearing anything about that. I
17 just -- I just remember, you know, him clearly
18 calmly stating, you know, Yes, I shot him.

19 MS. TAYLOR: Okay. No further questions, Your
20 Honor.

21 THE COURT: All right. Thank you.

22 And before we do cross-examination, we are
23 going to take about a 10-, 15-minute break. And we
24 are breaking later than normal. This witness took
25 a little longer than I anticipated. And so we will

1 go ahead and take a break and then come back in
2 about 10 or 15 minutes. All right.

3 (WHEREUPON, the jury retires to the jury
4 room at 12:20 p.m.)

5 THE COURT: All right, we'll take about a 10-
6 or 15-minute break, about 15 minutes.

7 Please do not discuss your testimony with
8 anyone.

9 Thank you. You may step down, sir.

10 (Witness steps down.)

11 THE COURT: All right, let's bring them in.

12 (Witness returns to witness stand.)

13 (WHEREUPON, the jury came into open
14 court at 12:44 p.m.)

15 THE BAILIFF: The jury is all present, Your
16 Honor.

17 THE COURT: All right. Yes, ma'am?

18 MS. ZMROCZEK: Thank you, Your Honor. May it
19 please the Court?

20 THE COURT: Yes. Please answer the questions
21 that Defense has.

22 MS. ZMROCZEK: Your Honor, and I believe
23 without objection I would like to enter in
24 Defendant's 4 and 5.

25 THE COURT: Any objection?

1 MS. TAYLOR: No, Your Honor.

2 THE COURT: Those will be entered without
3 objection.

4 MS. ZMROCZEK: Thank you.

5 (WHEREUPON, Defendant's Exhibit Nos. 4
6 AND 5 were marked for identification and
7 received into evidence.)

8 CROSS-EXAMINATION

9 BY MS. ZMROCZEK:

10 Q You are an officer, right? A military officer,
11 right?

12 A Yes, ma'am.

13 Q And so we're talking about 2015, December of 2015,
14 right?

15 A Correct.

16 Q And you were the very first officer there. A road
17 deputy, that is kind of what you do, right?

18 A Right.

19 Q And so as a road deputy -- well, let me start this
20 way. As police officers, you receive training,
21 right?

22 A Yes.

23 Q Tell the jury about -- not like your specific
24 training, but generally where do you go when you
25 get hired on to be a police officer?

1 A So, Richland County does in-house training for
2 their, you know, specific policies and just to
3 prepare you. And then you go to the South Carolina
4 Criminal Justice Academy.

5 Q And that is actually at a location and you spend
6 time there learning all the different areas of
7 things that you are going to be encountering,
8 right?

9 A Sure.

10 Q And you did that?

11 A I did.

12 Q Okay. And then you said you received additional
13 training because Richland County had their own set
14 of policies, right?

15 A Right.

16 Q And as a road deputy, you had different policies
17 and procedures specific to your job, let's say, as
18 opposed to an investigator or a crime scene
19 analyst? Everybody has their specific things that
20 they are supposed to do to make it work, right?

21 A Right.

22 Q So as a road deputy -- and this was 2015, so you
23 didn't have body-worn cameras yet, correct?

24 A That's right.

25 Q But you did have Dash Cams, right?

1 A Yes.

2 Q And tell the jury about what is a Dash Cam and what
3 do they do? What is their function?

4 A So it is a camera that is mounted right by the
5 rearview mirror and faces forward and just points
6 forward and records everything in front of the
7 vehicle if it is turned on.

8 Q Okay. And, in fact, they are designed to turn on
9 when you run your lights, is that correct?

10 A Right.

11 Q Okay. And did you run your lights in this case?

12 A I did.

13 Q And did you download the Dash Cam?

14 A I did not.

15 Q You also, even though it records everything in
16 front of the vehicle --

17 A Right.

18 Q -- but it also can be -- or does it simultaneously
19 or you can flip it and it records inside the
20 vehicle as well, right?

21 A I believe you can turn it. I never mess with mine.

22 Q Okay. Did you ever make any DUI arrests?

23 A No, I did not.

24 Q Okay. Okay. So that is where we typically see
25 these things, right?

1 A Right.

2 Q Because when people are in your vehicles and they
3 are making statements or behaving -- their demeanor
4 is a certain way, even without a Body Cam, the Dash
5 Cam could still tell us what was said and how it
6 was said, right?

7 A Sure.

8 Q But we don't have that in this one?

9 A No.

10 Q Okay. So -- and obviously you get there and you
11 are receiving this information off of the CAD
12 report from 9-1-1?

13 A Right.

14 Q And 9-1-1, they have several dispatchers, right?

15 A Sure.

16 Q I mean, they don't have just one person answering
17 the phone?

18 A They have a couple of people up there.

19 Q Uh-huh. And oftentimes there are multiple calls
20 that come in about the same incident, is that
21 correct?

22 A Sometimes, yes.

23 Q So sometimes -- when you talk about that little
24 green screen on your --

25 A Uh-huh.

1 Q So sometimes the information that is coming in is
2 not coming all from the same person on that green
3 screen, is that correct?

4 A Sometimes, yes.

5 Q Okay. Like the operators are putting it in and it
6 is just coming up?

7 A From what I understand, yes. I just see the
8 screen, so.

9 Q Sure. And, but that is where you rely on to get
10 your information?

11 A So, mostly I would look at that like later on to
12 look at the notes. You know, I was driving, so
13 most of the time I'll get the verbal information
14 over the radio, ask some clarifying questions. In
15 this case, I just went off the radio and the
16 address on the screen.

17 Q Okay. And I think you said -- and if I misquote
18 you, I try to listen, but I think you said that
19 sometimes the information that you get from people
20 on the screen is sometimes only partially accurate,
21 is that what you said?

22 A Right.

23 Q Okay. And, of course, you acknowledge someone
24 being shot is a serious matter?

25 A Right.

1 Q When you went to your training, and as you have
2 gone through your training, do they train you as an
3 officer on how to react when you shoot someone?

4 A Yes.

5 Q And what do they tell you?

6 A So they just train you that, you know, deadly force
7 should only be used if it is necessary to protect
8 your life or the lives of others and to only use
9 the amount of force necessary so that no one is no
10 longer in danger and just to, you know, remain calm
11 and secure the scene.

12 Q Remain calm, right?

13 A (Nods affirmatively.)

14 Q That is what they teach you?

15 A Right.

16 Q Because there is no -- you would agree with me,
17 there is no one right way to react to a situation,
18 right?

19 A Every situation is different, so.

20 Q And not only every situation is different, every
21 person is different, right?

22 A Sure.

23 Q And I think you recall -- I think you testified to
24 this jury that once you, when you first got there,
25 Barbara was a little crazy, right? I mean, she was

1 trying to talk to you and she is glad to see you,
2 and then she calms down when you get there, right?

3 A She -- she was nervous, a little high strung, and
4 then later on calmed down, got real quiet.

5 Q And that calmed down part, because not only are you
6 there to be at the scene, but we have several
7 officers, we have firefighters, I think EMS were
8 there briefly, but there are a lot of other people
9 with professional responsibilities at that point,
10 right?

11 A Right.

12 Q Okay. And so I want to talk about the crime scene
13 for just a little bit.

14 A Okay.

15 Q Briefly. We saw all the pictures that were
16 entered. And I just want to show you a couple more
17 and talk to you about them. I don't have a big
18 fancy board, but I will try to make sure everybody
19 can see. I show you Defendant's 4 and 5 ask if you
20 recognize those same pictures also taken that
21 evening?

22 A Yes, this is from that evening.

23 Q And like you said, you got the call -- this was in
24 December, right?

25 A Correct.

1 Q And so you got the call around 4:30ish? I'm not
2 trying to trick you. It was before the evening,
3 but of course the sun was going down early, right?

4 A Sure. I remember it was late in the day, it was
5 like it was still well lit. So according to my
6 report, I was dispatched at 4:43 p.m.

7 Q Okay. All right. And so on Number 4 -- let me see
8 that one real quick. Sorry. I've been vaccinated.
9 I know I'm violating the rule, I apologize, but
10 I've been vaccinated. Okay, so Defendant's 4, that
11 was -- so the white fence, right, that is on 1129
12 Antioch Amez Church Road, that is where Mark and
13 Barbara and **Daughter** live, right?

14 A Right.

15 Q Now, that fence, were you and other people able to
16 go in and out of that fence?

17 A So, I don't remember where we got around, but I
18 believe there was like a walkway or an entrance,
19 but it is not pictured here. I don't remember if
20 we went through the fence or around it. I don't
21 remember.

22 Q But my point being, you could get there through
23 there?

24 A Sure.

25 Q And let me show the jury. And then what is this in

1 the leaves? And then I will show the jury so they
2 can see.

3 A Let me see.

4 Q And we are on Defense 4.

5 A You mean like the blue and white stuff here?

6 Q Correct.

7 A That looks like discarded medical use equipment
8 that the EMT's or firefighters use.

9 Q So at this point I think you said, you know, they
10 were there. We already heard from them, they were
11 there. They were caring for Lanny, right? And so
12 y'all didn't stop the care so you could take
13 pictures of where he was?

14 A No.

15 Q But this is what we have left, right?

16 A Right.

17 Q And so we have the fence and just the medical
18 equipment, right?

19 A Right.

20 Q And we talked about you set up a crime scene. I
21 think you did a crime scene log, or started a crime
22 scene log?

23 A Yes, ma'am.

24 Q And you said that you do that because you don't
25 want the crime scene to be disturbed?

1 A Right.

2 Q Now oftentimes, for example, when EMS or fire, they
3 are not worried about moving evidence, and whatnot,
4 because they have their job?

5 A Correct.

6 Q Right? But when you talk about things being
7 disturbed, you mean like things that were there and
8 then -- that could have been taken away before the
9 police got there, right?

10 A Right.

11 Q Okay. Because when that happens, that changes the
12 landscape of what we see, right?

13 A Right.

14 Q So that can alter the way the crime scene is
15 perceived, correct?

16 A Right.

17 Q And so your job as the responding officer, patrol
18 deputy, you have got a lot going on?

19 A Right.

20 Q That is why we have the specially trained
21 investigators, and things like that, right?

22 A Right.

23 Q Because you are certainly not telling me that just
24 because somebody said they shot him that you are
25 just not going to do an investigation, right?

- 1 A Right.
- 2 Q That would be silly?
- 3 A Right.
- 4 Q People in the heat of the moment and the are saying
5 things and they are trying to remember, they may
6 not tell you everything, right?
- 7 A Sure.
- 8 Q Okay. And that is why we have the investigation
9 team?
- 10 A Right.
- 11 Q But that wasn't your job, right?
- 12 A No.
- 13 Q Perfect. And Number 5 I think is just a closer up
14 picture, is that correct?
- 15 A Looks like it.
- 16 Q Okay. What do you see hanging on the fence right
17 there?
- 18 A There is a sign that says, Private property, no
19 trespassing.
- 20 Q Okay. And do you -- are you able to see in that
21 picture kind of blood on the leaves?
- 22 A I believe I do, yes.
- 23 Q Okay. And so -- and this equipment, again, was
24 where the First Responders were putting their
25 things, right?

1 A Right.

2 Q Okay. So I'm showing 5 that has the property --
3 the no trespassing sign, private property. And
4 then, so I'm not misconstruing, is this the area
5 with the blood in the leaves?

6 A Yes.

7 Q Okay. And so I want to talk about -- you said that
8 you learned through somewhere, or somewhere, that
9 there had possibly been some prior difficulties?

10 A Right.

11 Q But you weren't familiar with them?

12 A No.

13 Q Okay. But you are not the only one who works that
14 region, right?

15 A Right.

16 Q Okay. So, and you certainly don't work 24/7?

17 A No.

18 Q But that is the information that you gathered as
19 you are there talking to people?

20 A Right.

21 Q Okay. And, you know, we talked a lot about
22 demeanor, and things like that. In fact, there
23 were some people on the dirt road part of the road?

24 A Right.

25 Q And they were also emotionally charged?

1 A I just saw -- I just remember one individual that
2 was in the road when I got there. And I think I
3 briefly talked to him when I first got there. I
4 didn't take any statements from him or anything.

5 Q Right. Because that is why you have other people
6 being dispatched, because you can't do it all?

7 A Right.

8 Q Do you remember when you got there, was there a
9 black or dark blue truck anywhere?

10 A I don't remember.

11 Q You don't remember seeing that?

12 A No.

13 Q Okay. And I know that you didn't take these
14 pictures, but you were able to at least see them,
15 right?

16 A Right. And I did not take those, no.

17 Q Right, right. So I want to move then on to the --
18 you talked about one of the things that you
19 probably receive more training just because you as
20 a road deputy or patrol officer you interact with
21 the public more than most people, most officers,
22 right?

23 A Right.

24 Q So you get training you said specifically on
25 intoxicated persons you might encounter?

1 A Right.

2 Q And why do you need special training for people who
3 are intoxicated?

4 A So, primarily the training for that focuses around
5 people that are driving under the influence.

6 Q Uh-huh.

7 A But also, you know, judging someone's level of
8 intoxication is going to judge how they are going
9 to behave.

10 Q Right. Because that can change the way that they
11 behave, right?

12 A Right.

13 Q And you were talking about DUI, or driving under --
14 while intoxicated. What is the legal limit for
15 driving while intoxicated?

16 A So there is driving with an alcohol content of .08
17 or above or any alcohol content that will make you
18 materially or appreciably impaired to operate a
19 motor vehicle.

20 Q And that is something that is set by the statute,
21 but do that based on science and how alcohol could
22 affect your body and mind, and things like that,
23 right?

24 A Sure.

25 Q And we talked about, you were asked specifically

1 when talking about officer safety because you
2 received a lot of training on that, and that
3 certainly is something that you are aware of,
4 right?

5 A Right.

6 Q Because sometimes people just don't like police
7 officers, right?

8 A Right.

9 Q Just like sometimes people don't like their
10 neighbors, right?

11 A Right.

12 Q And they can threaten you. Have you been
13 threatened before?

14 A Sure.

15 Q And if somebody said, I got something for you, are
16 you just going to laugh it off or is it going to
17 maybe make you pay attention?

18 MS. TAYLOR: Objection. Speculating on what
19 he would do in the situation. He is not an expert
20 in how neighbors will respond. He is a police
21 officer.

22 MS. ZMROCZEK: I didn't ask that. My question
23 is how would he react.

24 MS. TAYLOR: How is that relevant?

25 THE COURT: All right, the objection will be

1 overruled.

2 MS. ZMROCZEK: I'm just keeping it to him.

3 A I'm sorry, can you state the question again?

4 Q Sure. If somebody threatened you or said, I got
5 something for you, and they are not saying it nice
6 like me, like, I got something for you --

7 A Uh-huh.

8 Q -- is that going to get your attention?

9 A I have had that said to me before. I don't put a
10 lot of stock in it, but that is just me as an
11 individual.

12 Q And you are also fully trained in how to deal with
13 these situations, right?

14 A Right.

15 Q I mean, they tell you, you know, kind of -- I think
16 they call it a continuum of force or something?

17 A Right. There is an escalation of force type
18 situation.

19 Q Right. And they even talk about how many feet away
20 that the officers are allowed to react to someone?

21 A That is not really specific. It is really
22 depending on a lot more factors than that.

23 Q Okay. But certainly those are some of the factors?

24 A This one is a factor, but I never had any training
25 where I have been told a specific amount of feet

1 that will allow you to react in a certain way.

2 Q Right. Right. You were talking about movement,
3 like you wanted to see if people act nervously
4 or -- and I believe the law calls that furtive
5 movement. Is that what those are?

6 A I have heard that statement before.

7 Q Okay. And you are watching someone because if they
8 make one of these furtive or nervous movements, you
9 want to pay attention to that, right?

10 A Right.

11 Q Okay. Because you don't know what is going to
12 happen next? You can't perceive the future?

13 A Right.

14 Q So you said that this case was unusual. It was
15 also unusual there was a whole surveillance system
16 with audio, right?

17 A Right.

18 Q And in your experience as an officer, have you been
19 to locations where they have surveillance?

20 A Not to any residences, only businesses have them.

21 Q And why do businesses put those up?

22 A I don't know. I'm sure they have their own
23 reasons.

24 Q Okay. You talked about you saw -- you recall
25 interacting with one person on the street, maybe

1 Rick I think you said his name was?

2 A Right. In my report I wrote his name down as Rick
3 Holten.

4 Q Okay. And you briefly spoke to him, but, again,
5 you didn't take a statement from him?

6 A No.

7 Q Okay. But there were -- you stayed on the scene
8 until I believe 7:00 p.m.?

9 A Right.

10 Q And so were there others on the scene as well,
11 other bystanders or witnesses or people?

12 A I don't recall anybody else being there.

13 Q Okay. Because once you got there and you kind of
14 got your safety and situation under control, you
15 already had other officers on the way, right?

16 A Right.

17 Q And additionally I think we heard from the
18 gentleman at the fire department, they were kind of
19 blocked in, so they were also there if needed,
20 right?

21 A Right.

22 Q I mean, I know that is typically not their job, but
23 they couldn't get out so you were stuck with them.
24 And you said that Mark was very compliant, right?

25 A Right.

1 Q He didn't fight you?

2 A No.

3 Q Did he talk to you?

4 A Yes.

5 Q He did talk to you? He, in, fact when you said --
6 and I don't know if you -- and you have never gone
7 back and watched the security videos from the
8 house, have you?

9 A No.

10 Q Okay. So when you got there, you said that Barbara
11 was on the phone and you were telling her to get
12 off the phone, right?

13 A Yes.

14 Q Would it surprise you to learn she was on the phone
15 with 9-1-1?

16 A No.

17 Q Oh, okay. And I believe you said, I don't care if
18 it is the president of the United States, get off
19 that phone, right?

20 A It sounds like something I would say.

21 Q And she complied?

22 A Right.

23 Q Okay. And then they told you where the gun was?

24 A Right.

25 Q And you don't recall manipulating it?

1 A No.

2 Q Okay. And, in fact, it was -- when you walked in,
3 it was just as you saw in that picture, right?

4 A From what I remember. I remember definitely it was
5 clearly visible in the kitchen. You know, the
6 picture looks like where it was. And I don't
7 remember manipulating it.

8 Q My question is, when you are on the scene and there
9 is a gun involved, what is the first thing that you
10 are typically trained to do?

11 A You want to make sure that nobody has access to
12 weapons.

13 Q And it is rendered safe, right?

14 A Right.

15 Q Because I know oftentimes I like to beat up on cops
16 and say, when you manipulated that weapon, you
17 changed it? But in this case it was rendered safe
18 when you saw it?

19 A I don't remember. It may have been. I don't know
20 if myself or one of the other deputies on the scene
21 rendered it safe and took the rounds out of it or
22 if it had already been done before that. I don't
23 remember.

24 Q Okay. And you didn't have to look for it?

25 A No. They told me where it was.

1 Q Okay. And I believe you said, just as you were
2 trained, you read Mark his Miranda rights and then
3 you escorted him to the car because, again, that is
4 something obviously you were trying to get a little
5 gist of what happened, but that is really somebody
6 else's job, right?

7 A Right.

8 Q Okay. I mean, you kept -- you had him cuffed and
9 made sure everything was safe, but really the
10 investigation comes later down the road?

11 A Right. A more thorough investigation, right.

12 Q Okay. And Barbara certainly showed you -- I know
13 you didn't watch the video, but she showed you
14 where the surveillance system was and made sure
15 that everybody. Knew that it was there?

16 A Right.

17 Q Okay. Because, again, that would be a job for the
18 investigators to look at it and to be able to
19 decide whether or not -- you talked about, Well, I
20 would have investigated, or I would have searched
21 the truck, or I would have done this. But, again,
22 you were the patrol officer and you didn't see the
23 video, so you didn't know what happened before you
24 got there, did you?

25 A No, not other than what I was told.

1 Q So that investigation would have been in this case
2 Investigator Holdorf's job, right?

3 A Sure.

4 Q Okay.

5 MS. ZMROCZEK: Beg the Court's indulgence.

6 (Pause.)

7 BY MS. ZMROCZEK:

8 Q I believe that is all I have. Thank you so much
9 for answering my questions.

10 A You're welcome.

11 REDIRECT EXAMINATION

12 BY MS. TAYLOR:

13 Q Is it illegal to have a verbal argument with your
14 neighbor?

15 A No, ma'am.

16 Q She asked you about how an officer is trained to
17 react I guess when shooting someone, or something
18 like that. And you mentioned deadly force should
19 be used only to protect oneself, others, and use of
20 necessary force?

21 A Right.

22 Q Can you use deadly force during a verbal argument
23 or while you are having a verbal argument?

24 A No, ma'am.

25 Q Okay. She mentioned that EMT's were at the crime

1 scene and things could have potentially been moved.

2 Did you talk to the EMT workers?

3 A I did not.

4 Q Did you talk to the Defendant?

5 A Yes.

6 Q And did the Defendant mention the victim having any
7 weapons on him?

8 A No, ma'am.

9 Q Okay. And she asked you about not checking a
10 truck. And that would have been the investigator's
11 job?

12 A Right.

13 Q Who on the scene or the witness that you talked to
14 on the scene mentioned anything about a truck being
15 involved in the shooting?

16 MS. ZMROCZEK: Objection, Your Honor. I'm not
17 quite sure what the answer is going to be, and if
18 it was anybody else I can't cross-examine, then
19 that is why I would object.

20 BY MS. TAYLOR:

21 Q Well, did anyone that you talked to on the scene
22 mention anything about a truck being involved in
23 the shooting?

24 A Other than the victim was standing by a truck at
25 some point, I wasn't told anything about a truck

1 being involved in any way.

2 MS. TAYLOR: No further questions.

3 THE COURT: All right. You may step down.

4 Any objection to this witness being excused?

5 MS. ZMROCZEK: No objection from the Defense.

6 MS. TAYLOR: Can he be released from all
7 subpoenas?

8 MS. ZMROCZEK: Yes.

9 THE COURT: You are free to leave.

10 (Witness steps down and excused.)

11 THE COURT: All right, call your next witness.

12 MS. TAYLOR: The State would call Megan
13 Timmons.

14 THE BAILIFF: Come forward to be sworn, sir.

15 (Witness approaches.)

16 THE BAILIFF: Please face the clerk there,
17 place your left hand on this Bible right here, and
18 raise your right hand.

19 (Witness complies.)

20 THE CLERK: Do you swear or affirm the
21 testimony you shall give in this case will be the
22 truth, the whole truth, and nothing but the truth,
23 so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Have a seat in the

1 witness stand, and state your full name for the
2 record.

3 (Witness seated.)

4 MEGAN TIMMONS,
5 after being duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. TAYLOR:

8 Q Can you state your name for the record, please?

9 A Megan Timmons.

10 Q And where do you currently work?

11 A Kershaw County EMS.

12 Q And what is your job there?

13 A I'm a paramedic.

14 Q And how long have you worked there?

15 A At Kershaw, I have been there three or four months.

16 Q Back on December 27th, 2015, where did you work?

17 A Richland County EMS.

18 Q And what was your job back then?

19 A Paramedic.

20 Q What were some of your duties as a paramedic?

21 A They were different levels of patient care from
22 basic life support all the way to advanced life
23 support, managing first aid, all the way to
24 critical life support, and also dealing with your
25 partners and regular work, bureaucratic stuff.

1 Q And how many years experience total do you have
2 working as a paramedic?

3 A Twenty-one.

4 Q Were you involved in responding to the incident
5 that we're here for today?

6 A Yes.

7 Q And what was the address of the location that you
8 responded to?

9 A 8 Megan Court.

10 Q And is that located in Richland County?

11 A It is.

12 Q Did you write a report to document your response to
13 this incident?

14 A I did.

15 Q And would you describe the area that you responded
16 to as rural?

17 A Yes.

18 Q And how did you receive notice to respond to that
19 location?

20 A From our dispatch.

21 Q And can you briefly describe how dispatch works in
22 notifying you?

23 A If somebody calls 9-1-1 it goes to a dispatch
24 center where the calls come in, and they
25 differentiate what type of emergency services they

1 need, whether law enforcement, fire, or EMS, and
2 then they dispatch, EMS dispatches, dispatches an
3 ambulance if needed.

4 Q And what time did you receive the dispatch call?

5 A It was in the afternoon around 4:00 o'clock, I
6 believe, 4:00-ish.

7 Q And did you respond in an ambulance?

8 A We did.

9 Q With lights and sirens on?

10 A Yes, ma'am.

11 Q What type of call were you responding to?

12 A It was a shooting.

13 Q And what time did you respond to the scene?

14 A According to this, we went en route at 1643, which
15 is 4:43.

16 Q And I think you may have already said this, but
17 when a call is dispatched, do other First Responder
18 agencies get that same call?

19 A They do if they are toned out to it by the other
20 levels of dispatch, whether it is fire or law
21 enforcement. If they deem it is necessary, they
22 will send them out there as well.

23 Q And what do you use as driving directions to know
24 how to get to a certain location?

25 A Map books or CAD. They have computers put into

1 ambulances now that act as map books that give you
2 route to get to locations.

3 Q Like a GPS type thing?

4 A Yes.

5 Q And while you are en route to the scene, does
6 dispatch update you information about the scene?

7 A They do.

8 Q Okay. And do you remember responding to this
9 particular incident?

10 A I do.

11 Q And what was it about this particular incident that
12 made you remember it?

13 A That I was supposed to be getting off and caught a
14 late call, and it was way out there, and then that
15 the shooter was on -- the dispatch note stated that
16 the shooter was on scene and law enforcement wasn't
17 there, so we were not happy when we were told to go
18 without law enforcement there.

19 Q And typically -- and why were you not happy,
20 like --

21 A Because it puts us at risk if somebody has a gun,
22 if you know they have a gun or just shot somebody
23 or if a weapon is involved, I don't necessarily
24 want to go in if they are still there because I
25 don't know if they are going to want to harm

1 anybody else.

2 Q And can you describe, if you remember, the ability
3 of the ambulance to drive down the road on Megan
4 Court?

5 A It was a dirt road, if I recall correctly, and very
6 small. We ended up getting blocked in. Like it
7 was a one-way, or either it was just really small.

8 Q And when you arrived on scene, did you observe any
9 other First Responder agencies already there?

10 A Some firemen had gotten there before we had.

11 Q And did you observe the victim on the scene?

12 A I did.

13 Q And where was he physically located when you
14 observed him?

15 A He was on the ground outside near the roadway
16 beside the fence.

17 Q And when you first arrived on the scene, what if
18 any type of treatment had the firefighters already
19 started doing?

20 A CPR.

21 Q And how was he positioned?

22 A He was laying on his back when they were doing CPR.
23 They do what we call supine, which is laying flat
24 on your back.

25 Q And is it possible that the firefighters could have

1 moved him --

2 A Yes.

3 Q -- from where he was originally found? Other than
4 the firefighters, did you observe any other people
5 in the road or nearby?

6 A There was somebody else that was in the vehicle
7 with the patient that was there, a friend of his.

8 Q Okay.

9 A And then a woman was in the yard.

10 Q And do you remember what the woman in the yard was
11 doing?

12 A Not really much. She was just kind of standing
13 there.

14 Q Okay. Describe the victim's condition when you
15 first arrived.

16 A He was already in cardiac arrest. He was
17 already -- no pulse and no respirations. In
18 layman's terms, he was already dead.

19 Q And do you recall if the victim had a shirt on?

20 A I do not remember.

21 Q Okay.

22 A If he did, it didn't stay on.

23 Q And if he didn't have a shirt on, what would be the
24 purpose of cutting someone's shirt off?

25 A To expose looking for any wounds.

1 Q Did you observe any injuries on the victim's body?

2 A I did. He had a gunshot.

3 Q And where was that located?

4 A The left upper quadrant.

5 Q Describe the amount of blood that you observed
6 coming from the victim's body.

7 A He had blood coming out from his airway like crazy.
8 I don't recall there being exit wound. If there
9 was, we only found one, an entrance wound that I'm
10 aware of.

11 Q And what was his level of consciousness?

12 A He was unresponsive.

13 Q And what signs indicated that to you?

14 A He had dilated pupillary response. They were
15 dilated and would not respond. He had no verbal
16 response. He had no light reflections to stimuli
17 and no respiration.

18 Q Did you move the victim from where he was laying in
19 the area where you found him?

20 A We did.

21 Q And what method did you use to move him?

22 A We put him on a long spine board and usually that
23 involved putting a log roll, but depending on the
24 scenario. We did a log roll and put him on a spine
25 board, and then and on a stretcher, and then into

1 the back of an ambulance.

2 Q Is there something called a Glasgow Coma Scale that
3 paramedics used to monitor a patient?

4 A Yes.

5 Q And can you briefly explain what that is used to
6 measure and what factors you use to measure that?

7 A It is used to -- it is eyes, motor, and verbal
8 responses, and it is used to monitor somebody's
9 mental status, whether they are alert and how alert
10 they are or if they are not alert at all.

11 Q And what was the victim's Glasgow Coma Scale total?

12 A He was a three.

13 Q And what does that number indicate?

14 A Basically there is no response to anything
15 whatsoever. There was no verbal response, there
16 was no response to his eyes, and no motor response.
17 He did not move his arms or anything.

18 Q You mentioned that blood was coming out of his
19 airway. Can you describe any other conditions you
20 observed regarding his airway?

21 A I remember that he was a really hard intubation.
22 When we were trying to intubate him we were having
23 difficulty because there was so much blood that
24 just kept coming up into his airway. So we were
25 constantly having to suction it and trying to

1 maneuver him so we could to that, but it was mainly
2 just a lot of blood that was coming up and mucous.

3 Q And what does intubation mean?

4 A That is when we put a tube down someone's throat to
5 establish an airway on them. It goes directly
6 through their mouth into their lungs.

7 Q And how did he respond to those procedures?

8 A He didn't respond at all.

9 Q Describe your observations of the condition of his
10 lungs and his ability to breathe.

11 A He did not have any ability to breathe. And there
12 were equal chest rise ventilations when we were
13 trying to put it in, but it was really gunky like
14 he had possibly aspirated.

15 Q And what does aspirate mean?

16 A That is when some foreign substance, whether it be
17 a liquid material or anything that goes into that
18 airway and gets into the lungs.

19 Q Describe your observation of the condition of his
20 heart and pulse.

21 A He had no heart rate and he had no pulse.

22 Q So what does that mean if someone has no heart rate
23 or pulse?

24 A They have no atrial activity in their heart to
25 cause the heart to actually contract and beat to

1 push the blood throughout the body to supply it.

2 Q And what hospital did you take him to?

3 A Richland.

4 Q And what time did you arrive there?

5 A We got there at -- I would have to look at the
6 times, sorry. 1715, so that is 5:15.

7 Q And based on your observations of the victim during
8 your care, describe the victim's level of showing
9 signs of life.

10 A He was completely unresponsive. He didn't have any
11 signs of life whatsoever throughout the time that I
12 had him.

13 Q And between the time that you first came in contact
14 with the victim at the scene of Megan Court and the
15 time you took him to the hospital, did you remove
16 any personal items from the victim's body or
17 clothes?

18 A Not that I am aware of. If we cut his shirt, I'm
19 not sure if we did or First Responders cut his
20 clothes, but, no, we did not remove any items from
21 him that I'm aware of.

22 Q And if during your observation of the victim's
23 body, if you had observed any weapons, what would
24 you -- how would you have documented them or what
25 would you have done?

1 A If there were any weapons present that we had
2 saw -- first, we wouldn't move any weapons if they
3 were on scene. If we saw anything that was deemed
4 to be evidence, something like that, we wouldn't
5 move it, we would leave it alone, not touch it or
6 take anything, it would stay there. But I didn't
7 see anything on him.

8 MS. TAYLOR: Okay. No further questions.

9 THE COURT: Yes, ma'am?

10 CROSS-EXAMINATION

11 BY MS. AUSTIN:

12 Q You consider a knife a weapon, right?

13 A Yes.

14 Q And do you remember seeing a beer can near the
15 patient?

16 A Not right off the top of my head, I do not.

17 Q So you don't remember throwing a beer can away?

18 A No.

19 Q And you said that Pruitt or the victim may have
20 been aspirating. If someone is aspirating by
21 blood, would applying pressure to the wound help
22 stop the bleeding?

23 A No, not for aspirating.

24 Q So how do you help someone who is aspirating?

25 A You suction their airway. That is all you can do.

1 And you give them oxygen.

2 Q Thank you.

3 THE COURT: Any redirect?

4 MS. TAYLOR: No redirect, Your Honor.

5 THE COURT: All right, you may step down.

6 THE WITNESS: Okay.

7 (Witness steps down.)

8 THE COURT: All right. Any objection to that
9 witness being excused?

10 MS. SAMPSON: Not from the State, Your Honor.

11 MS. ZMROCZEK: Nothing from the Defense.

12 (Witness excused.)

13 THE COURT: All right, ladies and gentlemen of
14 the jury, it is about 1:25, and so it is time for
15 us to take our afternoon lunch break. I will -- we
16 will start back -- it will take you all a minute to
17 get out of here -- about 1:40 -- 2:40. That will
18 give you time to eat, right? We will start back
19 around 2:40.

20 And so please do not discuss the case.
21 Remember, you have been sworn to be fair and
22 impartial. Part of being fair and impartial is
23 waiting until you have all the evidence, arguments
24 of the parties, and charge by the Court. So please
25 do not discuss anything else regarding the case.

1 Keep your badges on, especially if you are going to
2 eat around here so that the parties may know that
3 you are actually serving on the jury and no one
4 accidentally says anything in front of you.

5 So have a wonderful lunch. We will see you
6 back at 2:40.

7 (WHEREUPON, the jury is excused for
8 lunch at 1:26 p.m.)

9 THE COURT: We'll see you all back about 2:40.

10 (WHEREUPON, a lunch break was taken.)

11 THE COURT: You can bring them in.

12 (WHEREUPON, the jury came into open
13 court at 2:53 p.m.)

14 THE BAILIFF: The jury is present, Your Honor.

15 THE COURT: All right. I hope you had a good
16 lunch. We are ready to continue.

17 You can call your next witness.

18 MS. TAYLOR: The State calls Jackie Richburg.

19 THE BAILIFF: Come forward and be sworn,
20 please.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, raise your right, and face the clerk.

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm the

1 testimony you shall give in this case will be the
2 truth, the whole truth, and nothing but the truth,
3 so help you God?

4 THE WITNESS: Yes.

5 THE CLERK: Thank you. Please have a seat in
6 the witness stand, and state your full name for the
7 record.

8 (Witness seated.)

9 THE WITNESS: Jacquelyn Richburg.

10 JACQUELYN RICHBURG,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. TAYLOR:

14 Q Ms. Richburg, where do you work?

15 A Columbia-Richland 9-1-1 Communications.

16 Q And what is your job there?

17 A Interim Deputy Director.

18 Q And what are some of your duties?

19 A Some of my duties are to maintain and to fulfill
20 the requests for recordings and the daily
21 operations of 9-1-1.

22 Q Okay. And can you -- so one of your duties is to
23 oversee the 9-1-1 system?

24 A Yes.

25 Q And can you briefly describe to the jury how the

1 9-1-1 system is set up?

2 A So all of our phone calls and radio traffic is
3 recorded, so once the employee answers the phone,
4 all of the -- that information is recorded on our
5 database.

6 Q And are these calls maintained as part of the
7 business records of your organization?

8 A Yes.

9 Q And are you the custodian of these records?

10 A Yes.

11 Q Okay. I want to show you what has been marked as
12 State's Exhibit Number 4. And can you tell me if
13 you recognize this?

14 A Yes.

15 Q And have you had the opportunity to listen to what
16 is on that CD?

17 A Yes, I did.

18 Q And what is on that CD?

19 A Three phone calls.

20 Q 9-1-1 calls?

21 A Yes.

22 Q Okay. And does your -- are these your initials on
23 this disk?

24 A Yes.

25 Q And that indicates that you listened to this video?

1 A Yes.

2 Q Does this -- do these calls fairly and accurately
3 represent 9-1-1 calls that were made on December
4 27, 2015?

5 A Yes, they do.

6 MS. TAYLOR: Your Honor, the State requests to
7 move State's Exhibit Number 4 into evidence.

8 THE COURT: Any objection?

9 MS. ZMROCZEK: Without objection, Your Honor.

10 THE COURT: It will be entered without
11 objection.

12 (WHEREUPON, State's Exhibit No. 4 was
13 marked for identification and received
14 into evidence.)

15 MS. TAYLOR: Permission to publish, Your
16 Honor?

17 THE COURT: Yes, ma'am.

18 (State's Exhibit 4 played in open court.)

19 MS. TAYLOR: No further questions.

20 THE COURT: Yes, ma'am?

21 CROSS-EXAMINATION

22 BY MS. ZMROCZEK:

23 Q Good afternoon, Ms. Richburg. You have a lot of
24 people that work answering calls? Or let me
25 rephrase that. You have more than one person

1 answering calls at any time, right?

2 A Yes.

3 Q And y'all take calls -- you say -- is it
4 Columbia-Richland? You do the -- you have a vast
5 area that you cover, right?

6 A Yes.

7 Q Okay. Did you -- when a call is generated, it
8 prints out a little report, right?

9 A Yes.

10 Q And what is that called?

11 A It is called a closed incident report.

12 Q Closed incident report. Is that generated every
13 single time someone calls 9-1-1?

14 A No.

15 Q Okay. So tell -- who gets -- who decides what gets
16 reported and what doesn't?

17 A So, there is two separate reports. The first
18 report is the phone report, and that report shows
19 us what time the call starts ringing, what time our
20 employee picks it up, what time they hang it up
21 before we have it transferred. And then we have
22 the CAD incident report, which that report will
23 start the time, once we get the information as to
24 what is the location and what is the concern, and
25 then that time starts on that report.

- 1 Q Okay. And then do the -- and then do the police
2 always get notified every time someone calls 9-1-1?
- 3 A Yes.
- 4 Q Okay. And then so if the police go out, then they
5 will have their own little incident report and they
6 will have reports separate and complete from yours,
7 right?
- 8 A Yes.
- 9 Q Okay. So, but -- and they don't always go out,
10 that is their choice, right?
- 11 A Yes.
- 12 Q Okay. But you always have a log of when people
13 call, correct?
- 14 A Yes.
- 15 Q Okay. And so one of things you said is that it
16 starts recording before -- like we can still hear
17 it ringing, right? How does that work?
- 18 A Well, it doesn't start recording until they
19 actually answer the phone. When they actually pick
20 it up is when it starts recording, but our phone
21 system records it when it starts ringing. That is
22 a separate report.
- 23 Q Okay. All right. Oftentimes there is noise in the
24 background, and things like that. It just picks up
25 everything that is able to be picked up on the

1 phone, right?

2 A Yes.

3 Q Okay.

4 MS. ZMROCZEK: I don't have any further
5 questions, Your Honor. I would ask that she remain
6 under subpoena if we need to call her in our case
7 in chief.

8 THE COURT: All right, thank you.

9 Any redirect?

10 MS. TAYLOR: No, Your Honor. And she can be
11 released from our subpoena.

12 THE COURT: All right. You may step down.
13 Thank you.

14 (Witness steps down.)

15 THE COURT: Call your next witness.

16 MS. SAMPSON: Beg the Court's indulgence one
17 moment.

18 (Pause.)

19 MS. SAMPSON: The State calls Scott Hunger.

20 THE BAILIFF: Come forward and be sworn.

21 (Witness approaches.)

22 THE BAILIFF: Place your left hand on the
23 Bible, raise your right, and face the clerk.

24 (Witness complies.)

25 THE CLERK: Do you swear or affirm that the

1 testimony you shall give in this case will be the
2 truth, the whole truth, and nothing but the truth,
3 so help you God?

4 THE WITNESS: Yes, ma'am, I do.

5 THE CLERK: Thank you. Please have a seat in
6 witness stand, and state your full name for the
7 record.

8 (Witness seated.)

9 THE WITNESS: Scott Hunger.

10 SCOTT HUNGER,
11 after being duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. SAMPSON:

14 Q And is it -- what is your rank right now?

15 A Current rank is sergeant.

16 Q Sergeant Hunger. I just want to make sure I call
17 you the right name.

18 A Yes, ma'am.

19 Q Where do you work?

20 A Richland County Sheriff's Department.

21 Q And how long have you been there?

22 A Approximately 18 years.

23 Q And can you tell the jury kind of how you go
24 through the ranks?

25 A You are saying what is each rank, or?

1 Q Like -- no. How do you start and then get to
2 sergeant?

3 A You start out as a deputy, and then you go to
4 master deputy. And then now we have -- there is
5 another rank in there, so it is master deputy, then
6 corporal, and then sergeant after that.

7 Q And is there training that goes with that?

8 A Yes.

9 Q How often do you get trained?

10 A We have mandatory training about every six months,
11 and also have multiple other training opportunities
12 that come about in between.

13 Q And, now, I am going to take you back to December
14 of 2015. What was your rank at that time?

15 A At that time I was a master deputy.

16 Q And what does a master deputy do?

17 A A master deputy is a secondary supervisor to the
18 shift supervisor, who is a corporal. And in this
19 situation we did not have a corporal assigned to
20 the shift, so it was a master deputy that took on
21 the role of master deputy and corporal being in
22 charge of the shift.

23 Q When you are talking about shift, what is a shift?

24 A A shift is a squad. A squad is assigned to a
25 specific region. And in this case it was Region 1,

1 which is the lower area. We have a geometrical
2 area in which we are assigned to answer calls
3 within that area and respond to citizens and deal
4 with any complaints or calls in that area.

5 Q And how do you all receive a call?

6 A Through the radio. Whatever dispatch receives,
7 they figure out where it is occurring at and who
8 they need to send, and then they ultimately
9 dispatch whatever units are available to that call.

10 Q But can you tell the jury how you got involved in
11 this case?

12 A In this case, with this situation, any time there
13 is any type of shooting incident, they put out what
14 we call a tone, in which they tone across all
15 channels. And in our situation, we are on Tag 1,
16 which is Channel 1 for Region 1, and when they drop
17 the tone, it goes across all the channels in the
18 county, and they put out the information regarding
19 the incident, which they, in this situation, they
20 classified it as shooting hit. And then in that
21 case, basically the most immediate units will
22 respond. And in a situation like this, the entire
23 squad that is within that area will respond to the
24 scene in order to secure the scene and make sure it
25 is safe.

1 Q And is that what happened?

2 A That is what happened, yes, ma'am.

3 Q So can you tell the jury what you observed when you
4 got there?

5 A It was so long ago, I don't recall too much. I do
6 recall that, I think it was either EMS or fire
7 department was already on the scene working with
8 the victim on the side of the road. And then I
9 believe the wife was on the porch at the time. And
10 Deputy Vadasz I believe had gotten there before me,
11 and he had already -- I believe at that time he had
12 already detained the individual or was in the
13 process of it, so at that point we just -- we
14 continued going through from there.

15 MS. ZMROCZEK: Without objection, Your Honor.

16 THE COURT: What number is that?

17 MS. SAMPSON: State's Exhibit 13.

18 THE COURT: All right, State's 13 will be
19 entered without objection.

20 MS. SAMPSON: Thank you, Your Honor.

21 (WHEREUPON, State's Exhibit No. 13 was
22 marked for identification and received
23 into evidence.)

24 BY MS. SAMPSON:

25 Q I am going to show you what has now been entered as

1 State's Exhibit 13 and ask if you recognize that?

2 A Yes, I do. That looks like the trailer.

3 Q So that is how it looked that night, I mean, by the
4 time you got there? That you remember?

5 A I don't recall.

6 Q But that is what --

7 A That does appear to be, yes.

8 Q And do people have roles when they get there, like
9 particular things they do, or does everybody do
10 everything?

11 A It kind of depends. Most of the time our roles are
12 things that need to be done and, you know, as a
13 supervisor, there is a specific role that I have,
14 but it is kind of one of those that the deputies as
15 well can also do the same roles, but with multiple
16 people on the scene, we try to divvy it up and make
17 sure that somebody is doing something so that it
18 get done. And then in this case, this is where,
19 you know, pretty much everybody stepped in and was
20 doing a specific thing, and I was overseeing all of
21 them to make sure that each thing was handled. And
22 then in this case is where I actually was the
23 contact person to notify. In these situations we
24 have certain people we need to notify, the desk
25 sergeant, other individuals to get other assistance

1 out there, stuff like that. So I took on that role
2 because it is easier for all those other elements
3 to contact one person that is on the scene, so that
4 is usually the supervisor, so that was my role that
5 I took at that point. I started making
6 notifications by phone.

7 Q And as the contact person, are you receiving
8 information, or what are you doing?

9 A Kind of both. I'm assessing what we have on the
10 scene. I am, you know, gathering all the
11 information we have on the scene, the knowns, the
12 unknowns, you know, facts, evidence, you know,
13 witnesses, subjects, victims, whatever we have. I
14 try to compile that information from my guys or
15 directly, and I pass that on to the other elements
16 so that they kind of have a heads-up as to what
17 they are coming into and what they need to deal
18 with.

19 Q And was it your job to secure the scene, or was it
20 already secure when you got there?

21 A It was -- I honestly can't recall if it was -- it
22 was not -- I wouldn't say it was secure, but we
23 were, you know, I think the ambulance was already
24 there and we just kind of, as far as, I guess I
25 have to elaborate, or securing the scene. We

1 needed to make sure that everything involved was
2 accounted for and that the area was secure and safe
3 in order for all the other elements to come in with
4 the investigation phase of it, so we needed to get
5 everything collected, secure, and safe. So.

6 Q And when you are doing this, do you have to get
7 consent from anyone to, for example, go in the
8 house?

9 A It just kind of depends on the situation. I
10 believe in this situation we needed to figure out
11 where the firearm was. And I don't recall exactly
12 the language or the exchange, but I believe the
13 subject's wife advised where the firearm was and
14 where to retrieve it.

15 Q Did she give you, or someone give you all consent
16 to go in?

17 A Yes, but I don't remember exactly what the exchange
18 was, but it was something there where, you know,
19 she said, It is right there.

20 Q And so what did you do based on that?

21 A Again, I don't recall exactly, but I do recall we
22 entered in there and observed the firearm that was
23 involved in the situation. I believe it was on the
24 counter or it was something right there in plain
25 view. And then at that point -- I do not recall

1 exactly how we secured it. I do recall having a
2 conversation with the investigator over the phone
3 trying to figure out, you know, what the best way
4 is of how they wanted to secure it.

5 Q And did you speak with the Defendant or the suspect
6 at the time?

7 A Not in depth. I mean, I don't know if -- I don't
8 really recall if I had any words with him.

9 Q What about with his wife?

10 A Yes. I do believe I did speak with her.

11 Q And was any information provided to you about the
12 victim having a weapon?

13 A I don't recall. I don't recall.

14 Q Any information provided to you about the victim
15 threatening the wife?

16 A I don't recall exactly. I believe she had
17 mentioned something about past history because of
18 neighbor complaints, disputes.

19 Q But that day?

20 A I don't recall. I don't recall specifically
21 anything.

22 MS. SAMPSON: Beg the Court's indulgence.

23 (Pause.)

24 MS. SAMPSON: No further questions, Your
25 Honor.

1 THE COURT: Yes, ma'am?

2 MS. ZMROCZEK: Thank you.

3 CROSS-EXAMINATION

4 BY MS. ZMROCZEK:

5 Q Good afternoon, Sergeant Hunger.

6 A How are you doing?

7 Q Good. How are you?

8 A Good. Thank you.

9 Q I see that you have worn your uniform.

10 A Yes, ma'am.

11 Q And you are issued uniforms when you get onto the
12 police force, right?

13 A Yes, ma'am.

14 Q What do you carry on your uniform?

15 A A multitude of things.

16 Q Let me make it easy for you.

17 A Yes.

18 Q Have you got a Body Cam?

19 A Yes.

20 Q Okay. Those didn't start until I think just the
21 next year, 2016, 2017, right?

22 A I'm not -- it wasn't at that time.

23 Q It wasn't in 2015, right?

24 A Yes.

25 Q Now, as the master deputy at the time, did you have

1 a Dash Cam in your car?

2 A I believe I did. Yes, I think we did.

3 Q You did?

4 A I think we did have it. I'm not sure. I can't be
5 a hundred percent sure.

6 Q Okay. And those are started when the blue lights
7 go on unless you turn it off, right?

8 A They are supposed to.

9 Q Okay.

10 A Yes.

11 Q We don't have any downloads from any Dash Cams in
12 this case, though, do we?

13 A I do not know. I do not know.

14 Q Okay. You said that you were kind of overseeing --
15 not kind of, you were the supervisor, right?

16 A Yes, ma'am.

17 Q At the scene. And when you go out there, you have
18 your uniform on. Obviously you didn't have the
19 Body Cam, but you have other things, like a utility
20 belt?

21 A Yes, ma'am.

22 Q And what do those contain in them?

23 A Our firearm. I don't -- I believe we had tasers at
24 the time. Baton, extra ammo, gloves, OC spray,
25 handcuffs.

1 Q Things to keep you safe, right?

2 A Yes. Yes.

3 Q Okay. And all of those are items that you use,
4 that you have at your disposal if you need them if
5 you are in fear, right?

6 A Yes.

7 Q And you receive a lot of training on how to react
8 in different situations?

9 A Yes.

10 Q Okay. And you also, when you are -- you said
11 several times about securing the scene and making
12 the scene safe?

13 A Yes, ma'am.

14 Q And that is done for several reasons, right?

15 A Yes, ma'am.

16 Q Well, the first -- well, not the first, but one of
17 them is to try to make sure that evidence doesn't
18 get tampered with?

19 A That is one of them, yes.

20 Q And you want to make sure that if there are any
21 witnesses there, you want to get statements from
22 them -- not you, but somebody, right?

23 A Uh-huh.

24 Q And then also you want to be sure that it is safe
25 for officers as well as people in the area, right?

- 1 A Yes, ma'am.
- 2 Q Have you been trained to and have you had the
- 3 occasion to pat people down?
- 4 A Yes.
- 5 Q And why do you do that?
- 6 A It really depends on the situation, but normally it
- 7 is to see if they have any weapons or contraband on
- 8 them.
- 9 Q Okay. What do you consider weapons?
- 10 A Anything that can be used to harm somebody.
- 11 Q Okay. A knife?
- 12 A Yes.
- 13 Q A gun?
- 14 A Yes.
- 15 Q If someone was in a vehicle, could that be used to
- 16 harm someone?
- 17 A Yes.
- 18 Q Okay. You received the training on how to assess
- 19 the situation?
- 20 A Yes.
- 21 Q So you, as a police officer, obviously you have
- 22 more contact with the general public than normal
- 23 people, and so that is why they train you to know
- 24 and to react to certain situations, right?
- 25 A Yes. Yes.

1 Q And so you have the ability to know, probably gauge
2 how serious a threat is, right?

3 A Essentially, yes.

4 Q Okay. They taught you about that, right?

5 A Yes.

6 Q And you have to use some of your internal
7 instincts?

8 A Yes.

9 Q And I asked Officer Vadasz about the continuation
10 of a threat, you know, the things that y'all are
11 trained to be aware of to know if you need to
12 defend yourself, right?

13 A Yes, ma'am.

14 Q And do you recall receiving that training?

15 A What you mean, a specific date or?

16 Q Oh, no, no, no. Just in general what they taught
17 you.

18 A Yes.

19 Q And they teach you to listen to the words that
20 people are saying?

21 A Uh-huh.

22 Q And they teach you that if they are within so many
23 feet, that you need to be more heightened and more
24 aware?

25 A Potentially dangerous, yes.

1 Q Okay. And you -- when you went to the academy,
2 they taught you how to write reports?

3 A The basics, yes.

4 Q And typically report writing is used so that five
5 and a half years later down the road you can
6 remember what was said, right?

7 A Correct, yes.

8 Q But -- and I'm not fussing at you, but one of the
9 reasons that you are having trouble remembering is
10 because you didn't do a report of your own, right?

11 A Correct, yes.

12 Q And because really you were trying to make sure
13 that everybody else was doing what they were
14 supposed to?

15 A Yes, ma'am, uh-huh.

16 Q Okay. Do you recall -- so when you arrive -- I
17 think you arrived just after the road patrol
18 deputy, correct?

19 A Uh-huh.

20 Q Sometime very close to that?

21 A It was pretty quick after, yes, because we were all
22 starting off together.

23 Q And so you spoke with people in the road? Do you
24 recall speaking with anybody in the road?

25 A I do not recall, no.

1 Q Okay. But you know all the video cameras were
2 there, right?

3 A Yes.

4 Q Okay. And you don't look substantially different
5 than you did back then, do you?

6 A No, not really.

7 Q Okay. So, like you said, you are kind of the
8 information gatherer, right?

9 A Yes.

10 Q And then you are giving what information you
11 learned to your officers so that you know how to
12 progress, right?

13 A Yes, ma'am.

14 Q Okay. When you get to a scene like that -- well,
15 if you recall -- if you don't recall, obviously you
16 don't recall -- but what was the emotional state of
17 the lay people? Of the witnesses?

18 A I don't really recall that at all, so I don't want
19 to really speculate on that either.

20 Q No, absolutely fine. Do you have -- how many
21 scenes roughly do you think you have been to?

22 A I couldn't even guess.

23 Q Hundreds?

24 A Yes, it could be hundreds.

25 Q And the point being -- sorry.

- 1 A No, I was just saying I couldn't get a number to
2 you.
- 3 Q Multiple, right?
- 4 A Yes, ma'am.
- 5 Q And the point being, though, that every scene is
6 different, right?
- 7 A Yes, ma'am.
- 8 Q Everybody reacts differently?
- 9 A Uh-huh.
- 10 Q Everybody -- in fact, they react differently, so
11 there is no one right or wrong way to react to a
12 situation, is there?
- 13 A I guess that depends on how you look at it.
- 14 Q Right. But in an emotional -- in an emotional
15 state, you can't say, Oh, well, this person should
16 have cried or they shouldn't have cried? There is
17 no check list as to how somebody should react,
18 right?
- 19 A I couldn't really speculate on that either. I
20 don't --
- 21 Q You spoke with Barbara?
- 22 A I believe I did, yes.
- 23 Q Okay. And you said that you may have had a brief
24 conversation with Mark?
- 25 A It may have been something in passing, but nothing

1 really substantial.

2 Q And the gun was on the freezer?

3 A It was like a counter height area, I can't remember
4 specifically, but, yes. Yes.

5 Q Kind of right next to the sink area?

6 A Yes, I think it was.

7 Q And it certainly probably looked like a counter
8 even though it was a freezer.

9 A Right.

10 Q And you didn't render it safe, right? You didn't
11 touch it?

12 A I don't recall how we secured it, what we did in
13 this exact situation. I'm not exactly sure how,
14 but I know we did make it safe at some point. We
15 secured it and made it safe at some point, but I
16 just don't know exactly.

17 Q Okay.

18 MS. ZMROCZEK: Beg the Court's indulgence.

19 (Pause.)

20 BY MS. ZMROCZEK:

21 Q You mentioned that there were prior difficulties, I
22 guess, between the parties?

23 A I believe that had been mentioned at the time.

24 Q Okay. But you don't remember by whom?

25 A No.

1 Q You don't remember where you learned that
2 information, do you?

3 A No.

4 Q Okay. Thank you.

5 A Yes.

6 MS. ZMROCZEK: Nothing further.

7 THE COURT: All right. Any redirect?

8 MS. SAMPSON: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. SAMPSON:

11 Q Sergeant Hunger, she asked you about a report.
12 When officers go to the scene, does every officer
13 make a report?

14 A No, ma'am.

15 Q Why not?

16 A It is redundancy. If there is -- usually with one
17 scene, if everybody stays on the scene, one report
18 can handle or document what occurred. If there is
19 multiple scenes where, you know, somebody has to go
20 away from the scene that is further away and do
21 something there, then they do a supplemental to
22 supplement the original, just advising what
23 occurred at the other spot. So in this case we
24 were all together, we were all handling the same
25 thing, so one report usually documents the initial.

1 Q So was it usual or unusual that there is no report
2 from you in this case?

3 A That is usual, yes.

4 Q And she asked you about Dash Cam, or whatever.
5 Would you have a Dash Cam to use in this case for
6 you?

7 A What do you mean by that?

8 Q Your car? Did anybody go in your car?

9 A You mean after the fact?

10 Q Once you get there, did the Defendant get in your
11 car?

12 A No.

13 Q Did any witness get in your car?

14 A No, not that I recall.

15 Q Were you there at the scene when this happened?

16 A Not when it happened, no.

17 Q So would your Dash Cam have captured anything that
18 happened in this case, other than your car being
19 there?

20 A Yes -- no, it wouldn't have.

21 MS. SAMPSON: No further questions, Your
22 Honor.

23 THE COURT: All right, you may step down.

24 Any objection to this witness being excused?

25 MS. SAMPSON: Not from the State.

1 MS. ZMROCZEK: Not from the Defense, Your
2 Honor.

3 THE COURT: All right. You are free to leave.

4 THE WITNESS: Thank you, Your Honor.

5 (Witness steps down and excused.)

6 THE COURT: Call your next witness.

7 MS. TAYLOR: The State calls Kerri McClary.

8 THE BAILIFF: Come forward and be sworn.

9 (Witness approaches.)

10 THE BAILIFF: Place your left hand on the
11 Bible there, raise your right, and face the clerk.

12 (Witness complies.)

13 THE CLERK: Do you swear or affirm the
14 testimony you shall give in this case will be the
15 truth, the whole truth, and nothing but the truth,
16 so help you God?

17 THE WITNESS: Yes, I do.

18 THE CLERK: Thank you. Please have a seat in
19 the witness stand, and state your full name for the
20 record.

21 (Witness seated.)

22 THE WITNESS: My name is Kerri McClary.

23 K-E-R-R-I. Last name M-C-C-L-A-R-Y.

24 KERRI MCCLARY,

25 after being duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MS. TAYLOR:

3 Q Investigator McClary, where do you work?

4 A I work for the Richland County Sheriff's
5 Department.

6 Q How long have you worked there?

7 A For approximately 13 years.

8 Q And what is your job there?

9 A I am a crime scene investigator, so my duties
10 entail going out and processing crime scenes,
11 collecting evidence, processing evidence. I do
12 latent print comparison, attend autopsies.

13 Q And back in December 27th of 2015, did you work as
14 a crime scene investigator for Richland County?

15 A Yes.

16 Q And is taking pictures part of your duties?

17 A Yes, that is a large part of our duties.

18 Q And were you involved in processing the crime scene
19 that we are here for today?

20 A Yes, I was.

21 Q And did you write a report to document your
22 involvement?

23 A Yes.

24 Q Can you briefly explain what processing means in
25 relation to crime scene investigation?

1 A When we respond to a crime scene, we do
2 documentation through photographs and we visually
3 examine the scene for any possible evidence. It is
4 case by case. It depends on what the type of crime
5 is the type of evidence that we are looking for.

6 Processing can mean actively searching for
7 things. It can also mean that we are using some
8 kind of processing technique, maybe powder to
9 process for latent prints or chemicals to process
10 for different types of evidence.

11 Q How were you notified to participate in the
12 processing of this crime scene?

13 A With this particular scene, I was notified by our
14 desk sergeant. He called me to say that they were
15 requesting me to respond to this particular
16 incident to process the scene.

17 Q And what was the address for the processing
18 location?

19 A I have got in my report 1129 Antioch Amez Church
20 Road.

21 Q What type of incident were you responding to?

22 A It was a shooting, a death investigation.

23 Q What date did you respond?

24 A I responded on December 27th, 2015.

25 Q And what time did you begin processing the scene?

1 A I responded to the scene or arrived at the scene
2 approximately 1805, which is 6:05 p.m.

3 Q And was it dark outside when you arrived?

4 A It seems like it was dusk, dark. I don't recall.

5 Q And what time did you finish processing the scene?

6 A I cleared the scene at 2116 hours, which is
7 9:16 p.m.

8 Q So it would have been dark at that time?

9 A Yes, it was.

10 Q Okay. What types of processing were you requested
11 to perform at this incident?

12 A To process the scene, looking for any possible
13 fired cartridge casings, the weapon, I was to
14 collect the weapon, and I was also asked to collect
15 for gunshot residue.

16 Q And when you are called to process a scene, how or
17 who determines what area or what type of processing
18 you need to do?

19 A Depending on what I see at the scene, I can make
20 that determination, but the investigators or the
21 first responding deputies may also have acquired
22 information prior to my arrival that they will
23 relay on to me about any possible areas I need to
24 examine or specific processing that needs to be
25 done.

1 Q When you arrived on the scene, were any other law
2 enforcement deputies on the scene already?

3 A Yes.

4 Q And did you talk to any of them?

5 A I have in my report that Deputy Hunger actually
6 provided me the majority of the initial scene
7 information. I remember also Investigator Holdorf
8 was there as well.

9 Q And did you observe the Defendant on the scene?

10 A I did.

11 Q And where was he located when you observed him?

12 A At the time that I was getting ready to collect GSR
13 from him, he was handcuffed in a patrol car.

14 Q Okay. So when you arrived to process the scene and
15 it is dark outside, what do you use to like light
16 up the area so you can see things?

17 A We have got a variety of different flashlights that
18 we can use. Some are more powerful than others.
19 When I'm photographing the scene, we have
20 techniques where we can make our external flash on
21 our camera more powerful so that it illuminates a
22 larger area. We can also slow the shutter speed
23 down to leave the shutter open for a longer period
24 of time.

25 Q And describe what you observed outside when you

1 arrived on the scene.

2 A When I arrived, I realized that there was still
3 some First Responders, like emergency vehicles,
4 fire trucks, there were police cars there. There
5 was crime scene tape up around the scene perimeter.
6 And there were was already a crime scene log in
7 process, which indicates to me who all has been in
8 the scene responding to that.

9 Q And when you said that there was crime scene tape
10 on the perimeter, did you indicate in your report
11 where the crime scene tape kind of began and ended?

12 A I have that I observed the tape from the fence and
13 across the dirt gravel road on Megan Court.

14 Q And did you observe any physical items outside?

15 A My attention was directed to an area between the
16 gravel road and the fence where there was a blue
17 shirt on the ground. I did ultimately see some
18 red-brown stains on the ground there. I was
19 instructed that that was where the victim had
20 apparently been on the ground.

21 Q And when you processed this crime scene, did you
22 wear any type of protective gear?

23 A Yes. Standard we wear gloves. And it just depends
24 on the case if we need to dress in more personal
25 protective gear. But in this particular case, I

1 did have on gloves.

2 Q And what is the purpose of wearing gloves while
3 processing a scene?

4 A Well, we want to prevent any cross-contamination,
5 so I don't want to put any of my DNA or my prints
6 on anything that I handle in the scene. And I also
7 don't want to pick up any possible contaminants on
8 my skin.

9 Q Did you take any photographs at the scene?

10 A I did.

11 Q And what areas did you photograph?

12 A I photographed the outside yard area and roadway
13 where the incident -- where I was told the incident
14 had apparently occurred. I also took some
15 photographs inside the residence there, like the
16 living room area, kitchen area, dining room area.

17 Q And how were you able to gain entry into the
18 residence?

19 A I was led inside the front door for the initial
20 walk-around.

21 Q Did you have any type of consent to search?

22 A We did. I believe Sergeant Holdorf at the time had
23 obtained written consent for search.

24 Q Okay. And while you were inside of the residence,
25 did you collect any items from inside of there?

1 A I did. I collected a gun that was in the kitchen
2 area on top of a, it looked like a counter type,
3 counter height freezer, so the gun and the magazine
4 and the unfired cartridge, I'm assuming it was from
5 the chamber, were all on top of that. And then I
6 also collected a Canon PowerShot camera.

7 Q And what is a magazine?

8 A The magazine is actually part of a semi-automatic
9 gun, so it is what feeds the unfired cartridges
10 into the weapon. So it actually goes up into the
11 grip area of the gun.

12 Q And what is an unfired cartridge?

13 A Unfired cartridges are cartridges that are just
14 that. They are the ammunition that feeds up into
15 the gun that hasn't been fired.

16 Q And did you collect any items from the outside
17 area?

18 A I collected the blue shirt. That appears to be the
19 only thing that I collected from the outside.

20 Q And how did you label that blue shirt?

21 A I have got, Victim's light blue shirt,
22 short-sleeved, size large.

23 Q And I can't remember if you just said this, but
24 where did you collect that from? What area?

25 A It was on the ground in the leaves between the

1 roadway -- I believe that is Megan Court -- and the
2 fence to the property.

3 Q Because you are processing a shooting incident, as
4 part of your processing, did you try to locate any
5 evidence of the shooting?

6 A I did look for and also used a metal detector to
7 try and locate the fired cartridge casing that
8 would have been ejected from the weapon. It was a
9 large yard area covered in leaves. I don't know
10 the approximate size of it, but a pretty large
11 area, so I ended up visually walking that area with
12 flashlights searching. And then I also went over
13 it with a metal detector.

14 Q And what was the result of the search?

15 A I was not able to locate it.

16 Q Okay. I'm going to show you some items. Before I
17 show you this item right here, earlier you -- well,
18 you just testified you did a search of the yard for
19 evidence of shell casings in a shooting. Is it
20 uncommon to not find a shell casing after a
21 shooting?

22 A No, it is not uncommon.

23 Q Okay. And earlier you testified about what you
24 observed outside near the road, the ground area.
25 You said that you saw a reddish-brown stain. What

1 does that mean to you? What is a reddish-brown
2 stain?

3 A We describe -- typically when we have any kind of
4 injuries, we will just -- we are more descriptive
5 when we are talking about different stains, and so
6 we will describe apparent blood as red-brown
7 stains.

8 Q Okay. Okay. So I'm going to show you what has
9 been marked as State's Exhibit Number 47 and --
10 MS. ZMROCZEK: We don't object to any of the
11 physical evidence as well, Your Honor.

12 THE COURT: All right. It will be entered
13 without objection.

14 (WHEREUPON, State's Exhibit No. 47 was
15 marked for identification and received
16 into evidence.)

17 BY MS. TAYLOR:

18 Q And I'll give you some gloves. All right. And I'm
19 going to bring the rest of them up here at the same
20 time, okay?

21 A Okay.

22 Q I will show you State's Exhibit Number 6 and
23 State's Exhibit Number 45. It is going to be a lot
24 of stuff for you to look through. And then State's
25 Exhibit Number 42 and State's Exhibit 7 and 9. And

1 then State's Exhibit Number 18, 19, 20, 21, 22, 23,
2 24, 31, 32, and 33.

3 MS. ZMROCZEK: Your Honor, I made sure to look
4 at all the physical evidence, and we do not object
5 to those.

6 THE COURT: All right.

7 BY MS. TAYLOR:

8 Q And then this is going to be 48, the GSR kit from
9 Mark Volstromer when you open it up.

10 MS. TAYLOR: So the State requests to move all
11 of this into evidence, Your Honor.

12 THE COURT: It will be entered without
13 objection.

14 (WHEREUPON, State's Exhibit No. 6 was
15 marked for identification and received
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 45 was
18 marked for identification and received
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 42 was
21 marked for identification and received
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 7 was
24 marked for identification and received
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 9 was
2 marked for identification and received
3 into evidence.)

4 (WHEREUPON, State's Exhibit Nos. 18-24
5 were marked for identification and
6 received into evidence.)

7 (WHEREUPON, State's Exhibit Nos. 31-33
8 were marked for identification and
9 received into evidence.)

10 BY MS. TAYLOR:

11 Q So I guess let's start with --

12 MS. ZMROCZEK: Your Honor, because the
13 evidence is piled up, I can't see the witness. And
14 that is fine, I am just going to move closer.

15 BY MS. TAYLOR:

16 Q I'm trying to figure out how to do this. Let's
17 start with the physical stuff first.

18 THE COURT: If you sit it there, she can see.

19 MS. ZMROCZEK: Yes.

20 BY MS. TAYLOR:

21 Q Let's start with the physical stuff, and then -- so
22 can you take what is out of State's Exhibit Number
23 6 and show the jury what it is?

24 A The label says it is the victim's T-shirt, light
25 blue, size large, from leaves between fence and

1 dirt road.

2 Do you want me to take it out?

3 Q Yes, you can take it out.

4 A I don't mean to turn my back to you.

5 Q And you can step down from the stand if you want
6 to, if it is easier.

7 A I just don't want to touch anything and have it be
8 a biohazard.

9 Q Okay. And that is what you collected off the side
10 of the road ground area?

11 A Yes.

12 Q Okay. And you can put it back in the box.

13 And let's go to State's Exhibit Number 42.

14 A This one?

15 Q Yes.

16 A It is labeled Canon PowerShot digital camera
17 collected from dining room table.

18 Q And that was collected from inside of the
19 Volstromers' house?

20 A Yes, on the dining room table.

21 Q Okay. And let's open the box that is labeled
22 State's Exhibit 47. And we may have to label it
23 depending on how it is packaged.

24 THE COURT: Do you have the lock on it?

25 MS. SAMPSON: Gun lock?

1 THE COURT: Yes.

2 MS. TAYLOR: We have never opened it before.

3 MS. SAMPSON: I don't know.

4 THE COURT: Sir, do y'all have the little
5 plastic --

6 MS. SAMPSON: It should be zip-tied, but we
7 won't know until we open it because we couldn't
8 open it until now.

9 (Officer checks gun.)

10 THE OFFICER: It is good.

11 MS. TAYLOR: Okay.

12 BY MS. TAYLOR:

13 Q So what is included in this box right here?

14 A It is the gun, the magazine, the envelope
15 containing an unfired cartridge.

16 Do you want me to pull that out?

17 Q Yes, you can open it.

18 A Okay.

19 Q And where was that located?

20 A All of this was on the top of the freezer in the
21 kitchen. This one was loose. Typically that is
22 indicative of what they rack out of the chamber of
23 the gun when they are clearing it.

24 Q Okay.

25 A And then the other remaining ones I would have

1 removed from the magazine during processing.

2 Q Okay. And then I'm going to have you open this
3 package, which is labeled as GSR kit, the one with
4 Mark Volstromer's in there, and we are going to
5 label that Number 48 once you open it.

6 A I've got both of these GSR kits.

7 Q Okay. And which one is Mark Volstromer, the
8 Defendant?

9 A This one.

10 Q Okay. We are going to label that as State's
11 Exhibit Number 48.

12 (WHEREUPON, State's Exhibit No. 48 was
13 marked for identification and received
14 into evidence.)

15 BY MS. TAYLOR:

16 Q Okay. And I'm going to show you these. And can
17 you look through them and see if they are the
18 pictures you took from the crime scene that night?

19 A Yes, these appear to be what I took.

20 Q Okay. So let me take those. And I've got one more
21 box of physical evidence. So can you show the jury
22 what is in this box right here?

23 A It looks like it is labeled clothing items.

24 Q This box is labeled Exhibit --

25 A Forty-five.

1 THE COURT: What number?

2 MS. TAYLOR: Forty-five.

3 A Do you want me to remove everything?

4 Q Uh-huh. And does it -- are you aware of where
5 these items may have been taken from? You know
6 what? Nevermind. Nevermind. Sorry about that.
7 Sorry about that.

8 A It's all good.

9 Q So you just showed us the package where the
10 Defendant's GSR kit was collected?

11 A (Nods affirmatively.)

12 Q Can you briefly describe what gunshot residue is?

13 A Well, from the training we have received, when
14 someone is in close proximity or fires a weapon,
15 residue can be left behind from when the gun is
16 actually discharged, and so we're trained to
17 collect for it on -- typically on hands, sometimes
18 we collect for it on surfaces, but the majority of
19 the time we are collecting for it on hands.

20 Q Okay. And who did you collect gunshot residue from
21 in this particular case?

22 A This evening, or the evening of this incident, I
23 collected it from Mark and Barbara Volstromer.

24 Q And what type of permission did you have to collect
25 gunshot residue from the Defendant and

1 Ms. Volstromer?

2 A Written consent.

3 Q And did you witness both of them sign the GSR
4 consent to search form?

5 A I believe I did. Yes. I've got my -- where I
6 signed as a witness here. Yes.

7 Q Okay. And can you describe how you take GSR off
8 somebody's fingers?

9 A Yes. We have the kit that is a sealed kit, and it
10 has a pair of gloves in it and it has two little
11 vials. They are plastic vials with caps on them.
12 When you remove the cap, it has got an adhesive
13 material on it. And then it is just a matter of
14 doing one for the left and one for the right. And
15 we just press along kind of the index finger, the
16 back of the hand, the thumb, the webbing area, both
17 hands separately.

18 Q Okay. And I'm going to show you what has been
19 marked as State's Exhibit Number 9, which I believe
20 is already in evidence. Can you explain to the
21 jury what is on that form or what that form is?

22 A This is our department's written consent form for
23 collection of gunshot residue.

24 Q And whose name is on that, or would have -- gave
25 that consent?

1 A Mark Volstromer.

2 Q Okay. And in addition to that consent form, is
3 there another form associated with GSR collection
4 that was part of the GSR collection in this case?

5 A Yes, there is actually a form -- there is two forms
6 inside the GSR kit when we break the seal and open
7 it. One is the instructions on how to collect for
8 it. The other one is just basically an information
9 form where we will ask the person like their name,
10 we put the case number, what type of incident it
11 was, what the individual has been doing since the
12 time of the shooting, caliber, if we know the
13 weapon type, if we know what caliber of ammunition.
14 It is just an information sheet that we are to fill
15 out.

16 Q Okay. And I want to show you what has been marked
17 as State's Exhibit Number 7. Is this the GSR
18 information form you collected from the scene?

19 A Yes, it is.

20 Q And whose writing is that on that sheet?

21 A That would be my writing, my handwriting.

22 Q And who gave you the information to write on that
23 sheet?

24 A This -- I would have asked Mr. Volstromer this
25 information as I was getting ready to obtain his

1 GSR, or collect for it.

2 Q Okay. So now we're going to look at some pictures.
3 Okay, I'm going to show you what has been marked as
4 State's Exhibit Number 18. What do you -- what is
5 being shown in this picture?

6 A I was trying to tie the area in where the shirt was
7 located in the foreground. At the bottom of the
8 photograph you'll see it looks like some first aid
9 medical devices on the side of the road. And I was
10 tying that in to the home in the background, which
11 is where I located the gun and stuff like that
12 inside. That was their residence.

13 Q And if you don't mind, could you like come down
14 here and just kind of point some things out to the
15 jury for us?

16 A Do you want me to put my mask back on?

17 Q On, no, you don't have to.

18 (Witness steps down.)

19 Q This is Number 18. So let's go to Number 19. And
20 what is shown in this photo?

21 A So in this area, once again this is just kind of
22 the area where some of the red-brown sub stains
23 were, apparent blood. The shirt, just some signs
24 of where they were trying to render first aid to
25 the individual. And then the yard and the

1 residence over here.

2 Q Now we'll look at Exhibit Number 20. And I think
3 you kind of described it, but where in this picture
4 did you see those reddish-brown stains that you
5 described earlier?

6 A It was kind of in this area.

7 Q Okay. And what --

8 A Right there.

9 Q And what physical area is to the left of where
10 those blood stains are?

11 A This road?

12 Q Yes?

13 A I believe that is Megan Court.

14 Q Okay. And I'm going to show you Exhibit Number 21.
15 Do you see anything here?

16 A Once again, we've got the shirt that I was told was
17 removed from the victim while they were rendering
18 first aid, the First Responders were working on
19 him. Some medical devices. And then, once again,
20 it looks like we've got some possible blood here,
21 and over in here.

22 Q And now we are going to look at 22. Is this the
23 same blue shirt?

24 A Yes, it is.

25 Q Okay. And then 23, what does this area show?

1 A This is on the other side of the fence. So, this
2 area on the outside of the fence would have been
3 where all that first aid equipment was, and the
4 shirt, and this is the front yard area, and the
5 residence would be kind of up over in this area.

6 Q And where you found those reddish blood stains,
7 what side of the fence would they have been on this
8 picture?

9 A It would have been on the far side, on the outside.

10 Q Okay. And I want to show you Exhibit Number 24.
11 What does this show?

12 A This is me photographing my way into the residence,
13 so it is a photograph of the front door of the
14 residence.

15 Q Do you know -- like this person sitting right here,
16 do you know what his purpose is?

17 A I believe that was one of our employees just kind
18 of watching the front area.

19 Q Okay. To make sure nobody came in or out?

20 A Uh-huh.

21 Q Okay. I'm going to show you Exhibit Number 31.
22 What does this photo show?

23 A That is a photograph of the gun as I found it on
24 top of the freezer in the kitchen.

25 Q And Exhibit 32, what is shown in this photo?

1 A I was just doing a closer view of the serial number
2 that is engraved on the side of the weapon.

3 Q Okay. And 33, what is shown in this video -- I
4 mean, this picture?

5 A This is the magazine and the loose unfired
6 cartridge as I found them when I got inside the
7 door.

8 Q Thank you very much. You can go sit back down up
9 there.

10 (Witness returns to witness stand.)

11 BY MS. TAYLOR:

12 Q I am going to put these photos back over here so I
13 don't lose them.

14 So regarding the gun and the magazine and the
15 unfired cartridges that you collected, did you do
16 any further processing on those items?

17 A Yes. Once I got them back to the lab, I processed
18 them. It was maybe the next day. I went ahead and
19 processed them in our lab, which is a controlled
20 environment, where I fumed them with some
21 cyanoacrylate, which is one of the processes we use
22 when we process weapons, and then I followed that
23 up with black powder processing, so I dusted them
24 with black powder.

25 Q And so what were you -- what is the purpose of

1 fuming and using black powder on a gun?

2 A We do those processes in an attempt to develop
3 ridge detail or fingerprints.

4 Q Did any result come from those processing methods?

5 A I was not able to develop anything of value, so my
6 results were negative.

7 Q And how common is it to receive a negative result
8 for prints on an item that someone has touched?

9 A It is not uncommon at all. You know, there is just
10 a lot of factors in what determines whether or not
11 we are successful in developing identifiable ridge
12 detail. So it is not uncommon at all.

13 Q And what type of factors could cause no prints to
14 be found?

15 A If you are looking at like surface area, so if we
16 have a very large surface area, our probability is
17 greater that we're going to be able to develop
18 ridge details that will ultimately be identifiable
19 versus a very tiny surface area. You know,
20 something significantly less than our probability
21 for development of ridge detail. The surface
22 texture can have a lot to do with it, whether it is
23 smooth or whether it is more rough, a more rough
24 texture. If the surface is clean or dirty. Or if
25 the surface might have oil or some kind of

1 contaminant on it. So those are some of the
2 factors dealing with the surface, nature of the
3 surface.

4 Q Okay. And after you collect all these items at a
5 crime scene, can you describe the method that you
6 use to package and preserve these items to secure
7 them and prevent tampering?

8 A We want to package them in a manner that will
9 preserve any possible other evidence. You know,
10 maybe this weapon was going on to another
11 department for examination, so we want to package
12 things so that we are not going to cause any harm
13 to them. With guns, I prefer to strap them down in
14 the box so they are not shuffling around, moving
15 around. You know, if it is something that I
16 collected that is going on to another department
17 maybe for DNA analysis or trace, anything like
18 that, I want to package it in a manner that it is
19 not going to become contaminated or
20 cross-contaminated by another item of evidence. So
21 we like to package things separately.

22 Q Do you use any type of tape or signature or bar
23 code to mark it?

24 A We do. We do. Most of our packages, whether they
25 are paper envelopes or paper boxes, we will secure

1 them with clear box tape to make sure that the
2 package is closed and securely closed. And then we
3 follow that up with a piece of evidence tape that
4 is very fragile and can break easy, so we secure
5 that, and we initial and date the time that we
6 actually secure the seal.

7 Q And where do you store the items that you collected
8 after you securely package them?

9 A Once they are done with processing and once we are
10 ready to submit them to our evidence and property
11 section, we will take them -- it is actually
12 located on the bottom floor of our department or
13 our headquarters, and we drop them off either at a
14 locker or like a drop box, like a mailbox, that is
15 secure that only evidence and property staff have a
16 key to get into.

17 Q Okay.

18 MS. TAYLOR: No further questions for this
19 witness.

20 THE COURT: All right.

21 MS. ZMROCZEK: I do have some questions, but I
22 didn't know if you wanted to take a break.

23 THE COURT: Yes, we'll take a break. Thank
24 you.

25 All right, ladies and gentlemen of the jury,

1 we will go ahead and take our afternoon break.
2 We'll take about 15 minutes for you to stretch and
3 use the restroom and pull your masks off.

4 All right. Thank you.

5 (WHEREUPON, the jury retires to the jury
6 room at 4:23 p.m.)

7 THE COURT: All right, we will take about a 15
8 minute break.

9 MS. SAMPSON: And for the record, Your Honor,
10 we will not speak with the witness while she is on
11 the witness stand.

12 THE COURT: Yes. Please do not discuss your
13 testimony with anyone. Thank you.

14 (WHEREUPON, a break was taken.)

15 (WHEREUPON, Defendant's Exhibit No. 6
16 was marked for identification only.)

17 MS. SAMPSON: Before the jury comes back,
18 Ms. Zmroczek stated she plans on introducing -- I
19 don't know what Defense Exhibit number that is.

20 MS. ZMROCZEK: Six.

21 MS. SAMPSON: -- Defendant's Exhibit 6. It is
22 the crime scene log. My concern is it has hearsay
23 within hearsay. I understand it is a business
24 record. However, there is times, there is
25 different things on there that this witness can't

1 attest to the truth or validity of because she
2 didn't write it down, somebody else did.

3 MS. ZMROCZEK: And, Your Honor, I'm not
4 offering it for -- that has anything to do with the
5 times that they were in or the times that they are
6 out. It deals with who was there and who signed
7 the sheet, that's it.

8 MS. SAMPSON: I think she can ask -- that is
9 something she has to introduce in the order of
10 evidence.

11 THE COURT: Is she the keeper of it?

12 MS. SAMPSON: No, she is not.

13 MS. ZMROCZEK: Her initials are on the bottom.

14 MS. SAMPSON: But she is not the custodian of
15 record, she is not the keeper of that business
16 record, and she did not maintain that log, somebody
17 else did.

18 THE COURT: So, and of course you have to be
19 able to lay a foundation to try to get it in
20 through her. You can always ask her about it.
21 Just make -- yes, I mean, you have got to see if
22 you can get it in. If you can't, then you can
23 object at that time.

24 MS. SAMPSON: Okay, Your Honor.

25 MS. ZMROCZEK: I will leave it for ID, and

1 then figure out -- I imagine it was part of the
2 case jacket, which was in Holdorf's possession, so
3 then I can get it in through him. Or try at least.

4 THE COURT: All right, bring them on in.

5 (WHEREUPON, the jury came into open
6 court at 4:46 p.m.)

7 THE BAILIFF: The jury is all present, Your
8 Honor.

9 THE COURT: All right, thank you. We'll
10 continue with the testimony of this witness. I'll
11 ask if the Defense has any cross-examination.

12 MS. ZMROCZEK: Hopefully just a few. Thank
13 you, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. ZMROCZEK:

16 Q Good afternoon.

17 A Good afternoon.

18 Q You were the crime scene -- the CSI person, right?

19 A Yes.

20 Q Okay. In fact, that is what they call your unit,
21 the Crime Scene Investigating Unit, right?

22 A Yes.

23 Q And there are multiple people in your group, and
24 sometimes more than one person goes to a scene,
25 right?

1 A Yes, that's correct.

2 Q Sorry. But in this case, it was just -- you were
3 the one on-call, so you got to go out?

4 A Yes.

5 Q Is that how it works? I'm guessing. Okay. So
6 when you get to a crime scene, you kind of
7 arrive -- you rarely arrive as it has just happened
8 or anything, usually you get called in by the
9 police, is that correct?

10 A That's typically how it goes, yes.

11 Q Okay. And when you go there, do you know exactly
12 what you are going to collect?

13 A No, not ahead of time. We develop those things as
14 I process the scene and as I examine the scene.

15 Q And then, I think you said that sometimes you get
16 direction -- obviously you received training in how
17 to preserve and collect evidence, right?

18 A Yes, that is correct.

19 Q But if, for example, Sergeant Holdorf said, Hey,
20 this may have something to do with something, I
21 need you to go just take a picture, then you would
22 do that, right?

23 A Yes, we will do that.

24 Q Because oftentimes we don't know what is going to
25 be evidence and what is not going to be evidence,

1 right?

2 A That's correct.

3 Q But the problem is that once you go -- once you
4 leave, what may or may not be evidence may or may
5 not be there if you have to come back, right? For
6 example, if you learned because you watched a video
7 that someone reached into a truck utility box and
8 that somehow becomes important, but you didn't know
9 about it at the time, you can do one of two things.
10 You can go and try to find that truck and
11 photograph it, right?

12 A (Nods affirmatively.)

13 Q Or if it doesn't exist, then we can't, right?

14 A That's possible, yes.

15 Q Okay. So the point being is that at times, unless
16 you have a bunch of information or all the
17 information, it is better to overdo than to miss
18 some, correct?

19 A That would be an accurate statement, yes.

20 Q So you talked about the gunshot analysis and
21 residue. And certainly Mr. Volstromer voluntarily
22 signed that away, as did his wife, right?

23 A They signed written consent forms, yes.

24 Q They didn't give you any trouble with that?

25 A No, they did not give any trouble.

1 Q And then I want to show you what has been marked
2 for ID purposes as Defense Number 6. Do you
3 recognize that item?

4 A It is a copy of the crime scene log for this
5 particular incident.

6 Q Okay. I will let you hold onto that. What is a
7 crime scene log?

8 A It is the log established for anyone entering the
9 crime scene. It establishes -- we get a name of
10 who the individuals are, the times they entered,
11 what their purpose, specific reason for entry was,
12 and then the time they exited.

13 Q And is that limited to police?

14 A No. Typically, we try to get the first responding
15 officers to obtain information as far as First
16 Responders. Life-saving measures always take
17 precedent, but they can include First Responders,
18 EMS, fire personnel, sometimes if there were any
19 other individuals that were in the scene.

20 Q That is what I was getting to. So if there are
21 what we call lay witnesses, people who aren't
22 professionals within the scene, you would like to
23 know that, right?

24 A It would be a good idea. If we were to need to go
25 get some kind of known standards to compare to, it

1 is good for us to know who is in the scene so we
2 would know who to go to to get the particular
3 elimination standards.

4 Q Okay. And I understand that the crime scene log is
5 typically started by one of the police officers.
6 That is not your job, right?

7 A Correct, that is not something I do.

8 Q Right. And but whoever starts it typically just
9 goes around and gets -- tries to get people's names
10 and about what time they got there, about what time
11 they left?

12 A Well, I can't answer for how they go about doing it
13 because it is already initiated prior to my
14 arrival.

15 Q So when you get there, do you put your information
16 on there?

17 A Yes. I take it and include my time in.

18 Q So you put your name and what time you got there
19 and what time you left?

20 A Yes.

21 Q Okay. And why -- are your initials at the bottom
22 of this?

23 A My initials are on the bottom of this page because
24 this is part of my case file, and as per our
25 procedure, our protocol, we have to have our

1 initials on all items for part of our case file,
2 our case jacket.

3 Q And as part of your case jacket, is that a
4 regularly -- I cannot say that word -- a regularly
5 kept business record that you keep in your -- you
6 receive that from whoever, which is why you put
7 your initials on it, and then you keep it with your
8 case jacket, correct?

9 A Yes. If I'm the one that is there when the scene
10 is released, then it will go with my case record.

11 Q And so you -- like you said, you weren't collecting
12 the names and the times, that was somebody else's
13 job, but you collected that record when it was
14 done, right?

15 A Yes, when we left the scene.

16 Q And is that record, the one that you are holding,
17 Defense 6, does it accurately reflect the business
18 record that you collected?

19 A It does, yes.

20 MS. ZMROCZEK: Your Honor, at this time we
21 would move Defense Exhibit Number 6 into evidence.

22 THE COURT: Any objection?

23 MS. TAYLOR: Your Honor, we object under
24 hearsay within hearsay. She can't confirm that
25 what is on that sheet is accurate. She didn't

1 start it. She only got it when it was complete.
2 She is not the custodian of records for Richland
3 County Evidence Department or AFIS system, so I
4 don't think she can -- it can come in through her.

5 THE COURT: All right. Yes, ma'am?

6 MS. ZMROCZEK: Your Honor, as she testified,
7 she signed it when it was completed and she makes
8 that part of her regularly kept case jacket and
9 business record that they generate.

10 THE COURT: All right. It will be entered
11 over the objection of the State.

12 (WHEREUPON, Defendant's Exhibit No. 6
13 was admitted into evidence.)

14 BY MS. ZMROCZEK:

15 Q And, again, it is not -- I'm not saying that the
16 times are -- you didn't write any of those times
17 down, you wrote your time down, right?

18 A Yes.

19 Q Okay. But the purpose of a crime scene log, like
20 you said, is to try to make sure we know who is on
21 the scene and about when they are there, right?

22 A Yes.

23 Q Okay.

24 MS. ZMROCZEK: Beg the Court's indulgence.

25 (Pause.)

1 MS. ZMROCZEK: Thank you. I have no further
2 questions. Thank you.

3 THE COURT: All right. Any redirect?

4 MS. TAYLOR: Yes.

5 REDIRECT EXAMINATION

6 BY MS. TAYLOR:

7 Q Yes. Investigator McClary, who would have been the
8 person to ask about the accuracy of the
9 information on that form?

10 A There are deputies' names at the bottom of it that
11 were actually in different periods of time
12 maintaining the log, so I would imagine they would
13 be the ones to ask.

14 Q Okay. And you cannot testify that what is actually
15 on that sheet is accurate?

16 A That's correct.

17 MS. TAYLOR: No further questions.

18 THE COURT: All right. You may step down.
19 (Witness steps down.)

20 THE COURT: Let me see y'all one second.

21 MS. SAMPSON: May this witness be released,
22 Your Honor?

23 THE COURT: Yes.

24 (Witness excused.)
25

1 (WHEREUPON, a bench conference was held
2 in the presence of the jury but out of
3 the hearing of the jury.)

4 THE COURT: Call your next witness.

5 MS. TAYLOR: The State calls Investigator
6 Brian Metz.

7 (Witness approaches.)

8 THE BAILIFF: Place your left hand on the
9 Bible, raise your right hand, and face the clerk.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you shall give in this case will be the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Please have a seat in
17 witness stand, and state your full name for the
18 record.

19 THE WITNESS: It is Brian Metz, M-E-T-Z.

20 BRIAN METZ,

21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. TAYLOR:

24 Q Investigator Metz, where do you work?

25 A At the Richland County Sheriff's Department.

- 1 Q And how long have you worked there?
- 2 A It will be 39 years the end of this month.
- 3 Q Wow. What is your job there?
- 4 A I'm an investigator in the technical services
5 division of the criminal investigative division.
- 6 Q Okay. And back on December 27 of 2015, you worked
7 at the Richland County Sheriff's Department?
- 8 A That's correct.
- 9 Q And what was your job back then?
- 10 A The same. I was an investigator in technical
11 services.
- 12 Q And can you tell us some of your duties?
- 13 A They can run the gamut. At that time I was still
14 doing computers. We also do cell phones, forensic
15 downloads, downloading video, installing video
16 cameras, any other thing that would fall under the
17 digital or technical realm.
- 18 Q And were you involved in downloading any videos in
19 the case that we're here for today?
- 20 A I was.
- 21 Q Okay. And do you recall responding to this
22 incident?
- 23 A I do.
- 24 Q And what was it about this incident that made you
25 remember it?

1 A Don't normally go to a Defendant's house and
2 download on a Sunday afternoon or a Sunday evening.

3 Q Okay. And how were you notified that you were
4 needed to download these videos?

5 A I received I believe a phone call from Sergeant
6 Holdorf.

7 Q And you said that it was the Defendant's house you
8 responded to?

9 A That was my understanding, yes, ma'am.

10 Q And what type of device did you download the videos
11 from in this case?

12 A It was a DVR, a store bought DVR.

13 Q And can you kind of explain what a DVR is?

14 A So a lot of systems like that, a DVR is just a
15 specific device, depending on the manufacturer. It
16 could be computer software or it could just be
17 proprietary software in the computer that records
18 the video from the cameras that are attached to it
19 and then also, in most circumstances, give you some
20 options to download the video from that recording
21 device.

22 Q And were you able to tell what type of system you
23 downloaded the video off of?

24 A If I recall correctly, it was a Lorex DVR.

25 Q Okay. And what type of factors made you be able to

- 1 determine that?
- 2 A I don't remember what was written on it, but I also
- 3 note from the video that it uses a Lorex player.
- 4 Q Okay. And is Lorex just a brand?
- 5 A Lorex is a fairly common brand, yes.
- 6 Q Okay. And when you are called to respond to an
- 7 incident, any incident, and you are asked to
- 8 download some kind of video, how do you know what
- 9 part to download?
- 10 A It is up to the investigator, in this case Sergeant
- 11 Holdorf or Sergeant -- or Investigator Carter to
- 12 give me some parameters to go by.
- 13 Q And when you say parameters, like what type of
- 14 things do you mean?
- 15 A A time period.
- 16 Q Okay. And I am going to show you what is marked as
- 17 State's Exhibit Number 46. And do you recognize
- 18 this CD?
- 19 A I do.
- 20 Q And have you had the opportunity to watch this CD
- 21 before?
- 22 A I have.
- 23 Q And do your initials on there indicate that you
- 24 watched the CD?
- 25 A It does.

1 Q And what you watched on that CD, is that a fair and
2 accurate representation of the videos that you
3 downloaded off of the Volstromers' surveillance
4 system?

5 A It is.

6 MS. TAYLOR: The State requests to introduce
7 State's Exhibit Number 46 into evidence.

8 MS. ZMROCZEK: Without objection, Your Honor.

9 THE COURT: It will be entered without
10 objection.

11 (WHEREUPON, State's Exhibit No. 46 was
12 marked for identification and received
13 into evidence.)

14 MS. TAYLOR: Permission to publish, Your
15 Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. TAYLOR:

18 Q And just a couple -- before we watch the video, how
19 did you get permission to download this video?

20 A There again, that is a function of the
21 investigators of the case. And it was my
22 understanding that they had received a consent from
23 the owners.

24 Q Okay. And in incidents that you respond to where a
25 search warrant allows you to download some kind of

1 footage, how common is it for you to take an entire
2 surveillance system camera from a location?

3 A To take the entire system is very unusual.

4 Q Okay.

5 A It would depend on a lot more circumstances than we
6 had.

7 Q Okay.

8 (State Exhibit 46 published to jury.)

9 BY MS. TAYLOR:

10 Q Just a couple of follow-up questions. Investigator
11 Metz, were there other camera angles that you
12 downloaded from the Volstromer surveillance system?

13 A There were.

14 Q Do you remember about how many?

15 A I believe there were five in total.

16 Q Okay. And I think you said earlier you don't
17 download an entire video system stored?

18 A No.

19 Q Okay. And in this particular case, how did you
20 know what portions of the stored surveillance
21 footage to capture for this particular case?

22 A So given the time period to look for by the
23 investigators, once finding the incident itself,
24 then I went back to the beginning in this case
25 where I saw the vehicle pulling up and then

1 collected some time period after that when I
2 stopped hearing the audio and it looked like, I'm
3 assuming that was an ambulance or fire truck
4 leaving at that point. The deputies were already
5 on the scene.

6 Q Okay. And with surveillance or a video
7 surveillance system, it is possible there could be
8 months or weeks or years of video stored in a
9 surveillance system, correct?

10 A Depending on the system and the size of the hard
11 drive, yes.

12 Q And did you get any other videos from this
13 particular system from any other days?

14 A I did not.

15 Q And why not?

16 A I wasn't asked to.

17 MS. TAYLOR: No further questions.

18 THE COURT: All right, yes, ma'am?

19 MS. ZMROCZEK: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Good afternoon, Investigator Metz.

23 A How are you?

24 Q I'm great. How are you?

25 A Doing well.

- 1 Q We have met like this numerous times, haven't we?
- 2 A Yes, ma'am.
- 3 Q And you are familiar with Chris Watkins, aren't
- 4 you?
- 5 A The name does not ring a bell.
- 6 Q The digital -- he has done some digital computer
- 7 work as well? He doesn't work for y'all?
- 8 A He does not ring a bell.
- 9 Q Okay. You -- so you -- just to be clear, I don't
- 10 want to put words in your mouth -- you were sent
- 11 out to the Volstromers' house, right?
- 12 A Correct.
- 13 Q And you were told to download a specific time
- 14 frame?
- 15 A I was told a specific time frame to look at, but to
- 16 download the video from this incident.
- 17 Q Okay. And that direction was given to you by
- 18 Investigator Holdorf?
- 19 A That is my recollection.
- 20 Q Okay. And you did download all five cameras,
- 21 right?
- 22 A Correct.
- 23 Q Okay. And you would agree with me that -- strike
- 24 that. You -- were you able to see where the
- 25 cameras were?

1 A I did not go around the residence looking. I took
2 it at face value from what the camera showed.

3 Q And in talking about that, so the cameras, though,
4 they are like a dome camera, right?

5 A I'm not sure what kind. It could be a dome or a
6 spotlight.

7 Q Okay. My point being, that can distort maybe how
8 long and wide? If it is trying to get a bigger
9 view, it could distort like the length or the -- it
10 could distort some of the images, right?

11 A I don't know that I would say distort. Depending
12 on the software itself in the DVR and the type of
13 lens used, then the camera could be made to look
14 wider and taller.

15 Q Right. That's what I mean, wider and taller, not
16 like -- it can't change images, right?

17 A No, ma'am.

18 Q So, I mean, so the camera -- if it looked a little
19 wider than it is, it is still not going to add or
20 subtract someone walking away from the scene,
21 right? What is on the camera is on the camera?

22 A Right.

23 Q And so were you ever asked to go back out and
24 download maybe some specific dates or times?

25 A Not that I recall.

1 Q Okay. And you don't just -- you don't do your own
2 investigation, right, you are generally guided by
3 what you were told to do?

4 A Correct. We serve the investigators.

5 Q Okay. And how usual is it for you -- you said I
6 think it was unusual to go out to a Defendant's
7 home?

8 A It is not just the Defendant's home, but just the
9 circumstances in this, it was rememberable.

10 Q Okay. And the -- what did you -- you did that that
11 afternoon, that same day, or --

12 A Correct.

13 Q -- shortly thereafter?

14 A Correct.

15 Q And then you turned it over to Investigator
16 Holdorf?

17 A Correct.

18 Q Okay. And that was very shortly after this
19 happened?

20 A Correct.

21 Q Okay. You -- are you familiar with video
22 enhancement?

23 A I am.

24 Q Okay. So can you -- and I'm not saying -- you
25 weren't asked to do any video enhancement, were

1 you?

2 A That's correct.

3 Q But you could? If you were asked, you could see if
4 you could zoom in to get maybe a closer look at
5 what actually happened at the fence?

6 A I could have looked at that. I don't know that it
7 would have been that much you could do in this
8 situation.

9 Q Sometimes depending on the unit, the memory, the
10 program, if you zoom in too much it could distort?

11 A It does.

12 Q Okay. But even with the distortion, it still can't
13 change the movement of what is going on, right? It
14 just makes it harder to see?

15 A Right.

16 Q Okay. And is there also -- strike that.

17 MS. ZMROCZEK: Beg the Court's indulgence.

18 (Pause.)

19 MS. ZMROCZEK: Thank you. I have no further
20 questions.

21 THE COURT: Any redirect?

22 MS. TAYLOR: No, ma'am.

23 THE COURT: All right, you may step down.

24 Any objection to this witness being excused?

25 MS. TAYLOR: Not from the State, Your Honor.

1 MS. ZMROCZEK: None from Defense.

2 THE COURT: All right, sir, you are free to
3 leave.

4 (Witness steps down and excused.)

5 THE COURT: All right. Ladies and gentlemen
6 of the jury, it is about 5:39, and this is a good
7 time to break for the evening.

8 I do want to remind you, please do not discuss
9 this case, do not do any independent research, do
10 not discuss anything on social media about your
11 service on the jury or anything that is happening
12 here.

13 We will see you back in the morning at 9:30.
14 We will see you back tomorrow at 9:30. Have a
15 wonderful evening.

16 Thank you.

17 (WHEREUPON, the jury is excused at 5:40
18 p.m.)

19 THE COURT: All right. Is there anything we
20 need to take up today? So y'all will be ready at
21 9:30.

22 MS. SAMPSON: Nothing from the State at this
23 time, Your Honor.

24 THE COURT: And just not holding you to it,
25 but so I can make sure she has her witnesses lined

1 up, do you think you are going to rest sometime
2 tomorrow?

3 MS. SAMPSON: Yes, ma'am.

4 THE COURT: So you need to have your witnesses
5 here and available.

6 MS. ZMROCZEK: I will. Just because we don't
7 know, I'll just go ahead and tell them to be here
8 around 1:00 o'clock, because we still have to argue
9 the DV motion.

10 MS. SAMPSON: I think that is probably
11 accurate.

12 MS. ZMROCZEK: They are under subpoena at this
13 time.

14 MS. SAMPSON: I don't anticipate her needing
15 witnesses in the morning, I think it would probably
16 be closer to the afternoon because we'll have to
17 argue the DV.

18 THE COURT: So you have what, about three or
19 four more witnesses? And I am not holding you to
20 it.

21 MS. SAMPSON: We have four or five.

22 THE COURT: Okay. So, yes, 1:00 o'clock will
23 be fine.

24 All right, I will see you all in the morning.

25 (WHEREUPON, court adjourned for the

1 evening at 5:42 p.m.)

2 JUNE 16, 2021

3 (WHEREUPON, the trial resumed at
4 9:48 a.m.)

5 THE COURT: You can bring them in.

6 (WHEREUPON, the jury came into open
7 court at 9:48 a.m.)

8 THE BAILIFF: The jury is present, Your Honor.

9 THE COURT: All right. I'll ask the State to
10 call your next witness.

11 Good morning, ladies and gentlemen of the
12 jury.

13 THE JURY: Good morning.

14 MS. SAMPSON: Thank you, Your Honor. May it
15 please the Court? The State would call Nicole
16 Hardin to the stand.

17 THE BAILIFF: Come forward and be sworn.

18 (Witness approaches.)

19 THE BAILIFF: Place your left hand on the
20 Bible, raise your right hand, and face the clerk.

21 (Witness complies.)

22 THE CLERK: Do you swear or affirm the
23 testimony you shall give in this case will be the
24 truth, the whole truth, and nothing but the truth,
25 so help you God?

1 THE WITNESS: I do.

2 THE CLERK: Please be seated, and state your
3 full name for the record.

4 (Witness seated.)

5 THE WITNESS: My name is Nicole Hardin,
6 H-A-R-D-I-N.

7 NICOLE HARDIN,
8 after being duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. SAMPSON:

11 Q Good morning.

12 A Good morning.

13 Q Can you please tell the jury where you work?

14 A I work for the South Carolina Law Enforcement
15 Division in their forensic lab in the trace
16 evidence department.

17 Q And is that normally known as SLED?

18 A Yes, ma'am.

19 Q And what do you do there?

20 A I am a forensic scientist, and I analyze evidence
21 submitted for the presence or absence of gunshot
22 residue.

23 Q And how long have you been working for SLED?

24 A Around three years.

25 Q And can you tell us a little bit about your

1 educational background?

2 A Sure. I have a bachelor of science degree in
3 chemistry with a concentration in forensic science
4 from Methodist University.

5 Q And what kind of training did you get to become --
6 to analyze gunshot residue?

7 A When I began at SLED, I began a
8 year-and-a-half-long training program that
9 consisted of written, practical, and oral
10 examination, all of which you had to pass.

11 I also had a competency exam where I had to
12 correctly report my findings. I had a mock trial
13 on that case. And then I also have attended
14 courses at Hooke College of Applied Sciences, in
15 Westmont, Illinois.

16 Q And have you been certified as an expert in the
17 field of gunshot residue analysis before?

18 A I have.

19 MS. SAMPSON: At this time, Your Honor, I
20 would ask that she be -- that this witness be made
21 an expert in the field of gunshot residue analysis.

22 MS. ZMROCZEK: We have no objection to that,
23 Your Honor.

24 THE COURT: All right. Ladies and gentlemen
25 of the jury, something weird is going on with my

1 microphone, but I am going to try. Normally a
2 person cannot give opinion testimony. Normally
3 when a person testifies, they must testify as to
4 what they either saw, heard, or sensed by smell, or
5 something of that nature. However, it is an
6 exception when someone is qualified because of
7 education or experience. They are permitted to
8 give their opinion in certain areas if the Court
9 qualifies them in that way.

10 This witness will be qualified in the area of
11 gunshot residue analysis to give opinion testimony
12 in that area. That does not mean that you must
13 accept the opinion, but it is evidence for you to
14 use in any way you see fit and give it the weight
15 and credibility you believe is appropriate.

16 Thank you.

17 Yes, ma'am?

18 MS. SAMPSON: Thank you, Your Honor.

19 BY MS. SAMPSON:

20 Q So can you explain to the jury, what is gunshot
21 residue?

22 A Gunshot residue is the mixture of chemicals that
23 come out of a gun when it is discharged. This
24 mixture comes from the primer, the propellant, and
25 the projectile.

1 What we are specifically looking for comes
2 from the primer portion, and our microscopic molten
3 particles containing the elements lead, barium, and
4 antimony.

5 Q And are all three required before you can call
6 something gunshot residue?

7 A Yes, ma'am. Lead, barium, and antimony all have to
8 be present.

9 Q And are there different levels when you say
10 something has GSR, or gunshot residue?

11 A There is not. If I say that it is positive for
12 gunshot residue, then it has all three of those
13 components. And if not, I would not call it
14 gunshot residue.

15 Q What would you say if you only found two?

16 A I would say there were two particles present.

17 Q So can you explain to the jury how you received the
18 gunshot residue kit?

19 A Sure. SLED is an agency that anyone in the entire
20 state can bring your evidence to from another
21 agency. They will bring it into SLED and it will
22 be given a identifying number, a unique number,
23 also called a SLED lab number. From there, they
24 assign what analysis they would like performed on
25 that in the GSR kit, and then it would be a gunshot

1 residue analysis.

2 Once it is at the lab, I can go and retrieve
3 it from evidence control where they hold the
4 evidence that is submitted. And then it will be
5 brought up by either myself or a forensic
6 technician for our department, and the kit will be
7 inventoried and then prepared for analysis.

8 Q And what is a GSR kit?

9 A I have an example if --

10 Q If you can pull out the example and show it and
11 explain it to the jury. And while you are doing
12 that, are all kits the same?

13 A This -- they are not exact -- all of the kits have
14 particle lifts, which I'm about to show you. We
15 distribute these specific ones. They are Tri-Tech
16 kits. We distribute these because we do quality
17 analysis on the particle lift before they are given
18 out to be used. All of them are not exactly the
19 same kit-wise. They might be packaged differently.
20 But they all contain a particle lift.

21 Q And I guess that is what I was trying to get at.
22 They all are used the same, they all have similar
23 equipment inside?

24 A Yes.

25 Q So if you can go ahead explain to the jury and show

1 them what you have.

2 A So this is an example of a gunshot residue evidence
3 collection kit. Inside there are a few different
4 things, two of those being a GSR information form.
5 This is a form that whoever is collecting this kit
6 will fill out. It has a spot for the collecting
7 officer's name, the subject that they are
8 collecting from, their name, if they are living or
9 deceased, did they sustain a wound. I also had the
10 date and time that the shooting occurred and the
11 time of collection. Those are important times. It
12 includes an instruction sheet telling them what to
13 do when they open this kit. They will put on the
14 gloves that are located inside. And then they will
15 open the one particle lift at a time. This is what
16 they look like. You uncap it, and inside it looks
17 like the top of a roofing nail with super sticky
18 tape on it. And whoever is collecting -- so this
19 one says left back, so they would collect from the
20 left back location of the subject's hands and they
21 will dab repeatedly.

22 Q So if like that was my hand, what would you do if
23 you were test collecting?

24 A I would have gloves on. But I would dab repeatedly
25 all over the location of the hands until the sticky

1 is gone, and then I would cap it. And after all
2 those were completed, put it in here. It includes
3 an evidence seal. So then they would dispose of
4 their gloves, put the GSR info sheet back in, seal
5 it up, and then would bring it to SLED.

6 Q And is that how every kit is done? You would do,
7 you said, the left hand, then you would do the
8 palm, is that correct?

9 A So this is actually a whole kit. We have moved
10 away from the right palm, right back, left palm,
11 left back, and we only do right hand and left hand
12 because the location, it doesn't really tell you,
13 and I can't give you any more information other
14 than it is there.

15 Q So you couldn't tell us if it was on your left
16 pinkie or your left thumb, you can just say it was
17 on your left hand?

18 A Right.

19 Q And even on the old kits, would it be fair to
20 say -- all you could say was it was on the palm or
21 back, you couldn't say if it was, again, the top of
22 the pinkie or the top of the thumb, you could say
23 it was the top of the hand or bottom of the hand?

24 A Yes.

25 Q So how do you find -- so you do the kit, and then

1 what happens once you receive the kit?

2 A Whenever I receive a kit, it will be inventoried
3 either by myself or the forensic technician. That
4 just means they open the kit and make sure that
5 that info sheet that I brought out is filled out.
6 They will make sure it contains all of the correct
7 particle lifts. Then they will put it back in
8 there, secure it, or put it in a secure location,
9 and then I will retrieve it from that location for
10 analysis. When I --

11 Q Let me interrupt you for just a second. When you
12 receive a kit, would you all receive the kit if it
13 was open?

14 A No, ma'am.

15 Q For example, when you received it, if it wasn't
16 sealed, what would you do?

17 A If it was not sealed, I would either bring it to my
18 supervisor's attention. If it was just a GSR kit
19 and whatever the GSR kit was in, maybe a
20 heat-sealed pouch or something, if it was open,
21 then if it was still contained in the other outer
22 pouch and the particle lift, if they were still
23 closed, nothing else disrupted and the outside
24 package was sealed and initialed, then I would
25 analyze it. But if not, I would not.

1 Q So you wouldn't analyze something that was open?

2 A Correct.

3 Q So once you make sure everything is correct and you
4 now have the kit, how do you analyze the kit?

5 A So I take the particle lifts and I put them into
6 the chamber of the SQCRAM electron microscope. The
7 SQCRAM electron microscope is a very high powered
8 microscope that allows me to see things unable to
9 be seen with the naked eye, such as gunshot
10 residue, and that is also paired with an X-ray
11 detector that allows me to see what chemical
12 elements are present in the particles I find, such
13 as lead, barium, and antimony.

14 Q So you just said GSR cannot be seen by the naked
15 eye. What do you mean by that?

16 A It is -- its average size is around 110 microns,
17 which, to put into perspective, you would fit
18 around 100 of them across the diameter of one human
19 hair. So they are very, very tiny.

20 Q Okay. So you put it on a microscope?

21 A So that I can see it.

22 Q So I'm going to put you -- move you forward to this
23 case. Did you receive any evidence in this case?

24 A I did.

25 Q What did you receive?

1 A I received Item 1, one GSR kit from Mark
2 Volstromer. And I received Item 2, one GSR kit
3 from Barbara Volstromer.

4 Q And I am just going to focus right now on the kit
5 from Mark Volstromer. Did you find any gunshot
6 residue?

7 A I did.

8 Q And was it on a particular right, left, or
9 anything, or can you tell the jury about that?

10 A Sure. I will first read my result, if that is
11 okay.

12 One GSR kit from Mark Volstromer. My result
13 was particles characteristic of gunshot primer
14 residue were found in general. Particles
15 characteristic of gunshot primer residue are
16 microscopic molten particles that contain the
17 elements lead, barium, and antimony.

18 Gunshot primer residue can come from
19 discharging a firearm, being in the vicinity to the
20 discharge of a firearm, or coming into contact with
21 a surface that has gunshot primer residue on it.

22 Q So saying that something has particles
23 characteristic of gunshot residue, is that saying
24 there is gunshot residue on their hand or on the
25 kit?

1 A Yes, ma'am. And then in the location, right palm,
2 right back, left palm and left back, I found
3 particles on all.

4 Q On all four lifts?

5 A Yes, ma'am.

6 Q And I want to talk to you a little bit about
7 victim. If a victim is shot, do you expect to find
8 gunshot residue?

9 A I do.

10 Q So what is y'all's -- what is SLED's protocol when
11 it comes to testing GSR kits from victims?

12 A For a victim, we prefer not to test unless it is a
13 very specific instance. The reason being, we
14 expect gunshot residue to be found on the victim
15 because gunshot residue follows the path of the
16 bullet, and since the person would have a wound,
17 because they were shot, so they are associated with
18 a shooting already.

19 Q And one more question. You talked about the times
20 being important, for example, on the form. Why are
21 the times important?

22 A Gunshot residue is a very fragile piece of
23 evidence. At SLED, for a living individual, we
24 will not analyze a kit that has been collected six
25 hours after the incident occurs. The reason being,

1 because we do not expect to find anything after six
2 hours. It is very fragile. It is easily removed,
3 easily transferred. And what you do with your
4 hands can remove it. So if you were to put your
5 hands in and out of your pocket, if you were to
6 wash your hands, that can remove it. If you run
7 them through your hair, shake someone else's hand,
8 things like that can remove it.

9 Q And in this case the kit that you gave, did it have
10 that form that you were talking about in it?

11 A Yes, ma'am.

12 Q And was everything correct with that kit in terms
13 of the way you received it and the form being
14 included in it?

15 A Yes, ma'am.

16 Q Would you have tested it if it were not?

17 A No, ma'am.

18 MS. SAMPSON: Beg the Court's indulgence.

19 (Pause.)

20 MS. SAMPSON: Thank you. I have no further
21 questions of this witness, Your Honor.

22 Please answer anything the Defense may have.

23 THE COURT: Yes, ma'am.

24 CROSS-EXAMINATION

25

1 BY MS. AUSTIN:

2 Q Good morning, Ms. Hardin.

3 A Good morning.

4 Q I just have one question. When a person admits to
5 shooting someone and that shooting is recorded on
6 video, would you expect to find gunshot residue on
7 their hand?

8 A Can you repeat the beginning of the question?

9 Q Sure. When a person admits to shooting someone and
10 that shooting is recorded on video, would you
11 expect to find gunshot residue on that person's
12 hand?

13 A If they have admitted it, I would not be surprised
14 to find it, but I would not know for sure unless I
15 analyze the kit.

16 Q Thank you.

17 THE COURT: Anything else?

18 MS. SAMPSON: No, ma'am.

19 THE COURT: All right, you may step down. Any
20 objection to this witness being excused?

21 MS. SAMPSON: Not from the State, Your Honor.

22 MS. AUSTIN: Not from the Defense.

23 THE COURT: Thank you, ma'am. You are free to
24 leave.

25 (Witness steps down and excused.)

1 MS. SAMPSON: Your Honor, we just need one
2 moment to make sure our witness is here.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 MS. TAYLOR: The State calls Richard Carter.

6 (Witness approaches.)

7 THE BAILIFF: Place your left hand on the
8 Bible, raise your right hand, and face the clerk,
9 please.

10 (Witness complies.)

11 THE CLERK: Do you swear or affirm the
12 testimony you shall give in this case will be the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. Please have a seat in
17 the witness stand, and state your full name for the
18 record.

19 (Witness seated.)

20 THE WITNESS: Richard Carter.

21 RICHARD CARTER,
22 after being duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. TAYLOR:

25 Q Where do you work?

- 1 A Richland County Sheriff's Department.
- 2 Q And how long have you worked there?
- 3 A Eighteen years.
- 4 Q And what is your job there now?
- 5 A Currently I am a shift leader for the uniform
- 6 patrol division, Region 2.
- 7 Q And what is your rank?
- 8 A Staff sergeant.
- 9 Q And can you kind of tell the jury how you got to
- 10 that rank and as a shift supervisor?
- 11 A Well, I guess it is just a progression of, you
- 12 know, work. Just -- I mean, I don't know exactly
- 13 how to explain it. Twenty-five years is my total
- 14 experience. I was in investigations. I
- 15 transitioned out for, you know, being promoted.
- 16 Q Okay.
- 17 A I mean, I don't --
- 18 Q That's fine. Back on December 27, 2015, did you
- 19 work at Richland County Sheriff's Department?
- 20 A I did.
- 21 Q And what was your job back then?
- 22 A Then I was an investigator in investigations.
- 23 Q And what were some of your duties as an
- 24 investigator?
- 25 A At that time I was -- I believe I was assigned to

1 the motor vehicle theft unit.

2 Q Okay. And even though you were assigned to that
3 unit, are investigators sometimes on call?

4 A Yes.

5 Q And what does it mean to be on call?

6 A Every -- I think at the time it was maybe every six
7 weeks we are on call for a week. We work nights
8 and we respond to anything that requires an
9 investigator, or it could be anything outside of
10 what we are normally doing.

11 Q Okay. And were you involved in investigating the
12 incident that we are here for today?

13 A Yes.

14 Q And how were you notified to become involved?

15 A At that time I was working evening shift on call,
16 and I was notified by the desk sergeant.

17 Q Okay. And what type of incident were you notified
18 about?

19 A About a shooting that occurred.

20 Q And what time were you notified?

21 A 17 -- well, 1702 hours, or 5:02 p.m.

22 Q Okay. And did you write a report to document your
23 investigation?

24 A I did.

25 Q And after you were notified about the shooting,

1 what did you initially do?

2 A After I was notified by the desk sergeant, I
3 contacted the deputy that was on scene requesting
4 us to contact him.

5 Q And who was that deputy that was on scene?

6 A It was Master Deputy Hunger.

7 Q Okay. And he was on scene and you contacted him?

8 A Yes.

9 Q And as an investigator assigned to an incident like
10 this, is it one of your duties to advise the
11 deputies that are already on scene?

12 A Yes.

13 Q And what did you advise Deputy Hunger to do at the
14 scene?

15 A Based on what I was told or he had informed me
16 about, I asked him not -- I asked him if he could
17 obtain some written consent from the wife at the
18 house.

19 Q Okay. Did you tell him anything else about whether
20 people could enter and exit the house?

21 A No, I asked him to secure the scene.

22 Q Okay. And that means to not let anybody into the
23 house?

24 A Correct.

25 Q And did you advise him about anything regarding

1 gunshot residue?

2 A Yes.

3 Q What did you tell him?

4 A I asked him to make sure their hands, not to wash
5 them so a gunshot residue kit could be completed.

6 Q And when you are referring to they, who are the
7 people you were talking about?

8 A Oh. The husband, Mr. Volstromer -- excuse me if I
9 can't pronounce it correctly -- and his wife.

10 Q Okay. And were any other investigators involved in
11 investigating this incident with you?

12 A Yes.

13 Q And who was that person?

14 A Sergeant Holdorf.

15 Q So at some point when you received information
16 about what was going on at the scene, did you leave
17 to respond to the incident location?

18 A Yes.

19 Q And while you were en route, did you obtain any
20 documents to further assist you in the
21 investigation?

22 A Yes.

23 Q What did you obtain?

24 A A search warrant.

25 Q And can you briefly explain what a search warrant

1 is and how you obtained one in this case?

2 A The reason for the search warrant is because there
3 was reason to believe there was evidence located
4 inside the residence, at the residence, and to
5 avoid any kind of violation of the Fourth
6 Amendment, it was -- I met with a judge, gave the
7 facts of the case, and obtained a search warrant so
8 we could collect that evidence.

9 Q And when you talk about Fourth Amendment, that
10 deals with searches?

11 A Searches, yes.

12 Q Okay. And in this particular case, what was the
13 specific reason why you needed to obtain a search
14 warrant?

15 A Because of the -- because of the nature of the
16 incident, the reason to believe -- the residence
17 had surveillance video. The camera footage, the
18 evidence was inside the house. A firearm was
19 inside the house. I mean, it was to, you know,
20 collect evidence so we could further our
21 investigation.

22 Q Were you able to get verbal consent from anyone?

23 A No.

24 Q So was that the reason you got the search warrant?

25 A Yes.

1 Q Okay. What was the address of the location that
2 the search warrant was authorized for you to
3 search?

4 A 1129 Antioch Amez Church Road.

5 Q And who drafted and typed that search warrant?

6 A I did.

7 Q And did you request any information from anyone at
8 the incident location about the description of this
9 area to search to assist you in drafting the search
10 warrant?

11 A Yes.

12 Q And what did you request?

13 A Master Deputy Hunger sent me a photograph of it so
14 I could describe the description of the residence.

15 Q And is that a required element of getting a search
16 warrant?

17 A Yes, describing place, person, things to be
18 searched.

19 Q And I think you may have already touched on this,
20 but what type of evidence does the search warrant
21 authorize you to collect from the residence?

22 A Specifically -- I mean, I don't have it in front of
23 me to give you verbatim what it is, but --

24 Q If I showed you the search warrant, would it help
25 refresh your memory?

1 A Yes.

2 Q So what items did the search warrant authorize you
3 to do?

4 A Firearms, ammunition, surveillance camera system,
5 computers, cell phones, electronic storage device,
6 collection of any and all physical evidence from
7 the interior and exterior of the residence.

8 Q Okay. And at some point did you arrive at the
9 incident location?

10 A I did.

11 Q And what was the address that you responded to?

12 A 1129 Antioch Amez Church Road.

13 Q And what time did you arrive?

14 A 2000 hours, 8:00 p.m.

15 Q And when you arrived on the scene, did you make
16 contact with any witnesses at the residence?

17 A Yes.

18 Q And who did you make contact with?

19 A Barbara Volstromer.

20 Q And what is her relationship to the Defendant?

21 A His wife.

22 Q And where was she located when you made contact
23 with her?

24 A At the residence.

25 Q And when you first made contact with her, did you

1 give her anything?

2 A I did.

3 Q What did you give her?

4 A A copy of the search warrant.

5 Q And did she provide you with any physical items
6 when --

7 A Yes.

8 Q What did she provide you with?

9 A A Canon SX160 IS 10.

10 Q Did you have a conversation with her about the
11 shooting incident?

12 A I did.

13 Q And how did you document any statement that she
14 provided to you?

15 A I obtained a written statement from her.

16 Q And can you describe her willingness to talk to you
17 about the incident and to complete a written
18 statement?

19 A She was -- she was cooperative.

20 Q And after she completed the written statement, did
21 she have the opportunity to review her statement
22 and make any changes or corrections?

23 A Yes.

24 Q And did she sign the statement?

25 A Yes.

1 Q Did you observe her sign that statement?

2 A Yes.

3 Q And after she completed the statement, did she do
4 anything with the statement?

5 A Yes. She made herself a copy of it.

6 Q And, in general, throughout your years of law
7 enforcement, you have taken lots of written
8 statements from witnesses, correct?

9 A Yes.

10 Q And if a witness wanted to change something or
11 update something about their written statement,
12 have they ever contacted you to do that?

13 A If they wanted to make or add, certainly I would
14 have allowed them to do that.

15 Q Okay. And in this case, when, if ever, did Barbara
16 Volstromer contact you to make any updates or
17 changes to her written statement?

18 A She didn't.

19 Q She what?

20 A She did not.

21 Q Okay. And what, if anything, did Barbara
22 Volstromer indicate about whether the victim was
23 armed during this incident?

24 MS. ZMROCZEK: Objection, Your Honor. That
25 is, I believe, hearsay. She is trying to ask what

1 she said.

2 THE COURT: Sustained.

3 MS. TAYLOR: Okay.

4 BY MS. TAYLOR:

5 Q If Barbara Volstromer or any other witnesses that
6 were on scene had mentioned anything to you or
7 indicated anything to you about the victim being
8 armed, what additional actions would you have taken
9 during your investigation of this case?

10 A I would have documented, written down, and tried
11 to -- if they weren't there, try to locate them,
12 speak with them to follow up on that information.

13 Q And did you have a reason to do that in this case?

14 A No.

15 Q Okay. And while you were obtaining Barbara
16 Volstromer's statement, did any other investigators
17 arrive on the scene?

18 A Yes.

19 Q And who was that person?

20 A Sergeant Holdorf.

21 Q Other than Holdorf, did anyone come to collect any
22 evidence that was --

23 A Investigator Metz.

24 Q Okay. And what did you observe Investigator Metz
25 do while he was on scene?

1 A He downloaded the video from the residence.

2 Q And did you have the opportunity to watch that
3 surveillance video?

4 A Yes.

5 Q And where did you watch it?

6 A At the house.

7 Q And can you describe what you observed in that
8 surveillance video?

9 A I observed a green truck, which Ms. Volstromer
10 reported to me was driven by Ricky. It showed
11 Mr. Pruitt walk around the rear of the truck, at
12 one point held his hands up, and nothing was
13 observed in his hand.

14 THE COURT REPORTER: Nothing was what, I'm
15 sorry?

16 A Observed in his hands. It showed Ms. Volstromer
17 walk back towards the house as Mr. Volstromer
18 walked towards Mr. Pruitt, who was on the other
19 side of a white rail fence, not in the Volstromers'
20 yard.

21 MS. ZMROCZEK: Your Honor, while I appreciate
22 his perception, I think that the video is in
23 evidence and the jurors are allowed and actually
24 required to make their own view of what they see.

25 THE COURT: All right. So what is the

1 objection?

2 MS. ZMROCZEK: Just a narrative -- that it is
3 a narrative and it is his personal opinion of what
4 he saw.

5 THE COURT: All right. The objection will be
6 overruled. Go ahead.

7 BY MS. TAYLOR:

8 Q You can continue.

9 A The video then showed Mr. Volstromer walking back
10 towards the house. A handgun can be observed in
11 his right hand.

12 Q Okay. So going back to the search warrant, did you
13 have any further involvement in completing the
14 documentation of the search warrant?

15 A Yes. I completed the return portion.

16 Q And what is the search warrant return?

17 A It is where I itemized any evidence that was
18 collected and it is listed on the back of the
19 search warrant, and then I return it to the judge
20 who I obtained it from.

21 Q Okay. And what items did you document were
22 collected from the residence during the execution
23 of the search warrant?

24 A A Canon SX60 IS 10; video from the surveillance
25 camera; one GSR, Mark Volstromer; one GSR, Barbara

1 Volstromer; one black in color handgun, DGA 3 CAL;
2 9 Browning Court with a serial number of A150441;
3 one black in color magazine containing 9 RP 380
4 auto, one loose USC RP 380 auto.

5 Q Okay. And you testified that the property that you
6 were authorized to get the search warrant was any
7 and all physical evidence from the interior and
8 exterior of the residence. So, theoretically, that
9 means you could take literally everything from
10 inside that house, right?

11 A That was of evidentiary value.

12 Q Okay. And do you typically take every single thing
13 out of someone's house, even if you have a search
14 warrant?

15 A No.

16 Q Okay. So you take, you said, what has evidentiary
17 value?

18 A Correct.

19 Q So going back to the written statement you obtained
20 from Barbara Volstromer and the conversation that
21 you had with her, can you describe the length of
22 the conversation? If you remember it?

23 A The statement that I handwrote was five pages. I
24 mean --

25 Q Can you kind of describe the process that you use

1 to interview a witness and write a statement?

2 A Yes. Generally, I'll take the statement, I'll
3 handwrite it, I'll do it in a question/answer
4 format.

5 Q And then what does the witness do after that?

6 A After I obtain it, I allow them to read it, make
7 sure what I wrote down was correct, they agree with
8 it. And once that is done, I will -- I notarize
9 it.

10 Q You notarize it? What does that mean?

11 A That means I swear to it as true and correct.

12 Q Okay. And did you have any other involvement in
13 investigating this case?

14 A No, ma'am.

15 Q Okay. And the information that you collected
16 during your part of this investigation you turned
17 over to Investigator Holdorf?

18 A Yes, ma'am.

19 MS. TAYLOR: No further questions.

20 THE COURT: Cross?

21 MS. ZMROCZEK: Thank you.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 Q Good morning, Agent Carter.

25 A Good morning.

1 Q You have been with the Richland County Sheriff's
2 Department how many years?

3 A Eighteen.

4 Q Eighteen years. You received a lot of training in
5 those 18 years?

6 A Yes.

7 Q Because, in fact, in your search warrant -- do you
8 have a copy of that still in front of you?

9 A No.

10 Q Okay. I'll ask you about it, and if I need to
11 refresh your recollection I will show it to you,
12 okay?

13 You swore out to the magistrate that you
14 were -- the reason for seeking this property was
15 because you know that the collection of physical
16 evidence is necessary to conduct a thorough
17 investigation, right?

18 A Yes, ma'am.

19 Q Okay. And that is what you were going to do in
20 this case, is a thorough investigation, right?

21 A Yes, ma'am.

22 Q Okay. On this paper, on your search warrant it
23 says that, Affiant knows that information stored on
24 surveillance camera system can be easily exchanged
25 and downloaded to computers and cell phones, right?

1 A Yes, ma'am.

2 Q Did you limit yourself to a few hours of the
3 incident that day?

4 A What are you asking?

5 Q When you went to go download the information to do
6 your thorough investigation, did the search warrant
7 limit you in any way to just a few hours of that
8 day? Or did it say you can have any and all?

9 A I mean, if you are asking, we could have downloaded
10 and took the whole hard drive.

11 Q And that is what thorough investigation would have
12 been, right?

13 A If it -- well, if it wasn't related to -- if it was
14 evidentiary.

15 Q Right. If it wasn't related. So let's talk about
16 that. You took a statement from Ms. Volstromer
17 where you learned that there was constant
18 harassment, correct?

19 A Yes.

20 Q Okay. And that that was related to her fear and
21 her anger -- not anger, her fear of being
22 threatened at her fence line, right?

23 A Yes.

24 Q Okay. So those incidents were the reason she got
25 the video camera so they would be on that video,

1 right?

2 A Yes.

3 Q And so to do a thorough investigation, to see
4 maybe who was the first aggressor, you could maybe
5 look at that video, right? Nothing stopping you
6 from downloading?

7 A That day.

8 Q That day you watched all of it? All of the
9 incidents that she told you about?

10 A Not all of them.

11 Q Okay. So let's talk about the one that you did
12 watch. So you watched the video and you see a
13 truck pulling up the road, right?

14 A If my memory serves me correct, yes. I haven't
15 seen that video since that day.

16 Q Okay. But you watched it that day and testified on
17 it on direct, right?

18 A Yes.

19 Q Okay. And so you saw that the truck was so close
20 to the fence that when Ricky tried to get out he
21 couldn't because the fence -- his door hit the
22 fence, he couldn't even open the door, right? You
23 saw that?

24 A I don't recall that.

25 Q Okay. Do you recall seeing when Mark comes out of

1 his house and goes to the aid of his wife, that
2 Mr. Pruitt got out of the truck? Do you recall
3 that?

4 A Yes.

5 Q Okay. And then do you recall when he goes to the
6 side of the truck, you know where they keep those
7 truck lock boxes, and he lifts it up, and you can
8 actually hear it click. Do you recall seeing that?
9 He, Mr. Pruitt?

10 A Without looking at that video, I --

11 Q Right. But obviously it was something that
12 occurred. So at that point did you think maybe,
13 Hey, maybe we should go see what is in the back of
14 that truck? Or is that somebody else's job?

15 A I am not understanding you.

16 Q Okay. If you are doing a thorough investigation
17 and you see someone get out of the truck, walk to
18 the side of the truck, lift something up that makes
19 a click, puts his hands in there, put his hand back
20 behind his pocket, and then take a few steps, is
21 that something you maybe want to investigate to see
22 what he had in there?

23 A And who are you referring to?

24 Q Mr. Pruitt, the person who you watched get out of
25 the truck and go to the back of and you said you

1 couldn't see anything?

2 A I can't recall that.

3 Q Okay. That's fine. What about when -- oh, did you
4 listen to the audio or did you just watch it
5 without listening?

6 A I don't believe I was able to hear anything.

7 Q You what?

8 A I don't believe there was any audio.

9 Q Okay. So there was no audio on the video you
10 watched?

11 A Correct.

12 Q Okay. Because somebody making those moves and
13 saying, I got something for you, maybe that would
14 have piqued your interest, right?

15 A Well, that is what I asked her in her statement.

16 Q Right. But you got it on video right in front of
17 you?

18 A Well, you just -- that is why I asked her what was
19 said.

20 Q Okay. And this was less than three hours after she
21 just witnessed somebody who she says has been
22 threatening her and she felt attacked get shot?

23 A I mean, that is why I asked her in her statement.

24 Q Okay. Do witnesses who have been in traumatic
25 situations always give you correct and perfect

1 information?

2 A Could you ask -- say that again?

3 Q Do witnesses who have been involved in traumatic
4 situations always give you correct and accurate
5 information?

6 A In the past, I have had cases I have worked where
7 they may forget, leave out intimate details.

8 Q Right.

9 A And so they will contact me and let me know.

10 Q How many times has somebody come and changed their
11 statement?

12 A I couldn't tell you off the top of my head.

13 Q Okay. If somebody gives you a statement and then
14 you have evidence that you can watch with your own
15 two eyes and those two don't match up, would that
16 be something that you would maybe want to
17 investigate further? If we are doing a thorough
18 investigation, I mean?

19 A Well, on that day and while I was there at that
20 time was my focus.

21 Q Okay. In fact, you even swore out on your
22 affidavit that sometimes information can be hidden
23 within forensic files, forensic computer files,
24 right?

25 A Correct.

1 Q And you want to make sure that you get it all
2 because people with criminal -- people who have
3 desires to conceal criminal evidence, with your
4 search warrant, you can get to that, right?

5 A With a forensic analysis of the information of the
6 hard drive.

7 Q Right. A thorough forensic analysis, right?

8 A Yes.

9 Q Okay. And then, let's go back to the video. So
10 you watched -- you said that you watched
11 Mr. Volstromer, Mark, shoot Mr. Pruitt, right?

12 A The video showed Ms. Volstromer walk back towards
13 the house as Mr. Volstromer walked towards
14 Mr. Pruitt, who was on the other side of the white
15 rail fence, not in Mr. Volstromer's yard. The
16 video then showed Mr. Volstromer walking back
17 towards the house, and a handgun can be observed in
18 his right hand.

19 Q Okay. So the way that you saw it was
20 Ms. Volstromer walked towards the house and then
21 Mr. Volstromer walked -- you are talking about
22 after the shooting, right?

23 A That is what I saw.

24 Q Okay. Perfect. That's fine. But it is on video,
25 right, so we can each see things that are there or

1 not there, but it is what it is, right? You didn't
2 change that video? You downloaded it straight from
3 the scene, right?

4 A Correct.

5 Q Okay. You don't have a special copy that I don't
6 have, right?

7 A Correct.

8 Q Okay. And so did you continue to watch it after
9 that?

10 A No.

11 Q Oh, so you didn't watch when Ricky came up to
12 Ms. -- no, first of all, you didn't watch Mr. Ricky
13 drive off and leave his friend in the road?

14 A I can't -- I can't recall.

15 Q You can't recall that? Did you recall watching
16 Ricky walk back up and bend over, pick something
17 up, and put it in his back pocket?

18 A I don't recall that.

19 Q Didn't recall that. Do you recall when the sirens
20 came on and Ricky is on the phone talking to
21 somebody, and soon as he hears the siren, he takes
22 off the other direction from his truck? Do you
23 recall that?

24 A No.

25 Q Okay. Do you recall, if you look at Camera 3, that

1 you see Ricky putting something in the grass? Did
2 you recall that?

3 A No.

4 Q Okay. But that was -- somebody should have
5 investigated, right? If that is what it showed,
6 then maybe somebody should have investigated that,
7 right?

8 A Yes.

9 Q If we are doing a thorough investigation?

10 MS. ZMROCZEK: I have no further questions,
11 Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. TAYLOR:

14 Q Sergeant Carter, in an investigation of a crime as
15 serious as a shooting that ended up with a person
16 dead, do different investigators have different
17 roles?

18 A Yes.

19 Q So it is not your role to do every single thing
20 that is related to this investigation?

21 A Correct.

22 Q Okay. And are you a forensic video analyst --

23 A No, ma'am.

24 Q -- expert?

25 A No, ma'am.

1 Q Okay. Did you actually download the video in this
2 incident?

3 A No, ma'am.

4 Q Who did that?

5 A Investigator Metz.

6 Q Okay. So she brought up the fact of what Barbara
7 Volstromer told you in her statement. Do you have
8 Barbara Volstromer's statement in front of you in
9 your report?

10 A I have a, I guess it's a copy.

11 Q Okay. So let's --

12 MS. ZMROCZEK: Your Honor, I asked if he took
13 the statement, and I asked if she came and changed
14 it. She can't go through hearsay.

15 MS. TAYLOR: She asked specifics about, Did
16 Barbara tell you about weapons in the truck or
17 anything in the truck? Did Barbara tell you about
18 prior disputes? I think she opened the door to
19 what is in that statement.

20 THE COURT: The objection is overruled.

21 MS. TAYLOR: Okay.

22 BY MS. TAYLOR:

23 Q So let's go to Page 2. And the question is: Do
24 you know Keith Pruitt? What was Barbara
25 Volstromer's response to that? How many times did

1 she say she had met him?

2 A Once.

3 Q Okay. And going further down, and it says, the
4 question: Can you tell Investigator Carter what
5 you observed? It is like one -- can you read what
6 she wrote, her response?

7 A I know my husband came out. I was outside taking a
8 picture of the dirt road beside my house. A truck
9 pulled up -- pulled out. A guy named Ricky, who I
10 met once before today, and Pruitt was in the
11 passenger's seat. I took a picture of the truck.
12 There was a sign on the side of the truck. And the
13 man, I think his name is Ricky.

14 Q Okay. And --

15 MS. ZMROCZEK: That is not all she wrote, Your
16 Honor. If she can ask him to publish, do the whole
17 thing.

18 THE COURT: All right. Let's make sure he has
19 answered it completely.

20 BY MS. TAYLOR:

21 Q Go ahead.

22 A The Ricky guy started telling me our fence is
23 three feet on his property because he said he owns
24 the road.

25 That Pruitt man said, Oh, you're kind of cute.

1 Then he got out of the truck.

2 I started backing up. I said, You people
3 think you own this road. I'm sure I said some
4 other things. I had my gun in my back pocket, and
5 I wanted to get away from the fence. I started to
6 get my gun out of my pocket because I thought he
7 was going to get me. I dropped my gun on the
8 ground, and the next thing, my husband shot him.

9 Q What does Ms. Volstromer say about whether
10 Mr. Pruitt was armed with a weapon, or did she see
11 him with a weapon in his hand?

12 A Not that I can recall. I was scared. I wanted to
13 get back.

14 Q And what did she say about whether Mr. Pruitt
15 threatened her life?

16 A I don't know. I was scared.

17 Q And what does she say about whether Mr. Pruitt
18 crossed over the fence onto her property?

19 A No. That property off that road is mine. I could
20 swear his arms were over the property. His hands
21 were over the fence.

22 Q And on the fifth page, on the last page, the
23 question is: Is there anything else you would like
24 to add that the investigator has not asked you?

25 What did she -- how did she -- what did she

1 say were the ways that Mr. Pruitt had been
2 terrorizing her?

3 A Her answer was: This man has been terrorizing me.
4 I can't step outside without them speeding down the
5 road, stalking, creeping our property.

6 Q Okay. So she never tells you that he physically
7 does anything to her?

8 A No.

9 Q Okay. And she asked you about witnesses in
10 traumatic situations, do they always give accurate
11 or correct information. Barbara Volstromer had a
12 chance to review and update her statement if she
13 wanted to, correct?

14 A Yes.

15 Q And in her statement -- so Ms. Zmroczek asked you
16 about this truck and why you didn't investigate
17 this truck, and some stuff like this.

18 In her statement, does she mention anything
19 about him reaching into a cooler in the truck or
20 anything in the truck?

21 A No.

22 Q So if she didn't mention this, would you have had a
23 reason to go search this truck?

24 A No.

25 Q And she asked you about Barbara Volstromer telling

1 you, I guess about prior -- these incidents. Did
2 she tell you that these incidents were on video?

3 A No.

4 Q So would you have known the dates and the times of
5 what videos these instances would have appeared on?

6 A No.

7 MS. TAYLOR: No further questions.

8 THE COURT: Any recross?

9 MS. ZMROCZEK: Thank you.

10 RECROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 Q You watched the video with your own eyes. You
13 testified on direct that you saw him reach into the
14 truck and, quote, said -- and you said, I didn't
15 see anything in his hands. That is what you said,
16 right?

17 A The video showed Mr. Pruitt walk around the rear of
18 truck, at one point held his hands up, and nothing
19 was observed in his hand.

20 Q Okay. So you never saw him reach into anything?

21 A I don't recall.

22 Q No worries. And then she asked you about you
23 didn't know the dates and times of these stalking
24 and terrorizing incidents. Did you ask her about
25 that?

1 A I don't believe I did.

2 Q Okay. So you didn't go back -- you had an
3 opportunity, right, to go back and follow up with
4 that, right?

5 A No, because my involvement ended after --

6 Q The first question she asked you on redirect was,
7 That was not your role. Whose role was that?

8 A Whoever would have been assigned to follow up.

9 Q Would that be Investigator Holdorf?

10 A I mean, that would have come from after my
11 involvement ended. They would have I guess maybe
12 reassigned someone else in my place. I mean, I
13 can't answer that.

14 Q Thank you.

15 MS. ZMROCZEK: Nothing further, Your Honor.

16 THE COURT: All right. You may step down.

17 MS. TAYLOR: May he be excused from all
18 subpoenas, Your Honor?

19 MS. ZMROCZEK: Yes, ma'am.

20 THE COURT: All right. You are free to leave.

21 (Witness steps down and excused.)

22 THE COURT: All right. Call your next
23 witness.

24 MS. SAMPSON: The State calls Dr. Amy Durso.

25 (Witness approaches.)

1 THE BAILIFF: Place your left hand on the
2 Bible, raise your right hand, and face the clerk,
3 please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you shall give in this case will be the
7 truth, the whole truth, and nothing but the truth,
8 so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you. Please have seat in
11 the witness stand, and state your full name for the
12 record.

13 (Witness seated.)

14 THE WITNESS: Amy Durso, D-U-R-S-O.

15 DR. AMY DURSO,

16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SAMPSON:

19 Q Good morning, Dr. Durso.

20 A Good morning.

21 Q Where are you employed?

22 A I'm employed by Professional Pathology Services as
23 a forensic pathologist.

24 Q And can you tell the jury, what is a forensic
25 pathologist?

1 A A forensic pathologist is a medical doctor that
2 basically examines bodies after death, experts in
3 like injury, illness, and determining cause of
4 death.

5 MS. ZMROCZEK: Your Honor, we can stipulate to
6 Dr. Durso being an expert in forensic pathology.

7 THE COURT: All right.

8 MS. SAMPSON: That's fine.

9 THE COURT: Ladies and gentlemen of the jury,
10 this witness will be qualified in the area of
11 forensic pathology to give opinion testimony in
12 that area. That does not mean that you must accept
13 the opinion, but it is evidence for you to consider
14 any way -- to use and consider in any way you see
15 fit and give it the weight and credibility you
16 believe is appropriate.

17 Thank you.

18 MS. SAMPSON: She is introduced as an expert
19 in forensic pathology, Your Honor?

20 THE COURT: Yes.

21 BY MS. SAMPSON:

22 Q Dr. Durso, can you continue to tell the jury about
23 your education?

24 A Sure. So I got my bachelor's degree at Emory
25 University in psychology.

1 After that, I went to the University of North
2 Carolina in Chapel Hill, where I got my 4-year
3 medical degree, my MD.

4 After that, I did four years of residency
5 training in anatomic and clinical pathology at Wake
6 Forest.

7 And then I stayed at Wake Forest for an
8 additional year to do a fellowship specifically in
9 the field of forensic pathology.

10 Q And how long have you been working in forensic
11 pathology?

12 A Since I finished fellowship, about 11 years.

13 Q And during that time period, tell the jury, what do
14 you do as a pathologist? Exactly what does your
15 daily job entail?

16 A Well, as a forensic pathologist, I do autopsies.
17 So that is an examination of the body after death.
18 And so I usually am contacted by the Coroner's
19 Office, the Richland County Coroner's Office, to do
20 an autopsy. And then we go through the whole
21 process. Do you want me to describe --

22 Q No, you don't have to describe -- no, you do not
23 have to describe all the specifics of autopsy, but
24 is it fair to say, are they conducted pretty -- is
25 it a pretty standard way that you conduct an

1 autopsy?

2 A Yes. So there is a basic flow we go through where,
3 you know, the Coroner's Office will dump the body,
4 identifies the body that we're doing. I get a
5 brief synopsis from the investigators at the scene.
6 And then, you know, we look at the outside of the
7 body and then we start making incisions, look at
8 the inside of the body, and then I prepare a report
9 when I'm done.

10 Q So in this particular case, how did you become
11 involved with it?

12 A I was contacted by the Richland County Coroner's
13 Office to do an autopsy on someone who had been
14 shot.

15 Q And is that the basic information you are given as
16 far as that they were shot?

17 A Yes.

18 Q And can you tell this jury about Mr. Pruitt? What
19 was his height and weight?

20 A He weighed 174 pounds, and he was 6 feet tall.

21 Q All right. And can you tell the jury what was the
22 cause of his death?

23 A A gunshot wound to the abdomen.

24 Q And how did it cause his death? I mean, do all
25 gunshots result in death?

1 A No. So it has to hit a vital structure or
2 something that would, you know, cause death like a
3 major blood vessel.

4 Q And in this case, what happened?

5 A So it goes in the left upper part of the abdomen,
6 and it goes to the stomach, pancreas, and then what
7 hits is the descending aorta. So the aorta is this
8 major blood vessel that comes up off your heart.
9 It kind of curves around and comes down and it
10 basically supplies blood to the entire lower half
11 of your body. And the projectile went straight
12 through it, so he bled profusely and quickly.

13 Q Is it fair to say this was a catastrophic injury?

14 A Yes, I would.

15 Q Would it have mattered if you did CPR immediately
16 on him?

17 A I don't think unless there was a trauma surgeon
18 near an ED and could save the aorta that could have
19 prevented his death.

20 Q I believe when we were speaking, we said if he had
21 been in the hospital parking lot, there wouldn't
22 have been anything anybody could do?

23 A I mean, they could have tried, but I don't -- I
24 doubt it.

25 Q And were you able to obtain the bullet that was

1 inside of the victim?

2 A Right. So it lodged in the second lumbar
3 vertebrae, and so we removed the projectile at
4 autopsy.

5 Q I am going to show you what has been marked as
6 State's Exhibit 34, 35, 36, and 37.

7 MS. ZMROCZEK: I have looked at those, Judge.
8 We have no objection.

9 THE COURT: 34, 35 --

10 MS. SAMPSON: 36 and 37.

11 THE COURT: And no objection. So those will
12 be received without objection.

13 (WHEREUPON, State's Exhibit Nos. 34-37
14 were marked for identification and
15 received into evidence.)

16 BY MS. SAMPSON:

17 Q And I am going to try to show them to you and ask
18 you do you recognize them first.

19 A So these are all photographs taken at the time that
20 I did the autopsy.

21 Q And is that normal, the normal procedure?

22 A Yes. So I don't take the photographs, but a
23 representative from law enforcement, whatever law
24 enforcement agency is investigating, and someone
25 from the Coroner's Office takes pictures.

1 Q So taking photos at autopsy isn't out of the
2 ordinary?

3 A No, we do it on every case.

4 Q Okay. State's Exhibit 34, what does it show?

5 A So this is a picture of the projectile removed from
6 the spine.

7 Q Okay. And is that how it was when you found it?

8 A Yes.

9 Q And State's Exhibit 37?

10 A So in order to find the bullets in the body, the
11 projectiles, we do X-rays. And so that is a photo
12 of the X-ray that shows kind of from the side,
13 lateral X-rays, and you can see where the bullet is
14 in the spine. That is that white area.

15 Q So that is -- where I have my finger, that is where
16 the bullet is?

17 A Yes.

18 Q And State's Exhibits 35 and 34 show what?

19 A So this is the --

20 Q I mean, I'm sorry, these are 35 and 36 for the
21 record. Sorry.

22 A These are photographs of the gunshot wound
23 entrance. One is closer than the other. And as
24 you can see, it kind of has a little -- you can see
25 the central hole and there is kind of a ring of

1 abrasion around it, it is called an abrasion
2 collar, and we see that in all the entrance wounds,
3 pretty much all entrance wounds. So as the bullet
4 starts to go into the skin, it actually, you know,
5 pushes for a split second on the edges and abrades
6 the skin as it comes in. So it is a classic
7 entrance wound for a gunshot wound.

8 Q Okay. And there is a thing called stippling. Did
9 you find stippling in this case?

10 A No. The stippling is when the gun powder from the
11 end of the gun reaches the body and leaves little
12 tiny abrasions, and usually that is within 18 to
13 24 inches, as long as it doesn't go through thick
14 clothing or a window or another object and that
15 would stop the powder. And I did not notice any
16 stippling in this case.

17 Q So does that give you any indication of just how
18 far away the person would have had to have been?

19 A So as long as it didn't go through a lot of
20 clothing or a window or a door or something else,
21 so it would have to been at least like greater than
22 18 to 24 inches away.

23 Q So greater than a foot and a half to two feet?

24 A Right. It depends on the gun and the gun powder as
25 to how far out stippling going.

1 Q What -- and did you notice any soot?

2 A No. So soot is usually within six inches of the
3 end of the gun, and there was no soot in this case
4 either, so that would be a pretty close range
5 gunshot. And I did not notice any soot. But,
6 again, you would -- I would need to know whether or
7 not it went through thick clothing or some other
8 window or door.

9 Q So if you were given information that the only
10 thing the victim was wearing was a T-shirt and
11 there was nothing impeding the bullet, would you
12 expect -- would that still -- would that change the
13 distance that you gave us?

14 A So I would say greater than 18 to 24 inches in that
15 case.

16 MS. SAMPSON: Beg the Court's indulgence.

17 (Pause.)

18 BY MS. SAMPSON:

19 Q I think I asked this, but I am going to clarify
20 because my co-counsel said I haven't. The cause of
21 death in this case was what?

22 A A gunshot wound to the abdomen.

23 MS. SAMPSON: Thank you. No further
24 questions.

25 THE COURT: Yes, ma'am?

1 MS. ZMROCZEK: Good morning, Dr. Durso. Great
2 to see you, but I don't have any questions for you
3 today.

4 THE WITNESS: Thank you.

5 THE COURT: All right. You may step down.
6 Any objection to this witness being excused?

7 MS. SAMPSON: Not from the State, Your Honor.

8 MS. ZMROCZEK: None from the Defense.

9 THE COURT: Thank you.

10 (Witness steps down and excused.)

11 THE COURT: Ladies and gentlemen of the jury,
12 at this time we are going to go ahead and take our
13 morning break. We'll take about 15 minutes for
14 your morning break. Please do not discuss the
15 case. We will see you back shortly.

16 Thank you.

17 (WHEREUPON, the jury retires to the jury
18 room at 10:56 a.m.)

19 THE COURT: How many more do you have?

20 MS. SAMPSON: Right now we only have one more,
21 Your Honor, this morning, I believe. And it is
22 going to be the most lengthy one, which is
23 Investigator Holdorf, so we will have to have that,
24 probably that argument about what can come in with
25 him as he talks about prior record, prior

1 instances. I believe Ms. Zmroczek is planning to
2 ask him about some of those things, the specifics,
3 so we are probably going to have to have that
4 argument prior to him testifying.

5 THE COURT: Are you trying to get that in
6 through him or --

7 MS. ZMROCZEK: I mean, well, no, I'm going to,
8 you know, ask him about his investigation. But
9 like the stuff that we emailed, those come in
10 through the clerk, so.

11 MS. SAMPSON: I didn't know. Yesterday you
12 said something about asking him, so I didn't know.

13 THE COURT: They come in through who?

14 MS. ZMROCZEK: The Clerk of Court to certify
15 his record.

16 THE COURT: You are going to call -- you are
17 trying to call the clerk?

18 MS. ZMROCZEK: Uh-huh.

19 MS. SAMPSON: I'm not.

20 THE COURT: The one from Lexington. One is
21 from Lexington.

22 MS. ZMROCZEK: I'm sorry?

23 THE COURT: One of those convictions is from
24 Lexington?

25 MS. ZMROCZEK: Yes, ma'am.

1 THE COURT: And I read over it, but I'll be
2 glad to listen to those arguments, but, I mean, you
3 are not going to ask him anything about it. I
4 don't know -- I mean, because the convictions -- I
5 mean, the question is what they knew. I mean, if
6 they didn't know anything about it, I mean --

7 MS. SAMPSON: I also have case law that states
8 even if they did know they are not admissible. So
9 we can have that argument. It is just yesterday
10 she stated something about needing to do it
11 before --

12 MS. ZMROCZEK: I am not going to ask him about
13 those convictions, so.

14 THE COURT: Are you going to ask about the
15 prior difficulties, about the Sheriff's Department
16 being called out there before?

17 MS. ZMROCZEK: Yes.

18 THE COURT: Are you objecting to that?

19 MS. SAMPSON: I am going to object --
20 depending on which one she is going into, yes,
21 ma'am. So that is why I wanted to --

22 MS. ZMROCZEK: I can tell her right now. I am
23 going into the one where she tells --

24 THE COURT: You can tell them that it is going
25 to be about 20 minutes, and if they need to go

1 smoke -- do you have smokers? So if they want to
2 take a smoke break, they can. It is going to be
3 about 20 minutes. While we are on break I am going
4 to take up a matter of law, so tell them it will be
5 about 20 minutes.

6 (Pause.)

7 MS. ZMROCZEK: I'm sorry, Your Honor. So I
8 intend to ask about the May 29th incident between
9 Ms. Volstromer and Mr. Pruitt.

10 MS. TAYLOR: What year?

11 MS. ZMROCZEK: 2015. I intend to ask him
12 about the September 4th incident between Barbara
13 Volstromer --

14 THE COURT: 2015?

15 MS. ZMROCZEK: Yes, ma'am. And the last one,
16 Your Honor, I intend to ask is the -- September
17 1st, not 4th, Your Honor, I just can't read this
18 morning. And December 10, 2015.

19 THE COURT: All right. Do y'all want to take
20 a look at those?

21 MS. SAMPSON: Well, what I would like to is,
22 if we could take our break break so I can get --
23 now that I know which ones it is, and make sure I
24 have copies, and then have the arguments about
25 them.

1 THE COURT: Yes. All right, well, I will see
2 you all back in 10 minutes then.

3 MS. SAMPSON: Thank you.

4 THE COURT: I will let them go on a little
5 longer break.

6 (WHEREUPON, a break was taken.)

7 THE COURT: I will be glad to hear from you.

8 MS. SAMPSON: So it is my understanding
9 Ms. Zmroczek wants to introduce three incidents.
10 One is from February 29th of --

11 THE COURT: She said May 29th.

12 MS. SAMPSON: I'm sorry, May 29th of 2015.
13 And in that one it is alleged that the victim was
14 sitting in a parking lot, church parking lot, that
15 Ms. Volstromer came up to him while he was sitting
16 in the church parking lot and words were exchanged,
17 and that he stated to her he was going to rain hell
18 down on her. And then her daughter began to
19 photograph him, he began to photograph the
20 daughter. When police arrived, he denied making
21 photographs of anybody and that he did not stop in
22 front of her residence, he stated that he was in
23 the church parking lot.

24 I want to outline what we are talking about.

25 The other incident is from September 4th --

1 1st -- I'm sorry, the officer made the report on
2 September 4th, it occurred on September 1st of
3 2015. And in that one, Ms. Volstromer called
4 police and stated that the victim and his friend
5 were riding up and down a dirt road in 4-wheelers
6 revving the engines, the behavior usually happened
7 for about an hour. She stated that dust thrown up
8 from the 4-wheeler is a nuisance. That she
9 believed the subject is also riding by shining a
10 flashlight at her security cameras. And that she
11 is concerned because the subject stated to her, You
12 do not know what you are dealing with.

13 MS. ZMROCZEK: She skipped a line in there,
14 Your Honor. It also says, The complaining victim
15 also pulled the criminal records of the subject and
16 stated she is concerned because the subject stated
17 to her, You don't know what you are dealing with.

18 MS. SAMPSON: That is correct. That is what
19 it says.

20 And then the last one from December 10th of
21 2015 is not even between the victim and
22 Ms. Volstromer, it is between a third party.

23 MS. ZMROCZEK: Your Honor, the third party is
24 who they published the cell phone call, or the
25 9-1-1 call, the second 9-1-1 call, Douglas Bryan,

1 who is also the son of Ricky Holten.

2 MS. SAMPSON: But, again, my point is it is
3 not the victim.

4 THE COURT: It has to be -- I mean, I think
5 the case law says it has to be -- if you are trying
6 to get it in to show prior difficulty --

7 MS. ZMROCZEK: Prior difficulty.

8 THE COURT: -- between them, it has to be
9 them. So that one would not qualify. So if it is
10 not between -- and when I say between them, I think
11 it gives you a little bit of latitude like if it
12 was between the daughter and -- I mean, because it
13 is the Defendant's wife, and that that is actually
14 the difficulty, once again, in this case is with
15 the wife, I think the other two, I'll be glad to
16 hear Ms. Sampson's argument, the other two -- the
17 other two could come in, but the third one has
18 nothing to do with the wife or him.

19 MS. ZMROCZEK: It had to do with the wife,
20 yes.

21 MS. SAMPSON: It had to do with the wife and a
22 third party, but not the wife and my victim.

23 MS. ZMROCZEK: But the third party, again, was
24 the son of the person driving the truck, and he was
25 on the 9-1-1 call yesterday that they published.

1 MS. SAMPSON: Just because he was on the 9-1-1
2 call doesn't mean incidents with him can come in.

3 THE COURT: Well, what is the incident with
4 him and the wife?

5 MS. ZMROCZEK: Your Honor, he is taking lights
6 and shining them into their house and their
7 security cameras. I mean, not little lights, big,
8 like police floodlights.

9 MS. SAMPSON: But, again, not my victim. It
10 is not even Mr. Holten, who is on the tape, it is,
11 according to her, his son. I don't have any proof
12 that it is his son, but I'll take her word for it
13 that it is Mr. Holten's son, but it is not the
14 party to this case. None of that is. That is an
15 incident between --

16 THE COURT: So she is not alleging that either
17 one of them were the ones --

18 MS. ZMROCZEK: Well, Your Honor, because of
19 the pattern of behavior, she was concerned, and
20 then the police contacted Mr. Douglas, who -- they
21 all live, Your Honor, they all live right there.
22 And Mr. Douglas said, Yes, I'm doing it, and the
23 police told him to stop.

24 THE COURT: But who is Mr. Douglas?

25 MS. ZMROCZEK: Mr. Douglas -- Ricky, the

1 person driving the truck --

2 THE COURT: Yes?

3 MS. ZMROCZEK: That is his son.

4 MS. SAMPSON: It is actually his grandson
5 according to Ms. Pruitt, but it is irrelevant. It
6 is not anybody who is in this --

7 MS. ZMROCZEK: According to the obituary it is
8 his son, but, yes.

9 THE COURT: It is Mr. Pruitt's son?

10 MS. ZMROCZEK: No, no, the guy driving the
11 car, that stopped the car.

12 THE COURT: You said obituary. That is why --

13 MS. ZMROCZEK: He has also passed away.

14 MS. SAMPSON: And so has the person she is
15 talking about that is the father, or the
16 grandfather, he has passed as well. The one that
17 is on the 9-1-1 call. Unrelated to this, he is
18 dead.

19 THE COURT: Okay. All right. So December
20 10th, 2015, does not come in.

21 MS. ZMROCZEK: Okay.

22 THE COURT: I'll be glad to hear from you
23 regarding May 29th and September 1st. Because that
24 is the conflict directly between Ms. Volstromer
25 and --

1 MS. SAMPSON: Mr. Pruitt. I would totally
2 agree that those are issues between Mr. Pruitt and
3 Ms. Volstromer. The State's position is, however,
4 Your Honor, if you look at the case law, and I
5 believe Ms. Zmroczek is using the same case law,
6 but I will hand up to the Court so you will have a
7 copy, State v. Day, which is 341 S.C. 410, 535
8 S.E.2d. 431, a 2000 Supreme Court opinion; and also
9 State v. Mekler, M-E-K-L-E-R, which is 358 S.C. 1,
10 626 S.E.2d 890, a 2005 Supreme Court case.

11 In both of those cases --

12 MS. ZMROCZEK: If I may have a copy of the
13 second one, Your Honor.

14 MS. SAMPSON: In both of those cases, Your
15 Honor, the Court stated that the prior acts were
16 prior acts of violence. In both of those cases,
17 they were acts of violence. They were either -- in
18 Day they discussed how the victim in that case had
19 had a prior incident with the victim, but also the
20 specific -- where Mr. Renew was the victim, he had
21 just four months prior to the incident where he was
22 killed, took a gun to another individual, put it to
23 her head, and drove around Aiken County looking for
24 drugs. I would agree that that is an act of
25 violence. If that is what we had in this case,

1 we'd be having a conversation.

2 In State v. Mekler, Your Honor, in that case
3 the victim is a male, the Defendant is a female.
4 She shoots him, as she believes he is about to
5 either hurt her or her friend, who is his wife, and
6 they had a domestic violence before. But they
7 wanted to get into the domestic violence where he
8 hit her, broke down her door, committed violent
9 acts. In all of this, Your Honor, in all the case
10 law, it talks about acts of violence.

11 From what she has stated, the only act of
12 violence would be the words he said. Words alone
13 are not an act of violence. There is case law on
14 that. That is from the incident report where he is
15 in the church parking lot in May of 2015. The one
16 from September of 2015, he is riding 4-wheelers
17 down the road. That is not an act of violence.
18 And then may have said, You don't know who you are
19 messing with. Words alone. He is not in any of
20 these coming onto their property, he is not using a
21 weapon, as in all of the case law, he is not
22 assaulting anyone, he is not touching anyone. He
23 has not committed an act of violence.

24 And the case law, even in Day, the one that
25 she is talking about, the Court only allows acts of

1 violence, not conflict. I don't even know if she
2 is trying to introduce the report or just the fact
3 that they called police. I think if she is allowed
4 to introduce any of this, it should probably be
5 limited, but it would be the State's argument, they
6 can talk about they had problems, but to get into
7 the specifics where they are going to be: (a)
8 litigating whether it happened, because Mr. Pruitt
9 denies doing what they are saying he did; and (b)
10 it is not relevant and not admissible because it is
11 not -- it might be relevant from her perspective,
12 but it is not admissible because they are not acts
13 of violence. The case law and the report is
14 specific that it has to be an act of a violence.

15 MS. ZMROCZEK: Your Honor, it actually is not.
16 We are talking about character evidence. And we
17 are talking -- first of all, she said that Mr.
18 Pruitt denies it. And I didn't see that on the
19 report. If there is a report that they have --

20 MS. SAMPSON: He denies -- and I will quote
21 from the report that you gave me.

22 Then made contact with the subject, Mr.
23 Pruitt, who stated that the victim and him did
24 exchange words, but no threats were made. The
25 subject stated that he did not stop in front of the

1 victim's residence and did not take pictures of her
2 daughter due to his cell phone not having a camera.

3 MS. ZMROCZEK: That was the first one. I was
4 asking about the second one.

5 MS. SAMPSON: The second one --

6 THE COURT: I don't know, on the second one,
7 what is he denying, that he was riding down the
8 road on --

9 MS. ZMROCZEK: I don't know.

10 THE COURT: I mean, I'm asking you.

11 MS. ZMROCZEK: No.

12 THE COURT: Because is it illegal for him to
13 ride down the road?

14 MS. ZMROCZEK: No, Your Honor, no. But riding
15 down the road is what they do. But it is the
16 words, You don't know who you are dealing with,
17 that -- that is a direct threat. You don't know
18 who you are dealing with. After he has already
19 told her, I am going to rain hell fire down on you.

20 Your Honor, this goes specifically to -- and
21 I'm quoting straight from Day, on the third --
22 fourth page, bottom paragraph.

23 In the murder prosecution of one pleading
24 self-defense against an attack by the decedent,
25 evidence of other specific instances of violence on

1 the part of the deceased are not admissible unless
2 they were directed against the Defendant, who we
3 all agree is a part of this thing, as they said in
4 opening and continue to say that, and just put her
5 statement in where she talks about where she was
6 threatened.

7 And then, Your Honor, it goes on to say -- and
8 I know that you have already made your ruling on
9 the December one, but this is why we included the
10 December one, because it says: Or, if directed
11 against others, were so closely connected at the
12 point of time or occasion with the homicide, to
13 reasonably indicate the state of mind of the
14 deceased.

15 THE COURT: No, no, what that means is if he
16 was directing a threat --

17 MS. ZMROCZEK: To somebody else.

18 THE COURT: -- to somebody else.

19 MS. ZMROCZEK: Right.

20 THE COURT: Not somebody, third, fourth party
21 and her in some difficulty.

22 MS. ZMROCZEK: Right. And, Your Honor, it
23 goes on to say: Or -- so we are back to the first
24 two -- Or produce reasonable apprehension of great
25 bodily harm. She called the police and told them

1 that she was in fear because he said in May, I'm
2 going to rain hell fire down on you. And then the
3 police told them to leave each other alone. And
4 then in September he said, You don't know who you
5 are messing with. Those are her state of mind.

6 THE COURT: But the issue with the first one
7 is she approached him, according to the incident
8 report.

9 MS. ZMROCZEK: Because he was -- so the
10 church, Your Honor, is right across the street from
11 their driveway, and he would routinely -- routinely
12 park his vehicle and just stare into their house.

13 THE COURT: So you are going to try to get
14 that in? How are you going to get -- I mean, so
15 that is the problem with getting into -- too deep
16 into these other instances is that -- you almost --
17 I mean, it almost puts the State in a position of
18 having to bring whoever took the report from her in
19 these two cases.

20 MS. ZMROCZEK: I have them on subpoena.

21 THE COURT: And then that person -- well, of
22 course, I can't require you to do it because that
23 would be burden shifting. That requires the State
24 to bring them in from the other two cases and then
25 them to testify what their investigation -- and

1 obviously it didn't come to anything because he
2 didn't get arrested. And so I think the State
3 has -- if you get into this, they have got a right
4 to bring it in. And I don't know how any of this
5 really helps other than the fact it sounds like
6 your lady just makes all these phone calls to the
7 police.

8 MS. ZMROCZEK: She made two phone calls --

9 THE COURT: You said three.

10 MS. ZMROCZEK: Right. Right.

11 THE COURT: The third one is --

12 MS. ZMROCZEK: But I'm talking about --

13 THE COURT: I guess what I'm saying is, is
14 there a common denominator in this, and who is that
15 common denominator?

16 MS. ZMROCZEK: There are two.

17 THE COURT: I mean, they don't want it in. It
18 can go either way, putting the incident reports in,
19 if you ask me. They may think -- they may see it
20 differently. But what -- I guess what I'm saying
21 is, there is no arrest, there is no -- she says he
22 threatened them, but there is no act of violence.
23 I'm going to let him -- you can ask him about the
24 prior difficulty, but my concern is just getting
25 too deep into those prior difficulties, because

1 basically it is all hearsay, what she said, what he
2 said. So obviously I'm going to let you -- because
3 I think under self-defense that is, you know,
4 something that needs to come in. The question is
5 how much of it comes in.

6 MS. ZMROCZEK: Right. And I don't intend to
7 make a case about that, obviously. But, Your
8 Honor --

9 THE COURT: So you want to ask him to get into
10 the incident report as to what happened?

11 MS. ZMROCZEK: No. No. This is how I intend
12 to ask it, Your Honor.

13 THE COURT: Okay.

14 MS. ZMROCZEK: You -- in your report, before
15 you -- like the third thing he puts in his report
16 is that before he even went out there he pulled
17 incident reports between the two of them.

18 THE COURT: Okay.

19 MS. ZMROCZEK: And these were -- and that's
20 how we got them. They gave them to us. And he
21 saw -- he noticed that there were two prior
22 difficulties and then --

23 THE COURT: And the dates?

24 MS. ZMROCZEK: And the dates of those
25 difficulties. I mean, but see, Your Honor, and

1 what she is going to -- so she is going to testify,
2 and so all I'm going to ask her is what she -- what
3 was said to her and why that made her call the
4 police, because it goes to her state of mind. But
5 I'm not going to ask -- I don't have to put that in
6 through him. But I can ask him to pull the report,
7 or that he pulled the reports and was aware of it,
8 because that is what everybody in the world has
9 been saying, is prior difficulties, prior
10 difficulties, prior difficulties, but then we have
11 to talk about the prior difficulties because --

12 THE COURT: Well, that is -- I mean, that is
13 up to -- I think trying to get it in through him,
14 that is going to be hearsay.

15 MS. ZMROCZEK: I don't have to get into
16 specific things, what I can do is ask if he pulled
17 the reports.

18 THE COURT: If there were reports, he can
19 testify to the dates of the report, and I guess he
20 can testify -- I mean, if there was --

21 MS. ZMROCZEK: I won't ask him anything.

22 THE COURT: Did anything happen after those.
23 I mean, if they ask him -- I am assuming the State
24 is going to probably ask him -- did they arrest him
25 as a result of the report.

1 MS. ZMROCZEK: Right.

2 MS. SAMPSON: So here is my concern. If you
3 are saying that she can get into the fact that
4 there is prior difficulties where law enforcement
5 was called -- and I'm making sure I'm understanding
6 your ruling correctly -- because that is the only
7 way he would know about it --

8 THE COURT: Yes.

9 MS. SAMPSON: -- is if law enforcement was
10 called.

11 Now the jury is going to be left, if I don't
12 ask the particulars, for all they know it was a
13 crime of violence between the two, because now the
14 police are being called, and it is putting me in a
15 Catch 22. I either then ask him about the
16 specifics, because the jury is going to be left
17 with the police were called and not having a clue
18 what it is about, or I have to go into the
19 particulars. That is my concern. That is why we
20 have been saying dispute. We haven't said the law
21 was called, we haven't said any of that, because I
22 didn't want to get into all the specifics where one
23 of the parties is dead and can't say what happened,
24 and if I bring -- now I am going to have to bring
25 in law enforcement to say, this is what was said,

1 this wasn't what was said, and making a collateral
2 issue come up as to what happened or didn't happen
3 in September and May of 2015.

4 THE COURT: But I do think that it is
5 relevant, so we have just got to figure out how to
6 get -- it is relevant, because even on the video
7 that you introduced, I think the Defendant says,
8 I'm tired of -- I'm just tired -- I'm tired of this
9 shit, or something like that.

10 MS. ZMROCZEK: He says, I'm done, Your Honor.

11 MS. SAMPSON: And that's why we keep saying
12 there is prior problems, prior disputes. But we
13 have yet to say that the law was ever called into
14 any of those other priors. But if she is allowed
15 to ask him about prior reports, then it is just
16 going to be, there are prior reports to law with no
17 context, or I have to put it in.

18 THE COURT: What I was saying in context in
19 terms of there was a call, she called. When she
20 called, the police respond, and was anybody charged
21 or anything like that as a result. That is what I
22 initially was thinking. But I still do believe
23 that based on the nature and totality of the
24 circumstances, everything that has been presented
25 before the Court, that it is relevant to the

1 self-defense claim.

2 MS. SAMPSON: I agree that she can say that
3 her client or whomever can come in and say they
4 believe Keith Pruitt threatened them and blah,
5 blah, blah, blah. My problem was the police
6 reports coming in, and so that -- because then it
7 just never ends.

8 MS. ZMROCZEK: I am not putting the police
9 report in, but knowing that there were police
10 reports.

11 THE COURT: Let me look at --

12 MS. ZMROCZEK: It is my understanding, Your
13 Honor, that their theory of malice was that
14 because -- and what was said in opening has been
15 put forth by the State, unless I'm watching a
16 different trial, was that there had been prior
17 difficulties and he was done. That is their whole
18 theory of malice.

19 THE COURT: Ms. Zmroczek, what is your
20 position on, if allowed, then she is allowed to get
21 into the specifics of the incident.

22 MS. ZMROCZEK: I mean, they can cross -- I
23 mean, it is my position that they can cross-examine
24 her, but he wasn't arrested or whatever they want
25 to -- I think they can cross-examine her on it. I

1 mean, we're not trying to not play fair, Your
2 Honor, we are trying to put it out there and, you
3 know.

4 THE COURT: All right, I'm going to allow you
5 to ask him about the -- just because of the
6 self-defense law and because it deals with the same
7 parties, and while it is not as close as the time
8 in Mekler, which is a domestic violence, it is all
9 within six months maybe of the murder or the
10 incident. And so I'm going to allow -- I mean, it
11 will be up to Ms. Sampson if she wants to bring the
12 deputies in and ask them if anything, you know, did
13 they look into it and if anything happened as a
14 result.

15 My only concern is trying to figure out the
16 hearsay portion of it. How many calls did she --
17 those are the three calls she made in total, or she
18 made more calls?

19 MS. ZMROCZEK: Those are the three that I have
20 incident reports on.

21 MS. SAMPSON: She also called Animal Control,
22 but I am assuming she is not getting into those. I
23 have no idea. She gave us reports about those, as
24 well as the time that she got hit by a dog and the
25 time that her client got ran over with a dog. I

1 don't know if she is bringing those in or not.
2 There is also a time she called law enforcement to
3 help look for a cat. Then they showed up to help
4 her look for her cat. I don't know if they are
5 going to get into those.

6 THE COURT: Well, the problem is -- and we'll
7 deal with it at the time -- you know, when you put
8 her on the stand --

9 MS. ZMROCZEK: I know. I know. I understand.

10 THE COURT: And if I let -- getting into these
11 prior instances, if you put her on the stand --

12 MS. ZMROCZEK: And so here is the other issue
13 that I want to --

14 THE COURT: Because now you are kind of
15 opening the door to her calling law enforcement.

16 MS. ZMROCZEK: Her calling law enforcement. I
17 understand. I understand. And we discussed that.
18 And, Your Honor, so while we are discussing it,
19 because I think it is going to flow there, and I
20 don't want to have to send the jury out again, or
21 have you send the jury out again, but, so in -- as
22 you heard -- I don't know if you heard or not, but
23 the 9-1-1 call, she says she can't ever finish a
24 statement, kind of like me right now, and she
25 starts saying, He has a criminal, you know, record.

1 She just says he has a criminal -- and then in
2 September -- and this may go to the other thing --
3 but the problem is that, as we all know, he does
4 have a criminal record and he was prohibited from
5 having any weapon, and that also is a part of the
6 theory of our case, which you heard a little bit
7 about being cross-examined by Investigator Carter,
8 and so that may just be something that we deal with
9 later on, but obviously not in through him.

10 THE COURT: Well, the only problem is, I
11 haven't heard any testimony that he has a record.

12 MS. ZMROCZEK: Either way. Right.

13 THE COURT: So until -- I guess until we -- I
14 hear -- you know, we have to hear some testimony
15 that -- not burden shifting, but thus far, there is
16 no testimony from anyone that he had a weapon, so.

17 MS. ZMROCZEK: Right.

18 THE COURT: Yes, we'll have to deal with that.
19 But I do think if you start getting into prior
20 calls by this one person, then I think that the
21 State can cross-examine him, maybe ask him,
22 Holdorf. I don't know what he knows, you know,
23 about calls, because you are asking him about calls
24 to --

25 MS. ZMROCZEK: No, I'm asking about -- well,

1 the incident reports, not the calls. I'm asking
2 specifically about the incident reports.

3 THE COURT: But they came from her call?

4 MS. ZMROCZEK: Right. Right. But all the
5 other calls didn't have an incident report
6 apparently.

7 THE COURT: They don't?

8 MS. ZMROCZEK: Yes. They didn't have any -- I
9 mean, that's why -- so that is why when I was
10 talking to the 9-1-1 operator, I was asking her do
11 they always result in the police going out.

12 THE COURT: Did the police go out on these
13 too?

14 MS. SAMPSON: Yes, ma'am.

15 THE COURT: But nothing happened?

16 MS. SAMPSON: No, ma'am.

17 THE COURT: All right. Let's bring them in.

18 (WHEREUPON, the jury came into open
19 court at 11:53 a.m.)

20 THE BAILIFF: The jury is present, Your Honor.

21 THE COURT: All right. I'll ask the State to
22 call their next witness.

23 MS. SAMPSON: Thank you, Your Honor. The
24 State calls Investigator Travis Holdorf.

25 (Witness approaches.)

1 THE BAILIFF: Place your left hand on the
2 Bible, raise your right hand, and face the clerk,
3 please.

4 (Witness complies.)

5 THE CLERK: Do you swear or affirm the
6 testimony you shall give in this case will be the
7 truth, the whole truth, and nothing but the truth,
8 so help you God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you. Please have a seat in
11 the witness stand, and state your name for the
12 record.

13 (Witness seated.)

14 THE WITNESS: Travis Holdorf, H-O-L-D-O-R-F.

15 TRAVIS HOLDORF,
16 after being duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. SAMPSON:

19 Q Investigator Holdorf, where do you currently work?

20 A I am currently employed with Hawk Law, private
21 injury attorneys, as their Columbia investigator.

22 Q And how long have you worked there?

23 A Since the first of September.

24 Q Of?

25 A 2021.

1 Q I'm like, what year?

2 A 2020. I'm sorry, 2020.

3 Q And when did you -- where did you work prior to
4 that?

5 A Before that, I was employed with the Richland
6 County Sheriff's Department. I retired in August
7 of 2020.

8 Q How long did you work for Richland County?

9 A Just under 26 years.

10 Q And when you retired, what was your rank?

11 A I was a sergeant.

12 Q And can you tell the jury kind of how you got
13 from -- I guess you started as a road deputy all
14 the way up to sergeant?

15 A Yes, ma'am.

16 Q Can you kind of tell them about that?

17 A When I was first hired on, I was a road deputy for
18 approximately two and a half to three years. In
19 '97 I was promoted to investigations. I was an
20 investigator for a while. I was promoted to
21 sergeant, I don't remember the year and date, but
22 several years before I retired. It requires
23 testing and a board.

24 Q So I'm going to move you to December of 2015. So
25 at that time you were employed with Richland

1 County, is that correct?

2 A Yes, ma'am.

3 Q And what was your rank at that time?

4 A I was a sergeant in the investigative division.

5 Q And so what did you do as a sergeant in the
6 investigation division?

7 A You run a shift. Your investigative side of things
8 will be broken up into several different
9 categories, so you will have people that have more
10 expertise in certain areas. We also took on-call
11 on a rotating basis. On this incident, I was the
12 sergeant on call, so I was the supervisor that
13 handled the calls.

14 Q And so what, as a supervisor that handles the
15 calls, what do you do when a call comes in?

16 A It all depends on who is calling. I will get calls
17 by deputies, get calls by the desk sergeant. They
18 will filter out what needs to be done. Sometimes
19 they are just advising, sometimes we need to
20 respond to things. When I go on-call, I have a
21 team that works with me, and I will either send
22 them or come out myself with them.

23 Q And so can you tell this jury how you got involved
24 with this case?

25 A It was a Sunday afternoon. I was coming in to do

1 paperwork and just happened to be at the same time
2 that Carter received a call about the shooting.

3 Q And so based on that, what did you do?

4 A Took down the information, got a background of
5 what -- there are several different computer
6 systems that we have. And the most recent one we
7 have, I used -- just did a quick search of what we
8 had that was relevant in that area or to that
9 address, and then went out to the scene.

10 Q And so when you say go to the scene, where did you
11 go?

12 A I went to 1129 Antioch Amez Church Road.

13 Q And upon your arrival, what did you do?

14 A Upon my arrival, I started talking to people,
15 making sure we had the proper resources to what we
16 needed at the time. I had Carter go and do a
17 search warrant so we would have legal justification
18 to search the residence for what we needed.

19 Q And what information did you have at that time
20 about what had occurred?

21 A I had a rough -- from the deputies that arrived at
22 the scene, they told me that there had been a
23 verbal dispute and that our victim, Mr. Keith
24 Pruitt, had been shot by Mr. Mark Volstromer.

25 Q And so based on that information, did you look for

1 any information in your database as far as whether
2 there had been problems between these people
3 before?

4 A It is a brief search. My main concern is to get
5 out to the scene. The more information I have, the
6 better I can do my job, but you have to weigh it
7 with if I need a thorough search, I would have to
8 ask one of our records people or one of our Intel
9 people to do that. That wasn't what I had on a
10 Sunday afternoon or a Sunday evening, so I just did
11 a quick address search and it gave me three reports
12 that came up.

13 Q Okay. So I am not going to talk about those right
14 now, I just want to say that you did look for that
15 stuff, is that correct?

16 A Yes, ma'am.

17 Q All right. So did you ever get any information
18 about there being surveillance?

19 A Yes, ma'am.

20 Q And so what did you do based on that?

21 A I contacted Investigator Metz involving the
22 shooting so that we could preserve the evidence.
23 He is trained to download videos, to get what we
24 needed.

25 Q Okay. And how did he decide or how do you -- do

1 you decide or does he decide what is downloaded?

2 A Obviously wanted to catch not just the incident,
3 but what we could of what had happened. It becomes
4 impossible to collect everything unless you take
5 the entire system. Based upon talking with
6 Ms. Volstromer, that is not something I wanted to
7 do.

8 Q Why not?

9 A She felt threatened by her neighbors, so I did not
10 want to take the entire system. If there is
11 something else that had gone on or she was fearful
12 of something else happening that night, if I took
13 her recording system, that would leave them without
14 something that they felt they needed. So I was
15 trying to work with them.

16 Q Okay. So based on the information that you had,
17 what did you ask Investigator Metz to pull?

18 A The video of the incident.

19 Q Did you ask him to pull any other dates or times
20 from the video?

21 A In talking with Ms. Volstromer, she mentioned there
22 had been several other incidents that had happened.
23 I asked her if there was a recording of this to let
24 us know if we can get it, if she can provide us a
25 recording -- it is their recording system, which is

1 why we have a specialist that he has a familiarity,
2 but then it comes to the weight of what we are
3 looking at. They have a reasonable expectation of
4 privacy. I can go into the incident where I have a
5 dead body and look for stuff, I have a reason for
6 it, but just to download everything, I would think
7 that would be an intrusion into their privacy.

8 Q And so were you given any information about any
9 other incidents being on video?

10 A No, ma'am.

11 Q So you asked Investigator Carter to get a search
12 warrant. Why did you do that?

13 A We had originally tried to obtain a consent to
14 search. A consent to search is voluntariness of
15 that person who has an expectation of privacy, and
16 they waive it. There was some wavering on whether
17 or not she wanted to sign the consent to search, so
18 out of an abundance of caution we got a search
19 warrant to where the facts are explained to a judge
20 and the judge, if they agree, they will sign a
21 search warrant so we can search and collect what we
22 need.

23 Q So I think you have gone over this a little bit,
24 but when you first got there you were able to speak
25 to Ms. Volstromer?

1 A Yes, ma'am.

2 Q Did she speak to you freely?

3 A Yes, ma'am.

4 Q What about her daughter Daughter ?

5 A She did not want me talking to her daughter

6 Daughter She stated that her daughter Daughter
7 did not see anything.

8 Q And once you spoke with her, were you able to get
9 consent to search?

10 A Yes, ma'am.

11 Q What did she do? Did you provide her with a copy
12 of that consent?

13 A She made a copy on her copy machine.

14 Q Now, did you have an opportunity to speak with
15 Mr. Volstromer?

16 A I did.

17 Q And tell the jury how you first saw Mr. Volstromer.

18 A Mr. Volstromer was in the back of a patrol car. I
19 went and, after speaking to Ms. Volstromer, spoke
20 to him.

21 Q Okay. And what was his demeanor like at that time?

22 A I thought it was appropriate for what had happened.

23 MS. ZMROCZEK: I didn't hear that, I'm sorry?

24 A His demeanor was appropriate for what had happened.

25 Q Did you -- did he ask to do anything when you were

1 speaking with him?

2 A He had to use the restroom. We were out in the
3 country. I let him go behind his shed or his
4 workshop and use the restroom.

5 Q Why didn't you let him go back in the house?

6 A I am trying to keep people out of the house. I
7 don't know what is in the house. I have not
8 searched the house.

9 Q And did Mr. Volstromer provide you with any
10 information about whether or not he was
11 intoxicated?

12 A He had mentioned that he had a couple of beers. I
13 did not find his level of impairment to be anything
14 that I was concerned about where he did not know
15 what he was doing. In talking with him, his
16 answers made sense. He was not slurring his words.
17 Yes, he had a couple of beers, but I didn't feel
18 that that impaired him to where he did not know
19 what was going on or what he was doing.

20 Q And then did you -- was your plan to speak with him
21 at that point about what had happened?

22 A Yes, ma'am.

23 Q So based on that, what did you do?

24 A We waited for Investigator McClary to come so she
25 could get the gunshot residue off the hands. He

1 said he would agree to do that. That is a timely
2 process. That is a top priority. The more
3 Mr. Volstromer moved around or moved from one
4 vehicle to another vehicle -- it is like a fine
5 dust or a fine powder -- it can come off the hands.
6 So I wanted our lab to do the gunshot residue
7 before I took him to our headquarters.

8 Q And at any point did you advise him of his rights?

9 A I did.

10 Q And did you do that while he was at home or once
11 you got to headquarters?

12 A He was advised of his rights at the scene. Once
13 we --

14 Q And how did you know that had happened?

15 A The deputy told me.

16 Q And so did you speak with him on scene?

17 A I did.

18 Q And at that time, what did he tell you?

19 A He stated that -- if I may refer to my notes?

20 Q You may.

21 A I asked him if he had had anything to drink. He
22 said he had a few beers while watching the game and
23 after the shooting he had about four beers. I
24 asked if he felt he knew what he was doing. He
25 stated he did. I asked if he felt impaired. He

1 said no.

2 While talking with Mr. Mark, his answers were
3 relative to my questions and I did not have any
4 trouble understanding him.

5 When walking to pee, he seemed steady on his
6 feet. When I asked Mark what happened, he said he
7 just lost it, that they had been harassed by Lanny
8 Pruitt, and that that is why they installed
9 surveillance cameras.

10 Q And at that time did he mention ever seeing the
11 victim with a weapon?

12 A No, ma'am.

13 Q Did he ever mention the victim having a weapon?

14 A At no time that day or any other day did someone
15 say he had a weapon.

16 Q Okay. So while on scene, did you do anything else?

17 A I was able to take a statement from the person he
18 was in the vehicle with.

19 Q Who was that?

20 A That was Mr. Rick Holten.

21 Q And is Mr. Holten still alive?

22 A He is not.

23 Q Unrelated to this, he died, is that correct?

24 A There is no relation to his dying and this
25 incident, no.

1 Q Did you speak with Ms. Volstromer?

2 A I did.

3 Q Did you get the statement from her?

4 A I did not.

5 Q And why didn't you do it?

6 A Just the resources. I had Investigator Carter when
7 he came back to the scene, he is a very capable
8 investigator, I had him take a statement from
9 Ms. Volstromer. I had already talked to her, so I
10 understood her side of what had happened. I told
11 Investigator Carter what she had told me or a
12 summary of what she had told me, and that was
13 consistent with what is in her written statement.

14 Q While speaking with you, did you receive any
15 information from her about the victim having a
16 weapon?

17 A No, there was no mention.

18 Q Any mention of seeing a weapon on the victim?

19 A There was none.

20 Q So, after you have done this, what do you do?

21 A Then I take Mr. Volstromer to our headquarters so
22 we can do a written statement. And it is a decent
23 ride from Eastover to Two Notch Road where our
24 headquarters is located, so it is going to be
25 probably about 40 minutes.

1 Q And what are y'all doing during that time?

2 A Just talking with him.

3 Q And before Ms. Zmroczek asks, is there a Dash Cam
4 of this?

5 A I'm in an unmarked vehicle. I did not have Dash
6 Cam.

7 Q Is that --

8 A So, no, ma'am, there was no audio/video recording
9 of my talking to him.

10 Q Is that standard?

11 A At that time, yes, ma'am.

12 Q Okay. And so -- I interrupted you -- but you went
13 to headquarters?

14 A Yes, ma'am.

15 Q And what did you do once you got to headquarters?

16 A He asked to use the restroom again. He used the
17 restroom. I got him a cup of coffee and I got a
18 cup of coffee. Then we started talking. I read
19 him his rights again at 9:03.

20 Q And I'm going to stop you right there. I am going
21 to show you what has been marked as State's
22 Exhibits 1 and 2 and ask if you recognize those?

23 A Yes, ma'am.

24 Q And what are those?

25 A Those are copies of his Advice of Rights and also

1 his written statement.

2 Q And are these fair and accurate depictions of the
3 Advice of Rights and the written statement?

4 A They are.

5 Q Has it been changed or altered in any way?

6 A It has not.

7 MS. SAMPSON: At this time, Your Honor, I
8 would ask to introduce State's Exhibits 1 and 2
9 into evidence.

10 MS. ZMROCZEK: Without objection.

11 THE COURT: Numbers 1 and 2 will be entered
12 without objection.

13 (WHEREUPON, State's Exhibit No. 1 was
14 marked for identification and received
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 2 was
17 marked for identification and received
18 into evidence.)

19 BY MS. SAMPSON:

20 Q And is this blow-up an accurate depiction of what
21 Number 1 is?

22 A Yes, ma'am.

23 Q Okay. So can you explain to the jury what you do
24 with this form?

25 A This is an Advice of Rights. You put the person

1 that you are talking to or interviewing. This one
2 says, Interrogation, Advice of Rights, which is
3 Mark Volstromer. The place, which was 5623 Two
4 Notch Road. Officer, was just myself. The date,
5 which was the 27th of December. And then the time,
6 9:03 p.m.

7 Q And then -- do you then go over these rights?

8 A Yes, ma'am.

9 Q How do you do that?

10 A As I'm going over the rights, I check them. I have
11 it where they can read it and I can read it off the
12 form.

13 Q And what rights do you read?

14 A Before I ask you any questions, you must understand
15 your rights. You have a right to remain silent.
16 Anything you say can be used against you in court.
17 You have the right to talk to a lawyer for advice
18 before answering any questions and to have a lawyer
19 with you during any questioning. If you cannot
20 afford a lawyer, one will be appointed to you
21 before any questioning if you wish. And if you
22 decide to answer questions now without a lawyer
23 present, you still have the right to stop answering
24 questions at any time. You also have the right to
25 stop answering questions at any time until you talk

1 to a lawyer.

2 Q And so there is little check marks. Who does those
3 little check marks?

4 A I do.

5 Q Okay. And did he sign that?

6 A He does.

7 Q Did you force him to sign it or anything?

8 A No, ma'am.

9 Q And then I'm going to ask you the next one. What
10 is that?

11 A The bottom part is, Waiver. I have read the
12 statement of my rights. I understand what my
13 rights are. I am willing to talk and answer
14 questions. I understand and know what I am doing.
15 No promises have been made to me and no pressure or
16 coercion of any kind has been used against me.

17 Q Now, that box isn't checked. Does that mean he
18 refused to waive his rights?

19 A No, ma'am, he signed it. I will ask him if he
20 understands what pressure or coercion is. If they
21 do not understand it, then I will underline it.
22 This is not underlined, so he said he -- indicated
23 he did understand.

24 Q Okay. And so you then take a statement from him,
25 is that correct?

1 A I do.

2 Q So can you tell the jury how you take the
3 statement? I mean, does he just talk and you just
4 write, or how does this work?

5 A I had spoken to Mr. Volstromer from the time we
6 left the incident location to the time that we're
7 at our headquarters to get the statement, so I had
8 a pretty good understanding of what happened and
9 the sequence of events, I heard it several times,
10 to try to produce it in writing in chronological
11 order about what happened.

12 Q All right. So is this the same as what is State's
13 Exhibit Number 2?

14 A It is, ma'am.

15 Q And this is the written statement you were just
16 talking about?

17 A It is.

18 Q And at the bottom here, is that -- whose signature
19 is that?

20 A Mr. Volstromer.

21 Q And he signed it in two different places. Why do
22 you do that?

23 A One is to where he is saying he made the statement
24 of his own free will and accord without reward or
25 intimidation. And the second part is that he

1 understands. He is given a copy of the statement.

2 Q So --

3 A And that he understands what it says that has been
4 read to him. We have gone over it.

5 Q So the first thing is he states that his wife is
6 outside, is that correct?

7 A Yes, ma'am.

8 Q All right. And I want to -- I'm not going to have
9 you just read verbatim the statement since it is
10 already in evidence, but there are some things I
11 want to ask you about.

12 A Yes, ma'am.

13 Q Did he indicate to you why he went and got a gun?

14 A Just because he heard some noises outside, some
15 yelling.

16 Q And what did he tell his daughter when he went
17 outside?

18 A Told her to be prepared.

19 Q What does he tell her to do?

20 A If anything happens, call 9-1-1, and for her to
21 stay inside.

22 Q And -- for her to stay inside. And he tells you
23 that --

24 MS. ZMROCZEK: Your Honor, I believe she is
25 about to ask a leading question.

1 MS. SAMPSON: Sorry. I'm trying to --

2 THE COURT: Yes. Just rephrase it.

3 MS. SAMPSON: It is my fault.

4 BY MS. SAMPSON:

5 Q What did he tell you about his gun and where he had
6 it located?

7 A He stated he had the gun in his back pocket.

8 Q And then what did he tell you he did with his gun?

9 A He stated the victim in this case, Mr. Pruitt, was
10 acting cocky, so he just shot him.

11 Q What did he tell you about Mr. Pruitt, what
12 Mr. Pruitt was doing, about the cooler?

13 A He said, He reached in the cooler. I did not know
14 what he was grabbing. I don't remember if I did
15 anything -- or, excuse me, if I said anything. I
16 think he said something to me, and I shot him one
17 time.

18 Q Did he tell you anything about the victim
19 approaching him?

20 A No, ma'am.

21 Q Did he tell you anything about the victim having a
22 weapon?

23 A No, ma'am.

24 Q Did he tell you anything about the victim pointing
25 anything at him?

1 A No, ma'am.

2 Q Did he talk to you -- did you ask him about
3 Mr. Pruitt threatening him?

4 A I asked him the direct question, Did Mr. Pruitt do
5 anything to threaten you?

6 Q And what was his response?

7 A No. He reached in the cooler. I did not know what
8 he was grabbing. I was asking them just to go
9 away, and they would not leave.

10 Q Did he tell you anything about Mr. Pruitt going
11 over the fence?

12 A No, ma'am.

13 Q Anything about Mr. Pruitt coming to the fence?

14 A No, ma'am.

15 Q Anything in there about there being a utility box
16 in the back of the truck?

17 A It was a cooler.

18 Q Anything about there being a weapon in the back of
19 the truck?

20 A No, ma'am.

21 Q And I'm sure there is going to be some questions
22 about this. Why didn't you go search the truck?

23 A The truck leaves the scene. Once this truck leaves
24 the scene, I no longer have control of what was in
25 that vehicle and what was not in that vehicle. The

1 probativeness of my search of that vehicle, I
2 didn't feel there was any reason. It is all
3 speculation. I'm relying upon the two people who
4 are -- the homeowners, Mr. Mark Volstromer and
5 Ms. Barbara Volstromer. If there was a weapon,
6 they would have said something. If they had
7 indicated there was a weapon or something for us to
8 look, then I would have had the road deputy
9 immediately go down to that scene and secure that
10 vehicle.

11 Q Was that ever told to you?

12 A It was not.

13 Q And I'm going to show you what has been marked as
14 State's Exhibit Number 44.

15 MS. ZMROCZEK: No objection to 44. I do have
16 objection to you putting in my evidence, but we
17 will talk about that later.

18 MS. SAMPSON: This is mine.

19 MS. ZMROCZEK: I know, the other one.

20 MS. SAMPSON: This is mine too.

21 THE COURT: Yes, ma'am, what is the number
22 again?

23 MS. SAMPSON: State's Exhibit 44.

24 THE COURT: And you said no objection?

25 MS. ZMROCZEK: Not to 44, Your Honor.

1 THE COURT: All right. It will be entered
2 without objection.

3 (WHEREUPON, State's Exhibit No. 44 was
4 marked for identification and received
5 into evidence.)

6 BY MS. SAMPSON:

7 Q And State's Exhibit 44, what does it show?

8 A It is an overview of the area where the incident
9 happened. It has Antioch Amez Church Road and then
10 the private road that runs right beside it.

11 Q Now, to the best of your knowledge, can you get to
12 the Volstromers' home without going on Megan Court?

13 A You can.

14 Q So to the best of your knowledge, you don't have to
15 go on Megan Court to get to their house?

16 A I'm sorry.

17 Q No, you said it correctly. To get to the
18 Volstromers'.

19 A On the Volstromers' house, no, you do not have to
20 go on Megan Court. To go to Mr. Pruitt's house,
21 you have to go on Megan Court.

22 Q So for him to get in and out to his property, how
23 would he have to go to get in and out of his
24 property?

25 A Through Megan Court.

1 Q So he has to pass the Volstromers' house to get out
2 of his property?

3 A The Volstromers' house is at the very front where
4 the Megan Court joins the other road to get out of
5 there, which is Antioch Amez Church Road.

6 Q Can he not go back to the outside of Megan Court
7 and just drive off somewhere?

8 A It is Court. The answer is no.

9 Q And we have introduced the video. Were you able to
10 watch that video?

11 A I did not see the video that night. By the time I
12 had received a copy, I had relied upon what
13 Investigator Carter told me, Investigator Metz had
14 told me, and statements that we had.

15 Q But you have seen them?

16 A I have seen them. I was able to watch it the next
17 day.

18 Q And part of your -- I'm sorry, I wasn't clear, I
19 didn't mean that night -- as part of your
20 investigation, have you watched the video?

21 A Yes, ma'am.

22 Q Okay. And there is more than one camera, yes,
23 fair to say?

24 A Yes, ma'am.

25 Q And we showed -- the jury has seen one camera, is

1 that correct?

2 A Yes, ma'am.

3 Q I'm going to show you what has been marked as
4 State's Exhibit 51 and ask you -- is this the -- we
5 made this with you before. Is this the second
6 camera?

7 A Yes, ma'am.

8 Q And when we watched it, was it a fair and accurate
9 depiction of what was downloaded off of their
10 surveillance video from the second camera?

11 A It is.

12 MS. SAMPSON: At this time, Your Honor, I
13 would ask to introduce State's Exhibit 51.

14 MS. ZMROCZEK: Is that from Camera 2?

15 MS. SAMPSON: Camera 2.

16 THE COURT: Any objection?

17 MS. ZMROCZEK: No.

18 (WHEREUPON, State's Exhibit No. 51 was
19 marked for identification and received
20 into evidence.)

21 BY MS. SAMPSON:

22 Q Now, I want to talk to you a little about this
23 video. And for now I am just going to turn the
24 sound off.

25 A Channel 1.

1 Q Okay. So, for the record, this is Channel 1, what
2 I just called Camera 1?

3 A Yes, ma'am.

4 Q All right. So because when we watched it, nobody
5 knows who is who. Who is this in Camera 1? And
6 I'm pointing to the person we are watching.

7 A That is going to be Ms. Barbara Volstromer.

8 Q And so whose truck is that?

9 A That is going to be Ricky's truck.

10 Q And who is driving that truck?

11 A Ricky is driving his own truck.

12 (Video plays.)

13 Q And so to the best of your knowledge, the person
14 talking to Barbara Volstromer, is that Keith Pruitt
15 or Ricky Holten?

16 A That is Ricky.

17 (Video plays.)

18 Q To best of your knowledge, what are they arguing
19 about?

20 A This dirt road that runs beside the Volstromers'
21 property that is Megan Court.

22 Q And, again, who is arguing at this point?

23 A Ricky and Ms. Volstromer.

24 (Video plays.)

25 Q We hear some talking. Is that Mr. Pruitt?

1 A That is not.

2 (Video plays.)

3 Q That voice that says, No, you don't, who is that?

4 A That is Mr. Mark Volstromer coming out of the
5 house.

6 (Video plays.)

7 Q Is that him? Who is that in the screen?

8 A That is Mr. Mark Volstromer.

9 Q Where is Mr. Pruitt?

10 A He is in the passenger's side of the vehicle.

11 Q He is still in the vehicle?

12 A Yes, ma'am.

13 (Video plays.)

14 Q Who is that that says, Walk over here?

15 A That is Mr. Mark Volstromer.

16 Q Now, who is that that we now see in the screen at
17 the end of the truck?

18 A You can see Mr. Pruitt get out of the passenger
19 side of the truck and he goes to the back of the
20 vehicle.

21 (Video plays.)

22 Q And I paused it. Does Mr. Pruitt say, I'm coming
23 over there?

24 A No, ma'am.

25 Q What does he say?

1 A I'm not coming over there.

2 (Video plays.)

3 Q Now, all that, is that Mr. Pruitt talking to
4 Mr. Volstromer?

5 A It is.

6 (Video plays.)

7 A That is where he reaches in and grabs something
8 out, presumably a beer.

9 Q And I'm going to show you what is now marked as
10 State's Exhibit 49.

11 MS. ZMROCZEK: Your Honor, I'm going to ask
12 for her to lay the foundation for that. And then
13 if it is properly laid, we have a Brady issue.

14 THE COURT: What is the number?

15 MS. SAMPSON: Forty-nine.

16 THE COURT: All right.

17 BY MS. SAMPSON:

18 Q Can you tell the jury what 49 is?

19 A It is a zoomed in shot of the video right here.

20 Q From that video?

21 A Yes, ma'am.

22 Q And when was -- it was a still shot from this
23 video?

24 A Yes, ma'am.

25 Q Was it altered in any way whatsoever?

1 A It is not.

2 MS. SAMPSON: At this time, Your Honor, I
3 would ask to introduce State's Exhibit 49 into
4 evidence.

5 MS. ZMROCZEK: Your Honor, when did they -- I
6 mean, I haven't been provided that.

7 THE COURT: All right. Ladies and gentlemen
8 of the jury, let me send you all out one second.

9 (WHEREUPON, the jury retires to the jury
10 room at 12:25 p.m.)

11 THE COURT: All right. What is the objection?

12 MS. ZMROCZEK: So, Your Honor, the objection
13 is they were provided by me a copy of the zoomed in
14 video because I asked their investigator if they
15 did it. My investigator did do it. And so I just
16 object to them putting in the evidence that I gave
17 them as it came from them.

18 Now, sure, if they want to get up there and
19 say they relied on my evidence from my expert, then
20 I have no problem with that, Your Honor, but that
21 is not how it was presented.

22 MS. SAMPSON: Your Honor, this is a still that
23 I made from this video with this gentleman
24 yesterday. It is not from her video. It is from
25 the video that she has, it is just a still. I can

1 stand here right now and take a picture of this and
2 it would be the exact same thing.

3 MS. ZMROCZEK: Your Honor, it is zoomed in, so
4 if she altered it -- she has altered it by zooming
5 in -- I'm not saying it changed it, but if they had
6 zoomed in pictures that they took, then they should
7 have been provided to me.

8 MS. SAMPSON: All I did, is you take this
9 video, you can do it with any equipment you want,
10 it is not even still, it is just taking that one
11 portion of it and taking a screenshot with your
12 computer. There is no -- we didn't make it better,
13 we didn't do anything but actually take a still
14 shot of the video that she had on the phone.

15 MS. ZMROCZEK: But if she is now saying that
16 they zoomed in the pictures, then that has to be
17 provided to me.

18 MS. SAMPSON: She has it.

19 THE COURT: It is on the video. I'm confused.

20 MS. ZMROCZEK: Your Honor, that is a zoomed in
21 picture.

22 THE COURT: I understand that, but it is a
23 zoomed in picture from the video that you have that
24 is in evidence that you already have.

25 MS. ZMROCZEK: I understand that, Your Honor.

1 My point is, is that yesterday I asked if they did
2 any zooming in, if there were any pictures. The
3 answers were no. Apparently they did some work
4 product last night, or not even work product, they
5 did discovery, using it to enter in, and they
6 didn't give it to me. So either -- and, Your
7 Honor, I know it came from my video. It is neither
8 here nor there at this point.

9 MS. SAMPSON: It did not. The video she is
10 talking about, she gave me one where there are
11 splits, and there is a total different camera that
12 has -- and her person put the two together. She is
13 correct, she gave me that. This is not from that.
14 This is from this.

15 MS. ZMROCZEK: But I just ask, Your Honor,
16 any other things that they did that they care to
17 introduce that they haven't shown me I would just
18 like to see before coming into evidence.

19 MS. SAMPSON: They are still photos from this
20 video. That's it.

21 MS. ZMROCZEK: A still photo, Your Honor, is
22 when -- so see how the screen is right now? I
23 don't know if you can see it, but I'll turn it so
24 you can see it.

25 MS. SAMPSON: You can take captures. It is a

1 capture that I took off the computer from this
2 video. I didn't take a camera -- I didn't do
3 anything. You can do this with this video. That
4 is all it is.

5 MS. ZMROCZEK: That's fine, Your Honor. I
6 will deal with it on cross. I withdraw my
7 objection.

8 THE COURT: All right. Let's bring them back
9 in.

10 (WHEREUPON, the jury came into open
11 court at 12:29 p.m.)

12 THE BAILIFF: The jury is present, Your Honor.

13 THE COURT: All right. Yes, ma'am, you may
14 continue.

15 MS. SAMPSON: I think you did it on the
16 record, but I need to make sure the objection was
17 overruled?

18 MS. ZMROCZEK: I withdrew the objection.

19 MS. SAMPSON: She withdrew it? Okay.

20 THE COURT: Yes.

21 DIRECT EXAMINATION CONTINUES

22 BY MS. SAMPSON:

23 Q So I'm going to ask you to look at both State's
24 Exhibit 49 and 50, because I think I only did 49,
25 and ask if you recognize both of those?

1 A Yes, ma'am.

2 Q And are they -- what are they?

3 A They are still shots of the video.

4 Q And do these fairly and accurately depict the
5 video, but just shots from the video?

6 A Yes, ma'am.

7 MS. SAMPSON: At this time I would ask to
8 introduce 49 and 50 into evidence.

9 MS. ZMROCZEK: Without objection, Your Honor.

10 THE COURT: All right, they will be entered
11 without objection.

12 MS. SAMPSON: I am going to leave these up
13 here with you.

14 THE COURT: So that is 49 and 50?

15 MS. SAMPSON: Yes, ma'am.

16 THE COURT: All right.

17 (WHEREUPON, State's Exhibit Nos. 49-50
18 were marked for identification and
19 received into evidence.)

20 BY MS. SAMPSON:

21 Q So are there times on each one of these pictures?

22 A There are.

23 Q What are the times?

24 A The video is stamped with a date and the time.

25 Q And so on State's Exhibit 49, what is the time?

1 A The time is, on the 27th, 04:38:40, so 4:38 and 40
2 seconds, and it says the 38 minutes.

3 Q And what is the time on State's Exhibit 50?

4 A It is 4:38:50, so 10 seconds later.

5 Q Okay. So I'm going to -- I actually went ahead of
6 myself. Let me go back.

7 (Video plays.)

8 Q Is that what we are talking about?

9 A Yes, ma'am.

10 Q And is that what is in State's Exhibit 49?

11 A Yes, ma'am.

12 Q Is that important to you at all? And if so, why?

13 A Yes, it is important. I was told by Mr. Volstromer
14 that he was reaching in the cooler. According to
15 Investigator Carter, he was reaching into the
16 cooler. When I looked at the video myself, it
17 looks like he is reaching into a cooler.

18 (Video plays.)

19 Q And 4:38:50, what, if anything, is significant
20 about that to you?

21 A His hands are by his -- out by his side. They are
22 in plain sight.

23 (Video plays.)

24 Q I want to ask you, Investigator, you have watched
25 this several times?

1 A Yes, ma'am.

2 Q Who approaches the fence?

3 A Ms. Volstromer goes back towards the fence moments
4 before the shooting.

5 Q This is after the argument with Mr. Holten?

6 A Yes, ma'am.

7 Q And this is after whatever words were said by
8 Mr. Pruitt?

9 A Yes.

10 Q Did she -- did Mr. Volstromer ever indicate to you
11 that he was in fear for his life when this
12 happened?

13 A He did not.

14 Q Did he ever indicate to you that he was in fear for
15 himself when this happened?

16 A Neither him or his wife, no, ma'am.

17 Q Did they ever indicate to you they were trying to
18 eject him from their property with a gun?

19 A Not with a gun. They did ask Mr. Pruitt to leave.
20 They asked Mr. Rick to take Mr. Pruitt. And that
21 was earlier in the video.

22 Q Where are they when he -- where is Mr. Pruitt and
23 Mr. Holten when they ask him to do that?

24 A They are on the dirt road.

25 Q Are they allowed to be on the dirt road?

1 A They can be on the dirt road.

2 Q Is that the Volstromers' property?

3 A It is not.

4 Q Would the Volstromers be allowed to eject someone
5 from someone else's property?

6 A No, ma'am. Again, this is a road that they have to
7 access to get to their house.

8 Q And when you say they, you mean who?

9 A Mr. Pruitt.

10 Q So were you able to see only video that you watched
11 or did you watch all the channels -- all the camera
12 videos?

13 A Channel 1 and Channel 2 are the two that are of the
14 incident itself. The other three really didn't
15 have anything on them.

16 Q All right. And so State's Exhibit 51 that has been
17 introduced, you have watched this video as well?

18 A Yes, ma'am.

19 (Video plays.)

20 Q So I'm going to stop it. What is this of?

21 A This is going to be towards the shed or the garage,
22 a different angle. So as you are looking at the
23 house or as you are on the house, it is going to be
24 off to the right of the front of the house.

25 Q Is there any sound on this camera angle?

1 A No, ma'am.

2 Q And I'm going to point. Is up here where -- and
3 I'm pointing from the middle to the right -- where
4 the action kind of is?

5 A Yes, ma'am.

6 Q And what do you see here? And you can step down or
7 stand.

8 A Just above the date and time stamp, you can see the
9 vehicle's tail lights.

10 Q And who was standing out here?

11 A Ms. Volstromer.

12 (Video plays.)

13 Q And while this is playing, is this the same as what
14 we saw, just a different angle?

15 A It is.

16 (Video plays.)

17 Q And who is this entering the camera?

18 A This is Mr. Volstromer coming out of his house.

19 (Video plays.)

20 Q Who is this right here?

21 A You can see Mr. Pruitt coming around the back of
22 the truck.

23 Q Can you see him open, or whatever, the cooler?

24 A On that angle it is very fuzzy. It is further
25 away. You can see him at the back of the truck.

1 (Video plays.)

2 Q And from this angle, can you see Ms. Volstromer go
3 to the fence?

4 A She is approaching the fence.

5 Q And did you see Mr. Pruitt fall?

6 A He is walking up towards the fence too.

7 Q As he falls or after?

8 A Oh, I'm sorry. You see Mr. Volstromer take a
9 couple of steps. When Mr. Pruitt is shot, he falls
10 towards the fence.

11 Q Did he fall on it?

12 A I really can't tell. I was not able to tell from
13 that angle if he falls forwards. I can't tell if
14 he hit the fence or not.

15 Q Then this truck drives away?

16 A It does.

17 Q I'm going to ask you, was there ever any indication
18 from any of the calls that you heard, any of the
19 talks that you had with Mr. Volstromer or Ms.
20 Volstromer that Mr. Pruitt ever came onto their
21 property?

22 A No.

23 Q Where was he, Mr. Pruitt?

24 A He was on the dirt road.

25 Q They never gave you any indication he came onto

1 their property?

2 A No. The video, even Mr. Volstromer is like, Come
3 over here. He is acknowledging. And Mr. Pruitt,
4 I'm not coming over there. I'm not coming on your
5 property.

6 Q And, in fact, Mr. Pruitt tells him to come to him,
7 doesn't he?

8 A Yes.

9 Q Mr. Volstromer does not?

10 A Does not.

11 Q But Mr. Pruitt does not go onto his property
12 either?

13 A Does not.

14 MS. SAMPSON: Beg the Court's indulgence.

15 (Pause.)

16 BY MS. SAMPSON:

17 Q No further questions at this time. Please answer
18 anything Ms. Zmroczek may have for you.

19 A Yes, ma'am.

20 THE COURT: Do you need the screen?

21 MS. ZMROCZEK: I do. Actually if you can just
22 leave that for me.

23 Thank you, Your Honor. May it please the
24 Court?

25 CROSS-EXAMINATION

1 BY MS. ZMROCZEK:

2 Q I want to start right where we left off, because I
3 want to understand, Investigator Holdorf, what you
4 just said.

5 A I'm sorry. Can you clarify?

6 Q Yes. If I'm wrong, please correct me. Your
7 testimony is, Mark takes out a gun, shoots a man
8 with a .380 hollow point, and he falls. He doesn't
9 go back, he falls forward onto the fence?

10 A He falls towards the fence.

11 Q Okay. And his head is towards the fence?

12 A That's what it appears from the video, yes, ma'am.

13 Q Okay. You've been here for the testimony of the
14 firefighters that found him, right?

15 A Yes, ma'am.

16 Q Okay. You saw the State's 50 -- do you still have
17 those zoomed in ones up there?

18 A I do not have them.

19 Q So you have identified these and gave your opinion
20 on what the locations of I guess people were doing.
21 When did you first get to see these?

22 A I would have seen those the next day.

23 Q No, no, these pictures.

24 A That was a work product that we did yesterday.

25 Q Okay. Yesterday. Okay. And so let's go back to

1 the beginning. So you were an investigator for
2 Richland County for 26 years almost?

3 A Yes, ma'am.

4 Q And you and I have done this before, been in a lot
5 of cases together, right?

6 A Yes, ma'am.

7 Q Okay. And so you know that I ask you these
8 questions because here we are June whatever, 2021,
9 and this happened June -- December 27th, 2015,
10 quite some time ago, right?

11 A Yes, ma'am.

12 Q And so, in fact, I believe you referred to your
13 notes on direct, right?

14 A Yes, ma'am.

15 Q Because you learned and have learned over the years
16 how to write reports, right?

17 A Yes, ma'am.

18 Q And you want to make sure that they are true?

19 A Yes, ma'am.

20 Q Accurate?

21 A As best you can, yes, ma'am.

22 Q As best you can. And complete?

23 A There is no such thing as a perfect report, if you
24 will.

25 Q Right.

1 A It is just impossible to do, note everything that
2 you did, everything that was said. That is why
3 nowadays you see most of these are going to be
4 audio/video taped. That was not an option at the
5 time of this.

6 Q What are going to be audio/video taped?

7 A Our interviews.

8 Q In fact --

9 A Right now they are audio and video taped.

10 Q There is a policy that was implemented in 2019,
11 right?

12 A That sounds about right, yes, ma'am.

13 Q Because there was a policy before that as well,
14 right?

15 A There have been several policies.

16 Q And that policy was not to record?

17 A In order to record, you have to have a standard.
18 You don't want one person doing one thing that is
19 not consistent with that. And then once you start
20 recording, you have to manage where it is going to
21 be, you have to manage how it is going to be
22 recorded. You don't want something that does one
23 thing one time and one thing another, so you have
24 to have a standard approach. And you also have to
25 have a way to manage everything that you are

1 recording.

2 At the Richland County Sheriff's Department,
3 we handle a lot of crime, or we handled -- I did.
4 So that becomes volume that you are taking in. You
5 have to have a way to manage that in categories.

6 Q And it is important to do that, right?

7 A It is.

8 Q Because without the video, it is just what you said
9 as a police officer and what whoever says -- in
10 this case, Mark, who has never been involved with
11 the police?

12 A No, ma'am. That is why we took written statements.
13 That is what we had at the time.

14 Q Right.

15 A And I explained to Mr. Volstromer, this is not my
16 statement, this is his statement. When we are
17 going over it, if there is anything he needs to
18 change or correct, he doesn't like how it sounds,
19 this is not my statement, these are his words, not
20 mine.

21 Q And how long after this incident did you take that
22 statement?

23 A We would have started this statement at 9:10.

24 Q P.M. that evening?

25 A Yes, ma'am.

1 Q So less than --

2 A Five hours. Four hours.

3 Q Four hours, right. So you've been involved in
4 police shootings?

5 A Yes, ma'am.

6 Q Never shot anyone?

7 A No, ma'am.

8 Q But you have had colleagues who have and you have
9 been there?

10 A Yes, ma'am.

11 Q And they do several interviews with police
12 officers, correct?

13 A It has changed, but, yes, ma'am.

14 Q They do one where they -- they do one before they
15 can even watch the Body Cams or the Dash Cams or
16 any videos?

17 MS. SAMPSON: Your Honor, I am going to object
18 to asking what they do with law enforcement since
19 this isn't about a person in law enforcement.

20 MS. ZMROCZEK: Your Honor, it goes to state of
21 mind.

22 MS. SAMPSON: For law enforcement, but not for
23 Mr. Volstromer.

24 THE COURT: The objection is sustained.
25

1 BY MS. ZMROCZEK:

2 Q When you interview someone who has been involved in
3 a traumatic event, what precautions do you check to
4 check their state of mind?

5 A You talk to them. Everybody is going to respond
6 differently. There is no set way that someone is
7 going to react if it is a normal reaction. So you
8 try to empathize with them. You place them in an
9 office. If someone needs to use Kleenex, if they
10 need a break. You try to approach this with a
11 humane approach. There is no -- like the stuff you
12 see on TV where there is a spotlight on someone,
13 this is a conversation with that other person. At
14 no time was it confrontational. At no time was
15 there banging on the desk and name-calling, or any
16 of that other stuff. We are two people talking. I
17 have nothing against Mr. Volstromer and nothing for
18 Mr. Pruitt. I'm trying to find out what happened
19 that night, or that day. I'm trying to accurately
20 portray everything that I can at that time.

21 Q But, so when you do that -- first of all, you don't
22 have a psychology degree, do you?

23 A Not a written degree, no, ma'am.

24 Q Not a written degree?

25 A Twenty-six years in law enforcement, you do have a

1 way to pick up on people in certain non-verbal and
2 verbal indicators.

3 Q Okay.

4 A So I would say I'm not a doctor or anything close
5 to that, but I have life experience.

6 Q Okay. And so you have life experience with someone
7 who has never shot a gun before except for one time
8 in a CWP class at a target and how his mind is
9 dealing with what he just had to do?

10 A I do not know about that part. I know I walked him
11 through the sequence of events several different
12 times to produce his statement on paper.

13 Q And then you said, Well, I didn't need to
14 investigate the truck because --

15 A That is not what I said.

16 Q Oh, okay. Tell me --

17 A Once the truck left, it becomes problematic for me
18 to say what was and what was not in that truck. I
19 don't have that chain of custody.

20 Q But you were there within -- very shortly after
21 this happened?

22 A No, ma'am. Not as shortly as the paramedics or the
23 first responders. And at that time, they didn't
24 know about it. By the time I am made aware of this
25 truck that would have left that was actually seen

1 leaving the scene, it is the next day.

2 Q And did you see where it left the scene to go?

3 A Back towards the house.

4 Q Back towards Mr. Pruitt's house?

5 A Yes, ma'am.

6 Q And certainly in your thorough investigation you
7 measured how far it was from where they stopped to
8 the house, right?

9 A I'm sorry, where, the Volstromers?

10 Q How far did that truck travel?

11 A That part I do not know.

12 Q Okay. But you watched the videos, right?

13 A Yes, ma'am.

14 Q And you can see where the truck goes and stops,
15 right?

16 A On the road in front of the Volstromers' house?

17 Q No, no after it leaves?

18 A I can see it goes down the road.

19 Q And you see where it parked?

20 A It goes to the Pruitts.

21 Q Right. You didn't measure. Right down the road.

22 And then you see Mr. Rick get out of it, right?

23 A I did not. I did not see that part.

24 Q You didn't see that part?

25 A No, ma'am.

1 Q And you didn't see him come walking back up the
2 road?

3 A I saw him when he comes back into the camera view,
4 yes, ma'am.

5 Q Okay. But that was on Camera 1. You didn't watch
6 on Camera 2?

7 A I did not see him come back up on the road on
8 Camera 2.

9 Q Okay. So, all right, let's stick with the video
10 for a minute. You watched it the next day, right?

11 A Yes, ma'am.

12 Q And you would agree that you could still go back
13 and investigate and maybe just look what is beside
14 the truck so I'm not beating you up about it,
15 right?

16 A I could have, but the probative value, once that
17 truck has left the scene, I'm not sure what I would
18 have gotten from it.

19 Q But we don't know now because we didn't even try,
20 right?

21 A Once that truck leaves the scene, I don't have
22 control of what happened to it.

23 Q You can't issue a search warrant for it?

24 A I probably could have gotten consent if I knew that
25 there was -- or had reason to believe that there

1 was something in the truck.

2 Q Okay.

3 A But in talking to both Barbara and Mr. Mark
4 Volstromer, there was nothing of any weapon or
5 anything that was noted in the truck. Otherwise,
6 we would have.

7 Q But actually you did. You said, I don't know what
8 it was. So it was something, right?

9 A I believed it to be a beer or a beverage which you
10 can get out of a cooler.

11 Q I hear that is what you said, but that is not what
12 Mr. -- that is not what Mark said, right?

13 A He said he did not know.

14 Q He said he did not know. So there is a dispute.
15 Who said it was a beer?

16 A It was an assumption because it was a cooler.

17 Q An assumption. So what if it wasn't a cooler and
18 what if it was a truck box?

19 A Based upon the video itself --

20 Q Uh-huh.

21 A -- the first time that I heard that anyone said a
22 truck box was yesterday in trial. There was
23 nothing that I had that it was a truck box. Even
24 if it was, no one articulates that they see a
25 weapon. No one gives me something that they are

1 saying this is something where I feel threatened or
2 fear for my life or my wife's life.

3 Q Okay. And we'll come back to that. So certainly
4 you did some investigation into who was the first
5 aggressor?

6 A The first aggressor I would have to call Mark
7 Volstromer.

8 Q Okay. That is what you are saying, Mark
9 Volstromer, first aggressor?

10 A Can you explain a little bit more about what you
11 mean by first aggressor?

12 Q You are familiar with what first aggressor is,
13 right? You have been an investigator --

14 A I want to make sure that my understanding and your
15 understanding of how you are asking are the same.

16 Q Okay. Why don't you tell me, when you investigate
17 cases that involve disputes between two people, do
18 you investigate who is the first aggressor? And if
19 so, how do you define first aggressor?

20 A On this one you would have to put the first
21 aggressor as a multitude of people. You would have
22 to put both Rick and Barbara as first aggressors if
23 you ying and yang back and forth between the two.

24 Q Okay. Let's talk about your report for a moment,
25 and then we'll come back to the video.

1 A Sure.

2 Q Okay. Because that is not what you told Rick, is
3 it?

4 MS. SAMPSON: Your Honor, I'm going to object
5 to what he talked to Mr. Holten about because
6 Mr. Holten is not going to be here to testify.

7 MS. ZMROCZEK: I'm not asking his response,
8 I'm asking what he told him. That is not hearsay.

9 MS. SAMPSON: But it is typical back and forth
10 between the two. If we just talk about what he
11 said and not talk about what Mr. Holten said to
12 him, putting it in --

13 MS. ZMROCZEK: They can put his statement in.

14 THE COURT: Let him see you all one second.

15 (WHEREUPON, a bench conference was held
16 in the presence of the jury but out of
17 the hearing of the jury.)

18 THE COURT: Ladies and gentlemen of the jury,
19 let me send you all out for one quick second.

20 (WHEREUPON, the jury retires to the jury
21 room at 12:55 p.m.)

22 THE COURT: Yes, ma'am?

23 MS. SAMPSON: Your Honor, there are several
24 things besides the written statement. He spoke
25 with Mr. Holten. He did give a written statement.

1 He also spoke to him on the phone. I don't know
2 where she is going with any of this, but that's why
3 I objected, and I don't have a clue, especially
4 since Mr. Holten isn't here to testify.

5 THE COURT: All right. Do you want to proffer
6 the testimony?

7 MS. ZMROCZEK: I do. Thank you.

8 PROFFER

9 BY MS. ZMROCZEK:

10 Q On direct, or just now with me on cross, you
11 testified that there were two people that were
12 first aggressors, right?

13 A Yes, ma'am.

14 Q Okay. And do you recall taking a brief statement
15 and then having follow-up conversations with
16 Mr. Holten?

17 A Yes, ma'am.

18 Q And you recall telling Mr. Holten that you did
19 attempt to explain to him that if they did not
20 stop, then none of this would have happened, that
21 for the looks of it, they were instigating an
22 argument?

23 A That is because I was talking to Mr. Rick. Had I
24 been talking to Ms. Barbara, had she just stepped
25 away from the fence, or had Mr. Volstromer just

1 stayed in the house, they had equal opportunity,
2 they could just walk away from the fence. Both
3 sides are at it.

4 Q I understand. That is your explanation now, and
5 you are certainly entitled to it. My question is,
6 did you say that, I did attempt to explain to him
7 that if they did not stop, then none of this would
8 have happened?

9 A Correct. Because I was talking to one party out of
10 the two.

11 Q Right. Did you say that to Ms. Volstromer?

12 A She -- can we get into the premise of why he called
13 in?

14 Q Sure. Absolutely.

15 MS. SAMPSON: I don't know, Your Honor.

16 THE COURT: I mean, this is a proffer, so,
17 yes.

18 MS. ZMROCZEK: Right.

19 A He had wanted -- I will just read it. Mr. Rick had
20 wanted to pursue charges against Ms. Volstromer for
21 pointing and presenting because she had a gun and
22 he felt that she pointed it at him.

23 THE COURT: This is before or after that?

24 MS. SAMPSON: Before he says what Ms. Zmroczek
25 just asked him to say, he is speaking to

1 Mr. Holten, because Mr. Holten had called to ask
2 why they didn't charge Ms. Volstromer. So that is
3 what I meant -- this is an entire conversation.
4 She is picking his response from one part of it.
5 And it is all hearsay.

6 MS. ZMROCZEK: It's not hearsay what he says.

7 MS. SAMPSON: But why he said it and the
8 reason it came up so she can just pick and choose
9 statements when I can't call the witness who it was
10 said to or started a conversation because he is
11 dead.

12 MS. ZMROCZEK: Again --

13 THE COURT: Hold on. I guess I'm just
14 processing it. So Mr. Holten's statement is that
15 she also pulled a gun on him?

16 MS. ZMROCZEK: Yes.

17 MS. SAMPSON: And that she should have been
18 charged. And he called Mr. -- he called
19 Investigator Holdorf asking why she is not being
20 charged. What she is reading to you is his
21 response to that.

22 MS. ZMROCZEK: No.

23 MS. SAMPSON: In that conversation.

24 MS. ZMROCZEK: That is not correct, Your
25 Honor. I'm reading when he -- from his report,

1 Investigator Holdorf's, I'm reading from his
2 report, what he says to Mr. Holten on that day. I
3 was about to get to the time when then Mr. Holten
4 calls back and asked to have Barbara arrested and
5 Investigator Holdorf, I advised him if he could
6 give a legal reason why he stopped in the road and
7 instigated the argument, we could look into it.
8 Because what he testified to is they are both at
9 fault, but that is not what he put in his notes.

10 MS. SAMPSON: She is talking about two times.
11 And, again, these are conversations between him and
12 Mr. Holten. One of them led to a written statement
13 where he said part of what we just talked about.
14 Another one is a phone call where he said some of
15 the things that she is getting into.

16 MS. ZMROCZEK: But he said them.

17 MS. SAMPSON: And they are all hearsay. It is
18 outside of court offered for the truth of the
19 matter asserted. He is not here to talk about it.
20 She just wants to pick and choose what Investigator
21 Holdorf said back to him and trying to make me put
22 in what he said to him.

23 THE COURT: What does the exception say?

24 MS. ZMROCZEK: He is not available.

25 MS. SAMPSON: He was never cross-examined.

1 The unavailability deals with once they have been
2 under sworn testimony.

3 MS. ZMROCZEK: But, again, what Mr. -- what
4 Investigator Holdorf says is not hearsay.

5 THE COURT: So it would only be an exception
6 if -- (Reading to self.)

7 I'm going to sustain the objection. I'm just
8 not sure. There is no way to cross-examine
9 Mr. Holten because he is deceased.

10 MS. ZMROCZEK: I don't need to cross-examine.
11 I'm asking him, him, Investigator Holdorf, what he
12 said. How is that hearsay?

13 MS. SAMPSON: It is a statement made outside
14 of court.

15 MS. ZMROCZEK: But he is here.

16 MS. SAMPSON: Just because he is here to say
17 it doesn't mean you can ask him what he said back
18 to him. Otherwise, you can do that with every
19 witness.

20 THE COURT: You can ask him questions -- I
21 think you can rephrase the questions and ask him,
22 as opposed to getting into the statement, you can
23 ask him questions regarding -- not necessarily what
24 he said in the statement.

25 MS. ZMROCZEK: He who?

1 THE COURT: That he said.

2 MS. ZMROCZEK: I can't ask him what he said to
3 somebody? That is where I'm losing it. He is
4 here. He said something to somebody. I can ask
5 him what he said.

6 THE COURT: So you want to ask him what he
7 said, but you don't want him to give testimony --

8 MS. ZMROCZEK: He can give all kinds of
9 testimony. It's fine.

10 MS. SAMPSON: She wants both.

11 MS. ZMROCZEK: I don't want both, but if that
12 is what the State feels like is more fair, that
13 they want to put this deceased witness in, go
14 ahead. I'm not -- I'll put it in if you want me
15 to. I'm not trying to hide the ball.

16 THE COURT: She is not going to enter the
17 statement into evidence. But you can -- she can --
18 I think under the rules she can ask him what he
19 said. Now, he --

20 MS. SAMPSON: The problem --

21 THE COURT: -- can give the context of what
22 was said.

23 MS. SAMPSON: That is the problem, Your Honor.
24 It is making us get into the whole conversation
25 when there is a party not here. Any other time we

1 have done this, it is a party that -- a party
2 opponent, such as Mr. Volstromer, or when we asked
3 about what Ms. Volstromer said, they objected
4 because it was hearsay, both to the question and to
5 the answer.

6 MS. ZMROCZEK: And then you read the statement
7 in.

8 MS. SAMPSON: Because you can't do it. If I
9 can just have somebody come up in here and just say
10 everything they said to somebody, then that is what
11 we would do. But you can't do that. It is out of
12 context.

13 MS. ZMROCZEK: That is exactly what Carter
14 did. Carter read her statement in.

15 MS. SAMPSON: Because she brought it up. She
16 opened the door when she started asking him what
17 was in the statement. They objected and Your Honor
18 allowed it because she asked about what was in the
19 statement. I have yet to ask what Mr. Holten has
20 ever said to him afterwards. Have not. The
21 closest I have come is, Did you hear anything about
22 a knife, and that was with Mr. Volstromer.

23 MS. ZMROCZEK: I'm not talking about his
24 statement. He made conclusions in his
25 investigative report. I can ask him why he said

1 things and why he put them in his report.

2 MS. SAMPSON: Not everything in a report is
3 admissible. We keep going around in circles. I
4 could just introduce the report, then we would just
5 never have a witness. They would say, This is what
6 I wrote down, and just put it in.

7 MS. ZMROCZEK: She can redirect and she can
8 ask the context if she wants, if she feels like he
9 can't say it, which I'm not saying he can't. If
10 she wants to ask him, she can. But, Your Honor, I
11 cannot be restrained from asking a witness who is
12 here who said something and put it in his report,
13 those were his thoughts, his conclusions, he said
14 it, his words.

15 THE COURT: In his report or in that
16 statement?

17 MS. ZMROCZEK: No, in his report. No. There
18 is no statement. This is Holdorf's report that I'm
19 talking about.

20 MS. SAMPSON: His report is about the
21 statement.

22 THE WITNESS: The purpose of Mr. Holten's call
23 is he wanted to add something to his statement is
24 how I start out my investigative follow-up. That
25 was a pretext for his calling in.

1 MS. SAMPSON: And the other comment is after
2 he -- when he is taking the statement from
3 Mr. Holten.

4 MS. ZMROCZEK: But he tells them --

5 MS. SAMPSON: And he writes in his report what
6 they were talking about.

7 MS. ZMROCZEK: But what he, the person on the
8 stand here for cross-examination, says is, You
9 provide me a legal reason -- you provide me a legal
10 reason -- hold on. I advised him -- I advised
11 him -- I, Mr. Holdorf -- advised him if he could
12 give a legal reason why the stop in the road -- why
13 he stopped -- why the stop in the road and
14 instigated an argument, then we could look into it.

15 Your Honor, that is clearly not what he just
16 testified to when I said, Who instigated it?

17 THE WITNESS: I also had --

18 THE COURT: Are you trying to impeach him?

19 MS. ZMROCZEK: Yes.

20 MS. SAMPSON: Impeachment, perhaps. But,
21 again, she asked him who was the first aggressor.
22 He told her who he believed to be the first
23 aggressor. That is not impeachable. He can tell
24 her his belief.

25 MS. ZMROCZEK: Except that it is different in

1 his report.

2 THE COURT: All right. I'm going to allow --
3 because if he is saying something different than he
4 put in the report, then I think that falls under
5 impeachment. I am going to allow him to testify.
6 You can ask those questions. But I am going to
7 allow him to give the context of the phone calls
8 and why he was calling.

9 MS. ZMROCZEK: Absolutely. And I believe that
10 that is proper. I'm not trying to hide anything.

11 THE COURT: I mean, if you open the door to
12 the statement, then I think -- if you open the door
13 for him to be able to give context as to what --

14 MS. ZMROCZEK: And I have no problem with
15 that.

16 THE COURT: Why he was having the conversation
17 with Mr. Holten.

18 MS. SAMPSON: I just want to make sure there
19 is not going to be an objection when I start
20 getting into hearsay to respond to what she just
21 asked him.

22 MS. ZMROCZEK: Like I said, if she wants to
23 ask about Rick and his statement all day long, I
24 have no problem with it.

25 THE WITNESS: Another part of that statement

1 that to me is important is where I say adults
2 acting like adults, and so it is pluralized.
3 Instead they were acting like kids and as a result
4 his friend was shot. So adults pluralized and kids
5 pluralized means both parties, not just a singular
6 person.

7 THE COURT: And he can explain it.

8 MS. ZMROCZEK: He absolutely can explain it.

9 THE COURT: All right, let's bring them in.
10 (WHEREUPON, the jury came into open
11 court at 1:08 p.m.)

12 THE BAILIFF: The jury is present, Your Honor.

13 THE COURT: All right. The objection is
14 overruled.

15 CROSS-EXAMINATION CONTINUES

16 BY MS. ZMROCZEK:

17 Q Investigator Holdorf, we talked about report
18 writing, right?

19 A Yes, ma'am.

20 Q And you did a report in this case?

21 A Yes, ma'am.

22 Q And you do that because, like you said, you have
23 numerous, numerous cases, and then when we come
24 back to court, what you said and what you did you
25 put in your report and then I can ask you about it

1 and you can tell me about it, right?

2 A Yes, ma'am.

3 Q Okay. And everything that you put in your report
4 is, like we talked about, fair, accurate, and
5 complete, to the best of your ability?

6 A Yes, ma'am.

7 Q Okay. So do you have a copy of report or do you
8 need it?

9 A I have a copy.

10 Q Okay, great. So in that report you spoke with
11 Rick, who was driving the vehicle, correct?

12 A Yes, ma'am.

13 Q And tell the jury, when you spoke to him -- and
14 this is I believe on the very first page of your
15 report, right?

16 A No, ma'am.

17 Q Or did it get out of order. Page 2?

18 A I believe it is Page 3. On the top does it start
19 with, Investigator Metz gave me a copy of the
20 video?

21 Q Okay, yes, that is Page 3. Let's go to Page 2
22 where on the top it says SCI McClary?

23 A Yes, ma'am.

24 Q Are you with me?

25 A Yes, ma'am.

- 1 Q Okay, perfect. So you said something to Rick.
2 Tell the jury what you told Rick, what you
3 attempted to explain to him. You told them, If
4 they did not stop and then none of this would have
5 happened, that for the looks of it, they were
6 instigating an argument. That is what your report
7 says, right?
- 8 A Hold on a second. I'm sorry.
- 9 Q Sure.
- 10 A Again?
- 11 Q You said to Rick, the driver of the vehicle --
- 12 A Uh-huh.
- 13 Q -- that you attempted to -- attempt to explain to
14 him, If they did not stop, then none of this would
15 have happened, that for the looks of it, they were
16 instigating an argument. It says "and" argument,
17 but I believe it was a typo.
- 18 A Yes, ma'am.
- 19 Q Okay. That is what you said to him, right?
- 20 A Yes, ma'am.
- 21 Q And then later on, Page 3, you have a follow-up
22 conversation?
- 23 A Yes, ma'am.
- 24 Q With Mr. Holten, right?
- 25 A Yes, ma'am.

1 Q And I understand that there is some context of
2 that. He had called you, right?

3 A Yes, ma'am.

4 Q Okay. And you advised him, If he could give a
5 legal reason why the -- and I'm sure it was they --
6 trust me, I type just like this, so I could -- I
7 advised him if he could give a legal reason why the
8 stop in the road and instigated an argument, then
9 we could look into it. I advised that instead of
10 acting like adults, they were acting like kids, and
11 as a result his friend was shot. I advised Rick
12 the homeowners had both cameras and sound. I
13 pointed out that they asked him several times to
14 take Pruitt away. Right?

15 A Yes.

16 Q Okay. And that's what you told him?

17 A Yes.

18 Q And then you put it in your report?

19 A Yes, ma'am.

20 Q Okay. And you -- I want to go back to your report,
21 because we talked about wanting to make sure that
22 we do a thorough investigation, right?

23 A As best as you can, yes, ma'am.

24 Q Okay. Were there any -- were there anything -- was
25 there anything limiting you from doing a thorough

1 investigation in this case?

2 A I thought we did with what we had at the time.

3 Q Okay. Is there a time limit on investigations?

4 A There is not.

5 Q Okay. In fact, on January 25th, you go back to the
6 Volstromers' house?

7 A I believe so, yes, ma'am.

8 Q Okay. And you and Barbara, you walk right out to
9 the property and right out to her fence, and she is
10 showing you what happened again, right?

11 A I don't necessarily recall that part. I know that
12 we had further dealings, or I talked to her a
13 couple of different times.

14 Q Okay.

15 A I'm not saying it didn't happen, I just don't
16 have --

17 Q Right. And so I'm just going to show you something
18 that may or may not refresh your recollection.

19 A Thank you.

20 Q Okay.

21 MS. SAMPSON: Your Honor, I have a matter.

22 MS. ZMROCZEK: I'm not moving them in, I am
23 just asking to refresh his recollection.

24 MS. SAMPSON: Never seen them.

25 THE COURT: All right.

1 MS. ZMROCZEK: We can approach.

2 THE COURT: Yes, let's try to.

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury but out of
5 the hearing of the jury.)

6 BY MS. ZMROCZEK:

7 Q Let me ask the question again, Investigator. You
8 remember going out there on January 25th of 2016,
9 yes?

10 A I don't remember the date. I know I had further
11 dealings with Ms. Barbara Volstromer.

12 Q Okay. And so is it your testimony that this visit
13 in January you didn't go out and revisit this area
14 where everything happened?

15 A I don't have that in my notes. I don't recall.

16 Q Okay. Do you have any notes that you went back out
17 there?

18 A No, ma'am.

19 THE COURT: Let me see you all one second.
20 Let me see you one second.

21 (WHEREUPON, a bench conference was held
22 in the presence of the jury but out of
23 the hearing of the jury.)

24 BY MS. ZMROCZEK:

25 Q Let's see if this question clears it up. If I told

1 you that the video system that was in existence
2 then was in existence on January 25th, 2016, and
3 there is video footage of you walking out to the
4 exact area with Ms. Volstromer and walking back,
5 would that refresh your recollection?

6 A If you said it is video, I would not doubt what you
7 were saying.

8 Q Okay. So you had opportunity to go out and
9 continue an investigation if you needed to, right?

10 A Yes, ma'am.

11 Q Okay. But the last entry in your report is on what
12 date?

13 A The last entry appears to be December 28th.

14 Q 2015?

15 A Yes, ma'am.

16 Q Okay. So were you -- did you stop your
17 investigation in December 28th, the day after this
18 happened, 2015?

19 A No, ma'am. This would have been when it was passed
20 on. It just was not updated.

21 Q Explain that to me.

22 A I'm the on-call investigator or supervisor for that
23 weekend, so it would have been written up at a
24 certain point in time. I don't recall what else
25 there was. I know I talked to Ms. Volstromer a

1 couple of different times.

2 Q Okay, let me ask this question. Are there any
3 other investigators with any other notes that are
4 the lead investigators of this case?

5 A No, ma'am.

6 Q Okay. You are, or were, the lead investigator in
7 this case?

8 A Yes, ma'am.

9 Q Did you do any investigation beyond December 28th,
10 2015?

11 A There would have been some information from the
12 lab. There would have been some information from
13 SLED with gunshot residue, but getting other
14 records -- it is all encompassing.

15 Q Right. Certainly.

16 A There is nothing that is noted in my report.

17 Q Okay. So even though receiving information back,
18 nothing -- you didn't do anything beyond
19 December 28th, 2015, is that what I hear you
20 saying?

21 A I'm saying it is not noted on my report.

22 Q Not noted on your report. Okay. Is there anything
23 that you can recollect that would have been of
24 significance that you did after December 28th of
25 2015?

1 A Not at the time, no, ma'am.

2 Q Okay. Because you would have put that in your
3 report certainly, right?

4 A In an ideal word, yes, it would have been nice if
5 it was in the report if there was something else I
6 had done so that we could have it refreshed if we
7 needed to.

8 Q Right. Right. Because you would agree with me
9 that investigations of these kind of cases, really
10 in any case, is important, right?

11 A Yes, ma'am.

12 Q And if you have information, you certainly would
13 like to follow up so we can get a full picture of
14 what happened, right?

15 A If we could, yes, ma'am.

16 Q What?

17 A If we could, yes, ma'am.

18 Q If we can, right. And, again, was there anything
19 impeding you from continuing this investigation?

20 A Other than still being on call and working other
21 cases.

22 Q Right. Your job?

23 A Yes, ma'am.

24 Q Okay. But certainly you are not the only
25 investigator, right? There were lots of you?

1 A Yes, ma'am.

2 Q Okay. So when did you watch the video?

3 A The next day.

4 Q December 28th?

5 A Yes, ma'am.

6 Q Okay. And did you -- oh, yes, here you go. You
7 watched -- I viewed the video at 4:36 -- oh, no, at
8 4:36:10 the homeowner is walking out. Okay. So
9 your note -- you put down notes of the video,
10 right?

11 A Yes, ma'am.

12 Q Okay. So when you watch that video, which was
13 after you had already talked to Mark -- and we can
14 play it again if you need to -- but do you recall
15 having any questions as to when Mr. Pruitt says at
16 4:38:35 p.m., You know what I told you the last
17 time you talked to me.

18 Do you want to hear it again?

19 A No, ma'am.

20 Q Okay. Do you recall him saying that?

21 A Yes, ma'am.

22 Q Okay. And what is it that Pruitt had said to Mark
23 the last time before he saw him?

24 A I don't know.

25 Q Well, didn't you go, Hey, Mark, this might be

1 important. What did he say to you the last time he
2 saw you? Did you follow up with that?

3 A At that time, Mr. Volstromer would have had legal
4 representation, once he is booked into the bond
5 court.

6 Q Did you call the legal representation and say,
7 Hey --

8 A I did not, no.

9 Q Okay. So Mr. Pruitt -- so you don't know what he
10 and Mark were talking about, right? So you have no
11 idea what that means?

12 A I do not.

13 Q Okay. So, but Rick didn't have legal
14 representation, right? He didn't need it?

15 A Correct.

16 Q All right. So you watched that video the next day.
17 Did you ask Rick why he opened his door but
18 couldn't get out because he was so close to the
19 fence?

20 A I did not see that.

21 Q You didn't see it. Okay.

22 MS. ZMROCZEK: I just don't want to pull
23 something that is not here. Is it marked on here?

24 THE COURT: Turn it around so it won't be in
25 front of the jury.

1 MS. ZMROCZEK: Camera Number 1.

2 BY MS. ZMROCZEK:

3 Q The first question, how wide is that road?

4 A Seven, eight feet or so.

5 Q Okay. Could two vehicles fit down that road?

6 A It would be a very tight fit.

7 Q Okay.

8 (Video plays.)

9 Q I'm just turning it down. We all can hear the
10 words. So sometimes it is easier to focus without
11 the volume.

12 Right there, do you see that? You can come
13 closer if you need to.

14 A It does look like a door opens.

15 Q Okay.

16 A Or I can't tell if that is Ms. Volstromer coming in
17 or out, but --

18 THE COURT: You can step down.

19 THE WITNESS: Thank you, Judge.

20 (Witness steps down.)

21 BY MS. ZMROCZEK:

22 Q So right here. You can't tell, right?

23 A I don't see the door opening. I don't see where I
24 can determine that it was.

25 Q Okay. When you were doing work product last night,

1 zooming out pictures, you didn't do the video part,
2 right?

3 A I'm sorry? The picture comes from the video.

4 Q Right, right, right, right. Okay. So did you ask
5 Rick why he turned off the truck?

6 A I don't believe I did.

7 Q Did you know he turned off the truck?

8 A I'm not sure.

9 Q Okay. I am going to turn the volume on for you.
10 (Video plays.)

11 Q Okay. So this wasn't a conversation at the fence?
12 Did you ask -- I mean, it was a conversation at the
13 fence. But now the truck is stopped, right?

14 A Yes, ma'am.

15 Q Okay. So you can have a seat.

16 (Witness returns to witness stand.)

17 Q You didn't ask Rick why he turned off the truck?

18 A No, ma'am. I didn't see the video until the next
19 day.

20 Q Okay.

21 A And I'm not sure if I would have picked up that the
22 truck was turned off.

23 Q Okay. You said that there were no threats, right?
24 That nobody told you they were threatened? That is
25 what you said, right?

1 A I'm not sure I understand.

2 Q Okay. Were you told by Mark or Barbara that they
3 were being threatened and terrorized by Mr. Pruitt?

4 A Ms. Volstromer, yes.

5 Q Okay. And when somebody says -- in your 26 years
6 of investigative experience, not a PhD -- when
7 somebody says, I got something for you, I'm the
8 devil?

9 A I have listened to it several times. I have in my
10 note says that it says, I'm the villain. Yes, that
11 is in a threatening manner.

12 Q That is in a threatening manner?

13 A Yes.

14 Q To who?

15 A To Mr. Volstromer.

16 Q Okay. And certainly you did some investigation
17 into -- oh, I believe that you said in your
18 report -- let's go back to your report. You said
19 that there was an ongoing -- Page 1.

20 A Thank you.

21 Q I'm sorry, I'm not trying to trick you. I just
22 have it in front of me. Page 1 -- unless I get it
23 out of order again. There is an ongoing dispute
24 with Barbara Volstromer had -- Mark and Barbara
25 Volstromer had had an ongoing dispute with Lanny

1 Pruitt, right?

2 A Yes, ma'am.

3 Q And you did some research into that ongoing
4 dispute?

5 A Yes, ma'am.

6 Q And did you find any information about a dispute
7 over the property between -- between Mr. Pruitt and
8 Ms. Volstromer or Mark Volstromer? Any dispute?

9 A I would have to see the reports to refresh my
10 recollection. There were a number of reports that
11 I had read out or had seen. Some had nothing to do
12 with any of this.

13 Q So let's talk about the ones that have to do with
14 this. Just this, okay?

15 A Yes, ma'am.

16 Q Is that fair?

17 A Yes, ma'am.

18 Q Okay. So how many reports did you find between
19 Mark Volstromer and Mr. Pruitt?

20 A I don't believe there are any specifically with
21 Mark Volstromer. I would say they were with
22 Ms. Volstromer.

23 Q How many reports did you find between Barbara and
24 Mr. Pruitt?

25 A There was one where I believe Mr. Pruitt was named.

1 There was another one, I'm not a hundred percent he
2 was named, but neither one were of anything we
3 could do anything criminal with.

4 Q Okay. Do you have those -- you pulled those
5 reports as part of your investigation, right?

6 A Yes, ma'am.

7 Q Okay. And so let me ask it this way. You -- the
8 two reports -- the reports -- the two reports that
9 you have between Barbara and Mr. Pruitt, do they
10 have anything to do with a property dispute?

11 A I'm sorry, I don't recall. The reports, they
12 weren't anything that I wrote. I read over them.
13 I looked to see if there was something I could use
14 as part of this or not. At the moment -- I have
15 read it several times -- I just can't say whether
16 or not it was over the property itself, but there
17 was a verbal dispute between the two parties.

18 Q Would it refresh your recollection to see your
19 report?

20 A Please.

21 MS. ZMROCZEK: Your Honor, just for ID
22 purposes, I'm not obviously putting them in, but
23 just because I will be referencing them and there
24 will be two different ones, should I just mark them
25 as ID?

1 THE COURT: Yes.

2 (WHEREUPON, Defendant's Exhibit Nos. 7-8
3 were marked for identification only.)

4 BY MS. ZMROCZEK:

5 Q Okay. Just so it will be more clear, because I am
6 certainly not trying to confuse you, I am going to
7 show you what is marked for ID as Defense 7.

8 A Yes, ma'am.

9 Q And how do you know that you pulled that report?
10 If you look on the second page, what does it say?

11 A Under the second page highlighted in orange is Case
12 Management Database, and it has my information.

13 Q Okay. And then the date and time that you did it,
14 right?

15 A Along with date and time.

16 Q Okay. So y'all have, you said, multiple case
17 management systems, right?

18 A At the time the property -- you had the old
19 handwritten report system. We went to ASIS, and
20 now they are on a Tri-Tech system. As databases
21 get older, you have other things that add more
22 bells and whistles that are an upgrade. At this
23 time we were in ASIS.

24 Q So at the time in ASIS you pulled that report just
25 to review it, right?

1 A This was pulled at 2205, so this was pulled after
2 the incident.

3 Q Okay. Right, right, right. That same night after
4 the incident?

5 A Yes, ma'am.

6 Q And does it reflect a property dispute?

7 A You could say it is property dispute-ish in that he
8 is on the property, but it is a wide -- property
9 dispute is a pretty wide term.

10 Q Okay.

11 A If you will.

12 Q Okay. But --

13 A His presence in and around is --

14 Q Is what causes Ms. Volstromer concern?

15 A What causes this, yes.

16 Q Okay. All right. And, in fact, did she say she
17 was threatened?

18 MS. SAMPSON: Your Honor, I am going to object
19 to the hearsay.

20 MS. ZMROCZEK: Okay. That's fine.

21 THE COURT: Sustained.

22 BY MS. ZMROCZEK:

23 Q So you had that report, though, right?

24 A I had it that evening.

25 Q Okay, perfect.

1 A Yes, ma'am.

2 Q I'll take that back because I'm not trying to

3 confuse you, and I am going to leave that as ID.

4 And then I am going to hand you what is marked

5 as -- oh, I didn't ask you the date, I am sorry.

6 Back to that first report.

7 A It is on the date of the incident or when the

8 incident report was taken. And this incident

9 report was done May 30th of 2015.

10 Q May 30th of 2015?

11 A Yes, ma'am.

12 Q Okay, thank you. And then a second report that you

13 pulled was marked for ID Defense Number 8. Do you

14 recognize that?

15 A Yes, ma'am.

16 Q And what was the date of that report?

17 A This was September 4th of 2015.

18 Q September 4th of 2015?

19 A Yes, ma'am.

20 Q And was that a property dispute between Barbara and

21 Mr. Pruitt?

22 A Again, I would have to qualify that with a yes and

23 an -ish because they are riding in the proximity.

24 Q Okay. Okay. Ms. Pruitt -- excuse me, Ms. Barbara,

25 I will call her Barbara -- was out taking pictures

1 that day, right?

2 A Yes, ma'am.

3 Q And her camera was collected by I think we heard
4 Investigator McClary that night, right?

5 A Yes, ma'am.

6 Q Okay. And you developed those pictures, right?

7 A I did not, but they were developed.

8 Q When were they developed?

9 A After I had left. I had spoken with the
10 Solicitor's Office. In order for me to view it I
11 would need to get a search warrant. We talked
12 about having a consent to search or we cannot
13 violate someone's reasonable expectation of privacy
14 even though it was in our evidence room.

15 Q And, in fact, I asked you to pull the pictures,
16 right?

17 A I'm not a hundred percent sure.

18 Q I asked somebody and they asked you to pull the
19 pictures?

20 A Yes, ma'am.

21 Q Okay. Thank you. And there were several pictures
22 on there that dealt with just unrelated family
23 things, right?

24 A There were a number of pictures on there, yes,
25 ma'am.

1 Q Okay. And there were some that were specifically
2 related to this event?

3 A Yes, ma'am.

4 MS. ZMROCZEK: Your Honor, I am going to mark
5 these as ID. I know that it is 1:30. I am just
6 trying to be mindful of the time, and I probably
7 have a while to go, but I just don't want to hold
8 anybody hostage.

9 THE COURT: All right, let me see you all.
10 (WHEREUPON, a bench conference was held
11 in the presence of the jury but out of
12 the hearing of the jury.)

13 THE COURT: All right, ladies and gentlemen of
14 the jury, they are telling me that we probably
15 have -- I hate to even say it -- but may have more
16 than an hour. I hate to guess, because I will
17 guess wrong. Based on my conversations with the
18 attorneys, we may have a little more than an hour
19 with this witness, and so I do recognize that it is
20 about 1:40 and it is lunchtime. And so we can go
21 ahead and take our lunch break. And I will -- we
22 will have you all back at 2:45. I will get it
23 right today.

24 All right, please do not discuss the case.
25 Please remember to keep your IDs on. And we'll see

1 you back at 2:45. Enjoy your lunch.

2 Thank you.

3 (WHEREUPON, the jury is excused for
4 lunch at 1:40 p.m.)

5 THE COURT: All right. As I stated at the
6 bench, you know, I was thinking we would be done.
7 So we will probably have to finish up with the
8 investigator, and then we'll take a little break to
9 do motions.

10 So I will see you back at 2:45.

11 Investigator Holdorf, do not discuss your
12 testimony over the break.

13 THE WITNESS: Yes, ma'am.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: Is there anything we need to take
16 up? All the jurors are here.

17 MS. SAMPSON: Not from the State.

18 THE COURT: The jurors are here and ready to
19 get started. Since you did not say anything.

20 MS. ZMROCZEK: I think I managed to cut it
21 down, so hopefully it won't be that long.

22 THE COURT: Take your time. Bring them in.

23 (WHEREUPON, the jury came into open
24 court at 2:52 p.m.)

25 THE BAILIFF: The jury is present, Your Honor.

1 THE COURT: We'll continue with the
2 cross-examination of Investigator Holdorf.

3 Yes, ma'am?

4 MS. ZMROCZEK: May it please the Court, Your
5 Honor?

6 CROSS-EXAMINATION CONTINUES

7 BY MS. ZMROCZEK:

8 Q Welcome back, Investigator Holdorf. We left off,
9 and I want to ask you a couple of things. I want
10 to go -- I want to talk about, as an investigator,
11 you also -- before you became an investigator, you
12 were also on the road?

13 A Yes, ma'am.

14 Q Okay. So you had interactions with the public as a
15 road deputy?

16 A Yes, ma'am.

17 Q All right. You have conducted pat-downs before?

18 A Yes, ma'am.

19 Q Terry pats or frisks?

20 A Yes, ma'am.

21 Q Okay. What are you looking for when you do those?

22 A Weapons.

23 Q Okay. What do you define as a weapon? Let me --
24 that is a really broad question and a bad one. Let
25 me rephrase it this way. Is a gun a weapon?

1 A It is.

2 Q Is a knife a weapon?

3 A It is.

4 Q And did you find a knife -- or did you hear that
5 there was a knife on Mr. Pruitt that day?

6 A I want to say through the coroner's report that
7 there was mention that there was a knife.

8 Q Okay.

9 A I never found it. It was taken apparently at the
10 hospital. When I checked at the hospital, it was
11 not -- it was no longer in their possession. They
12 didn't have a chain of custody or anything else
13 where I could say what happened to it. I never saw
14 it. He did have a Gerber --

15 Q Knife holder?

16 A -- holder on his belt.

17 Q Okay. And you -- on direct you had an occasion to
18 interact with Barbara. And she was kind of all
19 over the place, I think you said at first, right?

20 A Yes, ma'am.

21 Q Okay. But then she spoke to you. But **Daughter**,
22 the 16-year-old daughter, didn't speak to you,
23 right?

24 A I asked if she had anything, if she had seen
25 anything. Very familiar and versed with talking to

1 children, so it was very comfortable doing it
2 myself if we needed to. She said her daughter did
3 not see anything. I had no reason to question what
4 she told me.

5 Q Okay. And did you -- were you aware of any of the
6 background with her daughter and police involvement
7 prior?

8 A At the time, no, ma'am.

9 Q Okay. And you certainly did some investigation
10 into -- or did you do any investigation into the
11 other people that were arriving on the scene
12 afterwards?

13 A Afterwards, it would have been very limited. I
14 don't believe I found anything that was of
15 substance. The video speaks for itself. You can
16 hear what the people are saying. You can hear what
17 people are doing. It is a very raw moment for
18 everyone.

19 Q And in that raw moment, Phillip, a gentleman in the
20 video, says to Barbara, You are dead, right?

21 A Correct.

22 Q And then Rick says, Where is your shotgun, to
23 Phillip, right?

24 A Yes, ma'am.

25 Q So there were weapons available to these people,

1 right?

2 A I assume everyone has a weapon. I mean, that is
3 just -- that is how you go about your daily
4 business. I assume everyone has a weapon.

5 Q Okay. There are certain classes of people that are
6 not allowed to have weapons, though, right?

7 A Yes, ma'am. That doesn't stop them.

8 Q And that does not stop them, you are correct. In
9 this case, did you become aware of anyone that was
10 not allowed to have a weapon?

11 MS. SAMPSON: Objection, Your Honor. May we
12 approach?

13 THE COURT: Yes.

14 (WHEREUPON, a bench conference was held
15 in the presence of the jury but out of
16 the hearing of the jury.)

17 MS. ZMROCZEK: I'll move on from that.

18 THE COURT: Objection sustained.

19 MS. ZMROCZEK: Thank you.

20 BY MS. ZMROCZEK:

21 Q You -- did you do background investigations on
22 anyone then?

23 A I'll say maybe the immediate parties involved.

24 Q Okay. Did you -- so social media is a big thing in
25 investigations now, right?

1 A It is, and it has gotten bigger.

2 Q Yes, much bigger. And did you go on social media
3 and look at anybody's social media profile?

4 A I did not.

5 Q Okay.

6 A At the time -- and I'm not saying I didn't have it,
7 but it wasn't as prevalent as it is now. Nowadays
8 you have a whole -- you almost have a team of Intel
9 people and they can do all sorts of stuff.

10 Q You -- I want to go back to the statement that you
11 took from Mark. And it was said in direct how
12 he -- in the statement, and of course was very open
13 with you, right? He was telling you everything
14 that -- he was answering the questions you were
15 asking, right?

16 A Yes, ma'am.

17 Q Okay. And did you ask him specific questions that
18 weren't on that form?

19 A We had been talking for several hours.

20 Q Okay.

21 A During the part we sit down and we are in front of
22 computer and I'm typing, after I advise of rights,
23 there may have been something that was asked that
24 wasn't put on the paper, but then it wasn't
25 relative to anything like, Are you okay, do you

1 need a break, or something like that, but --

2 Q Let me be more clear. You asked him in his
3 statement, Did Mr. Pruitt threaten you, right?

4 A Yes, ma'am.

5 Q And he said no, but we have seen the video, it
6 speaks for itself, right?

7 A Yes, ma'am.

8 Q Okay. But did you ask him, Did Mr. Pruitt threaten
9 your wife?

10 A No, ma'am.

11 Q Okay. In the statement he says -- he says very --
12 as we read and heard -- that he was in the bathroom
13 and his wife was outside taking pictures, right?

14 A Yes, ma'am.

15 Q And that he heard commotion?

16 A Yes, ma'am.

17 Q And then he gets his gun and puts it in his pocket
18 and he tells **Daughter** to be prepared to call
19 9-1-1, right?

20 A And to stay inside.

21 Q Yes, and to stay inside. Now, did you develop that
22 any further? Did you say, Man, why did you grab
23 your gun and go outside?

24 A No, ma'am. I'm really not challenging. I'm taking
25 in the information as he is giving it. It would

1 have been a great follow-up question at the time,
2 but I'm human. I had been up all day. I have
3 20 million other things I'm trying to do. Again,
4 it would have been a great follow-up question to
5 do. I just didn't think of it at the time.

6 Q Because, were you aware in 2006 on this property he
7 was --

8 MS. SAMPSON: Objection, Your Honor.

9 MS. ZMROCZEK: If he is not aware, then--

10 MS. SAMPSON: Objection, Your Honor.

11 MS. ZMROCZEK: I will withdraw the question,
12 Your Honor. I will reask it in a different way.

13 BY MS. ZMROCZEK:

14 Q Are there reasons that people arm themselves other
15 than people fighting outside?

16 A Yes, ma'am.

17 Q Is arming yourself with a gun in your back pocket
18 because there is a potential for perhaps a dog
19 attack, would that be a reasonable reason to get
20 your gun and tell your daughter to be prepared to
21 call 9-1-1 if she needs to?

22 A That is pushing it.

23 Q It is pushing it?

24 A Yes, ma'am. There is no reason why he didn't call
25 9-1-1 before coming out. They obviously were very

1 versed on calling the police.

2 Q Did he -- go ahead, I didn't mean to interrupt.

3 A That is what we are there for, to respond to
4 situations all the time, Hey, I'm having a problem
5 with someone or something. And by the time we get
6 there, most of the time it is resolved.

7 Unfortunately, on this, it did not resolve in the
8 way that anyone wanted.

9 Q But he didn't tell you he knew that they were
10 fighting before he went outside, did he?

11 A He says that there is -- I believe his words were a
12 commotion.

13 Q A commotion?

14 A Or heard yelling.

15 Q Right. Heard -- right, he heard yelling?

16 A Yes, ma'am.

17 Q Okay. Have you ever had a family member attacked
18 by an animal?

19 A Yes.

20 Q Did they yell when they were attacked?

21 MS. SAMPSON: Objection, Your Honor, to the
22 relevance of what happened to a family member.

23 THE COURT: What is the relevance?

24 MS. ZMROCZEK: Your Honor, it is relevant to
25 the state of mind of -- the inferences that he went

1 outside because he heard a commotion because it was
2 these people. And, Your Honor, it is simply
3 relevant to exploring other reasonable reasons he
4 would go outside with a gun.

5 MS. SAMPSON: Asking about his particular
6 family members?

7 THE COURT: The objection is sustained.

8 BY MS. ZMROCZEK:

9 Q Okay, let me ask it this way. In working in your
10 field, have you ever in your 26 years had people
11 use weapons to protect themselves from animals?

12 A Yes.

13 Q Okay. Did you ask him when he purchased this gun,
14 him Mark?

15 A No, ma'am, I did not.

16 Q Okay. Did you ask him if he had a CWP?

17 A He was on his property at the time. I did not.

18 Q So he didn't even need it, right?

19 A No, ma'am.

20 Q Okay. You say that you respond to 9-1-1 calls all
21 the time?

22 A The Sheriff's Department does.

23 Q Right. I didn't mean you, yes, the Sheriff's
24 Department. So sometimes people call and you go
25 out there and it is nothing and sometimes people

1 call and nobody is dispatched, is that correct?

2 A I want to say if someone calls 9-1-1, unless there
3 is a valid reason why that would be canceled, that
4 is something someone should be dispatched to,
5 especially a 9-1-1 call.

6 Q Okay.

7 A There are several ways you can call in to get the
8 police. You have a regular phone number, at the
9 time it was 576-3000, or you can call 9-1-1. They
10 are both handled differently.

11 Q Through your 26 years as an investigator, have you
12 ever arrested anyone for harassment?

13 A Yes, ma'am.

14 Q Have you ever -- and that -- and is it your -- when
15 you make the arrest, that means that you have
16 probable cause, meaning that someone is engaging in
17 a pattern of intentional or substantial or
18 unreasonable intrusion, right?

19 A Correct. That is part of the statute.

20 Q Part of the statute. And have you ever arrested
21 anyone for stalking?

22 A Yes, ma'am.

23 Q Okay. Also there are elements for that too, right,
24 that you are familiar with about engaging in a
25 pattern of words or conduct intending to or causing

1 a targeted person to fear death, assault, or
2 battery?

3 A Yes, ma'am. There is more to it, but, yes, ma'am.

4 Q Okay. Oh, is there more?

5 A There is -- to tell them his contact was unwanted
6 and unreasonable.

7 Q Right, right, right. And damage to property is
8 also one of those -- can be one of those elements?

9 A Yes, ma'am, can be.

10 Q Okay. The -- I want to finish up with -- oh, wait,
11 just one more thing, and then I'll get back to the
12 video. So in the course of your investigation you
13 learned that Mr. Pruitt had a brother who was in
14 law enforcement?

15 A Yes, ma'am.

16 Q Okay. And he actually -- you actually spoke with
17 him, right?

18 A On his telephone.

19 Q You spoke with him on the telephone. And you
20 apologized for him not knowing about the death of
21 his brother, right?

22 A I did. I mean, just -- you don't want any family
23 member finding out without someone with a little
24 bit of compassion saying, Hey, I'm sorry to tell
25 you this, but this is what happened. I don't want

1 you watching the news, I don't want you to see
2 social media. When that happens it just puts a
3 very -- it is hard for the family.

4 Q And he actually, without telling me what he said,
5 he actually relayed some information to you about
6 his brother as well, right?

7 A He did.

8 Q Okay. And did you take any of -- into account any
9 of that information that he provided to you? Did
10 that weigh in your decision at all to charge
11 Mr. Volstromer with murder?

12 A By the time I had charged Mark Volstromer the night
13 of, the conversation takes place the day after, if
14 I'm not mistaken.

15 Q Okay. And -- oh.

16 A And on anything, there is a weighing factor for a
17 bunch of different things. The decision to charge
18 is not just mine alone. There are several people
19 and factors that are in on it, so it is not just me
20 in a wizard's cloak to make the decision.

21 Q Certainly. You -- just getting back to the video,
22 and then I promise I'll be done. So -- all right,
23 I want to move -- we are still on Camera 1. And I
24 am going to hit play and I am going to turn the
25 volume off. So, actually I am not going to turn

1 the volume -- I am going to turn the volume back
2 on. Because you watched -- did you watch -- you
3 watched the whole video, right?

4 A Yes, ma'am.

5 Q Okay. And I know that there were several different
6 camera angles, and that you felt that Camera 1 and
7 Camera 2 were the only ones with any relevant
8 value?

9 A And, again, their weight is -- they have everything
10 there. There is another camera angle that does
11 catch the back of the Pruitt's house, or what I
12 believe to be the Pruitt house, but I didn't watch
13 it at the time, it wasn't until later on that I
14 finally did.

15 (Video plays.)

16 Q Okay. And so who is speaking here?

17 A That is Mark Volstromer.

18 Q And to whom is he speaking?

19 A To Mr. Pruitt.

20 (Video plays.)

21 Q Did you ever ask Mark what he meant when he said,
22 Why did you make me do that?

23 A No, ma'am. Again, I didn't see the video until the
24 day after. By that time, Mr. Volstromer had been
25 charged. I try to take everything I could when I'm

1 talking to him, think of any relative or pertinent
2 questions that will help further the investigation
3 one way or the other. I'm trying to paint whatever
4 picture he has in his mind at the time.

5 Q Exactly my point. You served him with warrants
6 that night?

7 A When you make an arrest, it is not -- it is on
8 something that just happens. You type up a sheet
9 of paper. It is called a warrant worksheet. You
10 have to go down to the Detention Center. They will
11 type up the warrant, I believe. And at that time
12 it would have been the next morning, and then the
13 warrant would have been served on him just --

14 Q But you could have -- you could have -- you didn't
15 have to serve him a warrant that night, correct?

16 A I didn't have to, no, ma'am.

17 Q In fact, you have been involved in a double murder
18 case that you didn't make an arrest for several
19 months after, right?

20 A Correct.

21 Q Okay. And you thoroughly investigated that case as
22 well, right?

23 A There were a lot more resources. There were a lot
24 more complexities.

25 Q Okay. Because this seemed open and shut without an

1 investigation, right?

2 A No, ma'am. Just because there is a video of
3 something doesn't mean that that captures
4 everything.

5 Q Okay.

6 A You can see it all the time on different Body Cam
7 videos where it doesn't catch something that did
8 happen. Cameras are not the end all, be all. They
9 are a great tool. They are a great asset. But the
10 camera video alone does not give me probable cause.

11 Q Right. And you would agree that the time reflects
12 all of the -- from the time that Mark walked out
13 until the time of the shot is 49 seconds, right?

14 A That is what you said, and I have no reason to
15 doubt it is an appropriate number.

16 Q My math is not great, but the timer is on here, so
17 we can do the math, right?

18 A If we have to, yes.

19 Q It happened fast?

20 A It is quick, yes.

21 Q Okay. And as we know, police officers are trained
22 to react to situations. Are lay people -- in your
23 training and experience, do you feel like police
24 officers receive training in that and maybe lay
25 people don't?

1 A It is a wide variety of questions. I don't know
2 Mr. Volstromer's background. I don't know what
3 classes he has taken since he has had his firearm.
4 Even law enforcement, there is no such thing as
5 enough training. You can always have more
6 training.

7 Q Right. Did you inquire into any of that?

8 A Again, it would have been a great follow-up
9 question. I wasn't thinking of it at the time.

10 Q Okay. I want to show you -- and I promise this is
11 the last thing on the video. People always want to
12 fight me when I say that, but I promise.

13 (Video plays.)

14 Q So what we see -- obviously the camera is still
15 going, right? Oh, and you have been out to the
16 property?

17 A Yes, ma'am.

18 Q Right? Because the camera kind of is rounded so it
19 makes it look maybe a little longer or wider or --

20 A It is a wide angle so you can capture more of the
21 yard.

22 Q Right.

23 A So if you move further from one side to the other,
24 it does --

25 Q Okay. And then you have -- so we have Camera 2, I

1 think -- yes, Camera 2, like you said, catches up
2 the road, right, so we are able to see some
3 movement. Do you know who this is? And I know --
4 so I know it is difficult because that can't be
5 moved, but do you know who that is?

6 A That is going to be Ms. Pruitt.

7 Q That is Ms. Pruitt, right?

8 A Yes, ma'am.

9 Q Okay. And then -- and I believe you heard the
10 9-1-1 calls, right?

11 A Yes, ma'am.

12 Q And so when you heard that 9-1-1 call from
13 Ms. Pruitt, and obviously upset and she is talking
14 to people, and she tells Phillip, Phillip, he is
15 dead, or, They shot him, or something along those
16 lines, right?

17 A Yes, ma'am.

18 Q And then what does Phillip ask her back? Do you
19 recall hearing it, or do you want -- what she says
20 back to him is something about a gun, right?

21 A Are we talking the 9-1-1 tape?

22 Q Yes.

23 A Sorry, just a little bit of information overload.
24 I'm not a hundred percent. I know there were some
25 things about guns on different tapes and different

1 videos. I'm not trying not to be cooperative,
2 just --

3 Q Who did you ask if he had a gun? He, Mr. Pruitt?

4 A The Volstromers and also Mr. Ricky.

5 Q Okay. So you asked the Volstromers and Mr. Ricky.

6 A The people who were there at the time that this
7 incident happened.

8 Q Right. And if somebody says, I didn't see one,
9 does that mean no?

10 A I take that as a very honest answer.

11 Q Meaning if they didn't see it, they didn't see it,
12 but that doesn't mean it wasn't there?

13 A Yes, ma'am.

14 Q Okay. And, in fact, I think he even went further
15 and said, He got something out of cooler -- I say
16 truck box, whatever -- but he says, I don't know
17 what it is, right?

18 A Yes, ma'am.

19 Q But it was something?

20 A Yes, ma'am.

21 Q We heard in opening statements that it was a beer.
22 Did you find --

23 MS. SAMPSON: Objection, Your Honor. Opening
24 statements aren't evidence.

25

1 BY MS. ZMROCZEK:

2 Q Let me rephrase the question. Did you find a beer
3 can anywhere in this area?

4 A Ricky was never in the yard. I would expect to
5 find one in the truck, but, again, the truck is
6 moved. By the time I get aware of the truck, it is
7 the next day. There is nothing I can find that I
8 am going to be able to tie into any evidentiary
9 value to this case.

10 Q That we know of?

11 A That I can think of. I mean, I would think you
12 would have a field day if I found -- if the
13 situation was reversed and you were the Defense
14 attorney for someone else and I find something the
15 next day without a chain of custody, I'm going to
16 get beaten up over that.

17 Q Right. But at least you would have tried. Here we
18 have Ms. Pruitt. And of course we know that this
19 is Barbara, right?

20 A Yes, ma'am.

21 Q Okay. And you heard the calls. You would agree
22 with me that she was trying to get aid to
23 Mr. Pruitt?

24 A Yes, ma'am.

25 Q And then -- there we are. Okay. All right, now,

1 who is this?

2 A I believe that is going to be Ricky.

3 Q That is Ricky. Okay. When you talked to Ricky,
4 did you say, Ricky, why were you running back up
5 the road?

6 A I didn't have that information at the time that I
7 talked to Ricky.

8 Q Okay. So let's watch Ricky. This is Ricky, right?
9 What is Ricky doing right there?

10 A Again, I can assume that because it says Channel 1
11 where he is bending down, I'm under the premise
12 that he was checking on the victim.

13 Q Okay. All right. And as you watch it, what is he
14 putting in his back pocket right there?

15 A I don't know that he has picked anything up and put
16 it in his back pocket. He could also very well
17 have been pulling up his pants.

18 Q Could be. But we but didn't ask him so we don't
19 know, right?

20 A Did not.

21 Q Okay. And --

22 A I mean, he still has his hands --

23 Q Back there, right?

24 A Yes, ma'am.

25 Q We don't know what it is. Maybe it is a beer can.

1 We -- okay, now, who is this, do you know?

2 A I want to say that is going to be his son.

3 Q Are you sure that is not Phillip?

4 A It could be Phillip.

5 Q Okay. So we know who that is. All right. Did
6 Ricky tell you who he was on the phone with? Did
7 you know he was on the phone?

8 A I did not know he was on the phone.

9 (Video plays.)

10 Q Okay. Ricky's truck is back over here, right?

11 A It is down the road.

12 Q Right. This direction?

13 A Yes, ma'am.

14 Q And that is the direction he had come running from,
15 correct?

16 A Yes, ma'am.

17 Q Okay. Would you agree with me -- because I was
18 talking I may need to play it again -- but that he
19 is on the phone? I'll play it. I will play it for
20 you. And I won't talk this time.

21 I know it is hard to hear, but --

22 A It does sound like a phone.

23 Q It appears that his arm is up to his face and that
24 somebody is talking?

25 A Yes, ma'am.

1 Q Fair enough? Okay.

2 (Video plays.)

3 Q Is that still Ricky?

4 A Yes, ma'am.

5 Q Okay. Do you know where he is going?

6 A No, ma'am.

7 Q Okay. You didn't get to go back and ask him after
8 you watched the video?

9 A I did not go back and ask him, no, ma'am.

10 MS. ZMROCZEK: Beg the Court's indulgence.

11 (Pause.)

12 BY MS. ZMROCZEK:

13 Q Thank you, Investigator Holdorf. I have no further
14 questions.

15 THE COURT: You said no further questions?

16 MS. ZMROCZEK: I did.

17 REDIRECT EXAMINATION

18 BY MS. SAMPSON:

19 Q All right, Investigator Holdorf, a couple of
20 things. We will kind of work in reverse order.

21 Ms. Zmroczek just asked you about these things
22 that Ricky did afterwards. Why did you not ask him
23 about what happened after the shooting?

24 A The shooting has already happened. While I might
25 have something -- it is good information to have,

1 but it is not what happened at the incident itself.

2 Q And she says at least you could have tried to go
3 look at the truck. Can you explain to the jury
4 again why that didn't happen?

5 A At the time I didn't know about the truck. When I
6 realized there was a truck involved and the degree
7 in which it was involved, it has been well out of
8 any type of police custody or any neutral party's
9 custody to say this is exactly how it was. I
10 didn't feel there was anything probative that I
11 would be able to find or recover at that time.

12 Q And what if you did find anything a day later or
13 two days later? What evidentiary value would that
14 have for us?

15 A You are not having any evidentiary value.

16 Q Why not?

17 A There is no chain of custody. I can't say that
18 this was there at the time. It becomes very -- it
19 is almost impossible.

20 Q And at the time that you are speaking to
21 Ms. Volstromer and Mr. Volstromer, did they give
22 you any indication that there was something in the
23 truck that you needed to go look at?

24 A They did not.

25 Q And she asked you about -- let me ask you this.

1 When you are deciding what to look at and what to
2 investigate, how do you determine what to look at
3 and what to investigate?

4 A You try to look at and investigate everything. It
5 is not a perfect world, so you are going to have
6 something that might be missed. You try to talk to
7 other people at the scene, other people who were
8 there to try to find out what they know and what
9 they saw. And you are just trying to get as much
10 information as you can so you can make the best
11 decision at the time.

12 Q And would it be fair to say you are relying on what
13 witnesses tell you to determine how to go about
14 your investigation to some extent?

15 A Very heavily.

16 Q Now, she asked you about arresting someone for
17 harassment and stalking, and that one of the
18 elements was damage to property, correct?

19 A Yes, ma'am.

20 Q She asked you that. Did Mr. Volstromer or Barbara
21 Volstromer tell you that Mr. Pruitt had damaged
22 their property?

23 A No, they did not.

24 Q She asked you about why you didn't ask him about
25 when he purchased the gun. What, if anything,

1 would the relevance be to you of when he purchased
2 the gun for this case?

3 A There would be none. If I was trying to add a gun
4 charge to someone. He was charged with a very
5 significant charge, that being murder.

6 Q And let's be clear. Was it unlawful for him to
7 possess that gun?

8 A No. When the gun is put in evidence, the serial
9 number will be ran. If it comes back stolen, then
10 obviously that would have been an issue. It did
11 not, so there was no further -- anything for me to
12 do on that side, I felt.

13 Q She talked to you about going back and speaking
14 with Mr. Volstromer or Ms. Volstromer, going back
15 and doing things after your report ended. I'll
16 focus on that, all right? Your report stops I
17 believe she said December 28th of 2015.

18 A Yes, ma'am.

19 Q Did you continue to do things in the investigation?

20 A I continued to look at things. There was nothing
21 probative that I found.

22 Q And I think you said on direct that you even tried
23 to get the photographs from the camera?

24 A Yes, ma'am.

25 Q What did you want in order to get those

1 photographs?

2 A If there is information there, let's see what we
3 have.

4 Q Not why, what would you have done to get it? What
5 did you need from the Defendant?

6 A I would either need a consent to search or produce
7 a search warrant for it.

8 Q And do you remember asking to get that from either
9 myself or his attorney at the time?

10 A I asked for you to get the consent from the
11 attorney so we could be covered under --

12 Q Were we ever able to get that while you were
13 working for the Sheriff's Department?

14 A No, ma'am.

15 Q But at some point it was?

16 A It was.

17 Q And you did continue to look at things at that
18 point, right?

19 A Yes, ma'am.

20 Q I am going to show you what has been marked as
21 State's Exhibits 38, 39, 40, and 41 and ask if you
22 recognize those?

23 A Yes, ma'am.

24 Q And what are those?

25 A These are photos of Ricky's truck as they are

1 approaching Ms. Barbara. There are four photos.

2 And you can see Ricky and Keith inside the truck.

3 Q Are those fair and accurate depictions of what was
4 taken off the camera that day?

5 A Those are.

6 Q At some point?

7 MS. SAMPSON: At this time, Your Honor, I
8 would ask to introduce State's Exhibits 38, 39, 40
9 and 41 into evidence.

10 MS. ZMROCZEK: Without objection, Your Honor.

11 THE COURT: They will be entered.

12 (WHEREUPON, State's Exhibit Nos. 38-41
13 were marked for identification and
14 received into evidence.)

15 BY MS. SAMPSON:

16 Q And so State's Exhibit Number 38 is, what were you
17 saying? What is that?

18 A The truck is approaching where Ms. Volstromer is
19 standing beside her fence in the road.

20 Q State's Exhibit 39?

21 A That is a picture of Mr. Ricky, who is in his truck
22 in the drive.

23 Q State's Exhibit 40?

24 A A close-up of Ricky.

25 Q And State's Exhibit 41?

1 A You can see both Ricky and Keith.

2 Q And Keith, where is Keith?

3 A Keith is the passenger, like he is waving.

4 Q And but these were attained at some point after
5 December of 2015?

6 A Yes, ma'am.

7 Q Did you write it down in your report?

8 A No, ma'am.

9 Q But it happened?

10 A It did.

11 Q Okay. So just because something is not written in
12 your report doesn't mean you didn't do it?

13 A No, ma'am.

14 Q Now, she asked you also about what else you didn't
15 put in your report. Did you put that you got the
16 GSR results in your report?

17 A I did not.

18 Q Did you get them?

19 A I did.

20 Q How about the autopsy? Did you write that in the
21 report?

22 A I did not.

23 Q Did you get it?

24 A I did.

25 Q Let me see. She asked you about going back and

1 speaking with Ms. Volstromer in January of 2016?

2 A Yes, ma'am.

3 Q You didn't write that down?

4 A Did not write it down.

5 Q Let me ask you this. Had she told you that Keith
6 Pruitt was out there with a weapon, would you have
7 written that down?

8 A That would have been very important.

9 Q If she would have told you that she saw a gun that
10 night with him, would you have written that down?

11 A That would have been important.

12 Q How about that she saw any weapon at all, would you
13 have written that down?

14 A Yes, ma'am.

15 Q Okay. But you didn't write that down?

16 A No, ma'am.

17 Q Didn't happen?

18 A There was nothing significant that I recall from
19 that.

20 Q Now, let's talk a little bit about, she asked you
21 about a conversation that you had with Mr. Holten,
22 who is again dead and can't come tell us anything,
23 right?

24 A Right.

25 Q So she asked you specifically -- do you still have

1 your report up there with you and the statement?

2 A I do not have the statement. I have my --

3 Q Do you have your report? I'm sorry.

4 A Yes, ma'am.

5 Q Specifically, she asked you if you stated to
6 Mr. Holten that -- I don't want to get it wrong, so
7 I'm looking for it -- why did they stop and not
8 keep going, right?

9 A Yes, ma'am.

10 Q And that, I did attempt to explain to him that if
11 he did not stop, then none of this would have
12 happened?

13 A Yes, ma'am.

14 Q That it looks like they were instigating an
15 argument?

16 A Yes.

17 Q What did you mean by that?

18 A It takes two people to have an argument. By
19 stopping there and engaging with Ms. Volstromer for
20 the argument, I went on to tell them that both
21 sides -- instead of acting like adults, they were
22 acting like kids, and as a result his friend was
23 shot.

24 Q Does that mean that because they stopped that
25 Mr. Pruitt should have been shot?

1 A He should not have been shot.

2 Q She asked you about having a second conversation
3 with him and that you told him if he could give a
4 legal reason why they stopped in the road and
5 instigated an argument, that you would look into
6 it, and instead of acting like adults, they were
7 acting like kids. What did you mean by that?

8 A Either party, if the Volstromers turned around and
9 went back inside their house, this doesn't happen;
10 if Ricky and Mr. Pruitt keep going down the road,
11 none of this happens.

12 Q Now, did they have to go back in the house? It is
13 their property, right?

14 A Neither party had to do anything. Each party was
15 within their boundaries, if you will.

16 Q So was there anything illegal about Mr. Pruitt
17 being on that road?

18 A No, ma'am.

19 Q Was there anything illegal about Mr. Holten being
20 on the road?

21 A By legal -- I thought of being just a valid reason
22 for them to stop, something, Hey, a kid was
23 crossing the road or something, a reason why they
24 would have stopped. Not necessarily per se legal.
25 But I understand when I wrote it that the meaning

1 behind it is more of, Is there a valid reason why
2 you stopped?

3 Q But they can stop? That doesn't give -- does that
4 give someone the right to shoot them?

5 A It does not.

6 MS. SAMPSON: Beg the Court's indulgence.

7 (Pause.)

8 BY MS. SAMPSON:

9 Q When you spoke with Mr. Volstromer, or Ms.
10 Volstromer, for that matter, did they tell you
11 anything about being afraid of being attacked by
12 dogs?

13 A No, ma'am.

14 Q And she asked -- Ms. Zmroczek asked you about prior
15 times that law enforcement had been called and
16 whether there were property disputes. Do you
17 remember that she asked you about the prior
18 incidents?

19 A Yes, ma'am.

20 Q In either of those two prior incidents, was there
21 any indication that Mr. Pruitt came on their
22 property?

23 A No.

24 Q Any indication that he had a weapon and did
25 something to their property?

1 A There was nothing there.

2 Q Any indication that he had a weapon and used that
3 weapon to threaten them in any way?

4 A No.

5 Q And just to be clear, when you spoke with him for
6 that three hours that you spoke with him, and also
7 when you did that written statement with him, did
8 he ever say he saw the victim with a weapon?

9 A He did not.

10 Q Did he ever say he thought the victim had a weapon?

11 A He did not.

12 Q Did he ever indicate to you that he was scared of
13 the victim?

14 A He did not.

15 Q Did he ever say that he was scared for his wife
16 from the victim?

17 A He did not.

18 Q And did you ask him about being scared during the
19 three hours?

20 A I'm trying to ask more open-ended questions. You
21 know, Did he do anything to threaten you? I'm not
22 trying to add words or give him anything that he
23 would pick up on, no.

24 Q I am going to stop you. You specifically asked
25 him, Did Pruitt do anything to threaten you?

1 A Yes, ma'am.

2 Q And his answer was?

3 A No.

4 Q Now, he did say, I didn't know what he was
5 grabbing, but did he say, I thought he was grabbing
6 a weapon or he could have been grabbing a weapon?
7 Anything?

8 A He didn't say anything about a weapon.

9 Q And to be clear, what you wrote down as the reason
10 that this happened, coming from his mouth is, He
11 was just cocky, he reached in the cooler, I did not
12 know what he was grabbing, I don't remember if he
13 said anything, I think he said something to me, and
14 I shot him?

15 A That is correct.

16 Q There is nothing in his statement over three hours
17 talking to him about Mr. Pruitt coming to the
18 fence?

19 A No, ma'am.

20 Q There is nothing that says he was coming under the
21 fence?

22 A It was not.

23 Q And let's talk about the fence for a second,
24 because none of us talk about that. Is there a way
25 to get onto their property right there where they

1 are standing? How would you get on their property?

2 A You would have to come through the fence.

3 Q And what do you mean by come through the fence? Is
4 there a door?

5 A No, you would have to -- between the top post and
6 the bottom post, or over the top post, which would
7 be a little more difficult.

8 Q So have to climb?

9 A Or jump very high.

10 Q In fact, don't you see Ms. Volstromer do that when
11 she goes to check?

12 A She goes between the two posts.

13 Q And what does she do to get back on the property?

14 A Between the two posts.

15 Q So would it be fair to say if Mr. Pruitt wanted to
16 get on their property from there, that is how he
17 would have had to do it?

18 A Correct.

19 Q And they didn't tell you he tried to do any of
20 that, right?

21 A They did not.

22 MS. SAMPSON: Nothing further, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. ZMROCZEK: Thank you, Your Honor.

25 THE COURT: Recross.

1 MS. ZMROCZEK: Thank you.

2 RECROSS-EXAMINATION

3 BY MS. ZMROCZEK:

4 Q Investigator Holdorf, you saw the video and you
5 heard the words out of Keith Pruitt's mouth, right?

6 A Yes, ma'am.

7 Q So and you testified on cross that those weren't
8 threatening?

9 A Yes, ma'am.

10 Q So when he says no, maybe he -- was he lying to you
11 or a different state of mind, or did you do any
12 follow-up?

13 A Again, once Mr. Pruitt is -- excuse me, once
14 Mr. Volstromer is booked, he has legal
15 representation. I can't just go and talk to him or
16 continue interviewing him then.

17 Q And he is not a lawyer, right, Mr. Volstromer?

18 A Mr. Volstromer is not.

19 Q And he is not familiar with what he, you know,
20 needed to say three hours after that, what he was
21 feeling, right?

22 MS. SAMPSON: Objection, Your Honor. Calls
23 for speculation, what he thought he needed to do.

24 MS. ZMROCZEK: I will withdraw the question.

25

1 BY MS. ZMROCZEK:

2 Q You were asked if he ever said anything about a
3 dog, right?

4 A I don't recall the word "ever." I mean, there are
5 certain buzz words, never, always --

6 Q Sorry, let me rephrase that. She said, In his
7 statement, did he ever mention a dog?

8 A I don't --

9 Q And you said no, right?

10 A I'm looking at Page 2 where dog just jumped out at
11 the very bottom, the second paragraph towards the
12 end.

13 Q Go ahead and read that.

14 A Asked the question, When did you put in your
15 surveillance system? His response, he put it up
16 six to seven months ago because My wife got knocked
17 over by Pruitt's dog and fractured a rib. I had
18 the dog and I told Pruitt to get his dog. He just
19 left. He threatened my wife to come out past the
20 fence and he would hit her. Before he moved in, we
21 never had any problems. We have even been looking
22 for another place to move.

23 Q She asked you about the pictures, and you said that
24 you needed consent or a warrant, right?

25 A Yes, ma'am.

1 Q You see in the warrant, right, or no?

2 A That would be -- from my understanding, the
3 warrant, again Carter was the one that obtained it,
4 that was for the video system. I didn't recover
5 the camera. You are the attorney.

6 MS. ZMROCZEK: May I mark it?

7 (WHEREUPON, Defendant's Exhibit No. 17
8 was marked for identification only.)

9 BY MS. ZMROCZEK:

10 Q Marked for ID Defendant's Number 17.

11 A Thank you, ma'am.

12 Q You are very welcome. I know that Investigator
13 Carter, who testified this morning, he did the
14 warrant, right?

15 A Yes, ma'am.

16 Q And when I say, did the warrant, he went in front
17 of the magistrate and told him or her all of the
18 reasons that they needed the warrant, specifically
19 what he was looking for, and why, correct?

20 A Correct.

21 Q And that warrant gives him permission to collect
22 any and all electronic devices and download them,
23 including cell phones, cameras, video systems,
24 computers?

25 A It does.

1 Q It does. So you actually had the search warrant,
2 right?

3 A I did.

4 Q Okay. And I want to be clear on this testimony.
5 Is it your testimony today on that stand that once
6 you don't have control of property, that it is not
7 to be in evidence because you don't know what
8 happened to it? That is what I heard, so I want to
9 make sure that you correct me.

10 A No. Each case and each scenario is going to be
11 different. On this one, as it pertains to the
12 truck, I did not feel that there was anything
13 probative I would be able to obtain from the truck
14 itself because the amount of time that it was gone
15 from the scene and not in police custody.

16 Q Right. But it was in police view?

17 A For a short period, yes. I didn't --

18 Q You didn't have -- you didn't watch the video until
19 after, I get that. But it was in police view on
20 the cameras? You knew exactly where it was and how
21 long it stayed there and that it didn't leave?

22 A It took a little while longer before I saw Video 3
23 or Channel 3, which would have covered the truck,
24 but, yes, ma'am, eventually.

25 Q Okay. So you didn't watch Channel 3 when you

1 watched Channel 1?

2 A No. At the time I could only watch one at a time.
3 I'm not the most technology savvy person sometimes
4 and trying to get it to play can be a real guessing
5 game.

6 Q But you had Investigator Metz, right?

7 A Not then. He was -- he works at the department.
8 He was not there with me when I'm working on trying
9 to download this and view the video.

10 Q Okay. And you heard Barbara's 9-1-1 call where she
11 is saying, I was afraid? You heard that, right?

12 A I also see her going towards the fence instead of
13 just leaving.

14 Q Right.

15 A If you are afraid, leave.

16 Q Leave her own place?

17 A She doesn't have to leave her own place, but there
18 is no reason for her to stay up against the fence.
19 She actually goes up to the fence. Moments before
20 the shot she goes up to the fence. That is not
21 really a -- that is not characteristic of someone
22 who is afraid.

23 Q And sometimes when people are afraid, they do
24 things that don't make sense?

25 A She was more angry than afraid, in my point of

1 view.

2 Q In your point of view, right?

3 A Yes, ma'am.

4 Q Are you familiar at all with her background?

5 A Now?

6 Q At the time when you made the decision that she
7 went to the fence, were you familiar at all with
8 her background?

9 A No, ma'am.

10 Q Okay. Would you be angry if you got fractured
11 ribs?

12 A There comes a time when you just have to pick and
13 choose what battles you want to have.

14 Q Okay.

15 A If you knew that there was going to be a problem,
16 if there had been previous problems, if you feel
17 threatened, we have law enforcement for those
18 reasons, to stop people from getting hurt. Even
19 with the deputies getting on the scene, our primary
20 job is to stop people from getting hurt.

21 Q And you said that -- and I want to make sure that
22 this is clear -- you didn't inquire as to what
23 Pruitt meant when he said, You remember what I told
24 you last time?

25 MS. SAMPSON: Objection, Your Honor. She is

1 going beyond the scope of redirect.

2 MS. ZMROCZEK: She asked it on cross -- or,
3 excuse me, on redirect. On redirect she said that,
4 He never said he was threatened, right?

5 MS. SAMPSON: He never said he was threatened.
6 She is now asking about what Mr. Pruitt said in the
7 video.

8 MS. ZMROCZEK: I will rephrase the question.

9 THE COURT: Yes, please do.

10 MS. ZMROCZEK: Thank you.

11 BY MS. ZMROCZEK:

12 Q Is it your position that you have to wait for
13 someone to come onto your property when they are
14 threatening you?

15 A Do I have to do --

16 Q Let me ask it this way. How about this? This is a
17 much better way to ask it. What is a furtive
18 movement?

19 A Reaching into your pants, something where you are
20 portraying like you have a weapon.

21 Q Okay.

22 A Or just being plain outright fidgeting. It would
23 depend on how it is used, but there is a number of
24 ways. It is something that is telling that there
25 is something else there.

1 Q That something is not right and it is a movement
2 that makes it seem that something is not right,
3 right?

4 A Can be, yes, ma'am.

5 Q Okay. And we hear furtive movements a lot for
6 reasons for police to be able to arrest or detain
7 or sometimes protect themselves, right?

8 A Can be, yes, ma'am.

9 Q Okay. Is that any different for people, lay
10 people?

11 A If this was a police officer that did this
12 shooting, he would have been arrested.

13 Q And if there were -- and then if they found a
14 furtive moment, would that excuse it?

15 A It does not.

16 Q And that is your testimony, that it does not?

17 A Furtive movement alone when there is a fence
18 between you and they are not on the property, there
19 is not that immediateness. No, ma'am. You would
20 be in some serious jeopardy.

21 Q Right, but furtive movement with threats, that is
22 something different, right?

23 A You are adding to it, but you still are not there.

24 Q Right. Okay. And I'm going to show you lastly
25 Defense ID 9, 16, and 15. There were more than

1 just those pictures of Mr. Pruitt that were on the
2 end of that camera, right?

3 A Yes, ma'am. Ms. Volstromer stated that she had a
4 landscaper coming, I believe, and was taking
5 pictures for that.

6 Q Okay. And do those pictures fairly and accurately
7 represent the other pictures that were taken before
8 Mr. Pruitt comes up?

9 A I assume so, yes, ma'am.

10 Q They are timestamped, right?

11 A They are.

12 MS. ZMROCZEK: Your Honor, at this time we
13 would move Defendant's 9, 15, and 16.

14 A I want to say it is off by an hour on the photo.

15 Q I'm sorry?

16 A It says 17.

17 Q On the front. Sorry.

18 THE COURT: 9, 15, and --

19 MS. SAMPSON: I haven't seen them, Your Honor.

20 MS. ZMROCZEK: 9, 15, and I showed them
21 yesterday, but 16.

22 MS. SAMPSON: No objection.

23 THE COURT: You said no objection?

24 MS. SAMPSON: No, ma'am.

25 THE COURT: They will be entered without

1 objection.

2 (WHEREUPON, Defendant's Exhibit Nos. 9,
3 15 & 16 were marked for identification
4 and received into evidence.)

5 BY MS. ZMROCZEK:

6 Q And just one last question. On Defendant's 16,
7 what does that say right there on that fence?

8 A On the fence it says, No trespassing. But, again,
9 Mr. Pruitt would be on the other side of that.

10 Q Thank you.

11 MS. ZMROCZEK: Nothing further, Your Honor.

12 THE COURT: All right, you may step down.

13 THE WITNESS: Thank you, Judge.

14 (Witness steps down.)

15 THE COURT: Call your next witness.

16 MS. SAMPSON: Your Honor, at this time the
17 State rests.

18 THE COURT: All right. Ladies and gentlemen
19 of the jury, the State has rested. At this time
20 there are some matters of law that I need to take
21 up outside your presence, and also it is time for
22 our afternoon break. So we will take about 15 to
23 20 minutes.

24 Like I say, there are some matters of law that
25 I need to take up, so I am going to do that while

1 you all are on break, and we will see you back in
2 the courtroom shortly.

3 Please do not discuss the case.

4 Thank you.

5 (WHEREUPON, the jury retires to the jury
6 room at 3:49 p.m.)

7 THE COURT: All right. Any motions?

8 MS. ZMROCZEK: Your Honor, at this time the
9 Defense would move for a directed verdict on the
10 sole charge of murder, obviously focusing on the
11 malice, especially with the testimony that was just
12 given, his acting like kids -- or adults not acting
13 like adults, acting like children. That, in
14 combination with Mr. Volstromer on the video
15 walking back saying, Why did you make me do this?
16 As you are aware, the intent jury charge talks
17 about we can't, you know, dissect the brain and
18 think about what they were doing. In this case we
19 don't have to because Mr. Volstromer says it right
20 there as soon as it happened, Why did you make me
21 do this?

22 Your Honor, that is the clear not definition
23 of malice. And for that reason, we would at this
24 time ask for a directed verdict on the sole charge.

25 MS. SAMPSON: Your Honor, it seems like Ms.

1 Zmroczek is forgetting the part where he says, I
2 have had it, and shoots him.

3 And the evidence has been presented, Your
4 Honor, and there has been plenty to give this case
5 to the jury about clearly they are not arguing
6 about whether he was killed by gunshot or this
7 Defendant did kill him, so I am not going to talk
8 about that. Her only issue is malice, Your Honor.
9 He took a loaded weapon to a word fight, he pointed
10 it at the victim, he said, I have had it. He gave
11 statements to Investigator Holdorf that the victim
12 was cocky, so he just shot him. I think there is
13 plenty for the jury to be able to come to and
14 decide whether this is a murder or not. And we
15 would ask that you continue to allow this case to
16 go to the jury.

17 THE COURT: All right. Based on the testimony
18 before the Court and the evidence before the Court,
19 I do find that there is sufficient evidence as to
20 all the elements of murder to go before the jury.
21 It is an issue of fact for the jury to decide. And
22 in the light most favorable to the non-moving
23 party, the Court will respectfully deny the motion
24 for directed verdict. All right.

25 MS. ZMROCZEK: Thank you, Your Honor. I have

1 my witnesses available and I am ready to go.

2 THE COURT: All right. Well, I need to advise
3 your client.

4 MS. SAMPSON: Also, Your Honor, there may be
5 some matters of law.

6 MS. ZMROCZEK: Not with today's clients.

7 MS. SIMPSON: I don't know who her witnesses
8 are, so there may be -- before we bring a jury
9 back --

10 THE COURT: And when you say today's
11 clients --

12 MS. ZMROCZEK: Yes, ma'am. Today I have --

13 THE COURT: Witnesses, I mean.

14 MS. ZMROCZEK: I have three witnesses, two
15 will be very short, I think. And that is the
16 coroner and a hospital representative from Prisma
17 Health. And then I have my digital forensic
18 expert, Chris Watkins. And that is going to
19 include watching some videos that were blown up,
20 and so that is going to take quite some time.
21 Tomorrow I believe I will have four witnesses, and
22 those are the witnesses that I think will get
23 into -- or I think those are the issues that we
24 will deal with -- four or five, depending on the
25 Court's ruling. And so today's witnesses, like I

1 said, are the coroner, which is her report; the
2 hospital lady, which is her report; and the digital
3 forensics expert, which is several videos.

4 THE COURT: All right. I still have to give
5 him -- because not only is he testifying, but he is
6 introducing evidence.

7 All right, sir, let me have you stand up.
8 (Defendant stands.)

9 THE COURT: And I'll ask the clerk to place
10 him under oath.

11 THE CLERK: Please raise your right hand.
12 (Defendant complies.)

13 THE CLERK: Do you swear or affirm the answers
14 you shall give this Court to be the truth, the
15 whole truth, and nothing but the truth, so help you
16 God?

17 THE DEFENDANT: Yes, ma'am.

18 THE CLERK: Thank you.

19 THE COURT: All right. So, Mr. Volstromer, at
20 this time I am going to explain to you certain of
21 your rights. If you do not understand anything
22 that I say, please let me know. If you want me to
23 explain anything in more detail, please let me
24 know. Do you understand? Do you understand that?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: All right. And you can pull your
2 mask down, sir, when you are speaking.

3 We have now reached the stage of the trial
4 where you may present your defense. You have the
5 right to claim the protections given to you by the
6 Fifth Amendment to the Constitution of the United
7 States. This amendment states in part: No person
8 shall be compelled in any criminal case to be a
9 witness against himself. This means that you can
10 not be required to testify in this case. You have
11 the right to testify on your own behalf. However,
12 no one can make you testify. This is a personal
13 right, and no one can waive this right except you.

14 If you decide to testify, you will be subject
15 to the same rules that govern other witnesses, and
16 you may be examined and cross-examined on any
17 relevant issues in this case. In addition, if you
18 have any convictions involving dishonesty or false
19 statements or for crimes punishable by imprisonment
20 for more than one year and this Court determines
21 that the probative value of admitting this evidence
22 outweighs its prejudicial effect to you, the
23 Solicitor will be able to introduce your record to
24 attack your credibility.

25 If you decide to testify, this decision is on

1 your part. It must be freely, voluntarily, and
2 intelligently made, with the knowledge of the
3 protections given to you by the Fifth Amendment and
4 the consequences of your decision to testify.

5 If you decide not to testify, I will instruct
6 the jurors that they cannot give the fact that you
7 did not testify any consideration whatsoever and
8 that there is to be absolutely no prejudice to you
9 because you did not testify.

10 It is left entirely up to you whether or not
11 you testify. You may talk with your attorney, your
12 family, and your friends, or anyone else, but the
13 final decision will be left entirely up to you.

14 Do you understand what I have explained to
15 you?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Do you have any questions about
18 what I have explained to you?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: And have you discussed with your
21 attorney whether you should or should not testify?
22 You don't have to answer to me, tell me what y'all
23 discussed, but y'all have discussed it?

24 THE DEFENDANT: We have discussed it.

25 THE COURT: And do you wish to talk to your

1 lawyer any more at this time?

2 THE DEFENDANT: Oh sure.

3 THE COURT: About your testimony? About
4 testifying?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: All right. And then I will -- he
7 is not -- if he testifies, he is not testifying
8 today?

9 MS. ZMROCZEK: No, ma'am.

10 THE COURT: All right. And my understanding
11 from Ms. Zmroczek is he is testifying, is that
12 correct?

13 MS. ZMROCZEK: That what?

14 THE COURT: He is testifying, is that correct?

15 MS. ZMROCZEK: Yes, ma'am.

16 THE COURT: All right. Thank you. You may be
17 seated.

18 (Defendant seated.)

19 THE COURT: All right. So let's go ahead and
20 take a break, I guess, and come back in ten
21 minutes.

22 Oh, yes, I'm going to put on the record -- I
23 wanted to put on the record, there was an objection
24 on cross-examination by the State, Ms. Zmroczek was
25 soliciting a question. I believe the specific

1 question was -- I can't -- well, I can't say
2 specifically, but the question was about who -- was
3 there anyone there that was not supposed to have a
4 gun, who could not even possess a gun. And there
5 was an objection. And I will let y'all put that on
6 the record.

7 MS. SAMPSON: Yes, ma'am. Ms. Zmroczek
8 asked -- I wrote it down. She stated there were
9 classes of people who could not possess a gun. And
10 then she asked was there anybody involved who could
11 not possess a gun. And I objected because we are
12 aware that Mr. Pruitt had a prior -- has a prior
13 conviction that would keep him from being able to
14 possess a weapon. If she had been allowed to ask
15 that question and he be allowed to answer, Mr.
16 Pruitt, then the jury would be left with knowing
17 about his record that we have not established that
18 she can go into. And that is why I objected to it.

19 MS. ZMROCZEK: And, Your Honor, obviously we
20 discussed that he has more than one conviction and
21 that that is an issue that I agree is properly
22 decided on tomorrow.

23 THE COURT: What now?

24 MS. ZMROCZEK: As I understand it, we are
25 going to argue that -- once we have -- and we have

1 made a motion that we haven't argued under
2 404(a)(2), Your Honor, and we intend to argue that
3 motion. We will not discuss that until the Court
4 makes a ruling on that specific motion under
5 404(a)(2).

6 THE COURT: Yes. And the reason the objection
7 was sustained is because there has been no
8 discussion about him having a gun.

9 MS. ZMROCZEK: And that testimony will come
10 out tomorrow.

11 THE COURT: All right. Let's take about ten
12 minutes.

13 (WHEREUPON, a break was taken.)

14 THE COURT: Tomorrow we will go over the
15 issues?

16 MS. SAMPSON: Yes, ma'am, at some point. I'm
17 not sure when she is going to try to introduce the
18 evidence I am objecting to, but at some point, yes,
19 ma'am.

20 THE COURT: So I'll just tell the jurors to
21 come at 10:00. It shouldn't take that long, I am
22 already familiar with the issues. If you have case
23 law, it will help.

24 All right, bring them on in.
25

1 (WHEREUPON, the jury came into open
2 court at 4:25 p.m.)

3 THE BAILIFF: The jury is present, Your Honor.

4 THE COURT: All right. Ladies and gentlemen
5 of the jury, the State has rested. At this time I
6 will turn to the Defense and see if they have any
7 witnesses.

8 MS. ZMROCZEK: May it please the Court, Your
9 Honor? We do.

10 THE COURT: Yes, ma'am.

11 MS. ZMROCZEK: Thank you. For our first
12 witness we call Ms. Nell Mauney.

13 (Witness approaches.)

14 THE BAILIFF: Place your left hand on the
15 Bible, and raise your right hand, please.

16 (Witness complies.)

17 THE CLERK: Do you swear or affirm the
18 testimony you shall give in this case will be the
19 truth, the whole truth, and nothing but the truth,
20 so help you God?

21 THE WITNESS: Yes, I do.

22 THE CLERK: Thank you. Please have a seat in
23 the witness stand, and state your full name for the
24 record.

25 (Witness seated.)

1 THE WITNESS: Elizabeth Nell Mauney,
2 M-A-U-N-E-Y.

3 E. NELL MAUNEY,
4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ZMROCZEK:

7 Q Thank you for being here, Ms. Mauney. Where were
8 you employed on December 27th of 2015?

9 A I was the Deputy Coroner for Richland County.

10 Q And do you still do that, or have you retired?

11 A I retired as of January of this year to take care
12 of my father, who subsequently died.

13 Q And I'm so sorry for your loss.

14 A Thank you, ma'am.

15 Q Thank you for being here. I know it is difficult.
16 Ms. Mauney, as the Deputy Coroner, what
17 responsibilities do you have?

18 A Over the course of approximately 11, 12, years I
19 worked there, I responded to hundreds, if not
20 thousands, of deaths, to include senior responses,
21 dead-on-arrivals, traffic fatalities, train
22 fatalities, suicides, homicides. My main function
23 in that effort was to do the death investigation
24 and set people up for autopsy, decedents up for
25 autopsy, and also to obtain evidence off of the

1 body, if necessary.

2 Q And did you do that in this case?

3 A I responded to the ER in this case, yes.

4 Q And so how are you notified -- by whom are you
5 notified where you need to go?

6 A We have an answering service that notifies us of
7 the basic calls, but then in this case, as is all
8 hospital cases, the administrator on duty, who was
9 a nurse, charge nurse, called to inform us of the
10 death in the emergency room, and it was this case.

11 Q Thank you. And so you said you do a death
12 investigation, right?

13 A That's correct.

14 Q And what does that entail?

15 A Well, the basic would be -- our concern is the
16 body, and therefore we do extensive photography of
17 the body; we collect DNA swabs, referred to also as
18 buccal swabs from the mouth; we also bag the hands;
19 collect fingernail scrapings as necessary. I go to
20 the lab at the hospital, collect any blood and
21 urine that is obtained and what is called
22 admissions blood. All of that is submitted in the
23 morgue in the refrigerator and it will subsequently
24 go to SLED for analysis. Other physical objects I
25 would take from the body would be logged in at our

1 evidence facility at the Coroner's Office.

2 Q And, of course, you did that in this case, right?

3 A Yes.

4 Q And you -- so I want to talk about the blood draw.
5 You sent that to SLED, is that correct?

6 A Yes.

7 Q And then they send you the results back?

8 A They do.

9 Q And you are able to read their results?

10 A That's correct.

11 Q Okay. Did you receive results in this case?

12 A Just now, just today did I notice that those were
13 included in the report, and I took a cursory glance
14 at them, but I am not a toxicologist and I cannot
15 interpret values relating to standards and norms.

16 Q Right. But you can read the numbers that they give
17 you, right?

18 A Sure.

19 Q And what was the number that they --

20 MS. SAMPSON: Your Honor, I'm going to object.
21 She just said she can't testify as to how this was
22 done, the testing, or any of that, so she can't
23 testify to the results.

24 MS. ZMROCZEK: I can ask it -- I can lay a
25 better foundation, Your Honor. I mean, all I am

1 asking her to do is read a report that was given to
2 her.

3 MS. SAMPSON: Right.

4 THE COURT: Let me see you one second.

5 (WHEREUPON, a bench conference was held
6 in the presence of the jury but out of
7 the hearing of the jury.)

8 THE COURT: Ladies and gentlemen of the jury,
9 let me send you all out one second.

10 (WHEREUPON, the jury retires to the jury
11 room at 4:33 p.m.)

12 THE COURT: I can't remember your words
13 exactly, but if she is not qualified to interpret
14 the reading -- I think that is what she just said,
15 that she -- what did she just say? So how is she
16 going to testify to it? Because you are asking her
17 to -- you are asking -- I think you need the
18 toxicologist to testify to that. She can't -- I
19 mean, if she can't say how it was drawn, how it was
20 taken, how anything, time, anything like that,
21 affects the number, I think it would be improper to
22 put that in front of the jury.

23 MS. ZMROCZEK: Okay. That's fine, Your Honor.

24 THE COURT: Especially after she just said she
25 isn't qualified. I mean, I know, that is because

1 she has testified before me. She knows whether she
2 is qualified to testify to it or whether she is not
3 qualified.

4 MS. ZMROCZEK: Okay.

5 THE COURT: I'm not sure how you are going to
6 get that in.

7 MS. ZMROCZEK: It is all good, Your Honor. I
8 can move on.

9 THE COURT: All right.

10 MS. ZMROCZEK: But, oh, actually before we do,
11 Your Honor, it is my understanding that
12 yesterday -- I need to know if State's 45 was moved
13 into evidence, and if it wasn't, then I need to
14 move mine in.

15 MS. SAMPSON: It is my understanding it was.

16 MS. ZMROCZEK: That is why I am clarifying.

17 THE COURT: Court Reporter?

18 THE COURT REPORTER: I have it in.

19 MS. ZMROCZEK: You have it in? Perfect.

20 Excellent, thank you. As long as it is in, that's
21 great, Your Honor. I'll move on.

22 THE COURT: All right, let's bring them back
23 in.

24 (WHEREUPON, the jury came into open
25 court at 4:36 p.m.)

1 THE COURT: All right, the objection is
2 sustained.

3 MS. ZMROCZEK: Thank you.

4 DIRECT EXAMINATION CONTINUES

5 BY MS. ZMROCZEK:

6 Q So to be clear, you have the results, but you can't
7 interpret them, so we are going to move on. You
8 did send that to SLED, right?

9 MS. SAMPSON: Your Honor --

10 MS. ZMROCZEK: We are moving on.

11 THE COURT: Hold on.

12 BY MS. ZMROCZEK:

13 Q In your report --

14 THE COURT: We are missing a juror.

15 MS. ZMROCZEK: Oh.

16 THE COURT: There he is.

17 All right, the objection was sustained.

18 Please ask the next question.

19 MS. ZMROCZEK: Thank you.

20 BY MS. ZMROCZEK:

21 Q You do a report? You have an investigation form,
22 right?

23 A That's correct.

24 Q And you did one in this case?

25 A Yes, ma'am.

1 Q And you gathered information about the decedent, is
2 that correct?

3 A Yes, ma'am.

4 Q And then you put that information in a form?

5 A It is a quite lengthy, detailed report, yes, ma'am.

6 Q Right. You do a lot of work to get to this?

7 A Absolutely.

8 Q And so on Page 1 of this demographic data, you --
9 what do you have as far as identification of active
10 military or veterans?

11 A I have no under veterans. Obviously at the time I
12 did this report, I didn't -- wasn't aware if he was
13 a veteran, and I typically ask, being a Marine Corp
14 veteran myself.

15 Q And so you checked no on this, right?

16 A I checked no.

17 Q Okay. And then you -- so when you are at the
18 hospital and you are collecting items, what items
19 do you collect?

20 A Well, we do the extensive photography. We do DNA
21 swabs, as necessary, from the mouth. And at this
22 date, chronologically back in 2015, we weren't
23 doing DNA swabs on everybody at the scene. We
24 subsequently went on to DNA swab everybody, and
25 those are kept to eternity. In his case, I did the

1 photography, I examined the body, examined the
2 wound present, inquired about evidence, because
3 there was no jewelry or possessions on the body, so
4 that is when I inquired from the ER staff, because
5 they will oftentimes remove things from the body to
6 initiate treatment.

7 Q And did you learn that they had removed items from
8 the body?

9 A I did. And I annotated that on Page 7 of my report
10 that they had removed papers, a wallet, a knife,
11 and I annotated that in there. I even called my
12 supervisor to inquire did he want me to collect the
13 items that they had taken, and because of the
14 fragility of chain of custody, he said no. But I
15 want to interject that I did take pictures of the
16 items in the plastic bag that the ER personnel had
17 put that in and put it into the safe. I
18 photographed it, especially attention to the South
19 Carolina driver's license and the Blue Cross Blue
20 Shield medical card, because those aid us in
21 identification, further identification of the
22 deceased.

23 Q Thank you. I have no further questions. Please
24 answer any questions the State may have.

25 THE COURT: Yes, ma'am?

1 MS. SAMPSON: Beg the Court's indulgence.

2 (Pause.)

3 MS. SAMPSON: Excuse me, I'm sorry, Your
4 Honor.

5 CROSS-EXAMINATION

6 BY MS. SAMPSON:

7 Q Ms. Mauney, you stated that the items you were just
8 talking about, the wallet, the knife, miscellaneous
9 papers, did you ever see the actual knife?

10 A I palpated it in the bag. I knew there was a
11 fold-back pocketknife in the bag. And because
12 there was a Gerber pouch on his belt which was
13 open, that there is where they took the knife from.
14 He simply had it in his pouch. But I --

15 Q So --

16 A -- physically did not see the knife, no.

17 Q To the best of your knowledge, it was the kind that
18 folds down and it was folded?

19 A It was folded. And it was removed from the holder.

20 MS. SAMPSON: No further questions, Your
21 Honor.

22 THE COURT: Any redirect?

23 MS. ZMROCZEK: Just briefly.

24 REDIRECT EXAMINATION

25

1 BY MS. ZMROCZEK:

2 Q So, as I understood, she asked you that a knife was
3 collected from the Gerber pouch right on his belt?

4 A That is correct.

5 MS. ZMROCZEK: Thank you. No further
6 questions.

7 THE COURT: All right, you may step down. Any
8 objection to this witness being excused?

9 MS. SAMPSON: No, ma'am.

10 (Witness steps down and excused.)

11 THE COURT: Call your next witness.

12 MS. ZMROCZEK: Thank you, Your Honor. We call
13 Tonya Steadman.

14 (Witness approaches.)

15 THE BAILIFF: Place your left hand on the
16 Bible, and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you swear or affirm the
19 testimony you shall give in this case will be the
20 truth, the whole truth, and nothing but the truth,
21 so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. Please have a seat in
24 the witness stand, and state your full name for the
25 record.

1 (Witness seated.)

2 THE WITNESS: Tonya Steadman.

3 TONYA STEADMAN,

4 after being duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MS. ZMROCZEK:

7 Q Good afternoon, Ms. Steadman.

8 A Hi.

9 Q Can you please tell the jury where you work?

10 A Actually I work two jobs.

11 Q Okay. We are going to need you to speak up a lot
12 because I can't hear you.

13 A I work for the South Carolina Forestry Commission
14 and Prisma Health Richland.

15 Q So you have two jobs, the Forestry Commission and
16 then at Prisma Health?

17 A Yes.

18 Q Registration, is what you said?

19 A Correct.

20 Q And what are your duties at registration?

21 A So when a patient comes in, we go and update their
22 information in the system, get them to sign consent
23 and collect payment.

24 Q Okay. And you have additional duties to collect
25 personal property if the person is deceased?

1 A Well, we collect personal items if a trauma comes
2 in and they are not able to maintain their own
3 items, then the items are turned over to the
4 registration department.

5 Q Okay. And did you -- were you working on
6 December 27th of 2015?

7 A According to the documents you sent me, yes.

8 Q Okay. That has been quite some time, correct?

9 A Yes.

10 Q And so you received the documentation from the
11 hospital, right -- well, from me, but it was from
12 the hospital?

13 A Correct.

14 Q And on there, did you collect personal property
15 from a patient by the name of Keith Pruitt?

16 A Yes, ma'am.

17 Q And do you have that in front of you?

18 A I do.

19 Q Can you just tell us what you collected?

20 A I collected a brown wallet, two SC driver's
21 license, Pro Benefit MasterCard ending in 8168, a
22 Wells Fargo MasterCard ending in 9072, keys on a
23 white hook, lighter on a white and black hook, and
24 a black and brown knife.

25 Q Thank you. I have no further questions. Please

1 answer any questions the State may have.

2 A Okay, thank you.

3 THE COURT: Yes, ma'am?

4 CROSS-EXAMINATION

5 BY MS. SAMPSON:

6 Q Ms. Steadman, you don't know anything about how
7 that knife was used, correct?

8 A I don't.

9 MS. SAMPSON: No further questions, Your
10 Honor.

11 THE COURT: Anything else?

12 MS. ZMROCZEK: Nothing, Your Honor.

13 THE COURT: You may step down. Any objection
14 to this witness being excused?

15 MS. SAMPSON: Not from the State.

16 THE COURT: All right, you are free to leave,
17 ma'am.

18 (Witness steps down and excused.)

19 MS. SAMPSON: Your Honor, may we approach?

20 (WHEREUPON, a bench conference was held
21 in the presence of the jury but out of
22 the hearing of the jury.)

23 THE COURT: You can have a seat, sir.

24 All right, ladies and gentlemen of the jury,
25 we were up here conferencing regarding -- it is

1 about quarter till 5:00. They said this witness is
2 going to take some time, and so it will probably
3 put us at 6:00 o'clock or later, and I was not -- I
4 did not ask if anyone has anything else this
5 afternoon, so I did not want to keep you all beyond
6 6:00. So I'm going to go ahead and stop. And we
7 will start back tomorrow morning at 9:30.

8 Please do not discuss this case. Do not do
9 any independent research regarding the case. I
10 will see you tomorrow morning at 9:30. Have a
11 wonderful evening.

12 (WHEREUPON, the jury is excused at 4:49
13 p.m.)

14 THE COURT: We'll start with him in the
15 morning at 9:30. And I'll be glad to hear from you
16 I guess regarding the 404 issues. We can discuss
17 that.

18 MS. SAMPSON: I guess I need to know what --
19 Ms. Zmroczek, my understanding, wants to bring up
20 the victim's prior record. He has a prior criminal
21 sexual conduct second degree from 2000 -- I mean,
22 1989; and an AHAN, assault of a high and aggravated
23 nature, from 2000, although on his rap sheet it is
24 not on there, so that is a little strange.

25 She did give me a copy of the sentencing sheet

1 from Richland County yesterday. It would be the
2 State's position that neither of those are
3 admissible as they are -- they do not involve the
4 Defendant or his wife. They are so far removed
5 from the time of this incident that it can't be
6 used to show he was acting in conformity therewith.
7 But I need -- I don't know the basis for her
8 admission of them, so I have to hear that before I
9 can argue.

10 THE COURT: Yes, ma'am.

11 MS. AUSTIN: And so we are introducing
12 evidence to show that the victim had propensity for
13 violence. Under Rule 404(a)(2), I don't think
14 remoteness is a factor. It was my understanding
15 from my research that the victim just had to have
16 knowledge of the propensity for violence prior to
17 the homicide, or self-defense. And so we've got
18 evidence that the Defendant and his family knew of
19 all of the prior incidences of violence except for
20 the Richland County AHAN conviction. And that
21 reason was because, if you look at the incident
22 report I know that we were arguing about earlier
23 from September 1st, and if you listen to the 9-1-1
24 call, Ms. Volstromer says, He has a criminal
25 history, I looked him up.

1 The reason she looked him up is because the
2 victim said to her, You don't know who you are
3 dealing with, and then so she went back and pulled
4 his record. She searched Keith L. Pruitt, Jr., and
5 so his entire record came up except for the
6 Richland County one because he was charged under
7 Lanny Pruitt at Richland County, so that one did
8 not come up.

9 So the Defendant's family had prior knowledge
10 of this criminal sexual conduct second conviction,
11 which is a violent crime that prohibited him from
12 having a weapon, which we now have heard testimony
13 that he had a weapon on him.

14 So it is relevant. And we would argue that he
15 does only know about this prior conviction, but we
16 would argue that they did know about his propensity
17 for violence prior to the incident, so that both of
18 them can come in under the rules.

19 THE COURT: All right. Any response?

20 MS. SAMPSON: Yes, ma'am.

21 THE COURT: Well, let me back up. How -- if
22 he didn't know about -- if she didn't know about
23 the AHAN, that kind of goes against what you just
24 argued.

25 MS. SAMPSON: I would argue the AHAN is

1 definitely inadmissible, but then she just said
2 that the victim nor his wife even knew about it, so
3 how is it admissible? Even if it is a crime of
4 violence that would go towards his propensity, or
5 any of that. The first part of that is they have
6 to know about it. It is irrelevant if they don't
7 know. You could be the worst criminal ever, and if
8 they don't know that, then it doesn't go towards
9 whether they are fearful or towards his conduct, or
10 any of that. First, they have to know about it.

11 MS. AUSTIN: My understanding of the rule is
12 that they don't have to know about each conviction,
13 they have to know about his propensity for violence
14 prior to the incident because that forms the basis
15 of their fear and the threat of who this person
16 was. So I think definitely under the State's
17 argument, the CSC second comes in. But the way I
18 have interpreted the rule, I have read it a million
19 times, is does the Defendant know about the prior
20 propensity for violence, which they absolutely did
21 because they pulled his entire criminal history,
22 and they were on the receiving end of his threats.

23 THE COURT: Well, there is only two. You are
24 saying entire. Am I missing something? Because
25 the only one -- the convictions I have is the AHAN

1 and the --

2 MS. AUSTIN: Those are his two convictions,
3 Your Honor.

4 MS. SAMPSON: Yes, ma'am, that is the only two
5 that he has. And I'm going to tell the Court --
6 I'm sorry, I thought I had a second copy down here,
7 but right this second I cannot find it, I will
8 email it to Your Honor if I need to, but it is
9 State v. Brown, the cite is 321 S.C. 184, 467
10 S.E.2d 922(1996). It is a Supreme Court case that
11 is specifically on point.

12 In this particular case, at a pretrial hearing
13 the Defendant intended to introduce evidence of the
14 victim's criminal record showing a 1971 voluntary
15 manslaughter conviction in order to prove he had a
16 reasonable apprehension of violence from the victim
17 in a self-defense case.

18 In that case, the Court specifically said, no,
19 and cited the rule, Basically, the rule has long
20 been established in this state that evidence of
21 other specific instances of violence on the part of
22 the deceased are not admissible unless they were
23 directed against the Defendant or if directed
24 against others were so closely connected in point
25 of time or occasion with the homicide and

1 reasonably do indicate the state of mind of the
2 deceased at the time of the homicide or to produce
3 reasonable apprehension of great bodily injury.

4 In this particular case, as with this one, in
5 this case the manslaughter conviction was 23 years
6 prior to this offense. In our case, the CSC
7 conviction is 30 years -- well, not quite, it is 26
8 years since the conviction for the CSC. If 23
9 years didn't work for the Court, 26 isn't going to
10 work either.

11 And in that case, it was a voluntary
12 manslaughter. He was charged with killing someone.
13 I can see some sort of maybe correlation between a
14 murder and that being a crime of violence clearly
15 against someone and you being afraid of them
16 committing violence against you. He had a CSC from
17 '89. He is charged with killing a man. This is a
18 fight between Mr. Volstromer and Mr. Pruitt. There
19 is no sexual component. There is no -- I mean,
20 they say that they feel threatened by him, but I
21 have absolutely heard no testimony, and maybe there
22 will be some, that he was trying to sexually
23 violate anybody. So I don't know how there could
24 be a correlation between CSC from 26 years ago --
25 yes, 26 years ago -- and this.

1 So based on the rule and the case law that I'm
2 sitting here looking at -- I understand that they
3 allowed -- but even that didn't allow for
4 everything -- so I don't see, unless they can make
5 a connection, at how a conviction from 26 years ago
6 can come into this.

7 MS. ZMROCZEK: Your Honor, I would hand up the
8 case for you.

9 THE COURT: Thank you.

10 MS. ZMROCZEK: You are welcome.

11 THE COURT: Oh, we already have State v. Day.

12 MS. ZMROCZEK: Okay.

13 MS. SAMPSON: Yes, I gave her that. You
14 should have a copy of Day and Mekler. The one that
15 I don't have -- I just emailed it, and I will
16 provide Ms. Zmroczek a copy because this is
17 literally my only copy.

18 THE COURT: Of Brown?

19 MS. SAMPSON: Yes, ma'am. And it has not been
20 overturned and it is still good law.

21 THE COURT: Yes, ma'am?

22 MS. AUSTIN: Yes, Your Honor. So it is my
23 understanding that Day and Brown and Mekler all are
24 considering evidence like we discussed this
25 morning, which is under Rule 405, which is actually

1 cited here somewhere in Day. We are trying to
2 introduce this evidence under 404(a)(2), which is
3 character evidence. We understand -- according to
4 the rule, the consequence of us introducing this
5 character evidence against the victim is that they
6 can then introduce character evidence against the
7 Defendant, which we understand. But this is a
8 whole separate rule. There is no remoteness factor
9 in this rule. It is just, did the Defendant know
10 about the victim's propensity for violence before
11 this incident. And if he didn't, then it comes in
12 under the rule.

13 MS. SAMPSON: And this is the last thing I am
14 going to say. If it can come under one, it doesn't
15 mean it comes in if the other knocks it out. So
16 the fact that they -- that is like saying because
17 something can maybe come in under hearsay but you
18 say no means that can come in some other way. I
19 would have to argue how that still would be that
20 particular problem.

21 I guess what I'm trying to say is this, Your
22 Honor. They may be saying they are using it as
23 character evidence, and the Court talks about that.
24 They then go on to say that even if you are doing
25 it that way, you can't do it with this prior

1 conviction. It is specific. They talk about
2 exactly what she just said, that for it coming in
3 under character, but they still don't allow it. So
4 I don't know how we get around that. If they --
5 they have already gotten into the disputes between
6 the two. The remoteness is important apparently to
7 Court because they mention it, in the two instances
8 that they allow in both Day and Mekler, they
9 weren't convictions, they were priors from four
10 months prior. They were problems they had had a
11 few months prior. There was a DV conviction that
12 he had a few months prior. This is from 26 years
13 ago. The Court is very clear about that.

14 So it would be our position they cannot get
15 into his priors.

16 MS. AUSTIN: And briefly, Your Honor, I don't
17 have them printed out, but I cite it in my motion,
18 Rule 404(a)(2) specifically permits the Defendant
19 to introduce evidence of the victim's character as
20 an exception to the general rule of prohibiting
21 character evidence to help establish the defense of
22 the criminal charges.

23 THE COURT: How do these charges establish
24 his -- the self-defense? If he -- he didn't know
25 about the assault, AHAN charge. She did not -- I

1 mean, you have already said that she didn't know
2 about it because it was under the wrong name.

3 So let me just say this. The reason that you
4 are -- you have got to think about the reason that
5 it is coming in. The reason that you would bring
6 it in is to be able to show why they should have
7 feared him. You can't fear somebody if you don't
8 know something about it. He didn't know anything
9 about the assault.

10 The CSC second, I don't know -- she can't --
11 first of all, I don't know how your witness is
12 going to testify that she pulled up the CSC and
13 what she found out from it, because she surely from
14 looking online didn't find out the details of any
15 of it. So I'm not sure how she can come and
16 testify that she knew he had a propensity for
17 violence because of a CSC.

18 Now, if this was a rape case and she saw him
19 approach someone or being aggressive in a sexual
20 nature, then she may -- and he shot and killed --
21 then maybe he could say, Well, I know he is known
22 for raping women. But that is not the case here
23 because it is a -- or let me say this. If it was
24 the assault that she was saying she knew about,
25 then she could probably come in and testify and

1 say, Well, I knew he had an assault on his criminal
2 record. But she doesn't know that, because it
3 didn't show up on the rap sheet, for whatever
4 reason. It didn't show -- I mean, you gave us a
5 reason, because they put it under the wrong name,
6 but she can't -- she can't say, I feared him
7 because of an assault, because of a CSC, because
8 this has really nothing to do with a CSC.

9 MS. AUSTIN: Well, that will come in more
10 tomorrow, Your Honor. So it will come out that the
11 victim's 16-year-old daughter was molested when she
12 was younger by a neighbor and that neighbor
13 recently moved back into the neighborhood and was
14 hanging out with Mr. Pruitt. He was sort of part
15 of this group. So they -- this is all going to the
16 Defendant's state of mind and their fears. She
17 actually just did a public index search of
18 Mr. Pruitt, and so we wouldn't go into the details
19 of the CSC, but the CSC --

20 THE COURT: Which is why it is not admissible,
21 because you can't -- you are going in -- it is not
22 even related. It is from --

23 MS. SAMPSON: Twenty-six years ago.

24 THE COURT: -- from 1989. And so the
25 remoteness -- and that is -- when we -- I haven't

1 read these cases word-for-word, but when we talk
2 about bringing in people's records, whether that is
3 the Defendant or whether that is a victim or
4 witnesses, the Court has to consider the remoteness
5 of time of the charge as it relates to this charge.
6 So that is, you know, almost 30 years ago on a
7 charge that is not even related. There is no
8 correlation between them. Had you been saying he
9 had an assault 20 years ago, and I didn't know
10 which one she knew about, when I read your motion
11 earlier, I'll be honest with you, I was thinking --
12 I mean, if she knew he had an assault of a high and
13 aggravated nature and that was why -- I could see
14 that possibly coming in, but a CSC coming in, it
15 just is not -- there so no correlation. There is
16 no sexual allegations here. The fact that her
17 daughter was molested by a neighbor, I mean, we
18 will get into that argument tomorrow or we can get
19 into it today, but, once again, you are going to
20 have to have something to support that more than
21 just her saying that, and that he is now --

22 MS. AUSTIN: There is a police report on file.

23 THE COURT: Well, no, was he convicted? The
24 neighbor?

25 MS. AUSTIN: No. She was very young and

1 declined prosecution because she was so young, but
2 there is a police report and he was convicted of
3 subsequent against other victims.

4 THE COURT: And who is the neighbor? His
5 name?

6 MS. AUSTIN: His name is Mark Wright. But we
7 don't -- this is going to the Defendant and his
8 family's state of mind and their fears, and this
9 man is convicted of a violent crime of a sexual
10 nature, which they have already been victims of.

11 THE COURT: But there is no testimony thus
12 far -- actually, I think the testimony was that the
13 daughter did not leave the house, that the daughter
14 was even around.

15 MS. AUSTIN: She saw the whole thing.

16 THE COURT: No, no, no. She may have seen it,
17 but I thought Ms. Zmroczek asked someone earlier
18 did the daughter leave out of the house, and they
19 said no, the daughter didn't even leave out of the
20 house. She was not outside at the time. It is not
21 like the daughter was at the fence and he was
22 having a conversation with the daughter and they
23 see it and the daddy feared that he may do
24 something to the daughter. The daughter was in the
25 house. This is the mother -- and they are not

1 discussing -- there is no -- nothing sexual about
2 it that the daughter is asking that related to the
3 daughter. I understand what she -- what you are
4 saying, but there is no evidence to support that.
5 The daughter wasn't even there. If the daughter
6 was there at the fence and they were messing with
7 the daughter and he came out, then I could say,
8 Well, maybe this is why the CSC needs to come in.
9 But you are talking about the conviction of
10 somebody else not related to the victim. The
11 victim -- then you want to add the layer that the
12 victim had recently started hanging out with this
13 neighbor that previously sexually assaulted the
14 Defendant's daughter, who was not on the actual
15 scene, even though she was at the house, actual
16 scene of the confrontation, and that this man that
17 this lady says he is hanging out with and the
18 victim are hanging out, whose name has not been
19 brought up in the whole trial. I mean, I can see
20 if you were saying Holten was the person that
21 previously sexually assaulted his daughter, but
22 this is some random person, and we have nothing to
23 support that the victim was with this person at any
24 point in time.

25 MS. AUSTIN: So there is an incident which you

1 have already ruled comes in where -- the May 30th
2 incident report -- where the victim is actually
3 taking photos of the 16-year-old daughter on their
4 property. And then you'll hear in the video that
5 he, in my opinion, harasses Barbara by saying, Hey,
6 you're cute, like he comes at her at the beginning.

7 THE COURT: No. So let me back up. So the
8 one that is coming in, the incident report that
9 y'all read said that the victim was at the church
10 parking lot, which I know is across the street, and
11 that Ms. Volstromer went to the victim and started
12 taking pictures, and then he starts taking pictures
13 back.

14 MS. AUSTIN: Right. But this goes to the
15 Defendant's state of mind. So that is a
16 heightened -- they are taking photos of his
17 16-year-old daughter that has been a victim of this
18 before. And then it is a conviction for CSC
19 second. It did have an element where he kidnapped
20 someone with a deadly weapon.

21 THE COURT: But he didn't know that. That is
22 the problem. You can't get -- he didn't know -- he
23 doesn't know that that is what happened. She can't
24 find that out from looking at the public index.
25 All she is going to know is that there is a

1 criminal -- and I think it was a kidnapping charge,
2 I think y'all sent me. It must have been
3 dismissed.

4 MS. SAMPSON: It was dismissed, as far as I
5 know.

6 THE COURT: Yes. And so he wasn't convicted
7 of that. So that would be part of, I guess, where
8 the CSC could have deadly weapon, assault. But
9 nobody knew it. So she can't say, I was acting
10 upon something I didn't know. He was acting on it.
11 He was acting on something that he didn't know
12 about. All he knew was a CSC. And I don't even
13 know if half of the population knows when they look
14 it up exactly what a CSC second is. We know what
15 it is because we have been legally trained.

16 MS. AUSTIN: Barbara knows. She will testify
17 tomorrow that she knew exactly what that means.

18 THE COURT: All right.

19 MS. SAMPSON: Well, and the only other -- and
20 maybe we will have to proffer -- do this when she
21 is here to proffer, but, again, the only other
22 thing I would add, just to make the record clear,
23 they keep saying they are not trying to do it for
24 this reason and they are trying to do it as
25 character of the victim. It is one incident. That

1 does not make a pertinent trait or character
2 evidence from 26 years ago. They don't have
3 anything to show he continually sexually did
4 anything to people. If this was an assault and
5 this was an assault like -- but to say that a CSC
6 from 26 years ago shows that he is of the character
7 to then start a fight, that is what they -- that is
8 the leap you would have to make.

9 MS. AUSTIN: And I would argue that a CSC is
10 an assault. It is just a very specific type of
11 assault.

12 THE COURT: It is a different kind of assault,
13 yes. I'm not going to allow her to testify to that
14 a CSC -- I'm not going to allow the conviction for
15 a CSC to come in. I will go ahead and tell y'all
16 that, I will rule in the morning, but so you can
17 prepare your witnesses. The Court will make a
18 finding that it is too remote. There is no
19 correlation. There is no sexual allegation here.
20 And under the rule, it doesn't come in. The
21 probative value of it coming in would be to
22 determine their state of mind for purposes of
23 self-defense, and the CSC is not related in any way
24 to the murder charge and the allegations here in
25 the murder charge.

1 As to the assault of a high and aggravated
2 nature, had she known about that, I probably would
3 have let it in, but y'all said she did not know
4 about it. She cannot testify to it. The probative
5 value of everything here is to be able to show what
6 he knew in terms of propensity of violence. So I
7 am not going to -- I think it is improper character
8 evidence under 404 unless you can show that the
9 Defendant knew of the assault of a high and
10 aggravated -- assault of a high and aggravated
11 nature and is able to say that is why he acted the
12 way he did.

13 All right.

14 MS. AUSTIN: Can we proffer that testimony
15 tomorrow to preserve it for the record?

16 THE COURT: Yes, at some point. And then you
17 wanted -- something else you asked to get in.
18 Something about --

19 MS. SAMPSON: I asked -- well, they just
20 stated something about some CS -- some assault with
21 their daughter, and but they had -- I don't know if
22 it is police reports or what they have in relation
23 to that.

24 MS. ZMROCZEK: They were provided. They have
25 it.

1 MS. SAMPSON: I don't have it.

2 MS. ZMROCZEK: It was on the jump drive I gave
3 you.

4 MS. SAMPSON: I have printed everything on
5 that jump drive. I will look again. But I don't
6 have it.

7 MS. ZMROCZEK: We can send her another copy.

8 MS. SAMPSON: She gave me that on Friday, by
9 the way. But I will check. Not to my knowledge do
10 I have it.

11 MS. AUSTIN: We can send her another copy.

12 THE COURT: But that is going to be irrelevant
13 at this point because she can't get into the CSC.
14 So I don't know why it is necessary for her to
15 testify as to her daughter being sexually assaulted
16 by a neighbor unless she is just going to --

17 MS. AUSTIN: That is why they feel like they
18 need to protect themselves against these particular
19 neighbors.

20 MS. SAMPSON: I think we are again going in a
21 circle. This victim is not the one they are saying
22 molested her. If this friend or whomever he is
23 hanging with molested her, then I would understand
24 why they are afraid of that friend, but just
25 because he is hanging out with someone who molested

1 someone does not make him a molester, first of all.
2 And, secondly, there is no sexual allegations in
3 this case. None.

4 THE COURT: Well, we can proffer the testimony
5 as to why she, I guess -- so she is just going to
6 testify that she thought that everybody was going
7 to --

8 MS. AUSTIN: No. I think you will understand
9 when you hear it better from her. I think the
10 proffer of her testimony will be helpful, and at
11 least to preserve the record.

12 THE COURT: Yes. We will do that. But I'm
13 not inclined to -- you know, we are going to try
14 this case. And I did let in the prior difficulty,
15 but all these other cases of other people that have
16 nothing to do with this case that are not even
17 listed as witnesses, I mean, it just doesn't
18 come -- it is just too extrinsic, and it just
19 doesn't come in.

20 All right, what else do we need to take up?
21 Is she here now? I'll proffer the testimony now.

22 MS. AUSTIN: She is sequestered. But we will
23 have her in the morning.

24 THE COURT: Well, I have already told the jury
25 to come at 9:30. So we will have to do it before

1 -- maybe during the break. Is she your first
2 witness?

3 MS. SAMPSON: No, Mr. -- I'm not telling them
4 what to do.

5 MS. ZMROCZEK: I mean, I can make her our
6 first -- yes, she will be our first witness, Your
7 Honor.

8 MS. SAMPSON: She was saying not -- I'm not
9 putting words in Judge Benjamin's mouth, but
10 because we just had told the jury to come back at
11 9:30, I think Judge Benjamin was saying that we
12 could just do the proffer at the break instead of
13 in the morning at 9:30.

14 MS. ZMROCZEK: Okay. Either way.

15 MS. SAMPSON: If I am wrong, let me take back
16 what I thought.

17 THE COURT: That is what I was trying to say.

18 MS. ZMROCZEK: And, Your Honor, could we make
19 those motions that we sent you a Court Exhibit just
20 so we can --

21 THE COURT: Sure.

22 MS. ZMROCZEK: Thank you.

23 THE COURT: Do you have a copy?

24 MS. ZMROCZEK: I should have, yes.

25 And then, Your Honor, just in advance of

1 tomorrow, so yesterday I provided -- well, they had
2 most of it, but I provided a video from -- two
3 videos, excuse me -- from December 20th, so seven
4 days before this event, December 20th of 2015.

5 The first video, Your Honor, shows -- with the
6 audio on Camera 1 -- shows a vehicle driving slowly
7 past the residence. And then Your Honor you hear
8 the word "die." And then you see that vehicle turn
9 into Mr. Pruitt's driveway and park.

10 The other video is from that same evening
11 where gunshots are being fired that same night.

12 And so, Your Honor, I anticipate an objection,
13 and so I was trying to knock things out that we
14 could. I'm trying, Judge.

15 THE COURT: Because I hate having to send them
16 back in and out, but it is hard for me to hear up
17 here.

18 MS. ZMROCZEK: And it is so hard for me to
19 hear you too, and I know we are trying to be quiet.

20 THE COURT: Yes. So that is why we have to --
21 we just have to keep sending them out so we can --

22 MS. ZMROCZEK: I was trying to either avoid
23 that or I can have the witness come in a little bit
24 early. But I don't think we need the witness. I
25 mean, he just took the videos off of the system.

1 And so I am trying to anticipate their objection so
2 it goes a little smoother, so I thought maybe we
3 could discuss that now.

4 MS. SAMPSON: She did provide me with the
5 video; however, I didn't think she was just going
6 to put the video in with the person who has no idea
7 of what the video pertained to. I would have an
8 objection to them coming in through Mr. Watkins
9 just to show that they are -- I mean, they can play
10 videos every day of their lives.

11 THE COURT: I assume she is going to present
12 them through Mr. Volstromer.

13 MS. ZMROCZEK: Right, exactly. So, but he is
14 the one who downloaded it from their machine
15 since -- you have heard a lot of conversation
16 about, Oh, there is so much, blah, blah, blah.
17 Anyway, he, as the private investigator for the
18 Public Defender's Office at the time, did that,
19 Your Honor. And so obviously we could be here
20 for -- we talked about we could be here for a month
21 with videos. I chose two that were very close in
22 time and that she specifically mentioned she,
23 Ms. Volstromer, and Mark as well, both of them, but
24 it will likely come in through her. Obviously she
25 is the one who talks about these cameras all the

1 time. So what I was going to do is have him as the
2 expert talk about how he procured it from the
3 system, right? And that he has viewed them and --
4 or not -- of course he viewed them, but he has
5 already signed them, you know, like this is exactly
6 what it is, and then leave it in for ID, and then
7 put it in through her.

8 THE COURT: Yes, meaning you can't publish it.

9 MS. ZMROCZEK: Right. I am not going to
10 publish that through him, of course. Now, there
11 are things that I am going to publish through him,
12 which are the zoomed in videos because he had to do
13 some -- well, he didn't change it, but -- and I'll
14 deal with that at trial, but, you know, he just
15 zoomed in, just like the picture that they put in
16 today.

17 THE COURT: Yes, ma'am.

18 MS. ZMROCZEK: And so I do anticipate on
19 showing those. And that was the video that is
20 going to be -- that was the video that they were
21 talking about. It is long. So --

22 MS. SAMPSON: And I don't object to the video
23 of the incident. That is, I mean, clearly even in
24 his version, that was not what I was objecting to.
25 What I'm objecting to is the video from the 20th of

1 December that she just spoke of that said there is
2 a vehicle. And it is my understanding, correct me
3 if I'm wrong, that they don't know whose vehicle
4 that is, that drives past their residence and
5 shines a light and then parks at Mr. Pruitt's
6 house. But, to my understanding, is they don't
7 know that that was Mr. Pruitt.

8 THE COURT: That will go to the weight.

9 MS. SAMPSON: And so -- right. I mean, I
10 guess if they want to play it, they can play it.

11 The other one with shots fired, at least what
12 I watched, you don't know where they are coming
13 from. I don't know for sure if they are shots. I
14 guess she can testify they think they are shots.
15 For all I know, they are cars backfiring, it is
16 hunting season, I don't know what it is, but there
17 is absolutely no evidence that it came from Mr.
18 Pruitt at all. Like, it is just shots in the area.
19 At least with the one where they drive to his
20 residence, they do drive to his residence, I guess,
21 that is where their fence is, I'm not -- but -- or
22 it could have been him -- but the shots fired, that
23 can be anything.

24 THE COURT: Is there anything to connect -- I
25 mean, you are going to have an expert coming in

1 saying which way it came from and --

2 MS. ZMROCZEK: The expert will not do that.
3 Shots fired expert. Your Honor, we will -- I don't
4 have my notes in front of me of why -- I will tell
5 you, there are so many instances that I could do,
6 but I didn't, but there were some specific reasons
7 that she connected those shots. And I'll have to
8 go back and look. I can tell you in the morning.

9 THE COURT: Well, and I think, because it has
10 got to be, not that she -- as to why they feared
11 the victim.

12 MS. ZMROCZEK: Right.

13 THE COURT: And so if there is no connection
14 between the victim and the shots fired, I mean --

15 MS. ZMROCZEK: And I will clarify that.

16 THE COURT: Yes. I just need to know what the
17 connection is to the victim as to why she thought
18 they came from the victim, other than just her --

19 MS. ZMROCZEK: Thinking. And I will clarify
20 that tomorrow. I will cover that tonight and
21 then -- yes.

22 THE COURT: But I think the one where somebody
23 shines the light and then they pull into his
24 driveway, the issue of was it him or was it not him
25 goes to the weight of the evidence and you have got

1 cross-examination.

2 MS. SAMPSON: As I stated, I am more -- the
3 shots in the area is more concerning to me than a
4 light shining in the window, because I don't know
5 that -- who was shooting. At least I can see some
6 sort of connection, and I am willing to say that
7 with someone driving past --

8 THE COURT: I mean, like, how close are the
9 shots? I mean, I don't know -- I mean, I can hear
10 shots at my house from Fort Jackson, so I assume
11 that is where they are from, but, I mean, just more
12 than me assuming.

13 MS. ZMROCZEK: Exactly. I'll look into that.
14 I'll clarify that.

15 THE COURT: Yes. But you have got to have
16 some connection to the case.

17 MS. ZMROCZEK: Certainly.

18 THE COURT: Yes. But the other one, yes, it
19 can come in. It doesn't sound like they are
20 objecting to the other one.

21 MS. SAMPSON: No, ma'am. Any objection I had
22 to the one of the street -- of the car driving down
23 the street, I will withdraw my objection to. The
24 one with shots fired, you don't even see anything,
25 you hear it, you don't see it.

1 MS. ZMROCZEK: And then we will be putting a
2 lot of videos in. Like we talked about, there were
3 a bunch of cameras. Your Honor, we're not going to
4 make this jury suffer through all of that, but I
5 have screenshots of those videos which they --

6 THE COURT: Coming in through Mr. Watkins?

7 MS. ZMROCZEK: I beg your pardon?

8 THE COURT: Mr. Watkins, right?

9 MS. ZMROCZEK: Right, right. Yes.

10 THE COURT: You are trying to show the
11 different angles?

12 MS. ZMROCZEK: Correct. And they are not just
13 difficult angles, but there are different areas
14 which I think -- and actually what he is going to
15 testify is to that, and then my private
16 investigator -- the other private investigator I
17 hired -- so Mr. Watkins was involved before I was
18 involved in the case -- Brian Setree, who has been
19 my current investigator, then went out and
20 measured -- not only did he do measurements and so
21 we will put things in through him, but he also has
22 the angles of the cameras, so he is going to take
23 that information -- he took that information from
24 Mr. Watkins that he downloaded and that is where we
25 get the screenshots from. So that will be later

1 testimony. But it will be based on evidence that
2 we put in through Mr. Watkins.

3 MS. SAMPSON: All I would ask is that I see it
4 before we introduce it in evidence.

5 MS. ZMROCZEK: Of course.

6 THE COURT: All right.

7 MS. ZMROCZEK: And I will let her see them --
8 I have them here, so she can see it now.

9 THE COURT: Anything else?

10 MS. SAMPSON: The only other thing, since we
11 are just trying to go over stuff that could come up
12 tomorrow and not have to stop again, is
13 Ms. Zmroczek gave me yesterday -- or this
14 morning -- some information, I guess from Mr.
15 Setree, in terms of questioning about shooting and
16 testing and firearms.

17 MS. ZMROCZEK: No, I was just giving you his
18 training qualifications.

19 MS. SAMPSON: This information is what I am
20 talking about.

21 MS. ZMROCZEK: The use of force?

22 MS. SAMPSON: The use of force written exam,
23 the packet from narcotics training report with
24 highlights on it. This is how it came to me. I
25 would object to any of this coming in.

1 MS. ZMROCZEK: I'm not putting it in, I was
2 just giving her his background.

3 MS. SAMPSON: I didn't know since I was given
4 it, so that's why I'm asking, Your Honor.

5 THE COURT: So you are not going to ask him
6 about use of force and what -- because he is not a
7 police officer.

8 MS. ZMROCZEK: He is retired.

9 THE COURT: No, your client.

10 MS. ZMROCZEK: Oh, no, no, no, no. No, no,
11 no. No. And that was just all of his background
12 that all got emailed to me, so, no, I mean, I'm
13 going to stay certainly within the rules of that.
14 Yes.

15 THE COURT: I guess what I'm asking is if you
16 are going to ask him -- you asked the officers
17 about the officers and cases where there is -- I
18 think you questioned someone about seeing other
19 officers have to use force. I guess what I'm
20 saying is, if he is going to testify to anything
21 like that, he would need to be qualified as an
22 expert.

23 MS. ZMROCZEK: Right, right, right. And so I
24 will --

25 THE COURT: In that area.

1 MS. ZMROCZEK: Certainly. And I will --

2 THE COURT: And I don't even know if he was
3 qualified to testify to that.

4 MS. SAMPSON: We objected to some of it, so.

5 THE COURT: I mean, because I think you would
6 have to have somebody that studied use of force.
7 I mean, you have to have somebody that teaches it.

8 MS. ZMROCZEK: Right, which is what he -- so
9 he does, which is why -- that is why we turned all
10 of that over. But, again, I haven't had an
11 opportunity today to talk to him today. After some
12 of the testimony came out today, I may not need to
13 go into it, so.

14 THE COURT: I'm just saying if you are going
15 to go into it, he has to be qualified.

16 MS. ZMROCZEK: Absolutely.

17 MS. SAMPSON: And just for the record, we may
18 have to proffer it, depending on -- I don't have a
19 clue what she is talking about, so. Because what
20 she gave me isn't a CV, it is a tactical narcotics
21 training, and it doesn't say that he made it.
22 Normally a CV or a resume would say, I have taken
23 this training.

24 MS. ZMROCZEK: And I can probably forward that
25 part of it, but I will make sure that I check when

1 I get back.

2 MS. SAMPSON: She did give me a CV, so I'm not
3 talking about that.

4 MS. ZMROCZEK: Okay.

5 MS. SAMPSON: This is what I'm talking about.
6 She gave me Chris Watkins, I'm sorry, not Brian.
7 But what I'm talking about, what I do have is
8 tactical narcotics training, that training is
9 mandatory, meth lab, operations plan, search
10 warrants, and then blank operational plan and a
11 blank policy. And then the other thing is an exam
12 I guess they give people with some stuff
13 highlighted.

14 MS. ZMROCZEK: And it may just be that I
15 didn't print that one, I will make sure that I do
16 that tonight. And as I was thinking about CVs, I
17 do have one more to provide her, which is
18 Dr. Rozanna Tross, who is a forensic psychologist.

19 MS. SAMPSON: And I have no idea the forensic
20 psychologist. She did tell me on her witness list
21 that this person was on there. I don't know if she
22 examined her. I don't even know if the -- if there
23 is an examination or report, I don't have it. She
24 didn't give it to me.

25 MS. ZMROCZEK: She didn't do a report.

1 MS. SAMPSON: We may have to do this one in
2 camera. If she spoke to him about the event, I
3 don't have any of that. She never turned it over.

4 MS. ZMROCZEK: Well, she didn't do a report,
5 Your Honor.

6 THE COURT: So she is going to be a
7 psychologist?

8 MS. ZMROCZEK: Forensic psychologist.

9 MS. SAMPSON: Until the witness list, this is
10 the first I have ever heard of him bringing a
11 forensic psychologist to examine him. I mean, I
12 don't know what he is claiming at this point. I'm
13 assuming he is not claiming some mental defect that
14 would make him incompetent, or any of that, which
15 is normally when you have a forensic psychiatrist
16 or psychologist. If they are going to come in and
17 talk about, I don't know, PTSD or his mental state,
18 that is just not admissible in this manner from
19 this witness, I don't believe. And if it is, I
20 don't have it to either impeach her with it -- I
21 have no idea what she has ever said to this man or
22 what he has ever said to her.

23 THE COURT: We are going to have to proffer
24 the testimony.

25 MS. ZMROCZEK: We will.

1 THE COURT: And I need some case law saying
2 what and how you are trying to get it in because --

3 MS. ZMROCZEK: I will. I will, Your Honor.
4 And a lot of it goes to the constitutional issues
5 and his state of mind when he is raising this
6 defense. The State spent every witness that even
7 looked or saw Mr. Volstromer saying that he wasn't
8 remorseful, saying that he was -- absolutely that
9 was the testimony. From the first investigator,
10 you asked specifically, Is he -- was he remorseful.
11 And I objected. And then he testified that he
12 wasn't -- he didn't see he was remorseful. I
13 didn't think he was qualified to do that. The
14 Court disagreed with me, which is fine, but they
15 made this an issue. They made his state of mind an
16 issue.

17 MS. SAMPSON: Let me be clear. We asked one
18 witness. She just said we asked every witness. We
19 did not.

20 MS. ZMROCZEK: They asked every witness about
21 his demeanor. They asked specifically.

22 MS. SAMPSON: Which I have to ask about. I
23 never asked if he was remorseful but one person. I
24 didn't ask everybody else about that. The demeanor
25 question was, What was his demeanor like? We ask

1 that to every witness. That doesn't mean you get
2 to come in and talk about a hundred other things.
3 I get to ask what his demeanor was at that time.

4 THE COURT: We can proffer --

5 MS. SAMPSON: We do that in every case.

6 THE COURT: We will proffer the testimony.

7 Please let me know under which rule --

8 MS. ZMROCZEK: I will.

9 THE COURT: -- you are offering it and how it
10 comes in.

11 MS. ZMROCZEK: I will.

12 THE COURT: Because I'm not sure -- you know,
13 the courts are very clear about bringing witnesses
14 in to bolster other witness's testimony. So, and I
15 would say the same thing to them if that is -- and
16 that is what it sounds like, if it would be
17 improper bolstering.

18 MS. ZMROCZEK: No, and we are certainly well
19 aware of that. And, again, it is because of issues
20 that were being raised that -- that is not why I
21 had to talk to him, I had to talk to him for other
22 reasons, but then that became an issue about -- and
23 there were several -- the only -- so there were
24 different testimonies from different officers.
25 Investigator Holdorf was the only one who said that

1 that was --

2 THE COURT: I think he said it was
3 appropriate.

4 MS. ZMROCZEK: He said it was appropriate,
5 so -- but then the two other ones didn't. And so,
6 Your Honor, here is the issue, is that if I -- I
7 was going to look at the case law, I am going to
8 talk to her exactly about how she would testify,
9 and see if it is appropriate. But if in closing
10 they get up and they say, Well, the issue is that
11 he was acting like a cold-hearted -- because malice
12 is cold-hearted, you know -- and that is what the
13 inference was from everybody, except for today with
14 Investigator Holdorf.

15 THE COURT: Well, they have to prove malice,
16 so.

17 MS. ZMROCZEK: Right, right.

18 THE COURT: So I think they have to put
19 something in, I mean, for their purposes.

20 MS. ZMROCZEK: Right. But he certainly has --
21 raising an affirmative defense, he certainly has a
22 constitutional right to be able to present
23 evidence, that if they want to prove that his
24 behavior was malice, then a psychologist -- and I'm
25 not saying what she is going to say -- but in my

1 mind, a psychologist can say, There is no one way
2 to determine someone's behavior in a situation. So
3 I think we can rebut the fact that they are trying
4 to use his behavior as malice, not that, you
5 know -- and not go above and beyond and certainly
6 not say, I believe him, because that is not proper.
7 We know that. But to infer that his demeanor is
8 part of his malice, I think that we are
9 absolutely -- especially when you have an
10 affirmative defense of self-defense -- that we are
11 constitutionally allowed to say -- to put an expert
12 up that can say that there is no one right way to
13 respond to a situation.

14 MS. SAMPSON: I am not going to beat a dead
15 horse. I think we can just wait until tomorrow to
16 see what she is going to say and if she is going to
17 say anything. But even Ms. Zmroczek said in her
18 opening, the only way to determine what people did
19 and a part of it, you can't open their head at the
20 time, you look at their behavior. So part of this
21 case --

22 MS. ZMROCZEK: And --

23 MS. SAMPSON: Can I finish?

24 MS. ZMROCZEK: Sure.

25 MS. SAMPSON: Part of the case is to talk

1 about his demeanor, his behavior, his actions. I
2 have to talk about that. I mean, I don't know how
3 we would ever -- if this is allowed, that the
4 psychologist can come and talk about what he said
5 to her after this happened, then every time someone
6 does something with an intent crime, they can bring
7 in a psychologist to talk about that their behavior
8 does not show that. Every single time.

9 THE COURT: Well, the problem is -- once
10 again, I think we need to look at -- it is going to
11 be on that slippery slope of -- I mean, the only
12 thing I can refer to is when you bring in the
13 forensic interviewers in the CSC case, and the
14 Court has clearly said that that is improper
15 bolstering, the person was not there. For them to
16 come in after the fact and say how the child was
17 acting is -- I mean, they have been clear, more
18 than clear, clearer.

19 MS. ZMROCZEK: And I pulled those cases.

20 THE COURT: And I think I would just -- I'm
21 not ruling, because I'll be glad to proffer her
22 testimony, but I think that this is somewhat along
23 the lines of that kind of testimony. And if you
24 were to do it, it almost would have to be somebody
25 like a blind witness.