

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Oct 17 2022

SC Court of Appeals

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

THE STATE,

RESPONDENT,

V.

MARK ROBERT VOLSTROMER,

APPELLANT.

APPELLATE CASE NO. 2021-000676

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 14-18, 2021.....	1
OPENING STATEMENT BY MS. TAYLOR.....	40
OPENING STATEMENT BY MS. ZMROCZEK.....	50
TESTIMONY	
SAMPSON L. PARKER, III	
Direct Examination by Ms. Sampson	59
Cross Examination by Ms. Zmroczek.....	70
CARL JAMES COX, III	
Direct Examination by Ms. Sampson	78
Cross Examination by Ms. Zmroczek.....	86
JOSEPH CARL VADASZ	
Direct Examination by Ms. Taylor	88
Cross Examination by Ms. Zmroczek.....	125
Redirect Examination by Ms. Taylor.....	146
MEGAN TIMMONS	
Direct Examination by Ms. Taylor	149
Cross Examination by Ms. Austin	159
JACQUELYN RICHBURG	
Direct Examination by Ms. Taylor	162
Cross Examination by Ms. Zmroczek.....	164
SCOTT HUNGER	
Direct Examination by Ms. Sampson	168
Cross Examination by Ms. Zmroczek.....	176
Redirect Examination by Ms. Sampson.....	185
KERRI MCCLARY	
Direct Examination by Ms. Taylor	188
Cross Examination by Ms. Zmroczek.....	214
Redirect Examination by Ms. Taylor.....	221
BRIAN METZ	
Direct Examination by Ms. Taylor	222
Cross Examination by Ms. Zmroczek.....	228

NICOLE HARDIN	
Direct Examination by Ms. Sampson	236
Cross Examination by Ms. Austin	248
RICHARD CARTER	
Direct Examination by Ms. Taylor	249
Cross Examination by Ms. Zmroczek.....	263
Redirect Examination by Ms. Taylor.....	272
Re-Cross Examination by Ms. Zmroczek.....	277
AMY DURSO	
Direct Examination by Ms. Sampson	279
TRAVIS HOLDORF	
Direct Examination by Ms. Sampson	313
Cross Examination by Ms. Zmroczek.....	351
Redirect Examination by Ms. Sampson.....	416
Re-Cross Examination by Ms. Zmroczek.....	430
THE STATE RESTS	439
MOTION FOR DIRECTED VERDICT.....	440
RULING OF THE COURT	441
COLLOQUY WITH DEFENDANT REGARDING HIS RIGHT TO TESTIFY	443
TESTIMONY	
E. NELL MAUNEY	
Direct Examination by Ms. Zmroczek.....	450
Cross Examination by Ms. Sampson	458
Redirect Examination by Ms. Zmroczek	459
TONYA STEADMAN	
Direct Examination by Ms. Zmroczek.....	460
Cross Examination by Ms. Sampson	462
MOTION TO INTRODUCE APPELLANT’S KNOWLEDGE OF DECEDENT’S	
PRIOR CONVICTION.....	463
RULING OF THE COURT	479
KENNETH EARLY	
Direct Examination by Ms. Zmroczek.....	512
Cross Examination by Ms. Sampson	513

CHRISTOPHER J. WATKINS	
Direct Examination by Ms. Zmroczek.....	514
Cross Examination by Ms. Sampson	527
Redirect Examination by Ms. Zmroczek	527
BARBARA VOLSTROMER (PROFFER)	
Direct Examination by Ms. Zmroczek.....	530
Cross Examination by Ms. Sampson	539
Redirect Examination by Ms. Zmroczek	543
BARBARA VOLSTROMER	
Direct Examination by Ms. Zmroczek.....	552
Cross Examination by Ms. Sampson	604
Redirect Examination by Ms. Zmroczek	635
ARTHUR E. WHITE, JR.	
Direct Examination by Ms. Zmroczek.....	651
Cross Examination by Ms. Sampson	664
MARK R. VOLSTROMER	
Direct Examination by Ms. Zmroczek.....	665
Cross Examination by Ms. Sampson	710
Redirect Examination by Ms. Zmroczek	727
Re-Cross Examination by Ms. Sampson	733
PAUL BRIAN SETREE	
Direct Examination by Ms. Zmroczek.....	735
Cross Examination by Ms. Sampson	761
Redirect Examination by Ms. Zmroczek	764
Re-Cross Examination by Ms. Sampson	767
TRAVIS HOLDORF	
Direct Examination by Ms. Sampson	769
Cross Examination by Ms. Zmroczek.....	772
CONNIE OUTLAW PRUITT	
Direct Examination by Ms. Sampson	773
Cross Examination by Ms. Zmroczek.....	777
RENEWAL OF MOTION FOR DIRECTED VERDICT	785
RULING OF THE COURT	788
CLOSING ARGUMENT BY MS. SAMPSON	813

CLOSING ARGUMENT BY MS. ZMROCZEK	847
REBUTTAL CLOSING ARGUMENT BY MS. SAMPSON	871
CHARGE ON THE LAW	886
VERDICT	914
SENTENCING	923
COURT’S EXHIBIT #2 (MOTION TO INTRODUCE 404(A)(2) EVIDENCE OF VICTIMS PRIOR CONVICTIONS)	925
COURT’S EXHIBIT #3 (MOTION TO INTRODUCE 405(B) EVIDENCE OF PRIOR DIFFICULTIES BETWEEN DEFENDANT AND THE VICTIM)	928
STATE’S EXHIBIT #2 (APPELLANT’S WRITTEN STATEMENT).....	931
INDICTMENT.....	934
CERTIFICATE OF COUNSEL	936

THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT NOS. 17-18, 39 (PHOTOGRAPHS), 46 (CD), 50 (STILL SHOTS), 51 (DVD), DEFENDANT’S EXHIBIT NOS. 1 (MAP), 19 (VIDEO), 20 (CD), 24 (FLASH DRIVE), 25-30 (PHOTOGRAPHS), 42-45 (MAPS)

1 MS. ZMROCZEK: Right. And, Your Honor, so
2 here is the other -- another way to look at it.
3 The CSC, because that is what we have been dealing
4 with the whole time, but the way that I was
5 approaching it was the reasonableness and the
6 battered spouse route, so it is a --

7 THE COURT: But I didn't think in a battered
8 spouse -- you wouldn't even be able to bring an
9 expert in now, if you look at those cases, because
10 if you recall, you will be able to bring in a
11 spouse -- someone to testify about -- but it almost
12 would have to be I think a blind witness. They
13 can't testify -- I mean, I'm just talking out
14 loud -- from looking at -- reading all the cases
15 and the case law, recent case law, they don't want
16 anyone that examined someone testifying because
17 they said it is improper bolstering.

18 MS. ZMROCZEK: Certainly.

19 THE COURT: So I even think in a DV case, you
20 almost would have to bring in a -- I think even in
21 that case, the battered woman expert would be
22 similar to that of a forensic interviewer with a
23 kid, because that is what they are saying. You
24 know, there is usually a forensic interviewer
25 coming in and saying, Oh, her grades were -- the

1 kid's grades dropped because -- all of these are
2 indicative. And the Court is saying no.

3 MS. ZMROCZEK: Right. And I certainly
4 appreciate what you are saying. My looking at it,
5 and I will certainly look at it from the other lens
6 tonight, but my way of looking at it is -- so on
7 the elements of that he doesn't have to prove, but
8 the State has to disprove on reasonableness and
9 those -- and that line of cases. So not whether or
10 not I believe him, but whether his behavior was
11 reasonable.

12 And so that is -- you see, so that -- but I
13 will certainly look at it, because, I mean, I don't
14 want to, you know, ruin it for all the battered
15 witnesses as well, so, you know, I'm going to
16 certainly look at that before I --

17 THE COURT: And does it amount to her
18 bolstering, commenting on an issue of fact for the
19 jury.

20 MS. ZMROCZEK: Right.

21 THE COURT: And so that is the other -- I
22 mean, the reasonableness is for the jury to decide.
23 Whether or not his behavior -- I mean, would a
24 reasonable person have acted as he acted. And so,
25 I mean, that is a decision that the jury has to

1 decide. And I don't know if she --

2 MS. ZMROCZEK: Right. And I don't think that
3 she would make a decision on whether or not it was
4 reasonable. Again, I think it is more of just
5 explaining that there is no one way to act. But I
6 will certainly look at it tonight, of course.

7 THE COURT: Yes, I think that is going to be a
8 slippery slope right there. I mean, hey, the case
9 that talks about blind witnesses, that was a case I
10 had where I got reversed. So, I mean -- and I
11 think at that time it was Chief Justice Toal. It
12 was about not being able to bring the witnesses in.
13 But, I mean, that is the law, current law, is
14 bringing in a blind witness, even though now the
15 interesting thing is after that case, you started
16 bringing in blind witnesses and now Defense
17 attorneys are objecting to the blind witnesses
18 because you have got somebody up there testifying
19 about all kind of stuff. And the Defense is
20 saying, they are putting ideas into the minds of
21 the jury because this is not related in any way to
22 this case. So, yes, it is --

23 MS. ZMROCZEK: It is an issue ripe for --

24 THE COURT: It is an issue. But that is my
25 concern about it, is that it is probably improper

1 bolstering.

2 MS. ZMROCZEK: And I will make sure to double
3 check on that.

4 THE COURT: Yes. It is probably improper
5 bolstering. And so, yes. Just -- we'll look at
6 it. I'll pull the cases tonight, and we'll go from
7 there in the morning. And if we need to proffer
8 her testimony just for the record, that is fine.

9 MS. ZMROCZEK: Okay.

10 THE COURT: We can do that, but --

11 MS. ZMROCZEK: And I do have jury charges that
12 I was going to send this evening as well, Your
13 Honor.

14 THE COURT: I mean, I thought we would be
15 charging tomorrow, but I don't think so.

16 MS. ZMROCZEK: I'm trying to get ahead of the
17 game.

18 THE COURT: That's fine.

19 MS. SAMPSON: The only other thing, Your
20 Honor, is Ms. Zmroczek gave me a list of I don't
21 know how many witnesses. I have asked her for the
22 date of birth so I can run rap sheets, and I don't
23 have them for any of them.

24 MS. ZMROCZEK: I don't know that I will be --
25 after a lot of the testimony that came in, I don't

1 know that I will be calling lay witnesses. Of
2 course I will --

3 THE COURT: Well, she needs the date of birth.

4 MS. ZMROCZEK: I know that they can run it,
5 and I will make sure they have it. I mean, you
6 have Ms. Volstromer's.

7 MS. SAMPSON: I'm not talking about the
8 Volstromers.

9 MS. ZMROCZEK: Who are you talking about
10 specifically?

11 MS. SAMPSON: All the rest of them. You just
12 talked about your investigator who is no longer
13 with law enforcement, Mr. Watkins who is not with
14 law enforcement. I don't know who your other
15 witnesses are.

16 MS. ZMROCZEK: They are both licensed with
17 SLED, but I will gladly give you their birthdates.

18 MS. SAMPSON: And I don't know if you are
19 doing **Daughter** Volstromer. I don't think that I
20 have her date of birth, but I am not going to lie,
21 I might have it.

22 MS. ZMROCZEK: She testified at the last
23 hearing.

24 MS. SAMPSON: Right. But I don't know that I
25 have her date of birth. So I would need any people

1 who are not law enforcement.

2 MS. ZMROCZEK: Okay. And to be clear, are
3 licensed SLED private investigators considered law
4 enforcement or no?

5 MS. SAMPSON: No.

6 MS. ZMROCZEK: I'll get their birthdays.

7 THE COURT: I don't know, Mr. Watkins has
8 testified in court before.

9 MS. ZMROCZEK: He has testified many times,
10 but, hey, if she wants his birthday.

11 THE COURT: Just please lay the proper
12 foundation.

13 MS. ZMROCZEK: Of course. Of course.

14 THE COURT: Let me see y'all one second.
15 (WHEREUPON, a bench conference was
16 held.)

17 THE COURT: All right, so 9:30.
18 (WHEREUPON, court adjourned for the
19 evening at 7:04 p.m.)

20 **JUNE 17, 2021**

21 (WHEREUPON, the trial resumed at 9:41
22 a.m.)

23 MS. SAMPSON: We ran Mr. Watkins' rap sheet.

24 MS. ZMROCZEK: We are calling Ken Early first,
25 the SLED investigator.

1 THE COURT: Who are you calling?

2 MS. ZMROCZEK: Ken Early.

3 THE COURT: All right. So he works at SLED?

4 MS. ZMROCZEK: He is a private investigator
5 licensed with SLED, but, yes.

6 THE COURT: Did you run his?

7 MS. ZMROCZEK: Oh, you mean Ken Early? No,
8 Ken Early is -- I gave her all of them last night
9 when I got them, so.

10 MS. SAMPSON: I will have to check. We got
11 several at like 4:30 or 3:30 this morning, so I
12 will need to check to see if that that was one of
13 ones we got. I need to run them. I don't know if
14 it is Mr. Watkins or not. I'm sorry, Your Honor, I
15 am trying to find the email.

16 (Pause.)

17 MS. SAMPSON: I received yesterday from Ms.
18 Zmroczek Arthur White's birth date and Ken White's
19 birth date.

20 THE COURT: Ken White?

21 MS. SAMPSON: We were given the wrong name, so
22 now we are going to have to go run that. That is
23 not what we were given.

24 (Pause.)

25 MS. ZMROCZEK: All the ones they have given

1 me, Your Honor, there are no records.

2 MS. SAMPSON: Not that there is no record,
3 there is nothing that comes in unless they open the
4 door. Ms. Volstromer has a conviction of DUI from
5 1992.

6 MS. ZMROCZEK: Which would not come in anyway.
7 It is a 30-day charge from 1992.

8 MS. SAMPSON: If I can finish a sentence.

9 THE COURT: Go ahead. Let her finish.

10 MS. SAMPSON: That I would say would not come
11 in unless she somehow opened the door, which is
12 what I was going to say. To say she doesn't have
13 any record is a misnomer.

14 THE COURT: Obviously if she opens the door
15 and says something, then it will come in, and that
16 is the only way it will come in.

17 MS. SAMPSON: We ran the rap sheet for --

18 THE COURT: But she needs to be careful and
19 not say, I have never been in trouble with the law,
20 because then that is going to be opening the door.
21 If she has a conviction, to say, I have never been
22 in trouble with the law.

23 MS. ZMROCZEK: Right.

24 THE COURT: It is impeachable. So I am just
25 using that as an example.

1 MS. ZMROCZEK: Certainly. Thank you.

2 THE COURT: Because I don't want her to get on
3 the stand and get excited and say something that --
4 because they will be sitting there waiting on her.

5 MS. SAMPSON: And then Arthur White.

6 MS. ZMROCZEK: Whatever it takes, Your Honor.

7 MS. SAMPSON: Arthur White also has a DUI.
8 His is from 1986. Again, not admissible unless she
9 somehow opens the door.

10 MS. ZMROCZEK: Yes, ma'am. He is an attorney
11 and a surveyor. I will be sure to be careful not
12 to say he has never been arrested either.

13 THE COURT: What are we waiting for?

14 MS. ZMROCZEK: Mr. Early.

15 MS. SAMPSON: Mr. Early is their first
16 witness. I didn't have his birth date until just
17 now. I didn't have a name and birth date to go
18 together, which what I was given is Ken White. So
19 my paralegal has gone to run the rap sheet of
20 Mr. Early.

21 (Pause.)

22 MS. SAMPSON: While we are waiting, Your Honor
23 if I may go on the record?

24 THE COURT: Yes, ma'am.

25 MS. SAMPSON: This morning, I believe it was

1 4:30, I was provided with some discovery from the
2 Reciprocal Rule 5. It is a sheet of paper that I
3 cannot read.

4 MS. ZMROCZEK: We're not using it. It is
5 something that we are not even using. It was
6 inadvertently sent, Your Honor. Also, I made these
7 boards available. They are still available. I
8 waited after court, but before Mr. Setree takes the
9 stand, I'll make sure that they look at them
10 whenever they like.

11 THE COURT: What is that?

12 MS. ZMROCZEK: She can look at them whenever
13 she likes, these boards that we'll be using as
14 exhibits.

15 MS. SAMPSON: I'll look at them, Your Honor,
16 before she puts up the witness.

17 (Pause.)

18 MS. ZMROCZEK: There was a question about
19 Mr. Holten's son or grandson, so we just provided
20 the obituary where that information came from,
21 because there seemed to be some confusion.

22 (Pause.)

23 MS. SAMPSON: I just received the rap sheet of
24 Mr. Early. The only conviction is from 1984,
25 simple assault. It would not be admissible unless

1 somehow the door was open.

2 MS. ZMROCZEK: We are ready to proceed, Your
3 Honor.

4 THE COURT: All right, let's bring the jury
5 in.

6 (WHEREUPON, the jury came into open
7 court at 10:00 a.m.)

8 THE BAILIFF: The jury is present, Your Honor.

9 THE COURT: All right. Good morning, ladies
10 and gentlemen of the jury. I hope you had a
11 restful evening. At this time we will continue
12 with the Defense. I will ask them to call their
13 next witness.

14 MS. ZMROCZEK: Thank you, Your Honor. We call
15 Ken Early.

16 (Witness approaches.)

17 THE BAILIFF: Place your left hand on the
18 Bible, and 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: Yes, I do.

25 THE CLERK: Thank you. Please have a seat in

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

3 (Witness seated.)

4 THE WITNESS: Kenneth Early.

5 KENNETH EARLY,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ZMROCZEK:

9 Q Mr. Early, will you please tell the jury where you
10 are employed?

11 A A1-Security Services in Lexington.

12 Q And what kind of business is that?

13 A We provide security systems and camera systems for
14 businesses and houses.

15 Q And how long have you been with that business?

16 A Since 2003.

17 Q And I want to draw your attention to the year of
18 2015. Were you employed at that time?

19 A Yes.

20 Q And do you know -- do you happen to know Mark and
21 Barbara Volstromer?

22 A Yes.

23 Q How do you know them?

24 A We installed the camera system at their house.

25 Q You installed the camera system at their house?

1 A (Nods affirmatively.)

2 Q And was there anything unusual about this camera
3 system?

4 A Yes. He requested a microphone on the outside of
5 his house.

6 Q Is that something that -- why was that an unusual
7 request?

8 A Nobody has ever asked for that.

9 Q Thank you. Please answer any questions the State
10 may have.

11 A Okay.

12 CROSS-EXAMINATION

13 BY MS. SAMPSON:

14 Q You weren't at their home on December 27th of 2015,
15 correct?

16 A No, ma'am.

17 MS. SAMPSON: No further questions, Your
18 Honor.

19 MS. ZMROCZEK: May this witness be excused?

20 THE COURT: Yes. You may step down. You are
21 free to leave, sir.

22 (Witness steps down and excused.)

23 THE COURT: Call your next witness.

24 MS. ZMROCZEK: Your Honor, we are going to
25 call Christopher Watkins. I am going to mark some

1 items that have been provided to the State.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand, please.

5 (Witness complies.)

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

10 THE WITNESS: Yes.

11 THE CLERK: Thank you. Please have a seat in
12 the witness stand, and state your full name for the
13 record.

14 (Witness seated.)

15 THE WITNESS: Christopher James Watkins,
16 W-A-T-K-I-N-S.

17 CHRISTOPHER J. WATKINS,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Thank you. Mr. Watkins, can you tell the jury
22 where you are employed?

23 A Certainly. I am employed -- I am one of the owners
24 at Certified Computer Forensics based here in
25 Columbia. I am a SLED licensed private

1 investigator and a certified forensic computer
2 examiner.

3 Q Thank you. Mr. Watkins, how long have you been
4 employed in that job?

5 A So Certified Computer Forensics has existed since
6 January of 2019. Prior to that, I'll start with my
7 career. I started my career in February of 2010
8 working at a private investigation firm called
9 Stillinger Investigations, also based here in
10 Columbia.

11 In 2016, I left from there and started my own
12 company, named Watkins Digital Forensics and
13 Investigations.

14 And in 2019, formed a new company called
15 Certified Computer Forensics.

16 So I have been in this line of work for a
17 little over 11 years.

18 Q And exactly what kind of work is that?

19 A So my focus is in digital forensics. I also assist
20 in a number of other investigative matters ranging
21 from criminal cases to civil litigation. I work
22 for the general public. My services are available
23 to really anybody who needs the work. I have
24 worked with the State before. I have testified for
25 the State. I have also testified for Defense

1 attorneys. So my services are available to really
2 anybody.

3 Q And what kind of specialized training have you had?

4 A So my background is in information technology,
5 computer science. I studied at Midlands Technical
6 College in those fields. In 2010 I began working
7 professionally in the field of digital forensic
8 science. I have received training and
9 certification as a certified forensic examiner
10 through IACIS, which is the International
11 Association of Computer Investigative Specialists.

12 Q And I think you said that you had been -- you had
13 testified before. Was that as an expert in digital
14 forensics?

15 A Yes. So I have been qualified as an expert in
16 digital forensic science 23 times in South Carolina
17 Family Court, Circuit Court, General Sessions,
18 Common Pleas, and United States Federal Court.

19 MS. ZMROCZEK: Your Honor, at this time we
20 would move Mr. Watkins in as an expert in digital
21 forensics.

22 THE COURT: Any objection?

23 MS. SAMPSON: No, ma'am.

24 THE COURT: All right. Ladies and gentlemen
25 of the jury, this witness will be qualified as an

1 expert in the area of digital forensics to give
2 opinion testimony in that area. It does not mean
3 that you have to accept the opinion, but it is
4 evidence for you to use and give it the weight and
5 credibility you see fit.

6 Thank you.

7 MS. ZMROCZEK: Thank you, Your Honor.

8 BY MS. ZMROCZEK:

9 Q I'm showing you what has been marked as Defendant's
10 18. Do you recognize that?

11 A Yes. This is -- yes.

12 Q And what is it?

13 A It is a copy of my curriculum vitae.

14 MS. ZMROCZEK: Your Honor, at this time we
15 would move Defendant's 18 into evidence.

16 MS. SAMPSON: I would object to his curriculum
17 being introduced. He already is an expert. He has
18 already testified to it. It is duplicative and
19 unnecessary.

20 MS. ZMROCZEK: We can leave it marked as ID,
21 Your Honor, that is fine.

22 THE COURT: All right, we will mark it as
23 Defendant's 18 for ID.

24 (WHEREUPON, Defendant's Exhibit No. 18
25 was marked for identification only.)

1 BY MS. ZMROCZEK:

2 Q Mr. Watkins, did you have an occasion to do any
3 work with Barbara and Mark Volstromer?

4 A I did. I was brought into this matter October 16th
5 of 2017. At the time, Mr. Volstromer was being
6 represented by a former Richland County Public
7 Defender, Stephen Krzyston.

8 Q And what did you do as part of your investigation
9 into this case?

10 A I received a copy of the footage from the digital
11 video recorder located at Mr. Volstromer's
12 residence. I was asked to review that video, and
13 as it pertains to the footage on the date of
14 incident, I was asked to make any enhancements to
15 not necessarily improve the overall quality,
16 because once we get into this, you will see that
17 there are some limitations there, but to have a
18 better -- the goal is to improve the visual
19 quality, but in the scope of determining what the
20 subjects on the video, what their mannerisms are,
21 their body language, their movements, their
22 location, positions, and what have you.

23 Q And when you say video, on the day of the
24 incident -- we will focus on the day of the
25 incident first, so that was December 27, 2015?

1 A Yes.

2 Q And did you -- with regard to that day, how many
3 cameras were active on that day?

4 A To my knowledge, I believe there were five. I
5 think we -- I think my role -- I focused on three
6 main camera angles.

7 Q Okay. And I'm going to show you what has been
8 marked as Defendant's 21, 22, and 23, and ask you
9 of if you recognize them?

10 A Yes, I do.

11 Q How do you recognize -- what are they?

12 A These are disks containing -- they are individually
13 marked. You have got Channel 5, Channel 3, and
14 Camera 2. The videos are respective to each one of
15 those channels. I believe you've got it specified
16 to a specific date on these.

17 Q And do you -- how did you know that -- did you have
18 an opportunity to view those before we presented
19 them in court?

20 A Yes, I did.

21 Q And how did you know that?

22 A How did I know --

23 Q I mean, you went through those specific CDs, right?

24 A Yes, I did, and I reviewed the contents of the CDs,
25 yes.

1 Q Thank you.

2 MS. ZMROCZEK: Your Honor, at this time we
3 would move into evidence Defendant's 21, 22, and
4 23.

5 MS. SAMPSON: I just didn't hear. Which
6 channels -- which cameras are they?

7 MS. ZMROCZEK: 2, 3, and 5.

8 MS. SAMPSON: No objection, Your Honor.

9 THE COURT: All right, 21, 22, and 23 will be
10 entered without objection.

11 (WHEREUPON, Defendant's Exhibit Nos.
12 21-23 were marked for identification and
13 received into evidence.)

14 BY MS. ZMROCZEK:

15 Q There were five cameras, correct?

16 A Yes.

17 Q And so Camera 4, did that have any material at all
18 on it that would have been acceptable or had
19 anything to show anything about that incident that
20 day?

21 A To my recollection, no. Again, I focused on three
22 channels which did have relevant information
23 pertaining to the incident.

24 Q And you also focused on Channel 1?

25 A Yes.

1 Q Okay. And what was different about Channel 1?

2 A Channel 1 is going to overlook the front of the
3 yard or the yard. There is a road that runs
4 through. So it is overlooking that area. And to
5 my recollection, if it serves me well, that is
6 going to be the footage where we had the best
7 opportunity of seeing what is going on on the day
8 of the incident.

9 Q Okay. And did that have audio as well?

10 A I believe Channel 1 and Channel 2 have audio, and
11 then I think Channel 3 had audio but it was
12 distorted, so we did not use that.

13 Q Okay. I'm going to hand you what has been marked
14 as Defendant's 24. Do you recognize that?

15 A Yes.

16 Q What is that?

17 A This is a flash drive. It contains two of the
18 video renditions after I had examined and made the
19 applicable enhancements where I essentially zoomed
20 in the footage and had three channels synchronized
21 in this video. That is what this contains. It has
22 two renditions of that.

23 Q Okay.

24 MS. ZMROCZEK: Your Honor, at this time we
25 would move Defendant's 24 into evidence. Yes, 24

1 into evidence.

2 THE COURT: Any objection?

3 MS. SAMPSON: I'm so sorry. No objection,
4 Your Honor.

5 (WHEREUPON, Defendant's Exhibit No. 24
6 was marked for identification and
7 received into evidence.)

8 BY MS. ZMROCZEK:

9 Q Mr. Watkins, how difficult was it for you to zoom
10 in and provide these angles?

11 A For me, not very difficult. I do this -- and it is
12 one of the services I provide. I use currently a
13 number of software, but at the time I had been
14 using a specific software. The software name is
15 Sony Vegas Pro, Version 12. And essentially this
16 is a video editing suite where you would bring in
17 video to examine it. And in this case I created a
18 project that not only zoomed in on portions of the
19 video, but also put them together so that they are
20 able to be viewed simultaneously.

21 Q Okay. And the jury will have an opportunity to
22 view that sometime later today, but when you are
23 doing that, so when you are zooming in, are you
24 changing anything that is seen on it?

25 A The visual representation of what is seen on the

1 video is not changed. What you will see is in
2 comparison to the original video, I am zooming in
3 to a portion of the video, so naturally you are
4 going to see some distortion and pixilation after
5 zooming in to a picture or video. That is not
6 changing any of the contents of the video. We are
7 just zooming in to get a better view, a close-up
8 view of the subjects on the video.

9 Q And then so the jurors have seen some of the video
10 already. There are some, I guess, I call them
11 watermarks, but like the channel number or the
12 camera number, and then like the date and time.
13 Can you remove those things?

14 A So in this case, no, they are embedded, so it is
15 not like some video recorders where it is written
16 in as a subtext. So this is written into the
17 video, it is burned into it. So there are some
18 tools that might be able to change this, but I
19 don't use them because there are a few risks. If
20 you remove the watermark using one of these
21 methods, you could distort the video, and of course
22 I don't want to do anything that could change the
23 contents of the video.

24 Q So that is why you just left it?

25 A That's why I didn't touch it.

1 Q Okay. And when they watch the video, you say there
2 are multi-views. Explain how you did that and kind
3 of how that assists you in looking at the overall
4 picture.

5 A So, the first thing I do is I review the content of
6 each of the videos, and after seeing that the
7 content, the relevant content that we are looking
8 at, we are seeing it appear not just on one channel
9 but on two or three channels. What I then do is I
10 will put them into the project onto a timeline.
11 The software has a timeline where I can put them in
12 chronological time where I play the video
13 simultaneously to the second. So they are
14 perfectly synchronized. Then what I do is I go
15 into each video segment and I will fit it into the
16 same window, so we are seeing it on the same
17 screen. And so when you watch this video, you'll
18 see one of them is stretched out at the top, one is
19 stretched out at the bottom to show two different
20 camera angles of the exact same thing that is going
21 on simultaneously at the same second of time. And
22 then later in that video I added the third channel,
23 which will be in the upper right of the video,
24 which is a continuation of a particular subject in
25 the video leaving from the field of view to the

1 cameras and entering a field of view of a third
2 camera.

3 Q And what is the reasoning behind that? Are things
4 happening on different cameras at the same time?

5 A Yes. There is that. It is also good to have a
6 deeper perspective of what we are seeing, because
7 we are looking -- if you look at the first channel,
8 you are looking at the video where the subjects are
9 a good distance away from this camera. So when you
10 are watching the subjects and you are trying to
11 determine what their distance is from each other or
12 from certain objects, it is hard to do that when
13 you are looking at a two-dimensional view. So when
14 you throw in another camera angle, you bring some
15 depth perception to what you are looking at.

16 So that was part of the assignment, is just
17 trying to create that depth.

18 Q And so that was for that specific date that you did
19 that, the date of this incident, right?

20 A Yes.

21 Q Okay. Did you have an occasion to view any other
22 videos?

23 A There was a large amount of videos in this case.
24 And I and another investigator that worked with me
25 at the time, we both spent a lot of hours looking

1 at this video, not just on the date of the
2 incident, but other -- just what was given to us.

3 Q And was it hard to download all of these videos?

4 A No. Actually it was provided to me from the
5 attorney. The attorney provided a hard drive that
6 contained everything that was already exported from
7 the C Drive.

8 Q All right. And, just briefly, I'm going to show
9 you what has been marked for ID Defendant's 19 and
10 20. And these are just for ID at this point, but I
11 want to hand these both to you and ask if you
12 recognize those videos? Well, those items holding
13 the video?

14 A Yes.

15 Q Okay. And what are those?

16 A This here contains videos dated December 20th,
17 2015.

18 Q Is it a certain time frame?

19 A It is a certain time frame, yes.

20 Q Okay.

21 A And the flash drive contains additional videos from
22 that date.

23 Q Thank you.

24 MS. ZMROCZEK: Beg the Court's indulgence.

25 (Pause.)

1 BY MS. ZMROCZEK:

2 Q Thank you, Mr. Watkins. Please answer any
3 questions the State may have for you.

4 MS. SAMPSON: Thank you. May it please the
5 Court?

6 CROSS-EXAMINATION

7 BY MS. SAMPSON:

8 Q Mr. Watkins, you stated you looked at a lot of
9 video that was provided to you by the Defense?

10 A That is correct, yes.

11 Q Did you see any video where Keith Pruitt comes onto
12 the yard of Mr. Volstromer?

13 A Not that I recall, no.

14 Q In all that video footage?

15 A In all the video.

16 MS. SAMPSON: No further questions, Your
17 Honor.

18 THE COURT: Any redirect?

19 MS. ZMROCZEK: Yes.

20 REDIRECT EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Do you have notes of every single video that you
23 watched in front of you?

24 A I don't.

25 Q And when did you watch it?

1 A A couple of years ago. We finished our work in
2 this case I believe in 2018.

3 Q Thank you.

4 MS. ZMROCZEK: I have no further questions,
5 Your Honor. I would ask that he be released from
6 his subpoena.

7 THE COURT: All right, sir, may step down.
8 Any objection to this being excused?

9 MS. SAMPSON: No, ma'am.

10 THE COURT: All right, you are free to leave.
11 (Witness steps down and excused.)

12 MS. ZMROCZEK: Your Honor, I believe our next
13 witness we have a matter of law that we need to
14 address with the Court.

15 THE COURT: All right. Ladies and gentlemen,
16 I am going to send you all out, and we'll have you
17 back in shortly.

18 (WHEREUPON, the jury retires to the jury
19 room at 10:22 a.m.)

20 MS. ZMROCZEK: It is Barbara Volstromer, Your
21 Honor. And so we had talked about proffering the
22 testimony of what she knew about his criminal
23 history so that we can be able to direct her not to
24 talk about that once Your Honor makes a ruling.

25 THE COURT: I thought I had made a ruling as

1 to the CSC, but I thought we were proffering her
2 testimony as to something else.

3 MS. ZMROCZEK: I'm sorry?

4 THE COURT: I thought we were proffering her
5 testimony as to something else.

6 MS. TAYLOR: Just to preserve the record, Your
7 Honor.

8 THE COURT: Yes, I understand that, but there
9 was another issue with her that we were I thought
10 proffering. That's fine. Bring her on in.

11 MS. ZMROCZEK: Thank you. And she went to go
12 get her, Your Honor.

13 THE COURT: Okay.

14 MS. ZMROCZEK: Your Honor, we would call
15 Barbara Volstromer.

16 THE COURT: All right.

17 (Witness approaches.)

18 THE BAILIFF: Place your left hand on the
19 Bible, and raise your right hand, please.

20 (Witness complies.)

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

25 THE WITNESS: I do.

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

4 (Witness seated.)

5 BARBARA VOLSTROMER,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION(PROFFER)

8 BY MS. ZMROCZEK:

9 Q Good morning, Ms. Volstromer. And just so you are
10 clear as to why the jury is not here, remember we
11 spoke about some things yesterday that we may not
12 get -- we may not get to get in front of the jury,
13 but we want to go ahead and put it on the record
14 just in case, okay?

15 A Okay.

16 Q So this is going to be a little bit narrower than
17 your main testimony.

18 A Do you want me to state my name?

19 Q Yes. Oh, I'm sorry. Yes.

20 A Barbara Dean Volstromer.

21 Q Okay. Ms. Volstromer, for the purposes of this
22 hearing -- of this part, I want to ask, how did you
23 meet Keith Pruitt?

24 A He came to my home the day before he brought his
25 trailer.

1 Q Okay. And make sure that you lean -- it is hard to
2 hear you.

3 A He came into my home when he -- the day before he
4 brought his trailer down.

5 Q Okay. And was that the first time that you had
6 ever met him?

7 A Yes, ma'am.

8 Q What kind of interaction did you have with him?

9 A There was something wrong with him. He was
10 drinking and he came in my house, had a beer in his
11 hand, talking about wanting to cut down my trees
12 and just -- he was belligerent, so loud. And he
13 was crazy.

14 Q Do you remember what month or year this was?

15 A It was in 2015. I think it was February, I think.
16 I'm not sure.

17 Q Okay. That's okay. And then so just on that day,
18 how did he leave your house?

19 A I asked my husband to politely escort him out
20 around the gate, and I thanked him, and that was
21 it.

22 Q What was your next interaction with him, with
23 Mr. Pruitt?

24 A Mr. Pruitt, it was -- I believe it was
25 February 23rd. I was out in the yard, I was having

1 a dog problem that week. I had called Animal
2 Control. I walked out of the house and there were
3 these two big old dogs, I mean, just enormous. And
4 I had called Animal Control earlier that week. And
5 so my husband had been over to a neighbor's house
6 with my daughter. And I had thought I kept on
7 hearing people yelling outside. I thought, Oh, my
8 God. You know, I got my gun, went out there, and
9 there was no -- I mean, I kept on hearing yelling,
10 and I was like, Is everybody okay?

11 And he is like -- and that is when I heard
12 him. He said --

13 Q I'm sorry, him who?

14 A Mr. Pruitt.

15 Q Okay.

16 A Mr. Pruitt. He said, Oh, I'm getting my dog. My
17 dog is out here. And immediately, because I have a
18 fear of big -- I have a fear of anybody's dog but
19 mine, you know.

20 Q Okay. And so what was the next interaction you had
21 with him?

22 A I believe it was May 29th. You know, I had had --
23 I had gotten fractured ribs. His dog actually did
24 come through my fence and had fractured my ribs.
25 And I was on pain killers. My husband kept on

1 telling me -- kept on seeing -- I have lived in
2 front of the church, Antioch Amez Church Road 20
3 years. I have actually been over there. I knew
4 the reverend at the -- earlier reverend at one
5 time. But he kept on seeing this truck out there.
6 And, you know, it just -- I was on pain killers,
7 and I was like -- it was on May 29th. I was
8 getting ready to lay down. I took all my medicine.

9 He was like, Barbara, there is that truck
10 again.

11 I was just, Mark -- I got **Daughter** -- because
12 I was on pain killers -- I got **Daughter**, got a
13 flashlight, you know, walked out of the house,
14 because I figured the church would know. I mean, I
15 could call the church any time, the church would
16 know. And we had walked across the street. It was
17 **Daughter** my husband, and myself. And I thought,
18 Let me just get the license plate number, I'll turn
19 it over to the church and see if they know who this
20 person is.

21 Walked all the way out. There was a boat
22 attached. Stepped in -- I stepped over the
23 trailer, had written the license plate number down.
24 I had just -- and Mr. Pruitt was in that truck,
25 came out, had a beer in his hand, said, I am the

1 devil, and I am going to rain hell down on you.

2 You don't know who you are dealing with.

3 Immediately I rushed my -- I then get
4 across -- everybody gets across the street, and we
5 called the sheriff.

6 Q Okay. And then was there another occasion that you
7 had to call the sheriff sometime later on that
8 year?

9 A Well, there was -- I think there was one day that
10 I -- I think it was in June.

11 Q No, when the police came out?

12 A When --

13 Q Would that have been in September?

14 A Oh, in September.

15 Q Uh-huh.

16 A Actually, I was out there, and it had nothing to do
17 with this man.

18 Q Okay.

19 A If I recall correctly, it had to do with one of our
20 neighbors decided at 8:00 o'clock he was going to
21 burn the front yard of a vacant lot.

22 Q Okay.

23 A Right next to, you know, where he was residing.
24 And I'm looking out the window. You can smell the
25 smoke, you can see the fire. I called the fire

1 department. And I think it was this day.

2 Q Uh-huh.

3 A But Mr. Pruitt was out there with him, because you
4 can tell it was jumping, it was jumping off the
5 back into the trees off the other side of the road.
6 And so I think he was out there trying to make sure
7 his property was okay.

8 Q Uh-huh.

9 A And he started saying that -- the fire department
10 came up, and he was saying something about,
11 Everybody has a problem with her.

12 And I was like -- by that time I'm like, Just
13 put the fire out.

14 And that is when he said to me, You don't know
15 who you are dealing with.

16 Q Okay. And so you called the sheriff as well?

17 A No. That is when I -- that is when I decided, I
18 better find out who this man was.

19 Q Okay. And so when you say you needed to find out
20 who this man is, what did you do?

21 A I had used Been Verified, because we have our own
22 business, and I looked that up, and then I started
23 going through the county records, Richland and
24 Lexington, like Orangeburg, you know, all the
25 county records to find out exactly who this man

1 was.

2 Q Okay. And what did you learn?

3 A That he was a sexual offender.

4 Q And how did you learn that?

5 A Because it was right there.

6 Q Right there where?

7 A Right there in the records that I pulled up on
8 the --

9 Q So tell me about those records.

10 A I believe that was the Lexington County index.

11 Q The public index?

12 A Public index.

13 Q Okay. So you typed in his name, and what did you
14 see?

15 A I saw that he was convicted, second degree felony
16 sexual offense, which is -- which is rape.

17 Q Okay. Why was that important to you?

18 A Because my daughter was sexually abused when she
19 was four years old.

20 Q And how did learning about that record change
21 your -- the way that you were going to deal with
22 Mr. Pruitt?

23 A Well, I mean, before I found out -- I mean, there
24 were other things that had happened. I mean, it
25 was -- that man was crazy. I mean, he was always

1 there. I mean, either up at the church, on the
2 other side of the church, during the day, at night.
3 You know, I'd be outside, up, down, he would stop.
4 I'd be standing at my front door, and he would stop
5 right there.

6 Q So specific to this criminal charge, how did that
7 change the way that you felt when you were around
8 him?

9 A Oh, I was just -- I tinted my house windows. Well,
10 it wasn't just that, because we have lived there
11 for over 20 years. One of the earlier property
12 owners down there, Homer Beard, World War II vet,
13 wonderful man, his daughter Janet, he moved her in
14 down there and -- because of her ex-husband. And
15 so when I was pulling up -- I mean, Homer actually
16 shot at this man. This man had gone down there
17 when Janet -- he had moved Janet in. And he
18 actually came out -- of course, Homer is deceased
19 now. And so not only did I pull that record -- and
20 I'm thinking, This is -- this was her husband. And
21 this is -- that is why she moved down there. And
22 that just right there, I mean, I don't believe in
23 that much coincidence, because we have lived there
24 all this time.

25 Q And so on the day of -- I want to jump forward just

1 for the purposes of this. On the day of
2 December 27th, 2015, when you were in your yard,
3 did you have knowledge of Mr. Pruitt's propensity
4 for violence?

5 A Yes.

6 Q Okay. Did you have knowledge of his criminal
7 history of this violent act of the criminal sexual
8 conduct in the second degree?

9 A I didn't have the whole story.

10 Q Right.

11 A I knew all -- that is all I needed to know at that
12 time. That was it for me. I was -- I told my
13 husband that, We are moving. We are not going to
14 have our daughter -- she started out her
15 kindergarten years abused and had problems in
16 school, and I had to go to the guidance counselor
17 at Brookland Elementary. I wasn't going to have
18 her teenage years be tarnished.

19 Q And --

20 A We were moving.

21 Q And why did that, on that day specifically,
22 December 27th, 2015, why did that make you more
23 afraid of him?

24 A Because there he was, right? I tried to stay away
25 from him. I mean, if he was coming, I would try --

1 -- if I was out in the yard, I would -- he would
2 pull up behind me when I was in my garden and he --
3 How you doing? And, I mean, he would pull all the
4 way up. All the way up as close as he could. And
5 it just -- it was scary. He was a scary man.

6 MS. ZMROCZEK: Your Honor, for the purposes of
7 requesting to put that charge -- because, as I
8 said, her knowledge of that criminal charge went
9 specifically to her state of mind that day, and
10 that is why we were moving to proffer it in. I
11 don't know if the State has any more questions.

12 THE COURT: All right. Please answer any
13 questions that the State may have. Please answer
14 any questions that the Solicitor has.

15 CROSS-EXAMINATION (PROFFER)

16 BY MS. SAMPSON:

17 Q I was trying to follow along, but I was unclear.
18 Are you saying that Mr. Pruitt did something to
19 your neighbor's daughter? You said something about
20 Homer and his daughter that was living with him and
21 then him. And I didn't know who him was.

22 A No, ma'am, I didn't. I said Mr. Pruitt was married
23 to Janet Beard. Janet Beard had taken I believe a
24 restraining order out on him in 1995. And I know
25 for a fact that Homer Beard put a trailer back

1 there for Janet and Miranda to move in for
2 protection from this man.

3 Q And did you find that out before or after the
4 shooting?

5 A No, I knew in September of 2015 that that man,
6 Mr. Pruitt, was married to Janet Beard and that he
7 had been down there at that property prior to,
8 prior to this date, prior to him even moving in,
9 that that man had been down there. I did not know
10 what the man's name was that she was married to, it
11 was none of my business. I do not get into my
12 neighbor's business. But right then and there I
13 knew that they were married and that is why she
14 moved in with her father. Homer Beard was her
15 father. He was the original property owner down
16 there in Megan Court.

17 Q Just trying to make sure when you say him who you
18 were talking about.

19 A Mr. Pruitt.

20 Q And the things that happened with your daughter,
21 that was when she was four, is that correct, what
22 you just said?

23 A I believe we reported it in 2005. Her birthday was
24 ██████████ so she had just turned five years old.
25 So, yes, that would be correct.

1 Q So roughly 10 to 11 years before this?

2 A Roughly.

3 Q And his conviction, did you know the date of his
4 conviction?

5 A I can't --

6 Q At the time?

7 A At this time, I don't remember.

8 Q So it was in 1989?

9 A It could have been '89, it could have been '84. It
10 didn't matter to me.

11 Q It didn't matter to you?

12 A It did not matter to me. I was ready to move.

13 Q So it didn't matter to you that it was 26 years
14 ago?

15 A It did not matter at all. It did not matter. Only
16 because based off of the crazy stuff that was going
17 on prior to me actually finding that information
18 out.

19 Q And just --

20 MS. SAMPSON: I want to cover something else
21 that you had asked -- I don't know if Ms. Zmroczek
22 plans on doing this with her or someone else, but
23 you asked us to cover the shooting.

24 MS. ZMROCZEK: About what?

25 MS. SAMPSON: The shots being fired.

1 MS. ZMROCZEK: Yes, we can go ahead and cover
2 that now. Your Honor, again, that is why I'm
3 trying to do all this so that we don't mess up the
4 trial as we are, you know, getting close to the
5 end. So what I would do -- I was going to move
6 those two in through her, those two exhibits.

7 MS. SAMPSON: And I want to ask her about
8 them.

9 MS. ZMROCZEK: And then, Your Honor, after you
10 make your -- put everything on the record, I need
11 to just make sure that she doesn't say those
12 things, if that is okay, the things that she is not
13 allowed to say.

14 Thank you.

15 BY MS. SAMPSON:

16 Q And, Ms. Volstromer, there is a video of shots
17 being fired on December, I believe it is the 10th?

18 MS. ZMROCZEK: It is the 20th.

19 MS. SAMPSON: 20th. I don't know the dates.

20 BY MS. SAMPSON:

21 Q Can you tell the judge about that?

22 A I'm not quite certain what you are saying about
23 shots being fired.

24 Q There is a video that you have provided to the
25 Defense from your camera where you can hear or you

1 have alleged that you hear shots being fired, you
2 don't see anybody being shot at, you just hear
3 shots being fired on December 20th?

4 A No, I think on December 20th somebody came down and
5 said, Die. I mean, I think that that might have
6 been December 20th.

7 MS. ZMROCZEK: And, Your Honor, because -- if
8 I may. If I can --

9 REDIRECT EXAMINATION(PROFFER)

10 BY MS. ZMROCZEK:

11 Q Barbara, you provided us with several videos,
12 correct?

13 A Yes, ma'am.

14 Q And you had tried to document the ones that were
15 contributing to your state of mind?

16 A Yes, ma'am.

17 Q Okay. So there were several videos of several
18 different things, right?

19 A Yes, ma'am.

20 Q Okay. And remember that we picked just two videos
21 that we said we were going to talk about, right?

22 A I -- I --

23 Q It is fine. If you don't remember, you don't
24 remember.

25 MS. ZMROCZEK: Your Honor, we will not move

1 that in through her. We will move it in through a
2 different witness. So that -- I'll make sure to
3 only move in the One Drive video that has been
4 identified by Mr. Watkins, and we'll move that in
5 through her, so I will make sure that we cover that
6 with a separate witness.

7 Thank you.

8 THE COURT: Anything else?

9 MS. ZMROCZEK: We have nothing further.

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

11 (Pause.)

12 MS. SAMPSON: Just checking. Nothing at this
13 time. I still have the same arguments I made
14 yesterday.

15 THE COURT: Ma'am, you may step down.

16 (Witness steps down.)

17 MS. ZMROCZEK: And, Your Honor, just so that
18 we can preserve the record fully, if I may have
19 Ms. Austin explain the law again as to her
20 testimony, why we think it is relevant.

21 And, again, while she is doing that, Your
22 Honor, I am going to step outside and make sure she
23 knows what not to talk about.

24 THE COURT: You have got to wait on me to rule
25 first.

1 MS. ZMROCZEK: And I will do that.

2 THE COURT: But she needs to step outside.

3 (Witness steps out.)

4 THE COURT: All right. Yes, ma'am,

5 Ms. Austin?

6 MS. AUSTIN: Yes, Your Honor. And so we would
7 ask again that the victim's second degree CSC
8 charge comes in under Rule 404(a)(2), as well as to
9 introduce the victim's character to help establish
10 Mr. Volstromer's defense. Specifically,
11 self-defense, as long as we lay the proper
12 foundation that the witness knew about his
13 propensity for violence before this incident
14 happened, that it would be admissible.

15 I think there was some concern yesterday about
16 what did this have to do with anything. I think
17 Ms. Volstromer did a good job of explaining that,
18 Mr. Pruitt was pulling up to her and making her
19 feel uncomfortable frequently, which is exactly
20 what he did in this case, and made her so afraid
21 that she was actually going to move away from him.
22 And so she knew that he was violent, she knew that
23 this was a violent crime, that it was a rape. And
24 so we ask that it come in under 404(a)(2).

25 THE COURT: All right.

1 MS. SAMPSON: Your Honor, if I may just add to
2 the record, just to clarify, she actually said once
3 she found out he was a sex offender, she was moving
4 regardless because of what had happened with her
5 daughter. She didn't even know what year it was
6 that he got convicted. She did not even know it
7 was 26 years before this. To her, it didn't
8 matter, she was moving, he was a sex offender.
9 That has nothing to do with this particular case.
10 They still have to show a causal connection that is
11 necessary for a prior incident from 26 years ago
12 can come in.

13 THE COURT: All right. The ruling will remain
14 the same as to the CSC. It is too remote. There
15 is no connection. Actually I think I said on
16 yesterday, on the day of the incident they were not
17 fighting about him coming onto the property, they
18 were arguing over a fence in the road and who owned
19 the roadway and who did not own the roadway. There
20 is no causal connection between the CSC second and
21 what is already in evidence as to what occurred on
22 that day. She did not -- there is no testimony
23 regarding anything -- no sexual component argument
24 about anything about the daughter. The daughter
25 was not outside that day. I think their testimony

1 has been that the daughter was inside and did not
2 come outside at all. And there is no correlation
3 between the two. And I think I said yesterday if
4 there was testimony that she knew about the assault
5 of a high and aggravated nature, I think that would
6 be different, and she would be able to testify to
7 that. But she -- it is my understanding she
8 doesn't -- she did not know about that because it
9 was not on the rap sheet. I don't know if it was
10 on -- or whatever she looked at on the index under
11 his name and that is why she did not see it, it was
12 under another name.

13 MS. ZMROCZEK: Thank you.

14 THE COURT: So that is the ruling of the
15 Court. She cannot get into the CSC. I am going to
16 allow her to get into the prior difficulties that
17 she discussed. I know they are objecting to that,
18 but she can get into those two, the church and
19 the --

20 MS. ZMROCZEK: And the fire with the friend,
21 You don't know who you are dealing with.

22 THE COURT: The fire?

23 MS. ZMROCZEK: Or the threat. The fire is
24 what started the whole thing where he said, You
25 don't know what you are -- who you are dealing

1 with, and that is when she called the police. So
2 three days later.

3 MS. SAMPSON: Actually, that changed. The
4 incident report that they give us that they were
5 relying on yesterday does not mention fire. It
6 mentions him going down on a 4-wheeler and
7 afterwards.

8 THE COURT: Yes. That was new.

9 MS. ZMROCZEK: And so, yes, the connection,
10 Your Honor, is if you look at the incident date of
11 September 1, I think that is where -- and certainly
12 they can cross-examine her on that, and so --

13 THE COURT: I guess I'm confused. Yesterday I
14 had said she could get into the discussion
15 regarding him riding down the road on a 4-wheeler.

16 MS. ZMROCZEK: Okay. And I'll make sure --

17 THE COURT: And what is this one with the
18 fire?

19 MS. ZMROCZEK: Well, and that is why I need to
20 make sure that she --

21 THE COURT: Is that just -- is she going to
22 testify that there was a fire and he threatened her
23 at that time? So the police responded to that too?

24 MS. ZMROCZEK: No, no, police responded
25 three -- I think three days later, at a different

1 time. So that is why I want to make sure that I
2 was clear on the ruling so that she doesn't kind of
3 go off the rail into something.

4 THE COURT: You all are objecting to her
5 testifying to the fire incident?

6 MS. SAMPSON: If -- and maybe we need to
7 clarify with her. The incident report that we have
8 does not mention a fire. It mentions that he was
9 going down on this 4-wheeler, throwing dust up,
10 being a nuisance, and maybe shining a flashlight at
11 her security camera and said, You don't know what
12 you are dealing with. And yesterday they said that
13 is what led to her looking him up. Today she says
14 there was a fire that occurred and that he said
15 that statement while the fire was going on and he
16 was trying to make sure his property didn't get
17 burned down talking to the fireman and said this to
18 her about that, because he is telling the fireman,
19 She has got problems with everybody. And then,
20 according to what she just said, when she is trying
21 I guess to defend herself from that, or whatever
22 she was doing, he says, You don't know who you are
23 dealing with. And what she just testified to is
24 that is when she went looking up the record. That
25 is not what was said yesterday. So I have no idea

1 which two incidents, is it a separate incident or
2 one incident.

3 MS. ZMROCZEK: And, Your Honor, I believe that
4 the fire happened at night. The 4-wheelers
5 happened sometime very shortly thereafter, and so I
6 think that is when she called the police, but
7 obviously she can clarify that, they can question
8 her about it, but if they don't want to get into
9 the fire, that is what I'm trying to make sure --

10 THE COURT: Are y'all objecting to her
11 testifying to the --

12 MS. SAMPSON: I just was trying to make sure
13 if these were the same or two different incidents.
14 I don't know.

15 MS. ZMROCZEK: No, they are different.

16 THE COURT: All right, she can testify -- I
17 mean, she can testify to him threatening her with
18 the fire. She is not testifying to the gunshot
19 because --

20 MS. ZMROCZEK: No.

21 THE COURT: She doesn't even remember it.

22 MS. ZMROCZEK: I know.

23 THE COURT: And there was nothing in the
24 incident report. She just said somebody was
25 shooting a gun. And so there is nothing that

1 connects that to the prior difficulties for
2 purposes of self-defense.

3 MS. ZMROCZEK: Certainly. And I won't move
4 that video --

5 THE COURT: To be able to establish for
6 purposes of self-defense, I guess being able to
7 establish their fear, the reason why they would
8 have fear.

9 MS. ZMROCZEK: Certainly. And so I will go
10 make sure -- I won't even ask her about that, and I
11 won't move that video in through her.

12 THE COURT: All right. Anything else with
13 her?

14 MS. ZMROCZEK: If I may briefly have five --
15 not even five, maybe two minutes just to --

16 THE COURT: Okay.

17 MS. ZMROCZEK: Thank you.

18 (Pause.)

19 MS. ZMROCZEK: Ready, Your Honor.

20 THE COURT: All right, let's bring them back
21 in.

22 (WHEREUPON, the jury came into open
23 court at 10:53 a.m.)

24 THE BAILIFF: The jury is present, Your Honor.

25 THE COURT: All right, thank you.

1 All right, we are ready for our next witness.

2 MS. ZMROCZEK: Thank you, Your Honor. We call
3 Barbara Volstromer.

4 (Witness approaches.)

5 THE BAILIFF: Place your left hand on the
6 Bible, and raise your right hand, please.

7 (Witness complies.)

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

12 THE WITNESS: I do.

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

16 (Witness seated.)

17 THE WITNESS: Barbara Dean Volstromer.

18 BARBARA VOLSTROMER,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. ZMROCZEK:

22 Q Ms. Volstromer, I want to talk a little bit about
23 yourself. How old are you?

24 A Fifty-five.

25 Q You are 55. Where did you grow up?

- 1 A I was born in Columbus, Ohio.
- 2 Q Speak a little bit closer.
- 3 A I was born in Ohio.
- 4 Q In Ohio?
- 5 A Uh-huh.
- 6 Q And when did you -- how far did you go in school?
- 7 A I completed high school, and I had some college
- 8 courses.
- 9 Q Okay. When did you move to South Carolina?
- 10 A I moved to South Carolina, I believe it was '89,
- 11 '90.
- 12 Q And have you been married before?
- 13 A Yes, I have.
- 14 Q And to who?
- 15 A George Sidney Greenwood, III.
- 16 Q And how long were you married to him?
- 17 A Actually I dated him in high school, and I believe
- 18 I was married to him possibly seven to nine years.
- 19 It was one of the worst -- I'd like to -- I think
- 20 it was nine total till I finally divorced him.
- 21 Q And did you have any children as a result of that
- 22 marriage?
- 23 A Yes.
- 24 Q And who was that?
- 25 A Alyce Kayla Greenwood.

1 Q Okay. And what does Alyce do for a living?

2 A I have not talked to her since this incident, I am
3 going to be honest, because I used to get my
4 grandson, and I just had him that year, but she was
5 a critical care nurse at Tampa General Hospital,
6 graduated summa cum laude at Florida State
7 University 2009.

8 Q So she had a child?

9 A My grandson, Evan.

10 Q And you said that you -- so tell the jury about
11 when you say you had him some that year?

12 A Oh, I was there when he was born. She had to have
13 a C-section. I drove down there. Stayed there
14 with her for two, three weeks. And when he got old
15 enough, he would come and spend a couple of months
16 every year during the summer. And I was just
17 devoted. I mean, he was just everything --
18 everything to me.

19 Q And we call that Mamaw Camp, but so it was kind of
20 like summer camp with the grandparents?

21 A Oh, my goodness. It is beautiful. Totally
22 beautiful.

23 Q When did you meet Mark Volstromer?

24 A Mark, I believe it was '95. He was working at
25 Boatwright, and I was working as a temp for Edwin,

1 who Edwin and Marion owned the Marwin Company,
2 which also owned Boatwright.

3 Q And so did you and Mark date for some time?

4 A Well, truth be told, I had left. He called me six
5 months later after I left and invited me over Labor
6 Day weekend to grill out, and that was that.

7 Q So Labor Day weekend, he invited you over. Where
8 did he invite you over?

9 A Over to his home.

10 Q And where was that? What address was that?

11 A 1129 Antioch Amez Church Road.

12 Q It must have been a cook out. And you said that
13 was that. Did you and Mark get married?

14 A Yes. We dated a year. I was still married to my
15 husband. I was living, just me and my daughter
16 Alyce. We dated a year. And after my divorce was
17 final, I moved in with Mark. We lived together for
18 two years. And then we got married Labor Day
19 weekend, it was '98, because we had **Daughter** in
20 '99.

21 Q You got married in '98. Where did you get married?

22 A Right there at 1129 Antioch Amez Church Road.

23 Q Okay. And so how long have you been married now?

24 A Well over 20 years. Twenty-three.

25 Q Twenty-three?

1 A Twenty-three years.

2 Q And you said in '99 you had a child with Mark?

3 A Yes. We -- prior to that, I had a miscarriage.

4 And then I got pregnant with Daughter in '98. We
5 had Daughter in '99.

6 Q You had Daughter in '99. And how old is she now?

7 A She just turned 22.

8 Q And so I want to talk a little bit about the home
9 that you lived in. And so you moved in -- or so
10 you went there for a cookout and never left
11 basically. So you went there for a cookout and
12 you -- then you said eventually moved in before
13 y'all got married, right?

14 A Uh-huh.

15 Q And so describe the home that you lived in.

16 A Oh, I mean, how to describe it. We worked. I
17 mean, we cleared the lot. We were clearing -- I
18 mean, we cleared the whole back yard. We built a
19 privacy fence off the side. I mean, Mark is like
20 amazing. I mean, he built the garage, he built my
21 daughter a playhouse, her own little playhouse. I
22 mean, it is just -- this is what -- this was our
23 home. You know, we made it that way. We totally
24 redid the inside. You know, I mean this is our --
25 this was our home.

1 Q And so what kind of neighborhood environment was it
2 like when you moved in?

3 A Well, there weren't a lot of people. There were
4 older people. I believe at the time Homer Beard
5 lived down the road. There was John Coleman and
6 his wife.

7 MS. SAMPSON: Your Honor, I haven't objected
8 yet, but we are talking about I guess 1998 and who
9 lived there in '98.

10 MS. ZMROCZEK: I'll move forward.

11 BY MS. ZMROCZEK:

12 Q My point being, **Daughter** -- or, excuse me,
13 Barbara, you -- so you have known the people that
14 you lived around, right?

15 A Yes.

16 Q Okay. And it was a peaceful place to live?

17 A Yes.

18 Q Okay. Describe the -- so your house -- you have a
19 house, right?

20 A Well, it is a mobile home.

21 Q Right.

22 A It is a mobile home.

23 Q And what in the main room -- is that where y'all
24 spend most of your time?

25 A Yes, ma'am.

1 Q Okay. And what do you like particularly about that
2 main room?

3 A My husband had redone it, paneling, and it was
4 open, and we had a fireplace, and our dining room
5 table sat there -- I mean, sits there. And that is
6 just -- that is our area. That is --

7 Q Is that where the front door is?

8 A Yes, ma'am.

9 Q Okay. And the front door, are there windows next
10 to it?

11 A Yes, ma'am.

12 Q Okay. Do you -- what do the windows look out on?

13 A It looks out into the front and into the side yard.

14 Q Okay. And did you -- what did you do in that side
15 yard? What kind of things did you like to do?

16 A It was -- in 2014, we had cleared everything, this
17 side, the back, and what was left wooded. There
18 was like maybe 10, 15 feet back there, I'm not
19 quite certain. We had a 6-foot privacy fence. But
20 what we did, we started clearing back there. We
21 were going to put some rose bushes. And we cleared
22 that whole side and up in front. My husband had
23 built a garage, but all that was wooded. So we had
24 started in 2014 clearing all of that area.

25 Q Okay.

1 A And had planted -- we at one time had a whole row
2 of evergreens, but they had died. We really tried.
3 I was always out in the yard. We had a pool. I
4 think in 2014 I think is when my husband finally
5 took the pool down. So we were always out in the
6 yard.

7 Q Okay. Do you own a gun?

8 A Yes, ma'am.

9 Q When did you purchase your gun?

10 A That would have been after August, I believe, of
11 2006.

12 Q Okay. And why do you remember 2006 and buying a
13 gun? Why did you buy a gun?

14 A My husband was attacked by a dog going out to check
15 our mail.

16 Q Okay. So talk to me a little bit about that.

17 A My husband went out to go check the mail, and I
18 just kept on hearing, Barbara, get my gun. He had
19 shotguns. He had two shotguns.

20 Q Okay.

21 A And it was, Get my gun, get my gun. I was like,
22 you know, he never -- I mean, he never bleeds. And
23 I opened up the door, and he is like, I mean, blood
24 everywhere. I mean, he was just -- it was like --

25 Q Did you call the ambulance?

1 A I called the ambulance. He had to go to the
2 hospital in an ambulance. **Daughter** I think was
3 five. She would have been six.

4 Q So after that you purchased a gun?

5 A I did. I was scared. I didn't even ask my
6 husband. I just, you know, I stopped one day and I
7 thought, you know -- he had just -- I admit I had
8 never had really shot. He had shown me how to
9 shoot a shotgun. I never shot before I met Mark,
10 but he taught us, you know, how to shoot a shotgun,
11 even my daughter Alyce, how to shoot a shotgun.
12 And so I had stopped, because I am always out in
13 the yard. I'm always out in the yard.

14 Q Okay.

15 A And I stopped and purchased my gun.

16 Q All right. I want to jump ahead a little bit. I
17 want to talk -- I want to ask you, do you know
18 Keith Pruitt? Lanny?

19 A Did I know him personally?

20 Q Yes? When did you meet him?

21 A I met him -- I believe it was when he -- it was
22 when he moved -- the day before he moved his
23 trailer down there.

24 Q Okay.

25 A Is when I -- the only one time I was up close and

1 personal.

2 Q Okay. And what was significant about that meeting?
3 And do you recall when that was?

4 A He came in my house.

5 Q Do you recall -- I'm sorry, do you recall when that
6 was? What year?

7 A Oh, that was in 2015. I'm sorry. At the beginning
8 of 2015.

9 Q Okay. All right. And then so tell me about the
10 meeting. Sorry.

11 A He came into my house. He had a beer in his hand.
12 Started saying that he was going to cut down my
13 trees and just -- I mean, the man was crazy.

14 Q Okay.

15 A I knew right then and there. I mean, he was
16 boisterous, he was loud. And it wasn't just
17 because he had been drinking, there was something
18 psychologically wrong with that man.

19 MS. SAMPSON: Objection, Your Honor.

20 A In my opinion.

21 THE COURT: Hold it. Sustained.

22 MS. ZMROCZEK: Okay.

23 THE COURT: Please strike -- disregard the
24 last comment.

25

1 BY MS. ZMROCZEK:

2 Q Okay. So is it safe to say that you didn't have a
3 good feeling about him?

4 A Oh, not at all.

5 Q Okay. So how did he -- how did you remove him from
6 the house?

7 A I politely asked my husband, Would you please show
8 Mr. Pruitt out, show him through the side gate, and
9 I thanked him, and that was it.

10 Q Okay. And you said side gate. So the front door
11 that we talked about that faced your side yard, is
12 that the door that y'all use all the time?

13 A We use the side door coming in where the washer and
14 dryer is. We just leave that open. We leave that
15 open because of the yard in the front. But more
16 than -- we normally use the side or -- now, I would
17 sit out there and drink coffee, read my newspaper,
18 eat a bowl of cereal on that deck, but that is not
19 a door that we actually used to access if we went
20 to the grocery store, and things like that.

21 Q Okay. And so I'm going to show you what has
22 already been admitted into evidence as Defendant's
23 Exhibit 1. And so is this your house here? Oh,
24 I'm sorry, you don't have your glasses on, I told
25 you you didn't need them.

1 A Yes, ma'am. That is fine.

2 Q So if the front door is here, the side door, what
3 road does that face?

4 A The front facing is Antioch Church Road.

5 Q Okay. And so -- and is that where your driveway
6 was?

7 A Yes, our driveway is directly in front of the door
8 to the church. The door to the church and --

9 Q Okay. And that is what I was -- so that is what I
10 was getting at. You said your driveway is directly
11 in front of the doors of the church?

12 A Yes.

13 Q What church?

14 A Antioch Amez Church.

15 Q And so in 2015, you met Mr. Pruitt face to face.
16 Did you have any other interactions with him that
17 year?

18 A Yes, ma'am.

19 Q Okay. So what interactions specifically stick out
20 in your mind, the next kind of major interaction
21 you had with him?

22 A It was February.

23 Q Okay.

24 A I had called in February. There were dogs running
25 around. I had stepped out and there were these big

1 old dogs, I mean, big old dogs. And I had called
2 Animal Control. It was on a Monday. And -- I'm
3 sorry -- and then I believe it was a Thursday or
4 Friday. For some reason, I'm just having a moment
5 here. It was either Thursday or Friday that same
6 week. I believe it was Thursday, that Thursday
7 night because I had called -- my husband and
8 **Daughter** went over to the neighbor's house. Mark
9 didn't take his gun. He asked Ms. Rachel, and
10 Ms. Rachel said no, you know, she didn't -- because
11 of the dogs.

12 MS. SAMPSON: Objection, Your Honor.

13 BY MS. ZMROCZEK:

14 Q Don't say what people said.

15 A Because of the dogs.

16 MS. SAMPSON: Objection.

17 THE COURT: Sustained.

18 BY MS. ZMROCZEK:

19 Q I know that you are nervous.

20 A I'm so nervous.

21 Q It is okay. We can't talk about what other people
22 said, remember?

23 A Okay.

24 Q So what I want to ask specifically -- I understand
25 there is a back story, but we don't want to be here

1 all year, okay? So what I want for you to do is
2 tell me what happened to you about the dogs that
3 made it remarkable in your mind.

4 A My husband and Daughter were over at Ms. Rachel's
5 house. They took her over there.

6 Q Okay.

7 A And then they sat down and were eating with her.

8 Q Okay.

9 A I -- this was late. I had already -- I had been
10 sick. I had gone to the doctors. They thought I
11 had pneumonia. They took a chest X-ray. And then
12 they put me on pain medication.

13 Q Okay.

14 A And so when they were over there, I kept on hearing
15 somebody yell. I was afraid somebody was getting
16 attacked by a dog. I rushed out there, and there
17 was Mr. Pruitt. And it was at a distance. I was
18 like -- I mean, they were yelling. I was like, Is
19 everything -- everybody okay?

20 And he was like, Oh, my dog got loose.

21 Well, when I hear dog, I'm like, Well, you
22 better get that dog, don't let it come in my yard.

23 And he is, Come over here so I can hit you.

24 And I was like, This man is frickin' crazy.

25 Q Okay. Let me --

1 A The dog came through the fence.

2 Q There you go. Okay.

3 A There were two men and two women, including him,
4 out there. They walked down. My husband had I
5 guess heard something. The dog came through our
6 gate. He came through the gate. As I was
7 approaching him, his dog came through my fence,
8 jumped up on me, pushed me back into my fence, and
9 fractured my ribs.

10 Q Thank you. Okay. So that was kind of the next
11 memorable interaction. And I understand that it
12 fractured your ribs. Okay. It is okay. I want
13 to -- so, and that was you said February, or
14 sometime around February. Okay. And then, when is
15 the next time that you had an occasion to interact
16 with Mr. Pruitt? Personally?

17 A I believe it was May 29th.

18 Q Okay.

19 A I believe it was May 29th.

20 Q All right. So tell the jury about May 29.

21 A There had been a truck my husband had been seeing
22 across the street at the church in front of our
23 driveway.

24 Q Okay.

25 A It had been parking there. And I just got tired of

1 it. You know, we have been there at the church.
2 We knew the church. I figured, Okay, Mark, let's
3 go down there, let's get this license plate number,
4 we'll call the church and see if, you know --

5 Q Okay.

6 A So my daughter -- and I was on pain medication. I
7 was on pain medication because my ribs were not
8 healing right.

9 Q Okay.

10 A My daughter, my husband, and myself walked down our
11 driveway. And right there is this truck with a
12 boat attached. There was a boat and a trailer. We
13 walked across the street. I had the flashlight. I
14 went up underneath the trailer to get the license
15 plate number. And no sooner than my foot -- I was
16 coming out -- Mr. Pruitt, I guess that was his
17 truck, comes out with a beer in his hand yelling,
18 I'm the devil. I'm going to rain hell down on you.
19 You don't know who you are dealing with. I mean,
20 it just was crazy. It was crazy.

21 Q Okay. And so did you call the police at that time?

22 A Yes, ma'am, I did.

23 Q And you made a report?

24 A Yes, ma'am, I did.

25 Q Okay. And then, so that was in May, May 29-ish.

1 And then, so let me ask you this. And I'm asking
2 about your personal interactions with him. Okay?
3 But I want to step back for a minute and ask you in
4 general, how did life in your home and your kind of
5 neighborhood area change in 2015, if it did?

6 A Oh, my goodness, it was terrible. I mean, it was
7 just -- this man, when he moved in, is when we
8 started having problems. The vehicles, the dogs
9 running around. I mean, we always have had
10 problems with dogs, even after.

11 Q Okay.

12 A But the dogs, the -- he -- it is like they were
13 always there. He was always there. There was --
14 it just -- we were ready to move by September. I
15 told my husband, No more. I said, No more. It is
16 time to go. There is no way that we are going
17 to -- huh-uh.

18 Q Okay. And so we're talking about the road. Are
19 you talking about Megan Court?

20 A Yes, ma'am.

21 Q And you understand that there are several lots down
22 in Megan Court, right?

23 A Seven.

24 Q So you are familiar with the area?

25 A Very familiar, yes.

1 Q Okay. And people have lived there before
2 Mr. Pruitt moved in?

3 A Yes, ma'am.

4 Q And so did you have problem with people -- was that
5 the only way in and the only way out?

6 A Yes, ma'am.

7 Q And so do you have a problem with people using the
8 only way in and the only way out to get to their
9 driveways and their homes?

10 A No, ma'am. I actually got the county in touch and
11 they had made emergency repairs in 2014.

12 Q Okay. And so I know -- we heard a lot about a
13 property dispute. Were you disputing with any
14 neighbors about the property?

15 A I had no dispute with any of our neighbors about
16 property.

17 Q Okay. Who were you dealing with with that road?

18 A The owner of the road, Frances Smith. And whatever
19 problems I had, county, with the county authority,
20 yes.

21 Q So what were you asking for, for them just to
22 maintain it?

23 A No. No.

24 Q Okay. I don't want to go into all of that. It is
25 neither here nor there. But the point is, is

1 that -- my question is, were you trying to keep
2 people from going to their houses and coming from
3 their houses?

4 A Definitely not. Definitely not.

5 Q And so you -- all right, so we talked about -- but
6 you said -- you kept saying there was cars going up
7 and down the road. But what do you mean? Or you
8 said vehicles, I'm sorry. You said vehicles going
9 up and down the road. What kind of vehicles are
10 you talking about?

11 A Oh. 4-wheelers, dirt bikes, vehicles, not just --
12 I mean, of course the garbage truck. I mean, we
13 would get vehicles -- one time there was this big
14 old boom truck that came. I mean, it was just
15 outrageous. I mean, it just --

16 Q Let me ask you this. Do you think that people have
17 the right to enjoy their 4-wheelers and outdoor
18 activities?

19 A Yes, I do.

20 Q Okay. So did you have a problem with that
21 specifically?

22 A No, I did not.

23 Q Okay. So was there some other behavior about the
24 4-wheelers that was upsetting to you?

25 A Yes.

1 Q What was that?

2 A There was one time I think -- I believe it was in
3 June or July. It was almost a half an hour, 45
4 minutes, of just up and down and by the time -- I
5 mean, 400 feet adjacent to Megan Court is my side
6 property line. That is 400 feet. So, I mean, the
7 dirt -- it is a dirt road. The dirt -- my windows,
8 I had to shut. I mean, it was coming in. I mean,
9 and the noise was just -- I mean, it is up close
10 and personal. Up close and personal. And it
11 just -- I mean, constantly.

12 Q Let me ask you, is that -- did you get -- did y'all
13 install cameras?

14 A Yes, ma'am.

15 Q Okay. And why did you install cameras?

16 A Because of the Mr. Pruitt incident with the dog.

17 Q Okay. All right. And so, but were the cameras
18 always running?

19 A 24/7.

20 Q Okay. And so were you also recording any other --
21 so you were always recording, right?

22 A Always recording, yes.

23 Q Okay. So after the 4-wheelers, were there any
24 other incidents that you had with Mr. Pruitt? Did
25 you ever have to call the police again in perhaps

1 September?

2 A Yes, I did.

3 Q Okay. And so tell us, why did you have to call the
4 police in September?

5 A I believe it had to do with him specifically. They
6 started -- my security camera flashing, you know,
7 the spotlights.

8 Q Okay.

9 A I believe that is, you know, as far as Mr. Pruitt
10 goes.

11 Q Okay. And did you have any interaction -- did
12 Mr. Pruitt say anything to you that made you call
13 the police in September?

14 A He told me that I didn't know who I was dealing
15 with, I didn't know. Yes. Something towards that
16 effect. I'm flustered, I'm sorry. I'm flustered.

17 Q You're fine. So what was it about you don't --

18 A You don't know who you are dealing with.

19 Q So what was it about that that made you call the
20 police? How did that make you feel when he was
21 saying that to you?

22 A I figured I better find out who this person is.

23 Q Okay.

24 A Because, I mean, there was too many -- there was
25 something wrong. I mean, it wasn't -- and there

1 were other incidents that we did not call the
2 police.

3 Q Okay. All right.

4 A So, but it just, you know --

5 Q So it seems like you called the police when you
6 were getting a verbal threat, is that fair to say?

7 A Yes.

8 Q Or there were other verbal threats that you didn't
9 call the police?

10 A Yes. Yes. And there were other incidences that I
11 did not call the police on.

12 Q Okay. And so you said earlier, by September you
13 were just ready to move?

14 A Oh, I was ready. I told my -- I told my husband,
15 and we went looking for houses. No, I was ready to
16 move. We were ready to move out, yes.

17 Q And how long had y'all been there at that time?

18 A Twenty -- I mean, **Daughter** was 16 at the time.

19 Q Okay.

20 A So, I mean -- I'm sorry.

21 Q No, you're fine.

22 A Sixteen. I mean, I have been there --

23 Q Close to 20 years?

24 A Yes, close to -- yes, 20 years.

25 Q And so you said there were just kind of other

1 incidences. Were they -- did you -- were there a
2 change in the frequency? Or what did you start to
3 notice?

4 A Oh, it just -- I guess by September or October,
5 see, it wasn't just him. I mean, I think some
6 people I could attribute, but it wasn't just him.
7 There was, you know, another situation that we had.

8 Q Okay. And so it is safe to say that the neighbors
9 that you had kind of gotten to know when you first
10 moved in and lived there for some time had moved
11 out, right?

12 A Yes, ma'am.

13 Q Okay. So this was kind of a new crowd of people?

14 A Yes, ma'am.

15 Q Okay. So did you know Ricky Holten?

16 A I actually had met him.

17 Q Okay.

18 A Once. And that was the day after when he was --
19 Mr. Pruitt was moving his trailer.

20 Q Okay. So were they friends?

21 A Yes. He came over and he apologized for
22 Mr. Pruitt's behavior. He said that he had been
23 drinking --

24 MS. SAMPSON: Objection.

25 THE COURT: Sustained.

1 BY MS. ZMROCZEK:

2 Q Remember, you can't say what people say. It's
3 fine. It's fine.

4 THE COURT: Ma'am, you can't say what someone
5 said to you, all right?

6 BY MS. ZMROCZEK:

7 Q I know it is hard to remember, but I'll try to not
8 ask you questions about that. Okay. But you knew
9 who he was?

10 A Yes, ma'am.

11 Q Okay. And when we talk about Mr. Pruitt moving in,
12 so your house, although the address is Antioch, it
13 was adjacent to, next to Megan Court, right?

14 A We are the corner lot.

15 Q Okay. And so from your house, Mr. Pruitt's house,
16 was it in front?

17 A It was behind.

18 Q And so if I'm looking out the front door, was it to
19 the right or to the left?

20 A If you are looking out the front door, it is -- it
21 would be over to the left and down the road.

22 Q Okay.

23 A Down the road.

24 Q All right. And so the cameras that you had kind of
25 caught the traffic on that road as well?

1 A Yes, ma'am.

2 Q Okay. So on one of the cameras, were you able to
3 even see -- it is not that far down the road,
4 right? You could see it from the camera?

5 A Yes.

6 Q Okay. So I want to talk about December 20.

7 MS. ZMROCZEK: Actually, before we get to
8 December 20th, I want to mark these items.

9 (Pause.)

10 BY MS. ZMROCZEK:

11 Q I show you what has been marked Defendant's 25
12 through Defendant's 30 and ask you just to look at
13 these pictures.

14 Okay, you are looking at those pictures, good.

15 A Yes, I remember that.

16 Q Okay. Thank you. Do you know what these pictures
17 are?

18 A Yes. That is, I believe, it is Douglas Bryan --

19 Q Do you know what the pictures are?

20 A Yes, I do.

21 Q Okay. And what are the pictures?

22 A Pictures of the white SUV.

23 Q What do the pictures -- are they from your security
24 camera?

25 A Those are from my -- yes, ma'am, they are from my

1 security camera.

2 Q And then pictures from your security camera, and
3 they are dated in December of 2015, correct?

4 A Yes, ma'am.

5 Q And these came straight from screenshots from your
6 cameras, right?

7 A Yes, ma'am.

8 Q And you recognize that the images on there is what
9 your cameras collected?

10 A Yes, ma'am.

11 MS. ZMROCZEK: Your Honor, at this time we
12 would like to move 25 through 30 into evidence.

13 MS. SAMPSON: Without objection.

14 (WHEREUPON, Defendant's Exhibit Nos.

15 25-30 were marked for identification and
16 received into evidence.)

17 BY MS. ZMROCZEK:

18 Q Now, all I want to ask you is -- and make sure you
19 listen to my question, okay? And I am not trying
20 to talk down to you, but I know that you are
21 nervous.

22 A I know.

23 Q You are fine. So these pictures that are dated and
24 timed, when you say flashing lights, is this what
25 you mean?

1 A It is a -- yes, it is a floodlight like a police
2 officer would use.

3 Q And is it also -- do you have a window in your main
4 room that it also would come into?

5 A Yes, ma'am. Not only my main room -- I'm sorry.

6 Q You're fine.

7 A It would come through Daughter's room on the side,
8 my office, the living room, and our bedroom window.

9 Q Okay. And actually you just reminded me, I forgot
10 to ask you something. Do you work?

11 A I work with my husband.

12 Q Okay. What kind of work is that?

13 A We do garage doors.

14 Q Okay.

15 A We started a business in 2004.

16 Q In 2000 when?

17 A 2004, I believe.

18 Q Four, okay. And so when you say office, so you
19 have a home office?

20 A Yes, right there up in the front.

21 Q With those office supplies.

22 A Front bedroom, yes.

23 Q The front bedroom. Like office supplies with
24 copiers and computer, and all of that?

25 A Fax machine.

1 Q Ran your whole business out of there?

2 A Yes.

3 Q Okay. I forgot to ask you that. I got off track.

4 So, anyway, these -- back to these pictures. So
5 what these show, that is what you would see, not
6 only on your cameras, but in your house?

7 A Yes, ma'am.

8 Q Right?

9 A Yes, ma'am.

10 Q And so -- and this was happening through -- at the
11 beginning of December, right? Or was it --

12 A It started in September.

13 Q Okay. It had started.

14 A It had started in September.

15 Q Okay. So also in December -- and I'm focusing now
16 on December 20th, okay? Was there an incident on
17 December 20th that caused you concern?

18 A I believe that is when somebody had rode by and
19 said, Die.

20 Q Okay. And was that incident captured on video?

21 A Yes, ma'am.

22 Q Okay.

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

25 THE COURT: Any objection?

1 MS. SAMPSON: I don't know what it is.

2 MS. ZMROCZEK: It is a video.

3 MS. SAMPSON: That's fine.

4 MS. ZMROCZEK: And with permission to publish,
5 Your Honor?

6 THE COURT: It will be entered without
7 objection. Yes, ma'am, you may publish.

8 (WHEREUPON, Defendant's Exhibit No. 19
9 was marked for identification and
10 received into evidence.)

11 BY MS. ZMROCZEK:

12 Q While Ms. Austin is getting that set up for you, so
13 you have cameras, again, I just talked about that,
14 that kind of cover your whole property, right? You
15 have to say yes or no.

16 A Yes, ma'am.

17 Q Okay. So on December 20th this incident happened.
18 Did you call the police?

19 A We waited to call the police. We were advised by
20 the Sheriff's Department since we had the cameras
21 that there was no need to call them right out. All
22 we had to do is make a report and show them the
23 video.

24 Q Okay.

25 (Video played.)

1 BY MS. ZMROCZEK:

2 Q While this is playing, I want to ask you a question
3 before. So when your system records things, does
4 it do it like -- it saves it like a time period to
5 a time period?

6 A Yes, ma'am.

7 Q Okay. And, again, we'll see where the cameras are
8 later, but this is Channel 1, or Camera 1, which
9 faces Megan Court?

10 A Actually, that faces down toward Antioch more, I
11 mean --

12 Q Right. But it --

13 A But, yes. That is Megan Court there on that side,
14 yes. That is Megan Court.

15 Q Is that the camera that has the audio?

16 A Yes, ma'am.

17 Q So Camera 1, like I say, faces -- okay, this says
18 Channel 2. So this is a different camera?

19 A Yes, ma'am.

20 Q Okay. I'm holding my hand up on the left-hand
21 side -- no, the right-hand side of the screen,
22 okay?

23 A Yes, ma'am.

24 Q Whose home is here? Whose home can you see?

25 A That is my home.

1 Q No, no, not your home. What does the camera catch?
2 Which home across the street kind of diagonally
3 from your home?

4 A Diagonally?

5 Q Who lives there?

6 A Diagonally?

7 Q Yes?

8 A I mean, if I was looking in my front and looking
9 down that way? That is Mr. Pruitt is off to the
10 right.

11 Q His home is here?

12 A Yes.

13 Q Okay. So the other camera kind of catches this
14 area, correct?

15 A Yes.

16 Q And this camera does not have sound?

17 A No, ma'am.

18 Q So this is the house I'm talking about right here.
19 That is Mr. Pruitt's house?

20 A Yes. Down that way, yes.

21 Q Thank you.

22 (Pause.)

23 BY MS. ZMROCZEK:

24 Q You don't have your camera pointed at it, it just
25 happened to catch where his driveway and home is --

1 are?

2 A Yes, ma'am.

3 Q Okay. And so this is -- this says Channel or
4 Camera 3.

5 A Yes, ma'am.

6 Q And what area does that face?

7 A That is -- that camera is on our barn. That faces
8 Megan Court, the back end of our property.

9 Q Okay.

10 A So directly in front of us -- did you want me to
11 answer?

12 Q Yes, please.

13 A Directly in front of where that camera is, that is
14 a different Mr. Pruitt. His property -- where the
15 corner of the fence is, his property is right there
16 where those lights are right there.

17 Q Okay. And so we saw a light come on. Do you have
18 a motion sensor as well?

19 A Yes, ma'am.

20 Q Okay. And so this is the property here?

21 A Yes, ma'am.

22 Q Okay. I want to talk to you now about December. I
23 would like to talk to you now about December 27th,
24 2015, okay? What do you remember about earlier
25 that day?

1 A It was one of the best days in a long time.

2 Q Why is that?

3 A Because the Panthers were going to the Super Bowl.

4 Q And you are a big Panthers fan?

5 A Oh, yes. I used to dress Daughter up when she
6 couldn't even walk and gave her her first football.
7 Yes.

8 Q And so that day particularly stood out in your mind
9 because that is the day that you found out they
10 were going to the Super Bowl?

11 A Oh, yes. They lost, but they were going.

12 Q And did you watch the game that day, obviously?

13 A Yes, and we recorded it because I was trying to
14 schedule things for our business at the same time
15 and making food and just -- yes. It was one of
16 those days that just was -- it was great.

17 Q So one of the great things about South Carolina
18 was, even though we are talking December 27, was it
19 warm?

20 A That morning I think it was a little chilly.

21 Q Okay.

22 A Because I get up early. I get up -- that morning I
23 actually got up at 2:30.

24 Q Oh wow. Okay.

25 A I had taken a Benadryl because I have a lot of

1 allergies.

2 Q Okay.

3 A I got everything from the store. By that
4 afternoon, yes, we were opening up the windows.

5 Q Okay. What were you wearing?

6 A I put my short shorts on. I had my Panthers
7 earrings, my Panther shirt I had got for Christmas
8 the year before.

9 Q Okay.

10 A And it was great. It was great.

11 Q All right. So you watched the game. The Panthers
12 win.

13 A They lose.

14 Q Or they lose, sorry, but they are still going to
15 the Super Bowl. And then had it been raining that
16 day? Did it rain in the afternoon?

17 A It did. It wasn't a heavy rain, but it was one of
18 those rains that just, when it rains, I mean, it
19 just smells so good, and it was -- yes.

20 Q So what did you do?

21 A Well, we had finished watching the game. I got
22 everything scheduled. I had everything ready. We
23 were going to have steaks. I had already prepared
24 my twice baked potatoes. They were just ready to
25 put the bacon on and stick them in the oven, heat

1 them up. My husband needed to go take a poop. And
2 I had a yard -- my yard man was coming the next
3 day, but I had things I had to -- I had site
4 inspections I had to do myself. As I said, I
5 worked with my husband. And so I went out there.
6 And I figured I have a good 10, 15 minutes. I
7 hadn't been out of the house, you know.

8 Q You say you hadn't been out of the house. Talk to
9 me about that. Why hadn't you been out of the
10 house?

11 A Because, I mean, it just got to the point I was
12 scared. I mean, there were some days I just, you
13 know, I didn't want to go out there. You know, and
14 it was like, I felt like I was being watched. I
15 mean, honestly stalked even, from even my back
16 yard. And I have a 6-foot privacy fence back
17 there. I would see this man everywhere. He would
18 sit in the church -- at the church after May 29th.
19 I'd be out there during the day, because, again, I
20 work from home.

21 Q Uh-huh.

22 A And he would be sitting in his work truck up at the
23 church. And this started in June after that.

24 Q Okay.

25 A He was up in his work truck. It could be at night,

1 it could be during the middle of the day. I mean,
2 it just got -- I was so uneasy. I just -- you
3 know. And I love being out in my yard.

4 Q But you had stopped going out in your yard, but
5 today you went out there?

6 A Oh, I was always on -- I was on Cloud 9. I was
7 like, you know, let me go ahead and just go out
8 there. And, you know, and it was great. I
9 remember standing there, and I was kind of like in
10 my own head thinking, Boy, I mean, this is just --
11 I mean, I love my property, my home. I love my
12 yard. I love everything about my -- my home.

13 Q Okay. So you go out there. Before you went out
14 there, what did you take with you?

15 A I got my gun and my camera.

16 Q Okay. And so we -- I know you haven't been able to
17 be in the courtroom, but we -- some pictures have
18 been entered. And we saw pictures of -- oh, here
19 they are -- some pictures that you took that day,
20 right?

21 A Yes.

22 Q Okay. And so you remember being out there taking
23 pictures?

24 A Yes, ma'am.

25 Q Okay. So I want to show you -- what kind of camera

1 did you have, do you remember?

2 A It was a Canon 35 millimeter. I know how much it
3 cost, because I saved up for it. It cost me \$179.
4 I used to use it for my lead RRP and not just for
5 personal, but for business.

6 Q And I'm trying to put these in time, chronological
7 order. So it had a time and a date stamp on it,
8 correct?

9 A Yes, ma'am.

10 Q Was the time stamp right on the camera?

11 A I do not remember.

12 Q Okay. Okay. So I want to start by showing you
13 again Defendant's -- or not again, but showing you
14 Defendant's 9, okay? And what was that picture of?

15 A That is a picture of Megan Court.

16 Q Okay. So the road?

17 A Yes, ma'am.

18 Q Okay. So when you went out there -- and we can see
19 you on the camera, right? So you kind of -- when
20 you go out there, you -- is this -- where did you
21 start taking pictures, to the right or to the left?

22 A I believe I had walked down to the gate back there
23 on the corner.

24 Q Okay.

25 A There is a gate that goes to Ms. Rachel's property.

1 Q Okay.

2 A That way she could come back and forth.

3 Q Right.

4 A Instead of having to go out and walk in the muck.

5 Q Okay. Okay, yes, because when it rains -- so
6 particularly when it rains, the road would get
7 muddy, right?

8 A Well, they came down in 2014. So this -- I mean,
9 yes. It was -- it got -- I mean, it was worse. I
10 mean, it was bad and then they came down in 2014
11 and fixed it. And not even a year later, that is
12 the condition --

13 Q It was still muddy?

14 A -- that it was coming under, yes.

15 Q So Defendant's Exhibit 16 is the next
16 chronologically time stamped picture, so, I mean,
17 were you just haphazardly or were you trying to do
18 it kind of in an orderly --

19 MS. SAMPSON: Objection, Your Honor. I have
20 let it go, but she is leading.

21 MS. ZMROCZEK: I'll rephrase the question,
22 Your Honor.

23 BY MS. ZMROCZEK:

24 Q How were you trying to take the pictures?

25 A I just was out there taking pictures. I don't

1 remember. I mean. I wasn't out there
2 specifically, you know --

3 Q Okay. So, and then Defendant's 15, again, kind of
4 a long shot of the road, right?

5 A Yes, ma'am.

6 Q Okay. And then, so we see a series of photos that
7 are State's 40, 39, 41, and 38. I am going to show
8 you all of those. So 40, 39, 41, and 38.

9 A Uh-huh.

10 Q Do you recognize those?

11 A Yes, I do.

12 Q Okay. And those were the last four pictures on
13 your camera, right? You recently got a copy of all
14 the pictures that were on there, right?

15 A No.

16 Q You recently have seen the pictures that were on
17 there?

18 A Yes, ma'am.

19 Q So what we see in State's 40 and 41 and 38 --
20 State's 40, 39, 41, and 38, we see all kind of
21 similar pictures of the vehicle and a person
22 looking at you. Tell the jury why you took those
23 pictures.

24 A First off, I did not have my glasses on. I am
25 near-sighted. I mean, right now everything right

1 here is -- I can't even read what is there. And I
2 had been out there, and it was just, you know, it
3 was a great day. I mean, I had been out there, I
4 mean, for at least five minutes. And it was great.
5 I was daydreaming. And then I heard a vehicle
6 coming down. And I didn't recognize it. You know,
7 of course, I hadn't even been outside for a couple
8 of weeks, I think it was. And so I thought, Well,
9 you know, I just took a picture. And then as it
10 pulled up, it started coming, you know, closer. I
11 was like, Okay.

12 Q What do you mean closer?

13 A Kind of like coming up -- approaching. I didn't
14 know if maybe they were lost. But, you know, I
15 just took a picture, you know. I did not know who
16 was in the vehicle until they actually -- and I
17 wasn't going like this, I just clicked it like
18 this. So I still didn't know until they -- he got
19 up there.

20 Q So this truck got up to where you were on the
21 fence. Now, was it off on the road or had it
22 pulled up onto the leaves?

23 A It had pulled up onto the leaves.

24 Q So then when did you realize who was in the truck?

25 A When he opened up his mouth, and then I just -- I

1 was like -- and I recognized him.

2 Q He who?

3 A It was Rick Holten.

4 Q Rick Holten. And what was he, Rick Holten, was he
5 driving or was he the passenger?

6 A He was the driver.

7 Q And did he have a passenger?

8 A I didn't know. I couldn't see it. I mean --

9 Q Okay. So what, if anything, did he say to you?

10 A He asked me what I was doing.

11 MS. SAMPSON: Your Honor, I am going to
12 object.

13 MS. ZMROCZEK: Sorry. Sorry, sorry, sorry.

14 THE COURT: Sustained.

15 MS. ZMROCZEK: Yes. And that is all on me.
16 That was my fault.

17 BY MS. ZMROCZEK:

18 Q Did you have a -- let me rephrase that question.

19 Did you have a conversation with him?

20 A Yes, ma'am, I did.

21 Q Okay. So you were talking back and forth?

22 A Yes.

23 Q Did that conversation -- did you -- at what point
24 did you realize there was someone else in the
25 vehicle?

1 A When -- I really wasn't having a conversation with
2 Mr. Holten.

3 Q Okay.

4 A He had pulled up. I was nervous, but, you know,
5 never had -- like I said, that was the second time
6 I had met that man. That is the second time I had
7 ever --

8 Q That man, Rick?

9 A Rick Holten. That is the second time I had ever
10 spoken with him since the beginning of the year.

11 Q It wasn't a pleasant conversation?

12 A Well, you know, I tried -- I don't try to be rude.
13 And he asked me what I was doing.

14 Q Let's remember, you can't say what he said. And
15 that's my fault. So you said you were talking back
16 and forth. At some point did you realize there was
17 someone else in the vehicle?

18 A Yes, ma'am.

19 Q And who was that?

20 A It was Keith Pruitt.

21 Q Okay. And so obviously, because you have audio, we
22 catch a lot, the camera and audio catch a lot of
23 what you hear, so we don't really have to go
24 through that, okay? And that way you don't have to
25 say what people said because the camera recorded

1 it, okay?

2 A Okay.

3 Q But let me ask you this. We can hear you start to
4 raise your voice, right?

5 A Yes, ma'am.

6 Q Okay. Why did you raise your voice?

7 A Because I am -- this man has got me right where he
8 wants me. He kept -- I mean, he threatened to hit
9 me I don't know how many -- and he was crazy. This
10 man was crazy.

11 Q And so --

12 A The hair on the back of my neck, every time, I
13 mean, it just -- No. I mean, huh-uh.

14 Q So why didn't you run inside?

15 A I didn't have time. I don't know. I don't know.
16 I know I had my gun, my shorts were falling down.
17 Sorry.

18 Q No, you're fine. You're fine. Why is it important
19 that you mention you had your gun?

20 A Because I pulled it.

21 Q Okay.

22 A That's how I remember. I remember. What I
23 remember is that these men, they pulled up, Rick
24 Holten and Keith Pruitt pulled up. When I realized
25 that Keith Pruitt was in the car, I knew I was in

1 trouble. I was out there by myself. By myself.
2 And just -- you know, the next thing I knew, it
3 happened so fast, he is out of the truck.

4 Q He who?

5 A Rick Pruitt is out of the truck, and there he is,
6 and --

7 Q Let me -- you said Rick Pruitt. So you combined
8 names, and I know you are upset.

9 A Okay.

10 Q Was the driver or the passenger out of the truck?

11 A It was Keith Pruitt. I'm sorry.

12 Q You're fine. You're fine. Okay. So when he got
13 out of the truck, then did that make you more
14 upset?

15 A Oh, God, yes. Yes, ma'am.

16 Q All right, so I'm going to let you tell the jury
17 how you remember it, and then I'll ask you some
18 questions, so that way I won't keep interrupting
19 you. Okay. All right. So Keith gets out of the
20 truck. And then go ahead tell the jury what you
21 remember.

22 A All I remember -- I just saw his hands. I just --
23 just there he was. And I saw a hand, and I saw his
24 hand. And I remember, I pulled my gun. I pulled
25 my gun. I had my -- and I remember vividly, I

1 pulled my gun. I had my camera on my wrist. And
2 there was nothing in the chamber, because my
3 grandson had just -- I always unload it and make
4 sure that there was nothing in the chamber because
5 my grandson had just stayed with us for a couple of
6 months.

7 Q Okay.

8 A So when I pulled it out, I mean, I know you are
9 supposed to keep something in it. I felt like an
10 idiot. Because I went to cock it, and then I
11 dropped it.

12 Q Okay.

13 A And when I was -- I was stumbling for it. And I
14 saw Mark coming at me. And then I heard the shot.
15 And I asked him, Did you shoot him? And he said,
16 Yes. And I was like, Okay.

17 Q Okay. Now, I know that that is what you told the
18 police, that is what you remember to this day,
19 right?

20 A That is what I confessed to my priest.

21 Q Why did you confess to your priest?

22 A Because I would have shot both of them.

23 MS. SAMPSON: Objection.

24 THE COURT: Hold on. Hold on one second.

25 MS. SAMPSON: Objection to her talking to her

1 priest. That is irrelevant and prejudicial.

2 THE COURT: Sustained.

3 BY MS. ZMROCZEK:

4 Q Okay. So what -- you and I have -- when was the
5 first time you actually went back and watched the
6 video?

7 A I watched it, but when -- the first time I actually
8 really watched it was in your office.

9 Q Okay. And so many years later you are watching it.
10 And I said, Barbara --

11 MS. SAMPSON: Objection, Your Honor.

12 MS. ZMROCZEK: Okay.

13 BY MS. ZMROCZEK:

14 Q Many years later as you are watching it --

15 THE COURT: Sustained.

16 BY MS. ZMROCZEK:

17 Q -- you realize that what you testified to and what
18 you remember in your head --

19 MS. SAMPSON: I'm going to object to the
20 leading.

21 MS. ZMROCZEK: I'm getting to the question.

22 THE COURT: Okay, you have got to ask -- it is
23 direct. You have to ask, you cannot lead.
24 Sustained.

25 MS. ZMROCZEK: Thank you.

1 BY MS. ZMROCZEK:

2 Q Is what is on the video what you described?

3 A No, ma'am.

4 Q Okay. But what you described is what you remember?

5 A Yes, ma'am.

6 Q Okay. And you have heard the 9-1-1 call? Yes?

7 Have you heard the 9-1-1 call?

8 A No, ma'am.

9 Q Okay. So you -- did you call 9-1-1?

10 A Yes, ma'am.

11 Q Okay. Do you remember being on the phone with
12 9-1-1?

13 A Yes, ma'am.

14 Q All right. What were you -- when you were on the
15 phone with 9-1-1, what did you mean when you said
16 that you and Mark had had enough? What did you
17 mean?

18 A I don't know at this point.

19 Q I couldn't hear you.

20 A I have no idea.

21 Q Okay.

22 A I mean, as far as that goes, I'm sure I said it,
23 but, then again, I thought -- I thought it happened
24 a different way.

25 Q Okay.

1 A So I can't honestly answer that question for you.

2 Q Okay. You -- when you were on the phone with
3 9-1-1, what, if anything, were you trying to do
4 about Mr. Pruitt?

5 A I was trying -- I walked out -- I mean, people were
6 standing over him. They would touch him, but, you
7 know, nobody was helping him. That man was lying
8 on the ground and nobody -- they all just stood
9 there.

10 Q Okay.

11 A He is dead. He is dead. Nobody checked for a
12 pulse. They were just like, like touching him,
13 like, I mean, they weren't -- not checking for a
14 pulse. They weren't -- he was laying there. I
15 wanted -- I wanted to help him. I know he was the
16 devil. He was the devil, but still I didn't want
17 that man to die.

18 Q When the police came, how did you feel once they
19 got there?

20 A I felt safer. I felt -- I felt safer.

21 Q Were you -- did you -- were you giving them as much
22 information as you could?

23 A I don't know. I mean, I would like to hope -- I
24 would like to think I did. I would like to think I
25 was cooperative in what they asked me. I never

1 would have ever thought that I'd ever be in the
2 situation. I didn't know what I was supposed to
3 do. But I did try to cooperate with what their
4 requests were.

5 Q Okay. Did you -- where was **Daughter** when all of
6 this happened?

7 A She was right there by the door.

8 Q Okay. And by --

9 A In the house.

10 Q In the house?

11 A In the house.

12 Q Okay. She was not outside?

13 A No, ma'am, she wasn't.

14 Q Okay. You gave a written statement?

15 A Yes, ma'am, I did.

16 Q When -- and like you said, you tried to remember
17 everything that you could and write it down?

18 A Yes, ma'am.

19 Q Okay. What -- did you ever meet with the police or
20 talk with -- let me rephrase that. Did you ever
21 talk with the police after, after that first time
22 you gave a statement?

23 A In regards to this incident?

24 Q Uh-huh, yes?

25 A No.

1 Q Okay. Did you ever have an opportunity to speak
2 with Investigator Holdorf?

3 A I had contacted the Richland County Sheriff's
4 Department because I was having problems.

5 Q Okay.

6 A Specific problems.

7 Q Okay.

8 A And I was referred to him.

9 Q Had you ever -- had you ever been in a situation
10 where you had to give a statement to the police for
11 this kind of incident before?

12 A No, ma'am.

13 Q Okay. Did you know that you could call them up and
14 say, Hey, I have a copy of my statement now that
15 I -- did you ever know that your statement was
16 right or wrong or different than what the video
17 reflects?

18 A I read it, but, then again, I'm sure that the
19 Richland County Sheriff's Department was going to
20 put in there that I blamed them.

21 Q Why did you blame them?

22 A Because they knew I was having a problem.

23 Q Okay. You were outside at the fence taking
24 pictures, and then we have heard and we -- we saw
25 and we heard what happened. What -- at that moment

1 when all of this occurred, what was going through
2 your mind? What were you thinking?

3 A May I ask you a question before I answer?

4 Q Sure.

5 A Okay. What I was supposed to do?

6 Q Yes.

7 A Is this at the time or after I realized that --

8 Q No, no. I want realtime experience. Okay, so he
9 is driving up. He pulls up. Y'all -- there is an
10 argument. Things are getting louder. What are
11 your -- what are your thoughts at that time? What
12 are you feeling?

13 A That man, oh --

14 Q What were you feeling?

15 A I was terrorized. I was -- I was like -- I don't
16 know. I was so scared. I was. And I thought he
17 was -- I thought he was going to come after me. I
18 thought I was going to die. Because if that man
19 would have got hold of me, oh, he could have broke
20 me like a twig. And he would have. I know he
21 would have. That man, they were --

22 MS. SAMPSON: Objection, Your Honor.

23 THE COURT: Sustained.

24 BY MS. ZMROCZEK:

25 Q Try to -- try to -- I know that you are emotional,

1 okay? And when I put my hand up, it is just
2 because I want you to stop talking.

3 A I'm sorry. I'm just trying.

4 Q It is okay. I know. But regardless of, you know,
5 your personal thoughts of him, your feelings were
6 that you were afraid? Is that a yes?

7 A Yes, ma'am, I was afraid of that man. I was
8 deathly afraid of that man.

9 Q Please answer any questions the State may have,
10 okay?

11 A Yes, ma'am.

12 THE COURT: All right, we are going to take a
13 break. I do realize we are past our morning break
14 time. We are going to take about a 10 minute
15 break, and then we will have you all back and
16 receive you back in the courtroom.

17 (WHEREUPON, the jury retires to the jury
18 room at 12:02 p.m.)

19 MS. ZMROCZEK: Your Honor, I know that you are
20 going to direct her, and of course I am going to
21 tell her we can't talk to her and nobody is going
22 to talk to her, but may we have somebody get her
23 some water?

24 THE COURT: Yes.

25 MS. ZMROCZEK: Thank you.

1 THE COURT: All right, she can step down.
2 Ma'am, you can step down. And we'll take about 10
3 minutes and come back for cross-examination.

4 MS. SAMPSON: I expect it to be rather
5 lengthy.

6 THE COURT: Ma'am?

7 MS. SAMPSON: I expect it to be rather
8 lengthy, so.

9 THE COURT: I did too. That's why I took 10
10 minutes. I figured it would be a little lengthy.

11 (WHEREUPON, a break was taken.)

12 THE COURT: Are you ready to bring them back
13 in? Bring them on in.

14 (WHEREUPON, the jury came into open
15 court at 12:22 p.m.)

16 THE BAILIFF: The jury is seated, Your Honor.

17 THE COURT: All right, thank you. Ladies and
18 gentlemen of the jury, we will have
19 cross-examination by the State.

20 Ms. Sampson?

21 MS. SAMPSON: Thank you, Your Honor. May it
22 please the Court?

23 CROSS-EXAMINATION

24 BY MS. SAMPSON:

25 Q Ms. Volstromer, your house is in Eastover, correct?

- 1 A Yes, ma'am.
- 2 Q Would you agree with me that is a very rural area?
- 3 A Yes, ma'am.
- 4 Q Not in the city?
- 5 A Not in the city.
- 6 Q There are dogs a lot out there, correct?
- 7 A Yes, ma'am.
- 8 Q And I think you said on direct you had problems
9 with dogs after this incident, correct?
- 10 A Before and after, yes, ma'am.
- 11 Q After Mr. Pruitt is not around?
- 12 A Yes, ma'am.
- 13 Q Now, you talked earlier about when Mr. -- your
14 husband got hurt by a dog. That was in 2006,
15 correct?
- 16 A Yes, ma'am.
- 17 Q And that had nothing to do with Mr. Pruitt?
- 18 A No, ma'am.
- 19 Q And you stated that when you first met the victim,
20 he came to your house?
- 21 A Yes, ma'am.
- 22 Q And when your husband asked him to leave, he left?
- 23 A Yes, ma'am.
- 24 Q All right.
- 25 A But he did tell my husband that he needed to put me

1 in my place.

2 Q Oh, needed to put you in your place. But he left,
3 right?

4 A Yes. Escorted by my husband.

5 Q My question is, did he leave?

6 A Escorted by my husband.

7 Q Escorted by your husband, he left?

8 A Yes, ma'am.

9 Q Okay. Now, you said that you kept seeing a truck
10 in the church parking lot, correct? You stated in
11 direct when Ms. Zmroczek asked you that you kept
12 seeing a truck in the parking lot of the church?

13 A I believe when you are referring to the truck, it
14 was my husband who kept on seeing the truck and had
15 told me, but I never saw it until May 29.

16 Q So you never saw the truck in the church parking
17 lot?

18 A No.

19 Q So it wasn't bothering you in the church parking
20 lot?

21 A I had two fractured ribs. I was on --

22 Q Perfect.

23 A I was on pain killers and medication.

24 Q Right. You were on a lot of meds. So on May 29th,
25 when you go over to the church parking lot,

1 somebody is just sitting in the parking lot? That
2 is my question. Were they screaming in the church
3 parking lot?

4 A It wasn't the church parking lot.

5 Q Where was it?

6 A The truck was right down our driveway, right in
7 front of the church parked going this way, and the
8 church doors were -- the parking lot for the
9 church, there is some parking up there, but the
10 parking lot for the church is the parking lot on
11 the side of the church.

12 Q My question is, was it on the church property?

13 A Yes, ma'am.

14 Q Was it on your property?

15 A No, ma'am.

16 Q Was it on the road?

17 A No, ma'am.

18 Q In fact, you had to cross the road to get to the
19 truck?

20 A Yes, ma'am.

21 Q Okay. Was anybody doing anything in the truck?

22 A There was no indication that anybody was in the
23 truck until after I got the license plate number.

24 Q Correct. Weren't yelling at you?

25 A No, ma'am.

1 Q Weren't threatening you?

2 A No, ma'am.

3 Q Weren't doing anything to you or your family?

4 A No, ma'am.

5 Q But you went over there?

6 A To the church.

7 Q Right. And at that point Mr. Pruitt, what you say,
8 he gets upset?

9 A No, Mr. Pruitt comes out of the vehicle with a beer
10 in his hand saying that he is the devil, he is
11 going to rain hell down on us.

12 Q But you went to him, correct?

13 A I went to the vehicle, a vehicle that was parked
14 right down my driveway in front of the church that
15 I have lived in front of for over 20 years.

16 Q Again, the church was not in your yard -- I mean,
17 excuse me, the truck was not in your yard?

18 A Correct.

19 Q It was not in the roadway in front of your yard?

20 A Correct.

21 Q It was across the road in a parking space, or
22 parking lot in front of the church?

23 A Yes, ma'am.

24 Q All right. You went to it?

25 A That is my community. Of course.

1 Q My question is --

2 A Yes.

3 Q -- you went to it?

4 A Yes.

5 Q Okay. Didn't call police to say, Hey, there is a
6 truck over there, did you?

7 A No.

8 Q Okay. And you did call police about that?

9 A Yes, ma'am.

10 Q And earlier you said you blamed Richland County for
11 this. Did they come when you called?

12 A Yes, ma'am.

13 Q In fact, they came every time you called, correct?

14 A No, ma'am.

15 Q They didn't?

16 A No, ma'am.

17 Q Let's go over the times they did come. They came
18 on May 29th with the incident you just talked
19 about, correct?

20 A Yes, ma'am.

21 Q And they actually went and talked to him, didn't
22 they?

23 A Yes, ma'am.

24 Q Okay. They came when you called on September 4th
25 about an incident that happened on September 1st,

1 correct?

2 A I believe so.

3 Q Would seeing the incident report help refresh your
4 memory?

5 A Yes, ma'am.

6 (Pause.)

7 A Yes, ma'am.

8 Q So you called on September 4th about an incident
9 that happened on September 1st, correct?

10 A Yes, ma'am.

11 Q And they came?

12 A Yes, ma'am.

13 Q And you called about a 4-wheeler revving engine and
14 riding up and down the road, correct?

15 A Yes, ma'am.

16 Q And you also told them that you thought Mr. Pruitt
17 was flashing lights in your yard, but you actually
18 didn't know whether it was him or not, did you?

19 A I knew it was somebody associated with him.

20 Q But you didn't know if it was him?

21 A No, ma'am.

22 Q Okay. But they came when you called?

23 A Yes, ma'am.

24 Q All right. And on December 1st, 2015, you called
25 police as well, didn't you? And I'll give you that

1 report to help refresh your memory as well.

2 A Thank you.

3 (Pause.)

4 A Yes, ma'am.

5 Q And on that day, can you tell the jury why you
6 called the police? Why did you call the police
7 that day?

8 A My neighbor -- my daughter -- my daughter's cat,
9 the neighbor had taken her cat.

10 Q So the cat was missing?

11 A No, the neighbor had taken -- she knew that the
12 neighbor had taken the cat.

13 Q What did the police report say?

14 A That -- it says that the cat wandered away.

15 Q The cat wandered away?

16 A Uh-huh.

17 Q You called police?

18 A Uh-huh.

19 Q To help look for the cat?

20 A No, we specifically told them where we thought the
21 cat was. She knew where the cat was.

22 Q Did they help you look for the cat? What does the
23 police report say?

24 A They did not want to make a police report this day.

25 Q Not my question. What does it say?

1 A They just said that the cat wandered away. That is
2 not what happened.

3 Q Did they come?

4 A Yes, they did.

5 Q And they made that report?

6 A Yes, they did.

7 Q So when you call, they come. Thank you. Can I
8 have the report back?

9 A This doesn't show where they went.

10 Q I have asked you no questions.

11 MS. ZMROCZEK: Your Honor, she is allowed to
12 answer the question.

13 THE COURT: Okay. You can ask the question,
14 and she can answer.

15 BY MS. SAMPSON:

16 Q It says, and I quote -- and if I'm quoting wrong, I
17 will stand beside you so you can see it to make
18 sure I am quoting it right.

19 MS. ZMROCZEK: Your Honor, what I'm concerned
20 about is that she is reading from a police report
21 that my client didn't generate, and so -- if I may
22 finish -- my client didn't generate, so if she is
23 asking her to read what -- some report somebody
24 else made, Your Honor, those aren't her words. I
25 mean, if she wants to get that report or whatever

1 information in, she needs to call the officer.

2 THE COURT: All right. The objection is
3 overruled.

4 BY MS. SAMPSON:

5 Q On this report, it says, I searched the general
6 area for the cat with negative results. Did they
7 not search for the cat?

8 A They actually went over to the specific address.

9 Q So you called --

10 A So, yes. They went to the specific address that
11 we -- my daughter identified to the Sheriff's
12 Department to look for the cat at a specific place.

13 Q And, again, you called, they came?

14 A Yes.

15 Q On December 10th, when you called -- and, again, I
16 give you this report. When you called about lights
17 flashing in your yard, they came, correct?

18 A This is a follow-up. This is a supplemental.

19 Q That's fine. My question is did they come, yes or
20 no?

21 A They came out, and this is a supplemental -- they
22 came out this date -- a supplemental to one that
23 they had lost, because I have never seen the
24 original report that was made by the officer, which
25 was made prior to, that is supplemental, because we

1 had thought it had only happened that one time, and
2 come to find out, it had been going on since, I
3 believe it was December 2nd. So the incident that
4 we reported initially and the report that the
5 Richland County Sheriff's Department cannot find,
6 that is the supplemental to that report, when I
7 went back on the security cameras, it had began
8 December 2nd through, and that is when I gave all
9 that information to the sheriff's deputy. That is
10 a supplemental. But, yes, they came out to make
11 the supplemental to that report.

12 Q So, again, my question was simply, did they come
13 out?

14 A Yes, they did.

15 Q Okay. And, in fact, it wasn't Mr. Pruitt who was
16 doing anything with the lights at that time, it was
17 a different person, correct?

18 A Yes.

19 Q Okay. Now, you stated in direct that you had
20 problems with this dirt road with people driving
21 vehicles on the dirt road? Did you not say that?

22 A I don't -- I don't specifically recall me saying
23 that I had a problem with vehicles driving on the
24 dirt road, no. I don't believe I said that.

25 Q Ms. Zmroczek asked you did you have problems. And

1 she specifically asked you to name types of
2 vehicles. And you all went over dirt bikes,
3 4-wheelers. Do you not remember that just
4 happening?

5 A I had problems, not all the time. I only -- only
6 when it was certain activity. When it was ripping
7 it up. When it was over and over. But, no, I had
8 no problem with anybody -- I had no problem with
9 motorcycles, cars, or anything.

10 Q You didn't just say that in direct?

11 A I had problems with the noise and the dirt if it
12 was happening for a half an hour, those are the
13 problems I have.

14 Q And that was on a road that you don't own, correct?

15 A That is correct.

16 Q All right. So people can go up and down that road
17 as much as they want?

18 A Absolutely.

19 Q With whatever vehicle they want?

20 A Absolutely.

21 Q And, in fact, you said something about having a
22 problem with a garbage truck when she asked you on
23 direct?

24 A I don't recall that.

25 Q You don't recall. Okay. Well, we will just let

1 the jury remember.

2 A I said the garbage truck came up and down the road.

3 Q Okay.

4 A Yes.

5 Q And you said you had problems with, not Mr. Pruitt,
6 but other neighbors too, correct?

7 A Unidentified. Some -- one identified. One
8 specific, yes. Yes, yes.

9 Q My question is, did you have --

10 A Yes.

11 Q -- a problem with other neighbors?

12 A Yes.

13 Q Thank you. And you talked about, and there has
14 been a video introduced, with lights coming down
15 your road, and you have photographs of those
16 lights, and we watched a video of a car going down.
17 And you showed -- Ms. Zmroczek showed you how it
18 went towards Mr. Pruitt's house, correct?

19 A Yes.

20 Q You weren't outside when this happened, correct?

21 A No.

22 Q So whenever -- she is saying that someone yelled,
23 Die. Were you outside when that happened?

24 A I believe I was, yes.

25 Q You were outside? And did you call the police?

1 A I don't remember. No, no, we did not.

2 Q All right. And it was dark outside, correct?

3 A Yes.

4 Q And there is no street lights right there?

5 A No.

6 Q But you are sure you were outside when this
7 happened?

8 A I don't -- I can't be perfectly --

9 Q All right. So when you were talking to
10 Ms. Zmroczek about the incident, you agreed with
11 her and you would agree with me that your
12 description of what happened is not what we see on
13 that video?

14 A Yes, ma'am.

15 Q And while we are talking about what you were doing
16 out there --

17 (Pause.)

18 BY MS. SAMPSON:

19 Q I am showing you what has been marked as State's 52
20 and 53 and ask if you recognize those? Don't tell
21 me what they are. My question is do you recognize
22 them?

23 A Yes.

24 Q Were those pictures that you took the day of this
25 incident?

1 A I do not know because I do not have the pictures
2 from my camera.

3 Q Okay. Would you agree that -- you just went over
4 with Ms. Zmroczek that State's Exhibits 38, 39, 40,
5 and 41 were taken from your camera, correct?

6 A Yes.

7 Q And the time stamps on those are the same as the
8 time and date stamps on State's Exhibits 52 and 53,
9 correct?

10 A I am not certain if that camera -- if that is the
11 exact time.

12 Q My question is, do these have the same dates on
13 them?

14 A If they were taken off the camera, then I must have
15 taken them.

16 Q Do they have the same dates on them?

17 A Yes, they do.

18 Q And one says 1747. State's Exhibits 52 and 53
19 say -- one of them says 1742?

20 A Okay.

21 Q So would you agree with me that these would be from
22 your camera?

23 A Yes. Yes.

24 Q Is this your front yard?

25 A No.

1 Q Is this the fence outside of your -- showing the
2 roadway of Megan Court and a stake?

3 A That is correct.

4 Q Has it been altered in any way?

5 A Yes, it has.

6 Q How has it been altered?

7 A The county came down --

8 Q No, how has this photograph been altered?

9 A Oh. I couldn't tell you, but --

10 Q My question was has the photograph been altered,
11 not has the road been altered?

12 A Not to my knowledge.

13 MS. SAMPSON: I would ask to introduce State's
14 Exhibit 52 and 53 into evidence, Your Honor.

15 MS. ZMROCZEK: Without objection, Your Honor.

16 THE COURT: It will be entered without
17 objection.

18 (WHEREUPON, State's Exhibit Nos. 52-53
19 were marked for identification and
20 received into evidence.)

21 BY MS. SAMPSON:

22 Q And in these photographs, do you see a stake with
23 an orange ribbon on that?

24 A Yes, I do.

25 Q Can you tell the jury what that is about?

1 A It is a survey -- it is a surveyor's stake.

2 Q And isn't that showing where your property ends?
3 Outside of your fence?

4 A Right there at that specific -- at that specific
5 point, at that specific place, that is -- yes.

6 Q And you would agree with me that there is property
7 outside of that stake that is not yours?

8 A Yes. At that -- that specific area?

9 Q Yes?

10 A Yes.

11 Q And that is Megan Court, correct, what this is all
12 about?

13 A Yes, at that specific -- that specific area right
14 there, yes.

15 Q Uh-huh. That is Megan Court?

16 A Yes.

17 Q Now, when you were talking to Ms. Zmroczek about
18 the incident that you admit you remember
19 differently than what the video showed, correct?

20 A Yes, ma'am.

21 Q You will agree with me it was an argument between
22 you and Mr. Pruitt -- I mean, Mr. Holten, correct?

23 A No.

24 Q There was no argument?

25 A It got to be that way.

1 Q That is my question, there was an argument?

2 A Not in the beginning when he pulled up.

3 Q At some point there is an argument?

4 A He started getting upset, yes, and I started
5 getting upset.

6 Q So did you -- you yelled?

7 A Yes, ma'am.

8 Q You are cursing?

9 A Oh, yes, ma'am.

10 Q Okay. And would you agree with me that Mr. Pruitt
11 doesn't get out of the truck until your husband
12 comes out, correct?

13 A I don't recall my husband being there until after I
14 had dropped my gun. And as I had stated prior to
15 testify --

16 Q But before --

17 A In prior testimony --

18 Q -- Mr. Pruitt --

19 MS. ZMROCZEK: Your Honor, I ask that she be
20 allowed to finish.

21 MS. SAMPSON: I'm sorry.

22 THE COURT: Let her finish.

23 BY MS. SAMPSON:

24 Q Go ahead.

25 A As I stated, I did not register my husband even

1 being out there until I turned around and saw his
2 legs.

3 Q My question is --

4 A I did not know my husband was outside.

5 Q Great. My question is, did you pull your gun
6 before Mr. Pruitt even got out of the truck? That
7 is what you just said?

8 A It was after. In my head, it was after. He got
9 out of the truck. I knew something was going on.
10 I went -- I remember -- I remember it in my hand.
11 He was over here. He was flying his hands. I
12 mean, this is what I remember.

13 Q Right. And do you --

14 A He was flying his hands. And here was Rick, the
15 driver, right there. And I looked at that man, and
16 he was pure evil. I knew something was happening.
17 And --

18 Q And my question -- Ms. Pruitt, I mean, excuse me,
19 Ms. Volstromer, I am going to ask you questions --
20 this is how this works -- I ask a question and you
21 answer.

22 A I was trying to answer.

23 Q I haven't asked a question. My question to you
24 is -- we have already established that your memory
25 is not what is on that video, correct?

- 1 A Correct.
- 2 Q And I understand that you are saying what you
3 remember. My question is simply this: You had a
4 gun on you, correct?
- 5 A Yes.
- 6 Q You pulled it out, correct?
- 7 A Yes.
- 8 Q You pulled it out after or before Mr. Pruitt gets
9 out of the vehicle? After or before?
- 10 A It was after.
- 11 Q Okay. Thank you. After he gets out when? Is he
12 at the back of truck when you pull it out?
- 13 A He was -- yes, at the back of the truck. He was
14 over here, and that is all I saw was this. Yes. I
15 pulled -- in my head, I pulled the gun out after he
16 got out of that truck.
- 17 Q Right. You cocked the gun too, correct?
- 18 A No.
- 19 Q You just said on direct that you cocked the gun but
20 it didn't have a bullet in it?
- 21 A No. I said I went to cock the gun, it didn't have
22 a bullet, and I dropped it.
- 23 Q So you attempted to cock it?
- 24 A Yes.
- 25 Q Correct. You never saw Mr. Pruitt with a weapon,

1 did you?

2 A No.

3 Q You never saw him with a knife?

4 A No.

5 Q You never saw him with a gun?

6 A No.

7 Q Okay. And let's talk about, you said in direct
8 that he threatened to hurt you?

9 A Yes, ma'am.

10 Q Okay. Then, during this altercation, or some other
11 time?

12 A Several other times.

13 Q Several other times. Do you remember back
14 September of 2019 being here for a pretrial
15 hearing?

16 A I'm not -- I'm not certain.

17 Q You are not certain. Well, I'm going to show you
18 something and see if you recognize that. Is that a
19 transcript from the hearing when we were here in
20 September of 2019?

21 A Yes. I remember this. Yes.

22 Q And at that time you were asked some questions and
23 gave some answers?

24 A Yes, ma'am.

25 Q I want you to look -- and I'm going to show you,

1 because it is easier for me to show you and you not
2 have to fumble through here -- your testimony
3 starts on Page 40 of this transcript. You can take
4 as long as you want. And let me ask you this.
5 When you were giving that testimony, were you under
6 oath?

7 A Yes, ma'am.

8 Q Had you gotten -- just like you did in front of
9 this jury, put your hand on the Bible and swear to
10 tell the truth?

11 A Yes.

12 Q The whole truth?

13 A Yes, ma'am.

14 Q And nothing but the truth?

15 A Yes, ma'am.

16 Q Look in that transcript and tell me anywhere you
17 said that Mr. Pruitt had threatened to hurt you
18 several times?

19 A You want me to read this whole -- all of this? I
20 mean --

21 Q I just want you to show me where --

22 A Was I ever asked?

23 Q My question is, did you say it?

24 A Was I asked the question?

25 THE COURT: Okay, ma'am -- ma'am, you have to

1 answer the questions, you don't get to ask the
2 questions.

3 A I have stated more than several times on more than
4 several occasions that this man has threatened to
5 hit me.

6 Q And my question is, when you were at the pretrial
7 hearing being asked questions by your attorney,
8 being asked questions by myself, did you say that?
9 And if you can show it to me in there.

10 A I don't believe -- I don't believe I did in this
11 hearing.

12 Q Correct.

13 A I know in his bond court I did.

14 MS. SAMPSON: Your Honor --

15 THE COURT: Hold on. Ma'am, answer the
16 question that is asked.

17 A I'm sorry.

18 Q And you asked me were you ever asked. I'm going to
19 direct you to Page 50 of that transcript.

20 A Okay.

21 Q Let me know when you are there.

22 A I'm here.

23 Q Okay. See at Line 16 when Mr. Salley, your
24 attorney at the time, says, Were there any other
25 instances that caused you to fear Mr. Pruitt? That

1 is in there, correct? I didn't read that
2 incorrectly, did I?

3 A Yes, it is here.

4 Q All right. And you don't mention anything about
5 him threatening to hurt you in that answer, do you?

6 A As I had stated to this Court --

7 Q My question is --

8 A I actually --

9 Q Answer that question.

10 A I said as he was leaving he told my husband that he
11 needed to put me in my place.

12 Q That's it, correct? Nothing about hurting you,
13 going to hit you, going to you hurt you, going to
14 touch you in any manner? Mr. Pruitt?

15 A This specific -- this specific question when I was
16 asked, as I stated in this testimony, as he was
17 leaving he told my husband that he needed to put me
18 in my place.

19 Q And the question is, are there any other incidences
20 where you -- that made you fear Mr. Pruitt? And
21 the only thing you said was the one time he came
22 over he said that your husband needed to put you in
23 the place, yes or no?

24 A February 23rd.

25 Q My question is, is that what you said, yes or no?

1 A I said this when I was at that -- exactly what I
2 said in that court.

3 Q I'll ask you. Now, also you gave a statement to
4 Investigator Carter on December 27th of 2015, is
5 that correct?

6 A That's correct.

7 Q I'll have you look at that. Is that a copy of your
8 statement?

9 A Yes, it is.

10 Q In fact, you were given a copy of that statement,
11 correct?

12 A Yes, I was.

13 Q And on the very last page of that statement he
14 asked, Is there anything else you would like to add
15 that Investigator Carter had not asked you, is that
16 correct?

17 A That is correct.

18 Q You tell him, This man has been terrorizing me, I
19 can't stand outside without speeding down the road,
20 creeping on our property. Is that what you say?
21 Is that what you say?

22 A I said creeping?

23 Q That is what -- I'm just reading. If I misread it,
24 please correct me. It is the very last page.

25 A Very last page. I believe it said them. I don't

1 believe it says specifically. I believe it says
2 them in my statement. I don't believe it says
3 specifically Mr. Pruitt.

4 Q My question --

5 A So as far as that goes, it says them, so not
6 specific.

7 Q Okay. So when he asked you, Is there anything else
8 you would like to add, the only thing you add is
9 that answer, is that correct? Yes or no?

10 A I can't remember everything that happened when the
11 sheriff came.

12 Q Uh-huh. My question is, is that what it says?

13 A That is what it says.

14 Q Okay. And you have since, as you just said, spoken
15 with Investigator Holdorf, correct? Since you made
16 this statement?

17 A I spoke with him in regards to a different matter.
18 It had nothing to do with this.

19 Q Great. You spoke to him, is my question.

20 A Yes, I have.

21 Q And when we were at that hearing, he was there as
22 well, correct?

23 A Yes, he was.

24 Q You could have changed your statement then,
25 couldn't you? My question is could you --

1 A I don't know. I don't know.

2 Q Did you ask?

3 A No. I don't know.

4 Q Okay.

5 A I have never been in this situation before. I
6 don't know what you are supposed to do.

7 Q My question --

8 A I mean, if I could have, I'm sure I would have, but
9 I didn't know anything. I did not know I could. I
10 did not know. But --

11 Q Did you ask your attorney?

12 A I didn't have an attorney. My husband had an
13 attorney. We told my husband's attorney
14 everything.

15 Q So you didn't know that you could change your
16 statement even though they told you you could?

17 A Nobody told me I could.

18 Q They never --

19 A Nobody told me I could change my statement.

20 Q Okay. So when they asked you, Is there anything
21 else you want to add, you didn't know you could
22 add?

23 A No.

24 Q Even though they asked you that?

25 A Are we talking this day, the date that it happened?

1 Q Any day?

2 A I didn't know anything.

3 Q All right.

4 A I mean, I did not know anything. I have never been
5 in a situation like this. I never thought I would
6 ever be in a situation like that. I don't know
7 what the proper procedures are in a case like this.
8 So nobody told me. Not my husband's first
9 attorney, not his second attorney.

10 Q Did you ask anyone if you could change your
11 statement?

12 A I didn't know I could. So why would I ask? If I
13 did not know I could change my statement, why would
14 I ask?

15 Q But it is your statement, correct?

16 A It is my statement.

17 Q And you would agree with me that the video tape
18 shows the entire incident of that day, correct?

19 A Yes.

20 Q And your 9-1-1 call is the entire call from that
21 incident, correct?

22 A Yes.

23 Q And in that call and on the video, you tell law
24 enforcement that Mr. Pruitt is off your property
25 line in the road, is that correct?

1 A I can't recall what I said or what I didn't say.

2 Q If I show it to you and let you hear it, would that
3 refresh your memory?

4 A Why not?

5 (Video plays.)

6 Q Is that you?

7 A That is me.

8 Q Is that you saying, He was shot off my frickin'
9 property line?

10 A That is -- yes, that is me.

11 Q And that is -- again, He is right off our property
12 line. That is you?

13 A Yes, ma'am.

14 Q There is nothing about him crossing over onto your
15 property, is there? Because that didn't happen?

16 A I have never listened to the 9-1-1, so I don't know
17 what I said.

18 Q Let me rephrase.

19 A But --

20 Q Did he cross over your fence onto your property?

21 A Yes.

22 Q He went over the fence?

23 A Two feet at that point. From two feet at that
24 point I still own the property out there.

25 Q My question is did he go over the fence?

- 1 A The fence that sits on my property?
- 2 Q Yes?
- 3 A No.
- 4 Q And you just agreed with me that your property ends
5 where this stake is, correct?
- 6 A At that point.
- 7 Q That is my question.
- 8 A At that specific point right there.
- 9 Q And you agree with me that is where your property
10 ends. There is a stake in State's Exhibit
11 Number -- or, excuse me, Defense Exhibit 5 -- there
12 is a stake here, correct?
- 13 A I see the stake.
- 14 Q Yes. All the medical equipment, would you agree
15 with me, is outside of that stake, correct?
- 16 A Yes, ma'am.
- 17 Q And anything beyond that stake is not your
18 property?
- 19 A Specifically -- I'm not a surveyor, so.
- 20 Q Right. They put the stakes there before that,
21 correct?
- 22 A That is something that my surveyor would --
- 23 Q In fact, in the video you said you had it surveyed
24 several times?
- 25 A Yes, ma'am.

1 Q So you are not arguing with the surveyor, are you,
2 that they are wrong?

3 A I'm not quite certain at that point.

4 Q Okay.

5 A At that specific area, no.

6 Q But he didn't cross the fence, he didn't crawl
7 through it, he didn't crawl over it?

8 A He didn't -- and, no, he did not jump it.

9 Q In fact, the only person that went in and out of
10 the fence is you?

11 A That day?

12 Q Yes?

13 A Incorrect.

14 Q Incorrect? Somebody else went through the fence?

15 A Richland County Sheriff's Department.

16 Q They climbed through that fence?

17 A Richland County Sheriff's Department did.

18 Q They climbed through the fence?

19 A They climbed through the fence. One guy jumped
20 over it at 8:30 that night, yes, the Richland
21 County --

22 Q At that time?

23 A Richland County Sheriff's Department accessed that
24 through my fence crawling through that fence.

25 Q Did Mr. Pruitt?

1 A No.

2 Q Did Mr. Holten?

3 A No.

4 Q When this incident happened, did anybody except for
5 you crawl in and out of that fence?

6 A No, ma'am.

7 Q Okay. What you are talking about is after when
8 they are investigating the case?

9 A Yes, ma'am.

10 Q Okay. I'm talking about when this happened. Did
11 your husband go in and out of the fence?

12 A No, ma'am.

13 Q Only you?

14 A Yes.

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

16 (Pause.)

17 MS. SAMPSON: Nothing further, Your Honor.

18 THE COURT: Yes, ma'am.

19 REDIRECT EXAMINATION

20 BY MS. ZMROCZEK:

21 Q Ms. Sampson asked you about -- Ms. Sampson asked
22 you about a report on December -- she showed you a
23 supplemental report from December, right?

24 A Yes, ma'am.

25 Q And who is the suspect or the subject on that?

1 A That is -- oh, that is Bryan Douglas.

2 Q Bryan Douglas. Bryan Douglas, the same Bryan
3 Douglas the son of Rickie Holten?

4 A I don't know.

5 Q Okay. Bryan Douglas, who admitted to --

6 MS. SAMPSON: I am going to object to leading,
7 Your Honor.

8 THE COURT: Sustained. Please rephrase.

9 BY MS. ZMROCZEK:

10 Q Did Bryan Douglas admit to purposely shining the
11 lights into your house?

12 A He admitted to the night before. We actually were
13 watching another Panthers game and we were seeing
14 the lights come in, and that is why we made the
15 initial report.

16 Q And he admitted to doing that?

17 A He admitted that that day, to the sheriff that came
18 out, that he had done it just that once.

19 Q And did you know that he also made a 9-1-1 call?

20 A No, I did not.

21 Q Okay. She asked you about if you had problems with
22 your other neighbors, didn't she?

23 A Yes, ma'am.

24 Q Did you have problems with your other neighbors?

25 A I had a problem with one specific.

1 Q And who was that neighbor?

2 A Mark Edward Wright.

3 Q And why did you have --

4 A Jr.

5 Q And why did you have a problem with Mark Edward
6 Wright, Jr.?

7 MS. SAMPSON: Your Honor --

8 MS. SIMPSON: She opened the door, Your Honor.

9 THE COURT: Hold on one second. Let me see
10 you all for a second.

11 (WHEREUPON, a bench conference was held
12 in the presence of the jury but out of
13 the hearing of the jury.)

14 THE COURT: Objection sustained.

15 BY MS. ZMROCZEK:

16 Q You -- she asked you about a hearing, right, that
17 you had under oath, right?

18 A Yes, ma'am.

19 Q And your attorney was Mr. Salley, right?

20 A My husband's attorney, yes.

21 Q Okay. What happened --

22 MS. ZMROCZEK: May we approach, Your Honor?

23 THE COURT: Yes.

24 MS. ZMROCZEK: Thank you.

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 BY MS. ZMROCZEK:

5 Q Did something happen to Mr. Salley that prohibits
6 him from being in court?

7 A I believe he is ill.

8 THE COURT REPORTER: I'm sorry, I didn't hear.

9 A I believe he is ill.

10 Q Okay. Did he have a car accident?

11 MS. SAMPSON: Objection to the leading, Your
12 Honor.

13 MS. ZMROCZEK: I'll rephrase.

14 BY MS. ZMROCZEK:

15 Q Is there a reason -- there is a reason that he
16 couldn't be here, right?

17 A Yes.

18 Q Okay. You were asked about this testimony that you
19 gave under oath when you had -- before I got
20 involved, right?

21 A Yes, ma'am.

22 Q But Ms. Sampson right here, she was involved,
23 right?

24 A Yes, ma'am.

25 Q And she had the opportunity to ask you questions

1 under oath on the record, right?

2 A Yes, ma'am.

3 Q And when you read through that, did she ask you
4 anything about what you meant by being -- why you
5 were terrorized?

6 A No, ma'am.

7 Q Did Investigator Holdorf -- do you remember him?

8 A Yes, ma'am.

9 Q Okay. Did he ever say, Hey, on the 9-1-1 call, are
10 you being terrorized? Did anybody ever ask you
11 what you meant when you said terrorized?

12 A No, ma'am.

13 Q Did Investigator Carter ever say in your
14 statement -- you write in your statement in front
15 of Mr. Carter, did you -- you wrote, We were being
16 terrorized, right?

17 A Yes, ma'am.

18 Q Did anybody ever ask you any follow-up questions?

19 A No, ma'am.

20 Q What were you hoping when you were giving all of
21 this information to the police, what did you want
22 them to do with the video?

23 A I wanted them to do the right thing.

24 Q Which is what?

25 A Which is look at it, see what happened. I mean, we

1 are decent people. I was trying to cooperate. I
2 don't --

3 Q You were asked about the 9-1-1 call, right?

4 A Yes, ma'am.

5 Q You said you had never been involved in a shooting
6 before?

7 A No, ma'am.

8 Q Okay. So do you remember everything you said?

9 A No.

10 Q Okay. So she asked you about the time you called
11 the police in May, and then she asked you the time
12 that you called the police in September. Were
13 there incidents that upset you or that frightened
14 you in between those?

15 A Yes, ma'am.

16 Q Okay. Did you call the police?

17 A No, ma'am.

18 Q When you did call the police in May and you told
19 them that he was going to rain hell fire down on
20 you, did the police arrest Mr. Pruitt?

21 A No, ma'am.

22 Q Okay. In September when you told the police that
23 he said, You don't know who you are dealing with,
24 did the police arrest Mr. Pruitt?

25 A No, ma'am.

1 Q In fact, going back to May, what, if anything, did
2 the police tell you and Mr. Pruitt to do?

3 MS. SAMPSON: Objection to the hearsay.

4 MS. ZMROCZEK: Okay.

5 BY MS. ZMROCZEK:

6 Q Did you try to purposely continue to have
7 involvement with Mr. Pruitt after you took his tag
8 number?

9 A No, ma'am.

10 Q Okay. Are you a surveyor?

11 A No, ma'am.

12 Q Are you a tax agent?

13 A No, ma'am.

14 Q Are you -- do you have any legal knowledge about
15 your roads in your area?

16 A I did work for Dennis Lanier. I have worked on
17 SCDOT bids.

18 Q So my question is, did you, as far as your property
19 maps, and anything like that, did you do the survey
20 or did you hire somebody?

21 A We hired -- it was Artie White, the original
22 surveyor.

23 Q Okay. So you had somebody doing that for you?

24 A It was the original surveyor.

25 Q Okay.

1 A From when my husband purchased the property.

2 Q How tall are you?

3 A 5'5".

4 Q How much did you weigh on December 27th, 2015?

5 A No more than 115.

6 Q Okay. She asked you if anybody -- the question
7 was, Did anybody across the fence that day, right?
8 That was the question to you?

9 A I believe so.

10 Q Okay. And then I believe that your answer was,
11 Richland County, right?

12 A Yes. The deputies were going up underneath the
13 fence and --

14 Q At any time -- at any time once the police got
15 there, or the fire department, or EMS, did you say,
16 Hey, get off my lawn?

17 A No, ma'am.

18 Q Okay. On December 27th she said that -- she asked
19 you about you being out there and taking pictures
20 in the road, right? Or taking pictures of the
21 road, right?

22 A I believe so, yes.

23 Q And she showed you stakes, and things like that?

24 A Yes, ma'am.

25 Q Okay. Did you have any intention of doing anything

1 else that day?

2 A I had the intention of going in, we were going to
3 have steak, we were going to eat, and I was going
4 to go to bed early.

5 MS. ZMROCZEK: Nothing further, Your Honor.

6 THE COURT: All right, thank you.

7 MS. SAMPSON: No, ma'am.

8 THE COURT: You may step down. Any objection
9 to this witness being excused?

10 MS. SAMPSON: No, ma'am.

11 MS. ZMROCZEK: Your Honor, now that she is
12 released from her subpoena, may she stay in court?

13 THE COURT: Yes.

14 MS. ZMROCZEK: Thank you.

15 (Witness steps down.)

16 THE COURT: Ladies and gentlemen of the jury,
17 this is a good time for us to take a lunch break.
18 We will start back at 2:30. Please do not discuss
19 the case. Remember to keep your badges on. And we
20 will see you at 2:30.

21 (WHEREUPON, the jury is excused for
22 lunch at 1:10 p.m.)

23 THE COURT: All right. There was an objection
24 to testimony that was previously excluded by the
25 Court, and I believe Ms. Zmroczek wants to place

1 the objection on.

2 MS. ZMROCZEK: Yes, Your Honor.

3 THE COURT: And the Court sustained the
4 objection. It was regarding I think Ms. Sampson's
5 question as to, Did you have issues with other
6 neighbors? And I think her answer was yes.

7 MS. ZMROCZEK: Thank you. And, Your Honor,
8 again, it is our position that she opened the door.
9 And, in fact, Your Honor, she went on to ask other
10 questions where she specifically was reading from
11 incident reports about other neighbors that didn't
12 go in. You had made a ruling on that. You said
13 they could talk about the prior difficulties
14 between her and him. And I specifically told her
15 not to say anything else.

16 So, one, she was already instructed by me to
17 not even answer questions about that because -- or
18 to not saying anything about that, because that was
19 under your order.

20 And then Ms. Sampson comes in and asks about
21 the other neighbors, and other neighbors and other
22 problems, which, Your Honor, I understand her
23 intent. Her intent was to make her look like a
24 problem neighbor. Okay? And instead, that is what
25 the jury gets to be left and heard with instead of

1 why that problem was so -- not only was a specific
2 problem with a specific neighbor, as she kept
3 saying. But, Your Honor, that specific problem is
4 what formed a lot of the state of her mind, which
5 is what we have been arguing for her self-defense
6 and the defense of others with her husband. And,
7 Your Honor, you know, I've been on the receiving
8 end of an opening door, but accusations that have
9 been way more questionable than this. And, Your
10 Honor, this was very clear and very intentional.
11 And, for the record, we want to make sure that that
12 is a very preserved objection.

13 THE COURT: Yes, ma'am?

14 MS. SAMPSON: I don't know what she means by
15 very clear and very intentional. But, Your Honor,
16 I asked about the neighbor. The only thing I have
17 been provided by them had the most identifying
18 information marked out in terms of -- I don't know
19 that Mr. Wright is a neighbor. And if he was, it
20 was in 2005. I was asking about problems she had
21 now. And the particular incident reports that I
22 went over were from 2015. Didn't go past that.
23 Didn't ask about any prior -- that was what -- she
24 asked about disputes with neighbors as well. She
25 asked her about it. So I can't open a door that

1 she already opened. On direct she asked did she
2 have problems with other neighbors, so I can follow
3 up on that. That doesn't mean I opened the door.
4 So therefore I think your ruling is proper.

5 THE COURT: All right.

6 MS. ZMROCZEK: Very briefly, Your Honor. I
7 did not show her the report from 2005, which she
8 did, and that was the specific part of opening the
9 door that I refer to.

10 Thank you.

11 THE COURT: All right. I think the question
12 was asked on direct, it was followed up on cross.
13 She testified that she did have problems with other
14 neighbors. Someone asked the question about -- I
15 think she testified that everything was fine until
16 these people started moving in, when the other man
17 moved out. She testified that she had issues with
18 the neighbor Holten, then they said Holten's son,
19 Pruitt, the neighbor who stole the cat, the
20 neighbor's dog. So -- that she bought a gun
21 because she and her husband had issues with the
22 neighbors. Because her husband was attacked by the
23 neighbor's dog and she was afraid of the neighbor's
24 dog. And so, in context, I still believe that you
25 are trying to get in the testimony regarding some

1 incident between her -- I assume in 2005 with this
2 man that y'all are saying that has a sex offender
3 registry and that she -- her daughter was -- I
4 don't know if he -- was either molested by this man
5 or --

6 MS. ZMROCZEK: Her daughter was, yes.

7 THE COURT: By this man?

8 MS. SAMPSON: No, not Mr. Pruitt, a
9 different --

10 MS. ZMROCZEK: By the man she showed the
11 report to.

12 THE COURT: Her daughter had been molested by
13 the man and that somehow that is connected to this
14 case in 2015. There is nothing that connected --
15 other than I think you were trying to solicit
16 that -- that she said that she saw that man with
17 the decedent at some point. But there is nothing
18 closely connected about it. And he wasn't there
19 that day. His name has been brought up in the
20 entire case. I think it is improper to put that
21 before the Court. And it has -- it is not relevant
22 to any of the issues here in court. So that is the
23 reason for the ruling.

24 MS. ZMROCZEK: What time did you say come
25 back, Your Honor?

1 THE COURT: 2:30.

2 MS. ZMROCZEK: Thank you.

3 THE COURT: All right. Do you have witnesses
4 lined up for the rest of the day?

5 MS. ZMROCZEK: Yes, ma'am.

6 THE COURT: Because we are going to get the
7 testimony in tonight, regardless. I don't know
8 what time we are going to finish.

9 MS. ZMROCZEK: Oh, I'm sorry?

10 THE COURT: We are going to finish the
11 testimony today.

12 MS. ZMROCZEK: Yes, ma'am.

13 THE COURT: So I don't know what time we are
14 going to finish, but take your time, we'll be here.

15 MS. ZMROCZEK: I have three, possibly four
16 more.

17 THE COURT: No, that's fine. I'm not limiting
18 you. I'm just saying we are going to -- I am going
19 to keep them here, so make sure all your witnesses
20 are here.

21 MS. ZMROCZEK: Thank you.

22 THE COURT: So we can move forward.

23 MS. SAMPSON: The only thing I would ask Your
24 Honor, I don't know who these are, so just make
25 sure I have a rap sheet.

1 MS. ZMROCZEK: She has.

2 THE COURT: And if you have reply witnesses,
3 they need to be here.

4 MS. SAMPSON: Yes, ma'am.

5 MS. ZMROCZEK: And, Your Honor, I don't know
6 if the State will be calling any rebuttal
7 witnesses, but if they do, I would ask that they
8 provide any rap sheets for them as well.

9 Thank you.

10 THE COURT: Yes, ma'am. The dates of birth
11 for all witnesses, any possible reply rebuttal
12 witnesses.

13 I'll see y'all at 2:30.

14 MS. ZMROCZEK: Thank you.

15 (WHEREUPON, a lunch break was taken at
16 1:17 p.m.)

17 (WHEREUPON, the trial resumed at 2:43
18 p.m.)

19 MS. SAMPSON: I do have a matter. I don't
20 know if you want to take it up now or before the
21 witness. I think that they plan on using evidence
22 with, not this witness, but since we are at a break
23 I thought --

24 THE COURT: Who is that?

25 MS. SAMPSON: I don't know who they planning

1 on using it with, or if they do. While we were in
2 session at 10:00 o'clock I received an email with
3 several photographs that said Reciprocal Rule 5. I
4 don't know who their next witness is or if they
5 plan on getting these in, but I would object to
6 these coming in.

7 MS. ZMROCZEK: Your Honor, that will be with
8 our private investigator, so that is several
9 witnesses away.

10 THE COURT: All right. Bring them in.
11 (WHEREUPON, the jury came into open
12 court at 2:45 p.m.)

13 THE BAILIFF: Your Honor, the jury is all
14 seated.

15 THE COURT: All right. Call your next
16 witness.

17 MS. ZMROCZEK: Thank you, Your Honor. We call
18 Arthur White.

19 (Witness approaches.)

20 THE BAILIFF: Place your left hand on the
21 Bible, and raise your right hand, please.

22 (Witness complies.)

23 THE CLERK: Do you swear or affirm the
24 testimony you shall give in this case will 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. Have a seat in the
4 witness stand, and state your full name for the
5 record.

6 (Witness seated.)

7 THE WITNESS: My full name is Arthur E. White,
8 Jr.

9 ARTHUR E. WHITE, JR.,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. ZMROCZEK:

13 Q Good afternoon, Mr. White. Could you introduce
14 yourself to the jury? Tell them who you are, where
15 you work, and what you do.

16 A I'm Arthur White, Art White. My office is in West
17 Columbia, South Carolina. I'm an attorney and also
18 a registered land surveyor. I have been land
19 surveying since 1973, back when you used to drag a
20 chain through the woods and use transits. And I
21 have been a practicing attorney since 1980.

22 Q And what is a land surveyor? What does that mean?
23 What do you do?

24 A When you go out -- when you go home today and look
25 at your property, you can tell where all the --

1 there is real nice bushes usually at the corners,
2 because we have to cut them down all the time. And
3 somewhere there is an iron pin. And that iron pin
4 marks your specific corner as recognized by the
5 State of South Carolina and by the Assessor's
6 Office as to where your boundaries are on your
7 property.

8 Q And did you receive -- what kind of training or
9 education did you receive to do that? And do you
10 continue to do that?

11 A As far as land surveying goes, when I started --
12 when I finished high school, I didn't have a job.
13 So I went to work dragging a chain and transit
14 through the woods in 1973. At that point in time
15 you did not go to school to become a registered
16 land surveyor, you had to learn how to do it on the
17 field, in the field. So for eight years I was in
18 the woods. And I hadn't been in the woods since
19 yesterday. So the truth is, I enjoy being in the
20 woods. But I realized if I went to law school I
21 probably wouldn't have to swing a bush axe, but the
22 truth is, it is more fun to swing a bush axe. So
23 probably 65 percent of the time I land survey.
24 This time of year it gets very hot and humid, so
25 that is when I prefer to practice more law. But

1 that is all right.

2 Q Mr. White, are you familiar with the property area,
3 not just 1129 Antioch Amez Road, but -- Amez Church
4 Road, but this whole area that is the subject
5 matter of this issue?

6 A I'm familiar with the subdivision area, yes.

7 Q Okay. And how are you familiar with the
8 subdivision?

9 A I guess -- I think it was 1994 or '95, Harold
10 Swafford, he is a local attorney, I think he is
11 retired now, called my office to do a survey on
12 this piece of property. And I went and did the
13 survey prior -- I think at that point in time there
14 was nothing on it, it was just raw land, a little
15 over an acre, acre and a half, and they were going
16 to put a new home on it. And so we surveyed it to
17 make sure the property corners were correct, and
18 then went from there.

19 Q And what was the address of that property?

20 A The address -- I got to look that up. To be honest
21 with you, I'm not sure, I think it was Lot 9. As a
22 surveyor, we don't -- I don't worry too much about
23 the number that the Assessor's Office says it is.
24 It is more important to me as to what lot number it
25 was. I think it was -- well --

1 Q Would it assist you to -- did you prepare some
2 documents?

3 A It would.

4 Q Okay. Let me do it this way. I'll show you
5 Defendant's 31 through 36 and ask if you recognize
6 those?

7 A Defendant's Exhibit 31 is actually a copy of the
8 subdivision plat known as Spring Tree Subdivision.
9 Of that, I was surveying Lot Number 9, which is
10 directly across the street from -- I think it was
11 Antioch Lane that comes in on that side.

12 And Defendant's Exhibit 32 is simply the same
13 plat just blown up. And in my humble opinion, I
14 can read 31 better than I can 32.

15 And then Defendant's Exhibit 33 is actually my
16 plat that I prepared in 2014, in June of 2014. And
17 that is not showing any improvements on it, but
18 there is also Lot 9. And there are a few copies of
19 that plat. I'm trying to see if I have the
20 original. No, that is it.

21 And Lot 34 and 35 and 36 are all copies of my
22 same plat.

23 Q And so 31 and 32 you did not prepare yourself,
24 correct?

25 A That is correct. That was prepared by Anderson and

1 Associates, who is a surveying company here in
2 Columbia. And Jack Anderson did that survey in
3 1994.

4 Q And is that -- are those two -- well, I guess the
5 same survey, one is just blown up a little bit, I
6 think you said?

7 A That's correct.

8 Q And do those fairly and accurately represent
9 paperwork that you relied on to do your job?

10 A They are exactly what I relied on.

11 Q Okay. And then 32 through -- the rest of them, 33
12 through 36, I believe, those are documents that you
13 created?

14 A That's correct.

15 MS. ZMROCZEK: Your Honor, at this time we
16 would move 31 through 36 into evidence.

17 THE COURT: Any objection?

18 MS. SAMPSON: No, ma'am.

19 THE COURT: They will be entered without
20 objection.

21 (WHEREUPON, Defendant's Exhibit Nos.

22 31-36 were marked for identification and
23 received into evidence.)

24 BY MS. ZMROCZEK:

25 Q I am going to let you hold on to those. So I guess

1 how we got there was my original question was you
2 were asked to do a survey on Lot 9?

3 A That's correct.

4 Q Okay. And when did you do that survey?

5 A Initially I did the survey in 1995.

6 Q Okay. Have you done multiple surveys?

7 A I have surveyed this parcel of land at least three
8 times. Now, I only brought -- I think I have got a
9 copy of my original one I did in '95, and then the
10 most recent one was when I went out there
11 concerning this matter.

12 Q Okay. And so I want to talk about that. You said
13 the most recent one concerning this matter. Why
14 was that important for you to do?

15 A Mr. Volstromer needed me to go out there and
16 basically flag where the property line was. And I
17 went out there and put little orange flags
18 approximately every 50 feet on the property line in
19 the arc. Where Lot 10 and Lot 9 join together, it
20 is a curved road or a curved driveway, however you
21 want to place it, and approximately every 50 feet I
22 did that so Mr. Volstromer could make sure that his
23 fence was on his property.

24 Q Okay. And so can you explain -- and if you need to
25 step down -- if you need to step down and use the

1 easel. Sorry. If that will help you kind of
2 explain what we are talking about. It looks like a
3 map to me. I don't have them on there, but if you
4 want to bring them with you.

5 A Okay.

6 MS. SAMPSON: Your Honor, if she is going to
7 show this, we have a matter of law.

8 MS. ZMROCZEK: I'm not showing him that.

9 BY MS. ZMROCZEK:

10 Q Hang on, let me get a clean board. Here you go.
11 (Witness steps down.)

12 A We have this turned --

13 Q And you have got one juror behind you.

14 A Oh, I'm sorry. I have this turned so that the
15 north arrow is going straight up the page.
16 Unfortunately, that kind of -- this is the road,
17 the Antioch Amez Church Road. That is the main
18 road. This is the lot that the Volstromers live
19 on, Lot 9.

20 Q And you have the pointer, it may help you.

21 A I'm not known for being a professor, so just bear
22 with me.

23 This is Lot 9. This is the curve that I was
24 referring to where I was putting flags
25 approximately every 50 feet to make sure that their

1 fence was on their property.

2 This is the curved driveway to get in the lot.

3 I think that is Lot 10 or Lot 8. Excuse me, Parcel

4 A. That's right.

5 Q And you did this one when?

6 A The first time I did that was in 1995.

7 Q Okay. And, go ahead.

8 A In 1995, when I did that, to my -- best I can
9 remember, it was only 25 years ago, it was a vacant
10 lot and that was for the purpose of allowing them
11 to put a new home on the property.

12 Q Okay. And, again, is that just the --

13 A This is the same thing. To me the other one is
14 easier to read. But it is the exact same thing.
15 This is still Parcel A here and this is Lot 9.

16 Q And Lot 9 is what we -- what I would refer to as
17 1129 Antioch Amez Church Road?

18 A Correct. That is my understanding.

19 Q Okay.

20 A Let me grab one of my plats in case I need to --

21 Q Yes. Okay. And just explain to the jury what
22 these show.

23 A This is Lot -- Parcel A. It kind of wraps around
24 the property. This is the driveway that comes in
25 off of Antioch Amez Church Road. This is the lot

1 without showing any of the improvements. There are
2 a few fences on it now and there is a home on it.

3 Coming in from this direction, as you can
4 tell, this says Privately Maintained Road. And
5 that is because whoever owns Parcel A back here
6 owns all of this. And I didn't do any title work
7 on Parcel A, so I can't tell you exactly who owns
8 it.

9 Q Okay. And then Defendant's 34?

10 A That is the exact same thing that we were just
11 looking at.

12 Q Okay. And 35 is also --

13 A Same thing.

14 Q Okay, good. So what -- oh, there is one more,
15 sorry. Same?

16 A That is the same thing.

17 Q Okay, good. So we've got -- but you went out there
18 numerous -- you can sit down -- but you went out
19 there numerous times?

20 A Yes. Yes, I did.

21 (Witness returns to witness stand.)

22 Q Are you familiar with -- so you went out there to
23 make sure that the fence was on the property line,
24 right?

25 A That's correct.

1 Q Okay. And are you familiar with the privately
2 maintained road?

3 A As far as the fact that it is a driveway to get to
4 the back parcel, yes, ma'am.

5 Q Okay.

6 A Now, I did not survey the entire parcel, Parcel A.
7 I only surveyed our lot.

8 Q Okay.

9 A So.

10 Q And were there -- have you -- so you have seen the
11 pictures of the -- and you probably haven't. But
12 when we talk about fence, I'll just show you
13 Defendant's Exhibit 5. Is that the fence?

14 A That definitely looks -- well, as a matter of fact,
15 in this picture you can see a tall stake with a
16 piece of orange flag on it. If memory serves me
17 correct, that is probably my tall stake at -- there
18 is an iron pin showing on the plat, and that is
19 where that iron pin is at.

20 Q Okay. And so how far into the leaves, I guess,
21 does the property extend, or the Volstromers have
22 use of or access to?

23 A The Volstromers' property basically ends at that
24 fence.

25 Q Okay.

1 A They do not own anything out into the road or out
2 into that driveway.

3 Q Okay.

4 A And their fence is on their property.

5 Q Okay.

6 A Now, as I try to explain to everybody when they
7 call my office and ask, please don't put your fence
8 on the property line, because if you put it exactly
9 on the property line, you just made a gift to your
10 next-door neighbor of half interest in that fence.
11 Make sure your fence is on your property.

12 Q And is that fence on their property?

13 A It is.

14 Q Okay. And so you didn't do any surveys of Parcel
15 A, right?

16 A That's correct, I did not.

17 Q Do you have any knowledge about -- so is it still
18 Parcel A to this day?

19 A As far as I know, yes.

20 Q Okay. And so what can you tell me about, if
21 anything, that you know about that privately
22 maintained road?

23 A That privately maintained road that I can tell is
24 simply a driveway to get to that parcel of land in
25 the back.

1 Q Okay.

2 A Every parcel of land -- no parcel of land in South
3 Carolina can be landlocked. If it is, it can be
4 rectified in court. All the lots in this
5 subdivision have access to Antioch Amez Church
6 Road. They all do. And not just this one, but
7 every lot, including Parcel A. Parcel A, it was my
8 understanding at some point in time that they were
9 going to turn that into some kind of subdivision.
10 I do not know that has ever happened.

11 Q Okay. And is that -- so are -- I want to -- 31 was
12 easier to read, right?

13 A I think that is right. Yes.

14 Q So you see Parcel A and then you see Lot 8 -- do
15 you see Lot 8?

16 A Yes.

17 Q Okay. Is there any other access to get to Lot 8
18 other than that privately maintained road?

19 A The best I could tell, Lot 8 does not have legal
20 access to that privately maintained road. I do not
21 know who owned Parcel A. Lot 8 has legal access to
22 Antioch Amez Church Road and they have
23 approximately 121.65, 63 feet of road frontage on
24 that road.

25 Q And can you show -- again, I'm sorry, if you can

1 step down and kind of explain that to the jury.

2 (Witness steps down.)

3 A Again, this is Parcel A. This is the road that
4 everybody is talking about. This is -- this road
5 is actually the access for Parcel A. Parcel A, the
6 owner of Parcel A owns that strip, that 50-foot
7 strip. This is Lot 8. Lot 8 has 121 plus feet on
8 Antioch Amez Church Road. Best I can tell without
9 doing a title search on this lot and this lot, of
10 which I did not do, I wouldn't have any knowledge
11 of knowing whether or not Lot A even has legal
12 access to come across that privately maintained
13 road.

14 Q And so how would Lot 8 then be able to get to their
15 property?

16 A Come straight off of Antioch Amez Church Road.

17 Q So Lot 8, the people in Lot 8 can come off,
18 straight off Antioch Amez Church Road and not use
19 that privately maintained road?

20 A Unless they have special permission from the owner
21 of Parcel A, they have to come off Antioch Amez
22 Church Road. That is their legal access.

23 Q Thank you. Please have a seat and answer any
24 questions for the State.

25 (Witness returns to witness stand.)

1 MS. SAMPSON: May I proceed, Your Honor?

2 THE COURT: Yes, ma'am.

3 CROSS-EXAMINATION

4 BY MS. SAMPSON:

5 Q Where is Megan Court on this?

6 A Megan Court?

7 Q Yes, sir?

8 A I have no idea.

9 MS. SAMPSON: No further questions, Your
10 Honor.

11 THE COURT: All right, you may step down. I'm
12 sorry, any --

13 MS. ZMROCZEK: No.

14 THE COURT: You may step down. Any objection
15 to this witness being excused?

16 (Witness steps down and excused.)

17 THE COURT: Call your next witness.

18 MS. ZMROCZEK: Thank you. Your Honor, we call
19 Mark Volstromer.

20 (Witness approaches.)

21 THE BAILIFF: Place your left hand on the
22 Bible, and raise your right hand, please.

23 (Witness complies.)

24 THE CLERK: Do you swear or affirm the
25 testimony you shall give in this case will be the

1 truth, the whole truth, and nothing but the truth,
2 so help you God?

3 THE WITNESS: Yes.

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

7 (Witness seated.)

8 THE WITNESS: Mark Robert Volstromer.

9 MARK R. VOLSTROMER,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. ZMROCZEK:

13 Q Mark?

14 A Yes, ma'am.

15 Q What did you mean when you said you were done?

16 A I -- honestly, I did not know I even said that
17 until two years later.

18 Q You say you don't remember? And you just don't
19 remember?

20 A No, ma'am.

21 Q When did you remember that you said it?

22 A When my Public Defender showed me, like I said, two
23 years later.

24 Q On the video?

25 A Yes, ma'am.

1 Q On the day that you were forced to fire that gun --

2 MS. SAMPSON: Objection, Your Honor.

3 THE COURT: What is the objection?

4 MS. SAMPSON: To characterization and leading.

5 MS. ZMROCZEK: I haven't even asked the
6 question.

7 MS. SAMPSON: You said the day you were forced
8 to use that weapon.

9 THE COURT: Sustained.

10 BY MS. ZMROCZEK:

11 Q On the day that you fired -- let me rephrase it.

12 On December 27th, 2015, at 0438.13 seconds and
13 milliseconds, what was your state of mind?

14 A From the start of the timeline to the end of the
15 timeline?

16 Q Yes.

17 A From the start of the timeline, I was okay. From
18 the end of that timeline, of course I was a basket
19 case, basically.

20 Q All right. And we are going to talk about that.
21 We are going to come back to it, okay?

22 A Okay.

23 Q But tell the jury a little bit about yourself. How
24 old are you?

25 A I am 54.

- 1 Q Fifty-four?
- 2 A Yes.
- 3 Q And you are a little soft-spoken.
- 4 A I'm sorry. I'm 54.
- 5 Q And I'm also hard of hearing, so. Where did you
- 6 grow up?
- 7 A Battle Creek, Michigan.
- 8 Q How far did you go in school?
- 9 A High school.
- 10 Q Okay.
- 11 A I did some tech, technical school.
- 12 Q Some tech school?
- 13 A (Nods affirmatively.)
- 14 Q What did you do after high school?
- 15 A I did your basic Burger King, Wendy's jobs, stuff
- 16 like that.
- 17 Q Okay.
- 18 A Afterwards, yes.
- 19 Q And did you move anywhere?
- 20 A I did move to Florida when I was 18. And I got a
- 21 job installing -- well, being a garage door helper
- 22 installing garage doors.
- 23 Q Installing garage doors?
- 24 A Yes.
- 25 Q And did you have any training in that or anything?

1 A No, ma'am. I was trained. They trained me.

2 Q And you were I think you said 18?

3 A Yes.

4 Q Tell the jury what you do for a living now?

5 A I install garage doors.

6 Q So safe to say that you liked it?

7 A Yes. To this day I still enjoy it.

8 Q Okay. And so you said to this day you still do it.

9 Do you work for the same company, or who do you
10 work for?

11 A No, ma'am. I have been on my own for about 16
12 years now. And I worked for a big company in town,
13 Boatwright Corporation. I worked for them for 13
14 and a half years. And I worked at Overhead Door a
15 couple of years before that.

16 Q Okay. So you have owned your own company for
17 approximately the last 16 years?

18 A Yes.

19 Q Okay. And who -- do you have any employees?

20 A It is just me and my wife.

21 Q Okay.

22 A And now it is my daughter helping me too, so.

23 Q All right. And so your wife, you mentioned that,
24 is that the person that we heard from earlier?

25 A Yes.

- 1 Q Barbara?
- 2 A Yes.
- 3 Q And your daughter is?
- 4 A Daughter
- 5 Q Okay. So when -- approximately when did you move
- 6 to South Carolina?
- 7 A I would say '88, '89.
- 8 Q Okay. When did you -- where do you live now?
- 9 A I live at 1129 Antioch Church Road, Eastover.
- 10 Q Okay. When did you move there?
- 11 A 1995.
- 12 Q And we just heard from Mr. White?
- 13 A Uh-huh.
- 14 Q Did he do the -- is that who you used to do the
- 15 survey?
- 16 A The owner of the subdivision or lot that I bought
- 17 had, I guess, had the survey done. I didn't have
- 18 him do that original survey, no.
- 19 Q Okay. And so when you bought the lot --
- 20 A Uh-huh.
- 21 Q -- do you know what lot number that was?
- 22 A Lot 9.
- 23 Q Okay. And so when you bought Lot 9, were you
- 24 married?
- 25 A No, ma'am.

1 Q Okay. And so it was just you?

2 A Yes.

3 Q And what did it have on it at that time?

4 A Nothing. Just my trailer. That was it.

5 Q Okay. And so throughout the years -- obviously we
6 have seen pictures. So the shed, the garages, how
7 did they get there?

8 A Well, I -- well, the front garage and the shed and
9 the shed, the bigger shed, but it is a shed in the
10 back yard, I built those myself. The barn in the
11 back yard was built, I had someone build that one
12 for me.

13 Q And in addition to just adding sheds and barns and
14 garages, what else did you to do improve the
15 property?

16 A We did everything pretty much by hand. Cut down
17 trees, brush, pulled roots up, all kinds of good
18 stuff.

19 Q And so I want to go back to Barbara. That is your
20 wife, right?

21 A Yes.

22 Q And how long have you known her?

23 A A long time. Twenty-five years.

24 Q And when did y'all get married?

25 A '88.

- 1 Q Okay.
- 2 A No, I'm sorry. '98. I'm sorry.
- 3 Q '98. And then you have one child in common?
- 4 A Yes.
- 5 Q Okay. And who is that?
- 6 A That is **Daughter**
- 7 Q Okay. And she was born in?
- 8 A '99.
- 9 Q I'm not trying to test you, but I kind of am. Do
10 you have any grandchildren?
- 11 A Yes.
- 12 Q Okay.
- 13 A I have one. Well, now we have two, but at the time
14 we had one.
- 15 Q So Barbara had a child from a previous marriage?
- 16 A Yes.
- 17 Q Okay. And do you know her daughter?
- 18 A Yes. Alyce, yes.
- 19 Q So do you have any pets?
- 20 A I have had many pets over the years. I have one
21 right now -- well, two. I have a dog and a cat.
- 22 Q Dog and a cat. So I want to talk about the dog.
23 Have you ever been attacked by a dog?
- 24 A Yes, ma'am.
- 25 Q Okay. When was that?

1 A 2006.

2 Q And when we say attacked, describe what happened to
3 the jury.

4 A I went to check my mail up on Antioch Church Road.
5 I did that. Well, there was a young gentleman
6 sitting on the church stoop, a brick wall in front
7 of the church. He had a dog. I did notice it, but
8 of course I continued and I went across the street.
9 And then my mailbox is actually probably 75,
10 100 feet off to the side. I checked my mail. I
11 started walking back. And I asked the young man if
12 he lived around here, because I have never seen him
13 before. And he said no.

14 MS. SAMPSON: Objection, Your Honor.

15 THE COURT: Sustained.

16 BY MS. ZMROCZEK:

17 Q Oh, sorry. If you remember, you can't say what
18 people said. It is fine.

19 A I'm sorry. Well, he directed me to -- can I say
20 that -- to move, you know, to keep going.

21 Q So where did you go as a result of what he told
22 you?

23 A I started walking back down my driveway.

24 Q Okay. And what happened?

25 A Next thing I knew, bam, the dog was on me.

1 Q Okay. And when you say on you, what kind of
2 injuries did you sustain?

3 A Got both my legs and, you know, punctured a hole in
4 my hand.

5 Q And I am going to show you Defendant's 38, 39, and
6 40. Do you recognize those pictures?

7 A Yes, ma'am.

8 Q And what are they?

9 A My legs and my hand.

10 Q And there is a date and time stamp -- or a date
11 stamp on that.

12 A 8/15/2006.

13 Q And is that the date that it happened?

14 A No, it happened 8/14/2006. The 8/15 picture is a
15 picture of one of my legs with stitches in it.

16 Q Okay.

17 A What that looked like.

18 Q Okay. So there is one with stitches?

19 A Yes.

20 Q And then the other two are?

21 A The night of.

22 Q Okay.

23 A The night of the incident, yes.

24 Q And do those fairly and accurately represent your
25 injuries from that attack?

1 A Yes, ma'am. But the one picture of my right leg,
2 on the other side of my right leg, it is not on
3 this picture, but, yes. You could say yes.

4 MS. ZMROCZEK: Your Honor, at this time we
5 would move Defendant's 38, 39, and 40 into
6 evidence.

7 MS. SAMPSON: Can I just see them real quick,
8 Your Honor?

9 (Pause.)

10 MS. SAMPSON: I would object to 39, but I'm
11 fine with 40 and 38.

12 THE COURT: You said you object?

13 MS. SAMPSON: I object to -- one of them is
14 pretty graphic, but I'm fine with 38 and 40.

15 THE COURT: The objection is overruled.

16 MS. ZMROCZEK: Thank you.

17 (WHEREUPON, Defendant's Exhibit Nos.

18 38-40 were marked for identification and
19 received into evidence.)

20 BY MS. ZMROCZEK:

21 Q Okay. So 8/14/2006?

22 A That is when the incident occurred, yes.

23 Q Okay. And then -- and that was Defendant's 39. 40
24 is also that day?

25 A That is just my hand right here.

1 Q And then 38, you said, was the next day?

2 A That was -- yes, that was the next day, yes.

3 Q And you got stitches?

4 A That is where they -- yes. Both my legs. That is
5 a picture of one of my legs.

6 Q As a result of that attack, what did you do?

7 A I purchased a handgun.

8 Q Okay. I'm going to show you what has been marked
9 as Defendant's 41 and ask you if you recognize
10 that?

11 A Yes. That is my sales receipt.

12 Q Okay. And does that fairly and accurately
13 represent the receipt for --

14 A Yes, ma'am.

15 Q -- for State's 47?

16 A Yes, ma'am.

17 Q Okay.

18 MS. ZMROCZEK: Your Honor, at this time we
19 would move Defendant's 41 into evidence.

20 MS. SAMPSON: Without objection.

21 THE COURT: It will be entered without
22 objection.

23 (WHEREUPON, Defendant's Exhibit No. 41
24 was marked for identification and
25 received into evidence.)

1 BY MS. ZMROCZEK:

2 Q Mark, can you tell me the date that you purchased
3 it?

4 A 11/14/2006.

5 Q Okay. I'm sorry, is it hard for you to read
6 without your glasses?

7 A It is.

8 Q Sorry. I will try not have you read anymore. It
9 says on here, CWP class. Did you take a CWP class?

10 A Oh, yes. Yes, ma'am.

11 Q Okay. Did you own guns before this?

12 A I had a shotgun and a .22 rifle.

13 Q Okay.

14 A That I had for -- since I was a kid, yes.

15 Q Okay. So you had those since you were a kid?

16 A Yes, ma'am.

17 Q Okay. And have you ever owned a handgun?

18 A No, that is my first handgun.

19 Q Okay. And when that -- when the dog attack that we
20 just saw happened, pictures that we just saw, who
21 was around when that happened?

22 A Well, there was the -- obviously the individuals
23 that had the dog. There was me. Then there were
24 some neighbors next-door that saw it.

25 Q Okay. Who called the ambulance?

- 1 A My wife did.
- 2 Q Okay. So was she around as well?
- 3 A Oh, yes, she was. I thought you meant like in that
- 4 area.
- 5 Q All right. So once you got that handgun --
- 6 A Yes.
- 7 Q -- did you use it?
- 8 A Just at the -- when I did CWP target shooting.
- 9 Q Okay. So when you got your CWP you have to --
- 10 A You have to --
- 11 Q -- hit a target?
- 12 A Yes, ma'am.
- 13 Q And so had you used it since then? Had you fired
- 14 it since then?
- 15 A I have.
- 16 Q Okay. What was that at?
- 17 A Excuse me?
- 18 Q What -- at what did you fire the gun?
- 19 A Well, I shot somebody.
- 20 Q Very literal. Thank you. Before -- and I
- 21 appreciate that -- before December 27th -- okay, so
- 22 from -- I'm talking December 26th to -- 2015 --
- 23 A I never -- I never fired it.
- 24 Q Okay. You never fired it?
- 25 A Never had to.

1 Q Okay. So I want to get back to why we are here
2 today, okay?

3 A Yes, ma'am.

4 Q Did you know Keith Lanny Pruitt?

5 A I knew who he was. I didn't know him know him.

6 Q Okay. When did you meet him?

7 A Before he moved in, he pulled in my driveway.

8 Q Okay. Did -- was there ever a time that he came
9 into your house?

10 A One time.

11 Q Okay. So tell the jury about that.

12 A Well, he came into my house and -- well, ain't that
13 hearsay? He came --

14 Q You can talk about your conversation.

15 A Okay. He just came into the house. And of course
16 he was, you know, drinking, which I didn't have a
17 problem with that. Basically he started out fine,
18 then he got disrespectful really quick. He kept
19 calling my wife darling and sweetheart, and my wife
20 asked him several times, Please call me Barbara.
21 And at one point it was just pointless and futile.
22 My wife asked me to escort him out, and I did that.

23 Q And he left?

24 A He did, yes.

25 Q Did he say anything to you?

1 A He said when we were walking back --

2 MS. SAMPSON: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MS. ZMROCZEK:

5 Q Did you -- without telling me what anybody told
6 you -- did you believe that Mr. Pruitt was a Green
7 Beret?

8 A Well, yes, because that is what he told me.

9 MS. SAMPSON: Objection, Your Honor.

10 BY MS. ZMROCZEK:

11 Q Without telling me what you told -- so I know it is
12 hard. So after a conversation, it was your
13 understanding what?

14 A That Mr. Pruitt was a Green Beret.

15 Q Okay. And that was -- do you remember when that
16 was as far as what year or month?

17 A That would have been -- well, I know it was 2015
18 was before he moved in.

19 Q Okay.

20 A That is when.

21 Q Okay. And are you in the military?

22 A No, ma'am.

23 Q Okay. Are any of your family members in the
24 military?

25 A Yes.

1 Q Okay. Who is that?

2 A My brother was an MP for a couple of years. My
3 dad, my stepdad, who I consider my dad, he was a
4 Vietnam veteran. He was a Navy Seal.

5 Q So I want to talk about your neighborhood. When
6 you moved in in '95 you said it was just a lot,
7 right? And then you put your -- you moved your
8 trailer onto there?

9 A Yes.

10 Q And then obviously we talked -- we heard about the
11 improvements that you made, right?

12 A Yes.

13 Q Were there any -- did you have neighbors?

14 A I had -- if you are facing Antioch from my house, I
15 had a vacant lot on the right, and next to that
16 vacant lot was a single-wide trailer, and those
17 people also owned that vacant lot, if you follow
18 me.

19 Q Okay. And do you recall what lot number that you
20 lived on?

21 A 9.

22 Q Okay. So you lived on Lot 9?

23 A Uh-huh.

24 Q Okay. So right here, right? Oh, yes, I forgot,
25 you can't see. And so did any -- were there any

1 people that lived directly -- so your front -- so
2 your front address faces what?

3 A Antioch.

4 Q Okay. And so what is across the street?

5 A The church.

6 Q Okay. And then go to the left of your house.

7 A Okay. That is Megan Court.

8 Q Megan Court. Okay. And you are familiar with
9 Megan Court?

10 A I am.

11 Q Okay. Did anyone live on the other side of that?

12 A Yes.

13 Q Okay. Did you know those people?

14 A We got to know them.

15 Q Okay. And when did people start to move in?

16 A Behind us?

17 Q Uh-huh?

18 A I'm going to say maybe a year later they started
19 to, because I got -- can I say it?

20 Q Sure.

21 A Because at that time, for about a year, three days
22 out of the week when I was working for Boatwright
23 Corporation, I was going up to Greenville staying
24 overnight and everything, so I kind of missed a lot
25 of what was going on.

1 Q Okay. And so -- I appreciate you trying to follow
2 the rules, okay. So this is the rule I want you to
3 think of. When you are about to say what somebody
4 told you, then just don't say it. But any of it --
5 you can say that you went out of town, okay? That
6 is okay.

7 A All right.

8 Q So we talked about you met Mr. Pruitt right before
9 he moved in?

10 A Uh-huh.

11 Q And then he moved in. How did your life change?

12 A Well, I can say, you know, traffic went up
13 100 percent at least.

14 Q Let me ask you this. Do you have a problem with
15 people getting to their house?

16 A Oh, no.

17 Q Okay. So did that bother you? Were you mad?

18 A No, I'm not mad at -- you know, the people have to
19 get to their house, I understand that.

20 Q Okay. Who -- so I want to get to March of 2015.
21 Okay?

22 A Okay.

23 Q End of February, beginning of March 2015. What, if
24 anything, happened to Barbara that you remember?

25 A Oh, I remember a dog pushing -- came to the fence

1 and pushed her back.

2 Q What did you hear when she was pushed up against
3 the fence?

4 A I was right there.

5 Q Okay. And so what did you hear?

6 A There were people out yelling for their dogs.

7 Q Okay. And I'm going to show you Defendant's 37.

8 A Uh-huh.

9 Q Do you recognize that picture?

10 A This is a different incident.

11 Q Okay, so these are different dogs?

12 A Different, yes.

13 Q So did you have a camera system?

14 A No.

15 Q Okay. When that happened?

16 A No.

17 Q Okay. Did you get a camera system?

18 A After that happened, yes.

19 Q Okay. And why?

20 A Well, because when my wife of course called the
21 Sheriff's Department, and they said that --

22 Q There you go. When you -- you got a camera system
23 because of that, right?

24 A Right.

25 Q And let me ask you this. On the day that her ribs

1 were broken, did you call the police?

2 A No, I did not.

3 Q Did she call the police?

4 A Not that day, no.

5 Q Did you get your guns out and --

6 A No.

7 Q -- threaten anybody?

8 A No. No.

9 Q If you had problems with your neighbors in early
10 2015, how would you handle it?

11 A Talk to them.

12 Q Uh-huh. Just -- is that how you handled it when
13 Mr. Pruitt was in your home?

14 A Tried to.

15 Q Okay. Did -- were you always able to talk to your
16 neighbors?

17 A Yes. I mean, no problem.

18 Q Okay. As 2015 went on, were you always able to
19 talk to your neighbors?

20 A No, ma'am.

21 Q Okay. What changed?

22 A Different people moved in.

23 Q Okay. And I want to talk about your specific
24 interactions with Mr. Pruitt, okay? Just
25 Mr. Pruitt. Is that fair?

- 1 A That's fair.
- 2 Q Okay. And I don't ever want you to tell me what he
3 said, all right?
- 4 A Okay.
- 5 Q So - but we'll get there. So you, in July of 2015,
6 do you remember that time frame?
- 7 A You go ahead and we will see what we got going
8 here.
- 9 Q Okay. Who was staying with you at that time?
- 10 A Oh, my grandson.
- 11 Q Okay. Your grandson. And what kind of things did
12 you and your grandson like to do?
- 13 A Well, I mean, just stuff. I mean, I dropped a
14 basketball hoop down and we played basketball and
15 try to teach him how to play catch.
- 16 Q Did you --
- 17 A Usual.
- 18 Q -- do these things inside or outside?
- 19 A Well, basketball was outside right out in the front
20 yard. And of course baseball, about the same
21 thing. I mean, we had a big back yard too. We
22 spent most of the time in the back yard, but we did
23 go out in the front yard occasionally.
- 24 Q Okay. And so -- and when you say back yard, all
25 the pictures that we have been seeing in the

1 videos --

2 A That is the front.

3 Q Okay. So that is the front yard?

4 A Yes.

5 Q So you did play with him in the front yard?

6 A Yes.

7 Q Okay. Do you remember a specific -- and don't tell
8 me what he said, but do you remember a specific day
9 in July -- or I don't know if you remember the date
10 specifically, and if you do, that's fine -- that
11 you had an interaction with Mr. Pruitt?

12 A I don't remember the date.

13 Q I know you don't remember the date. Was it in the
14 summer?

15 A Oh, yes. It was hot.

16 Q Was your grandson there?

17 A Yes.

18 Q What were y'all doing, you and your grandson?

19 A We were -- we checked the mail together.

20 Q You what?

21 A We went and checked -- walked down the driveway and
22 checked the mail.

23 Q Checked the mail. Sorry. Okay.

24 A Yes. And, well, earlier we had some gravel and
25 dirt brought in, fill dirt brought it. We had two

1 big mounds of dirt out in the front. And we stayed
2 out there for a while. We played King on the
3 Mountain.

4 Q So you were playing King on the Mountain?

5 A Yes.

6 Q And what, if any -- did anybody drive by?

7 A Drive by or -- I mean --

8 Q Did you see or -- don't tell me what they said.

9 Did you see or talk to anybody that day?

10 A No.

11 Q Okay. Did you see Mr. Pruitt that day?

12 A Yes.

13 Q Okay. And so when did you see him?

14 A I just -- we were just playing, and I looked up and
15 there he was just sitting right there in his work
16 van.

17 Q Okay. Don't tell me what he said.

18 A I'm not.

19 Q But did he say anything to you?

20 A Yes, ma'am.

21 Q After he said what he said to you, how did you take
22 that?

23 A Not well. I had my grandson with me, and I took
24 him back in the house.

25 Q Okay. Why did you feel the need to take him back

1 into the house?

2 A Well, Number 1, at that particular moment it was --
3 to me, it was very -- personally, I would just say
4 it was just distasteful, I guess you would say, and
5 definitely worrisome.

6 Q Worrisome?

7 A Yes.

8 Q For you?

9 A For me. And him, yes.

10 Q Okay.

11 A My son -- grandson.

12 Q Obviously for your grandson?

13 A Yes.

14 Q But for you, after he drove by that day that you
15 are playing King of the Mountain --

16 A Uh-huh.

17 Q -- with your grandson, and I know you are saying
18 worrisome, at that point, what feelings did you
19 have about being around Mr. Pruitt?

20 A Well, I kind of never really liked being around him
21 anyways.

22 Q Okay. Were you happy? Were you sad? What were
23 your emotions?

24 A Like I said, I was kind of --

25 Q How did you take what he said? Don't tell me what

1 he said, but how did you take it?

2 A As a threat.

3 Q Thank you. Okay. And I know that it is hard.

4 A You had to drag that out of me, I'm sorry.

5 Q No. Here is the question. And I don't want you to
6 answer it, okay -- I want you to answer my
7 question, but don't answer it with what I'm going
8 to ask you. Has anyone ever asked you what he
9 said?

10 A No.

11 Q And let me rephrase that. Has any police officer
12 ever asked you what he said that day?

13 A No.

14 Q Okay. Has any investigator for the Sheriff's
15 Department ever asked you what he said that day?

16 A No, ma'am.

17 Q Okay. We watched the video, you have seen and
18 heard it several times. On the video, Mr. Pruitt
19 said, Remember what I told you the last time I saw
20 you, right?

21 A Yes, ma'am.

22 Q When was the last time you saw him before that?

23 A I think that was probably the last time.

24 Q That was the last time that you had any -- I
25 mean --

1 A Interaction.

2 Q Okay. Obviously people who drive down your
3 driveway, you are going to see them, right?

4 A Right.

5 Q Were you aware of a threat or problem between Mr.
6 Pruitt and your wife?

7 A Yes. My wife, yes.

8 Q Okay. Thank you. Did you know Ricky Holten?

9 A I only met him a couple of times.

10 Q You met him a couple of times?

11 A Yes, briefly.

12 Q Okay. That worrisome thing that you said that you
13 took as a threat, right?

14 A (Nods affirmatively.)

15 Q Did you call the police that day?

16 A No, ma'am.

17 Q Okay. Your camera security system had audio,
18 right?

19 A Correct.

20 Q Was there ever a time that it didn't work?

21 A Yes, there have been plenty of times, sure.

22 Q So during this period of time, was that threat
23 caught on camera?

24 A It should have been. Like, my camera holds things
25 for a week, but I didn't -- you know, in hindsight

1 I should have.

2 Q Okay. You -- we heard about the church right
3 across the road --

4 A Correct.

5 Q -- from your house, right?

6 A Correct. That is why I bought the property.

7 Q What issues, if any, did you notice with the church
8 across the road?

9 A Issues with the church itself or, you know --

10 Q Just in general?

11 A Oh, in general? Just people sitting up there at
12 the church, I guess you could say.

13 Q Okay. Was it the same people or was it --

14 A Yes, ma'am.

15 Q And who was that --

16 A One particular person. It was Pruitt.

17 Q And you can tell me, who was particular person?

18 A Keith Pruitt.

19 Q Now, did you know that -- did you always know that
20 it was him?

21 A After our first encounter, yes. And then --

22 Q And so -- and when you say often -- do you remember
23 how often that would happen?

24 A Oh, it was very often.

25 Q Did you call the police?

1 A No, ma'am. No point.

2 Q Okay. I want to move to December, okay? So what,
3 if any, changes had you noted between September and
4 December around -- or with things going on in your
5 front yard?

6 A Just your -- the stuff that had been going on, you
7 know, sitting out there, just sitting and, you
8 know.

9 Q Okay. Did you ever -- you lived in the country,
10 right?

11 A It is rural. It is not --

12 Q Not the country, I know. It is a rural area,
13 right?

14 A Yes.

15 Q Before March of 2015, did you ever have a steady --
16 did you ever hear gunshots?

17 A Oh, yes. I mean, sure.

18 Q Okay. Did that change? Did that change after
19 March of 2015?

20 A Oh, that changed dramatically, yes, there was more.

21 Q Okay. Did you -- could you tell from where they
22 were coming?

23 A Yes.

24 Q Okay. How could you tell from where they were
25 coming?

1 A I lived there a long time. I know what is going on
2 pretty much.

3 Q Okay. And so I'm going to show you Defendant's 1.
4 You can -- if you'll step down.

5 (Witness steps down.)

6 Q And if you will stand here so people can see you.
7 Okay. I'm going to hand you this pointer. And,
8 now, you have Ms. Debbie behind you, but I want to
9 make sure that everybody can see, okay? All right,
10 so show me where your house is. Oh, you need your
11 glasses.

12 A No, I mean, how long ago was this picture taken?

13 Q Here we go. And I'll help orient you.

14 A That is Megan Court.

15 MS. SAMPSON: I can't hear anything.

16 A Yes, that is me right here.

17 Q There you go. Okay. That is your house, right?

18 A Yes.

19 Q What direction were those gunshots coming from?

20 A Right here.

21 Q Okay.

22 A That general area.

23 Q This general area. And how many houses are in this
24 general area?

25 A Well, there is one.

1 Q There is one. Make sure you keep your voice up.
2 And whose house was that?

3 A Pruitt.

4 Q Okay. Go ahead and have a seat.

5 (Witness returns to witness stand.)

6 MS. ZMROCZEK: Beg the Court's indulgence.

7 (Pause.)

8 BY MS. ZMROCZEK:

9 Q So I want to direct your attention to December
10 20th, okay? We saw the video earlier, right?

11 A Right.

12 Q And did something else happen on December 20th that
13 startled you?

14 A Other than the car driving by and someone saying,
15 Die?

16 Q Yes, other than that?

17 A I heard gunshots.

18 Q You heard gunshots?

19 A Yes, ma'am.

20 Q And were those captured on your surveillance
21 system?

22 A Yes, ma'am.

23 Q And do you remember watching a CD, which you didn't
24 know it was Defense Exhibit 20, did that -- is that
25 what you captured on your surveillance system?

1 A Yes.

2 MS. ZMROCZEK: Your Honor, we would move
3 Defendant's 20 in.

4 THE COURT: Any objection?

5 MS. SAMPSON: I thought it was. That's fine.

6 (WHEREUPON, Defendant's Exhibit No. 20
7 was marked for identification and
8 received into evidence.)

9 BY MS. ZMROCZEK:

10 Q While this is loading up, what personal
11 knowledge -- I want you to listen to my question.

12 A Okay.

13 Q What personal knowledge, if any, did you have about
14 Mr. Pruitt owning guns?

15 A Just that he --

16 Q It is a yes or no question. Did you know whether
17 or not he owned guns?

18 A Well, sure he did.

19 Q Okay. You had personal knowledge that he did?

20 A Well, I mean --

21 Q I'm not going to ask you how you got it, just tell
22 me if you had personal knowledge.

23 A Yes. Yes.

24 Q Okay. Thank you. And this is loading up, so we
25 will watch in just a moment, okay? Or listen to

1 it, I guess is the word. So I want to talk to you
2 about the camera system while this is going. So
3 you have -- why did you choose to put cameras in
4 the outside location?

5 A Because that is where the problems were.

6 Q Okay. And were you trying to -- what were you
7 trying to do by putting those cameras up?

8 A Oh, just so it wouldn't be hearsay, I guess you
9 would say.

10 Q Okay.

11 A We would have proof.

12 Q Okay. So that when you -- so you said so it
13 wouldn't be hearsay?

14 A Yes.

15 Q Meaning that like if you --

16 MS. SAMPSON: Objection to the leading, Your
17 Honor.

18 MS. ZMROCZEK: I'm just trying to clarify what
19 he said, Your Honor.

20 THE COURT: All right. But you can't lead.

21 MS. ZMROCZEK: Right. I am not going to
22 suggest -- I won't suggest the answer.

23 THE COURT: All right.

24 BY MS. ZMROCZEK:

25 Q When you say -- what do you mean when you say you

1 didn't want it to be hearsay?

2 A Well, I need to have proof that something happened.

3 Q Thank you.

4 A All right.

5 Q I am going to let this warm up. We can look at it
6 a later time, okay? But what you heard and what
7 you heard on that video you said came from that
8 same direction that you pointed to?

9 A Yes, ma'am.

10 Q Okay. All right. So I want to talk about -- and
11 that was December 20th, right?

12 A Correct.

13 Q I want to move seven days later, okay?

14 A Yes, ma'am.

15 Q I want to talk to you about December 27th, 2015,
16 okay?

17 A Okay.

18 Q What did -- how did you spend your day that day?

19 A Just a regular Sunday. You know, we did our usual
20 football, watched the game, and we had the grill
21 going. And just your basic day. I mean, we were
22 having a pretty good day, so.

23 Q Okay. What happened later in the afternoon, after
24 the game?

25 A My wife went outside.

1 Q She went outside?

2 A Uh-huh.

3 Q Was that something that she normally did?

4 A No, ma'am.

5 Q Okay. And what do you mean?

6 A She didn't like going out there no more.

7 Q Anymore?

8 A Yes. She pretty much stayed inside. She would
9 always go in the back yard.

10 Q Okay. And when did that happen?

11 A It was way prior to the 20th.

12 Q Okay. All right. So what had you -- did you have
13 any plans to stay at your home?

14 A No, ma'am, we were going to move.

15 Q Okay. And how long had you been here -- been there
16 on December 27th of 2015?

17 A Maybe like 24 years, or something like that.

18 Q But you were going to move?

19 A Yes, ma'am.

20 Q Had **Daughter** ever lived in another home?

21 A No, ma'am.

22 Q Had you ever gotten married in another home?

23 MS. SAMPSON: Objection, Your Honor.

24 Irrelevant.

25 MS. ZMROCZEK: We'll move on.

1 BY MS. ZMROCZEK:

2 Q Was that home important to you?

3 A Yes, we were going to --

4 Q Okay. So you said she went outside?

5 A Yes.

6 Q So tell the jury what you remember that day.

7 A Okay. I was sitting on the toilet in our bathroom.
8 I heard -- basically, I heard my wife's voice, like
9 she was yelling or something. I heard a commotion,
10 put it that way. So I got up off the toilet, went
11 to my dresser and I got my gun and put it in my
12 back pocket.

13 Q I'm going to stop you there.

14 A Okay.

15 Q Why did you go to your -- get up from the bathroom
16 and go to get your gun?

17 A Well, my first thought is dogs, you know.

18 Q Did you know who was out there?

19 A No, ma'am.

20 Q Okay. Before you walked out of that door, did you
21 see or know if there were any other people besides
22 your wife out there?

23 A No, ma'am.

24 Q Okay. So go ahead. You got your gun?

25 A I got my gun. I didn't run. I kind of walked very

1 briskly to my daughter's room. I said -- I told
2 her, I said, Get ready to call 9-1-1. And I turned
3 around and started walking out and --

4 Q Okay. I am going to stop you right there.

5 A Okay.

6 Q Okay. I want to follow up with you.

7 A Okay.

8 Q Why did you go into your daughter's room and tell
9 her to call -- be prepared to call 9-1-1?

10 A Because I didn't know what was going on.

11 Q Okay. But then how did you know that something was
12 going on?

13 A That is why I said, Prepare to call 9-1-1.

14 Q What is it that alerted you that something was
15 going on?

16 A Because yelling.

17 Q Okay. You hear Barbara yelling?

18 A Yelling. My wife's voice is --

19 Q Okay. You could hear her?

20 A Yes.

21 Q All right, sorry. So did you -- okay, I promise I
22 will try to stop interrupting you. All right, so
23 you tell that to **Daughter**, right?

24 A Yes.

25 Q Does she listen to you?

1 A Yes.

2 Q Okay. What -- then what do you remember next? And
3 I promise I will not interrupt you until you stop
4 talking.

5 A I told her to stay inside.

6 Q Okay.

7 A I proceeded to go out the front door and, boom,
8 there was this truck. And it is this Ricky guy
9 that I see. So, I mean, they were talking about
10 the road and something about he owned the road
11 and --

12 Q But you could hear what they were discussing?

13 A Correct.

14 Q Okay. What were you thinking at that moment?

15 A I wasn't really thinking a whole lot. I was
16 thinking, Gosh, this guy is being an asshole.

17 Q Okay. Fair enough. Where was your gun?

18 A In my back pocket.

19 Q Okay. So I said I wouldn't interrupt you, and
20 there I did. Okay. So what did you do?

21 A I just walked over to my wife.

22 Q Why?

23 A Well, because she was out there by herself, and
24 that is why I was walking towards her, you know.
25 That is when Pruitt got out the truck.

1 Q Okay. How did that make you feel when Pruitt got
2 out of the truck?

3 A I was scared shitless.

4 Q Okay. Why?

5 A Just because of the man himself.

6 Q Okay. When he said, Remember what I told you last
7 time I saw you --

8 A Yes, ma'am.

9 Q -- how did that make you feel?

10 A Well, that is just kind of verging of threat.

11 Q Okay. What -- when he said, I'm the devil --

12 MS. SAMPSON: Your Honor, I am going to object
13 to her -- if he remembers what he said, that is
14 fine, but for her keep telling him what was said.

15 MS. ZMROCZEK: Your Honor, it is on the video.

16 THE COURT: You can't do that.

17 MS. SAMPSON: I object.

18 THE COURT: The objection is sustained.

19 BY MS. ZMROCZEK:

20 Q Tell me about your feelings when all of these
21 things that we heard on the video were being said
22 to you?

23 A Oh, man. You know, that -- that was it. I mean,
24 that was --

25 Q That was it, you were fed up?

- 1 A No, I mean, something bad was going to happen.
- 2 Q Okay. To who?
- 3 A To us, me and my wife.
- 4 Q Okay. Where is your daughter at this point?
- 5 A She is in the house.
- 6 Q Okay. What did you do next?
- 7 A Asked him to leave.
- 8 Q Let me ask you this. You said, Come on over here,
9 then or something.
- 10 A Uh-huh.
- 11 Q Why were you saying that?
- 12 A I don't remember saying that. Obviously I did, but
13 I don't remember saying that.
- 14 Q Okay. All right, so then tell us what happened.
- 15 A Well, Mr. Pruitt reached in the back of the truck
16 and, you know, put something in his back pocket,
17 from what it looked like. And I'm watching Ricky
18 and Pruitt. I'm trying to watch them both. Pruitt
19 is doing what he was doing.
- 20 Q Okay.
- 21 A You know, I told you what I would do to you, or
22 whatever, you know, and of course he is the devil.
- 23 Q How did that make you feel?
- 24 A I think it even heightened up my fear of him.
- 25 Q Were you trying to agitate the situation?

1 A Oh, hell no. No.

2 Q Okay. Was Barbara at that point agitating the
3 situation?

4 A I don't think she was.

5 Q Okay.

6 A She just wanted them to leave.

7 Q Okay. What did you do then? What do you remember
8 happening?

9 A Well, after the devil thing, and all that, you
10 know, he was walking towards our fence. And I
11 could have swore he put his hand behind his back,
12 or had them behind his back. And that is when I --
13 that is -- you know, I mean, he said he had
14 something for me.

15 Q Okay.

16 A You know. And I wasn't going to --

17 Q Did you think it was a birthday -- what did you
18 think it was?

19 A Well, he had something on him. I'm sure he had a
20 gun on him. He had to have.

21 Q Okay. And how long had you been out there?

22 A Not very long.

23 Q Okay.

24 A Maybe 20 seconds maybe, 30 seconds.

25 Q And then what did you do? And then what did you do

1 after --

2 A After I --

3 Q So he is at the truck?

4 A Well, yes, yes, ma'am. I shot Mr. Pruitt.

5 Q What did you feel right before you shot him?

6 A It was either him or us. I mean, I was scared
7 sh -- like I said, I was pretty scared.

8 Q Okay. Who were you talking to after -- you can be
9 heard talking. Who were you talking to? Do you
10 remember? Whose fault -- I believe you said --

11 MS. SAMPSON: Your Honor --

12 MS. ZMROCZEK: I stopped the question, Your
13 Honor.

14 A I --

15 Q Hang on. I'm going to reask the question, okay?

16 A Okay.

17 Q Do you remember talking?

18 A No. Not specifically, no.

19 Q Not specifically, no?

20 A No.

21 Q Okay. When did you -- you said that you watched it
22 about two years later?

23 A Yes, ma'am.

24 Q Okay. Is that when you started --

25 A That's when, yes, things started coming together.

1 Q Okay. What did you do after you shot him?

2 A I walked back in the house.

3 Q Okay.

4 A I emptied my gun. I took -- took -- I took the
5 bullet out of the chamber and left it on the
6 freezer. I hugged my daughter and I told her I was
7 sorry. And then I made a phone call.

8 Q You made a phone call?

9 A Yes, ma'am.

10 Q Who?

11 A I called my dad.

12 Q You called your dad?

13 A Yes.

14 Q Okay. And this is the dad that we talked about?

15 A Yes.

16 Q Your stepdad in the military?

17 A Yes.

18 Q Don't tell anybody what he said.

19 A I won't. Try not to.

20 Q After you spoke with him, how did you feel?

21 A Calmer.

22 Q Okay. Were you planning to shoot anybody that day?

23 A No, ma'am.

24 Q Do you regret it?

25 A I regret it happened, yes.

1 Q Would you have done anything different?

2 A I -- I don't think I would have.

3 Q You what?

4 A I don't think I would have done anything different.

5 Q Okay. Had you ever been in police custody?

6 A No. First time.

7 Q Okay. Why were you so cooperative with them?

8 A I -- that is hearsay, I think.

9 Q You can tell me why you -- you can tell the jury
10 why you --

11 A I was trying to be very calm. I was trying to be
12 strong.

13 Q What did you think that the police would do for
14 you?

15 A I would think that this would get straightened out.
16 I mean, I knew I was going to go to jail.

17 Q Okay.

18 A But I figured that it would get straightened out
19 and, you know.

20 MS. ZMROCZEK: Beg the Court's indulgence.

21 (Pause.)

22 BY MS. ZMROCZEK:

23 Q You gave a -- you talked to the police before you
24 went down to the station? Do you remember
25 talking --

1 A I remember walking in the yard looking for a shell
2 casing, helping them look for a shell casing. I
3 remember going -- I had to pee bad. I remember
4 peeing. I remember him doing the hand thing on me.

5 Q Okay. Had you ever been in a situation like this?

6 A No.

7 Q Okay. Please answer any questions the State may
8 have.

9 THE COURT: All right, ladies and gentlemen of
10 the jury, at this time we are going to take our
11 afternoon break, and then we will come back and
12 have cross-examination by the State.

13 Please do not discuss the case.

14 (WHEREUPON, the jury retires to the jury
15 room at 3:59 p.m.)

16 THE COURT: Wait on the jury to exit, please.

17 THE BAILIFF: Can he walk around a little bit?

18 THE COURT: Give me one second.

19 All right, sir, you can step down. Please do
20 not discuss your testimony. All right?

21 THE WITNESS: All right, ma'am.

22 THE COURT: Thank you.

23 MS. SAMPSON: Your Honor, can we make sure --

24 I understand that they don't speak to each other,
25 I'm not saying anybody is doing anything wrong, but

1 they don't speak to each other at all.

2 MS. ZMROCZEK: I just instructed them, Your
3 Honor, not to speak to them. Do you need to use
4 the restroom, Mark, or are you okay?

5 THE WITNESS: I think I will be -- I'll be
6 okay.

7 MS. ZMROCZEK: I want you to stay right there.
8 That's okay. I don't want to have anybody have any
9 questions, Your Honor.

10 THE COURT: If he needs to use the restroom.
11 Do you have to use the restroom?

12 THE WITNESS: I'm good. Ma'am, I'm good.

13 THE COURT: All right, we'll take about 10
14 minutes.

15 (WHEREUPON, a break was taken at 4:00
16 p.m.)

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

18 (WHEREUPON, the jury came into open
19 court at 4:21 p.m.)

20 THE BAILIFF: The jury is seated, Your Honor.

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

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

23 (Pause.)

24 CROSS-EXAMINATION

25

1 BY MS. SAMPSON:

2 Q So, Mr. Volstromer, on direct you talked about this
3 dog attack in 2006?

4 A Uh-huh.

5 Q Mr. Pruitt didn't live near you in 2006?

6 A No, ma'am.

7 Q So it wasn't his dog?

8 A Well, no.

9 Q And you recovered from that fine, correct?

10 A Well, yes, after a week or so, yes.

11 Q And --

12 MS. ZMROCZEK: Your Honor, I can't hear him.

13 BY MS. SAMPSON:

14 Q Ms. Zmroczek asked you about your handgun. But you
15 did say you have a rifle and a shotgun, correct?

16 A Yes.

17 Q So you didn't just have one weapon, you had three?

18 A Yes.

19 Q And your wife also had a handgun, correct?

20 A Yes.

21 Q In your household there were four guns?

22 A Well, not at that time, no. We had -- I had two
23 shotguns. We are talking about the dog attack,
24 correct?

25 Q No, I'm talking about period in your house. And I

1 will be more specific. In 2015, you all had four
2 guns in your house?

3 A Yes.

4 Q And you stated that when you met Mr. Pruitt, he
5 came over to your house, it was okay at first?

6 A Well, yes, I mean --

7 Q And at some point he was being disrespectful by
8 calling your wife darling, correct?

9 A That's correct.

10 Q And you asked him to leave, and he did?

11 A Correct.

12 Q You talked about him drinking at that time, but you
13 didn't have a problem with him drinking a beer?

14 A No, ma'am.

15 Q In fact, on the day of this incident you were
16 drinking beer, correct?

17 A Of course.

18 Q And after the shooting, you went back in the house
19 and drank more beer?

20 A I did.

21 Q You talked about -- let's talk about some of these
22 prior problems. You stated that you had this one
23 time where you were with your grandson --

24 A Yes, ma'am.

25 Q -- and Mr. Pruitt did something to you, correct?

1 A Yes, ma'am.

2 Q Do you remember speaking with law enforcement?

3 A No, ma'am, I did not.

4 Q Not about that, period?

5 A Correct.

6 Q Do you remember giving -- talking to Investigator
7 Holdorf in December of 2015 after this incident
8 happened? After this shooting?

9 A No, I never mentioned it to him.

10 Q My point is, did you talk to him?

11 A Yes.

12 Q And you talked to him while y'all were driving?
13 You talked to him at your house, correct?

14 A I know I talked to somebody at the house a little
15 bit, I guess.

16 Q And then he takes you to headquarters. Did you
17 talk to him in the car on the way to headquarters?

18 A I do believe we had a conversation, yes.

19 Q And then when you got to headquarters, he talked to
20 you some more?

21 A Yes.

22 Q And while he is talking to you, is he making you
23 talk to him?

24 A No.

25 Q Is he keeping you from saying anything?

1 A No.

2 Q You are allowed to talk about whatever you want?

3 A I didn't really talk that much. He did most of the
4 talking. I was just like, Yeah, uh-huh, yeah.

5 Q Okay. But at some point you are giving him
6 specific details, are you not?

7 A I guess, yes.

8 Q Okay. So let's see what you gave him. Do you
9 remember the written statement you gave him?

10 A Did I write this or did he write this?

11 Q My question is, Do you remember giving him that --
12 do you remember signing it on the bottom?

13 MS. ZMROCZEK: Your Honor, I believe that is
14 improper refreshing of the recollection. I think
15 that she can ask him. If he doesn't remember, she
16 can then give him the statement.

17 MS. SAMPSON: The statement is already in
18 evidence.

19 THE COURT: All right.

20 BY MS. SAMPSON:

21 Q So, again --

22 THE COURT: Rephrase the question.

23 Q -- do you remember signing that statement on the
24 bottom?

25 A Yes. That is my signature, yes.

1 Q And I understand that you didn't write it, but you
2 signed it, correct?

3 A I did sign it.

4 Q Did he allow you to read it before you signed it?

5 A I guess. I can't remember.

6 Q Can't remember that. And you say it has details.
7 Did he make those details up, or are those the
8 details you gave him?

9 A I don't know, I didn't really read the whole thing.

10 Q Go ahead and read it then.

11 MS. AUSTIN: Your Honor, can we give him his
12 glasses?

13 THE COURT: Yes.

14 (Pause.)

15 A Thank you.

16 Yes, ma'am, that's fine. I don't remember
17 saying the word cocky, but that's fine.

18 Q But it is in there, correct?

19 A The word cocky is in there, yes.

20 Q And my question is, those details that are in
21 there, you gave these to Investigator Holdorf,
22 correct? He just didn't make it up?

23 A Apparently, yes, ma'am, I did.

24 Q Okay. And, again, he let you write or tell him
25 whatever you wanted and he would write it down, is

1 that correct?

2 A He could write down what he wanted to right down, I
3 guess. I don't know.

4 Q And at the very end he asked did you want to add
5 anything to the statement, did he not? Look at the
6 second -- look at the last page.

7 A Well -- okay, it says that, yes.

8 Q And did you add or change anything at that point?

9 A No, because I wasn't really paying attention.

10 Q And you knew at the time he is talking to you he is
11 trying to understand what happened that day,
12 correct?

13 A Yes.

14 Q And as you said in direct, you wanted to make sure
15 that they got this straightened out, correct?

16 A Correct.

17 Q You wanted them to know what happened so that they
18 would know what to do, correct?

19 A Well, yes. I mean, yes.

20 Q So when you are talking to them and he asked you
21 specifically -- and I am going to point you to
22 Page 2 where he says and asks you, Did Pruitt do
23 anything to threaten you, your answer is no?

24 A That is obviously not what happened, but, yes, I
25 did say that.

1 Q My question is, did you say that?

2 A Yes.

3 MS. ZMROCZEK: Your Honor, I ask that he be
4 allowed to finish the sentence.

5 MS. SAMPSON: He did. He said he said that.

6 THE COURT: All right. Objection is
7 overruled. Continue.

8 BY MS. SAMPSON:

9 Q He asked you did Pruitt do anything to threaten
10 you, and you answered no, correct?

11 A That was my answer at that time, yes.

12 Q And then you added, He reached into his cooler. Is
13 that not what that says?

14 A That is what it says, yes.

15 Q So did you say that?

16 A That might have been what I said, yes.

17 Q You signed it on the bottom swearing that that is
18 what you said, isn't it?

19 A Yes.

20 Q Okay. Is there anything in that statement where
21 you say he reached behind his back or that he had
22 anything behind his back?

23 A I'm not -- I didn't know I was supposed to recall
24 every detail of what happened just a few hours
25 prior.

1 Q My question is, is it in there?

2 A No, it is not in here.

3 Q Okay. And you are trying to make sure they knew
4 everything that happened. Is there anything in
5 there about the problem with your grandson?

6 A No.

7 Q And when you are wanting him to understand
8 everything that happened that night so they could
9 do the right thing, is there anything about him
10 threatening your wife before this happened?

11 A No.

12 Q And in this time that you are trying to make sure
13 they know everything that happened, is there
14 anything in there about him coming over your fence?

15 A No, ma'am.

16 Q Is there anything in there -- again, we wanted them
17 to know everything in there, get it right. Is
18 there anything in there about him coming on your
19 property that day?

20 A No.

21 Q Okay. And you never added anything or changed this
22 in any way when given the opportunity, correct?

23 A No, I didn't.

24 Q And earlier, during direct with Ms. Zmroczek, you
25 stated that you didn't see that your wife was

1 agitating the situation at all?

2 A I said that?

3 Q You said that in direct.

4 A Really?

5 Q You don't remember saying that?

6 A So they weren't arguing or anything.

7 Q I -- she -- I wrote down that you said, He doesn't
8 think she was agitating the situation.

9 Ms. Zmroczek asked you --

10 A I don't think my wife was agitating the situation,
11 no.

12 Q That is not what I asked you, that is what you
13 said.

14 A I was trying to get it through my head, I'm sorry.

15 Q And you are sure about that?

16 A Yes.

17 Q Okay. And you are sure -- and you said this on
18 direct -- that Mr. Pruitt was walking towards your
19 fence?

20 A Correct.

21 Q You're sure about that?

22 A Yes.

23 Q Okay. And you said that you said something, but
24 you don't remember what you said after you shot
25 him?

1 A At the time, I mean, no.

2 Q So you don't remember saying, I shot his ass?

3 A No, ma'am.

4 Q And you don't remember right before you shot him
5 saying, I have had it?

6 A Not --

7 MS. ZMROCZEK: Your Honor, I would ask that
8 she do a correct statement of what was said right
9 before, because I don't think it was, I have had
10 it.

11 MS. SAMPSON: He can correct me. What did you
12 say -- I'm sorry.

13 BY MS. SAMPSON:

14 Q What did you say before you shot the man?

15 A Well, apparently I said, I'm done.

16 Q I'm done. I'm so sorry, I got that wrong. Do
17 remember saying that, I'm done?

18 A Nope. I didn't find that out till two years later.

19 Q But you said it?

20 A Obviously.

21 Q All right. And do you remember telling your wife
22 after that when you go in the house, They are not
23 allowed to stop and talk to us? Do you remember
24 saying that?

25 MS. ZMROCZEK: Your Honor, if she is going to

1 ask him if he remembers what he said, if she could
2 play it or show it to him so that he has an
3 opportunity to respond because he is saying he
4 doesn't remember, so if she is asking him things
5 that he said, if he can be allowed to either read
6 them or see them or hear them, then I think that
7 that would be a more appropriate way for him to be
8 able to answer the question.

9 MS. SAMPSON: Your Honor, this is
10 cross-examination. They didn't have a video
11 like --

12 THE COURT: It is her cross-examination.
13 You'll get to redirect.

14 BY MS. SAMPSON:

15 Q And, again, do you remember saying, They can't stop
16 and talk to us?

17 A I heard it on the video.

18 Q So you did say that?

19 A I heard it on the video.

20 Q And you stated that while you are talking to police
21 or after this incident happened, you were trying to
22 remain calm?

23 A Yes, ma'am.

24 Q And so when they get there, you talked to them and
25 you are calm?

- 1 A Yes.
- 2 Q They are asking you what happened, correct?
- 3 A The first officer, I guess I talked to somebody
4 else, I don't really recall talking. I don't
5 remember talking to him. I remember Holdorf kind
6 of.
- 7 Q Okay. So you don't remember telling them, I just
8 shot him?
- 9 A Well, I did shoot him.
- 10 Q And before you go outside, you stated to this jury
11 that you just heard your wife, is that correct?
- 12 A I heard commotion. Yes, mostly being my wife, yes.
- 13 Q You didn't know who she was talking to or --
- 14 A I didn't know --
- 15 Q -- what was going on?
- 16 A Correct.
- 17 Q I'm sorry, I should be more clear. You didn't know
18 what was going on?
- 19 A Well, that is -- that is correct.
- 20 Q And so you get your gun?
- 21 A Yes.
- 22 Q Okay. Go outside. And the first thing you do when
23 you go outside is look that way, I assume? Tell
24 me.
- 25 A Correct.

1 Q And you see her talking to someone in a truck?

2 A Correct.

3 Q You don't know who it is?

4 A Well, I knew who it was.

5 Q You did know -- so you knew it was Ricky?

6 A I knew it was Ricky.

7 Q Did you know Mr. Pruitt was in the passenger seat?

8 A No, ma'am.

9 Q Okay. So the first thing you say when get out of
10 house, though, is about the property line and who
11 paid taxes?

12 A I said that?

13 Q Yes, sir. I'm asking do you remember saying that?

14 A No, ma'am.

15 Q So but if it is in the video, that is what
16 happened?

17 A Apparently.

18 Q Today you said -- I want to make sure I get it
19 right. I want to move back a little bit to the
20 gunshot incident in 2015 where you heard shots
21 being fired.

22 A Okay.

23 Q And you said they were coming from the direction of
24 the Pruitt home?

25 A That is correct.

- 1 Q You didn't call police about that, though, right?
- 2 A No.
- 3 Q But y'all call police when your cat was missing?
- 4 A Well, yes. My daughter was freaking.
- 5 Q You heard someone yelling, Die, and shooting, but
- 6 you didn't call police about that?
- 7 A No.
- 8 Q But you did when the cat was missing?
- 9 A Yes. My daughter's cat, yes.
- 10 Q So when you went -- you stated on direct that when
- 11 you saw Keith -- let me get this right. Mr. Pruitt
- 12 was inside the truck with whatever was going on
- 13 with your wife outside, correct?
- 14 A Yes.
- 15 Q He didn't get out of the truck till you came
- 16 outside, correct?
- 17 A Yes.
- 18 Q And when you got close to the fence, he got outside
- 19 the truck?
- 20 A I think he was getting out the truck when I was
- 21 approaching the truck.
- 22 Q But not until you were outside, fair to say?
- 23 A Yes, fair to say, yes.
- 24 Q And you say at that point you got scared shitless?
- 25 A When he got out of the truck, yes.

1 Q And you told that to police, right?

2 A Actually, I didn't.

3 Q Okay. So the first time we are hearing about that
4 is today, some 2000 days later?

5 A Oh, yes.

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

7 (Pause.)

8 BY MS. SAMPSON:

9 Q So when you pulled out the gun --

10 A Uh-huh.

11 Q -- you speak to him before you -- or he speaks to
12 you once he sees the gun, correct?

13 A I'm sorry, can you say that again?

14 Q You pull your gun out to shoot Mr. Pruitt, correct?

15 A Okay.

16 Q You didn't shoot him from your pocket?

17 A Well, obviously.

18 Q So you pulled it out?

19 A Yes, ma'am.

20 Q And he actually said something to you before you
21 shoot him, doesn't he? I mean, is somebody over
22 there answering your question?

23 A I'm --

24 MS. ZMROCZEK: Your Honor, so if she is asking
25 him if he said something to her, the reason he is

1 looking is because he doesn't -- I'm assuming he
2 doesn't want to say hearsay. So I guess if she is
3 going to ask questions, she just needs to be
4 prepared for his answer.

5 THE COURT: All right. Is that an objection?

6 MS. ZMROCZEK: Yes, Your Honor. I would
7 object to -- if she is asking him the question -- a
8 clarification on a question to him, is she asking
9 him what he said, what he, Lanny, said to Mr.
10 Volstromer, she needs to clarify the question for
11 him.

12 BY MS. SAMPSON:

13 Q All I said was, did he say something to you?

14 A I think I --

15 THE COURT: All right, go ahead and answer the
16 question.

17 A I think something was said, but I can't remember
18 what it was.

19 Q My point is, there is time. There is a couple of
20 seconds where your gun is out and he is standing
21 there, correct?

22 A Not that I know of, no.

23 Q There is not enough time for him to speak?

24 A You watched the video. I mean --

25 Q You're right, I did. So you are telling me that

1 there is not time, when you pulled the gun, he
2 responds, and then you shoot?

3 A No, I think he said something and then I shot him.

4 Q Exactly.

5 MS. SAMPSON: Nothing else, Your Honor.

6 MS. ZMROCZEK: Your Honor, I'm having a little
7 trouble getting things to play, so if I may have a
8 moment to hook up my TV so we can play the video
9 for redirect, please. It will take me about a half
10 a second. It is right here. Or I can get
11 permission from the State --

12 MS. SAMPSON: I would have a matter of -- an
13 issue. I didn't play any of that. I did not play
14 the video, did not play the call. Her redirect has
15 to be about what I asked him about. I asked him
16 what he remembered, not what was on the video, not
17 what was on the call.

18 THE COURT: Well, I think the testimony --
19 there was some reference to the video.

20 MS. SAMPSON: I didn't ask -- I asked him did
21 he -- he brought up the video, I didn't. He
22 brought up that he watched the video and had I seen
23 it. I didn't ask him that.

24 MS. ZMROCZEK: Your Honor, she said clearly,
25 If the video showed, would you agree with me?

1 THE COURT: I am going to allow her to use it.

2 MS. SAMPSON: Go ahead and play it.

3 THE COURT: Can the jury see it?

4 MS. ZMROCZEK: I don't know, Your Honor, but I
5 hope so. I don't have a megatron, but --

6 THE COURT: You have got to make sure they can
7 see.

8 MS. ZMROCZEK: Thank you.

9 REDIRECT EXAMINATION

10 BY MS. ZMROCZEK:

11 Q While Mr. Austin is helping us, I want to ask you a
12 couple of things that she asked you about, okay?

13 A Okay.

14 THE COURT: Hold on. Hold on one second. Why
15 don't you turn it around while she is doing that,
16 because I don't need anything facing the jury.

17 MS. ZMROCZEK: Oh, the problem is the plugs
18 don't reach, so I'll wait. I'll wait till she is
19 done.

20 THE COURT: Well, no, no, no, before you put
21 anything up on the screen it needs to be --

22 MS. ZMROCZEK: It needs to be what?

23 THE COURT: It is the right --

24 MS. ZMROCZEK: And it is, Your Honor. It
25 would be Defendant's 24, which is already loaded on

1 my computer. I'm sorry.

2 THE COURT: Go ahead then.

3 MS. ZMROCZEK: I'm sorry. Your Honor, since
4 it is not working, I am just going to have to play
5 it from my computer since I can't seem to get any
6 assistance using the big one. And, I'm sorry, I'll
7 just try to do my best.

8 THE COURT: Where is the TV?

9 MS. ZMROCZEK: It is right there, I just can't
10 get it to work and I can't get any assistance, so.

11 MS. SAMPSON: I don't know why it is not
12 coming on either.

13 THE COURT: What is wrong with using the
14 projector?

15 MS. ZMROCZEK: I couldn't get it to -- there
16 is no HD cable to hook it in.

17 MS. SAMPSON: She doesn't have the right
18 equipment to work the projector.

19 THE COURT: We used it a couple of weeks ago.

20 (Pause.)

21 MS. ZMROCZEK: For the record, Your Honor, I
22 am publishing Defendant's Exhibit 24, which was the
23 zoomed in version entered earlier by Mr. Watkins.

24 THE COURT: Did you ask him a question?

25 MS. ZMROCZEK: Your Honor, there were

1 questions that were asked, and so what I was going
2 to do is refer to that section.

3 (Video plays.)

4 BY MS. ZMROCZEK:

5 Q She asked you what you heard or if you heard
6 anything. Whose voice did you say you heard?

7 A I heard -- I heard my wife's voice.

8 Q Okay. And do you see your wife in this screen?

9 A Yes, on the left side.

10 THE COURT REPORTER: I'm sorry?

11 A On the left side of the truck there.

12 Q Here?

13 A Correct.

14 Q And this truck. And who do you know this to be?

15 A That is Ricky.

16 Q Okay. And she asked you if you knew who he was,
17 right?

18 A Correct.

19 Q Okay. I'm going to fast-forward just a little bit.
20 She asked you about when you came out, correct?

21 A Yes.

22 Q Okay. Were you talking?

23 A Right then, yes.

24 Q Do you remember what you were saying? On that day,
25 do you remember?

1 A I don't remember. I know I called that Ricky guy
2 an idiot.

3 Q Okay. Okay.

4 MS. ZMROCZEK: And, Your Honor, this next
5 question, I am asking for the effect on the
6 listener, not for the truth of the matter asserted.

7 BY MS. ZMROCZEK:

8 Q She said that Mr. Pruitt said something to you. Do
9 you remember the last time -- she said that
10 Mr. Pruitt -- she asked you about what Mr. Pruitt
11 had said, or if he had said anything to you the day
12 that you were playing King of the Hill with your
13 grandson, correct?

14 A Correct.

15 Q Okay. What did he say?

16 MS. SAMPSON: Your Honor, I did not ask what
17 he said. She brought that out in direct. In
18 recross I asked did he tell the police about it. I
19 never asked what he said.

20 THE COURT: Sustained. Please rephrase the
21 question.

22 MS. ZMROCZEK: Okay.

23 BY MS. ZMROCZEK:

24 Q She asked you -- or she said that you stated on
25 direct that you saw Mr. Pruitt moving towards the

1 vehicle, correct? Or, excuse me, to the fence?

2 A To the fence.

3 Q Is that what you saw?

4 A Yes.

5 Q She asked you if he said anything to you when you
6 had your gun out?

7 A Correct.

8 Q Okay. And what did he say?

9 MS. ZMROCZEK: Again, Your Honor, for the
10 effect on the listener.

11 A He said, Pull it.

12 Q What did you see him do after he said, Pull it?

13 A Put his hand behind his back.

14 Q Okay.

15 MS. ZMROCZEK: Your Honor, those are all the
16 questions I have with the video.

17 THE COURT: All right.

18 BY MS. ZMROCZEK:

19 Q She asked you why you didn't say all of these
20 things in your statement?

21 A That is correct.

22 Q Why didn't you?

23 A I just don't remember half of that stuff.

24 Q Couldn't remember?

25 A I don't remember that, no.

1 Q Okay. Were you lying when you wrote that
2 statement?

3 A Not really, no. No, I mean, I wasn't lying, I
4 just, you know, I was scared and didn't know what
5 was going on, so.

6 Q Okay. Had you ever had to shoot someone before?

7 A No.

8 Q Okay. She asked you if he ever came on your
9 property, right?

10 A Correct.

11 Q Could he have come on your property?

12 A Well, very easily, yes.

13 Q And if he had, what do you think would have
14 happened?

15 MS. SAMPSON: Objection, Your Honor.

16 MS. ZMROCZEK: It goes to his state of mind,
17 Your Honor.

18 MS. SAMPSON: He can't speculate as to what
19 would have happened or could have happened.

20 MS. ZMROCZEK: In this situation, Your Honor,
21 I think it goes to his state of mind.

22 THE COURT: I'll let him answer. The
23 objection is overruled.

24 A What would have happened is -- I mean, obviously
25 something bad would have happened. I mean, me

1 getting hurt, my wife getting hurt, you know.

2 MS. ZMROCZEK: Those are all the questions I
3 have. Thank you.

4 THE COURT: All right.

5 MS. SAMPSON: Beg the Court's indulgence one
6 moment.

7 (Pause.)

8 RECROSS-EXAMINATION

9 BY MS. SAMPSON:

10 Q You just said to Ms. Zmroczek that something bad
11 could have happened if -- something bad could have
12 happened if he came on the property, is that what
13 you said?

14 A Well, yes. I mean, it was bad anyways, a bad
15 situation.

16 Q He was on the other side of the fence, correct?

17 A Well, yes.

18 Q And he would have had to climb through that fence,
19 correct? Or over it?

20 A Correct.

21 Q And both you -- you had a gun?

22 A Uh-huh.

23 Q And your wife had a gun?

24 A Yes.

25 MS. SAMPSON: No further questions.

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

2 (Witness steps down.)

3 THE COURT: Call your next witness.

4 MS. ZMROCZEK: Thank you, Your Honor. The
5 Defense calls Brian Setree.

6 MS. SAMPSON: Your Honor, there may be a
7 matter of law based on some information that
8 Ms. Zmroczek shared that she is getting into some
9 of those photographs.

10 MS. ZMROCZEK: Your Honor, I'm familiar with
11 what is admissible and what is not admissible, so
12 I'll make sure to have a ruling before I admit
13 anything that is not admissible.

14 THE COURT: All right.

15 (Witness approaches.)

16 THE BAILIFF: Place your left hand on the
17 Bible, and raise your right hand, please.

18 (Witness complies.)

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

23 THE WITNESS: I do.

24 THE CLERK: Thank you. Please have a seat in
25 the witness stand, and state full name for the

1 record.

2 (Witness seated.)

3 THE WITNESS: Thank you. My name is Paul
4 Brian Setree. I go by Brian.

5 PAUL BRIAN SETREE,
6 after being duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ZMROCZEK:

9 Q Mr. Setree, can you tell the jury a little bit
10 about yourself, what you do for a living?

11 A I am a private investigator for Eagle-Setree
12 Investigations.

13 Q Okay. And how long have you been doing that?

14 A Since my retirement from law enforcement in 2012.

15 Q And so you are an investigator. Do you have --
16 hold any licenses?

17 A I do. I hold a South Carolina issued-from-SLED
18 state private investigation license.

19 Q Okay. Do you hold any other licenses with -- from
20 the State Law Enforcement Division, from SLED?

21 A No. Nothing.

22 Q You said from your retirement from police?

23 A Correct. I was a certified law enforcement officer
24 since --

25 Q Okay. Are you still a certified law enforcement

1 officer?

2 A Well, once you retire, no.

3 Q Okay. So once you retire, you are not?

4 A Correct.

5 Q But how long were you in law enforcement?

6 A I believe roughly 21 years.

7 Q Okay. For whom did you work?

8 A The majority of my career, Lexington County
9 Sheriff's Department.

10 Q Okay. And what kind of work did you do for the
11 Lexington County Sheriff's Department?

12 A I had many different jobs, but for most of my
13 career I was in narcotics and violent crimes. I
14 worked drug crimes, organized crimes, homicides,
15 violent crimes.

16 Q Okay. So you worked homicide?

17 A Yes, ma'am.

18 Q Approximately how many homicides do you think you
19 worked?

20 A I have never counted them up. It was too many.

21 Q Okay. You -- when you say you worked homicides,
22 what does that mean?

23 A Investigated the untimely death of an individual by
24 another person.

25 Q Okay. So I want to talk about that for a moment.

1 You investigated. What kind of things do you do
2 when you investigate a murder?

3 A Well, you start by getting all the background
4 information on every individual involved, from
5 either side. You follow up on your leads. You
6 interview people. You a lot of times serve search
7 warrants and gather evidence and analyze the
8 evidence and send evidence to, you know, if it
9 needs to be analyzed by an expert, like DNA
10 analysis, and stuff like that.

11 Q You -- in your -- during your 21 or so years in law
12 enforcement, were there ever any homicides that
13 were on video?

14 A Yes, ma'am.

15 Q Okay. What did you do with those videos?

16 MS. SAMPSON: I'm going to at this point
17 object, Your Honor. What he did back when he was
18 in law enforcement is irrelevant to what happened
19 in this case in 2015, especially since he stopped
20 being in law enforcement in 2012.

21 THE COURT: The objection will be overruled,
22 but please make it relevant.

23 MS. ZMROCZEK: I will. Thank you.

24 A The first thing you do is watch the video.

25 Q Okay. The first thing you would do is watch the

1 video?

2 A Correct.

3 Q Okay. And when you say first thing, what do you
4 mean first thing?

5 A As soon as it became available to me legally,
6 lawfully, either through consent or search warrant.

7 Q Okay. You were involved in the investigation of --
8 were you involved in the investigation of this
9 case?

10 A Yes, ma'am.

11 Q Okay. What kind of things were you tasked to do?

12 A Watch the video.

13 MS. SAMPSON: Your Honor, I'm going to object
14 to his -- he just said he was part of the
15 investigation. Was he part of the Richland County
16 investigation. I think that needs to be clarified.

17 MS. ZMROCZEK: I'll clarify.

18 THE COURT: Sustained. Please be specific.

19 BY MS. ZMROCZEK:

20 Q Were you hired by Mr. Volstromer to investigate
21 this case?

22 A Yes, ma'am.

23 Q Okay. Did you, as a part of your investigation for
24 Mr. Volstromer, investigate this case?

25 A Yes, ma'am.

1 Q What kind of things did you do for Mr. Volstromer
2 to investigate this case?

3 A Well, like I said, I watched the video probably
4 over 100 plus times, interviewed Mr. Volstromer,
5 interviewed his wife, went over every single word
6 written in the police documentation.

7 Q Were there -- okay, you talked about police
8 documentation. Were you -- did you have the
9 occasion to read a supplemental incident report
10 from December 7th of 2015?

11 A The 27th or the 7th?

12 Q Did you have an occasion to review an incident
13 report about -- a supplemental incident report
14 about lights being shined into --

15 A Oh, yes, ma'am.

16 Q Okay. And do you recall who the person was who was
17 the subject of that?

18 A Douglas Bryan.

19 Q Did you -- in your investigation from
20 Mr. Volstromer, did you hear Douglas Bryan's name
21 any other time in this investigation?

22 A Other than I found out that he was Rick Holten's
23 son.

24 Q Okay. Did you listen to the 9-1-1 call?

25 A Yes, ma'am.

1 Q Okay. And you said you heard that he was -- you
2 learned that he was Rick Holten's son?

3 A Yes, ma'am.

4 Q Okay. And this was -- okay. And so -- and I don't
5 want you to give us your opinion of the video,
6 right, because I'm not asking for your opinion.

7 A Correct.

8 Q Okay. Were you asked to do any research about the
9 cooler?

10 A Yes, ma'am.

11 Q Okay. What -- hang on a second and let me ask this
12 before we get there. Okay. You said you watched
13 the video?

14 A Yes, ma'am.

15 Q Okay. And were you -- after the vehicle -- after
16 the truck leaves the scene, what -- were there
17 still vehicles on the road blocking Megan Court?

18 A At that particular time?

19 Q Yes?

20 A No.

21 Q Okay. No, I mean, sorry, not after, I meant --
22 okay, let me -- I'm not asking the question
23 correctly. So the vehicle does not -- does it
24 leave out of Megan Court to the exit to Antioch?

25 A No, ma'am.

- 1 Q Okay. Where does it go?
- 2 A It goes to Mr. Pruitt's residence.
- 3 Q Okay. And can you see that on the video?
- 4 A Yes, ma'am.
- 5 Q Okay. You -- did you see the vehicle leave at any
- 6 time that evening?
- 7 A No, ma'am.
- 8 Q You did not see that truck leave any time that
- 9 evening?
- 10 A No, ma'am.
- 11 Q Now, did you just watch a portion of the video, did
- 12 you watch it -- the whole thing?
- 13 A The whole thing.
- 14 Q Okay. You -- did you go out to the scene, being
- 15 where this incident happened?
- 16 A Yes, ma'am.
- 17 Q Okay. Did you prepare maps?
- 18 A Yes, ma'am.
- 19 Q Okay. All right. I'll show you this one first.
- 20 Showing you Defense Exhibit 42, do you recognize
- 21 that? Don't show it to the jury yet. Do you
- 22 recognize that?
- 23 A Yes, ma'am.
- 24 Q And how do you recognize that?
- 25 A We created it.

1 Q You created it?

2 A Yes, ma'am.

3 Q Okay.

4 MS. ZMROCZEK: Your Honor --

5 Q And does that fairly and accurately -- what does it
6 show?

7 A Well, it shows the measurements from the
8 Volstromers' driveway to the church, and then the
9 measurements to Megan Court.

10 Q Okay. How do you know those measurements are
11 accurate?

12 A I took them myself.

13 Q Okay.

14 MS. ZMROCZEK: Your Honor, at this time we
15 would move Defense 42 into evidence.

16 MS. SAMPSON: Without objection.

17 THE COURT: Any objection?

18 MS. SAMPSON: No, ma'am.

19 (WHEREUPON, Defendant's Exhibit No. 42
20 was marked for identification and
21 received into evidence.)

22 BY MS. ZMROCZEK:

23 Q I ask you to step down and explain to the jury the
24 measurements.

25 (Witness steps down.)

1 A Okay. So this is the mouth of the driveway of
2 Mr. Volstromer's house. And 45 feet from his --
3 the mouth of his driveway to here is where the
4 little church parking spaces are at, located at.
5 And then from the mouth of the driveway, there is
6 103 feet to where Megan Court is located.

7 So this is Mr. Volstromer's residence, and
8 this would be Mr. Pruitt's residence.

9 Q Uh-huh. And you said that you went out there and
10 you measured the feet?

11 A Yes, ma'am.

12 Q Okay. Did you measure any other distances?

13 A Yes, ma'am.

14 Q Okay. What other distances did you measure?

15 A I measured the roadway, I measured the -- maybe I
16 should call it the side of the roadway to the
17 fence.

18 Q Okay.

19 A I measured from Mr. Volstromer's front porch to the
20 fence.

21 Q Okay.

22 A I measured from what I call Channel 1 Camera to the
23 fence.

24 Q Did you measure anything from the incident --

25 A Yes, 193 feet from where the vehicle, the truck was

1 parked, to the mouth of the driveway of the Pruitt
2 residence.

3 Q And how many feet?

4 A 193.

5 Q Go have a seat.

6 (Witness returns to witness stand.)

7 Q I'm going to show you Defense 43 and ask you do you
8 know what that is?

9 A Yes, ma'am.

10 Q Okay. What is that?

11 A This is the other measurements from the front porch
12 from the fence line from the roadway that I spoke
13 of earlier.

14 Q Okay. And how did you get those measurements?

15 A Same way. I measured them myself.

16 Q Okay. And did you create that document?

17 A Yes, ma'am.

18 MS. ZMROCZEK: Your Honor, at this time we
19 would move Defense 43 into evidence.

20 MS. SAMPSON: I do have an objection to one
21 part of that. If I can see it.

22 THE COURT: All right.

23 (Pause.)

24 MS. SAMPSON: I object to this right here as
25 he was not there at the time, so he cannot

1 accurately say where the body was located.

2 THE COURT: Let me see it.

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury but out of
5 the hearing of the jury.)

6 THE COURT: Objection sustained.

7 BY MS. ZMROCZEK:

8 Q Without showing this to the jury, can you tell the
9 jury the distance between the front porch and the
10 fence?

11 A The front porch to the fence is 66 feet, 6 inches.

12 Q 66 feet, 6 inches. You also --

13 MS. SAMPSON: Same objection to that one.

14 MS. ZMROCZEK: I haven't asked a question.

15 MS. SAMPSON: If she is trying to introduce
16 that, same objection. Wait, I'm sorry. I'm so
17 sorry.

18 BY MS. ZMROCZEK:

19 Q You also -- I show you what has been marked for ID
20 as Defendant's 44.

21 A Yes, ma'am.

22 Q Okay. And did you create that document?

23 A Yes, ma'am.

24 Q With regard to the cameras, what were you trying
25 to -- what were you trying to show the jury?

1 A The angles, the position of the cameras.

2 Q Okay. So what you were trying to do was show the
3 locations of the cameras?

4 A Yes, ma'am.

5 Q Okay. And did you -- can you describe, without
6 showing to the jury, what the locations of the
7 cameras are?

8 A Okay. So if you are facing the home, Channel 1
9 Camera, I refer to as Channel 1, would be on the
10 right corner of the front of their home, and it
11 would be facing out towards Megan Court towards the
12 fence.

13 Channel 3 was in the back yard on top of a
14 barn style building that looks like it is at least
15 two stories on the inside. And I didn't go on
16 inside, but it is relatively high. It is not a
17 single story. And that particular camera shows
18 from the back of the Volstromer residence out to
19 Megan Court, and it also shows the area of the
20 driveway in the front yard of the Pruitt residence.

21 Q Okay. And so how many cameras were there in total?

22 A Four.

23 Q Four that had information relevant to this?

24 MS. SAMPSON: Objection to the leading.

25 MS. ZMROCZEK: Okay. I'll rephrase the

1 question, Your Honor. Sorry.

2 A There was three cameras that had relevance to this
3 case.

4 Q Thank you. You were asked to do specific
5 information or you were -- what were you asked to
6 do -- you said I think with information regarding
7 to a cooler?

8 A Well, I'm not quite sure I understand the question,
9 but I think I know what you are saying.

10 Q Okay. Let me ask you this.

11 THE COURT: Rephrase the question if he
12 doesn't understand.

13 MS. ZMROCZEK: I will. I am going to try to
14 make it make sense.

15 BY MS. ZMROCZEK:

16 Q When you were doing research, what, if anything,
17 did you find that were pictures of Mr. Pruitt? Did
18 you find any pictures of Mr. Pruitt on the
19 internet?

20 A I did, yes, ma'am.

21 Q Okay. Where did you find those?

22 A On his Friends of Lanny Facebook page.

23 Q And so on that page, was that something that you
24 had to -- was it a public page or was it a private
25 page?

1 A It was public.

2 Q So were you able to see without doing any --

3 A Correct. No manipulation, no forensic extractions,
4 just open source, just online.

5 Q Did you make a fake name to join or anything?

6 A No, ma'am.

7 Q Okay. I'm going to show you what has been marked
8 for ID as 45 and 46.

9 A I'm familiar with both.

10 Q What are they?

11 A They are pictures of Mr. Pruitt.

12 Q And where did you find those?

13 A On his Friends of Lanny Pruitt Facebook page.

14 Q And what were the dates of those?

15 A December the 30th one was posted, and --

16 Q What year, I'm sorry?

17 A 2015, I'm sorry.

18 Q Okay.

19 A And then on the second one I'm looking at here was
20 January 1st, 2016.

21 MS. ZMROCZEK: Your Honor, at this time we
22 would move -- I forgot what the numbers are?

23 A 45 and 46.

24 MS. ZMROCZEK: Defendant's 45 and 46 into
25 evidence.

1 MS. SAMPSON: Your Honor, this is the matter
2 we spoke of earlier that we never ruled on that I
3 brought up before the jury came in that we never --

4 THE COURT: All right. Ladies and gentlemen
5 of the jury, I'm going to send you all out for a
6 second.

7 (WHEREUPON, the jury retires to the jury
8 room at 5:18 p.m.)

9 THE COURT: Can I see the pictures? I don't
10 know what the --

11 MS. ZMROCZEK: Sure.

12 THE COURT: -- objection is. These are
13 pictures posted after he is dead?

14 MS. SAMPSON: Yes, ma'am, and they are also --

15 MS. ZMROCZEK: Very shortly after his death.

16 MS. SAMPSON: They are also -- I don't know
17 when they are from, first of all, because the date
18 is after they were posted, so I don't know when the
19 pictures were taken. Secondly, despite reminding
20 the Court -- Ms. Zmroczek several times about my
21 Rule 5, I did not receive these until 10:00 o'clock
22 today while I was in court. Secondly, while the
23 jury is out, the map that she is trying to get
24 in -- I let one of them in, but the other one,
25 again, never provided, nor were the photographs

1 that are used in them. The rules are very clear
2 about providing what she is using in her case in
3 chief.

4 MS. ZMROCZEK: Your Honor, they were provided.
5 They were available yesterday. I waited around.
6 Everybody left. Your Honor, they were created
7 yesterday just like the zoomed in picture that was
8 never provided to me. Your Honor --

9 THE COURT: But those pictures have
10 measurements on there. The reason I didn't let
11 them in was because they had measurements of the
12 body.

13 MS. ZMROCZEK: And I'm not --

14 THE COURT: But these pictures -- I'm not sure
15 where you are going with this -- of the victim, you
16 have got to be able to establish when we go to
17 Facebook, you have got to be able to establish who
18 posted them, when they were posted. You have
19 got -- when they were taken, who took them. And
20 he -- I don't think he can do that.

21 MS. ZMROCZEK: Thank you.

22 THE COURT: I mean, you are going to have to
23 find out who posted them. It just says, Friends of
24 Lanny Pruitt, but they were clearly -- the victim
25 didn't post them because he is dead.

1 MS. ZMROCZEK: Right. Thank you, Your Honor.

2 THE COURT: I mean, I don't think -- unless
3 you can lay the foundation.

4 MS. ZMROCZEK: It's fine.

5 THE COURT: Even though he found them on
6 Facebook, you know, that is one of the things
7 that -- he still has to be able to lay the
8 foundation to get them in before the jury.

9 MS. ZMROCZEK: Thank you. What -- Your Honor,
10 I want to go ahead and, because I know the next
11 round of questioning is going to draw another
12 objection, so I would like to --

13 THE COURT: Okay, yes.

14 MS. ZMROCZEK: -- do that.

15 THE COURT: I appreciate it.

16 MS. ZMROCZEK: If I may proffer what I am
17 asking.

18 THE COURT: Yes.

19 PROFFER

20 BY MS. ZMROCZEK:

21 Q Mr. Setree, how long were you in law enforcement?

22 A Twenty-one years.

23 Q I'm sorry, you have to talk up.

24 A Twenty-one years.

25 Q Okay. In that 21 years, were you ever involved in

1 any police shootings?

2 A Yes, ma'am.

3 Q Did you ever have to shoot someone?

4 A I have been involved in a couple of shootings.

5 Q Okay. There was testimony, you weren't here for
6 it, but there was testimony that a police officer
7 would have been arrested for this shooting. Do you
8 have an opinion as to whether it is not -- and,
9 Your Honor, if I need to further -- if I need to
10 qualify him as an expert, I can do that, which
11 obviously I am going to have to, so let me stop and
12 do that.

13 THE COURT: An expert in -- meaning you will
14 need -- go ahead. Go ahead. Go ahead. Because he
15 is going to have to be able to say he has some
16 training in use of force, publications, all of that
17 stuff under 701 that he has to be able to say, not
18 just that he took the class.

19 MS. ZMROCZEK: Thank you.

20 THE COURT: Twenty years ago.

21 MS. ZMROCZEK: I'll start there.

22 BY MS. ZMROCZEK:

23 Q Twenty-one years in law enforcement, correct?

24 A Yes, ma'am.

25 Q Did you -- what kind of training did you receive in

1 regards to police shootings? Or use of force,
2 excuse me?

3 A Well, we -- obviously basic training from the
4 academy, and once a year, every year, block
5 training. I was on the SWAT Team. I was on the
6 Narcotics Entry Team, where we actually trained for
7 8 to 12 hours every other week, a very exclusive
8 training. We would go out to Fort Jackson. We
9 used to shoot houses, been trained on simulators,
10 been in real life situations.

11 Q So you have training in relation to being on the
12 SWAT Team and also the Narcotics Entry Team?

13 A Yes, ma'am.

14 Q Okay. In addition to your training, did you ever
15 teach any classes?

16 A Yes, ma'am. I can't recall when, or whatever, but,
17 yes, we would all take turns teaching different
18 classes or take leadership roles in our trainings.
19 And like I said, these trainings went on constantly
20 and within the SWAT Team and Narcotics Enforcement
21 Team.

22 Q What kind of materials were provided to you during
23 these trainings?

24 A We would have our SOPs.

25 Q Which was?

1 A Standard operating procedures.

2 Q For what?

3 A For whatever training we were doing, plus --

4 Q Okay. Let me be more specific. Did you have any
5 standard operating procedure training in use of
6 force?

7 A Yes, ma'am.

8 Q Okay. Did you take any examinations?

9 A Yes, ma'am.

10 Q Were they written, or what kind of examinations
11 were they?

12 A Written, oral, practical.

13 Q Practical?

14 A Yes, ma'am.

15 Q And how many?

16 A Hundreds.

17 Q Okay. Did you ever teach any classes? I think you
18 said y'all --

19 A Yes, once again, we would -- and I have been -- I
20 went to Raid Commander School in Meridian,
21 Mississippi.

22 THE COURT: Excuse me, can we get dates? I
23 mean, in order for me to qualify him as an expert,
24 I need to know when he was trained, where he was
25 trained, what the title of the class was. I mean,

1 I need specifics as to when he was trained in use
2 of force and so -- and the issue is, I don't know
3 when, was it last year, was it this year, was it --
4 I mean, because use of force changes, has changed,
5 use of force has changed probably over the last
6 year. So if he is going to testify to that, he has
7 got to be able to give me some timeline as opposed
8 to, I just took these classes.

9 BY MS. ZMROCZEK:

10 Q Okay. Are you able to provide that timeline?

11 A I can give years and months on some of them, but
12 not every single one of them. Like I said, the
13 entire time we were on the SWAT Team and Narcotics
14 Enforcement, we trained every other week, so I
15 wouldn't have documented those dates.

16 Q All right. Do you have those written down?

17 A The Raid Commander School was in December of 2003
18 in Meridian, Mississippi.

19 I went to Advanced Undercover Techniques and
20 Survival February of 2000 at the International
21 Association of Undercover Officers. That was in
22 Orlando, Florida.

23 Of course, I graduated from the basic academy
24 in 1992. And then we would have annual block
25 training every year, and use of force every year

1 when you go to your block training, it was part of
2 the training, firearms qualification, driving
3 qualifications, use of force, legal updates. I
4 mean, it was forever -- constant.

5 Q Constant until what year?

6 A Until I retired in 2012.

7 Q Have you done any training since then?

8 A Yes, ma'am. I go to -- we have to have at least 12
9 hours every two years to maintain our PI
10 certification.

11 Q And what kind of training do you receive in that?

12 A All different kinds. One of the things that I
13 study the most is, you know -- obviously, I do
14 defense cases, so I keep up with current events on
15 defense cases and some of the classes are about
16 criminal defense work.

17 Q And do you have any other training in addition to
18 those?

19 A Not that comes to mind.

20 MS. ZMROCZEK: So, Your Honor, that would be
21 his training in that area.

22 BY MS. ZMROCZEK:

23 Q In addition to your 21 years of law enforcement?

24 A Yes, ma'am.

25 THE COURT: All right. Any voir dire from the

1 State?

2 MS. SAMPSON: Your Honor, I don't need to voir
3 dire him. I would object to him for several
4 reasons. First of all, he even said himself the
5 last training he had in law enforcement was 2012.
6 He said every year he has 12 hours of training, but
7 none of them specifically on use of force. I don't
8 know -- he can't even -- I don't know that he can
9 say what has changed from 2012 to 2021, or what was
10 different in 2015 when this even happened.

11 Secondly, for an expert to be necessary, it
12 needs be in an area beyond the expertise of the
13 jury for something that they need to help in
14 understanding. There has been no argument that
15 that is something that they need help in
16 understanding, or anything like that, Your Honor.
17 She is talking about something that, if my memory
18 serves me, she asked Investigator Holdorf about.
19 You can't create a problem and then want to put an
20 expert up to talk about it. I know that I didn't
21 ask would an officer be charged in this incident.
22 She did. So you then can't create a problem and
23 want to fix it.

24 THE COURT: Yes, ma'am?

25 MS. ZMROCZEK: Your Honor, I have nothing

1 further. I mean, his 21 years in law enforcement
2 alone provides him the background and knowledge to
3 be able to answer questions about whether or not an
4 officer would have been arrested.

5 THE COURT: All right. In looking at the case
6 law and 702 and State v. Way and all these --
7 because -- he said he had training in 2000 and
8 2003. One of the things the Court has to look at
9 and qualify an expert is knowledge -- and I'm not
10 saying he doesn't have the knowledge, but training,
11 education, everything he says has been almost 20
12 years ago. He went to the academy in '92. He has
13 not had any recent training on use of force,
14 policies around use of force. He says that he goes
15 and gets training, does 12 hours every other year,
16 but it is in -- he is usually looking at work in
17 terms of defense cases and criminal defense work
18 because that is the area that he is working in now.
19 And so I do not find him to be qualified to give
20 testimony. And he's been -- he has not been in law
21 enforcement since 2012, which is -- I'm sorry --
22 which is almost ten years ago, nine years ago, is
23 that right?

24 MS. SAMPSON: Yes, ma'am.

25 MS. ZMROCZEK: You know, I can't do math, Your

1 Honor.

2 THE COURT: Nine years ago. Policies and use
3 of force, like I said, I'm sure just in the last
4 year probably changed, and I don't think he can --
5 so he can't testify to that because he has not had
6 any training in that area.

7 MS. ZMROCZEK: I will move on.

8 THE COURT: So I am going to -- I am not going
9 to qualify him as an expert.

10 MS. ZMROCZEK: I will move on to a different
11 round of questioning, Your Honor.

12 THE COURT: All right. Anything else?

13 MS. SAMPSON: We kind of went around. So the
14 pictures are not coming in, correct?

15 MS. ZMROCZEK: Correct. That's why I had him
16 describe --

17 MS. SAMPSON: I was just making sure. And
18 then you --

19 THE COURT: Well, just because she can't lay
20 the foundation on it. Unless she can lay the
21 foundation. If she lays a foundation, then that is
22 fine. That is the problem with Facebook pictures.
23 I can post some picture today because it is
24 Throwback Thursday and put my pictures from when I
25 was a child on there, but that doesn't mean that

1 happened today. Isn't that what they call it,
2 Throwback Thursday, or something like that?

3 MS. SAMPSON: Yes.

4 THE COURT: Yes. So you can post a picture
5 any time, but you have still got to be able to
6 authenticate the picture. So I'm going to deny --
7 I mean, sustain the objection. So those are 45 and
8 46?

9 MS. ZMROCZEK: Yes. And that is why I just
10 had them marked as ID, Your Honor.

11 THE COURT: All right.

12 MS. SAMPSON: And just to clarify, she can't
13 ask him about use of force or whether an officer
14 would have been charged.

15 MS. ZMROCZEK: I'm not going to ask him.

16 MS. SAMPSON: I'm just making sure. I'm not
17 saying that she is going to. I am making it clear
18 for myself.

19 THE COURT: All right. Bring them on in. Is
20 this your last witness?

21 MS. ZMROCZEK: Yes, ma'am.

22 THE COURT: Okay. I'm just trying to figure
23 out for the jury, I am not trying to hold you to
24 it.

25 Bring them on in.

1 (WHEREUPON, the jury came into open
2 court at 5:33 p.m.)

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: Yes, ma'am, you may continue.

5 MS. ZMROCZEK: Thank you.

6 DIRECT EXAMINATION CONTINUES

7 BY MS. ZMROCZEK:

8 Q And, Investigator Setree, how many hours did you
9 spend investigating this case?

10 A 100, 150.

11 Q And how many hours after this incident was
12 Mr. Volstromer arrested?

13 A Three or four hours.

14 MS. ZMROCZEK: Thank you. I have no further
15 questions, Your Honor.

16 THE COURT: All right, thank you.

17 Cross?

18 CROSS-EXAMINATION

19 BY MS. SAMPSON:

20 Q Mr. Setree, you were hired by the Defense, correct?

21 A Yes, ma'am.

22 Q How much do you charge an hour?

23 A One hundred dollars.

24 Q So you made -- that's a lot of math -- 100 times
25 100 hours?

1 A No, ma'am. I got paid \$1,000, and I didn't get
2 paid anything else since.

3 Q Haven't gotten paid anything else? All right.

4 MS. ZMROCZEK: Your Honor, let him get through
5 answering the question.

6 BY MS. SAMPSON:

7 Q I'm sorry. I wasn't being smart, I thought you
8 were done.

9 A Yes, ma'am.

10 Q So you got paid a thousand, and that's it?

11 A Yes, ma'am.

12 Q Okay. And you spoke -- as part of your
13 investigation, you had full access to the Defendant
14 and his wife?

15 A Yes, ma'am.

16 Q You would agree with me that once an attorney is
17 involved, law enforcement has to stop some of the
18 way that they speak with the Defendant, is that
19 correct?

20 A Yes. Yes, ma'am. With the advice of an attorney,
21 yes, ma'am.

22 Q All right. And you talked about making these
23 charts and making the measurements. You weren't
24 there December 27th, 2015, correct?

25 A That's correct.

1 Q So other than what the Defendant, his wife, and
2 what you looked at, you can't tell this jury
3 anything more than what you were told, correct?

4 A That's not correct. I mean, I have done a lot of
5 background investigation.

6 Q Your background investigation?

7 A Right.

8 Q But you weren't there December 12 --

9 A I didn't observe the incident happen live and in
10 person, if that is your question.

11 Q And you weren't there when law enforcement was
12 investigating this, were you?

13 A No, ma'am.

14 Q And she asked you about looking at the video and
15 that you can see the truck, and this or that. When
16 did you look at the video?

17 A Upon being hired.

18 Q And when was that?

19 A About three years ago.

20 Q Okay.

21 A Or two years.

22 Q Three? Two, three?

23 A Yes.

24 Q You don't know when Investigator Holdorf was able
25 to see these things, correct?

1 A No, ma'am. I understand by looking at the police
2 documentation that they secured the search warrant
3 and seized it that night.

4 Q And that is what they are supposed to do, correct?

5 A Yes, ma'am.

6 Q All right. So you -- but you don't know, other
7 that what you read in his report, you don't know
8 what else he did in his investigation?

9 A Other than what he documented, no, ma'am, I don't.

10 MS. SAMPSON: No further questions, Your
11 Honor.

12 THE COURT: Yes, ma'am?

13 MS. ZMROCZEK: Thank you.

14 REDIRECT EXAMINATION

15 BY MS. ZMROCZEK:

16 Q She asked you about -- she asked you about people
17 with attorneys, right?

18 A Right.

19 Q Did Ms. Barbara Volstromer have an attorney?

20 A No, ma'am.

21 Q Okay. Did -- when he was alive, did Ricky Holten
22 have an attorney?

23 A Not that I am aware of.

24 Q When he was alive, did Douglas Bryan, son of Ricky
25 Holten, have an attorney?

- 1 A Not that I'm aware of.
- 2 Q When he -- when you watched the video, are there
3 more than just those people?
- 4 A Yes, ma'am.
- 5 Q Okay. Were you able to identify the wife of
6 Mr. Pruitt?
- 7 A Yes, ma'am.
- 8 Q Did she have an attorney?
- 9 A No, ma'am.
- 10 Q Did you identify any other men? Do you remember
11 any of their names that were there?
- 12 A Mark Wright.
- 13 Q Okay. Anybody else?
- 14 A An individual by the last name of Brayboy, but I
15 don't recall his first name.
- 16 Q Okay. Brayboy?
- 17 A Yes, ma'am.
- 18 Q Okay. And did they have attorneys?
- 19 A Not that I'm aware of.
- 20 Q Okay. And she asked you about the thousand dollars
21 that you paid -- that you were paid to do this
22 case?
- 23 A Uh-huh, yes, ma'am.
- 24 Q Okay. And because I don't -- I can't even add, but
25 much less divide, but did that change -- did the

1 money change the amount of time or energy or effort
2 that you put into investigating the case?

3 A No, ma'am, no case.

4 Q And you had to rely on the report because you
5 weren't there, right?

6 A That's correct.

7 Q Now, you went to the academy, right?

8 A That's correct.

9 Q Did they teach you not to put things in reports?

10 A I was taught if you don't write it, it didn't
11 happen.

12 Q Okay. So if it did happen, for example, you
13 received a gunshot residue test and you didn't put
14 it in a report, would that be proper police
15 procedure when you were a police officer?

16 A No, ma'am.

17 Q Okay. So up until 2012, that wouldn't be proper
18 procedure?

19 A No, ma'am.

20 Q And, now, I am talking about 2012 because that is
21 the last year you were a police officer, right?

22 A That's correct.

23 Q Did you have any knowledge that that has changed --
24 that that changed in 2015?

25 A No, ma'am, I sure don't.

1 Q Okay. And she asked you about relying on that
2 report, right?

3 A Well, yes, ma'am.

4 Q Okay. And so relying on that report, what, if
5 anything, did you learn about Mr. Volstromer being
6 arrested and the video being viewed? In what
7 chronological order did that happen?

8 A He was arrested first, and the video was then
9 reviewed later.

10 MS. ZMROCZEK: Thank you.

11 MS. SAMPSON: Very briefly.

12 RECROSS-EXAMINATION

13 BY MS. SAMPSON:

14 Q She just asked you about viewing the video. Isn't
15 there notes in there that other investigators had
16 the video and viewed it before Holdorf?

17 A There is notes that other investigators were
18 involved, yes, ma'am.

19 Q And she asked you about all these other people that
20 didn't have attorneys. The night this happened,
21 the only people that were there when the shooting
22 happened were Barbara Volstromer, Mark Volstromer,
23 Mr. Pruitt, and Mr. Holten, correct?

24 A Correct.

25 Q None of those other people were there when the

1 shooting occurred?

2 A That's correct.

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

5 THE COURT: All right, sir, you may step down.
6 Any objection to this witness being excused?

7 MS. ZMROCZEK: No, ma'am.

8 THE WITNESS: Thank you.

9 THE COURT: All right, you are free to leave.
10 Thank you.

11 (Witness steps down and excused.)

12 THE COURT: All right, call your next witness.

13 MS. ZMROCZEK: Your Honor, the Defense rests.

14 THE COURT: All right, thank you.

15 All right, any rebuttal witnesses from the
16 State?

17 MS. SAMPSON: Yes, Your Honor. We probably
18 can get it done before 6:00.

19 THE COURT: Let me see you one second, please.

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: Ladies and gentlemen, I try to
24 stop close to 6:00. I am trying to get all the
25 evidence in if possible. If not, if it goes

1 longer, then we'll start back in the morning. I am
2 speaking to the jurors. But that is what I am
3 doing. So we'll ask her to call her witness.

4 MS. SAMPSON: The State calls -- recalls
5 Investigator Holdorf.

6 (Witness approaches.)

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

11 THE WITNESS: I do.

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

15 (Witness seated.)

16 THE WITNESS: Travis Holdorf, H-O-L-D-O-R-F.

17 TRAVIS HOLDORF,
18 after being duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SAMPSON:

21 Q I just have a couple of small things to go over
22 with you, because I am not going to go back over
23 everything, all right?

24 We heard -- now that we have heard the case,
25 we have heard about that both Mr. Volstromer and

1 Ms. Volstromer had guns that night, is that
2 correct?

3 A Yes, it is.

4 Q And at some point there was some testimony about
5 Ms. Volstromer pulling her gun?

6 MS. ZMROCZEK: Your Honor, I can't hear.

7 BY MS. SAMPSON:

8 Q There was some testimony about Ms. Volstromer
9 pulling her gun?

10 A Yes, ma'am.

11 Q Are you allowed to pull a weapon and point it at
12 anyone?

13 A You can do it under certain circumstances. You
14 have to be able to articulate a reason the person
15 would feel that they were threatened or had an
16 imminent danger. Aside from that, no, you cannot
17 point and present a weapon.

18 Q And is that a criminal charge, or is there one?

19 A It is a criminal charge.

20 MS. SAMPSON: That's all I have, Your Honor.

21 Oh, wait, beg the Court's indulgence. I'm sorry.

22 (Pause.)

23 BY MS. SAMPSON:

24 Q Oh, and are words alone enough to allow --

25 MS. ZMROCZEK: Your Honor, that is a legal --

1 I am going to object to the response unless he is
2 an attorney.

3 THE COURT: Let me hear the entire question.

4 BY MS. SAMPSON:

5 Q Are words alone enough to allow you to pull your
6 gun at someone?

7 THE COURT: Same objection?

8 MS. ZMROCZEK: Yes.

9 THE COURT: Objection is sustained.

10 BY MS. SAMPSON:

11 Q What would you need to do in order to be able to
12 pull your gun on someone lawfully? I'll start
13 there.

14 A You would have to have something for a reasonable
15 person would feel that they were in imminent
16 danger. In a perceived -- not just, I think there
17 might be trouble, or, I think there might be a
18 problem, you have to be able to articulate it. For
19 a reasonable person, a jury of our peers would feel
20 that this is, I'm going to die, or, I am going to
21 get seriously hurt.

22 MS. SAMPSON: No further questions.

23 THE COURT: Yes, ma'am?

24 MS. ZMROCZEK: Thank you.

25 CROSS-EXAMINATION

1 BY MS. ZMROCZEK:

2 Q So, Investigator Holdorf, I want to make sure I
3 heard your testimony correctly. I'll try to talk
4 slow. You were asked if you would arrest somebody
5 who was pointing -- if you could arrest someone who
6 was pointing a weapon, right?

7 A Yes, ma'am.

8 Q Okay. And you said they could do that if they felt
9 so threatened like a reasonable person, but that
10 that is not a criminal charge, right?

11 A If they can articulate that, then you have grounds
12 where it needs to be examined further, yes, ma'am.

13 Q Okay. And so if they felt, or they felt as a
14 reasonable person felt that they were being
15 threatened, then you wouldn't arrest them, right?

16 A Being threatened, you have to have more than
17 just -- that is a very broad term.

18 Q Right.

19 A Threaten to me is more just verbal. You need more
20 than that.

21 Q Okay. Did you arrest Barbara Volstromer in this
22 case?

23 A I did not.

24 Q Thank you.

25 THE COURT: All right. Anything on redirect?

1 MS. SAMPSON: No, ma'am.

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

3 (Witness steps down.)

4 MS. SAMPSON: The State would call Connie
5 Pruitt.

6 (Witness approaches.)

7 THE BAILIFF: Place your left hand on the
8 Bible, and raise your right hand, please.

9 (Witness complies.)

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

14 THE WITNESS: Yes.

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

18 (Witness seated.)

19 THE WITNESS: Connie Outlaw Pruitt.

20 CONNIE OUTLAW PRUITT,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. SAMPSON:

24 Q Ms. Pruitt, how are you?

25 A Okay.

1 Q I am not going to ask a whole lot, I am just going
2 to try to get to what we need to get to.

3 A Okay.

4 Q Who were you married to back in 2015?

5 A Keith Pruitt.

6 Q And how long were you all married?

7 A Ten years.

8 Q And when did you all move to your home on Megan
9 Court?

10 A In 2015.

11 Q And what address is that?

12 A 8 Megan Court.

13 Q And do you remember when in 2015?

14 A February.

15 Q February. Now, what kind of dog did you guys have
16 back in 2015?

17 A We had ten beagles and a Boston terrier.

18 Q What was the biggest, heaviest dog you had?

19 A The beagles. They were about 30 pounds.

20 Q So we heard about an incident with your husband and
21 Ms. Volstromer and your dog. Did you witness this?

22 A I did.

23 Q Can you tell the jury what happened?

24 A A friend of ours had taken two of the dogs.

25 Q And I'm going to stop you. Who was the friend?

- 1 A Rick Holten.
- 2 Q Okay.
- 3 A When he returned with the dogs, I came out to help
4 him get the dogs in the pen because Lanny was
5 already asleep. When we went to put the dogs back
6 in the pen, they got loose.
- 7 Q I'm going to stop you. You said Lanny. Just so
8 everybody understands, who is Lanny?
- 9 A Oh, I'm sorry. Keith. I call him Lanny.
- 10 Q So Keith/Lanny was asleep?
- 11 A Yes.
- 12 Q Is that what you just said?
- 13 A Yes.
- 14 Q And I stopped you, so go ahead.
- 15 A Okay. So the dogs got loose and ran through their
16 yard, and we eventually were able to get the dogs
17 back in and get them in the pen.
- 18 Q And did you see Ms. Volstromer?
- 19 A I heard her.
- 20 Q What did you -- well, was she speaking? Yelling?
- 21 A Yelling.
- 22 Q Was Lanny out there yelling?
- 23 A No.
- 24 Q Where was Lanny?
- 25 A Lanny was asleep.

1 Q Who was out there yelling?

2 A Rick, and Rick had a friend with him, and I don't
3 know who that friend was.

4 Q All right. Now, I want to talk to you just a
5 little bit about the day that we are all here
6 about, okay? Who told you that your husband had
7 been shot?

8 MS. ZMROCZEK: Objection, Your Honor.

9 MS. SAMPSON: Who told her her husband had
10 been shot?

11 THE COURT: What is the objection? What is
12 the objection?

13 MS. ZMROCZEK: Oh, hearsay.

14 MS. SAMPSON: I asked who told her, not what
15 was told to her.

16 THE COURT: Objection sustained. Please
17 rephrase.

18 BY MS. SAMPSON:

19 Q How did you learn your husband had been shot?

20 A Rick drove to my house, and I could -- I had heard
21 the shot, and so I was coming out when Rick pulled
22 into the driveway.

23 Q Without telling me exactly what he said, did you
24 figure out what had happened?

25 A Yes.

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

2 A I went down the road.

3 Q And were you able to see your husband?

4 A Yes.

5 Q And how was he laying?

6 A He was laying facedown on the road.

7 Q Did you take anything off of him?

8 A No, I did not.

9 Q Did you see anybody else take anything off of him?

10 A No, I did not.

11 Q Did you see anyone turn him over?

12 A Not until the paramedics came.

13 MS. SAMPSON: No further questions, Your
14 Honor.

15 MS. ZMROCZEK: Thank you. Just very briefly,
16 Your Honor.

17 CROSS-EXAMINATION

18 BY MS. ZMROCZEK:

19 Q You had hunting dogs as well, right?

20 A Yes.

21 Q Okay. And they were also kept -- were they kept at
22 a different location, or did they reside there
23 at --

24 A Those were the beagles.

25 Q Okay. Those were the hunting dogs?

1 A Yes.

2 Q And that is because your husband hunted?

3 A Yes.

4 Q What kind of guns did he have?

5 A None.

6 Q I'm sorry?

7 A None.

8 Q He had none?

9 A No. He did not own any guns.

10 Q Okay. He did not own any guns ever?

11 A No.

12 Q In the whole time you were married to him?

13 A No.

14 Q Okay. Do you recall an incident in 2009 when he
15 was shot?

16 A Yes.

17 Q Okay. Do you recall the police returning two items
18 to you?

19 A Two items?

20 Q Uh-huh?

21 A No.

22 Q Okay. Do you recall them returning the truck?

23 A I don't remember about the truck.

24 Q Okay. And do you recall them returning the gun
25 that he had in the truck?

- 1 A Yes. That was my gun.
- 2 Q Okay. So let me ask the question maybe
3 differently. What kind of gun was that?
- 4 A I don't remember.
- 5 Q Okay. So when you -- did you have guns?
- 6 A Yes.
- 7 Q Okay. How many guns did you have in the house?
- 8 A I don't know exactly the number.
- 9 Q More than two?
- 10 A Yes.
- 11 Q More than three?
- 12 A Yes.
- 13 Q More than ten?
- 14 A Probably not.
- 15 Q I'm sorry?
- 16 A Probably not.
- 17 Q Probably not?
- 18 A No.
- 19 Q Less than eight?
- 20 A I don't know the exact number.
- 21 Q Okay. Were they in your house on Megan Court?
- 22 A Yes.
- 23 Q On the 9-1-1 call, did you have conversations with
24 someone that you knew to be Phillip?
- 25 A I honestly don't remember a whole lot about that

1 day. Phillip who?

2 Q Brayboy?

3 A I believe that is my neighbor.

4 Q Okay.

5 A I think he was there.

6 Q Okay. What -- you said you don't remember a lot
7 about that day?

8 A Well, I was standing there watching my husband --
9 my dead husband laying on the side of the road, so,
10 no, I don't remember.

11 Q Because it was a traumatic incident?

12 A Yes.

13 Q Okay. So that trauma made you not be able to
14 remember some things?

15 A Yes.

16 Q Okay. And there was a period of time that you left
17 before the fire and rescue -- let me ask the
18 question better. You said that you heard the shot
19 and that Rick drove up to your house?

20 A Uh-huh.

21 Q I'm sorry, you have to say yes or no just for the
22 record.

23 A Yes.

24 Q And so you -- so did he park his truck at your
25 house?

1 A I don't know. I left and went down, and by that
2 time I saw Lanny, and I really don't remember a
3 whole lot after that.

4 Q Okay. And I understand. So what time did Rick
5 leave your house that evening?

6 A I have no idea. I left and went to the hospital.

7 Q Okay. Was he there when you got back?

8 A No.

9 Q Okay. And what time did you get back from the
10 hospital?

11 A I have no idea.

12 Q Okay. Was it --

13 A I have no idea. I couldn't even speculate.

14 Q Okay. Was it -- the sun up?

15 A Again --

16 MS. SAMPSON: Your Honor --

17 A -- I just told you I don't know.

18 Q Okay. Did the police ever ask you about guns?

19 A No.

20 Q Okay. Did they ever take any statements from you?

21 A I talked to -- I went to watch the video with
22 Inspector Holdorf.

23 Q Okay. And when was that?

24 A What, probably a year after it happened.

25 Q Okay. And did seeing the video then refresh your

1 recollection of what happened that day, about you
2 walking up and down?

3 A Again, that was four years ago, so as of now -- I
4 didn't watch the video here. I didn't -- it is too
5 traumatic.

6 Q Okay.

7 A So, no.

8 Q All right. And are you familiar with a Facebook
9 page called Friends of Lanny?

10 MS. SAMPSON: Your Honor, I'm going to object
11 at this point simply because this is going way
12 beyond the scope of what I asked in reply.

13 THE COURT: Sustained.

14 BY MS. ZMROCZEK:

15 Q Have you ever seen a picture of your husband with
16 guns?

17 A No.

18 Q Okay. You have had hunting dogs?

19 A Yes.

20 Q Did you hunt?

21 A Yes.

22 Q Did Lanny Hunt?

23 A Lanny used the dogs.

24 Q What did he use the dogs for?

25 A To drive the deer out for the hunters.

1 Q Okay. And so it is your testimony today that he
2 never owned or shot a gun?

3 A I'm not saying he never shot a gun.

4 Q Okay.

5 A I'm saying he never owned a gun.

6 Q Okay.

7 A In the ten years that we were married.

8 Q Okay. And then -- and when he hunted, he didn't
9 use a gun?

10 A When he had the dogs -- when we are -- when you are
11 running the dogs, you are not carrying a gun.

12 MS. ZMROCZEK: Beg the Court's indulgence.

13 (Pause.)

14 BY MS. ZMROCZEK:

15 Q Did -- and then did the police ever come to your
16 house to inventory your guns?

17 A No.

18 Q Thank you.

19 MS. ZMROCZEK: Nothing further.

20 THE COURT: Redirect?

21 MS. SAMPSON: No, ma'am. None needed.

22 THE COURT: You may step down, ma'am.

23 (Witness steps down.)

24 THE COURT: Call your next witness.

25 MS. SAMPSON: That's it from the State, Your

1 Honor.

2 THE COURT: All right. Ladies and gentlemen
3 of the jury, there are matters of law that I need
4 to take up outside of your presence, so this is a
5 wonderful time for our evening break.

6 We will in the morning start with closing
7 arguments, and then I will charge you as to the
8 law. We'll have you come -- we are going to order
9 lunch tomorrow because by the time we do the
10 charges and closing arguments, it will be
11 lunchtime. So you all will have lunch in the room
12 with you when you -- during your deliberations.

13 And so we will probably start about 10:00, but
14 if you can get here a couple of minutes early so
15 you can order your lunch. There is probably some
16 things I need to run over with the attorneys in the
17 morning before we start closing arguments and the
18 charge on the law.

19 So we are going to start about 10:00 o'clock.
20 So if you can get here ten minutes earlier so he
21 can order your lunch. The clerk will have a menu
22 back there for you to order lunch.

23 Remember, you do have all the evidence, but
24 you do not have the law and you have not heard the
25 arguments of the parties. So it is still improper

1 for you to form any opinion, to have any
2 discussions, to do any research, to do any posting,
3 anything regarding this case until you are
4 instructed to deliberate tomorrow.

5 Have a wonderful -- one other housekeeping,
6 Juror Number 119, is it Driver? I am going to ask
7 you to serve as our foreman. You -- I will have
8 instructions for you tomorrow. You are going to --
9 they are going to show you where you need to sit
10 tomorrow. Mr. Driver is down here. All right, he
11 is going to give you -- you'll be sitting right
12 here where this young lady is in the brown. You'll
13 switch seats. And if you need to move, we will
14 need to move you somewhere you can see, we'll do
15 that. But as the foreman, you have to sit here,
16 all right?

17 And so we will start at 10:00 o'clock in the
18 morning. We will see you then. Have a wonderful
19 evening.

20 (WHEREUPON, the jury is excused at 6:01
21 p.m.)

22 THE COURT: All right, I will be glad to hear
23 any motions.

24 MS. ZMROCZEK: Thank you, Your Honor. Again,
25 at this time, after hearing the testimony, we would

1 ask the Court to grant a directed verdict on the
2 charge of murder, specifically based on the
3 testimony that was presented. And, again, not just
4 focusing on malice, but -- and I want to make sure
5 that I understand this correctly. Investigator
6 Holdorf testified in re -- in their reply, right,
7 that he was told that Barbara Volstromer had a gun
8 and pointed it. She testified that she had a gun
9 and pointed it.

10 And then he was asked, Are there any
11 situations -- is pointing and presenting a gun a
12 crime? His answer was yes, unless the person feels
13 so threatened and it was a reasonable person feels
14 so threatened that they could tell that to the
15 police and then they would make the decision not to
16 charge them. And then I asked him was she charged.
17 The answer was no.

18 So the testimony put up by the State is that
19 Ms. Volstromer's fear in Sergeant Holdorf's opinion
20 was reasonable, because he had information that she
21 pointed a gun, and he didn't arrest her. That was
22 the testimony, Your Honor. This case -- and you
23 heard from Mr. -- I'm sorry, the door is open, Your
24 Honor, that's why I stopped talking.

25 THE COURT: Thank you. Can y'all close the

1 door, please? Close the door, please.

2 Go ahead.

3 MS. ZMROCZEK: And then, Your Honor, you heard
4 testimony from Mr. Volstromer who testified not
5 only as to his fear based on the threats made by
6 Mr. Pruitt, as well as, Your Honor, his fear for
7 his wife. If her fear was reasonable, that
8 translates that his fear also was reasonable in a
9 case of defense of others, which is also one of the
10 affirmative defenses that we have been raised --
11 that we have raised in this case.

12 For those reasons, Your Honor, we would ask
13 the Court to direct a verdict.

14 THE COURT: All right, thank you.

15 Yes, ma'am?

16 MS. SAMPSON: If I may, Your Honor?
17 Investigator Holdorf never said why she wouldn't
18 be. Ms. Zmroczek asked if that was one of the
19 reasons. Had she continued to ask him, he would
20 have said because he didn't feel like she had
21 presented the gun, and I knew that was the answer,
22 but we didn't -- weren't going there with it. She
23 asked him that. She -- so she is making the
24 inference that that's what he meant. That is on
25 her if she wants to do that. But having said that,

1 Your Honor, the question isn't whether there is --
2 that happened, the question is there even a
3 scintilla of evidence that this jury can look at,
4 viewing the evidence in the light most favorable to
5 the non-moving party that would allow this to go to
6 the jury. We have given enough evidence, including
7 that video, to get past a scintilla of evidence,
8 especially the fact that he says, I'm done, and
9 shoots someone.

10 Based on that, Your Honor, we would ask that
11 you continue to allow this to go to the jury.

12 THE COURT: All right.

13 MS. ZMROCZEK: Just briefly, Your Honor. And
14 I understand what the ruling is going to be, but I
15 just need to say this. That I understand what she
16 knew the answer to be, but the question was never
17 asked, and that is not in evidence, so I want to
18 make sure that when the arguments are argued, it is
19 argued based on the evidence that is in the record,
20 not what wasn't presented or what they knew,
21 because I will be raising objections if that comes
22 in.

23 THE COURT: All right. Based on the testimony
24 before the Court, the Court does find there is
25 sufficient evidence of a genuine issue of fact for

1 the jury to decide. And in light most favorable to
2 the non-moving party, the motion for directed
3 verdict is respectfully denied.

4 All right. Anything else we need to take up
5 in the form of motions?

6 MS. SAMPSON: Your Honor, if I could? Well,
7 not motions, I just need to know what we are going
8 to be charging as far as the law.

9 MS. ZMROCZEK: I'm sorry, before we get to the
10 charge, Your Honor, I'm sorry, I was discussing
11 with her -- you said were there any more motions?

12 THE COURT: Motions, yes.

13 MS. ZMROCZEK: Yes. So the motions, Your
14 Honor -- and I think that -- so I have been trying
15 to read the case law to -- and I think this is the
16 time, according to the case law I read, but, again,
17 the case law is not as clear as we would like it.
18 That's why I guess we do these things, Your Honor.
19 But I understand that there was a Stand Your Ground
20 hearing and that Your Honor actual heard that
21 hearing and made the ruling on it.

22 Your Honor, at this time, we would renew that
23 request based on the testimony that has now been
24 fully presented to the Court.

25 Again, the case law is clear as mud. It is my

1 understanding that I at least need to make that
2 motion and that I need to preserve it, and I do
3 think it is an appropriate motion at this time.
4 And so -- and, Your Honor, and that changes the
5 landscape a little bit of my previous motion. So
6 the motion for the Stand Your Ground hearing, as
7 you understand, we certainly have the burden, the
8 Defense. And, Your Honor, we believe with the
9 testimony now fully presented, that Mr. Volstromer
10 is entitled to immunity based on a preponderance of
11 the evidence that has been presented in this case.

12 THE COURT: Yes, ma'am?

13 MS. SAMPSON: Your Honor, that is actually not
14 how the law works. The Stand Your Ground law is
15 very clear. There has to be a pretrial hearing.
16 There is case law on that. If I wanted to get my
17 notebook, I could give you every single case, but
18 I'll state with Curry. It specifically says that
19 you must do it pretrial, that the evidence
20 presented at the pretrial hearing is what you are
21 to take into consideration, not the evidence that
22 is given at the trial. They specifically talk
23 about there is a different standard at trial, and
24 that is why they are allowed to ask for
25 self-defense, even though they got denied that at

1 the hearing. It is ridiculous to be asking for it
2 now and basing it on all the information that was
3 given at trial when the case law is very clear that
4 it has to be done in a pretrial determination that
5 Your Honor has already done. They had their bite
6 of that apple. They don't get a second chance.

7 THE COURT: All right. The motion pursuant --
8 I don't have the statute in front of me.

9 MS. SAMPSON: The statute is 15-11-410 through
10 450.

11 THE COURT: 450. And I think you moved under
12 (a)(1).

13 MS. SAMPSON: Yes, ma'am. I said they went
14 under (a) saying that it would be the statute that
15 said he either came onto the property, attempted to
16 come in or had already entered or had left.

17 THE COURT: And I think the testimony -- well,
18 let me say this. Based on my understanding -- and
19 I know you are just laying the foundation, you are
20 just preserving the record.

21 MS. ZMROCEK: Exactly.

22 THE COURT: Yes. But based on my
23 understanding, it is pretrial. It is an issue of
24 law that has to be handled pretrial because it
25 deals with immunity. But with that being said, I

1 think even considering the testimony here before
2 the Court, that that motion would be denied because
3 both I believe Volstromers testified that no one
4 was on their property, that they were not on the
5 property, had not come over the fence. So the
6 ruling from the Stand Your Ground will stand, and
7 the motion is preserved for the record.

8 MS. ZMROCZEK: Thank you. And, Your Honor,
9 also, I have been asking, I can't seem to find a
10 copy of the motion that we filed for Stand Your
11 Ground. I just don't know if there is one. That's
12 all I was asking.

13 MS. SAMPSON: I emailed you. You asked me --

14 MS. ZMROCZEK: I got the order. I got the
15 order.

16 MS. SAMPSON: I never had the motion, so it
17 would have to be with the clerk's office.

18 MS. ZMROCZEK: Okay.

19 THE COURT: I don't know. Maybe it was a
20 verbal motion, I don't know.

21 MS. SAMPSON: He did, Your Honor. He
22 actually -- it was during a status conference with
23 Your Honor, and he asked for the hearing. And we
24 scheduled it. And then that is why I would assume
25 that on the record you asked him which issue --

1 which one he was going under, because we didn't
2 have a motion.

3 MS. ZMROCZEK: And, again, Your Honor, I
4 wasn't there. That is why I was asking. Thank
5 you.

6 THE COURT: Thank you. And I don't have the
7 motion.

8 MS. ZMROCZEK: Okay.

9 THE COURT: I mean, I don't think -- I mean, I
10 can go back and have -- and Assatta was not my law
11 clerk, I think Hazel was my law clerk at the time.
12 She sees the order, but we can go back -- we will
13 go back and search our emails too to see if there
14 was ever an order filed.

15 MS. ZMROCZEK: Thank you.

16 THE COURT: We'll do that.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Because the email, it would have
19 come from Mr. Salley, Lourie Salley.

20 MS. ZMROCZEK: Thank you, Your Honor.

21 THE COURT: All right. Jury charges. What I
22 can do, Assatta said she has not received any, but
23 she has a draft jury charge, and it is just a whole
24 lot of stuff in it. Nothing is set in stone, she
25 just kind of pulls it and puts it in there. I am

1 going to have her email that to you all. Are there
2 any charges that you all are requesting? She has
3 added in there defense of others, defense of
4 property.

5 MS. ZMROCZEK: And then there are -- so -- and
6 I'm sure she is quite knowledgeable, Your Honor,
7 but there are a lot of the definitions and also --
8 so, Your Honor, and under the summary requirements,
9 obviously the self-defense has four, typically
10 four. I believe that it has been more than well
11 established that they were on their property.

12 THE COURT: Yes.

13 MS. ZMROCZEK: So, Your Honor, I would ask
14 that the fourth element that they had -- just be
15 removed, that they did not have a duty to retreat.

16 THE COURT: I think it normally -- but I think
17 the duty to retreat says, you read the duty to
18 retreat, but it says if a person is on their
19 property they do not have to retreat.

20 MS. ZMROCZEK: That's fine. Okay. So we are
21 still -- I still only have to argue three then,
22 right? Okay. And then, Your Honor --

23 THE COURT: The Defendant was on his own
24 property, the Defendant had no duty to retreat
25 before acting in self-defense.

1 MS. ZMROCZEK: Okay. And so you did have the
2 defense of others. Okay.

3 Your Honor, there is the jury charge about
4 imminent danger, if the Defendant is in imminent
5 danger, if the Defendant's belief that he is in
6 imminent danger of death or receiving bodily harm
7 is reasonable, the Defendant need not wait until
8 actual attack or injury or until force is used by
9 the aggressor before exercising the right to use
10 deadly force in self-defense. In other words, the
11 Defendant need not wait until the assailant, quote,
12 gets the drop on him, end quote, in order to be
13 entitled to use force in self-defense.

14 THE COURT: It is something similar. But you
15 can send that or give her a copy.

16 MS. ZMROCZEK: Okay.

17 THE COURT: Do y'all have an objection to
18 that? I mean, I think that is an accurate --

19 MS. SAMPSON: No, I didn't have an objection
20 to that.

21 THE COURT: No, I'm asking --

22 MS. SAMPSON: No, I don't. I think it doesn't
23 have, the wait to get the drop on you part, I think
24 that is different, but whatever Your Honor charges
25 as far as that goes. I know they should get the,

1 he has the right to act on appearances part, I just
2 don't think the most recent one has the, wait to
3 get the drop on, but I could be wrong on that.

4 THE COURT: All right. Well, y'all send me
5 which one you want.

6 MS. ZMROCZEK: I will. Additionally, Your
7 Honor, one has the right to use force, and
8 repelling force, or in protecting one's self. And
9 one cannot be required to make a nice calculation
10 as to the degree or quantity or amount of force
11 which may be necessary for one's complete
12 protection from the loss of life or serious bodily
13 harm to one's self.

14 MS. SAMPSON: I don't know which case that
15 came from, but I would like to see that.

16 MS. ZMROCZEK: I will email it to everyone.

17 THE COURT: Yes, we need the case on that.
18 There is something in there that, you know, there
19 is something in there about not having, you know,
20 he doesn't have to basically shoot somebody in the
21 foot. Yes, I think that is --

22 MS. SAMPSON: I agree there is some language
23 about it, but I don't think it was that.

24 MS. ZMROCZEK: And then we have heard a lot
25 about it, Your Honor, the words, accompanied by a

1 hostile act. In determining whether a Defendant
2 had a right to use force in self-defense, words
3 accompanied by hostile acts may be sufficient to
4 constitute a threat of physical attack or in some
5 cases to constitute a threat of serious bodily
6 injury. And, again, I'll email these.

7 THE COURT: She puts in there the charge about
8 threats -- there is a charge in here about threats.

9 MS. SIMPSON: I'll check and see if there is a
10 duplicate one. And, of course, I will send all of
11 these, and I will not send them at 4:00 in the
12 morning. And the prior difficulties, I'm sure it
13 is already in there. The relative size, weight,
14 and ages.

15 THE COURT: Any objection to putting the
16 relative size? I'm not --

17 MS. SAMPSON: I don't believe there was any
18 testimony about Mr. Volstromer's weight or size.
19 There was testimony about Ms. Volstromer.

20 MS. ZMROCZEK: Right, there was no testimony
21 about it, Your Honor, but his testimony was he went
22 out there to protect his wife, who was with these
23 two men, and his fear for her protection.

24 THE COURT: All right. You can send it to us.
25 We will put it -- we have one actually, and I will

1 make a decision on that, because she is not the
2 Defendant.

3 MS. ZMROCZEK: Right.

4 THE COURT: I do know that he says that he was
5 out there to defend her.

6 MS. ZMROCZEK: And she would be "other" in the
7 defense of others.

8 THE COURT: I mean, that is going to --

9 MS. SAMPSON: That is not how it works. The
10 defense of others is you have to be able to be
11 defending yourself and that person, not that they
12 feel like they just need to be defending you and
13 then decide to do so. The law on defense of others
14 is not, I just get to defend someone, it is
15 specific to -- it has to be a relative, it can be a
16 relative, a bystander, family member, but it does
17 say they have to be able to raise self-defense, and
18 you have to be aware of that. That is what the law
19 says, so.

20 MS. ZMROCZEK: What I'll do is I'll just
21 submit these and I will do that.

22 THE COURT: Which other ones do you have,
23 because I would rather talk about them now, because
24 at 10:00 o'clock in the morning I want us to be
25 rolling. So have everything set up. If you have

1 got to show video, you need to figure out --

2 MS. ZMROCZEK: I'm going to make sure, Your
3 Honor, that I'm going to get here an hour early so
4 that I can make sure that if the big TV isn't
5 working, that I will either figure out how to get a
6 battery from the clerk or I will make sure that we
7 have sound.

8 THE COURT: Speak to Jim Truitt in the morning
9 about that.

10 MS. ZMROCZEK: I will, thank you. I have a
11 request about the continuing threat. In
12 determining whether a Defendant has a right to use
13 force in self-defense against a victim, the
14 continuing nature of the threat by the victim who
15 is still a threat despite action by the Defendant
16 to wound or threaten the victim may be relevant to
17 the apparent or actual need for force in
18 self-defense and to the amount of force needed.
19 And that is State v. Hendricks. I can send it.

20 THE COURT: Yes. I'm trying to think of how
21 that applies here. I'm confused. Continuing
22 threat --

23 MS. ZMROCZEK: That is just what it was
24 labeled.

25 THE COURT: You mean continuing from their

1 prior difficulties?

2 MS. ZMROCZEK: No, no, no, no, no. No.

3 THE COURT: It seems like that is where the
4 victim --

5 MS. SAMPSON: Hendricks is normally used, Your
6 Honor, when they continue to shoot. We have a one
7 shot.

8 THE COURT: Yes. I mean, that is if the
9 victim was still -- if he was still able -- trying
10 to move or pull -- I mean, that is my
11 understanding. You can send it.

12 MS. ZMROCZEK: I will.

13 THE COURT: We'll mark them. But I don't
14 think that is -- and I'll read -- we'll look at
15 Hendricks. She'll pull up Hendricks. We'll look
16 at it. But, yes, that is my understanding.

17 MS. ZMROCZEK: Because the way -- and I have
18 been reading it -- it says, or threaten the victim.
19 So it says, who is still a threat despite action by
20 the Defendant to wound or threaten. And so there
21 was testimony that he pulled the gun out and
22 pointed it at him, which is obviously a threat.

23 THE COURT: I think the continuing is if you
24 like shoot him in the foot and he is still moving
25 and able to hurt you and you continue to shoot him

1 until --

2 MS. ZMROCZEK: Again, it is "or threaten."

3 That is why I had it in here.

4 THE COURT: Okay.

5 MS. ZMROCZEK: Okay. And then, a threat by
6 assailant. In determining whether the Defendant
7 had a right to self-defense, you may consider any
8 threat made by the assailant or assailants. And
9 that State v. Douglas.

10 THE COURT: She has something already in there
11 about threats by the -- alleged threats by the
12 victim.

13 Any requests from the State?

14 MS. ZMROCZEK: Oh, and of course you are going
15 to do the Logan charge for circumstantial evidence?

16 THE COURT: Yes, we have that. You can look
17 at it and see, but I have that under the
18 circumstantial evidence charge. And I put in the
19 specific intent charge, murder requires specific
20 intent.

21 MS. ZMROCZEK: Okay.

22 THE COURT: Yes, ma'am?

23 MS. SAMPSON: The only thing from the State,
24 Your Honor, is I would ask that they not be given a
25 charge of defense of habitation. The only evidence

1 presented was that the victim was in the roadway.
2 The defense of habitation -- and I will hand up to
3 the Court cases, State v. Lee, which is 293 S.C.
4 536, 1987, 362 --

5 THE COURT: And she just put it in there.

6 MS. SAMPSON: Okay.

7 MS. ZMROCZEK: And we can argue.

8 THE COURT: And my law clerk even says that
9 the charge in and of itself doesn't --

10 MS. ZMROCZEK: I'm sorry?

11 THE COURT: The charge that they have for
12 defense of habitation doesn't make sense, she says,
13 because it is talking about being in the household
14 and in --

15 MS. ZMROCZEK: I will email one because, Your
16 Honor, I don't think that the testimony was clear
17 that he was in the road. I mean --

18 THE COURT: I think both your witnesses said
19 he was not on their property.

20 MS. ZMROCZEK: I mean, but the leaves, the
21 location of the blood, I think that -- they said on
22 the side of the road, not the road.

23 THE COURT: No, I think the question was
24 asked -- I can have Debbie pull it back up -- was
25 he on your property. And so if he is defending his

1 property, that is going to go to what he thought.

2 MS. ZMROCZEK: Right, right, right.

3 THE COURT: And what she thought.

4 MS. ZMROCZEK: Right.

5 THE COURT: And I think their testimony -- I
6 might be wrong -- but I thought the testimony was
7 that they both testified that he wasn't on the
8 property.

9 MS. ZMROCZEK: I'll check my notes as well,
10 Your Honor.

11 THE COURT: Yes, Debbie, can you look that up
12 tonight?

13 THE COURT REPORTER: Yes, ma'am.

14 MS. SAMPSON: And I will show you, for
15 Ms. Volstromer, we asked her about where the stake
16 was and then all the medical equipment and
17 everything else was beyond that stake. She agreed
18 that that stake is where her property ends. And
19 you can look at the photo. The stake is right next
20 to the fence. Their surveyor said that the stake
21 is where the end of their property line is. And
22 nobody said, in the testimony that was given today
23 by Ms. Volstromer or Mr. Volstromer, that
24 Mr. Pruitt walked onto the grass, they talked about
25 Ricky opening the door and being too close, but not

1 Mr. Pruitt. But what --

2 MS. ZMROCZEK: I'll go back.

3 MS. SAMPSON: Despite all of that, State v.
4 Bryant, which is 391 S.C. 225, which is a 2010 case
5 from the Supreme Court, and I believe I just said
6 State v. Lee, which is a 1987 case from the Supreme
7 Court. In both of those they talk about for
8 defense of habitation it is ejecting a trespasser.
9 It is all about being on the property or in the
10 dwelling. He clearly was not in their dwelling.
11 And in Lee, they were on the person's property on
12 the way out, and the Court still said that wasn't
13 defense of habitation.

14 THE COURT: Yes. I'll look at it. I'll let
15 Debbie, can you look at that for me? But I thought
16 she testified -- I mean, because there is a
17 question about, Was anybody on your property, and
18 she said, Yes, the police came on my property later
19 on.

20 MS. SAMPSON: I would also remind the Court
21 that she said whatever she remembered about that
22 day was incorrect, that the video was correct.

23 THE COURT: All right. Anything else?

24 MS. SAMPSON: Not from the State, Your Honor.

25 THE COURT: All right. I'll see you all at --

1 MS. ZMROCZEK: Nothing.

2 THE COURT: -- 9:30 in the morning.

3 MS. ZMROCZEK: Thank you.

4 THE COURT: And send those over.

5 MS. ZMROCZEK: I will.

6 THE COURT: And then the ones, if I don't
7 charge them, then we'll mark them.

8 MS. SAMPSON: Is it possible -- well, you said
9 we are going to come back at 9:30 to learn
10 specifically what the charges are going to be?

11 THE COURT: And the verdict form.

12 MS. SAMPSON: I am just trying for closing to
13 have that.

14 THE COURT: So I'm thinking that we'll start
15 at 9:30, go over the charge, finalize everything.
16 Assatta will have to go back and reprint it. And
17 while she is doing that, y'all take a break to get
18 yourself together, and then start.

19 MS. SAMPSON: We will probably need a small
20 break. That is why I was asking. Thank you.

21 (WHEREUPON, court adjourned for the
22 evening at 6:25 p.m.)

23 JUNE 18, 2021

24 (WHEREUPON, the trial resumed at 9:47
25 a.m.)

1 THE COURT: Let's talk about the jury charges.
2 The jury is still coming in.

3 All right, are y'all ready?

4 MS. SAMPSON: To argue on the charges?

5 THE COURT: To talk about the charges, yes.

6 MS. SAMPSON: I am still reading them, Your
7 Honor. One second. I just got them.

8 THE COURT: Oh, you just got them?

9 MS. ZMROCZEK: Oh, I haven't --

10 MS. SAMPSON: She emailed them to us.

11 (Pause.)

12 MS. SAMPSON: No objection to any of these.
13 The only thing I see is just a typo. I just want
14 to make sure you read it correctly. On Page 15,
15 the part where we are talking about defense of
16 others, it says, To show that the person being
17 defended had the right of self-defense, it must
18 first be shown that the person -- it says, begin
19 defended. I think it is supposed to say, being
20 defended.

21 THE COURT: Yes, that's the one I saw
22 yesterday.

23 MS. SAMPSON: That's it. I just want to make
24 sure it gets read correctly.

25 THE COURT: The person being defended.

1 MS. SAMPSON: Yes.

2 THE COURT: Yes. Okay. The person being
3 defended.

4 All right. And she said she has got to take
5 out the defense of --

6 MS. SAMPSON: It is not in here.

7 THE COURT: You must have taken it out.

8 MS. ZMROCZEK: I didn't see it. It is not in
9 the one I got.

10 THE LAW CLERK: Duty to retreat?

11 MS. SAMPSON: But Judge Benjamin stated she
12 was going to say it.

13 THE COURT: Yes, duty to retreat is just that
14 they don't have a duty to retreat. So you don't
15 have the elements in there. I don't see the
16 elements. Usually we leave the fourth one in there
17 saying they have the right to a duty to retreat
18 because they own the property.

19 MS. ZMROCZEK: I thought I saw it in there,
20 but, I mean --

21 MS. SAMPSON: It is in there, but instead of
22 there being four, she just put the two that are
23 normally separated as one.

24 MS. ZMROCZEK: Yes.

25 MS. SAMPSON: Normally it says, You are in

1 imminent danger or believe you are in imminent
2 danger, and often the Court will separate those two
3 to say, If you believe you are in imminent danger.
4 She has got, without fault, Number 2 is imminent
5 danger, and then I believe Number 3 is what we just
6 said, it says, the duty to retreat, that he doesn't
7 have the duty to retreat.

8 THE COURT: So y'all want me to keep that in
9 there?

10 MS. ZMROCZEK: That's fine, yes.

11 MS. SAMPSON: Yes. It is just the way it is
12 broken up. It usually says 4. I don't really
13 care.

14 THE COURT: Yes. I think -- and I think we
15 might need to move, the defense of others. I think
16 we talk about self-defense and then -- I don't
17 know. I mean, I'm fine leaving it in.

18 All right, yes, ma'am, any changes?

19 MS. ZMROCZEK: No changes, Your Honor.

20 THE COURT: All right. She didn't put in, but
21 I think you withdrew it, the continuing threat.

22 MS. ZMROCZEK: After reading it, Your Honor, I
23 think that it is an appropriate the way to -- I
24 don't think that -- and I did withdraw defense of
25 habitation.

1 THE COURT: And then this morning we put,
2 Words accompanied by hostile acts. That is in
3 there.

4 MS. SAMPSON: Yes.

5 MS. ZMROCZEK: Yes.

6 MS. SAMPSON: Words accompanied by hostile
7 acts is on Page 17.

8 THE COURT: Threats is in there too, right?

9 MS. ZMROCZEK: Yes.

10 MS. SAMPSON: Yes.

11 THE COURT: And continuing threat you said --

12 MS. ZMROCZEK: The one we -- yes.

13 THE COURT: And she said the only other one
14 she did not put in there because you didn't send it
15 to her was something about the size of the
16 Defendant.

17 MS. ZMROCZEK: Yes.

18 THE COURT: But, I mean, there is no testimony
19 regarding his size.

20 MS. ZMROCZEK: Yes. It's fine.

21 THE COURT: I mean, hers, but not his.

22 MS. ZMROCZEK: Right, right, right.

23 MS. SAMPSON: And also, Your Honor, there is
24 something in there that says, They can take into
25 consideration --

1 MS. ZMROCZEK: Part of the original charge is
2 in there, so, yes.

3 MS. SAMPSON: It says in here that, You can
4 take into account physical condition and
5 characteristics of the parties.

6 MS. ZMROCZEK: Yes.

7 MS. SAMPSON: I think that covers it.

8 MS. ZMROCZEK: I think that covers it.

9 THE COURT: All right. And then the verdict
10 form. Did you send that to them?

11 MS. SAMPSON: Yes, it as at the end.

12 MS. ZMROCZEK: We have no objection to that.

13 THE COURT: Okay.

14 MS. SAMPSON: Same for the State, Your Honor.

15 THE COURT: Okay. Anything else?

16 MS. ZMROCZEK: Nothing.

17 THE COURT: So the jury is probably here
18 ordering. How much time do y'all need to take?

19 MS. SAMPSON: If we can have like ten minutes.

20 THE COURT: And just so we are clear under
21 Beatty, open in full -- I mean, close in full,
22 close, rebuttal reply.

23 MS. ZMROCZEK: On anything, yes.

24 THE COURT: Okay. Do you need help with your
25 technology?

1 MS. ZMROCZEK: We have it all set up, but the
2 only thing is it is going to take literally like
3 five minutes to get it where it needs to go. Can
4 we send the jury out in between just so we are not
5 scrambling around, or we can -- I mean, the problem
6 is if I move the TV now, then it --

7 THE COURT: You can't just move it while you
8 get ready? I'll tell them to be patient while
9 you --

10 MS. ZMROCZEK: Okay. That's fine.

11 THE COURT: Yes, I hate to keep running them
12 in and out.

13 MS. ZMROCZEK: No, no.

14 THE COURT: Because depending on how long
15 y'all go, I'm going to probably take a break before
16 we charge. If y'all take two hours, then we will
17 probably take a break, and then I'll charge. But
18 hopefully y'all won't be more than that. I have
19 been in trial with both of y'all. I don't recall
20 either one of you ever being very long-winded.

21 MS. ZMROCZEK: My last closing was I think
22 seven minutes, Judge.

23 MS. SAMPSON: I think my closing is going to
24 be longer than seven minutes.

25 THE COURT: Well, today I think it will be,

1 but it won't be three hours.

2 MS. ZMROCZEK: It will not be three hours. I
3 don't think I could survive three hours.

4 THE COURT: If it gets to be too long I
5 will --

6 MS. ZMROCZEK: Throw things at us?

7 THE COURT: If y'all can stay in the hour
8 range, I think that is probably good.

9 MS. SAMPSON: Yes, ma'am.

10 THE COURT: Okay. Y'all go ahead and take ten
11 minutes. Like I said, the jury is still ordering.
12 And I'll probably take, like I said, a break before
13 we do the jury charge.

14 MS. SAMPSON: Yes, ma'am. I just need like
15 ten minutes.

16 THE COURT: Okay, y'all take ten minutes. Go
17 ahead. I'm still up here, but y'all go ahead.

18 (WHEREUPON, a break was taken at 9:59
19 a.m.)

20 THE COURT: Bring them on in.

21 (WHEREUPON, the jury came into open
22 court at 10:13 a.m.)

23 THE BAILIFF: The jury is seated this morning.

24 THE COURT: Thank you. Ladies and gentlemen
25 of the jury, good morning, and Happy Friday. We

1 are ready for closing arguments. First you will
2 hear from the State, I believe from Ms. Sampson,
3 and then you will hear from Ms. Zmroczek, on behalf
4 of the Defendant, Mr. Volstromer, and then the
5 State will have an opportunity to reply. All
6 right? And then we will have the charge on the law
7 after the closings. And if we need to take a
8 break, we'll take a break, just depending on how
9 long the closings are.

10 All right? So I will turn it over. Please
11 pay close attention to the attorneys.

12 Yes, ma'am, Ms. Sampson?

13 MS. SAMPSON: Thank you, Your Honor. May it
14 please the Court?

15 CLOSING ARGUMENT

16 MS. SAMPSON: I'm done. I told you, I'm done.

17 Those were the last words heard by Keith
18 Pruitt when that man, Mark Volstromer, decided on
19 December 27th, 2015, to pull out his gun, shoot him
20 like a dog, and leave him to die in the street.

21 At the beginning of this case, my co-counsel,
22 Stephanie Taylor, came to you, and she told you
23 that this case was about the Defendant deciding to
24 take the law into his own hands when he decided
25 that he was going to be the judge, jury, and

1 executioner of Keith Pruitt instead of allowing
2 Keith Pruitt to have his day in court, just like he
3 did, to exercise his constitutional rights, to come
4 in here and explain to you why he did nothing
5 wrong. He decided that he was done, that he had
6 had enough, to take matters into his own hands, and
7 to exercise vigilante justice. We live in America,
8 and that just isn't legal.

9 Now, what crime did Keith Pruitt do that
10 deserved this? You heard a lot of testimony
11 yesterday and over the course of time. And in the
12 beginning, Ms. Zmroczek told you, They were acting
13 in terror. Then she said terror, duress, and
14 trauma. She even, as far as I was concerned,
15 insulted all of us by saying this was like 9/11 or
16 we were comparing this like saying 9/11 was just an
17 airplane crash?

18 MS. ZMROCZEK: Your Honor, I am going to
19 object to the characterization of my character.

20 THE COURT: The objection is sustained.

21 MS. SAMPSON: She said, and I quote: Saying
22 this is just about property boundaries is like
23 saying 9/11 was a plane crash. That is insulting,
24 because this was about a property dispute. You
25 have now seen the video. It starts when they are

1 arguing about who owns the property, where is the
2 fence going to go. We didn't make that up. That
3 is the video.

4 The evidence that you were shown is that Keith
5 Pruitt terrorized them by driving a 4-wheeler on a
6 dirt road. He terrorized them by saying, How you
7 doing, to a woman. The terror that rained down on
8 them was saying sweetie and honey to a woman, which
9 I say. Southern men say that all the time. If I
10 had to shoot somebody for calling me sweetie,
11 honey, or cutie, there would be a lot of dead men.
12 But we don't get to do that here in South Carolina.
13 We just don't. You don't get to kill a man for
14 driving a 4-wheeler, saying things you don't like,
15 and maybe shining a light on your property.

16 Now, what do we have to show as the State? We
17 have to prove beyond a reasonable doubt the
18 elements of murder. And what are those?

19 First is the unlawful killing of another, with
20 malice aforethought, either express or implied.
21 That is all we have to prove. You would think when
22 you hear about murder that it is going to be a
23 whole bunch of stuff we have got to do, right? I
24 mean, it is murder. But in South Carolina we boil
25 it down. Killing of another, with malice

1 aforethought, either express or implied.

2 So how do we do that? We brought in witnesses
3 to talk to you only about the things that matter in
4 this case. We brought to you evidence that was
5 only about this case.

6 Now, I'll admit, I've been doing this a long
7 time, usually in murder cases you have way more
8 than this, but what we had was a video. A video.
9 We didn't need anything else.

10 Now, I'm sure Ms. Zmroczek is going to come
11 right behind me and talk about all the things we
12 didn't do and how that would have changed things if
13 they had gone and looked at this truck, or I don't
14 know what else they were supposed to do, gone and
15 done something when they called about, I don't
16 know, their cat. But that is not illegal.

17 Investigator Holdorf, Investigator Carter,
18 Deputy Vadasz all came in here and talked about
19 what they did. Investigator McClary, she talked
20 about what she did. Nicole Hardin, Dr. Durso, all
21 of them came in here and talked to you about what
22 happened, because that is what we are supposed to
23 do.

24 Well, how do we prove these things? What is
25 the evidence of malice in this case? The judge is

1 going to instruct you after you hear from me and
2 Ms. Zmroczek on the law. I am going to warn you
3 now, it is long. You are going to get bored. You
4 are going to be like, When is she going to stop
5 talking so we can go eat lunch? So I'm going to
6 ask you to pay attention. It is hard. But you've
7 been really good at it all week, and I just ask you
8 to hang on just a little bit longer, because she is
9 going to instruct you on what the law of malice is.

10 Malice isn't, you have got to mean it for
11 hours, it is not like on TV where you premeditate
12 it and let me think about how I can get away with
13 it. This isn't how to get away with murder. And
14 he clearly didn't. Or he didn't watch the right
15 episode, I don't know.

16 So what is evidence of malice? Malice is an
17 ill will, an evil depraved heart. And maybe you
18 don't think he is evil, he looks like a nice guy,
19 but the minute he went and got that gun and went
20 outside, malice begins. Telling your daughter to
21 call 9-1-1 when, according to him, what he told you
22 yesterday, maybe there were some dogs outside. And
23 I want you to think about that, because you are
24 going to see the video. I have no doubt Ms.
25 Zmroczek is going to play it, and I know I'm going

1 to play it. Do you hear any dogs? You can hear a
2 cat meow on this video. But if you think there is
3 a dog attack going on like he tried to tell you
4 2000 days after this happened, wouldn't you hear
5 it? What he hears is his wife screaming and
6 yelling, that is what he says.

7 Taking a loaded weapon to a word fight. Now,
8 I have heard the thing, Don't bring a gun to a
9 knife fight, right? My dad, when I was a kid, used
10 to tell me, Don't take a knife to a fist-fight,
11 because you can have a fight and be wrong and
12 apologize later, right? As long as it is just a
13 fist-fight. He brought a gun to a word fight.
14 They were out there arguing about property lines.
15 They are just yelling. And he brings a gun out
16 there, a loaded gun. Not a prop gun, not a BB gun,
17 the gun that we put into evidence, this gun right
18 here. This weapon that I will not open because it
19 is in this box is what he brought to a word fight.
20 That is evidence of malice.

21 MS. ZMROCZEK: Your Honor, we have a matter of
22 law.

23 (WHEREUPON, a bench conference was held
24 in the presence of the jury but out of
25 the hearing of the jury.)

1 THE COURT: The objection is overruled.

2 Finish your statement.

3 MS. SAMPSON: And why is that? Because if you
4 take a gun that is loaded, that you then point at
5 someone and shoot at them, a loaded gun, that is
6 malice.

7 MS. ZMROCZEK: Again, Your Honor, same
8 objection.

9 MS. SAMPSON: That you shot a gun and used it?

10 THE COURT: Hold on one second. Ladies and
11 gentlemen of the jury, let me send you all out one
12 second.

13 (WHEREUPON, the jury retires to the jury
14 room at 10:28 a.m.)

15 THE COURT: All right.

16 MS. ZMROCZEK: Your Honor, my objection is, it
17 is very clear on what the law was as the Supreme
18 Court stated in 2019, you can't use the gun as
19 evidence of malice.

20 MS. SAMPSON: Well, I think it said you can't
21 use the gun alone.

22 THE COURT: Yes. That is the -- it says
23 that -- it used to be the charge was you can infer
24 malice from use of a gun, and I think it is
25 something like -- basically it used to be that the

1 jury, if somebody uses a gun and use the gun alone,
2 but that is only malice. And I think the way the
3 case -- she is pulling it up. What is the name of
4 case?

5 MS. ZMROCZEK: It is Burdette. State v.
6 Burdette, from 2019.

7 THE COURT: Yes, but I think -- I mean --

8 MS. ZMROCZEK: And she just keeps --

9 THE COURT: Someone going and arming
10 themselves with a gun, I mean, if that is the case
11 you will say anybody that -- any time anyone goes
12 and arms themselves with a gun, you can't use that
13 alone. And I think the way the jury charge used to
14 read was that, it was basically saying, use of a
15 gun alone is malice, and that is not -- I think
16 that is what --

17 MS. SAMPSON: That is correct. If they can't
18 get the charge, it doesn't say that you can't talk
19 about that using a weapon, it says that you can't
20 get the charge that says use of a weapon alone is
21 malice. And I did not say that, alone. I
22 continued to talk and explain why that was malice.
23 And I am allowed to do that. They are not going to
24 get a charge that you can infer malice by the use
25 of a gun, and that is what the case law says.

1 THE COURT: Regardless of the evidence
2 presented at trial, the trial court shall not
3 instruct the jury that it may infer the existence
4 of malice when the deed was done with a deadly
5 weapon, overruling the other case. But we can go
6 ahead and put it on the record, but I think it is
7 that I cannot tell them that they can draw an
8 inference from it. And she can't stand there and
9 say -- you can't say that -- I mean, they have to
10 be able to prove malice.

11 MS. ZMROCZEK: I understand that.

12 THE COURT: And I think -- I mean, I don't
13 know how you can say not -- that it is somebody
14 arming themself with a gun.

15 MS. ZMROCZEK: In self-defense.

16 THE COURT: No, no, no. And I understand that
17 is not malicious in some form. I am not even
18 talking about this case, I am talking about cases
19 in general.

20 MS. ZMROCZEK: Right.

21 THE COURT: If that is the case, then every
22 case that we have that -- I don't -- where
23 somebody -- yes. Yes, so, but if the issue is --
24 the court, it sounds like here, the court is
25 telling the jury, because it is clear the

1 instruction is the issue, and I'm not giving that
2 instruction.

3 MS. SAMPSON: And if you continue to read, it
4 talks about the Solicitor or Prosecutor is allowed
5 to talk about it, but the judge can't give an
6 instruction on it. I'm almost positive it says
7 that. It might be in follow-up cases. But it
8 talks about that we can say it, you just can't --
9 it can't be the only thing I say, and also you
10 can't give the instruction on it.

11 THE COURT: Well, I'm not giving an
12 instruction.

13 MS. SAMPSON: Right.

14 MS. TAYLOR: There is also a case that says
15 malice can be inferred by conduct --

16 MS. SAMPSON: And that is what I was going
17 through, is conduct.

18 THE COURT: All right. Well, I'm going to
19 overrule the objection. You can continue. But
20 just be careful as to that.

21 MS. SAMPSON: That is the only time I am even
22 bringing it up.

23 THE COURT: All right. But I think you have
24 to -- if you are going to say conduct, you need to
25 go into all of his conduct.

1 MS. SAMPSON: This was just one part of a
2 6-page, I mean, 6 --

3 THE COURT: All right, bring them back in.
4 But the objection is noted for the record.

5 MS. ZMROCZEK: It is preserved?

6 THE COURT: Yes.

7 MS. ZMROCZEK: Okay, thank you.

8 (WHEREUPON, the jury came into open
9 court at 10:15 a.m.)

10 THE BAILIFF: The jury is seated, Your Honor.

11 THE COURT: All right. Yes, ma'am, you may
12 continue.

13 MS. SAMPSON: And for the record, the
14 objection was overruled?

15 THE COURT: Yes.

16 MS. SAMPSON: Thank you.

17 **CLOSING ARGUMENT CONTINUES:**

18 MS. SAMPSON: So, as I was saying, evidence of
19 malice. Telling the victim to come onto your
20 property while you are armed with a gun and he
21 isn't, that is what happened in this case.

22 You'll hear the video. He says, Come over
23 here. That is the words out of Mark Volstromer's
24 mouth.

25 And what do you hear? The victim's response

1 is, I'm not coming on your property.

2 That, ladies and gentlemen, is evidence of
3 malice.

4 Saying, I'm done, getting closer to the victim
5 so you can shoot him in the heart is evidence of
6 malice. He didn't shoot him in the leg. He didn't
7 shoot him in the arm. He didn't shoot at him. He
8 didn't point the gun in the air and say, Hey, go
9 away. He took the gun out of his pocket, took
10 steps forward, I'm done, shot him, looked at him as
11 he died. I told you, I'm done. Evidence of
12 malice. I don't have to repeat that, I have said
13 it.

14 Telling your wife as he lay dying, Yes, I shot
15 his ass. Does that sound like somebody who is
16 scared, or does that sound like somebody who is not
17 scared? Evidence of malice.

18 Going in the house drinking a beer as a man
19 lays dying on the road outside of your property,
20 left him just laying in the road like a dying dog
21 while you drink a beer. Evidence of malice.

22 So, ladies and gentlemen, we have proved
23 malice aforethought. You can check that one off.
24 It was both express and implied. You can check
25 that one off. He expressed it when he said, I'm

1 done. He told you yesterday, I don't even remember
2 saying it, but it is in the video. I don't know
3 why I said it. You said it because you are mad.
4 You said it because you are done.

5 Implied malice. Going inside and drinking a
6 beer as the man lays dying. Saying to him, It is
7 your fault. It is your fault. Implied malice.

8 So we're going to watch this video so that we
9 can talk about all that happened that day on
10 December 27th, 2015.

11 (Video plays.)

12 MS. SAMPSON: He asked her, Why are you taking
13 pictures? Is it okay if I ask you that?

14 Earlier Ms. Zmroczek asked you about, they
15 were poking and prodding her, getting her worked
16 up. Ms. Volstromer said she only met Ricky Holten
17 one time, and that one time he came over to
18 apologize. How did he even know her to get her
19 worked up? He said, What are you taking pictures
20 of? Do you mind me asking? But this isn't about a
21 property dispute. Although the next few words are
22 about that fence and who owns the road.

23 (Video plays.)

24 MS. SAMPSON: Who owns the road? He tells
25 them, I bet you two grand you don't own this

1 property. But this isn't a property dispute.

2 (Video plays.)

3 MS. SAMPSON: This fence got to go back, got
4 to go back. This ain't no property dispute.

5 (Video plays.)

6 MS. SAMPSON: And remember, she is so scared
7 she doesn't know what to do, so she keeps arguing
8 with him. How about stop talking? One of the
9 things my grandmother used to say is, You don't
10 have a fight, be quiet. You can't fight by
11 yourself.

12 (Video plays.)

13 MS. SAMPSON: Fifteen feet of right-of-way.
14 But this ain't a property dispute.

15 (Video plays.)

16 MS. SAMPSON: Now, yesterday Mr. Volstromer,
17 he just came outside and didn't know what was going
18 on. But what is the first thing he says when he
19 gets outside? You don't own it. You don't pay
20 taxes. But he didn't know there was a word fight
21 going on out there.

22 (Video plays.)

23 MS. SAMPSON: And I'm going to stop it here.
24 Here comes the tough guy. Those are the words of
25 Mark Volstromer. Keith Pruitt wasn't even arguing

1 with his wife, Ricky Holten was. He is out there
2 with a gun saying, Here comes tough guy, to the
3 victim.

4 (Video plays.)

5 MS. SAMPSON: I'm not coming on your property.
6 Come over here, tough guy.

7 You are going to hear the judge give you some
8 rules about self-defense, and I'm sure Ms. Zmroczek
9 is going to talk a whole lot about it, but one of
10 the things about self-defense is you can't bring on
11 the difficulty. You can't use words that might
12 make somebody act like telling them, Come on my
13 property, while armed with a gun.

14 (Video plays.)

15 MS. SAMPSON: He tells him -- and he tells
16 him, Come on over here, because he is not going on
17 their property. He is not doing it. He says it
18 multiple -- he says, You come on over here, then we
19 have got something to talk about, because he can be
20 on the property, he can be on the road. He can be
21 on the road. There is nothing illegal about being
22 on the road.

23 Now, Ms. Volstromer wants you to believe she
24 is so scared she doesn't know what to do. So what
25 does she say? Don't you step on my fucking

1 property, because she is so scared.

2 (Video plays.)

3 MS. SAMPSON: Do you hear that? First of all,
4 she tells him, This is my property.

5 He is like, Yes, that is your property. This
6 isn't. And it is so -- again, so good you can hear
7 a cat meow, but he went out there for a dog attack
8 that we never heard?

9 (Video plays.)

10 MS. SAMPSON: I don't know if you saw it, but
11 you can watch it again. I'm sure she is going to
12 play it. What I would ask you to watch is Mark
13 Volstromer as he takes one, two, three, four, five
14 steps towards the person he is supposed to be
15 scared of, while he takes that gun out, shows it,
16 I'm done, and blows him away. Ladies and
17 gentlemen, that is murder. That is malice
18 aforethought. You don't need to have it forever.
19 When you pull that gun out, that is aforethought.

20 (Video plays.)

21 MS. SAMPSON: Did you shoot him?

22 Yes, I shot his ass.

23 Aw, fuck. Not, I'm scared. Not, Oh, my God.

24 Not, Oh, I was terrified, thanks for doing it.

25 (Video plays.)

1 MS. SAMPSON: Cooly, calmly, collectively
2 walking in his door with his gun in his hand. But
3 he is real scared. Real scared.

4 (Video played.)

5 MS. SAMPSON: They can't stop, right? They
6 can't talk to us, yes or no?

7 They can't stop and talk to us, yes or no? It
8 is not illegal to talk.

9 (Video played.)

10 MS. SAMPSON: Shot off my frickin' property
11 line. Not on her property.

12 So in the beginning we heard about how this
13 was going to be how he came on their property
14 somehow, but he didn't. Even she said so.

15 And the other thing you don't hear is, Oh, my
16 God, he had to do it. Oh, my God, that man, I was
17 so scared, that man was coming on my property. Did
18 you hear anything like that? I am going to keep
19 playing it to make sure you don't.

20 (Video plays.)

21 MS. SAMPSON: Again, right off our property
22 line.

23 (Video plays.)

24 MS. SAMPSON: So scared that when the wife is
25 watching her dying husband die, you say, Fucking

1 bitch. She's real scared. Real scared. That is
2 not scared, that is angry, a little bit like me
3 right now.

4 (Video plays.)

5 MS. SAMPSON: Why do I stop it here? This is
6 important. They talk to you, and you are going to
7 hear about self-defense and how a reasonable person
8 in their circumstance would have had to be in fear.

9 Did you see what she had to do to even get to
10 him once he is dead? She had to climb through that
11 fence and she had to climb all the way back. So
12 Keith Pruitt, a 60-year-old man, would have had to
13 have either climbed through that fence or climb
14 over that fence to get to the two people who are
15 armed with guns.

16 Now, I'm sure they are going to say, Well, he
17 had a pocketknife, that absolutely no one saw. A
18 pocketknife that would have had to be unfolded and
19 I guess hurled at them before they could have shot
20 him.

21 (Video plays.)

22 MS. SAMPSON: Why is this important? She
23 won't let me touch him. I can't even get to him.
24 They talk to you about how maybe they patted him
25 down, I guess maybe they removed this weapon he

1 had. They were really bad at removing weapons
2 since they left one on him. They were really bad
3 at touching him since he was still facedown when
4 EMS and fire get there. They were really bad at
5 what they were doing, if that is what they were
6 doing. Or perhaps, as they watched their friend
7 dying, they are getting upset. Perhaps.

8 (Video plays.)

9 MS. SAMPSON: Telling everybody he is
10 licensed, not he shot because he was scared, shot
11 because I was scared, shot because he threatened
12 me, shot because he was coming on my -- none of
13 that -- on my property. Nothing.

14 (Video plays.)

15 MS. SAMPSON: And I want to talk to you about
16 this, because I am positive there is going to be
17 some more about this. They do start saying, We are
18 going to get her. We are going to do something.
19 Their husband, their friend is dying, dead on the
20 road. Maybe they were a little upset. They do
21 say, Let's go get some guns. I am not going to say
22 they didn't. Did they do it? No. And how do you
23 know they didn't? Barbara Volstromer and Mark
24 Volstromer are sitting over there.

25 (Video plays.)

1 MS. SAMPSON: Now, on here she said that
2 neighbor who -- he was approaching me. Remember
3 what she told you on the jury box? What I remember
4 isn't what happened. Because on that video, she
5 approaches him. She goes to the fence. He
6 doesn't.

7 (Video plays.)

8 MS. SAMPSON: My husband just got enough.
9 Isn't that when you say, He was scared, I was
10 scared? Instead you just say, Just had enough.

11 (Video plays.)

12 MS. SAMPSON: Now she remembers to say, I was
13 scared, just a little bit. She puts, But I had
14 enough too. That is not self-defense, ladies and
15 gentlemen.

16 (Video plays.)

17 MS. SAMPSON: Let that sink in. The threat
18 that she tells 9-1-1 about is taking her property,
19 not her life, not touching her, not threatening to
20 kill her, to take her property. And that threat
21 came from Ricky Holten.

22 And then she tells them, My husband just shot
23 this other guy that got out of the truck.

24 (Video plays.)

25 MS. SAMPSON: And she gets it wrong again.

1 Her husband told this man not to approach, and he
2 did. Her husband said, Come on over. And the
3 victim said, No.

4 (Video plays.)

5 MS. SAMPSON: Woman in fear? There is a
6 camera, you fucking asshole.

7 (Video plays.)

8 MS. SAMPSON: Still, so scared that she is
9 arguing with them again because she is so scared.
10 Or perhaps she just likes to argue, because that is
11 all she did this entire video.

12 And as Mr. Volstromer told you when he was
13 testifying, he said, I don't think she did anything
14 to amp this up. Really? Because that is all I saw
15 her do.

16 (Video plays.)

17 MS. SAMPSON: Even she knows that is not her
18 property. It is not anybody involved's property.
19 She sure can't kick anybody off of that property.
20 It is not hers. It is not Mark Volstromer's. They
21 brought in a surveyor who didn't even know where
22 the road was.

23 (Video plays.)

24 MS. SAMPSON: Talking shit to me. Not
25 threatening to kill me, not threatening to hurt me,

1 not threatening to come on my property, not
2 threatening to hurt my family. Talking shit.

3 (Video plays.)

4 MS. SAMPSON: Did you ever hear him say, Don't
5 get out of the truck? Because Keith Pruitt doesn't
6 get out of the truck until Mark Volstromer is
7 already out there. And as soon as he sees him he
8 tells him, Come on over. He never once tells him,
9 Get back in the truck once he gets out. Later he
10 does. He is like, Take him away, after they are
11 arguing. Sure he says that. But Keith Pruitt had
12 as much right to stand on that road as I would if I
13 wanted to go stand out there. You can't make a man
14 get off a road that you don't own.

15 (Video plays.)

16 MS. SAMPSON: And they keep saying how they
17 are letting him die and they are not doing
18 anything. I want you to remember what Dr. Durso
19 told you. This was a catastrophic injury. He
20 could have died in the parking lot and shot in the
21 front of a hospital and he would still be dead.
22 There was nothing they could do. They could see
23 that.

24 (Video plays.)

25 MS. SAMPSON: And I guess his wife was

1 supposed to stand there and watch him die instead
2 of go get shoes on so she could get in the
3 ambulance and go with them. Talk about victim's
4 rights.

5 (Video plays.)

6 MS. SAMPSON: Did you hear that? They start
7 to bend over and they start to cry, because that is
8 what you do when someone is dying in the middle of
9 the road.

10 (Video plays.)

11 MS. SAMPSON: She is so scared still of the
12 people that she tells them that they were
13 threatening and they were going to now kill her,
14 she goes to where they are, and to the point that a
15 firefighter, he came in here and told you, he had
16 to tell you -- tell her to get the fuck away. He
17 did.

18 She also -- remember what they told you, what
19 the firefighters told you? She told them they were
20 trespassing on her property. A man that is dying
21 in the street, has been moved so they can take care
22 of him, and she said, They are trespassing. To the
23 firemen.

24 (Video plays.)

25 MS. SAMPSON: Now, I am going to stop it here

1 and leave it, because you have seen what needs to
2 be seen. And y'all will have this video back there
3 for you to watch. And, like I said, I'm sure
4 Ms. Zmroczek is going to get up here and tell you
5 why this video doesn't show what I said. That is
6 what she is supposed to do. That is her job.

7 But what I want you to think about is that
8 Lanny Pruitt -- Lanny Pruitt was another human
9 being under the definition of murder. Mark
10 Volstromer killed him. That is what that video
11 shows. That video shows that it is unlawful.
12 There is no reason for that man to be dead other
13 than Mark Volstromer had enough. He was done, and
14 he shot him.

15 We have checked off all of the things we have
16 got to prove. Easy enough. Because we checked all
17 the boxes, the Defendant is guilty of murder.

18 Now, Ms. Zmroczek is going to get up here --
19 because I'm going to be done in a minute -- and she
20 is going to try to convince you that everything I
21 just said, everything we just went over isn't
22 right. That her client was acting in self-defense,
23 or, in the alternative, that he was defending his
24 wife. That is what she is going to try to do.

25 And she is going to tell you, I'm sure, that

1 the evil was from Lanny Pruitt, from Keith Pruitt,
2 and not from her client. Because that is what she
3 said in opening, so I assume she is going to say
4 that again.

5 But as you listen to her try to convince you
6 of these things, I am going to ask you to keep
7 three things in mind, okay?

8 First, think about all of the evidence that we
9 provided to you. The witnesses that we put up to
10 come in here and talk to you about the relevant
11 information. The 9-1-1 call. We brought you
12 those. The video, untouched. Not manipulated, not
13 cut together, not the expert that we hired to make
14 it so that it is the way we like it and a little
15 more fuzzy, as he said, or pixilated, but the
16 evidence itself. The gun, the photographs, the
17 reports, the test results.

18 It was pretty simple to put this case
19 together, and we have brought you each and every
20 piece of evidence that was relevant to show you
21 what happened on December 27th, 2015.

22 Now, the Defense, they have absolutely no
23 burden. We have it all. And I say bring it. And
24 we did. It has been brought, right here and on
25 that video.

1 When you see Keith Pruitt with his arms
2 outstretched with nothing in them, that is not
3 self-defense to shoot him in the street. Who
4 brought you that evidence?

5 But the Defense, they don't have to prove
6 anything. But once they choose to put witnesses on
7 that stand, you get to judge their credibility, not
8 me, not Ms. Zmroczek, not even the judge. You all.
9 So as you listen to what she says, think about what
10 the Defense witnesses told you. Nothing.

11 Two of them were brought in to talk about a
12 knife that nobody saw. A pocketknife that you
13 don't hear about on the video, you don't hear about
14 in Barbara Volstromer's statement, you don't hear
15 about it in Mark Volstromer's statement, you don't
16 hear it from Deputy Vadasz who talked to them, you
17 don't hear it from Investigator Holdorf, you didn't
18 hear it from Barbara Volstromer on the stand, you
19 didn't hear it from Mark Volstromer on the stand.
20 Who cares about that knife that was folded and I
21 guess in his pocket or on that belt, that nobody
22 saw?

23 They brought you in a surveyor, and all these
24 beautiful, beautiful surveys. They were great. I
25 liked that guy. He was kind of funny, right? And

1 he talked about how he had been doing this for a
2 long time. But my only question to him, Can you
3 show us where Megan Court is? Where is it? Oh, I
4 don't know that. This all happened on Megan Court.
5 Why are we talking about a survey when you don't
6 even know where we are talking about apparently?

7 Brought in an installer of the video
8 equipment. Was there ever a question that there
9 was video equipment? We showed you the video from
10 the surveillance. He wasn't there on December 27th
11 of 2015.

12 They gave you Ms. Volstromer. You got to see
13 her in all her blazing glory, who told you whatever
14 she remembered is not what happened, because what
15 is on the video is not what happened.

16 And they brought you the Defendant who said --
17 as long as Ms. Zmroczek was asking him questions,
18 he remembered, but when I asked him, he didn't
19 remember. But it was kind of interesting to me
20 what he did remember. After 2000 days, three
21 lawyers, he remembers hearsay. He remembers that,
22 Oh, yes, I was scared shitless. But that is
23 nowhere in the last 2000 days. That is nowhere in
24 his statement. There is nowhere in that video.
25 But 2000 days later, three lawyers later, suddenly

1 he remembers. So remember that as she talks to you
2 about whether he and his wife were scared that day.

3 The second thing I want you to keep in mind
4 is, like I said, you decide the facts of this case.
5 Not me, not her, you all. And as you decide, think
6 about when she says there are two sides to every
7 story, but, ladies and gentlemen, there is one
8 truth, and that truth is on that video. One truth.

9 Despite what they tried to tell you yesterday,
10 I want you to use your common sense. You didn't
11 leave it at the door when you came in as jurors.
12 It is the one thing you all have. We all go to
13 school for what we do, right? The judge went to
14 judge school, the lawyers go to law school. We all
15 go to school to learn how to do what we do. Nobody
16 gave you juror school, right? We just say, Hey,
17 you 12 people who live in Richland County, here is
18 some stuff, can you go decide for us? So I am
19 going to give you a couple of rules. Use your
20 common sense. If it doesn't make sense, it didn't
21 happen. It just doesn't make sense that 2000 days
22 later, three lawyers later, now they are scared.
23 But on that video, in those statements, there are
24 no threats to their life.

25 I guess when you say, I'm the villain, or, I'm

1 the devil, that is a threat when you are standing
2 on property with a fence between you and the person
3 you are talking to. I guess when you say, Remember
4 what I told you before, whatever that was, and
5 perhaps before you said, I'm going to rain down
6 hell on you, whatever that means to you, but now
7 you are standing arms stretched out on property
8 with a fence between you with two armed people, now
9 you are a problem? Just remember that. Does that
10 make common sense that you would be scared now,
11 2000 days later, but you weren't in December of
12 2015?

13 And, lastly, while she is talking, I want you
14 to look for the red herrings for the things she is
15 going to ask you to look at that don't matter.

16 This knife that nobody saw, because it will
17 just distract you to keep you from looking at the
18 actual case, because if you look at the actual
19 case, you have to find him guilty.

20 She is going to talk to you -- or there might
21 be, I don't know -- there was some talk about this
22 utility box that is not a cooler. Not a cooler?
23 Did anybody come in here and tell you it wasn't a
24 cooler except for Ms. Zmroczek? Her client said it
25 was a cooler in the statement. Nobody called it a

1 utility box. It is a cooler. She is probably
2 going to say, Well, Investigator Holdorf should
3 have went and found this mysterious truck and
4 checked to make sure that it was a cooler so that
5 his assumption that he pulled out a beer or a soda,
6 whatever he pulled out of it, would be made true.
7 But he has his hand outstretched, so whatever he
8 got out of that cooler is in his hand when he gets
9 shot.

10 She is going to talk about how -- what they
11 didn't do. And I want you to remember what
12 Investigator Holdorf told you, how he didn't try to
13 find that truck once he knew it was even part of
14 this case. It wasn't in his custody and control
15 anymore. And then they would be talking about how
16 we messed that up too. It is a Catch 22. This is
17 not CSI, this is not TV, this is not the movies.
18 We can't go, What is he doing in his mind? Perhaps
19 there was a truck. Oh, yes, let me go look for a
20 truck. That is not how this works. Investigator
21 Holdorf and his team rely on what they tell him.
22 That is why they got the video. That is why they
23 got the GSR kit. That is why they got the gun.

24 The only thing they told him is they came up
25 in the truck. Okay. They can drive up in a truck.

1 It doesn't mean I am going to take it into
2 evidence.

3 She said that, Well, you should have taken the
4 surveillance system so you could have watched all
5 the hours of video. Huh. Funny that her client
6 said on the stand that the system only keeps it for
7 a week. That is what he said. So exactly what
8 would he have watched had he took the surveillance
9 system and watched it?

10 Oh, yes, I forgot that on the 20th somebody
11 shines some lights on the property and might have
12 said, Die, and perhaps there were some people
13 shooting outside. But, of course, as they told
14 you, they didn't call law enforcement about that,
15 but they did call about their missing cat, because
16 that was way more important, I guess, than when
17 somebody is yelling, Die, or may be shooting
18 outside their property. That is what they told you
19 yesterday.

20 That is what we call a red herring, ladies and
21 gentlemen. Not look at the evidence, because if
22 you look at it, you have got to find him guilty.
23 Look at something else. Anything else.

24 They are going to blame Richland County for
25 not doing enough. That is what they said. You

1 heard Barbara Volstromer. Richland County didn't
2 do enough.

3 Now, I have friends, maybe you do too, who
4 think law enforcement don't come to things when
5 they call, right? That bad things are going to
6 happen if I call the law. These people called the
7 law about everything. They called them there were
8 dogs on the property. They called when a cat was
9 missing. They called when there was 4-wheelers
10 driving down a dirt road. They called when a man
11 is sitting in a church parking lot minding his own
12 business and you come over there to bother him.
13 Yet you don't call when he threatened you, you
14 don't call when there is a shooting around.

15 And here is the thing about blaming Richland
16 County. I might agree with them. Maybe it was
17 Richland County's fault. Except for one thing.
18 They came each and every time they were called.
19 That is what they said. When the cat was missing,
20 they came and looked for it, even though she didn't
21 want to tell you that. I had to show her the
22 report. It just said, Looked for cat with negative
23 results. She didn't want you to know that part
24 because I guess they didn't look where she wanted
25 them to look. But they came. When they called

1 about him being in the church parking lot minding
2 his business and she went over there and then he is
3 mad, they came. When he is driving down the dirt
4 road making too much noise, they showed up.

5 They are going to say, Well, they didn't do
6 anything. What the hell are they supposed to do?
7 And excuse my language, but what are they supposed
8 to do? It is not illegal. You can stand on a
9 public road if you want to. You can stand on a
10 private road as long as the person that owned the
11 road don't say you can't. You can drive on a dirt
12 road. They even said, I don't care if they drive
13 on the dirt, but apparently sometimes you do. You
14 can be in a church parking lot, or outside the
15 front of the church, because she didn't want to
16 tell me it was a parking lot. You can sit there.
17 You can drink a beer. It is not her property. But
18 she goes on over there. Let me see what is over
19 there. Oh, now I'm scared. Well, then stop being
20 places you are not supposed to be. And then he is
21 mad? Well, wouldn't you be too? Mind your own
22 dang business. But they called and they showed up.
23 But because they didn't arrest him for minding his
24 own business. And then perhaps saying to her, I'm
25 going to -- you don't know who you are messing

1 with, I am going to rain down hell, because you are
2 bothering the man in a church parking lot. Leave
3 him alone.

4 Don't be fooled by their story. Be convinced
5 by the truth. I'm about to sit down. Ms. Zmroczek
6 is going to get up here and talk to you, and then I
7 will get up again. I won't be very long, I
8 promise.

9 What I ask, use your common sense, remember
10 the three things I asked you to remember as you
11 listen to her, and that you will be firmly
12 convinced -- if you are not now you will be when
13 I'm done -- that he is guilty of murder.

14 Thank you.

15 THE COURT: Thank you. Yes, ma'am.

16 MS. ZMROCZEK: May I have time to set some
17 things up? Also may I approach about --

18 (WHEREUPON, a bench conference was held
19 in the presence of the jury but out of
20 the hearing of the jury.)

21 MS. ZMROCZEK: Thank you.

22 May it please the Court, Your Honor?

23 THE COURT: Yes, ma'am.

24 MS. ZMROCZEK: Thank you.

25 CLOSING ARGUMENT

1 MS. ZMROCZEK: Good morning. I spoke to you a
2 few days ago, and I told you what we were going to
3 tell you. And the State likes to ignore the state
4 of mind.

5 The judge is going to tell you the law, not
6 me, certainly not Ms. Sampson, it is the judge.
7 And that is where the law comes from. And she is
8 going to tell you that the State has the burden of
9 disproving self-defense, meaning proving that
10 Mr. Volstromer was not acting in self-defense or
11 not acting defending his wife beyond a reasonable
12 doubt.

13 And, ladies and gentlemen, reasonable doubt is
14 the highest standard in American jurisprudence, and
15 it is done that way for a reason. Because you all
16 came here to answer a very important question of
17 law -- question of fact. If they did not give you
18 the answers to those questions, the judge is going
19 to tell you you have to rely on the law.

20 Mark and Barbara never changed their
21 statements because they thought that the police
22 would do their job and investigate. Investigator
23 Holdorf told you on Thursday that -- or Wednesday,
24 excuse me -- that they were still investigating
25 doing work product on a Wednesday night.

1 I want to address a few things -- how I set up
2 my closing is I want to address a few things. I
3 want to first talk to you about some fears that I
4 have. Secondly, I want to talk to you about the
5 evidence as we view it. The beauty of having a
6 video -- and you all remember why we have the
7 video -- is because we each get to tell you what we
8 hear or we get to leave out what we don't really
9 want you to focus on, but you individually, each
10 and every one of you, get to make your
11 determination. And the determination is always
12 going to start in a self-defense case with their
13 state of mind.

14 And you'll hear some things, and you have
15 heard so many, but -- and, yes, we are going to
16 point out some things, because that is what
17 investigation is.

18 Ms. Sampson must have said, I don't know,
19 maybe two or three times, He had three lawyers, and
20 that somehow that that is bad, because his second
21 lawyer got in a car accident and I volunteered to
22 take the case. Or that Mr. Setree made \$6.67 an
23 hour to investigate this case. He didn't arrest
24 him before watching the video. That was
25 Investigator Holdorf.

1 And then one of the things that -- let me
2 start here. One of my fears is that -- you do
3 exactly what the prosecution asks and it is that
4 you focus on me, because I'm just a Defense lawyer.
5 Ms. Taylor told you in the beginning of the case
6 that she represented the State of South Carolina.
7 And, ladies and gentlemen, we represent the
8 constitution and Mr. Volstromer. And it says that
9 each and every individual is entitled to a defense.
10 And in this one -- and in this one, that is what he
11 got, and that is what he did.

12 I want to talk to you about this video,
13 because you are going to see it, and the beauty of
14 it is you have a lot of different camera angles and
15 you will get to take it with you and you will get
16 to see where people go, where people come from, and
17 you will get to watch it over and over and over.
18 And so, yes, we are going to point things out. And
19 I would ask that of course you listen, but
20 sometimes it is easier to focus on the individual
21 if you are watching it without sound. Although
22 sound will be important, and we'll talk about that.

23 We've seen the video. And you have seen when
24 Mr. Volstromer, when Mark pulls out his gun and
25 why, because of what is said. He talked to you

1 about the fear. He talked to you about the eight
2 months of terror.

3 These two people went to the police with an
4 innocent mind and they gave the police what they
5 thought that they would watch. Watch where their
6 hands are, watch their movements. We talked about
7 furtive movements. Furtive movements are
8 movements, as described by Investigator Holdorf,
9 that are twitching or makes somebody nervous. And
10 you'll get to see if you see them in here,
11 especially after he puts his hand behind his back
12 and Mark steps forward and diagonally to get in
13 front of his wife.

14 You heard from the digital forensics expert.
15 He didn't alter his video. He zoomed it in so that
16 we could try to see what happened, so that we could
17 try to understand why Mark Volstromer pulled that
18 gun and why Keith Pruitt waits until he comes out
19 of the house, because he had told him something
20 that must have scared him, and he was going to come
21 back. Remember what I told you last time I saw
22 you? He was going to do it right then. And he
23 said, I've got something for you.

24 And, yes, I am going to point those out. But
25 what I am also going to point out is what he said

1 after this gun has already been pointed at him,
2 because this man has been shot before, as you heard
3 from his wife. And they want to say, There is no
4 weapon. Oh, they just want to talk about the
5 pocketknife.

6 Ladies and gentlemen, all we are asking is
7 that you do what we asked the State to do when they
8 investigated this case. And remember when I asked
9 the first officer, he said, Well, that is not my
10 job, my job is this. I asked Mr. Carter, that is
11 not my job, that is my job. I even asked
12 Investigator Holdorf, and he said, Well, I had
13 already arrested him. He is pushing it on somebody
14 else.

15 Ladies and gentlemen, I want to start with why
16 Mark comes out of the house. 2000 days or so
17 before the State brings this case to you. And they
18 say in 2000 days he doesn't say anything about
19 being scared, or dogs, or any of that. And even
20 Investigator Holdorf when asked on direct by Ms.
21 Sampson, He never said anything to you about dogs,
22 did he? He said no. Am I calling Investigator
23 Holdorf a liar? Absolutely not, because, you know
24 what? People make mistakes. And that is okay.
25 But the truth of the matter is, he did talk about

1 dogs. It jumped out at him right here. Because
2 that is how this whole thing started. That is how
3 this whole state of mind started.

4 I'll talk to you about the trauma. The trauma
5 of being attacked by a dog in 2006 and going --
6 excuse me, in August of 2006, and then in November
7 of 2006 purchasing a gun. Purchasing a gun, a
8 handgun, for one specific reason. So when he tells
9 his daughter, Be prepared to call 9-1-1, and when
10 he tells you -- Vigilante Volstromer tells you that
11 he was taking a No. 2 and heard screaming and went
12 outside, and put his gun in his pocket because he
13 didn't know what it was. Listen to how many steps
14 he takes as he goes outside. You heard -- you
15 heard on the video Ricky say, Well, he just came
16 outside and started shooting.

17 (Video plays.)

18 MS. ZMROCZEK: Shuts the door. One, two,
19 three. Because you know what he was doing? He is
20 assessing the situation. And then he sees and
21 hears his 5-foot-5, 115-pound wife up against the
22 fence, her fence, with a man yelling at her calling
23 her a bitch. So what does he do? He goes out
24 there to protect her. Does he scream? No. Is he
25 angry? Is he upset? Maybe he is upset. He

1 said -- because as he is walking out there, soon,
2 and in the 49 seconds that we get to slow down, and
3 we get to go back and look at, and watch and
4 dissect, and that is not how that that went down.
5 And I think that is one of the most important
6 things to remember, is this is us stopping and
7 picking out parts and me showing you every little
8 thing. Like I'll show you when Mr. -- when Rick
9 turns off the truck and opens his door. Because
10 you'll hear it, you will hear it hit the fence.
11 And he can't even get out. But they are not on his
12 property. He can't even get out because he is so
13 close to the fence. And why is he getting out?
14 Why not just ride the 193 feet to where you are
15 going?

16 Bringing on the difficulty? Investigator -- I
17 want to talk about that for just a second.
18 Self-defense -- and the judge is going to read you
19 what the law is. And it is a complete defense.
20 The State has the burden of disproving this. The
21 judge is going to tell you the law. She is going
22 to tell you that there are things that you have to
23 consider. The first is, Are they without fault --
24 is he without fault in bringing on the difficulty?
25 Is Mark without fault in bringing on the

1 difficulty? He was on the toilet.

2 Investigator Holdorf testified very, very --
3 Investigator Holdorf testified that he told Ricky,
4 I did attempt to explain that if they had not
5 stopped, none of this would have happened. Those
6 were Investigator Holdorf's words to Ricky. That
7 for the looks of it, they were instigating an
8 argument. If Rick could give a legal reason why
9 they stopped and instigated an argument, he would
10 consider it, which was arresting or charging
11 Barbara. Because they wanted them all out. And it
12 just wasn't for this. This is eight months. Eight
13 months of this. And we will talk about that at the
14 end.

15 But, ladies and gentlemen, most interestingly,
16 in reply they put Investigator Holdorf on the
17 stand. And they said, Is pointing a weapon at one
18 someone a crime? He said yes, unless you had that
19 feeling, that fear -- that fear. And Ricky says
20 that -- everyone says that Barbara had a gun.
21 Barbara said she -- she tells them what she would
22 do with it. And guess who did not get arrested?
23 Barbara Volstromer. And if her fear is reasonable,
24 then her husband's fear is reasonable. She didn't
25 get arrested.

1 She is going to talk to you about contemptuous
2 language, and that the language is so contemptuous,
3 I'm done, is so contemptuous, Come on over here, is
4 so contemptuous that it contributed to the
5 encounter. That is not that definition.

6 The second thing that the judge is going to
7 tell you is that he must have believed that he was
8 in imminent fear of losing his life or sustaining
9 serious bodily injury or he actually was in
10 imminent danger. And she will also read to you the
11 defense of others.

12 So I want to point out, seven days before.

13 (Video plays.)

14 MS. ZMROCZEK: Ladies and gentlemen, this
15 isn't just about one man. We heard about Ricky.
16 We heard about Ricky's son. You see the pictures
17 that he admitted to, shining lights into their
18 home. Into their home. Oh, it is just shining
19 lights into your home. Oh, it is just driving the
20 down the road. This wasn't just one or two and
21 going into Ricky's house. This -- I mean, excuse
22 me, Keith's house. This wasn't just one or two
23 events, ladies and gentlemen. This starts back in
24 February.

25 And reasonable reaction? Reasonable reaction

1 to specific events. Were they frustrated that the
2 police just told them to stay away from each other?
3 Probably. Were they scared? Why were they
4 frustrated? Because they were scared.

5 (Video plays.)

6 MS. ZMROCZEK: I'll play it a few times.
7 Y'all, like I said, can take the videos back there
8 and watch it. But he is out here already.
9 Remember? Remember what I told you? Watch his
10 door. And you can hear.

11 (Video plays.)

12 MS. ZMROCZEK: Okay? That is not two people
13 having a conversation. That is not words. That is
14 two people, two buddies who apparently drive around
15 with less than ten, more than seven of Ms. Pruitt's
16 guns.

17 MS. SAMPSON: Objection, Your Honor. Arguing
18 facts not in evidence. She just said they were
19 driving around with guns in the car.

20 THE COURT: Sustained.

21 CLOSING ARGUMENT CONTINUES:

22 MS. ZMROCZEK: We have -- in slow motion you
23 can see him opening the truck, or is it just
24 something I'm seeing?

25 (Video plays.)

1 MS. ZMROCZEK: He is trying to come out of the
2 fence -- of his car and can't.

3 (Video plays.)

4 MS. ZMROCZEK: What he tells him, he has got
5 something for him. And Mark told you about the
6 fear that he had. They stopped going outside.
7 They stopped having their grandson over. These
8 were the threats that he was listening to.

9 (Video plays.)

10 MS. ZMROCZEK: Why? Why does he need to take
11 him away? What Investigator Holdorf, in hindsight,
12 in hindsight Holdorf tells you, That would have
13 been a good follow-up question to know why he was
14 scared. There were a lot of good follow-up
15 questions. The reason that we are here is because
16 Mark and Barbara didn't follow the plan or the
17 rules of how they are supposed to react in a
18 situation.

19 The first thing she is telling the 9-1-1
20 people is she is terrified.

21 I encourage each and every one of you to take
22 these videos and watch what Mark sees and watch
23 what Marks sees in those 49 seconds that he is
24 outside, because that tells you what his state of
25 mind is. And here is what his state of mind was.

1 (Video plays.)

2 MS. ZMROCZEK: Right there. Because he was on
3 my fence. Why did you do that? Because he was on
4 my fence. I didn't make up those words. Those
5 were his words at that moment. And then he walked
6 away and says, Why did you make me do that? And
7 they want to say that she is so scared that she
8 runs out and tries to help or wonders why they are
9 not helping. Or maybe they are just not malicious.

10 They are saying that they brought you the
11 9-1-1 call. You can play it. You can play it when
12 you go back there. I can also tell you, when you
13 do play it, ask this question. Why is the first
14 question when Ms. Pruitt goes back to get her shoes
15 and to lock up her house, why is the first question
16 she answers, No, he didn't have a gun? But the
17 State wants to tell you that there is no evidence
18 of a gun.

19 We have --

20 (Video plays.)

21 MS. ZMROCZEK: When you watch the whole video,
22 right after Mr. Volstromer steps to the side and
23 between his wife and he has been pointing the gun
24 at the man who had something for him, watch what he
25 does, because we hear what he says, which is, Pull

1 it. Pull it. Pull it. Because he didn't think he
2 would. Because he had been for eight months doing
3 whatever he wants to these people. So, go ahead,
4 pull it. And he did. And he did, yes. There was
5 no need to talk about gunshot residue and how to
6 collect it because on the video itself you can see
7 it. Take that time, take that energy and figure
8 out where Ricky was going and what he had in his
9 hand. Try. Try to get different angles. Try to
10 see.

11 (Video plays.)

12 MS. ZMROCZEK: They are going to say, Oh, they
13 are going to attack the police. They are going to
14 attack the police for not asking questions. It is
15 called an investigation and each and every one of
16 us is entitled to it. Investigator Holdorf said,
17 If a police officer had done this, he would have
18 been arrested. Not without a thorough
19 investigation of everybody and multiple times to
20 watch it to give multiple statements. No. But
21 three hours after someone who only shot at a target
22 in his life at a CWP class shoots someone, is he
23 held to that statement. And he didn't lie, he said
24 he didn't remember.

25 Here comes Rick. And, interestingly, ask

1 yourself, when they couldn't find the truck, and
2 watch the whole video of how long the truck is over
3 here in Ricky's parking lot, or Lanny's parking
4 lot, and ask how long -- you couldn't get in and
5 out of that road. That truck was there all night.
6 All night.

7 Yes, he said, He just came out shooting. I
8 know it is grainy, but at least we are trying to
9 see what he does when he bends over. Watch what he
10 does with his arms. What was he getting? The
11 first thing he does, the first thing he does is
12 bend down, put something right there in his back
13 pocket. They didn't even ask how many guns were at
14 the house.

15 (Video plays.)

16 MS. ZMROCZEK: And then, that was their state
17 of mind. That was their state of mind. Here is
18 Rick. Here is Ricky. Here comes the sirens.

19 Where is he going to go? Now we have more
20 people because Ricky is gone.

21 And then as you continue to watch, because you
22 have all of the video hours, we put them in there,
23 they are right there on the CD, you'll see him in a
24 little while coming right back up here, coming
25 right back up here. And she said, Oh, well, the

1 sweet little property guy didn't even know where
2 Megan Court was. But he knew it was Lot 9. And
3 you can look at his plat on Lot 9. And then look
4 at Lot 8. Lot 8, where they originally were being
5 sent to. And then look at the back of Lot 8 and
6 ask about that access road. That is why he came,
7 because there was another way in and another way
8 out that didn't involve harassing him.

9 He is just sitting in his truck minding his
10 own business -- staring right into their house,
11 with their 16-year-old daughter.

12 So all he does is -- he doesn't get his gun
13 out and walk over and blow his tires out. He
14 doesn't scream at him. They didn't even know a
15 person was in there. That was the concern. It was
16 more concerning when they found out he was in
17 there. She was going to write down the property --
18 the license tag to find out who it was. Because
19 this wasn't one time. This was months, or weeks,
20 excuse me, and days of him sitting outside.

21 And is it a coincidence that the same person
22 who had told Mark that he needs to keep his wife
23 under control or put her in check, or whatever it
24 was that he said. No, he takes note of the
25 frequency. He doesn't go out there the first time.

1 He is just trying to be a good husband and a good
2 father. It is the only thing that he knows and the
3 only place that he has lived where he has built his
4 life.

5 And why did Barbara call the police? Because
6 he said he is the devil and he is going to rain
7 hell down on her. How is she not -- she doesn't
8 know this man. The first time she met him, she had
9 to have her husband escort him out. But she is the
10 unreasonable one because she has a fear when
11 somebody says, I am going to rain hell fire down on
12 you, I'm the devil. The devil didn't have anything
13 to do with it, it is a property dispute. The devil
14 is the one that got out of the car and said, I have
15 something for you. His words. His words, not
16 mine. So she does file that police report when she
17 feels that fear. That is reasonable.

18 She called the police all the time. Look at
19 these dates. This isn't all the time. May -- or,
20 excuse me, this was May. July 2015, playing King
21 of the Mountain with his grandson. And since
22 Holdorf didn't ask, we can't tell you what was said
23 that made him go inside and fear and avoid whenever
24 he saw Mr. Pruitt. That would have been a good
25 follow-up question.

1 If the front door can't get out, how much
2 room do we have here? Right there, his hand is
3 going behind his back. That is what he sees. And
4 not in slow motion. He doesn't get to see it in
5 slow motion. He is seeing it within the 49 seconds
6 that he got out there, that he got out there, and
7 to the time that he stands in front of his wife.
8 And because she was trying to say, Shoo, Shoo, this
9 is mine, shoo. Because she shows her fear
10 differently than the State would like you to see.
11 But watch, he still hasn't pulled out his gun,
12 because it is not until he says, I have got
13 something for you that he does it.

14 What was that? Where did he go? That is when
15 he pulled his gun out. He is putting his hand
16 behind his back. He doesn't know what he is doing.
17 He even said, I don't know what he had, I couldn't
18 see it. I couldn't see it. And when you watch it
19 all together -- and watch it a lot, because we know
20 Investigator Holdorf didn't, and had he watched
21 that and saw him reach and then saw that one
22 movement, that one movement, that is what Mark saw
23 out of the corner of his eye was that one movement.
24 And, ladies and gentlemen, the combination of, I
25 got you -- I've got something for you, and that one

1 movement before he said -- when he said, Pull it,
2 that is his state of mind. That is his state of
3 mind. That is what they have to disprove, that he
4 wasn't scared, that he wasn't in fear. Scared
5 shitless, I think were his words. The man who got
6 a camera system so that he could show the police
7 that it is not just 4-wheelers running up and down
8 the street.

9 September 1st is the next time she calls the
10 police. June, July, August, September. Whew, she
11 is burning those phones up. But every time she
12 calls the police it is because she gets a verbal
13 threat that scared her. You don't know who you are
14 dealing with. And she didn't. Because what they
15 thought, because of what he told him, that he was a
16 Green Beret. She filed a police report again.
17 Nothing. They are like, Okay, that's it. We are
18 going to go. Do they blow up the road? Do they
19 start taking people out? No, they are being
20 reasonable. That is what they are doing.

21 Then we get to December. December. To Mock
22 people's fears when all they are trying to do is
23 ask for help. Maybe this is okay. He, Ricky's
24 son, said, Yes, I shined the lights into their
25 home. It was just one day maybe. But you can go

1 through the photos, because it is not one day.
2 But, hey, suck it up, they are your neighbors.
3 They are maybe -- I think they were called in
4 opening nuisance neighbors. Quite the nuisance.
5 Quite the nuisance. All they were asking for was
6 an investigation into these things. They
7 cooperated. They did everything. Even
8 Investigator Holdorf said he thought his behavior
9 was appropriate.

10 (Video plays.)

11 MS. ZMROCZEK: He can't go any further because
12 he is at the fence. That's when he says it. And
13 watch when he says it. Coming in front of Barbara,
14 his wife of 20 plus years. That is where he is
15 going, because that is his state of mind. And that
16 is what they have to tell you. If somebody tells
17 you that they are going to rain hell fire down on
18 you, that they are the devil, that they have got
19 something for you, you are just supposed to go back
20 inside and call the police, turn your backs on
21 them. That is what that -- that is what they want
22 you to do.

23 The judge, in addition to giving you the
24 elements of self-defense, she is going to tell you
25 things that you can consider. You can consider

1 whether the Defendant thought he was in actual
2 imminent danger of death or serious bodily injury
3 because they wouldn't -- they didn't want to talk
4 to you about the knife, they didn't want to
5 acknowledge that because, oh, it was a pocketknife.
6 We don't know because we don't have, but we do know
7 that it was on his side where he was putting his
8 hands.

9 The coroner, I have never called a coroner in
10 my life as a Defense attorney, but I did because,
11 you know what? She doesn't -- all she does is
12 investigate the death and turn it over. She
13 doesn't pick a side. And she said, Yes, there is a
14 knife right here. And you'll have his clothes.
15 You can take them back and look at them. Is that
16 reasonable for him to be in fear or could he have
17 been stopped by this fence or by that time who
18 knows what would have happened here, but he had 49
19 seconds from the time he walked out of that door to
20 figure it all out. Make them disprove self-defense
21 because that is what they have to do.

22 She is going to tell you that you can consider
23 all the facts and circumstances. All of them.
24 Prior difficulty. The right to act. This is law,
25 ladies and gentlemen. This isn't what I hope you

1 would do. This is what you are required to do
2 after you find the facts. But the law says, the
3 right to act on appearances. The Defendant does
4 not have to show he was in actual danger. It is
5 enough to believe that he was in imminent danger.
6 We are supposed to ignore the devil that has
7 something for you?

8 Maybe Mark was supposed to be of more than
9 ordinary firmness. Maybe he was supposed to be
10 remembering all of these things in the 49 seconds.
11 Or maybe he was supposed to be exactly what he was,
12 which was a human being with a wife and a daughter
13 and a fear of the man who just told him he was the
14 devil and he had something for him. There is a
15 reason that Mr. Pruitt waited to come out of that
16 truck, because he was waiting on Mark.

17 She is going to give you the law on words
18 accompanied by a hostile act. Hostile act.

19 Investigator Holdorf, where do people keep
20 weapons? In their pocket. Where were his hands?
21 But he's got 49 seconds and now maybe three seconds
22 to figure it out.

23 Prior difficulties. Ladies and gentlemen,
24 that is the terror that we are talking about. It
25 is not 4-wheelers up and down the road. It is a

1 lot more than that. It wasn't just Mr. Pruitt. It
2 was an army of his friends that had moved down in
3 there. Evidence of prior difficulty may be
4 considered in deciding whether a threat existed.

5 Remember what I told you last time? Remember
6 what I told you the last time I saw you? Do you
7 remember that? Do you remember that threat?
8 Because I assure you in Mark's mind, that threat
9 existed.

10 Threats made by the victim may be considered
11 in determining whether he was actually in fear and
12 how serious that threat was. Serious enough for
13 Mr. Pruitt to get out of the truck and make sure he
14 finished it.

15 Ladies and gentlemen, I could stand up here
16 all day and defend Vigilante Volstromer, but all we
17 do is ask that you take this video, because it has
18 been made very clear that people can't always
19 remember, but when you watch that video also, make
20 sure you find where Barbara told the police to get
21 off her lawn or the fire department to get off her
22 lawn, because they want you to hate her. They want
23 you to think she is a bad person because she
24 expresses her fear in a different way. That is
25 what she wants.

1 (Video plays.)

2 MS. ZMROCZEK: Coming over the fence. You can
3 listen to it a million times. But you have to want
4 to hear it. You can't just ignore the things that
5 you don't want to hear. The totality of the
6 evidence that is presented is what we are asking
7 you to do. Just investigate all of it. Mark grabs
8 his gun because he feared a dog. That is so
9 established. That is one thing he remembers to put
10 in his hand. He doesn't walk out with his gun
11 blazing. He only does it after he is threatened.
12 And he stepped in front of Barbara. They
13 cooperate. These people with innocent minds
14 thinking, Well, they will see. They have lived it.
15 They don't know exactly what happened. But you do
16 know exactly what he thought, because he told you.
17 He was coming over the fence. I didn't put those
18 words, it will be on the original piece of evidence
19 that you take back with you.

20 (Video plays.)

21 MS. ZMROCZEK: Okay? She is going to tell
22 you, ladies and gentlemen, that the law is you
23 don't have to wait for the victim to get the jump
24 on you to assert self-defense. That is what the
25 law is. As it should be. How long was he supposed

1 to wait to see what was behind his back or in his
2 pocket? How long? His actions were reasonable.
3 His belief, his fears were reasonable. They were
4 justified. They were self-defense, ladies and
5 gentlemen.

6 She talked about reasonable doubt and how
7 you'll have no reason once you go through all this
8 evidence, but I submit to you the law says if you
9 question or pause, like, What did he have in his
10 pocket? What did he mean? Where did Rick -- what
11 did Rick take? Why did Rick show up on this side?
12 Ladies and gentlemen, those are all reasons to
13 doubt. You don't need all of them, you just
14 need -- you don't even have a number. I submit you
15 just need one when we are talking about deciding
16 whether or not in that 49 seconds he acted in
17 self-defense.

18 And, ladies and gentlemen, if you have those
19 questions and the State can't answer them for you,
20 then they failed Mark and they failed the
21 constitution, and they have failed you.

22 Ladies and gentlemen, Ms. Austin and I have
23 done everything that we can to defend Mark, to
24 defend the constitution, and he was defending his
25 wife. We are asking that you apply the law to the

1 facts because we have done all we can, and he is
2 now in your hands.

3 Thank you.

4 THE COURT: Thank you.

5 REBUTTAL CLOSING ARGUMENT

6 MS. SAMPSON: I'm done, is not self-defense.
7 Ms. Zmroczek, as I told you, was going to tell you
8 about some red herrings she wanted you to look at.

9 Now, what are the elements of self-defense?
10 What she did get right, and what I told you before
11 I sat down, is that, A, we have to prove our case,
12 and, B, we have to disprove self-defense.

13 What she didn't bother to tell you, and what
14 the judge will instruct you, is we only got to get
15 rid of one element, not all. Just one. It is like
16 a 3-legged stool. You knock one of them out, the
17 stool falls over, no self-defense.

18 What are the elements? The Defendant must
19 have been without fault in bringing on the
20 difficulty. In this case, because they are asking
21 for defense of others, that means neither Barbara
22 Volstromer nor the Defendant Mark Volstromer could
23 be in fault in bringing about the difficulty.
24 Neither.

25 Secondly, either the Defendant, and in this

1 case because defense of others, his wife, both of
2 them must actually believe they are in imminent
3 danger -- either one -- of losing life or
4 sustaining serious bodily injury, or they were in
5 such imminent danger.

6 And in this case, because you don't see the
7 victim pull out a gun and point it at them, or
8 anything like that, if there is defense of either
9 defense of others or self-defense, if based on the
10 belief of imminent danger, then a reasonable person
11 of ordinary firmness -- not one bit by a dog ten
12 years before this happened, not one who is scared
13 of life, not one who calls the police for a cat,
14 but one of ordinary firmness and courage would have
15 entertained the same belief. That is the law.

16 Now, did we disprove that? You are dern
17 straight we did. And how did we do that? First of
18 all, the Defendant was not without fault. Not
19 without fault. How do we know that? First of all,
20 he went outside with a loaded gun. For
21 self-defense, you have to be without fault. He
22 came to a word fight with a weapon.

23 For the wife, I didn't even put this on here,
24 but for her to be able to defend herself, she has
25 to be without fault. And I promise you I am not

1 going to play that video again, we have all seen
2 it, but what I want you remember is I played it in
3 its entirety. I didn't play a piece here or a
4 piece there, so that could see what happened in
5 real time. She started an argument for no reason.
6 Don't take pictures of a person. Remember how this
7 all started? These two people were driving to his
8 property where he has the right to go home,
9 although he didn't get to go home, thanks to Mark
10 Volstromer. And they are stopped because she is
11 taking pictures of them. Don't have to believe me,
12 they are in evidence. You can see them. And they
13 stop. They are like, Why are you taking pictures
14 of us? And it goes downhill from there. They were
15 not without fault in bringing on the difficulty.
16 He told the victim to come onto his property.

17 Now, she did tell you, and the judge is going
18 to tell you about these words that you can and
19 cannot do, and because I want to get it just right,
20 I'm going to read it.

21 Self-defense is not available to a person who
22 uses language which is so contemptuous that a
23 reasonable person would expect it to bring on a
24 physical encounter.

25 Come on over here, tough dude. Come on over.

1 Now, I want to say something that might offend
2 some people. Y'all gentlemen like to do stuff like
3 that. Most women aren't going to challenge each
4 other, but men do. Come on over. Those are
5 fighting words that were made and designed to bring
6 him onto their property. Because once he is on
7 their property, they can blow him away, because
8 both of them are armed. They are not without
9 fault.

10 The other thing I want you to remember, the
11 fight was with Mr. Holten, between him and Barbara
12 Volstromer, right? There is no argument with
13 Mr. Pruitt until Mark comes outside. He brought
14 about the difficulty. He came outside. Mr. Pruitt
15 never even got out of the truck. Wasn't even
16 saying anything. Not one -- nothing, until Mark
17 came out there with that gun. No, y'all not,
18 arguing with them. Then -- watch the video, I'm
19 not making this up -- then Pruitt comes on. And
20 what does Mark say to him? Bring it. Come on my
21 property. Not, Hey, dude, get back in your truck.
22 Not, I'm scared. Not, Get away from here. Not, Go
23 on, get. None of that. Bring it. Come on over
24 here.

25 You can't -- you cannot use words like that

1 and then, Oh, it was self-defense.

2 Pointed and presented the gun at the victim.
3 We heard about that. One, two, three, four, five.
4 I'm done.

5 Did he say, Pull it? Maybe. He brought on
6 the difficulty. Did my victim say, Pull it? Sure
7 did, after he pointed a loaded gun at him. Words
8 alone are not enough. You will hear that.

9 And once she shows you the video, and I want
10 you to watch, and I am going to tell you where to
11 look, because I like to tell y'all what to do -- my
12 kids say I say that all the time, I am going to
13 tell you what to do -- is when you look at the
14 video that she shows you, there is going to be a
15 part right here where it splits right here, and
16 there is time and a date. And if you look right
17 above that on that bottom one, you can see that
18 Mr. Pruitt is standing there like this. He doesn't
19 move as Mark Volstromer takes those steps towards
20 him.

21 She said, Oh, it is because he wanted to
22 protect his wife and get between the wife. I say
23 it is because he wanted to make sure he got a good
24 shot at that heart, because that is what happened.

25 So, that one is gone. I don't have to go any

1 further. I can stop now. But just like she told
2 you, everything is in your hands now, and she is
3 giving him to you. It is hard for me to give this
4 case away to y'all to make -- until I know for sure
5 that I have done my job.

6 I have told you why it is murder, and now I am
7 going to tell you why it is not self-defense. He
8 was not in imminent danger. He said, I'm not
9 coming over there. You come over here.

10 And, remember, that all starts after -- she
11 wants you to forget that part. She wants you to
12 forget that nothing happened from Mr. Pruitt until
13 he is challenged by Mark Volstromer. Challenged by
14 him. I'm not coming over.

15 Does he say, I'm the devil, or the villain?
16 Sure does. After he is challenged. Both
17 Volstromers were armed. How can they be in danger?
18 There is a fence. There is pictures of the
19 property line. You'll see it. I didn't bother to
20 do this to y'all because, well, it is a lot of
21 stuff over here. But, look, there is a whole
22 property and then the fence. And the surveyor, the
23 one thing he did say is, Don't put your fence at
24 the end of your property. You are going to hear a
25 stipulation. I agreed their property doesn't end

1 right at the fence. But look at the pictures.
2 There is a stake where their property ends. And
3 all the equipment from the medical personnel, all
4 the blood, all of everything with this case is past
5 that. He wasn't near that fence. They want you to
6 believe that. Watch it with your own eyes.

7 I don't see anybody put their hands in their
8 pocket. Y'all men like to pull up your pants.
9 That is what I see.

10 They complain that Ricky doesn't touch them,
11 that nobody touches him, but then once somebody is
12 found dead, now it is, Oh, they were doing
13 something they shouldn't have been doing. Which is
14 it?

15 Fence. That fence is important. It keeps
16 people out. That is the whole point of a fence.
17 How can you be in imminent danger when to get to
18 you with your gun, he has got to climb through that
19 fence. I didn't make that up. You see Barbara
20 Volstromer had to do it to check on them. Couldn't
21 get to him. There is no imminent danger.

22 She now wants you to believe, Oh, he must have
23 had a gun on him. So how come somebody didn't say
24 that, just one somebody, anybody? Because that
25 wasn't true.

1 Now, and for this to be imminent danger, once
2 you have said all these things and done all these
3 things, one question. And if you think the answer
4 to this question is yes, find him not guilty. Did
5 you hear anyone tell you they ever saw Keith Pruitt
6 with a gun? Ever? Not that day, ever? So why,
7 when he is standing out there yelling, did you
8 suddenly decide he had one? They say, Oh, before
9 we heard shooting. It is the country. It is
10 December. You know what else happens in December?
11 Hunting. In the country.

12 The only thing the victim had was words and a
13 folded pocketknife, that nobody saw.

14 Now, Ms. Zmroczek wants to talk about, Oh,
15 well, you know, we didn't bring you the truck. And
16 poor ole Holdorf, I mean, that poor man, he is
17 damned if he does and damned if he doesn't. If he
18 had went and looked in that truck, she would be
19 yelling about not going through it enough. Now he
20 didn't, and where -- but here is the problem with
21 that. Did anybody tell him, Hey, go look at the
22 truck? Anybody? Nope. Nope. And you even heard
23 that he came back and talked to them later about
24 something else. Nobody told him then either.

25 And what I find kind of curious, and she wants

1 to bring it up, about this video that they didn't
2 get. He came back later. You heard him talk about
3 that. They didn't tell him then either. He can't
4 know what you don't tell him. He is not a
5 magician. He neither can make up evidence nor know
6 it is there unless you kind of give him a heads-up.

7 And I took -- you have the screenshot. Hands
8 open. This is after Mark came on the property.
9 This is after Mark had challenged him. This is
10 after Mark -- Barbara is still yelling about
11 whatever. Wide open. Not in his pocket. Not
12 going in his pocket. Not doing anything. Is he
13 yelling? Oh, yes, he is. Is he being annoying, a
14 nuisance, whatever you want to call it? Yes, he
15 is. But, ladies and gentlemen, you don't get to
16 shoot your neighbors for being annoying or a
17 nuisance. You just don't.

18 She went towards the victim. Now, you watch
19 that video again. She just showed you pieces. But
20 just like I told you, if you want to watch it
21 again, right on that bottom screen you are going to
22 see her little white shorts just go running up to
23 the fence. Go on. If you are so scared, what the
24 heck are you doing running up to the fence with
25 your little shorts? I would be backing the heck

1 up, right? But she doesn't. I don't want you to
2 act in a certain way, just act like you are scared.
3 Any of it. Any little piece. I have already said
4 this enough times, I am not going to keep talking
5 about it.

6 Never saw a weapon. Never told anybody. And
7 she said, Oh, well, you know, it has been 2000 days
8 and Ms. Sampson wants you to think about the three
9 attorneys. Yes, because it took that long for him
10 to come up with being scared shitless. You get to
11 think about that.

12 Never. Not Day 100, and not Day 1, Day 2,
13 100, 200, 1200, 1500, 1700 -- Day 2000 is when you
14 hear he is scared, after three lawyers and when he
15 is here asking you not to find him guilty, that is
16 when he is scared. Not when he tells the victim,
17 Come on over here. Does that sound like somebody
18 who is scared? Who didn't bring about the
19 difficulty? There is no imminent danger, ladies
20 and gentlemen.

21 Use language that would bring physical
22 encounter. Come on my property. Come on.

23 So now we have knocked out those two. She
24 wants you to think because I said they didn't act
25 in a certain way that somebody of the same firmness

1 and courage would have entertained the same belief.
2 Because he got bit by a dog nine years prior, he
3 believed he was in imminent danger? Do you hear
4 any dogs? The only time you hear dogs is after the
5 shooting, and then you do hear a whole bunch of
6 them. And you hear a cat. But you don't hear,
7 before he walks out there, you don't hear Keith
8 Pruitt arguing with anybody until Mark goes out
9 there. How is it reasonable? You can't bring on a
10 problem and then, Oh, now I have got to fix it. If
11 you do, you are going to be sitting over there.
12 Because, according to our law, you cannot bring
13 about a difficulty and then ask for self-defense.

14 Any fear he might have had, if he had any, was
15 not reasonable, because there is a fence between
16 him and that man, two guns between him and that
17 man, that man would have had to climb through that
18 fence, all of those things. It is not reasonable.

19 So what are you left with? He wasn't acting
20 in self-defense. He just wasn't. He just wasn't.

21 So defense of others. So for defense of
22 others, it has got to be a friend, relative,
23 bystander. We have got that, right, his wife?
24 They had the right to act in self-defense. I just
25 told you why she didn't have the right. A, she

1 started it. B, she never said she was scared.
2 Listen to the whole thing. And all the cussing.
3 Does she sound scared? I mean, I am not saying you
4 have got to cry, although I have seen some trying
5 to cry in the last days here. I'm not saying how
6 you should react, but maybe the words, I'm scared
7 of him, should have come out of your mouth at some
8 point instead of 2000 days later.

9 So, and there has to be some evidence that
10 exists that he was defending her. When you tell
11 someone, Come on over here, after calling him Tough
12 Guy, while you are armed and as far as you know
13 they are not, not in the position of defending
14 others. When Barbara Volstromer runs over to that
15 that fence to get closer to that danger, that is
16 not fear. That is -- and she said, Oh, well, she
17 got closer. And I'm glad she brought this up. He
18 came closer to them. When you watch that video,
19 who came closer to whom? She came closer to him.
20 She brought about the difficulty. She was by that
21 fence. So if he did now need to defend her, that
22 is Barbara Volstromer's fault. And you don't get
23 self-defense for that. You just don't.

24 Because of that, we knocked all that down. So
25 what are you left with? The Defendant didn't act

1 in defense of others either.

2 As you go back there, I want you to remember
3 that one thing, that one thing even if you are
4 forgetful like me, that one thing.

5 Now, Ms. Zmroczek talked to you about a few
6 things that I am going to check off, and then I am
7 going to sit down. And I know some of y'all are
8 like, Please sit down.

9 They were so scared, she told you,
10 Ms. Zmroczek told you, that they stopped having
11 their grandson over. But remember what Barbara
12 Volstromer told you? They didn't stop having their
13 grandson over until this happened. He was in the
14 middle of all this. They are so scared in February
15 that in the summer they have their grandson over.
16 That was what happened. I didn't make that up.

17 She said, We are here today because they
18 didn't follow the rules of how somebody acts. No,
19 ma'am, and, no, sir. We are here today because
20 they didn't follow the law. They didn't use decent
21 human humanity. They just shot a man and left him
22 in the middle of the road. That is why we are
23 here.

24 She said, Maybe -- maybe they are malicious.
25 Did you hear Barbara Volstromer while Connie Pruitt

1 is standing over her husband, who is dying, she
2 runs out there yelling, Fuck you? That is not
3 malicious? That is what she said.

4 She wants us to go back and say, Well, Holdorf
5 should have done this, should have asked, Well,
6 what did this mean or that mean? How about just
7 tell them -- You have the statement. He
8 specifically asked him, Why would you be afraid of
9 Mr. Pruitt? He never tells him anything. He can't
10 make this up, he doesn't know.

11 Tell him. Just tell him what?

12 She is like, Well, this is a bad investigation
13 because he didn't ask how many guns they have.
14 They clearly only need one. And he gave it to
15 them. Why would I ask how many others exist. It
16 doesn't matter.

17 Ladies and gentlemen, we have proved to you,
18 despite what you might have walked in here thinking
19 a murderer looked like, that that is what he looks
20 like. We have proven to you that it is not
21 self-defense, because we didn't just knock out one
22 leg of the table, we kicked them all down. Because
23 of that, ladies and gentlemen, I am confident that
24 you don't have a reasonable doubt. It is not all
25 doubt. You don't get back there and go, Well, let

1 me see, did they go look at that? Did we give you
2 the evidence to show he was guilty? Yes, we did.
3 Did we give you the evidence to show you he didn't
4 act in self-defense or the defense of others? Yes,
5 we did. That's it. There is no question he did
6 this. He didn't defend himself, he didn't defend
7 his wife because he didn't meet the elements. We
8 are done.

9 We have done our job, now I am asking you to
10 do yours. Go back there, talk about it, watch
11 whatever you need, remember what I told you, and
12 come back out here with a verdict that speaks the
13 truth, because it is the truth. Mr. Mark
14 Volstromer took the law in his hands and shot Keith
15 Pruitt and left him to die on the street for no
16 lawful reason. And for that, you need to hold him
17 accountable and find him guilty of murder.

18 Thank you.

19 THE COURT: Thank you. Ladies and gentlemen
20 of the jury, you might want to take a stretch or
21 need to stand up. We are going to charge you on
22 the law -- I know you have been sitting for a
23 second -- and then we will send you all back to the
24 jury room, unless there is someone who needs to go
25 to the restroom right now.

1 Do you need to go right now? Okay. We will
2 let you go. Does anyone else need to go?

3 All right, we will take about five minutes.

4 (WHEREUPON, the jury retires to the jury
5 room at 12:37 p.m.)

6 THE COURT: All right, we'll take about five
7 minutes.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Bring them in.

10 (WHEREUPON, the jury came into open
11 court at 12:46 p.m.)

12 THE BAILIFF: The jury is all seated, Your
13 Honor.

14 JURY CHARGE

15 THE COURT: All right, thank you.

16 All right, ladies and gentlemen of the jury,
17 you have heard all of the evidence, you have heard
18 the arguments of counsel. Now it is my
19 responsibility to charge you as to the law in this
20 case.

21 I remind you that during this trial you and I
22 have certain duties to perform. As the trial judge
23 it is my responsibility to preside over the trial
24 of this case, and I also have the duty to rule on
25 the admissibility of evidence offered during this

1 trial. You are to consider only the competent
2 evidence before you. If there was any testimony
3 ordered stricken from the record in this case
4 during the trial, you must disregard that
5 testimony. You are to consider only the testimony
6 which has been presented from this witness stand,
7 any exhibits which have been made a part of the
8 record in this case, and any stipulations of
9 counsel.

10 Ladies and gentlemen of the jury, the parties
11 in this case have stipulated to the following.

12 One, the victim, Keith Pruitt, died in the
13 emergency room of Palmetto Richland Memorial
14 Hospital from injuries sustained from a gunshot
15 wound, and therefore no testimony is needed from
16 the medical personnel that treated Pruitt in the
17 emergency room.

18 The second stipulation is that the property
19 owned by the Defendant extends past the white rail
20 fence that runs parallel to Megan Court.

21 Ladies and gentlemen of the jury, I have the
22 additional duty to charge you the law applicable to
23 this case. As the presiding judge, I am the sole
24 judge of the law of this case, and it is your duty
25 as jurors to accept and apply the law as I now

1 state it to you. If you already have any idea as
2 to what the law is or what the law ought to be and
3 it does not agree with what I now tell you the law
4 is, you must abandon this idea because you were
5 sworn to accept the law and apply the law exactly
6 as I state it to you.

7 In every case tried in this court before a
8 jury, the jury becomes the sole and exclusive judge
9 of the facts in the case. A trial judge cannot
10 state, comment on, or make any statements to a
11 trial jury about the facts in a case. Since you,
12 the jury, are the sole judges of the facts in this
13 case, you are not to infer from what I have said
14 during the progress of this trial in ruling upon
15 the admissibility of evidence or anything that I
16 say now during the course of this instruction to
17 you that I have an opinion about the facts in this
18 case. The law does not allow me to have an opinion
19 about the facts in this case. This is a matter
20 solely for you, the jury, to determine.

21 As jurors, it is your duty to determine the
22 effect, value, weight, and truth of the evidence
23 presented during this trial. You must not consider
24 as evidence any statement of counsel made during
25 the trial. Statements of counsel do not constitute

1 evidence. Rather, counsel is articulating the
2 position and contention of their client. This rule
3 applies to opening statements of counsel and
4 clothing arguments.

5 Ladies and gentlemen of the jury, there are
6 two types of evidence which are generally presented
7 in a trial: Direct evidence and circumstantial
8 evidence. Direct evidence directly proves the
9 existence of a fact and does not require deduction.
10 Circumstantial evidence is a proof of a chain of
11 facts and circumstances indicating the existence of
12 a fact. Crimes may be proven by circumstantial
13 evidence. The law makes no distinction between the
14 weight or value to be given to either direct or
15 circumstantial evidence. However, to the extent
16 that the State relies on circumstantial evidence,
17 the circumstances must be consistent with each
18 other and when taken together point conclusively to
19 the guilt of the accused beyond a reasonable doubt.
20 If these circumstances merely portray the
21 Defendant's behavior as suspicious, the proof has
22 failed.

23 The State has the burden of proving the
24 Defendant guilty beyond a reasonable doubt. The
25 burden rests with the State, regardless of whether

1 the State relies on direct evidence, circumstantial
2 evidence, or some combination of the two.

3 Necessarily, you must determine the
4 credibility of witnesses who have testified in this
5 case. Credibility simply means believability. It
6 becomes your duty as jurors to analyze and evaluate
7 the evidence and determine which evidence convinces
8 you of its truth.

9 In determining the believability of witnesses
10 who have testified in this case, you may believe
11 one witness over several witnesses, or several
12 witnesses over one witness. You may believe a part
13 of the testimony of a witness, and reject the
14 remaining part of the testimony of that same
15 witness. You may believe the testimony of a
16 witness in its entirety, or reject the testimony of
17 a witness in its entirety. You may consider
18 whether any witness has exhibited to you any
19 interest, bias, prejudice, or other motive in this
20 case. You may also consider the appearance and
21 manner of a witness while on the witness stand and
22 whether the testimony of the witness was
23 corroborated and made stronger by other testimony
24 and evidence, or was it made weaker and impeached
25 by other testimony and evidence presented.

1 Ladies and gentlemen of the jury, as I told
2 you on Monday or Tuesday -- Monday -- the
3 indictment in this case charges the Defendant with
4 murder. I remind you that the fact that the
5 Defendant was arrested, charged, and indicted in
6 this case is not evidence in this case and cannot
7 be considered by you as evidence of guilt in this
8 case, nor does it create any presumption or
9 inference of guilt. The document is simply the
10 formal written instrument which contains the charge
11 made against the Defendant. It is the formal
12 document by which this case is brought into court.

13 Ladies and gentlemen of the jury, now I will
14 talk about the presumption of innocence. The
15 Defendant in this case has pled not guilty to this
16 indictment, and that puts the burden on the State
17 to prove the Defendant guilty. A person charged
18 with committing a criminal offense in South
19 Carolina is never required to prove himself
20 innocent. I charge you that this is an important
21 rule of the law that the Defendant in a criminal
22 trial, no matter what the seriousness of the charge
23 may be, will always be presumed to be innocent of
24 the crime for which the indictment was issued
25 unless guilt has been proven by evidence satisfying

1 you of that guilt beyond a reasonable doubt.

2 This presumption of innocence does not end
3 when you begin your deliberation, but it
4 accompanies the Defendant throughout the trial
5 until or unless you reach a verdict of guilt based
6 on evidence satisfying you of that guilt beyond a
7 reasonable doubt.

8 The presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the
10 Defendant, which remains with the Defendant until
11 it has been stripped by evidence satisfying you of
12 the Defendant's guilt beyond a reasonable doubt.

13 The presumption of innocence is not a mere
14 legal theory. It is not just a legal phrase. It
15 is a substantial right to which every Defendant is
16 entitled unless you, the jury, are satisfied with
17 the evidence of the Defendant's guilt beyond a
18 reasonable doubt.

19 You may ask what is reasonable doubt. What is
20 a reasonable doubt in the law? A reasonable doubt
21 is the kind of doubt that would cause a reasonable
22 person to hesitate to act. The State has the
23 burden of proving the Defendant guilty beyond a
24 reasonable doubt. Some of you may have served as
25 jurors in civil cases where you were told it is

1 only necessary to prove that a fact is more likely
2 true than not true, such as, by the greater weight
3 or preponderance of the evidence. In criminal
4 cases, the State's proof must be more powerful than
5 that. It must be beyond a reasonable doubt.

6 Proof beyond a reasonable doubt is proof that
7 leaves you firmly convinced of the Defendant's
8 guilt. There are very few things in this world
9 that we know with absolute certainty, and in
10 criminal cases the law does not require proof that
11 overcomes every possible doubt. If convinced that
12 the Defendant is guilty of the crime charged, you
13 must find the Defendant guilty. If, on the other
14 hand, you think there is a real possibility that
15 the Defendant is not guilty, you must give the
16 Defendant the benefit of the doubt and find him not
17 guilty.

18 Ladies and gentlemen, next we will discuss
19 intent. In order to establish criminal liability,
20 criminal intent is required. For example, the
21 mental state required to be proven by the State for
22 a particular crime might be purpose, intent,
23 knowledge, recklessness, or criminal negligence.
24 Criminal intent must be proven by the State beyond
25 a reasonable doubt. Criminal intent is always a

1 matter that must be determined by the jury from the
2 circumstances surrounding the situation.

3 There is no way to prove intent to a
4 mathematical certainty. There is no way medical
5 science can dissect a person's brain and determine
6 what the person had in mind. So the law says that
7 criminal intent may be inferred from the
8 circumstances shown to have existed. This is how
9 you make a determination of whether or not the
10 element requiring intent was present. It is not
11 necessary to establish intent by direct and
12 positive evidence, but intent may be established by
13 inference in the same way as any other fact, by
14 taking into consideration the act of the parties
15 and all the facts and circumstances of the case.

16 Criminal intent is a mental state, a conscious
17 wrongdoing. It is up to you to determine what the
18 Defendant intended to do based on the circumstances
19 shown to have existed.

20 Criminal intent can arise from action or a
21 failure to act. It may arise from negligence,
22 recklessness, or an indifference to the duty of the
23 consequences that is considered by the law to be
24 equivalent of criminal intent.

25 Specific intent. A specific intent to kill is

1 an element of murder. Specific intent means
2 intending a certain result to actually occur, not
3 accidentally or involuntary. Intent may be shown
4 by acts and conduct of the Defendant and other
5 circumstances from which you may naturally and
6 reasonably infer intent.

7 Evidence of the character of the act, the
8 character of the instrument used, the manner in
9 which it was used, the purpose to be accomplished,
10 and the resulting wounds or injuries may be
11 considered in determining the intent with which the
12 act was committed. Intent may also be inferred
13 when it is demonstrated that the Defendant
14 voluntarily and willfully commits an act, the
15 natural tendency of which is to destroy another's
16 life.

17 Ladies and gentlemen of the jury, the
18 Defendant in this case, once again, is charged with
19 murder. The State must prove beyond a reasonable
20 doubt that the Defendant killed another person with
21 malice aforethought.

22 Malice is a legal term implying wickedness and
23 excluding a just cause or excuse. The term malice
24 indicates a formed purpose and design to do a
25 wrongful act under the circumstances that exclude

1 any legal right to do it. It is something which
2 springs from wickedness, from depravity, from a
3 heart devoid of social duty and fatally bent on
4 mischief.

5 Malice may be express or implied. Malice is
6 hatred, ill will, or hostility towards another
7 person. It is the intentional doing of a wrongful
8 act without just cause or excuse and with an intent
9 to inflict an injury or under circumstances that
10 the law would infer an evil intent.

11 Malice aforethought does not require that
12 malice exist for any particular time before the act
13 is committed, but malice must exist in the mind of
14 the Defendant just before and at the time of the
15 act, at the time the act is committed. Therefore,
16 there must be a combination of the previous ill
17 intent and the act.

18 Malice is shown when a person speaks words
19 which express hatred or ill will for another or
20 when a person prepared beforehand to do the act
21 which was later accomplished. For example, lying
22 in wait for a person or any other act of
23 preparation going to show that the deed was within
24 the Defendant's mind would be malice.

25 Ladies and gentlemen of the jury, the

1 Defendant in this case has raised the defense of
2 self-defense. Self-defense is a complete defense
3 and, if established, you must find the Defendant
4 not guilty. The State has the burden of proving
5 beyond a reasonable doubt of disproving
6 self-defense beyond a reasonable doubt. And I'll
7 read that again. The State has the burden of
8 disproving self-defense beyond a reasonable doubt.
9 If you have a reasonable doubt of the Defendant's
10 guilt after considering all of the evidence,
11 including the evidence of self-defense, then you
12 must find the Defendant not guilty. On the other
13 hand, if you have no reasonable doubt of the
14 Defendant's guilt after considering all the
15 evidence, including the evidence of self-defense,
16 then you must find the Defendant guilty.

17 The following are the elements required to
18 establish self-defense.

19 No. 1, without fault. First, the Defendant
20 must be without fault in bringing on the
21 difficulty. If the Defendant's conduct was the
22 type which was reasonably calculated to and did
23 provoke a deadly assault, the Defendant would be at
24 fault in bringing on the difficulty and would not
25 be entitled to an acquittal based on self-defense.

1 Contemptuous language. Self-defense is not
2 available to a person who uses language which is so
3 contemptuous that a reasonable person would expect
4 it to bring on a physical encounter and which did
5 actually contribute to the physical encounter.

6 No. 2, imminent danger. The second element of
7 self-defense is that the Defendant was actually in
8 imminent danger of death or serious bodily injury
9 or that the Defendant actually believed he was in
10 imminent danger of death or serious bodily injury.

11 If the Defendant was actually in imminent
12 danger, it must be shown that the circumstances
13 would have warranted a person of ordinary firmness
14 and courage to strike the fatal blow to prevent
15 death or serious bodily injury. If the Defendant
16 believed he was in imminent danger of death or
17 serious bodily injured, it must be shown that a
18 reasonably prudent person of ordinary firmness and
19 courage would have had the same belief.

20 In deciding whether the Defendant actually was
21 or believed he was in imminent danger of death or
22 serious bodily injury, you should consider all the
23 facts and circumstances surrounding the crime,
24 including the physical condition and
25 characteristics of the Defendant and the victim.

1 All right. Next we will talk about the
2 defense of others. Under the law of self-defense,
3 the Defendant may take another's life in the
4 defense of others. The right to intervene to
5 protect another person is subject to the same
6 rights and limitations as the right of
7 self-defense.

8 The Defendant may take the life of a person
9 who assaults a friend, relative, or bystander if
10 that friend, relative, or bystander would have had
11 the right of self-defense.

12 To show that the person being defended had the
13 right of self-defense, it must be shown that the
14 person being defended and the Defendant were both
15 without fault in bringing on the difficulty. If
16 the conduct of the person defended or the Defendant
17 was the type which was reasonably calculated to and
18 did provoke a deadly assault, the person would be
19 at fault in bringing on the difficulty and would
20 not have the right to self-defense. Therefore, the
21 Defendant would not have the right to use deadly
22 force in defending that person.

23 The defense of another person is excusable if
24 the Defendant had reasonable grounds to believe and
25 in good faith did believe that the person being

1 defended was in imminent danger of death or serious
2 bodily harm from the victim.

3 In deciding whether the person defended
4 actually was or that the Defendant actually
5 believed a person was in imminent danger of death
6 or serious bodily injury, you should consider all
7 the facts and circumstances surrounding the crime,
8 including the physical condition and
9 characteristics of the party.

10 Right to act on appearances. The Defendant
11 does not have to show that the person the Defendant
12 defended was actually in danger. It is enough if
13 the Defendant believed the person was in imminent
14 danger. The Defendant has the right to act on
15 appearances, even though the Defendant's belief may
16 have been mistaken. The Defendant must show that
17 under the circumstances as they appeared to the
18 Defendant, the Defendant believed the person
19 defended was in danger and that a reasonably
20 prudent person of ordinary firmness and courage
21 would have had the same belief under the same
22 circumstances.

23 It is for you, the jury, to decide whether the
24 Defendant's fear of immediate danger of death or
25 serious bodily injury to the person defended was

1 reasonable and would have been felt by an ordinary
2 person in the same situation.

3 The Defendant does not have to wait until the
4 victim gets the drop on the person defended. The
5 Defendant has the right to act under the law for
6 self-preservation to prevent the victim from
7 getting the drop on the person defended.

8 Prior difficulties. Evidence of prior
9 difficulties between the Defendant and the victim
10 may be considered in deciding whether a threat
11 existed, whether the Defendant had a reason to
12 believe a threat existed and how serious that
13 threat was.

14 Words accompanied by hostile acts.
15 In determining whether the Defendant had a right to
16 use force in self-defense, words accompanied by
17 hostile acts may be sufficient to constitute a
18 threat of physical attack, or in some cases to
19 constitute a threat of serious bodily harm.

20 Threats by the victim. Threats made by the
21 victim may be considered in determining whether the
22 Defendant actually was or believed he was in
23 imminent danger.

24 The final element of self-defense is that the
25 Defendant had no probable way to avoid the danger

1 of death or serious bodily injury than to act as
2 the Defendant did in this particular instance.

3 Duty to retreat. Premises. If the Defendant
4 was on his premises, the Defendant had no duty to
5 retreat before acting in self-defense.

6 Degree of force. One has the right to use
7 force and repelling force or in protecting one's
8 self and one cannot be required to make a nice
9 calculation as to the degree or as to the degree or
10 quantity or amount of force which may be necessary
11 for one's complete protection from loss of life or
12 serious bodily harm to one's self.

13 Ladies and gentlemen of the jury, the State
14 and the Defendant are entitled to the individual
15 opinion of each juror on the issues of fact in this
16 case. It is the duty of each of you to consider
17 and weigh all of the evidence in this case and
18 from such evidence to determine, if you can, the
19 question of the guilt or innocence of the
20 Defendant.

21 There is nothing peculiarly different in the
22 way a jury should consider the evidence in a
23 criminal case from that in which all reasonable
24 persons treat any question depending upon evidence
25 presented to them. You are expected to use your

1 good sense, consider the evidence in the case for
2 only those purposes for which it has been admitted
3 and give it a reasonable and fair construction in
4 the light of your common knowledge of the natural
5 tendencies and inclinations of human beings.

6 Your verdict in this case will be one of two
7 forms. If, from the evidence and the law, you find
8 that the Defendant is not guilty of the crime
9 charged, you will circle not guilty on the verdict
10 form that I will give you, and the foreman will
11 sign his name. If, on the other hand, you find
12 that the Defendant is guilty based upon the
13 evidence and the law which you have heard, you will
14 circle guilty on the verdict form, and the foreman
15 will sign his name.

16 Your verdict must be unanimous. It must be
17 guilty or not guilty. The law requires that a jury
18 verdict be unanimous, which means that all jurors
19 must agree. The only two forms of the verdict are
20 guilty or not guilty.

21 Mr. Foreman, once the jury reaches a verdict
22 of not guilty or guilty, circle the verdict on the
23 face of the verdict form and sign under the verdict
24 form signifying that what you have circled is the
25 verdict of all the jurors. Then you will notify us

1 that you have reached a verdict by knocking on the
2 door.

3 I will give you a copy of these instructions
4 in written form. During your deliberations, you
5 may refer to the instructions to guide your
6 decision-making. You must consider the
7 instructions as a whole and not follow some and
8 ignore others. Please return the instructions to
9 the Court at the time your verdict is rendered.

10 Mr. Foreman, I have in my hand, and you will
11 have a copy in the jury room, the verdict form. It
12 reads that: The State of South Carolina, County of
13 Richland, In the Court of General Sessions of the
14 Fifth Judicial Circuit, Indictment
15 Number 2016-GS-40-2355, State of South Carolina v.
16 Mark Volstromer, Defendant.

17 Verdict Form. Please circle the appropriate
18 verdict below and follow the accompanying
19 instructions carefully.

20 No. 1. As to the indictment alleging murder,
21 we, the jury, unanimously find the Defendant -- and
22 you will circle guilty or not guilty. You will
23 stop and end your deliberations. Mr. Foreman, you
24 will sign your name on the verdict form and date
25 it. And then you will knock on the door and inform

1 the bailiffs that you have reached a verdict. All
2 right?

3 All right, ladies and gentlemen of the jury, I
4 am going to send you back into the jury room. You
5 cannot begin your deliberations until you receive
6 instructions. I believe -- Mr. Bowen, are they
7 going to deliberate -- we normally would have you
8 all in one jury room deliberating, but because of
9 COVID protocols, I think we are going to use -- are
10 we going to use Courtroom 2C --

11 THE BAILIFF: 2B. They said we were going to
12 use 2B, yes, ma'am.

13 THE COURT: So you are going to put them right
14 here?

15 THE BAILIFF: Let me check.

16 THE COURT: All right. I am going to send
17 them on back.

18 As soon as he opens the door, we will send you
19 all back. And I am guessing some of your
20 belongings are in the other jury room.

21 All right, so we are going to send them back.
22 They are going to be right next-door. Okay, but
23 send them back into the individual jury -- the
24 small jury room, and then we'll send them into 2B
25 because their lunch should be here, so they can

1 pick up their lunch and go in there. And it is the
2 same size courtroom. You will have enough room to
3 spread out, pull your mask down, eat.

4 Also, Mr. Foreman, there will be a laptop. Do
5 we have a laptop?

6 MS. SAMPSON: Yes, ma'am.

7 THE COURT: Okay, we have a laptop. It is a
8 blank laptop. And we will send that back into the
9 jury room. If someone -- if you need help with it,
10 let us know and I'll send my law clerk to show you.
11 But I think somebody is IT, right? You. Okay.
12 So, yes, it is just a matter of putting a disk --
13 because you all have quite a few disks -- in the
14 computer. So we'll go ahead and get it turned on
15 and send it back, but it is a blank laptop, and I
16 think there is an attachment that goes with it.
17 And you'll receive the jury charges also in the
18 jury room.

19 All right, thank you. Do not begin until you
20 receive instructions.

21 (WHEREUPON, the jury retires to the jury
22 room at 1:14 p.m.)

23 THE COURT: All right, any objections or
24 exceptions?

25 MS. SAMPSON: Not from the State, Your Honor.

1 MS. ZMROCZEK: Not from the Defense on the
2 charges, Your Honor. We do have a couple of
3 requests. One is that we would like to send -- we
4 have an external speaker. You know how hard it is
5 to hear just on that little computer. And, you
6 know, I don't know how spread out they are going to
7 be. It has no information on it. It is just a
8 bigger speaker that they can plug into the
9 computer.

10 THE COURT: It plugs in? It is not on Wi-Fi?

11 MS. ZMROCZEK: No, no, it has an auxilliary
12 cord.

13 THE COURT: All right. Any objection?

14 MS. SAMPSON: No, ma'am.

15 THE COURT: Okay.

16 MS. ZMROCZEK: And I can preserve my other
17 objections whenever --

18 THE COURT: All right. And I need the
19 alternates. You all need to get the exhibits.
20 Let's bring the alternates in. And then here is
21 the verdict form. Y'all take a look at it one more
22 time. And I have got to get -- I think Assatta,
23 she had a clean copy. I'll get a clean copy
24 because we made a note on my jury charge. I make
25 notes sometimes when I talk, so.

1 Yes, let's bring the alternates out.

2 (WHEREUPON, the alternates enter the
3 courtroom at 1:17 p.m.)

4 THE COURT: To our alternates, it is
5 Mr. Miller and Mr. Franco, I want to thank you.
6 You were selected as our alternates, and I want to
7 thank you for your service here this week, but as
8 you can see, all 12 jurors have returned, and so we
9 will no longer need your services. My old boss
10 always says being an alternate is like being
11 invited to the dance but not being asked to dance.

12 So I do want to thank you and appreciate you
13 for being here, because it is necessary that you
14 are here because sometimes we do have to use our
15 alternates, but I know a lot of times the
16 alternates feel a little disappointed that they
17 don't get to participate in the deliberations, but
18 we cannot send more than 12 jurors back there to
19 deliberate.

20 So I do want to say thank you again for your
21 service on behalf of everyone here. You are free
22 to speak to anyone regarding the case. You can do
23 research. You can do whatever you want to do. You
24 can talk to your family. You can leave. If you
25 would like to hang around and see what your fellow

1 jurors come up with, they will put you in one of
2 the smaller jury rooms and you can wait in there.
3 I think lunch should be out there. And if you want
4 to leave and take the lunch with you, it is in a
5 box, you can. And if you need a note from the
6 clerk, she is out there, and she will get you a
7 work excuse for work. But I do want to thank you
8 again for your participating in this process this
9 week.

10 Thank you.

11 (WHEREUPON, the alternates were excused
12 at 1:19 p.m.)

13 THE COURT: All right. Anything else that we
14 need to put on the record?

15 MS. ZMROCZEK: Yes, Your Honor. At this time
16 I would like to specifically renew my objections
17 that we made during the trial, but most
18 specifically to the 404(a)(2) argument regarding
19 the criminal behavior and propensity for violence
20 of the decedent.

21 The second objection that I would like to
22 renew, Your Honor, was the malice objection that we
23 raised during closing.

24 And then, Your Honor, at this time we would
25 ask for a mistrial in that she did not open in

1 full, which we believe is a violation of the case
2 law. She argued everything but self-defense, and I
3 know that she will say, Oh, well, we were
4 responding to that, but, Your Honor, clearly the
5 case law is about clear as mud on what is
6 acceptable and unacceptable in closing. So, Your
7 Honor, I'm just making sure that I obviously get a
8 Court ruling, renew the objection, and then keep
9 that issue on the record.

10 THE COURT: Yes, ma'am.

11 MS. SAMPSON: I guess I'll start backwards.
12 As far as opening in full, I talked about
13 self-defense in my original opening, I just didn't
14 go into detail because I had to wait for
15 Ms. Zmroczek to say anything. If I had said it in
16 my first one and then said it again, then there
17 would be an objection to me about repeating it. I
18 have to reply to what she said, so I have to wait
19 for her to talk about it. So that is why I did it
20 in the manner that I did, but I didn't not talk
21 about self-defense, I just waited and responded to
22 what she had said, which is exactly what I am
23 supposed to do.

24 As to other two, I would ask that Your Honor
25 stand on your rulings. I think they would be

1 appropriate rulings.

2 THE COURT: All right, the rulings, previous
3 rulings will stand. The objections are overruled.
4 As to the 404 and also I think the objection during
5 the closing argument regarding the malice and the
6 weapon -- actually I was reading through the cases,
7 and they do -- I was glancing through them -- there
8 is something that says that -- that is part of the
9 discussion actually in that case, is that basically
10 the State can argue it, but the Court should not be
11 the one stating that as a charge on the law. So I
12 think that was a proper ruling, and so I will
13 uphold that ruling.

14 And then your final is that she has the right,
15 in reading State v. Beatty, to rebut what is said.
16 And I think part of disproving self-defense, which
17 the burden is on the State to do, is making
18 those -- disproving it in rebuttal or reply.

19 All right, but all of your objections are
20 noted for the record.

21 MS. ZMROCZEK: Thank you, Your Honor.

22 THE COURT: All right, y'all look at the
23 exhibits. I am going to get you a clean copy of
24 the jury charge. And then we'll get them
25 deliberating.

1 And please remember, they are going to be
2 next-door. My deputies in the back, the jury is
3 going to deliberate next-door, so we will need you
4 all posted up out there, even though I know
5 Kirkland probably already has people out there.
6 But they will be next-door, and so keep your voices
7 to a minimum. And I think we have numbers for
8 everybody. If not, just put a sticky up here with
9 your phone numbers on it.

10 MS. SAMPSON: The only thing I just thought
11 about, Your Honor, the Defendant is out on bond. I
12 think you need to give the instruction that we will
13 continue without him if he were to not be here for
14 the verdict.

15 THE COURT: Yes.

16 MS. ZMROCZEK: Your Honor, I told him he
17 couldn't leave the courtroom -- Mark, she can't see
18 you around the TV.

19 THE COURT: And, sir, as stated you are out on
20 bond.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: I have allowed you to stay thus
23 far, and you have not given me any reason to think
24 that you would not be here, but you have to stay
25 for the verdict. If you are not here, we will

1 continue on, we will receive verdict. If you are
2 not here, I will issue a bench warrant --

3 THE DEFENDANT: I'll be here.

4 THE COURT: -- and those gentlemen will come
5 get you.

6 THE DEFENDANT: I know.

7 THE COURT: All right. Anything else?

8 MS. SAMPSON: No, ma'am.

9 THE COURT: Anything else, Ms. Zmroczek?

10 MS. ZMROCZEK: Nothing further, Your Honor.

11 THE COURT: All right, thank you.

12 (WHEREUPON, Court's Exhibit No. 5 was
13 marked for identification only.)

14 (Whereupon, the jury was instructed to
15 begin deliberations at 1:35 p.m.)

16 (Whereupon, the following occurred at
17 3:31 p.m)

18 THE COURT: All right, you may be seated.

19 It is my understanding that they have reached
20 a verdict.

21 Let me be clear. If you feel like you
22 cannot -- the verdict is going to be one of two
23 things. If you cannot control yourself from making
24 any outburst when the verdict comes in, now is your
25 time to leave. If you feel like -- if you do

1 not -- if there is any outburst in front of the
2 jury, I will remind you that you are subject to the
3 contempt powers of court, meaning that the Court
4 can lock you up and these guys will take you down
5 to Alvin S. Glenn Detention Center tonight. So,
6 please, no outbursts from anyone when the jury
7 comes back with a verdict.

8 All right, thank you.

9 Bring them on in.

10 (WHEREUPON, the jury came into open
11 court at 3:35 p.m.)

12 THE BAILIFF: The jury is all seated.

13 THE COURT: All right. Mr. Foreman, it is my
14 understanding the jury has reached a verdict?

15 THE FOREMAN: Yes, Your Honor.

16 THE COURT: And is that verdict unanimous?

17 THE FOREMAN: Yes, ma'am.

18 THE COURT: If you can hand that to the
19 bailiff.

20 (Foreman complies.)

21 THE COURT: I'll ask the clerk to publish the
22 verdict.

23 VERDICT

24 THE CLERK: Indictment Number 2016-GS-40-2355,
25 State of South Carolina, County of Richland, State

1 versus Mark Volstromer.

2 As to the indictment alleging murder: We, the
3 jury, unanimously find the Defendant guilty. This
4 is signed Foreperson, Juror Number 119, June 18,
5 2021.

6 Mr. Foreman, is this your verdict and the
7 verdict of the entire jury?

8 THE FOREMAN: Yes, ma'am.

9 THE COURT: All right, thank you.

10 Anything else from the jury before I release
11 them? From the State?

12 MS. SAMPSON: Not from the State, Your Honor.

13 THE COURT: Anything from the Defense?

14 MS. ZMROCZEK: We would ask to poll the jury,
15 please.

16 THE COURT: Yes, ma'am. If you can -- I'll
17 ask the clerk to poll the jurors. She'll give you
18 instructions.

19 THE CLERK: Ladies and gentlemen of the jury,
20 I am going to ask you two questions regarding your
21 verdict. If you will just answer yes or no to each
22 question.

23 Juror Number 119, was this your verdict?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Is it still your verdict?

1 THE JUROR: Yes, ma'am.

2 THE CLERK: Juror Number 112, was this your
3 verdict?

4 THE JUROR: Yes, ma'am.

5 THE CLERK: Is it still your verdict?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes, ma'am.

9 THE CLERK: Juror Number 488, was this your
10 verdict?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Juror Number 208, was this your
15 verdict?

16 THE JUROR: Yes, ma'am.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Juror Number 229, was this your
20 verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number 357, was this your
25 verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes, it is.

4 THE CLERK: Juror Number 298, was this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Juror Number 220, was this your
10 verdict.

11 THE JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Juror Number 305, was this your
15 verdict?

16 THE JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 THE JUROR: Yes, ma'am.

19 THE CLERK: Juror Number 3, was this your
20 verdict?

21 THE JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Juror Number 349, was this your
25 verdict?

1 THE JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror Number 292, was this your
5 verdict?

6 THE JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: The jurors have been polled, Your
10 Honor.

11 THE COURT: All right, thank you.

12 All right, Mr. Foreman, and ladies and
13 gentlemen of the jury, I do want to thank you all
14 for your service here this week, fulfilling your
15 civic duty. As you can see, there are matters that
16 arise in this county and counties in the state
17 actually, in courtrooms all across this country,
18 and this is the manner in which we resolve these
19 matters. And so I do want to thank you for your
20 participation this week.

21 I know that it has been a long week, but you
22 all have been paying close attention and delightful
23 to deal with. So I do want to thank you again for
24 your service.

25 You will have -- do you have the checks?

1 THE CLERK: Yes, Your Honor.

2 THE COURT: She has your checks. I will tell
3 you when you open it, do not spend it all in one
4 place. She will have that. And also if anyone
5 needs a work excuse, she has work excuses. You are
6 released. You can speak to whoever you wish to
7 speak with. You can talk to your family, your
8 friends, anybody else. If you don't want to talk
9 to anyone, you don't have to. You are free to
10 leave at this time. And thank you again for your
11 service.

12 Thank you. If you will follow the bailiffs
13 out.

14 (WHEREUPON, the jury is excused at 3:39
15 p.m.)

16 MS. SAMPSON: The State is ready whenever Your
17 Honor is.

18 THE COURT: Ms. Zmroczek?

19 You all will need to sign it.

20 MS. ZMROCZEK: Your Honor, at this time I
21 would like to renew my motions.

22 THE COURT: Yes, ma'am.

23 MS. ZMROCZEK: Specifically the 404(a)(2)
24 motion. Your Honor, we fully believe had the jury
25 had knowledge of the full background of the

1 Volstromers, their daughter, the fact that she was
2 molested, the fact that he had been convicted not
3 only of one CSC second, but also another assault
4 charge that the family didn't know about, but the
5 family specifically knew about the first one, it
6 really went to their state of mind, so we want to
7 make sure that that and all of our others in
8 addition to those are preserved.

9 THE COURT: All right. Anything in response?

10 MS. SAMPSON: No. As I believe there was a
11 correct ruling at the time.

12 THE COURT: The motion is preserved -- denied,
13 but preserved for the record.

14 MS. ZMROCZEK: Thank you.

15 THE COURT: Actually, if you will hold tight,
16 I think some of the jurors wanted to come back in.

17 (Pause.)

18 THE COURT: All right, yes, ma'am?

19 MS. SAMPSON: Thank you, Your Honor. May it
20 please the Court?

21 At this point, you heard all of the facts of
22 the case, so I am not going to go over those. What
23 I am going to do is give you the statement from
24 Ms. Pruitt. I'm going to read it for her so that
25 you hear from her, but this is not me, this is her

1 words.

2 Lanny and I were together for 15 years, and I
3 assumed we would grow old together. On December
4 27th, 2015, my whole life changed. The man I loved
5 was murdered because of some dirt. This all began
6 because he requested some branches to be trimmed in
7 order to make it easier to move our home onto the
8 property we purchased. In the months after we
9 moved in, we found out from neighbors that the
10 Volstromers apparently thrived on chaos. They did
11 not just have issues with Lanny, but everyone on
12 Megan Court. They constantly called police and had
13 issues with everything from dogs to fireworks to
14 issues about where mailboxes were at and other
15 issues that are too many to mention. If they had
16 just kept to themselves instead of instigating
17 arguments, I would still be happily married.

18 And those are the words of Ms. Connie Pruitt.

19 Your Honor, as you are aware, the Defendant
20 does not have a prior record. This charge carries
21 30 years up to life. It is the State's position
22 that we leave that up to Your Honor's discretion
23 and that you sentence him to what you feel is
24 appropriate.

25 THE COURT: All right. Thank you.

1 All right, yes, ma'am, Ms. Zmroczek?

2 MS. ZMROCZEK: Thank you. Your Honor, my
3 client obviously, as you heard, has a wife and
4 child. They, as you are aware, they grew up in --
5 or she grew up, and they built this home together
6 in this area. You know, after their daughter was
7 assaulted at five years old, it really changed the
8 way that they lived, Your Honor. And learning what
9 they learned about the criminal background,
10 especially of the decedent, Your Honor, it really
11 made it hard when they were continuously harassed.
12 And that went a lot to their fear when he was
13 sitting outside the church and their 16-year-old
14 daughter was there in their house.

15 Your Honor, he has never had a record. This
16 case has languished for quite some time. And, you
17 know, he did turn down an offer for voluntary
18 manslaughter because he truly, truly acted in his
19 fear. And, Your Honor, we would ask that the Court
20 do sentence him to the mandatory minimum.

21 MS. SAMPSON: And just for the record, Your
22 Honor, the case only languished because he kept
23 changing attorneys. We would have tried this case
24 several times over. As you are aware, we had
25 hearings, we were prepared to go forward, and then

1 Corona happened. So it is not that we weren't
2 prepared to go forward, we just could not.

3 SENTENCE

4 THE COURT: All right. On Indictment
5 2016-GS-40-2355, sir, you will be sentenced to the
6 State Department of Corrections for 35 years.

7 Does he have any time served? Not the
8 monitor.

9 MS. ZMROCZEK: Your Honor, he has been on
10 house arrest for five and a half years. I'd have
11 to get the exact number. But since he's been out,
12 he has been on house arrest.

13 THE COURT: He has been on detention or house
14 arrest?

15 MS. ZMROCZEK: Ankle monitor.

16 MS. SAMPSON: He had an ankle monitor;
17 however, Your Honor, I'm not sure he could get it
18 on a violent crime.

19 THE COURT: On top of that, I normally do not
20 give, unless it is true, true, true house arrest,
21 like can't go anywhere.

22 MS. SAMPSON: No, he went to work. He could
23 leave.

24 THE COURT: So I don't usually give credit for
25 that, but any other time that he has served.

1 MS. ZMROCZEK: He did around 14 days, but I'll
2 have to check to get that number, Your Honor.

3 THE COURT: All right. Thank you. And good
4 luck to you all.

5 MS. SAMPSON: Thank you, Your Honor.

6 THE COURT: Thank you, ladies and gentlemen of
7 the jury.

8 And if my deputies can hold everyone else in
9 the courtroom until the jurors are released.

10 (WHEREUPON, the trial adjourned at 3:48
11 p.m.)
12
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(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH CIRCUIT

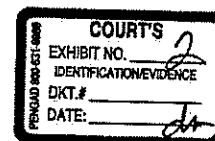
Motion to Introduce 404(A)(2) Evidence
of Victim's Prior Convictions

v.

Mark Volstromer,

Defendant.

Charges: Murder



The Defendant, Mark Volstromer, moves this Court to allow evidence of the Decedent, Keith "Lanny" Pruitt's, prior conviction for Criminal Sexual Conduct 2nd in 1989 and Assault of a High and Aggravated Nature in 2000, and the details of the Decedent's propensity for committing acts of violence with the use of deadly weapons, pursuant to Rules 404(a)(2) of the South Carolina Rules of Evidence and the Due Process Clause of the United States Constitution and the Constitution of South Carolina.

SCRE 404(a)(2) permits the Defendant to introduce evidence of the victim's character, as an exception to the general rule of prohibiting character evidence, to help establish the accused's defense to the criminal charges. Specifically, the Defendant can introduce evidence of the character of the victim to show that the defendant acted in self-defense to a charge of murder. State v. Franklin, 267 S.C. 240 (1976). In a self-defense case, the defendant must lay a proper foundation to introduce the victim's reputation for violence and specifically show that the defendant knew of the victim's propensity for violence. State v. Turner 29 S.C. 34 (1888).

Here, the Defendant is asserting self-defense, and the introduction of the victim's Criminal Sexual Conduct 2nd and Assault of a High and Aggravated Nature convictions will help establish his defense to the charge of murder. To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty, (2) the

defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life, and 4) the defendant had no other probable means of avoiding the danger. *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999).

Prior to this event, the victim, Pruitt, was charged with committing two violent crimes while armed with a deadly weapon. In 1989, the victim was accused of kidnapping a woman with the use of a deadly weapon and forcibly raping the woman. The victim eventually pled to the charge of Criminal Sexual Conduct 2nd. In 2000, the victim was charged with Assault and Battery of a High and Aggravated Nature. The victim pled guilty to Assault of a High and Aggravated Nature for threatening a 13 year-old with a deadly weapon. In both crimes for which the victim was convicted, he used a deadly weapon to attack or threaten another person.

Here, prior to his death, the victim made several threats to the Defendant and his family that he would commit acts of violence on them. In addition, months before this incident, the victim exclaimed to the Defendant's family "You don't know who you are dealing with!" This exclamation prompted the Defendant to research the victim's criminal history, and Defendant discovered at least one of the victim's criminal convictions. Defendant also knew that the victim had a propensity for violence because he and his family were on the receiving end of the victim's threats for 8 months prior to this incident. Defendant had reason to believe that the victim carried

weapons. Defendant also knew, after learning of the victim's criminal history, that the victim had followed through on violent threats before. Therefore, Defendant knew of the victim's reputation for violence prior to the victim's death.

Moreover, the victim's propensity for violence shaped the fear that my client had on December 27, 2015 when the victim threatened the Defendant, and goes to the heart of why Defendant reasonably believed his life, family and habitat were in imminent danger on the day that the victim was shot. Therefore, the introduction of the victim's prior convictions are not only helpful, but will be necessary, to establish the accused's defense to the criminal charges against him. Furthermore, to deprive Defendant of the opportunity to fully to explain to the jury the extent of the victim's propensity for violence, and the credibility of the victim's threats of violence to the Defendant, would deprive the Defendant of his right to due process under the law.

Respectfully Submitted,

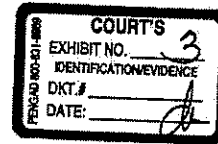
September ____, 2020.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
STATE OF SOUTH CAROLINA)
v.)
Mark Volstromer,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH CIRCUIT

Motion to Introduce Rule 405(b) Evidence
of Prior Difficulties between Defendant and
the Victim

Charges: Murder



The Defendant, Mark Volstromer, moves this Court to allow the introduction of evidence of all specific instances of violence against the Defendant on the part of the deceased pursuant to Rules 405(b) and 404(A)(2) of the South Carolina Rules of Evidence and the Due Process Clause of the United States Constitution and the Constitution of South Carolina.

In homicide cases, evidence that the accused and the decedent had previous difficulty is admissible. *Trial Handbook for South Carolina Lawyers*, John S. Nichols (2017) (citing *State v. Taylor*, 333 S.C. 159 (1988)). The evidence is admissible to show the animus of the parties and to aid the jury in deciding who was the probable aggressor. *Id.* Furthermore, it is well-established South Carolina law that:

"in the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant, or if directed against others, were so closely connected at point of time or occasion with the homicide as reasonable to indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm. *State v. Day* 341 S.C. 410 (2000) (citing *State v. Brown*, 321 S.C. 184 (1996); *State v. Amburgey*, 206 S.C. 426 (1945).

In addition, while specific instances of conduct are generally inadmissible character evidence, SCRE 405(b) permits the admission of specific instances of conduct

"in cases in which character or a trait of character of a person is an essential element of a charge, claim or defense. SCORE 405(b).

Analysis

In this case, the specific prior threats, and acts of violence from the decedent towards the Volstromer family are admissible because they were directed directly at the Defendant and his home. In addition, the decedent's character is an essential element of the Defendant's defense.

First, the Defendant is asserting self-defense. To establish self-defense in South Carolina, four elements must be present: (1) the defendant must be without fault in bringing on the difficulty, (2) the defendant must have been in actual imminent danger of losing his life or sustaining serious bodily injury, or he must have actually believed he was in imminent danger of losing his life sustaining serious bodily injury; (3) if his defense is based upon his belief of imminent danger, defendant must show that a reasonably prudent person of ordinary firmness and courage would have entertained the belief that he was actually in imminent danger and that the circumstances were such as would warrant a person of ordinary prudence, firmness, and courage to strike the fatal blow in order to save himself from serious bodily harm or the loss of his life, and 4) the defendant had no other probable means of avoiding the danger. *State v. Bryant*, 336 S.C. 340, 520 S.E.2d 319 (1999).

In this case, the victim's propensity for violence against the Defendant is an essential element of the defense. Specifically, the Defendant must introduce evidence of the victim's propensity for violence to prove that he believed he was in imminent danger of losing his life or sustaining serious bodily injury on December 27.

Here, prior to his death, the victim made several threats to the Defendant and his family that he would commit acts of violence on them. For example, The victim threatened to physically

assault the Defendant's wife. Months before this incident, the victim exclaimed to the Defendant's family, after stalking them, that the victim would "rain hell down" on the Defendant's family. (See attached Exhibit 1.) The Defendant's family called the Richland County Sheriff's Department several times to report threats and acts of violence perpetrated against them by the victim and the victim's friends. (See attached Exhibit 2.)

Moreover, the Defendant cannot establish that he defended himself because he believed he was in imminent danger of losing his life or sustaining serious bodily injury, unless the specific instances of conduct are admitted as further evidence of the victim's continuous and consistent pattern of threatening and terrorizing the Defendant and his family.

Conclusion

Therefore, the Defendant respectfully requests this Court allow the admission of all specific instances of violence against the Defendant on the part of the deceased pursuant to Rules 405(b) and 404(A)(2) of the South Carolina Rules of Evidence and the Due Process Clause of the United States Constitution and the Constitution of South Carolina.

Respectfully Submitted,

September ____, 2020.

Statement of

Mark Volstromer11-18-671129 Antioch Amez Church Rd

Made at

Columbia, South Carolina, this 12-27-15, at 2110, in the presence of Sgt. Holdorf of the Richland County Sheriff's Department.

I, Mark Volstromer, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q- My wife Barbara went outside to check the lights. I was on the toilet and I heard yelling. I knew something was not right. I got my gun (380 black in color) from the top drawer of my dresser. I told my daughter- Daughter that if anything happened she needed to call 911 and for her to stay inside. I walked outside. My wife was talking to the Ricky who was sitting in the truck. She was telling him that he did not own the road and he was saying that he did. Pruitt was already out of the truck, he was walking towards the back from the passenger's side. I told Ricky that he needed to get him and go. Ricky said no. I told them both to go away. I had my gun in my back pocket. I pulled it out. He said what are you going to do shoot me? He was just cocky. He reached in the cooler; I did not know what he was grabbing. I don't remember if I said anything. I think he said something to me and I shot him one time. My wife called the sheriff and I went inside and emptied my gun and put it on the table. I cannot believe I did what I did. I told my daughter I was sorry.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: Mark Volstromer

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this 27 day of Dec 2015.

Sworn to and subscribed before me

This 27 day of DecSigned: Mark Volstromer

[Signature]
Notary Public for South Carolina
My commission expires 12/1/2016

Q. Did Pruitt do anything to threaten you?

R. No. He reached in his cooler and I did not know what he was grabbing. I was asking them to just go and they would not leave.

Q. Did you point the gun a Ricky?

R. No, I don't remember doing that.

Q. Did your wife have a gun?

R. Earlier. I don't know if she had a gun on her when this happened.

Q. How do you know Keith Pruitt?

R. He moved in about 9 months ago and we have had problems ever since. I have called the Sheriff's department multiple times because we continue to have problems with him. He will ride his four wheeler up and down the road. He has been disrespectful towards my wife. He would try and provoke me. One day he pulled up in his work van and got out and put his arms on my fence. I was watering the garden. He wanted me to come up and talk to him. He said that he just wanted to be friends. I saw another person in his van and felt that he was trying to start a fight. He has told me that he was a green beret. He would ride up and down the road and throw his cigarette butts on the ground. He would always have people around and try and start something. He was also with a guy in a white SUV that would run up and down the road and shine a spot light on our house as well as honk the horn.

Q. When did you put up your surveillance system?

R. We put it up 6-7 months ago because my wife got knocked over by Pruitt's dog and fractured a rib. I had the dog and I told Pruitt to get his dog and he just left. He threatened my wife to come out past the fence and he would hit her. Before he moved in we never had any problems. We have even been looking for another place to move.

Q. Is there anything that you would like to add or change about your statement?

R. I did not mean for this to happen. It just happened.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: _____

Signed: Mark V. Vahner

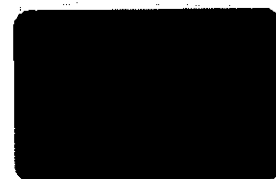
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this 27 day of Dec 2015.

Sworn to and subscribed before me
This 27 day of Dec 2015

Signed: Mark V. Vahner

[Signature]
Notary Public for South Carolina
My commission expires 11/22/16



934

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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Jun 22 2021
SC Court of Appeals

DOCKET NO. 2016GS4002355

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

MAY TERM 2016

91

THE STATE
vs.

Mark Robert Volstromer

Indictment for
MURDER / MURDER

SC Code: 16-03-0010
CDR Code: 0116

WITNESSES

(S) Travis Holdorf
– Richland County Sheriff

ARREST WARRANT NUMBER

2015A4010204216

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 11, 2016, the
Grand Jurors of Richland County present upon their oath:

MURDER

That Mark Robert Volstromer did in Richland County, on or about
December 27, 2015, kill the victim, Keith Pruitt, Jr., with malice
aforethought, either express or implied, by means of Gun shot, and the
victim did die as a proximate result thereof. All in violation of Section 16-
03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.

DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

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Oct 17 2022

SC Court of Appeals

s/ David Alexander
David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 17th day of October, 2022.

