

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Edgefield County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BARRY WAYNE JONES,

APPELLANT

APPELLATE CASE NO. 2022-000046

RECORD ON APPEAL

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

JULIANNA E. BATTENFIELD
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211-1549
(803) 734-6395

RICK HUBBARD
Solicitor, Eleventh Judicial Circuit

205 East Main Street, Suite 309
Lexington, SC 29702
(803) 785-8352

ATTORNEYS FOR RESPONDENT

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

FROM THE SEPTEMBER 7-8, 2021 PRETRIAL HEARING: DEFENDANT’S EXHIBIT NO. 1 (POOL ROOM ENHANCED VIDEO); DEFENDANT’S EXHIBIT NOS. 2-4 (PHOTOGRAPHS); DEFENDANT’S EXHIBIT NO. 11 (POOL ROOM ORIGINAL VIDEO); DEFENDANT’S EXHIBIT NO. 12 (PHOTOGRAPH); STATE’S EXHIBIT NO. 1-3 (VIDEO CLIPS); STATE’S EXHIBIT NOS. 4-19 (PHOTOGRAPHS).

FROM THE DECEMBER 3-13, 2021 TRIAL: STATE’S EXHIBIT NO. 8 (KATHMANN DASH CAMERA VIDEO); STATE’S EXHIBIT NO. 13 (POOL ROOM VIDEO); STATE’S EXHIBIT NO. 14 (POOL ROOM VIDEO); STATE’S EXHIBIT NO. 60 (DENSMORE BODY CAMERA VIDEO); DEFENDANT’S EXHIBIT NO. 71 (CD OF PHOTOGRAPHS); DEFENDANT’S EXHIBIT NO. 96 (CD OF VIDEO); DEFENDANT’S EXHIBIT NO. 97 (PHOTOGRAPH).

1 MR. HUBBARD: Okay.

2 THE COURT: Is he your husband? When were you
3 married?

4 MR. HUBBARD: Yes, sir.

5 THE COURT: I think that is appropriate.

6 MR. HUBBARD: All right. Thank you, Your Honor.

7 THE COURT: Anything else before we bring the jury
8 in?

9 MR. HUBBARD: No, sir, Your Honor.

10 THE COURT: Mr. Secord, obviously when you hear that
11 question, assert your objection and we'll move on.

12 MR. SECORD: Yes, sir.

13 THE COURT: Let's bring the jury in please.

14 (Whereupon, the jury entered the courtroom at 9:35
15 a.m.)

16 THE COURT: All right. Mr. Foreman, ladies and
17 gentlemen, please be seated. We'll pick up right where
18 we left off with the next witness in the State's case in
19 chief.

20 MR. HUBBARD: Thank you, Your Honor. Your Honor,
21 the State calls Brenda Hall.

22 Thereupon,

23 BRENDA HALL

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. Once you're seated,

1 state your full name spelling your last please.

2 THE WITNESS: Brenda New Hall, H-a-l-l.

3 DIRECT EXAMINATION

4 BY MR. HUBBARD:

5 Q. Ms. Hall, what was your relationship to Milledge
6 Hall?

7 A. His wife.

8 Q. How long were y'all married?

9 A. Almost 43 years.

10 Q. What's your relationship to Clayton Hall?

11 A. His grandmother.

12 Q. Were you aware of your husband's investment in the
13 pool room that Clayton was running with his wife Madison?

14 A. Yes.

15 Q. Some I believe about \$16,000.00?

16 A. Mm-hmm.

17 Q. Did Milledge actually go there everyday to work or
18 what would he do?

19 A. No. He would come and it wasn't everyday. He
20 didn't like to go in there and take charge, but if he saw
21 something that needed to be done or he didn't think was being
22 done, he would call it to their attention or nothing, you
23 know, he didn't go in there and just run things, operate it.

24 Q. How often typically would he go in during the course
25 of a week?

BRENDA HALL - DIRECT BY MR. HUBBARD

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1 A. Probably about three times a week.

2 Q. Is Monday one of those days?

3 A. Yes.

4 Q. Is there a reason why?

5 A. Well, not a particular reason, but Monday was kind
6 of like the day that him and his buddies would catch up, you
7 know, talk about sports over the weekend and I used to say
8 it's a bunch of old men sitting up there talking, but that was
9 basically why he was there on Mondays.

10 Q. And would he ever stay to like closing time?

11 A. No.

12 Q. He'd be home well before then?

13 A. Yeah.

14 Q. Did he usually come home for dinner?

15 A. Oh, yeah.

16 Q. Okay. Now, had he been going to this establishment
17 even before Clayton bought it with Madison?

18 A. Yes. Yes.

19 Q. Was it known as the pool room, pool hall?

20 A. It's always been known as the pool room to me, even
21 though Clayton tried to change the name and things, it was
22 still the pool room.

23 Q. Would you sometimes go with your husband Milledge to
24 the pool room?

25 A. Yes.

1 Q. On one of those occasions did you happen to see the
2 defendant Barry Jones in the pool room?

3 A. Yes.

4 Q. Was there an occasion when he confronted your
5 husband Milledge?

6 A. There was one time. Clayton was not running the
7 pool room then. It was being run by Annette and Jerry
8 Holloway.

9 Q. Is that some time like in 2017?

10 A. Yes.

11 Q. What took place with this confrontation?

12 A. This has been like four years ago. I remember Barry
13 coming from the bathroom and we were sitting like on this
14 side, the bathroom is back this way and he stops behind my
15 husband's stool he's on and something about saying I hear you
16 been telling lies about me. I was not fired from the pool
17 room and you shouldn't be saying stuff like that.

18 Q. The pool room or SRS?

19 A. SRS. I'm sorry.

20 Q. Okay. That's all right. Are you a little nervous
21 today?

22 A. Sir?

23 Q. Are you a little bit nervous today?

24 A. Of course.

25 Q. Okay. So Barry Jones confronts your husband

BRENDA HALL - DIRECT BY MR. HUBBARD

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1 Milledge?

2 A. Mm-hmm.

3 Q. What does husband do?

4 A. Well, it's a swivel seat. He turns around in his
5 seat and he said, well, the best thing for you to do is just
6 go back over there and sit down.

7 Q. Did he even get up from his seat to say that?

8 A. No, sir.

9 Q. Did he say anything else to Barry Jones?

10 A. No.

11 Q. Did Mr. Jones leave?

12 A. Yes.

13 Q. And that was the end of the confrontation?

14 A. That was the end of it.

15 Q. While your husband would go to the pool room to
16 assist Clayton or to meet his friends, did you ever know him
17 to carry a gun?

18 A. No.

19 Q. Or a pistol?

20 A. No.

21 Q. Did you ever know him to carry a gun or a pistol at
22 any time?

23 A. No.

24 Q. Was he just not the kind of guy that would carry a
25 gun?

1 A. No, sir.

2 Q. Did he carry a phone?

3 A. Yes. He was proud of his phone.

4 Q. Where did he keep that phone?

5 A. On his side.

6 Q. On that big clip?

7 A. Yeah. It was an autobox with a clip on it.

8 Q. Your husband Milledge, did he have some heart
9 issues?

10 A. Yes.

11 Q. We heard testimony that he had had bypass surgery.
12 When did that occur?

13 A. January 2016, triple bypass.

14 Q. Triple bypass. Was he at the time on May 7th, 2018,
15 was he still under a doctor's care for his heart?

16 A. Yes.

17 Q. When was the last time your husband Milledge had
18 been to the cardiologist to have his heart checked on follow
19 up?

20 A. That morning.

21 Q. The morning of May 7th?

22 A. Yes.

23 Q. And he had to go to Augusta for that?

24 A. Yes, sir. To Dr. Salazar at the University
25 Hospital.

BRENDA HALL - DIRECT BY MR. HUBBARD

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1 Q. Now, on May 7th, you weren't at the pool room when
2 this incident occurred, correct?

3 A. No.

4 Q. You were at home?

5 A. Yes.

6 Q. When you learned something had happened at the pool
7 room involving your husband Milledge, what was your first
8 thought?

9 A. That he had had a heart attack.

10 Q. And did you learn that he had actually been shot?

11 A. Yes.

12 Q. Did you go to the pool room to see your husband?

13 A. Yes.

14 Q. Were you able to see him before he was taken away by
15 the ambulance?

16 A. Yes.

17 Q. Were you able to speak to him?

18 A. I got up in the ambulance and he looked at me and he
19 said, he shot me, and that's all he said.

20 Q. He didn't say who, he just said, he shot me?

21 A. No.

22 Q. Did you follow that ambulance and go to Augusta to
23 the hospital?

24 A. Yes. I was in a car. I was not driving. My
25 son-in-law was driving.

1 Q. Were you with your husband when he passed?

2 A. Uhm, yeah. I was there.

3 Q. Can you tell us about what time he passed?

4 A. It was after one in the morning.

5 Q. And he was still at the hospital? They were still
6 working on him?

7 A. Yeah.

8 Q. Were you there while they were still working on
9 him?

10 A. They were doing compressions on him and I was
11 watching.

12 Q. Okay. Was that the early morning hours of the
13 8th?

14 A. Mm-hmm. Yes.

15 MR. HUBBARD: Ms. Hall, thank you so much.

16 THE COURT: Cross examination.

17 MR. SECORD: May it please the Court.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. SECORD:

21 Q. Good morning, Ms. Hall.

22 A. Good morning.

23 Q. I know you're nervous. I think everybody here is,
24 but I just want to let you know I'm not here to give you a
25 hard time, okay? I just want to ask you a few questions. And

BRENDA HALL - CROSS BY MR. SECORD

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1 it was May 8th that Mr. Hall died, right, the day after?

2 A. The day he actually died. Yeah.

3 Q. Okay. Yes, ma'am. And I know that was a terrible
4 day for you and I don't mean to be insensitive. I want to ask
5 you to go back to that day in your mind just briefly because
6 there was some information after he died that the hospital
7 asked you about to put on his death certificate.

8 A. Mm-hmm.

9 Q. Do you remember being the informant for that?

10 A. Yeah.

11 Q. And the only thing that I want to point out, and it
12 had things like his date of birth, his parents' names. Do you
13 remember things like that?

14 A. Mm-hmm.

15 Q. And it also asked for his occupation. You told them
16 that he was self-employed?

17 A. Mm-hmm.

18 Q. Is that right?

19 A. Mm-hmm.

20 Q. And also it asked for the nature of his business and
21 you said construction, right?

22 A. Yep.

23 Q. And that's because that's what Mr. Hall did,
24 right?

25 A. Yes. He was more or less a foreman. Yep.

1 Q. Yes, ma'am. Okay. That's all I wanted to ask you
2 about that day and I appreciate that. And I think this was
3 entirely clear from your conversation with Solicitor Hubbard,
4 but the interaction that you saw between Mr. Hall and Mr.
5 Jones in the pool hall that day or that evening I guess it
6 was, whenever it was, was in your mind definitely about what
7 you perceived to be Mr. Jones' belief that Mr. Hall had been
8 telling people that Mr. Jones was fired from SRS; is that
9 right?

10 A. No. You're talking about the day that I saw them?
11 You're talking about when?

12 Q. Yes, ma'am. I'm sorry.

13 A. About the lying?

14 Q. Yeah.

15 A. Start over.

16 Q. Yes, ma'am. I just wanted to make sure that I'm on
17 the same page. That day that you saw Mr. Jones ask Mr. Hall
18 that question about why are you telling lies on me, right?

19 A. Yeah.

20 Q. Your understanding of that is that it was Mr. Jones'
21 belief that Mr. Hall was telling people that Mr. Jones had
22 been fired from Savannah River Site?

23 A. Yes.

24 Q. Okay. Back in September we had an opportunity to
25 speak when there was a hearing on this case. Do you remember

BRENDA HALL - CROSS BY MR. SECORD

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1 that?

2 A. Mm-hmm.

3 Q. Early September I think it was and you told us then
4 as you did today about Mr. Hall's health problems, right?

5 A. Mm-hmm.

6 Q. And those had been longstanding heart problems that
7 he had, right?

8 A. (Witness nodding head.)

9 Q. And we talked about the fact that that was obviously
10 a concern to you because you loved him, right?

11 A. Mm-hmm.

12 Q. And we talked about the fact that you knew obviously
13 that your husband drank sometimes?

14 A. Yes.

15 Q. And given his heart conditions we talked about the
16 fact that it would probably be better if he hadn't drank,
17 right?

18 A. Well, it's better if nobody drinks. That's my
19 opinion.

20 Q. That's exactly right and that's the point that I
21 wanted to make, because when we talked about that before, I
22 asked you if you wished that he hadn't drank at all and you
23 said I wish nobody ever drank at all, right?

24 A. Yes.

25 Q. And I told you that I agreed wholeheartedly with

1 that, right.

2 A. Yes.

3 Q. And I think that, well, correct me if I'm wrong, but
4 that's because we know just as lay people going through life
5 and our life experience that alcohol affects people
6 negatively, right?

7 A. Well, I mean, it just depends on the case, I guess.
8 I can't really answer that question.

9 Q. You wouldn't say that drinking is good for a person,
10 right?

11 A. No.

12 Q. All right. And I'm sure you've seen people that
13 drink and it changes the way that they are when they're not
14 drinking, right?

15 A. Yes.

16 Q. Some people get really sad who aren't normally sad,
17 right?

18 A. Yes.

19 Q. Some people get really happy who aren't normally
20 happy. Some people get angry who aren't really angry,
21 right?

22 A. Yes.

23 Q. And some people get aggressive who aren't normally
24 aggressive, right?

25 A. Yes.

BRENDA HALL - REDIRECT BY MR. HUBBARD

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1 Q. And for people like you who would prefer people not
2 drink, those types of things can be concerning, right?

3 A. Yes.

4 MR. SECORD: Thank you, Ms. Hall. Appreciate your
5 time.

6 THE COURT: Redirect.

7 MR. HUBBARD: Quick follow up.

8 REDIRECT EXAMINATION

9 BY MR. HUBBARD:

10 Q. Since we're talking about drinking, was your husband
11 given to drinking until he was highly intoxicated or highly
12 impaired?

13 A. No.

14 Q. When you would see your husband drink, did you see
15 any real change in his behavior?

16 A. No.

17 Q. So the Milledge that you would see on any given day
18 was pretty much the Milledge you would see whether he was
19 drinking a beer or not?

20 A. Yes.

21 MR. HUBBARD: No further questions.

22 THE COURT: Recross?

23 MR. SECORD: Nothing further, Your Honor.

24 THE COURT: All right. The witness is excused.

25 MR. HUBBARD: Thank you, Your Honor. Your Honor, at

1 this time the State rests.

2 THE COURT: Very well. Ladies and gentlemen, I've
3 got some matters I have to take up with the attorneys 'at
4 this time. If you would just go back to the jury room,
5 refresh yourselves. Please don't discuss the case. I'll
6 get you back out here later. Thank you very much.

7 (Whereupon, the jury entered the jury room at 9:50
8 a.m.)

9 THE COURT: Okay. The State has rested. Any
10 motions?

11 MR. SECORD: Yes, sir. Your Honor, I would just
12 like to be heard on our directed verdict motion if I
13 may.

14 THE COURT: Yes, sir.

15 MR. SECORD: And we'll be relying primarily at least
16 for the charge of murder on the State of South Carolina
17 versus Jason Michael Dicky and progeny of that case to
18 include State versus Fuller, 297 SC 440, State v. Hendrix
19 270 CS 653, State versus Harvey, 220 SC 506, State versus
20 Rash, 182 SC 4, State v. Starns, 340 SC 312.

21 As Your Honor is aware, defense is entitled to a
22 directed verdict when the State fails to present any
23 direct evidence or substantial circumstantial evidence of
24 the evidence of the crimes charged and the State's burden
25 to overcome the directed verdict motion is compounded

JERRY HOLLOWAY - DIRECT BY MR. L. SHEALEY

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1 MR. HUBBARD: Yes, sir.

2 THE COURT: All right. Let's bring the jury in
3 please.

4 (Whereupon, the jury entered the courtroom at 10:30
5 a.m.)

6 THE COURT: Mr. Foreman, ladies and gentlemen of the
7 jury, please be seated. Welcome back. When we left on
8 last break the State had rested. You will now have the
9 opportunity to hear from the defense to present their
10 case. Mr. Shealey.

11 MR. L. SHEALEY: May it please the Court. The
12 defense calls Jerry Holloway.

13 Thereupon,

14 JERRY DAVIS HOLLOWAY

15 after having been first duly sworn, testified as follows,

16 THE CLERK: Please have a seat. Once you're seated,
17 state your full name spelling your last please.

18 THE WITNESS: Jerry Davis Holloway, H-o-l-l-o-w-a-y.

19 DIRECT EXAMINATION

20 BY MR. L. SHEALEY

21 Q. Good morning, Mr. Holloway.

22 A. Good morning.

23 Q. You don't particularly want to be here today, do
24 you?

25 A. No. I don't.

1 Q. But I'll make this short and to the point. Are you
2 familiar with a pool room in Johnston, South Carolina?

3 A. Yes.

4 Q. How are you familiar with the pool room in Johnston,
5 South Carolina?

6 A. I was in the process of buying it through a loan.

7 Q. Okay. Did you operate that establishment?

8 A. Yes.

9 Q. And your wife was a part of that?

10 A. Yes.

11 Q. Approximately how long did you operate that pool
12 room?

13 A. Close to two years.

14 Q. Okay. And do you recall roughly when you stopped
15 operating that establishment?

16 A. Somewhere in '16.

17 Q. '16. '17 maybe?

18 A. Maybe. Yeah, '17. It could have went over to '17.
19 Yes.

20 Q. Do you know if Clayton Hall started running it after
21 you gave it up?

22 A. Yes. I understand that.

23 Q. That's your understanding?

24 A. Yes.

25 Q. Well, I want to talk to you, now, your

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1 establishment, did you have pool in there?

2 A. Yes. Pool.

3 Q. Did you serve food?

4 A. Food.

5 Q. Did you have beer?

6 A. Beer.

7 Q. Is there sports?

8 A. Just games.

9 Q. Yeah, games?

10 A. Games.

11 Q. Football games?

12 A. Boxing things or bowling machines, stuff like
13 that.

14 Q. Okay. Now, during the time that you operated this
15 establishment, did you have an occasion to meet my client Mr.
16 Barry Jones?

17 A. Yes. I did.

18 Q. Okay. Does it sound accurate that he would frequent
19 that establishment sometime in the fall of 2017?

20 A. While I was there, while I was there in my last
21 month or whatever, yeah, Barry was there.

22 Q. Okay. And do you know Milledge Hall?

23 A. Yes. I do.

24 Q. And did he frequent that pool room for a long
25 time?

- 1 A. A long time.
- 2 Q. All right. Was he a regular customer of yours?
- 3 A. A regular customer.
- 4 Q. Was Barry a regular customer of yours?
- 5 A. Regular customer.
- 6 Q. Did they both spend good money in there?
- 7 A. They both spent good money.
- 8 Q. Okay. Did they play pool?
- 9 A. Occasionally. Occasionally.
- 10 Q. Okay. So I guess it's fair to say you had an
- 11 opportunity to observe both of their behaviors while that was
- 12 your establishment?
- 13 A. Yes, sir. I was familiar with them.
- 14 Q. Okay. Now, there's been some, you don't know this,
- 15 but during the course of this trial there have been some
- 16 specific allegations about Barry being a belligerent drunk, a
- 17 harasser of wait staff. Did you observe any of that as your
- 18 time as the head of the Johnston Pool Room?
- 19 A. No.
- 20 Q. Okay. Didn't give any of your staff a hard time?
- 21 A. No.
- 22 Q. Never had to call the law on him or kick him out?
- 23 A. No. Never.
- 24 Q. Never put him on trespass notice?
- 25 A. No.

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1 Q. Okay. Now, in that same time when you ran that
2 place you didn't have any problems with Milledge either, did
3 you?

4 A. Not at all.

5 Q. Okay. Did you ever see Milledge and Barry have any
6 confrontations or problems with each other?

7 A. No. I never observed that.

8 MR. L. SHEALEY: Okay. Thank you, Mr. Holloway.
9 Please answer any questions that the State has for you.

10 MR. HUBBARD: No questions. Thank you,
11 Mr. Holloway.

12 THE COURT: All right. The witness may step down.

13 MR. L. SHEALEY: May he be released from my
14 subpoena?

15 THE COURT: Any objection.

16 MR. HUBBARD: Absolutely none by the State.

17 THE COURT: All right.

18 MR. L. SHEALEY: The next witness will be Brandi
19 Truesdale.

20 Thereupon,

21 BRANDI K. TRUESDALE

22 after having been first duly sworn, testified as follows,

23 THE CLERK: Please have a seat. Once you're seated,
24 state your full name spelling your last please.

25 THE WITNESS: Brandi K. Truesdale,

1 T-r-u-e-s-d-a-l-e.

2 DIRECT EXAMINATION

3 BY MR. L. SHEALEY:

4 Q. Good morning, Ms. Truesdale.

5 A. Good morning.

6 Q. Thank you for being here. Tell me where you live
7 and how old you are, if you don't mind?

8 A. I'm from Barnwell, South Carolina and I'm 45.

9 Q. Okay. Are you currently employed?

10 A. Yes. I work at a nursing home.

11 Q. Do you know Barry Jones?

12 A. I do.

13 Q. Okay. Tell me how and tell this jury how you know
14 Mr. Barry Jones.

15 A. I met Barry for the first time at a bar slash
16 restaurant that I worked at. I was a bar manager, general
17 manager for them. The name of it was Mr. B's Food and
18 Spirits. I met him back when I first started working there.

19 THE COURT: Move the mic a little bit closer. We're
20 having trouble hearing.

21 BY THE WITNESS:

22 A. I'm sorry. I met Barry, I worked at a bar slash
23 restaurant in Barnwell called Mr. B's Food and Spirits. I
24 started working there like 2013 in May, and that's whenever I
25 first met Barry.

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1 BY MR. L. SHEALEY:

2 Q. All right. Now, I think you said you were a manager
3 there; is that right?

4 A. Yes.

5 Q. Did you also serve drinks?

6 A. I was full-time bartender and manager.

7 Q. Okay.

8 A. I worked, it was Tuesdays, Thursdays, Fridays and
9 Saturday nights.

10 Q. And that was in Barnwell?

11 A. In Barnwell.

12 Q. Okay. And was Mr. Jones a regular in Mr. B's?

13 A. Yes.

14 Q. And was that during the time while he worked at SRS?
15 Do you know anything about that?

16 A. Yes.

17 Q. So about how many times would he come into Mr. B's
18 roughly?

19 A. Three, four, five times a week sometimes.

20 Q. Okay. I think you said that started in 2013?

21 A. Mm-hmm.

22 Q. Now, obviously you don't know this, but this
23 incident that we're here for in this trial occurred in May of
24 2018. Was Barry still a customer ever at Mr. B's at that
25 point?

1 A. Yes.

2 Q. Okay. Was it as regular as it was before?

3 A. Not quite as much. No.

4 Q. Not quite as much?

5 A. No. Maybe I'd see him two, these, four times a
6 month, sometimes might be every other month, but he would
7 still pop in.

8 Q. Were you aware that he had moved --

9 A. Yes.

10 Q. -- back home?

11 A. Yes.

12 Q. Okay. Now, you don't know this, but there's been a
13 specific allegation that while Barry has been a patron at a
14 bar that he was a belligerent drunk and that he harassed wait
15 staff. What is your observations of Barry as someone that
16 observed him in a bar setting?

17 A. He's never done anything like that as far as at our
18 place. He would come in. He would be there sometimes
19 whenever I got to work and he would help out. He would sit
20 around. If we closed, if it was just us leaving at night, he
21 would make sure we got out safe. He would sit there and wait
22 until we would close up. He would help us sweep the floors.

23 Q. Okay. So as the manager of Mr. B's at that time,
24 you don't have any specific knowledge of him needing to be put
25 on trespass notice?

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1 A. No.

2 MR. HUBBARD: Your Honor, I do want to object to
3 this just politely. I think they can say he had a
4 general reputation for being good and peaceful. I think
5 it stops there. We've let it go beyond that.

6 THE COURT: Overruled.

7 MR. L. SHEALEY: Okay. Thank you, Judge.

8 BY MR. L. SHEALEY:

9 Q. Brandi, so you said he was never put on trespass
10 notice. Did you ever notice him to be belligerently drunk?

11 A. No.

12 Q. Did you ever observe him to harass any wait staff
13 particularly women?

14 A. No.

15 Q. Okay. And like you said, he was still frequenting
16 your establishment occasionally in the spring of 2018?

17 A. Yes.

18 MR. L. SHEALEY: Thank you. Answer any questions
19 that the State has for you.

20 MR. HUBBARD: No questions.

21 THE COURT: Very well. The witness is excused.

22 MR. L. SHEALEY: Next we call Tim Cornwell.

23 Thereupon,

24 TIM CORNWELL

25 after having been first duly sworn, testified as follows,

1 THE CLERK: Please have a seat. Once you're seated,
2 state your full name spelling your last please.

3 THE WITNESS: Tim Cornwell, C-o-r-n-w-e-l-l.

4 DIRECT EXAMINATION

5 BY MR. L. SHEALEY:

6 Q. Mr. Cornwell, good morning. Tell the jury please
7 where you're from?

8 A. Johnston.

9 Q. How old are you, sir?

10 A. 52.

11 Q. Are you married?

12 A. Yes.

13 Q. Kids?

14 A. Yes.

15 Q. Where do you work?

16 A. I'm self-employed.

17 Q. Okay. What do you do, sir?

18 A. I run a shop. It's called Carolina Heavy
19 Maintenance. We specialize mostly in fleet equipment.

20 Q. Okay. Now, you said you're from Johnston?

21 A. Yes.

22 Q. Being from Johnston, did you have occasion to know
23 Milledge Hall?

24 A. Yes.

25 Q. Okay. How did you know Milledge Hall?

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1 A. Oh, just by living in Johnston.

2 Q. So is it fair to say from a young age even up to
3 close to the time of his death?

4 A. Yes.

5 Q. Okay. Now, there has been a specific allegation by
6 the State in this case that Mr. Hall is a very peaceful man
7 who wouldn't harm a fly. Is that your opinion of his
8 reputation in the community?

9 A. No, sir.

10 Q. Okay. What is your opinion of Mr. Hall's reputation
11 in the community?

12 A. Uhm, rough around the edges.

13 Q. Can you elaborate?

14 A. From what I know about B'Boy --

15 MR. HUBBARD: Your Honor, object. Again, he can't
16 get into specific instances. I think he can give a
17 general reputation.

18 THE COURT: Well, let me ask you a quick question.

19 (Side bar off the record.)

20 THE COURT: Ladies and gentlemen, we need to take a
21 short break. I'll send you back into the jury room for
22 five minutes. Please don't discuss the case. I'll get
23 you right back out.

24 (Whereupon, the jury entered the jury room at 10:50
25 a.m.)

1 I think is too remote.

2 MR. HUBBARD: Thank you, Your Honor.

3 THE COURT: Your objection - certainly you have made
4 an adequate record I think at this point.

5 MR. L. SHEALEY: Yes, Your Honor.

6 THE COURT: All right. Are we ready to bring the
7 jury back in?

8 MR. L. SHEALEY: Yes, sir.

9 THE COURT: All right. Let's bring them back in
10 (Whereupon, the jury entered the courtroom at 11:15
11 a.m.)

12 THE COURT: All right. Ladies and gentlemen, please
13 be seated. We'll continue where we left off.

14 BY MR. L. SHEALEY:

15 Q. All right. Mr. Cornwell, before our break, I think
16 you established a few things for us. I think you told us
17 you're from Johnston, right?

18 A. Yes.

19 Q. And that you've known Mr. Milledge Hall all of his
20 life until he died, right?

21 A. Yes.

22 Q. Okay. I was asking you about your opinion of his
23 reputation. Do you believe he has a reputation for being a
24 fighter?

25 A. Yes.

RANDY YONCE - DIRECT BY MR. L. SHEALEY

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1 Q. Okay. How about a drinker?

2 A. Yes.

3 MR. L. SHEALEY: Okay. Nothing further, Your
4 Honor.

5 THE COURT: Any cross?

6 MR. HUBBARD: No questions.

7 THE COURT: All right. The witness may step down.

8 MR. L. SHEALEY: The defense would call Randy Yonce.

9 Thereupon,

10 RANDY YONCE

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat. Once you're seated,
13 state your full name spelling your last please.

14 THE WITNESS: Randy Yonce, R-a-n-d-y Y-o-n-c-e.

15 DIRECT EXAMINATION

16 BY MR. L. SHEALEY:

17 Q. Mr. Yonce, good morning. Thanks for being here.

18 Where are you from, Mr. Yonce?

19 A. I live in Johnston.

20 Q. Have you lived there your whole life?

21 A. Yes.

22 Q. What do you do, sir?

23 A. I'm retired.

24 Q. What did you do?

25 A. I worked at Savannah River Site.

- 1 Q. How old are you today?
- 2 A. I'm 70.
- 3 Q. Married?
- 4 A. No.
- 5 Q. Did you have occasion to know Mr. Barry Jones?
- 6 A. Yes.
- 7 Q. Did you have occasion to know Mr. Milledge Hall?
- 8 A. Yes.
- 9 Q. Okay. And is that in large part due to Johnston
- 10 Pool Hall?
- 11 A. That's correct.
- 12 Q. Is that a place that you would frequent from time to
- 13 time?
- 14 A. Yes.
- 15 Q. Now, would you go there occasionally and, well, have
- 16 like a meeting on a Monday to talk about what happened on the
- 17 weekend?
- 18 A. Yes. Usually on a Monday or a Tuesday.
- 19 Q. Right. And would you sometimes meet with
- 20 Mr. Jones?
- 21 A. Yes. He would be there or he would come in while I
- 22 was there.
- 23 Q. Did you ever meet with Kurt Kelz?
- 24 A. Yes. Kelz. Yes.
- 25 Q. Okay. And just -- The purpose of these meetings

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1 would be what?

2 A. Just to come in and have a beer or two and talk.

3 Q. Okay. Now, I want to draw your attention to May 7th
4 of 2018, okay? You're aware that's the day that Mr. Milledge
5 Hall was shot and killed, right?

6 A. Correct.

7 Q. Now, you weren't there during the shooting, were
8 you?

9 A. I was not there.

10 Q. Okay. But you were at the pool hall earlier, were
11 you not?

12 A. I was there earlier.

13 Q. And do you recall Mr. Barry Jones being there
14 earlier?

15 A. I think I was there when he came in.

16 Q. Okay. So you recall when he came in?

17 A. Yes.

18 Q. And what I'm showing you right here, is this
19 generally a layout of the pool hall interior?

20 A. Yes. That's the front door.

21 Q. That's the front door. This is the surveillance
22 video so is there a bar kind of in this area where you would
23 sit?

24 A. Right.

25 Q. Is that where you were sitting that day?

1 A. Yes.

2 Q. And who else was sitting with you?

3 A. I don't recall. I think you mentioned Kurt Kelz.

4 He was there. Kenny Hutchins. I just don't remember because
5 and Barry came in as some of those other people were
6 leaving.

7 Q. Did Barry come sit with you?

8 A. He ended up, yeah, sitting beside me on my left.

9 Q. Now, we've got lots of pictures of this bar in
10 evidence, but there's a large part of the bar that wraps
11 around this way, right, to the right?

12 A. Yes. It's kind of a Z shape or an S shape.

13 Q. And in the back would be pool tables and things of
14 that nature?

15 A. Right.

16 Q. Do you recall Mr. Milledge Hall being there that
17 day?

18 A. Yes. I think he was there.

19 Q. He wasn't sitting with your group, was he?

20 A. No.

21 Q. While you were there observing both Barry and
22 Milledge, did you see them have any interaction whatsoever
23 that day?

24 A. I don't recall them talking at that particular
25 day.

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1 Q. Okay. Do you recall, now, you said you observed
2 Barry get there, right?

3 A. Yeah. He came in and sat beside me.

4 Q. Did any member of the wait staff or even Mr. Hall
5 stop him at the door and advise him that he had no business
6 being there, no permission to be there?

7 A. Not that I observed. My back was kind of to the
8 door.

9 Q. But you don't recall anybody coming up to him and
10 saying you need to leave, nothing like that?

11 A. No. I don't remember anything like that.

12 Q. Okay. Do you recall Mr. Barry Jones talking about
13 his girlfriend that day?

14 A. Well, he came in and sat by me and it wasn't long
15 before she came in and she sat over further away on the other
16 part of the bar.

17 Q. And she is Angie Smith, right?

18 A. Angie Smith. Correct.

19 Q. You're familiar with Angie Smith?

20 A. Yes.

21 Q. Were you aware that they were dating at the time?

22 A. Yes.

23 Q. Was it unusual for her to come in but not sit next
24 to Barry?

25 A. Yes. Normally when I was up there in the early part

1 of the afternoon, she usually wasn't there.

2 Q. But she and Barry, did they come together or
3 separately?

4 A. I think they came separately. Barry was already
5 there when she came in.

6 Q. Do you recall her going and sitting with Milledge?

7 A. Possibly. I knew she was not sitting near us. I
8 don't know if she was beside Milledge or not. I don't recall
9 that.

10 Q. Do you recall Mr. Jones expressing any concerns
11 about Ms. Smith showing out or giving him a hard time in the
12 bar?

13 A. Yes. He said something to the effect of when she
14 came in like, oh, hell, here comes Angie which struck me as
15 strange because I wouldn't suspect him to say something like
16 that, and then he says, I'm afraid she's gonna start some
17 trouble. You need to watch my back. I said, what do you
18 mean, Barry? He said, I'm just afraid she's gonna start some
19 trouble. I said, okay. I see her over there. She's just
20 sitting over there. There doesn't appear to be any issue.

21 Q. But he was concerned about it seemed to you?

22 A. Yeah. He said it to me. Yes.

23 Q. Did you observe Mr. Jones leave a short while
24 later?

25 A. Well, at that point I said, well, I'm getting ready

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1 to leave. I'm gonna pay my tab and I'm leaving. And Barry
2 said, well, I'm leaving when you leave, so in essence we left
3 at approximately the same time.

4 Q. All right. Now, this is the original pool hall
5 video and I want to play this for you and tell me if you
6 recognize this guy in this video.

7 (Playing video.)

8 BY MR. L. SHEALEY:

9 Q. Do you know that gentleman?

10 A. Yeah, that's, I think that's Nick Watts.

11 Q. All right. Who is that?

12 A. I guess that's Barry. I'm not sure.

13 Q. Okay. You think that's Barry Jones?

14 A. I think that's Barry. Yeah.

15 Q. And who is that gentleman?

16 A. That's me.

17 Q. All right. So you and Mr. Jones, like you said, are
18 leaving about the same time?

19 A. Mm-hmm.

20 Q. All right. And again, knowing Barry wasn't being
21 escorted out, kicked out or told to leave by Milledge Hall or
22 anybody with that bar at that point in time, right?

23 A. Not that I was aware of.

24 MR. L. SHEALEY: Please answer any questions the
25 State has for you.

1 THE COURT: Any cross?

2 CROSS EXAMINATION

3 BY MR. McNAIR:

4 Q. Mr. Yonce, these meetings y'all had on Monday and
5 Tuesday or whatever, that was typically just the guys?

6 A. Yes.

7 Q. Angie wouldn't usually be there, right?

8 A. Correct.

9 Q. That was pretty much every Monday or Tuesday?

10 A. Yeah. Pretty much.

11 Q. All right. Now, Mr. Jones expressed to you that he
12 was worried about Angie Smith, but you saw her that day too,
13 right?

14 A. Yes.

15 Q. And she seemed fine to you?

16 A. Yes. As far as I could tell.

17 Q. She wasn't acting out?

18 A. No.

19 Q. She wasn't pointing out Barry Jones while she was
20 sitting with Milledge Hall?

21 A. Not that I recall. Now, again, my back was sort of
22 to them.

23 Q. But everything you saw concerning Angie Smith she
24 seemed fine to you that day?

25 A. Yes.

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1 MR. McNAIR: Okay. Thank you.

2 THE COURT: Any redirect examination?

3 MR. L. SHEALEY: No redirect.

4 THE COURT: All right. The witness may step down.

5 MR. L. SHEALEY: The defense calls Tony Friar.

6 Thereupon,

7 TONY FRIAR

8 after having been first duly sworn, testified as follows,

9 THE CLERK: Please have a seat. Once you're seated,
10 state your full name spelling your last please.

11 THE WITNESS: My name is Tony Friar. Last name is
12 spelled F-r-i-a-r.

13 DIRECT EXAMINATION

14 BY MR. L. SHEALEY:

15 Q. Good morning, Mr. Friar.

16 A. Good morning.

17 Q. Tell this jury, where are you from?

18 A. From Johnston, South Carolina.

19 Q. And you've lived there your whole life?

20 A. Yes, sir.

21 Q. How old are you, sir?

22 A. 63.

23 Q. Do you have children?

24 A. Yes, sir. Two grown children and three that I have
25 custody of now.

1 Q. Yes, sir. Now, do you know Barry Jones?

2 A. Yes, sir.

3 Q. Did you ever have occasion to know his wife?

4 A. Yes, sir.

5 Q. Okay. Tell the jury about how you new Barry Jones
6 and his wife?

7 A. Okay. Well, I have known Barry since he was a
8 child, then we started working together out at SRS and we
9 actually car pooled about 10 or 12 years and his wife Dana
10 worked in the same building that we had worked in so I have
11 known her a long time too.

12 Q. SRS, Savannah River Site?

13 A. Savannah River Site. Yes, sir.

14 Q. You worked there?

15 A. I did work there. Yes, sir.

16 Q. Where do you work now?

17 A. Carolina Machine Engines.

18 Q. So you knew his wife Dana?

19 A. Yes, sir.

20 Q. I think you said you worked in the same building
21 with her?

22 A. Yes, sir.

23 Q. Are you aware that Barry and Dana met at Savannah
24 River Site?

25 A. Yes, sir.

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1 Q. Are you aware about the circumstances of Barry's
2 departure from Savannah River Site?

3 A. Yes, sir.

4 Q. What do you know about that? Was he fired or did he
5 retire?

6 A. No, sir. He retired.

7 Q. Do you know why he retired?

8 A. I think from when Dana passed away, he was just out
9 there long enough, he was ready to go.

10 Q. You're aware his wife died of cancer?

11 A. Yes, sir.

12 Q. Okay. So now when Barry was working at SRS, he
13 didn't live in Johnston, right?

14 A. He did.

15 Q. Oh, he did.

16 A. From the beginning he did, yes, sir, until he got
17 married.

18 Q. Then he moved to Barnwell?

19 A. Yes, sir.

20 Q. Now, do you know Milledge Hall?

21 A. Yes, sir.

22 Q. How do you know Milledge Hall?

23 A. I pretty much knew him growing up through elementary
24 school and just from being in town.

25 Q. Okay. Do you have an opinion about his reputation

1 in the community for violence or peacefulness?

2 A. Well, the only thing I remember with Milledge coming
3 up through school he fought quite a bit. He fought quite a
4 bit at school.

5 Q. Did you ever see Milledge with a gun?

6 A. No, sir. I've seen him with one on the seat in his
7 truck before.

8 Q. Okay. So you've seen one with him on the seat in
9 his truck?

10 A. Yes, sir.

11 Q. What kind of gun?

12 A. It was a rifle.

13 Q. Was it a situation where he was going hunting or did
14 you feel like he might use that rifle?

15 MR. McNAIR: Objection to speculation.

16 THE COURT: Why don't you ask -- Rephrase your
17 question.

18 MR. L. SHEALEY: Okay.

19 BY MR. L. SHEALEY:

20 Q. The time that you saw him with a gun, was he in a
21 deer stand or was he in the middle of a confrontation with
22 somebody?

23 A. He was basically just had it in the truck. He
24 called me to come up there to talk with him.

25 Q. Concerning what?

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1 A. His grandson Clayton played football for me and I
2 was the head coach and one of the coaches had more or less --

3 MR. McNAIR: Objection to relevance and hearsay.

4 THE COURT: Let's not get into what the football
5 coach --

6 MR. L. SHEALEY: It's relevant because of --

7 THE COURT: I'm not arguing. Let me just see you
8 guys.

9 (Side bar off the record.)

10 BY MR. L. SHEALEY:

11 Q. All right. Mr. Friar --

12 THE COURT: Actually, hold on one second. Okay. Go
13 ahead.

14 BY MR. L. SHEALEY:

15 Q. Now, Mr. Friar, we're back on the record moving
16 forward. So just to confirm without going into full detail,
17 but I think you've confirmed for us that you have seen Mr.
18 Hall in possession of a gun before, right?

19 A. Yes, sir.

20 Q. And you told us about his reputation of being a
21 fighter, right?

22 A. Yes, sir.

23 Q. Has he a reputation for being a drinker?

24 A. I don't have any idea on that one.

25 Q. Don't have any idea on that one?

1 A. No, sir.

2 Q. Let me bring you forward to May, spring of 2018,
3 okay? Now, at that time had you, were you aware necessarily
4 that Barry Jones had moved back to Johnston?

5 A. No, sir. Not at that time.

6 Q. Was there an occasion at the pool hall where you
7 became aware of that?

8 A. Yes, sir.

9 Q. Okay. So do you frequent the pool hall a good
10 bit?

11 A. No, sir.

12 Q. But during that occasion, and we're here for an
13 event that happened on May 7th of 2018. To the best of your
14 memory this occasion at the pool hall that I think you're
15 about to talk about, when was that roughly?

16 A. Approximately maybe a month or less before that.

17 Q. And why were you at the pool hall?

18 A. I went. Milledge I would see him sometimes around
19 town. He would ask me, said I haven't been out there to eat.
20 The food was good, so I went out there to eat, me and my wife
21 and my brother went out there to eat.

22 Q. And you would have been aware, I guess, that Clayton
23 was the owner of that establishment at that point?

24 A. Yes, sir. He was running it. I wasn't sure who
25 owned it. I wasn't sure if he or Milledge owned it.

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1 Q. Try and speak up a little bit because I'm having a
2 hard time --

3 A. I knew Clayton was there and Milledge was there. I
4 didn't know who actually owned it.

5 Q. So you did end up going there based on that
6 invitation?

7 A. Yes, sir.

8 Q. And did you see anybody there that surprised you
9 that day when you got in the pool room?

10 A. Barry. Barry was there.

11 Q. Okay. And did you take an opportunity to catch up
12 with Barry, the guy that you knew, knew his wife and worked
13 with at SRS?

14 A. Yes, sir. When we came in, Barry saw me. He got up
15 and came over there, talked to me. We were still standing and
16 then he went back and sat down. We went to a booth and sat
17 down.

18 Q. Did there come a point in time where Barry presented
19 to you a problem he was having that day?

20 A. Yes, sir. He came over and sat down with us. At
21 that time Milledge was walking around inside of the building.
22 When he come by, Barry was talking about how he didn't like
23 Milledge and that Milledge had a problem with him.

24 Q. Okay. And what was his reason for not liking
25 Milledge that you were hearing about in that moment?

1 A. That Milledge was telling people that Barry had
2 gotten fired from Savannah River Site.

3 Q. Okay. Now, you've already talked about that, but
4 you knew that not to be true, right?

5 A. Yes, sir.

6 Q. We've already talked about the circumstances of his
7 early retirement, right?

8 A. Yes, sir.

9 Q. Due to his wife's passing?

10 A. Yes, sir.

11 Q. But I think what you're saying is that Barry was
12 venting his frustration and anger about that, what he would
13 deem as a lie, correct?

14 A. That's correct.

15 Q. And he was pointing out to you that Milledge was the
16 source of that lie, correct?

17 A. Yes, sir.

18 Q. So what happened next?

19 A. Well, Barry said he was going back up to the bar and
20 sit and when he got up and left, Milledge sat down in the
21 booth with us.

22 Q. Okay. Did you address Barry's concern with
23 Milledge?

24 A. Yes, sir. First Milledge asked me did I know him
25 and how well I knew him. I told him that I pretty much known

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1 him all his life. We worked together. And then he asked me,
2 he said, well, he got fired from out there, didn't he? And I
3 said no, he did not get fired.

4 Q. So Milledge was trying to assert to you that he
5 believed Barry got fired?

6 A. Yes, sir.

7 Q. And you corrected Milledge?

8 A. Yes, sir.

9 Q. Did Milledge receive that information and back down
10 and say, okay, you're right?

11 A. No, sir. Not really.

12 Q. What did Milledge do next?

13 A. Well, he was telling me that he couldn't stand Barry
14 and that he was going to, I guess with aggression he told me,
15 he said, you know, me, he said, I'm gonna take care of him and
16 he took his hand and did his fist like that in his hand
17 (indicating.) I told him, I said, y'all don't need to fight.
18 Y'all need to work it out. He said, no. I'm gonna take care
19 of him.

20 Q. So what you're saying is that Milledge agreed he
21 didn't like Barry?

22 A. Yes, sir.

23 Q. And that while doing that, he took his hand in his
24 fist and went like that (indicating)?

25 A. Yes, sir.

1 Q. And said I'm gonna take care of him?

2 A. Yes, sir.

3 Q. When he said, I'm gonna take care of him, did you
4 think he meant like maybe put some money in his retirement
5 account, buy him some roses? What did you think that meant?

6 A. I figured it meant it was gonna end up being a
7 fight.

8 Q. Now, did you talk to Barry afterwards?

9 A. No. I didn't tell him that, what was said at the
10 table. No, sir.

11 Q. Okay. But it was your belief that Milledge who you
12 think is a fighter had those intentions towards Barry?

13 A. Yes, sir.

14 Q. Okay. And this is about a month prior to May of
15 2018?

16 A. Yes, sir. I don't remember the exact date, but it's
17 about a month.

18 MR. L. SHEALEY: Please answer any questions the
19 State has for you.

20 THE WITNESS: Yes, sir.

21 CROSS EXAMINATION

22 BY MR. McNAIR:

23 Q. Mr. Friar you're here to testify that Milledge Hall
24 was a fighter based on what you knew about him in elementary
25 school?

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- 1 A. Yes, sir.
- 2 Q. 50 years ago, over 50 years ago?
- 3 A. Yes, sir.
- 4 Q. Have you ever been in a fight?
- 5 A. Yes, sir.
- 6 Q. Does that make you a fighter?
- 7 A. No, sir.
- 8 Q. Do you want people to judge your whole life by the
- 9 fact you've been in a fight before?
- 10 A. No, sir. Not after one fight. No, sir.
- 11 Q. So you knew Milledge Hall in elementary school?
- 12 A. Yes, sir.
- 13 Q. But then you never really had that much contact with
- 14 him after that, did you?
- 15 A. No, sir.
- 16 Q. But you grew up with Barry Jones?
- 17 A. Yes, sir.
- 18 Q. Y'all lived in the same neighborhood?
- 19 A. Yes, sir.
- 20 Q. You worked with him?
- 21 A. Yes, sir.
- 22 Q. And you car pooled with him for 12 years?
- 23 A. Yes, sir.
- 24 Q. So you knew him a lot better than Milledge Hall?
- 25 A. Yes, sir.

1 Q. Now, this threat you heard about a month prior where
2 you said Milledge Hall did something with his fist?

3 A. Yes, sir.

4 Q. You never told Barry Jones about that?

5 A. No, sir.

6 Q. So you weren't concerned enough about that to tell
7 Barry Jones?

8 A. I assumed they both had been arguing. Like I said,
9 I figured they end up fighting is what I figured was gonna
10 happening.

11 Q. Did you think Barry Jones would be scared to fight
12 Milledge Hall?

13 A. No, sir.

14 Q. So Barry Jones, the person you know Barry Jones,
15 would not be scared of Milledge Hall?

16 A. No, sir.

17 Q. And this gun you're talking about, it was a rifle
18 that Milledge Hall had in his truck?

19 A. Yes, sir.

20 Q. And that was like 15 years ago, right?

21 A. Probably 20, yes, sir.

22 Q. 20 years ago?

23 A. Yes, sir.

24 Q. So you never knew Milledge Hall to carry a pistol,
25 did you?

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1 A. No, sir.

2 MR. McNAIR: Thank you, sir.

3 THE WITNESS: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. L. SHEALEY:

6 Q. Mr. Friar, since the Solicitor is bringing up the
7 gun, was that gun used in the course of a dispute?

8 MR. McNAIR: Objection, Your Honor.

9 THE COURT: I think you opened the door.

10 Overruled.

11 BY MR. L. SHEALEY:

12 Q. That gun that Milledge Hall had and you saw him
13 with, was that in the context of a disagreement?

14 A. Yes, sir.

15 Q. Okay. And the Solicitor is saying that you only
16 know Milledge to be a fighter from elementary school, but you
17 don't know him just being involved in one single fight when he
18 was eight, do you?

19 A. No, sir. There was a good many.

20 Q. A good many?

21 A. Yes, sir.

22 Q. And you have testified to his reputation for that?

23 A. Yes, sir.

24 MR. L. SHEALEY: Okay. Nothing further.

25 THE COURT: Recross.

1 be seated. Mr. Foreman, ladies and gentlemen of the
2 jury, we'll pick back up with our next witness.

3 MR. L. SHEALEY: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. L. SHEALEY: The defense would call Doug
6 Lacey.

7 THE COURT: Very well.

8 Thereupon,

9 DOUGLAS LACEY

10 after having been first duly sworn, testified as follows,

11 THE CLERK: Please have a seat. Once you're seated,
12 state your full name spelling your last please.

13 THE WITNESS: My name is Douglas Lacey. Last name
14 is spelled L-a-c-e-y.

15 DIRECT EXAMINATION

16 BY MR. L. SHEALEY:

17 Q. Good afternoon, Mr. Lacey.

18 A. Good afternoon.

19 Q. Mr. Lacey, where do you live?

20 A. I live in Fredericksburg, Virginia.

21 Q. Graduated high school?

22 A. I did.

23 Q. Did you go to college?

24 A. I did.

25 Q. Where did you go to college?

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1 A. First the University of Florida and then I
2 transferred to the University of Miami where I graduated with
3 my undergraduate degree.

4 Q. What was that in?

5 A. Bachelor of science degree in electrical engineering
6 from the audio engineering program at the University of
7 Miami.

8 Q. Do you have further education?

9 A. I do.

10 Q. What is that?

11 A. I earned a master's of science in recording arts
12 with an emphasis in media forensics from the University of
13 Colorado in Denver in December of 2019.

14 Q. Tell me about the field you work in and the first
15 place you worked in that field.

16 A. I am an audio and video and image forensic examiner.
17 I conduct analyses of audio/video recordings, video recordings
18 and digital still images. My first location of employment in
19 that field was with the FBI from 1996 through 2003.

20 Q. And what did you do in your job at the FBI then?

21 A. I was an electronics engineer was my official title
22 and I served as a forensic audio examiner conducting analyses
23 of recordings submitted by not only the FBI but also local and
24 State law enforcement agencies.

25 Q. And you were there from '96 to 2003?

1 A. Correct.

2 Q. Okay. And your job has ultimately aided the FBI in
3 their prosecution of cases?

4 A. Yes. Not only the FBI, but we were also funded by
5 congress to support local and state law enforcement in the
6 prosecution offices as well.

7 Q. Okay. Where, if anywhere, would you go after your
8 career with the FBI?

9 A. I left the FBI in 2003 and began working full-time
10 in the private sector conducting the same types of analyses.
11 I did that initially with as a subcontractor with a company
12 named Bekktech, LLC, who is owned by a retired FBI supervisor
13 special agent.

14 Q. And what type of work does Bekktech, LLC do?

15 A. As I stated earlier, conducts examinations of audio
16 recordings, video recordings, digital still images such as
17 enhancing audio recordings so that the voice information can
18 be more readily heard or enhancing video recordings or still
19 images so that the visual details can be more easily seen.
20 I'm also involved in the authentication of recordings. If an
21 audio recording or a video recording is challenged by someone,
22 by a party, then I would analyze that recording to determine
23 if it's consistent with the original contiguous and unaltered.
24 And I do that again with audio recordings, video recordings
25 and still images. I also conduct various analyses, signal

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1 analysis of audio sounds. I worked on cockpit voice recorders
2 in aircraft that has crashed through and through signal
3 analysis examination can sometimes aid the investigators with
4 determining how much thrust the engines were putting forth at
5 the time of the crash and other investigative aspects of the
6 case through an analysis of the audio.

7 Q. Do you hold any certifications in your field?

8 A. Yes. I'm a certified forensic video examiner
9 through an organization named the International Association
10 for Identification.

11 Q. Have you ever had occasion to testify in a court of
12 law before?

13 A. Yes. I have.

14 Q. Have you ever been qualified as an expert in a court
15 of law before?

16 A. Yes.

17 Q. Approximately how many times?

18 A. This is my fifty-seventh opportunity to testify so
19 let's say 55 of those, one of the testimonies that I provided
20 was in front of the Ukrainian Parliament, it wasn't a court of
21 law per se. It was a different venue.

22 Q. Have you been qualified before as an audio and
23 digital forensic expert?

24 A. I'm sorry. Audio and?

25 Q. Digital forensic expert? Video forensic expert?

1 A. Yes. Audio depending on the nature of the case, the
2 work I conducted either forensic audio examiner or audio
3 forensics expert, video forensics expert, et cetera.

4 MR. L. SHEALEY: Your Honor, at this time I would
5 seek to admit Mr. Lacey as an expert in the areas of
6 audio and video forensics.

7 MR. HUBBARD: No objection.

8 THE COURT: Very well. Ladies and gentlemen, this
9 witness will be qualified in the area of audio and video
10 forensics and can give opinion testimony in that area.
11 That does not mean you must accept the opinion, but it is
12 evidence for you to use in any way you see fit.

13 BY MR. L. SHEALEY:

14 Q. Mr. Lacey, were you employed by me in this case?

15 A. Yes. I was.

16 Q. And did I ask you to do certain tasks with both
17 video and audio in this case?

18 A. Yes. You did.

19 Q. Regarding the video, did I ask you to enhance and
20 crop certain portions of certain videos in this case?

21 A. Yes. You did.

22 Q. Now, just so it's clear, you don't have a proverbial
23 dog in the fight in this case, correct?

24 A. That's correct.

25 Q. Other than I hired you and you want to do a good job

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1 I guess, right?

2 A. I always strive for that. But yes, my work is as
3 you requested, specifically in enhancement and enlargement of
4 portions of video in this case.

5 Q. It's not your duty to put - this isn't photoshop,
6 it's not your job to put guns in people's hands or determine
7 what something is? You were just simply following my
8 instructions, right?

9 A. Yes.

10 Q. If I say I want ten seconds of video blown up and
11 contrasted or brightened so that I can see something more
12 clearly, you try to do that to the best of your abilities?

13 A. Yes.

14 Q. And if I say, hey, Mr. Lacey, here's an audio
15 recording from a cell phone, I can't really hear what's being
16 said, can you run that through some filters and try to make it
17 more readily hearable so that we can identify what's being
18 said, right?

19 A. Yes.

20 Q. Let's talk about some of the techniques that you use
21 to do these things. If I give you a audio - or sorry, a video
22 clip of, let's say, ten seconds that I have identified for you
23 and I want you to zoom in and make it so somebody can see
24 better, let's say what's in someone's hands, explain to the
25 jury the process, the methods, the techniques that you go

1 through to do that?

2 A. The first thing I would do is identify the
3 designated portion whatever time portion that you're
4 interested in me work on. I would segment that off as a
5 separate video file or in software I can specify, only work
6 with this portion of a longer recording. I then identify what
7 issues in the recording should be addressed through filtering,
8 through video filtering, so if a scene is very dark, then a
9 simple thing might to be is to brighten the visual content or
10 increase the contrast. If there's a scenario where there's
11 shadowed areas and very bright areas, then there are tools
12 that can address those issues separately. So identify what
13 issues there are with the video recording, identify what
14 filters I should apply to address those issues, and apply
15 those filters to that desired segment and in the case of
16 portions that you were interested in having, you know, a
17 smaller portion of the camera view enlarged, I would then
18 create a separate cropped version where I just choose that
19 portion of the camera view and then enlarge that by some
20 factor so that when that cropped enlarged version is played
21 back, it appears larger on the computer monitor than if you
22 were just looking at it at a hundred percent.

23 Q. These techniques generally that you're employing
24 when you do this work, are these the same techniques that are
25 peer reviewed and done across the country by other experts in

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1 your field?

2 A. Yes. They are.

3 Q. You're using the same methods that they use at the
4 FBI?

5 A. Yes.

6 Q. Okay. And when we talk about something being
7 zoomed, just for example, we've got several zoomed in photos
8 that the State has. I know you don't know a lot about this,
9 but if this is done on a computer or let's say an iPhone,
10 we're zooming in, talk to the jury about the method, the
11 process, the algorithms that are potentially being used here
12 so that they can understand what's being done.

13 A. Specifically with the enlargement, the cropped
14 enlarged process?

15 Q. Yes.

16 A. So with this display here in the very upper left
17 corner we have a small inset that shows the full camera view.
18 You see the full extreme of what the camera captured and
19 recorded on the surveillance system. Within that inset we
20 have a white rectangle that appears to be approximately 25
21 percent of that full camera view, and it appears that that,
22 the content that's within that white rectangle has been
23 enlarged to this larger image that's behind that inset. So
24 when I identify a portion or when anyone identifies a portion
25 of the video that they wish to crop and then enlarge, what

1 they're doing is introducing new pixels to that cropped area
2 to enlarge it on the computer model. Videos, just taking a
3 step back, videos are comprised of frames, individual frames
4 of content that are displayed at a certain frame rate to
5 identify motion, essentially record motion over a period of
6 time.

7 Each frame of video just as in a still image is
8 comprised of pixels, individual squares of color and so if we
9 zoomed in far enough to any of these images, we'd start to see
10 the individual pixels, and you may have seen this on CSI or
11 other shows where, you know, zoom and enhanced, the famous
12 zoom in enhancement. When they zoom and they see those pixels
13 that's minimum level of detail. You can't go any further than
14 what the pixel level provides you, so when I enlarge that, I
15 have to introduce pixels in between the existing pixels to
16 make that image larger so if I have a simple example of two by
17 two image, two pixels, two pixels and I double the width and
18 the height, I now have four by four which means for each one
19 pixel I had in my original image, I now have to have four
20 pixels in order for that image to be, it's four times as large
21 doubled on each dimension.

22 Q. When we have a zoomed like this on a State's
23 Exhibit, that's what the computer is doing through its
24 algorithm, it increases the pixels?

25 A. Right. It adds pixels to whatever portion you

1 selected in order for that cropped enlarged version to appears
2 larger on your screen. Your computer monitor and TV also has
3 pixels and so if the original full camera view is exactly the
4 same number of pixels as your display, then your display is
5 showing you one hundred percent the full camera view. If I
6 now choose 25 percent of it and double the width and the
7 height, now that cropped version would fill the entire screen
8 of an HDTV. To do that pixels have to be added to do that
9 cropped image.

10 Q. And again, you're not taking artistic license
11 playing Picasso, a little pixel here, a little pixel there,
12 this is all pursuant to recognized algorithms for this type of
13 cropping and zooming?

14 A. Yes.

15 Q. Okay. Let's talk about enhancement because I think
16 we're talking about something different. One thing is to zoom
17 in. One thing is to enhance. Describe what you do when you
18 enhance something.

19 A. So as I mentioned earlier, the first thing I would
20 identify is what are the issues with the video recording. One
21 of the filters that I applied in my work in this case is
22 what's called levels. Levels looks at each pixel within my
23 video or still image and identifies a brightness of that pixel
24 and it has a value between zero and 255. Zero would be
25 basically a purely black pixel basically zero brightness. 255

1 would be pure white which is maximum brightness. In video a
2 lot of times we will get, all of the pixels will be somewhere
3 in between those two numbers, let's say between 50 and 200 and
4 using the levels filter I can basically take those pixels and
5 stretch the brightness out to maximize the full range of zero
6 to 255. So what it kind of looks like, it takes something
7 that almost looks like it has something over the camera lens
8 like pantyhose or some sort of gray, just wash, and it helps
9 to remove the dark pixels that are truly black black and the
10 whites truly white, so it stretches out that contrast. That's
11 one example of one tool that's applied.

12 Another one would be if you had a scene that had
13 shadow areas and very bright areas, there are tools that would
14 identify the shadow areas and brighten those separately
15 without affecting the bright areas so it brightens the shadow
16 without affecting the other parts of the image content.

17 Q. So is it fair to say when we talk about enhancement,
18 we're making details that are already there more visible?

19 A. Yes. That's the goal of video enhancement or image
20 enhancement.

21 Q. But you're not introducing new content?

22 A. That's correct. It's brightening or adjusting the
23 pixels that are there.

24 Q. And you did both enhancement and kind of cropping in
25 zooming work in this case?

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1 A. Yes.

2 Q. Now, did I also have an occasion to ask you to take
3 a cell phone video and clean up or enhance the audio on that
4 cell phone video?

5 A. Yes.

6 Q. Okay. Describe for the jury the steps you took when
7 you did that type of work?

8 A. With an audio enhancement from a video recording the
9 first step is to take an audio stream and create a separate
10 audio only file of that and then I conduct critical listening
11 to the record, very simply stated, identifying what sort of
12 noises are present. I also use what's called a spectrum
13 analyzer which allows me to view the frequency content of that
14 audio recording and so I can identify if there's a tonal sound
15 like a beep (indicating) sound, some sort of continuous
16 discreet tonal sound that I can then notch out through
17 enhancement. But again, critical listening and spectral
18 analyses are set to identify what audio filters I'm going to
19 apply. I then determine what filters and what settings
20 I should apply to create a separate audio file that is an
21 enhanced version and then I marry that back to the video
22 stream of the original file that was provided.

23 Q. Does all of that allow us to hear better what is on
24 the video?

25 A. Yes. That's the goal of audio enhancement is to

1 increase the listenability of the recording or ideally the
2 voice intelligible ability being able to understand what is
3 being said in the audio.

4 Q. But again, that doesn't add content? You're not
5 adding words or anything into the audio?

6 A. That's correct.

7 Q. Okay. Mr. Lacey, did I provide you some files to
8 review that you've done in work for me today?

9 A. Yes.

10 Q. Were they, in fact, on this CD?

11 A. Yes.

12 MR. L. SHEALEY: Your Honor, at this time I would
13 seek to move Defendant's Number 80 into evidence as an
14 enhanced audio and video files.

15 THE COURT: Subject to objection.

16 MR. HUBBARD: Yes, Your Honor.

17 THE COURT: So admitted.

18 MR. L. SHEALEY: I don't have anything further for
19 Mr. Lacey.

20 THE COURT: Let's take a short break. Ladies and
21 gentlemen, this will be a short break, but I'll get you
22 back in here in five to 10 minutes. Please don't discuss
23 the case. Thank you.

24 (Whereupon, the jury entered the jury room at 2:10
25 p.m.)

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1 THE COURT: Take a moment to stand up, Mr. Lacey,
2 get up, stretch your legs. Don't discuss the case with
3 the lawyers.

4 (Short break.)

5 THE COURT: Defendant ready to proceed?

6 MR. L. SHEALEY: Yes, sir.

7 THE COURT: State ready to proceed?

8 MR. HUBBARD: Yes, sir.

9 THE COURT: Bring the jury back in.

10 (Whereupon, the jury entered the courtroom at 2:20
11 p.m.)

12 THE COURT: Mr. Foreman, ladies and gentlemen,
13 please be seated. We'll pick up where we left off with
14 cross examination.

15 MR. HUBBARD: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. HUBBARD:

18 Q. It's Mr. Lacey, right?

19 A. Yes, sir.

20 Q. Mr. Lacey, I understand you were with the FBI for a
21 little while?

22 A. Yeah. September of '96 through June 2003.

23 Q. And that was as an engineer, not as a field agent,
24 correct?

25 A. That's correct. I was support personnel within the

1 FBI, if you're not a special agent, they have two classes of
2 employee, special agent and support personnel.

3 Q. And today you're in private business?

4 A. Yes. I am.

5 Q. For yourself?

6 A. Yes. I'm a sole practitioner, single member LLC.

7 Q. And one of the things you do is you travel around
8 and testify or you provide assistance to customers that pay?

9 A. Yes.

10 Q. You don't work for free?

11 A. No. I do not.

12 Q. And you're from Virginia?

13 A. Yes. I am.

14 Q. So what are you being paid on this case?

15 A. My hourly rate in this case is \$295.00 an hour.

16 Q. 295. Now, that doesn't include travel or does it?

17 A. That hourly rate applies to any time spent on the
18 case so that would include travel time, testimony. It's all
19 billed at the same rate. Actual expenses would be billed
20 whatever the actual expenses were.

21 Q. And that includes testifying, your time here
22 today?

23 A. Yes.

24 Q. So about how many hours do we have in so far?

25 A. I think to date not including November and December

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1 I have billed I think \$9500.00 total including expenses,
2 travel expenses prior to today.

3 Q. All right. Now, you discussed about how you do two
4 things. You talked about enlarging and enhancing video. This
5 is the original video that's been placed into evidence. You
6 have seen that, correct?

7 A. Yes.

8 Q. And this is what you were given and you were told by
9 the defense we would like you to enlarge certain areas and
10 they told you what they wanted to focus on, correct?

11 A. Yes.

12 Q. And then they wanted you to enhance certain areas
13 and they told you what they wanted you to focus on?

14 A. Yes. That's correct.

15 Q. Now, even this system that we have can enlarge,
16 correct?

17 A. Which software are you using there, VLC?

18 Q. I have no idea. It's some kind of software.

19 A. Okay. It appears to be VLC media player.

20 Q. Okay. So all systems have basic abilities to
21 enlarge and show things, right?

22 A. Yeah. I would have to explore what possibilities
23 there are to crop down and enlarge that. I have never used
24 VLC to do that so...

25 Q. And I'm not gonna get with you on that part. But

1 basically let me ask you this: When we talk about, when we
2 enlarge something, you talked about everything works on pixels
3 so you have to add pixels or pixels are added?

4 A. Yes.

5 Q. And generally there's some mathematical algorithm to
6 that?

7 A. Yes.

8 Q. But you would agree with me, too, the more we
9 enlarge something, we start off with something that might not
10 be crystal clear right here, but the more we enlarge it, the
11 more pixilated it gets?

12 A. Yes. That's correct.

13 Q. And then we're adding pixels that were not there to
14 begin with, correct?

15 A. Yes, sir. To achieve the larger space on the in
16 this case the protector displayed.

17 Q. Sure. Sure. And visually you can kind of see or
18 hope to see what you're looking at, but you would agree that's
19 not necessarily -- Well, just talking about that, there's no
20 way to quantify the accuracy of the enlargement process that
21 the pixels that have been added clearly show what was
22 originally there?

23 A. Yes. Because we don't have a reference recording so
24 again if I'm cropping the upper quadrant, the upper 25 percent
25 and enlarging that to the full size, I don't have that

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1 quadrant captured at the full resolution as if it were full
2 size so I don't have a reference for that quadrant that I can
3 quantify the differences between my enhancement, for example,
4 with a enlargement and a reference recording of that quadrant
5 as if it were recorded for resolution.

6 Q. The most accurate starting point would be a
7 reference point that is spot on accurate, right? A crystal
8 clear photo?

9 A. Well, in this case video.

10 Q. Or video?

11 A. Yes.

12 Q. So like what we see on TV when we watch NCIS and
13 they have somebody that supposedly has your type of job and
14 they click on a computer, really what they really started off
15 with, they work backwards on TV?

16 A. Yes.

17 Q. They can do things you can't do?

18 A. Yes. They start with the video of the woman with a
19 mole on her right cheek, they degrade that video, you know, in
20 production and start with the degraded version, zoom that
21 degraded version and then, you know, hit the magic red button
22 and then it morphs into the crystal clear photo that is truly
23 what they started with in Hollywood, yes.

24 Q. This is reality. So you start with something
25 degraded, correct?

1 A. Degraded in the sense of its limited pixel
2 resolution and in this case the area of interest is some
3 distance from the camera position which means that content at
4 that position will have a fewer number of pixels that occupy
5 it as opposed to if they were closer to the camera view they
6 would occupy more pixels in the video.

7 Q. So what you were asked to do starting with this
8 degraded picture, this fuzzy picture, enlarge it and then
9 enhance it?

10 A. Or enhance and enlarge.

11 Q. Enhance and enlarge. You enhance first and then you
12 enlarge; is that correct?

13 A. Correct.

14 Q. Okay. Well, let's talk a little bit about both of
15 those. And again, when you enlarge, there's no way to
16 quantify that what we end up seeing at the end of the day is
17 more accurate than what we started with? When we're asking
18 what is the reality that's really there, an enlargement by and
19 of itself isn't necessarily going to give us that better
20 answer because of the pixel issues, correct?

21 A. Right. We can't determine, we can't quantify the
22 difference between the enlargement and again what that
23 enlarged portion would have looked like had it been recorded
24 initially at full resolution. Yeah. That's correct.

25 Q. If we were to do some kind of experiment, if we had

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1 done the original enlargement, it might look different than
2 the enlarged version of something like this when we enlarge
3 it? See what I'm saying?

4 A. If we captured this scene -- So I'll throw some
5 numbers out. If this scene has a million pixels in it and if
6 we had somehow simultaneously recorded it with a four million
7 pixel camera, the four million pixel camera would give us one
8 million pixels in each quadrant. If I then go back to my one
9 million pixel version and I crop one quadrant and enlarge it,
10 I could compare that, I would have enough pixels in my four
11 million pixel reference to compare with my lower resolution
12 video that has been subsequently enlarged.

13 Q. Then we can quantify?

14 A. Then we can quantify.

15 Q. You can't do that with this?

16 A. That's correct.

17 Q. All right. Now, we talk about enhancements and I
18 believe you said you use a filter to do that?

19 A. Yes.

20 Q. Levels, I think?

21 A. Levels is one of the filters. Yes.

22 Q. And you talked about zero to 250, solid black, solid
23 white and then somewhere in between is the sweet spot, I
24 guess, is what you're looking for?

25 A. Well, I have a meter that I can see the distribution

1 of the brightness of all of the pixels in the video and
2 typically what happens is the distribution starts somewhere
3 above zero and ends somewhere before 255 so it's not utilizing
4 the full potential range from dark to light.

5 Q. But the key is you are the one, that's where you
6 step in using that filter process, but you are the one that
7 selects that or is there an algorithm for that?

8 A. There is an auto levels option. But no. In this
9 case I manually select the settings for this levels filter.

10 Q. So that part is subjective for you based on your eye
11 and your sense of what you think is best?

12 A. Well, using the meter, that's objective so I would
13 not set the setting where it crosses over the distribution
14 that's currently there because, in other words, I would start
15 to turn pixels that aren't true black black if I set the
16 setting if I'm too aggressive. So that's where my education,
17 training and experience come in to optimally setting the
18 settings of that filter.

19 Q. Absolutely. But you would agree with me, say
20 someone is sitting in that chair has the same training and
21 background and has the same filter and they want to do that or
22 they're inclined to do that, the rest of us wouldn't know?

23 A. I'm sorry. Do what?

24 Q. Add some darkness where there wasn't or light where
25 there wasn't. We have to rely on you?

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1 A. Rely on my testimony. Yes.

2 Q. Not just your testimony, rely on you?

3 A. Yes.

4 Q. Right. So that's the subjective element to all
5 this. Even if you say you're using an objective process, we,
6 jurors looking at you have to say you did it right, correct?

7 A. Yes. I think so.

8 Q. Okay. So you do that process, then you do the
9 enlargement process starting with something that we know is
10 grainy and you can't quantify what at the end of the day is
11 more accurate as far as what is truthfully there than what we
12 started from, correct?

13 A. I cannot quantify the enlargement compared to what
14 it would have been had it been recorded initially at a higher
15 resolution. Yes.

16 Q. So correct. Now, this image that we see, Mr. Hall
17 has something in his hand pointing. You were asked to focus
18 in on that, correct?

19 A. As one of the portions of this video. Yes.

20 Q. And you were informed that the question was whether
21 he had a phone or a gun, correct?

22 A. I was notified that that was one point of contention
23 in this case. Yes.

24 Q. One big point of contention, correct?

25 A. I don't know what weight it has in the case but...

1 Q. Well, you were asked to focus on that though, were
2 you not?

3 A. Yes. As one of a number of portions from this
4 video.

5 Q. Okay. Mr. Lacey, I'm gonna enlarge this just a
6 little bit using whatever system they have here. Okay.
7 You see that. So in this process you did not do this so you
8 haven't done any enhancements on this, correct?

9 A. You're playing the original file so that's
10 correct.

11 Q. Correct. This is an enlargement, correct?

12 A. Yes.

13 Q. Where we see an object in a man's hand, but you can
14 see all of this hand, correct? Maybe you can't from where you
15 are.

16 A. Yeah. I see a light area. I see a dark area that
17 sort of overlaps the bed of the truck.

18 Q. Well, you see lights on the truck?

19 A. Yes.

20 Q. Or a shine on the truck and shadow, body, arm?

21 A. Yes, sir. I generally agree with that.

22 (Playing video.)

23 BY MR. HUBBARD:

24 Q. And then this object gets placed right back there.

25 You see it? Stop it. Now, let's look at what you did. This

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1 is what you did.

2 A. Actually, no. You still have the magnification
3 on.

4 Q. Okay. That's what you did right there?

5 A. Yes.

6 Q. Okay. Reaches, pull. Back up again. Right there.
7 So these are your enhancements?

8 A. Yes. Enhancement and enlargement.

9 Q. And that object is now, you would agree with me, a
10 little bit bigger than it had been?

11 A. Compared to the original, yes, because it's been
12 enlarged.

13 Q. No, no, no. In the hand. Not the object being
14 blown up, but in conjunction to the hand, in relationship to
15 the hand.

16 A. I would have to -- I can't really say yes or no. I
17 would have to do a comparison between them to verify that.

18 Q. Maybe this will show a little better. That object
19 in the hand is now bigger than it had been?

20 A. I would need to see the original frame to make any
21 sort of -- You're asking me to quantify that it appears bigger
22 and I would have to see it again to have a reference.

23 Q. Mr. Lacey, the point is, you had that. You didn't
24 do -- What you did not do for us or for the jury for anyone
25 was do side by side so we can see the output that you did, the

1 final product versus what we were originally looking at,
2 right?

3 A. I did not create side by side representation, that's
4 correct.

5 Q. And that would be helpful for seeing just how
6 reliable and acceptable what your work was, I mean, for this
7 jury, right?

8 A. They sort of can watch the original video, but it is
9 not a side by side representation.

10 Q. Otherwise those who want to go back and study this
11 have to put in the original and then pull it out and look at
12 yours, put yours in and look at yours, right?

13 A. Yes.

14 Q. You didn't do a side by side that would assist in
15 showing look what I did. I didn't really add anything. I
16 didn't really change anything. Don't be alarmed. What
17 you see is real. You didn't do that?

18 A. I did not present side by side representations,
19 no.

20 Q. If you were asked to do that, you could have?

21 A. Yes.

22 Q. You were not asked to do that?

23 A. That's correct. I was not.

24 MR. HUBBARD: Mr. Lacey, I believe that's about all
25 I have for you. I may have bumped up your pay a little

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1 bit today.

2 THE COURT: Redirect.

3 REDIRECT EXAMINATION

4 BY MR. L. SHEALEY:

5 Q. Well, that's true, Mr. Lacey. The longer you stay
6 on the stand, I mean, you're billing, aren't you?

7 A. Yes. I am.

8 Q. Is your experience and expertise free?

9 A. No. There is a market for what I do.

10 Q. Have you ever heard the saying you get what you pay
11 for?

12 A. I've heard that. Yes.

13 Q. I want to talk to you about something. The
14 Solicitor was questioning you about how I didn't ask you to do
15 a side by side comparison of the original to your
16 enhancements, right?

17 A. Yes.

18 Q. I didn't, did I?

19 A. No. You did not.

20 Q. I mean, we've already got the original, right?

21 A. Yes.

22 Q. I'm pretty certain there's a bunch of the originals
23 there, but I guess you can agree that I didn't say put it in a
24 chart so we can compare, right?

25 A. That's correct.

1 Q. What I would do, correct me if I'm wrong, is give
2 you certain things that I think are of interest on certain
3 clips of these videos, right?

4 A. Yes.

5 Q. I would say, hey, where he's lifting up his shirt,
6 can you crop in and enhance so we can see what is there,
7 right?

8 A. Yes. That was one of the portions you did
9 designate.

10 Q. Did I ever tell you to please put a gun in Milledge
11 Hall's hands?

12 A. No. You didn't ask me to put a gun in anyone's
13 hand.

14 Q. Do you know the names of any of these people in this
15 case?

16 A. No, other than the defendant.

17 Q. Did I ever tell you to put a gun in the guy with the
18 gray shirts hand?

19 A. No.

20 Q. What you said on my direct is that enhancement
21 allows us to see details that were already there or more
22 details of what the content is that is already there, right?

23 A. Yes. That's the goal of video enhancement.

24 Q. So if I enhance a video or a still and it happens to
25 look more like a gun, is that in keeping with the content

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1 that's already there?

2 A. Yes.

3 Q. Did you do any specific enlargement of what's in his
4 hand at my request? I mean, I asked you to enlarge the entire
5 thing, right?

6 A. Right. A portion of the video you asked me to
7 essentially crop and then enlarge that portion.

8 Q. But I did not say will you please crop and make
9 bigger in relation to his hand that black object, did I?

10 A. No.

11 Q. Okay. That wouldn't sound very -- I would think
12 that you would probably object to being requested to do
13 anything like that in your line of work?

14 MR. HUBBARD: Your Honor, I'm gonna object. Now
15 it's just kind of bolstering at this point. If he has a
16 question, just ask the question.

17 THE COURT: Overrule the objection, however, move
18 along. Thank you.

19 BY MR. L. SHEALEY:

20 Q. And this is one of the areas I asked you to focus in
21 on as well, right?

22 A. Yes.

23 Q. I had an interest in seeing what might be in his
24 waistline so you did enhance and crop in, correct?

25 A. Yes. This area.

1 Q. This entire thing?

2 A. Yes.

3 Q. But I did not say please zoom in on any particular
4 thing. I just asked you to allow us to see a greater picture
5 of the entire field of view that was of interest, correct?

6 A. Yes.

7 Q. And if it happens to look more like a gun in his
8 waistline after we've enhanced it, then that's just the
9 content that's there, right?

10 A. Yes. After enhancement.

11 Q. Now, there's been some questions about how the
12 Solicitor maintains that there's no way to quantify how much
13 more accurate your enhancements are compared to the original.
14 Do you recall that?

15 A. Yes.

16 Q. Okay. That's somewhat of a difficult question to
17 answer, is it not?

18 A. Without a frame of reference, yes.

19 Q. Correct. So in your opinion these enhancements, you
20 can't say it's 75 percent more accurate because you don't have
21 a frame of reference, correct?

22 A. To quantify it, yes. Correct.

23 Q. But you can certainly say they're not less accurate,
24 right?

25 A. Well, yeah. The flip side I couldn't say that one

1 way or the other.

2 MR. L. SHEALEY: Correct. Okay. Mr. Lacey, I don't
3 think I have anything further for you.

4 THE COURT: Recross.

5 MR. HUBBARD: One quick one.

6 RECROSS EXAMINATION

7 BY MR. HUBBARD:

8 Q. You said as to the final product the question was
9 the content is already content that's there and you said after
10 enhancement when we see the final product and again,
11 enhancement is something that you control?

12 A. Yes.

13 MR. HUBBARD: No further questions.

14 THE COURT: All right. The witness may step down.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Yes. Counsel.

17 (Side bar off the record.)

18 THE COURT: Ladies and gentlemen, let me get you
19 back to the jury room for a few minutes. I'll get you
20 right back out here. Thank you. Please don't discuss
21 the case while you're back there.

22 (Whereupon, the jury entered the jury room at 2:50
23 p.m.)

24 THE COURT: We had a bench conference a few minutes
25 ago where the defendant essentially indicated, excuse me,

1 MR. L. SHEALEY: Sequestration within the rule and
2 the rule allows for this, it's routine as anything else.
3 It is perfectly allowable, common, normal. It's just as
4 normal as the SLED agent being in here the entire case,
5 it is that normal.

6 THE COURT: Okay. All right. What's the identity
7 of the person? Who is the witness?

8 MR. L. SHEALEY: This is Police Chief Rick Myers.

9 THE COURT: Okay. All right. Sitting right there?

10 MR. L. SHEALEY: Yes, sir. Right there.

11 THE COURT: All right. I'll allow the witness to
12 stay.

13 MR. L. SHEALEY: Thank you, Your Honor.

14 THE COURT: Bring them in.

15 (Whereupon, the jury entered the courtroom at 9:05
16 a.m.)

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, please be seated. Welcome back. We're going to
19 pick up where we stopped yesterday with the next witness
20 in the defense case in chief.

21 MR. L. SHEALEY: May it please the Court, Your
22 Honor.

23 THE COURT: Yes, sir.

24 MR. L. SHEALEY: At this time the defense would call
25 Barry Jones to the stand.

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1 THE COURT: Very well.

2 Thereupon,

3 BARRY WAYNE JONES

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat. Once you're seated,
6 state your full name spelling your last please.

7 THE WITNESS: Barry Wayne Jones, J-o-n-e-s.

8 DIRECT EXAMINATION

9 BY MR. L. SHEALEY:

10 Q. Good morning, Barry.

11 A. Good morning, Luke.

12 Q. Barry, tell this the jury where are you from?

13 A. I was raised in Johnston and I later moved to
14 Barnwell when I married my wife.

15 Q. How old are you today?

16 A. I'm 57 years old.

17 Q. How old were you in May of 2018?

18 A. 54.

19 Q. Okay. Do you have family -- You said you were
20 raised in Johnston?

21 A. I was.

22 Q. You have family there?

23 A. I do.

24 Q. Okay. Did you go to school there?

25 A. I did. I went to Wardlaw Academy, opened in 1970,

1 and my class was the first class to go one through 12, so I
2 didn't go to high school, I went straight to the academy for
3 12 years.

4 Q. Did you graduate there?

5 A. I did. 1982.

6 Q. All right. Did you have any further education after
7 high school?

8 A. I did. I went to Lander College in Greenwood, South
9 Carolina where I received my bachelor of science in business
10 administration and where I majored in management.

11 Q. Okay. So you graduated from Lander?

12 A. 1986. Yes, sir.

13 Q. Let's talk about some of your work history. Did you
14 start work pretty young?

15 A. I did. Age 13, I was hired on at J.W. Yonce and
16 Sons which is a peach farm in Johnston. I worked there from
17 13 until I was 22.

18 Q. Okay. Did you work there while you were in
19 college?

20 A. I did. I worked my way through college. I did.
21 Yes, sir.

22 Q. Okay. Let's talk about after college after you got
23 these degrees, where, if anywhere, did you work next?

24 A. I was hired on at Savannah River Site at the age of
25 22 and I worked there for 27 years.

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1 Q. Okay. Let's start, did you work the same job the
2 entire 27 years?

3 A. I didn't. I started as an electrical and
4 instrumentation mechanic grade 20 and later on after about
5 half way through that about 13 years I had the opportunity to
6 become a multi skilled technician which means that I was able
7 to get another grade 20 qualification which I received in
8 radcon which is radiology control where I surveyed for
9 contamination and radiation for the safety of the workers.

10 Q. So for those that don't know what SRS is, that's a
11 nuclear facility, right?

12 A. It is.

13 Q. Okay. Did you have to have a security clearance to
14 work there?

15 A. I did.

16 Q. And at the time did you have a security clearance?

17 A. I did. The whole 27 years I had whatever clearance
18 that was required and we were investigated about every five
19 years, I think, or 10 years.

20 Q. Okay. Now, we heard from Tony Friar yesterday. Is
21 that someone you knew from Savannah, SRS?

22 A. I did.

23 Q. All right. Now was there someone else important to
24 you that you met while working at SRS?

25 A. I did. I met my wife Dana and we were able to work

1 in the same facility about five years. Tony was there. We
2 used to drive back and forth, car pooled to Savannah River
3 Site and Tony stayed, I think he worked with my wife for about
4 15 years.

5 Q. How long were you married to your wife?

6 A. 20 years.

7 Q. What was your wife's name?

8 A. Dana.

9 Q. And is she with us today?

10 A. Unfortunately she is not.

11 Q. Okay. How did she die?

12 A. We battled cancer for eight years, the last two
13 years was very bad on me.

14 Q. All right. Well, we'll talk about that, but you
15 lost your wife to cancer?

16 A. I did.

17 Q. And again, you've testified that you met your wife
18 at Savannah River Site, correct?

19 A. I did. That's where I met her.

20 Q. And because this is an important issue in this case,
21 I want to go ahead and ask you, after your wife's passing, did
22 you continue to work on at Savannah River Site?

23 A. No. I didn't. I wanted to, but mentally I was so
24 depressed without her being out there, I couldn't. I took
25 retirement.

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1 Q. Okay. So you were not fired? You took a
2 retirement?

3 A. I did. I took early retirement.

4 Q. An early retirement?

5 A. At age 50. Yes, sir.

6 Q. What is your understanding of what a full retirement
7 would require of you?

8 A. I would have had to work eight more years at the
9 site before I received a hundred percent retirement.

10 Q. So are you saying that you took a reduced pension in
11 your retirement?

12 A. I did.

13 Q. Okay. Now, after retiring from SRS, would you
14 eventually make your way back your home of Johnston?

15 A. I did. My father had become pretty ill and I
16 decided to move back and take care of my dad.

17 Q. Can you tell the jury about what year this would
18 have been?

19 A. Around, well, I know for a fact it was 2017.

20 Q. Okay. And your father was still living in
21 Johnston?

22 A. He was.

23 Q. Okay. And you said he was ill so you moved back to
24 help him out, take care of him?

25 A. That's why I moved back to Johnston. Yes, sir.

1 Q. Is Johnston a big town full of lots of things to
2 do?

3 A. No. It's not.

4 Q. Okay. And you grew up there?

5 A. I did.

6 Q. What, if anything, would you like to do for
7 entertainment or food while you lived and moved back to
8 Johnston?

9 A. Well, I'm a big sports fan and I enjoyed going out
10 and having a beer or two, socialize, get a bite to eat and
11 when I'm doing that, I like to usually watch sports on TV.

12 Q. Okay. Was there a place that you could do all those
13 things, get a bite to eat, have a beer, watch sports on TV?

14 A. I found there was a place. I always known it as the
15 pool room, but it had been renamed Johnston Sports Bar I
16 believe.

17 Q. Okay. And that's the place that we have been
18 talking about all week, right?

19 A. Yes, sir. We have. Yes, sir.

20 Q. When you in the fall of 2017, when you moved back to
21 Johnston, do you recall who ran the pool room?

22 A. Yeah. It was a guy named Jerry Holloway.

23 Q. Is that the same Jerry Holloway we heard from this
24 week?

25 A. Yes. He was previously up here. Yes, sir.

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1 Q. Okay. Did he run a good pool room?

2 A. He did.

3 Q. What was your opinion of it?

4 A. Uhm, it was just run well. I mean, it had good food
5 and it just was what I like to do and go to.

6 Q. All right. Now, how often would you frequent the
7 pool room?

8 A. Oh, quite often. Probably at that point in time
9 probably about four to five times a week.

10 Q. Okay. So while frequently the pool room four to
11 five times a week, did you happen to meet somebody that would
12 be important to this next chapter of your life?

13 A. I did. I met Angie Smith there and...

14 Q. Okay. And so what could you tell us about Angie and
15 her life at that point?

16 A. Well, she was divorced. At the time she wasn't
17 dating anyone and I wasn't dating anyone so we just struck up
18 a conversation and started a relationship.

19 Q. Okay. So you guys hit it off?

20 A. You could say that.

21 Q. Okay. So she was divorced, you were a widower?

22 A. Correct.

23 Q. She was aware of that?

24 A. She was very aware of that. I talked to her quite a
25 bit about that.

1 Q. And so when would you say that you guys were
2 officially a couple? What time of year of 2017?

3 A. I remember it being football season so it would have
4 been somewhere around September.

5 Q. Okay.

6 A. 2017.

7 Q. So by the time of May of 2018 were you guys still
8 dating?

9 A. Yes. We were living together. I was living with
10 her.

11 Q. Okay. I'm gonna ask you that, but by the time of
12 this incident roughly how long had you guys been dating?

13 A. Eight months.

14 Q. All right. So you said you were living with her.
15 How quickly in the relationship did that happen?

16 A. Fairly quick.

17 Q. Okay. Now, did you purchase a home in Johnston?

18 A. No. I didn't.

19 Q. Would you ever stay with your dad?

20 A. I would.

21 Q. Did you have possessions at your dad's?

22 A. Yes. Most of my possessions stayed there.

23 Q. It sounds like you were predominately living with
24 your girlfriend Angie Smith?

25 A. As far as staying overnight I did.

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1 Q. You had clothes over there?

2 A. I did.

3 Q. Valuables, toiletries, things like that?

4 A. I did.

5 Q. So now is there anybody that as part of meeting and
6 developing a relationship with Angie would you ultimately meet
7 Milledge Hall?

8 A. Yes. Yes. She introduced me to B'Boy. I don't
9 know him as Milledge but B'Boy. I do now because of what's
10 happened but at that time I only knew him as B'Boy.

11 Q. Okay. So let's make that clear. Is it your
12 understanding that he went by B'Boy?

13 A. Yes.

14 Q. So when you were introduced to him, it wasn't this
15 is Milledge Hall?

16 A. No. It wasn't.

17 Q. Okay. All right. What was your understanding of
18 the relationship or kinship between Angie Smith and B'Boy?

19 A. They were cousins.

20 Q. That was made known to you?

21 A. It was.

22 Q. Now, is there anybody else that you became friendly
23 with at the pool hall and exchanged information with around
24 that same time?

25 A. Yeah. I didn't know at the time, but he was a

1 sergeant. It was Sergeant Mathis of the Johnston Police
2 Department.

3 Q. Sergeant Mathis with the Johnston Police
4 Department?

5 A. Yes, sir.

6 Q. And would you guys, why did y'all strike up a
7 friendship?

8 A. I saw him there and I had a car that I talked to
9 several people about that liked cars that I told him I had a
10 Corvette for sale and asked him was he interested in it. He
11 said yeah, he would try to take a look at it.

12 Q. Okay. So y'all exchanged cell phone numbers?

13 A. We did. That night we did.

14 Q. Now, let's move back to Angie. Were you aware of
15 who her ex-husband was when you met her?

16 A. She eventually told me, not at the very beginning,
17 but as we got to know each other she told me she had an
18 ex-husband that was an investigator for the Sheriff's
19 Office.

20 Q. Okay. And would that be James Smith or Jimmy
21 Smith?

22 A. Yes. She - she called him James Smith, but now I
23 realize that he's known by Jimmy Smith also.

24 Q. Okay. So that was, you were aware of who her ex
25 was?

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1 A. Yes. I was.

2 Q. All right. And I want to, first I want to talk to
3 you, let's fast forward you a little bit to the spring of
4 2018, okay?

5 A. Okay.

6 Q. Are you still dating Angie?

7 A. Yes. I am.

8 Q. Now, is the pool hall in the spring of 2018 still
9 owned by Jerry Holloway?

10 A. No. It's not.

11 Q. Okay. Who per your understanding at the time is now
12 owning the pool hall?

13 A. Clayton and Madison Hall.

14 Q. Okay. And we've heard testimony this week that
15 Clayton you're aware is the grandson of B'Boy?

16 A. That's correct.

17 Q. And Madison was his wife at the time?

18 A. Yes, sir.

19 Q. Now, tell us about your experiences in the pool hall
20 as a regular customer and what, if any, changes were there
21 from when Jerry Holloway owned it to when Clayton owned it.

22 A. Well, they changed the menu trying to kind of put
23 their touch on it and it's just some issues that came up as
24 far as -- I don't know if you want specifics or not.

25 Q. Well, was the change in management an improvement in

1 the quality of the atmosphere and service or was it less
2 good?

3 A. It was not as good.

4 Q. Okay. But again, I think you've testified this is
5 one of the few places in town where you can get a bite to eat,
6 drink a beer and watch sports, right?

7 A. It's the only place. Yes, sir.

8 Q. Okay. So what was your opinion of the new
9 management and their experience level in terms of running a
10 bar or restaurant?

11 A. Right. They were very young and hadn't had the
12 experience of, you know, running a bar so I had told them some
13 of the things that I thought would help the bar and some of
14 the things wasn't received well.

15 Q. Okay. Well, let's talk about that. So you as a
16 paying customer or patron, I think you're saying you would
17 bring up issues with the service or the food and it wasn't
18 received well by Clayton?

19 A. That's correct.

20 Q. Give some examples about the food or anything.

21 A. Well, one evening, I love the cheeseburgers there so
22 I ordered the cheeseburger and Clayton was cooking and when I
23 got the cheeseburger, it's not major, but when I got my
24 cheeseburger it had grilled onions on it and I ate it just
25 like I normally would, but I told him that if somebody is not

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1 requesting grilled onions, you probably need to put raw onions
2 on there.

3 Q. Okay. And how was that received by Clayton?

4 A. He's very insecure and he took it - he didn't take
5 it very well.

6 Q. So do you mean he's insecure given that he's in your
7 opinion doing a job that he has very little experience in?

8 A. That's correct.

9 Q. And you as a customer are voicing a complaint?

10 A. I don't know if you want to call it a complaint or
11 not but I was --

12 Q. A criticism?

13 A. Right.

14 Q. Were there any other issues with the temperature or
15 anything else?

16 A. Right. For about three days Angie and her friend
17 Brenda had to wear their winter coats inside and after the
18 third day, it really didn't bother me that much because I'm
19 hot natured so it really didn't bother me, but they asked me
20 to talk to Madison. She was behind the bar also with a jacket
21 on and I went and told Madison that it was really too cold in
22 there, that maybe they could bump the heat up because Angie
23 and Brenda had requested me to see if I could get the
24 temperature turned up.

25 Q. Okay. So it sounds like you're saying you made a

1 couple criticisms of the way the place was being run since the
2 change in ownership?

3 A. That's correct.

4 Q. It's not being well received?

5 A. Right.

6 Q. But when you're making these criticisms, I mean,
7 you're not raising Cain about it? Are you yelling, screaming,
8 doing anything?

9 A. No. Not at all.

10 Q. Okay. Is it the biggest deal in the world to you?

11 A. No. It's not.

12 Q. All right. Now, having a business background and
13 being a man of middle age, what is your opinion about whether
14 this bar is gonna succeed or not if the service stays like
15 that?

16 A. Well, not only those two things, like I said, it was
17 more also that was wrong, but I expressed to them that other
18 people are not gonna be as understanding as I was and it may
19 go under.

20 Q. Okay. Now, if that pool room goes under or closes
21 down, is there going to be a convenient place to get a beer,
22 get a bite of food that's good and watch sports?

23 A. Not in Johnston or Edgefield it wouldn't be.

24 Q. Where would you have to go for something similar?

25 A. Well, at the time I didn't know, but for some reason

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1 that we'll probably talk about it, there was a place called
2 Foley's in Saluda.

3 Q. How far away is that?

4 A. About 12 miles from where we was staying.

5 Q. All right. So correct me if I'm wrong, but I guess
6 for somewhat selfish reasons you didn't want the very
7 convenient place to disappear where you have to drive out of
8 town?

9 A. That's correct.

10 Q. Okay. Well, I want to move you a little more
11 forward into getting closer to the spring of 2018. First
12 I want to talk to you, we're gonna talk about some more
13 exhibits and you've had an opportunity to identify and review
14 all of these as part of the evidence in the case, but you've
15 seen the original pool room video and this is gonna be an
16 additional one that I've shown you that has the full final
17 clip that's unedited, right?

18 A. Yes, sir.

19 Q. You recognize these text between yourself and
20 Officer Mathis?

21 A. Yes, sir.

22 Q. And you've seen and recognize these numerous other
23 videos of the interior of the pool hall and other crime scene
24 photos that we've already gone over?

25 A. Yes. I have.

1 Q. Okay. And you also have seen and recognize a couple
2 enlargements that we're gonna talk about here in a little bit
3 some photos that are already in evidence.

4 A. Yes. I have.

5 MR. L. SHEALEY: Your Honor, at this time defense
6 would seek to introduce Defendant's Exhibit numbers 83
7 through 98, I believe.

8 THE COURT: Without objection?

9 MR. McNAIR: Without objection, Your Honor.

10 THE COURT: Defendant's Exhibit 83 through 98
11 admitted into evidence.

12 BY MR. L. SHEALEY:

13 Q. Now, Barry, there's been some mention that you are
14 an incorrigible drunk and belligerent harasser of staff and a
15 bad actor in that pool room. Have you heard that testimony
16 this week?

17 A. Yes, sir. I have.

18 Q. Is that true?

19 A. No. It's not.

20 Q. Did you ever get belligerently drunk in that pool
21 room?

22 A. No. I have not.

23 Q. Did you ever have the police called to escort you
24 out of there due to bad behavior?

25 A. No, sir.

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1 MR. L. SHEALEY: Mr. Clerk, how do I turn this on?

2 THE CLERK: I'm not sure about the Elmo, sir. It's
3 not mine. You may have to plug the power cord into it
4 unless it's already on.

5 BY MR. L. SHEALEY:

6 Q. All right. We'll just talk about it unless my
7 co-counsel can help me. I want to show what's in evidence as
8 defendant's number 81. Do you recognize these text
9 messages?

10 A. I do.

11 Q. All right. Now, do they start in January of 2018?

12 A. They do.

13 Q. Okay. And who are you texting in these text
14 messages?

15 A. Sergeant Mathis.

16 Q. Is that with the Johnston police office?

17 A. Yes, sir.

18 Q. All right. Now, I want to show you, draw your
19 attention to a text from February 24th of 2018. Do you see
20 that?

21 A. I do.

22 Q. Do you recognize a text from you where you're
23 reaching out to Sergeant Mathis?

24 A. Yes. I do.

25 Q. And do you agree that the topic is about a woman

1 named Miranda?

2 A. Yes. Miranda that worked at the bar.

3 Q. Okay. What was her role at the bar?

4 A. She was a full time bartender.

5 Q. What I want to point you to is the text message that
6 you were just referencing right there. Do you agree it says,
7 Miranda says pool room is closing and has no males present on
8 February 24th?

9 A. Yes. I do.

10 Q. And why are you sending that text?

11 A. She was gonna be closing by herself. She didn't
12 have any male there with her and she was concerned and I was
13 concerned for her also for her safety.

14 Q. And you're informing Officer Mathis you agree that
15 she says, Clayton is coming back, but 12:00 and thanks?

16 A. Correct.

17 Q. And you did receive a response from Officer
18 Mathis?

19 A. I did.

20 Q. And it's okay. I don't mind, if I need a ride up
21 there. If you want to give her my number, I'm good with
22 that?

23 A. Right.

24 Q. And rout respond with a thumbs up emoji?

25 A. Correct.

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1 Q. So when the State says that you're a harasser of
2 staff, a belligerent drunk in that bar, is that true?

3 A. No. It's not.

4 Q. Okay. Were you a regular customer?

5 A. Yes. I was.

6 Q. Did you actually care about the wait staff?

7 A. I did.

8 Q. I want to bring you a little farther, further about
9 a month prior to the incident that we are here for.

10 A. Yes, sir.

11 Q. Now, do you recall an occasion where you were at the
12 pool room and you needed to talk to B'Boy about something?

13 A. I don't follow you.

14 Q. Do you recall an occasion at the pool hall where
15 B'Boy was there and Angie was there and you had to bring
16 something to his attention that was not true?

17 A. Oh, yes. Yes. I did.

18 Q. Okay. Tell this jury about what happened that day.

19 A. Well, I had learned that he had said some untrue
20 statements about me.

21 Q. And specifically was that about the way you left
22 Savannah River Site?

23 A. Yes, sir. It was.

24 Q. Did you learn that he was advising people that you
25 were fired rather than retired from Savannah River Site?

1 A. Yes, sir. That's what I was told.

2 Q. And that's not true, is it?

3 A. No. It's not.

4 Q. Is that a deeply personal thing for you?

5 A. It is because of my wife and what we went through
6 and I wanted to stay out there on that job because I loved my
7 job out there.

8 Q. Okay. And I think you've already testified that you
9 just, due to the sadness of it, didn't feel like you wanted to
10 stay out there?

11 A. I wanted to and I tried. I took six months of leave
12 because of that and that's how much you can get, the maximum
13 amount. I couldn't get myself together in time for the six
14 months to run out so I decided to take early retirement.

15 Q. Okay. So bringing you back to the pool room on that
16 day when you learned that B'Boy was spreading these untruths
17 about you concerning that topic, what did you do?

18 A. I approached him and asked him is that what he
19 said.

20 Q. All right. Meaning you wanted to confirm whether he
21 was spreading the lie or not?

22 A. Correct. I didn't believe he would be spreading
23 that rumor with him being Angie's cousin.

24 Q. Okay. And what did you learn from B'Boy?

25 A. That he did say that, but he wouldn't tell me who

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1 told him.

2 Q. So you were wondering, well, I guess based on the
3 misinformation where he learned that from?

4 A. Right. Because I didn't think he would make that up
5 so I wanted to know who he heard it from so I could clear it
6 up with whoever actually said it.

7 Q. Would he tell you who he heard it from?

8 A. No. He said that didn't matter.

9 Q. Okay. Were you telling him it was not true?

10 A. I did tell him it wasn't true and it did matter who
11 was spreading those rumors about me.

12 Q. And again, did he seem to care that it wasn't
13 true?

14 A. He didn't care.

15 Q. So when you approached him, where was he
16 physically?

17 A. Sitting on the corner of the bar.

18 Q. All right. And where were you when you first
19 learned of the lie?

20 A. I was about four seats down from him sitting beside
21 Angie.

22 Q. So did you walk over to him to discuss it with
23 him?

24 A. I did.

25 Q. All right. And what, if anything, did he do after

1 refusing to tell you who he learned that from and refusing to
2 change his tune? Get up. Let's pretend that you're B'Boy and
3 you're sitting on your bar stool --

4 A. Okay.

5 Q. -- and I'm you having a conversation. All right.

6 A. I would be more on that side.

7 Q. Okay. Well, just for purposes here, what did he do
8 after refusing to take back the lie or tell you where he heard
9 it from?

10 A. He got up from his bar fairly quickly.

11 Q. All right. Act that out if you want.

12 A. (Indicating.)

13 Q. Okay. How tall are you?

14 A. I'm five eleven.

15 Q. How big were you around that time?

16 A. Five eleven, 190 pounds.

17 Q. Okay. And how tall in your memory and recollection
18 is B'Boy?

19 A. I didn't know at the time, but I know he was looking
20 down on me.

21 Q. Kind of like this?

22 A. Yes.

23 Q. All right. And how big is he of a man?

24 A. Well, we've heard in here, I didn't know exactly
25 either, I know he was more than 280 pounds, but now I

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1 understand he was probably 300 pounds.

2 Q. Okay. So when he got up quickly from his bar stool,
3 what did he say and do?

4 A. Well, the first thing he did was he got all up in my
5 face. I had to start backing up to get away from him and I
6 put my hands up like this, like, whoa. He said, I'll beat
7 your little a-s-s all about this bar.

8 Q. So I'll beat your, I'll be impolite for you, I'll
9 beat your ass all about this bar?

10 A. Yes, sir.

11 Q. And what did, how did that cause you to feel?

12 A. Well, of course I was threatened, a large man with
13 that stature coming at me like that. I can't ever remember
14 that happening to me in 40 years at that point in time.

15 Q. All right. Have a seat.

16 A. (Witness complies.)

17 Q. So this is a physical threat. Is that what your
18 testimony is?

19 A. Yes. It was.

20 Q. By a large man?

21 A. Very large.

22 Q. And prior to that moment had you had any real
23 problems with him?

24 A. No. I hadn't. I had never seen him act up that way
25 when I would go in there. Not at all.

1 Q. And I think you testified that you felt he had the
2 physical capacity to hurt you?

3 A. Absolutely.

4 Q. Now, but did he hit you? Did he punch you or
5 anything?

6 A. No. He didn't. He seemed to - his eyes, he has
7 very intimidating eyes. He has really blue eyes that I feel
8 they're intimidating type look that he was looking at me.

9 Q. Did he seem like he was playing around?

10 A. He was definitely not playing around.

11 Q. Now, did you take that opportunity to go ahead and
12 punch him or start a physical altercation?

13 A. No. I didn't. Like I told you, I put my hands back
14 and backed up. It's almost like when I did that, he kind of
15 snapped out of his violent mood if you want to call it that.

16 Q. Okay. Now, did you stay around the bar and hang out
17 after that?

18 A. No. I didn't. I went back and told Angie we needed
19 to get the tab and for us to, we needed to leave.

20 Q. And you left?

21 A. And I left.

22 Q. Now, do you recall around that same time reaching
23 out to Officer Mathis over this?

24 A. I did. Shortly after that, I don't remember exactly
25 when because it was kind of weighing on me that, what he did.

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1 I really didn't know what to do. Angie was wanting to go to
2 the bar and I would, you know, go to the bar basically because
3 of her and I just kept my distance from B'Boy.

4 Q. I think you said that this in your recollection was
5 about a month prior to the incident?

6 A. Right.

7 Q. Okay. I want to show you again the text message to
8 Officer Mathis and again it's somewhat blurry, but we'll do
9 our best to read it. The jury will have this in evidence. Do
10 you see that message, it starts on April 9th, 2018 from Barry
11 Jones. Do you see that?

12 A. Yes, sir.

13 Q. If you turn the page, it's the actual body of the
14 text. Do you recall a text from you to Officer Mathis that
15 says, when you are on days and have time, I need to talk to
16 you about dot dot dot. Do you see that?

17 A. Yes, sir.

18 Q. What are you referring to when you text Officer
19 Mathis like that?

20 A. The incident that happened in the pool room that
21 night that we were just discussing.

22 Q. And you do recall a response from Officer Mathis,
23 right?

24 A. Yes, sir. He did respond.

25 Q. And he responds telling you that he rarely works

1 days, but he would be back Wednesday on nights, right?

2 A. Correct.

3 Q. He gives you a time, usually there around 5:30.

4 Call me around that time and I'll come by, right?

5 A. Correct.

6 Q. Did you ever actually make an appointment to go talk
7 to Officer Mathis about this situation?

8 A. No. He was usually sleeping during the day and
9 working at nights so it never worked out.

10 Q. Did you call Edgefield County Sheriff's Office about
11 this situation?

12 A. No. I didn't.

13 Q. Why is that?

14 A. I didn't feel real comfortable about calling the
15 Sheriff's Department because of Angie's ex. James Smith was a
16 prominent investigator and I didn't feel comfortable with
17 that.

18 Q. Now, let's talk about the relationship. So you've
19 already said that Angie's ex-husband is James Smith?

20 A. Correct.

21 Q. The man that signed off on your murder and attempted
22 murder warrants?

23 A. Correct.

24 Q. Now, technically he's the ex-cousin-in-law of B'Boy,
25 right?

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1 A. That's correct.

2 Q. If Edgefield County got involved, what was your
3 opinion about who they would believe regarding a disagreement
4 between you and B'Boy?

5 A. I wouldn't get fair treatment.

6 Q. Okay. But you did trust Officer Mathis enough to
7 reach out to him; is that right?

8 A. I did.

9 Q. But again, I think you said you never found the time
10 to follow up with him?

11 A. Right. And also Sergeant Mathis worked for the
12 Johnston Police Department.

13 Q. A different agency?

14 A. It is.

15 Q. Now, moving forward, what, if in any way, did your
16 habit and routine change when you went to the pool room after
17 the B'Boy threat?

18 A. Well, from then on I always sat in the very front of
19 the bar because if B'Boy came in, he would always go to the
20 back part of the bar, but as has been testimony on, he
21 probably came about three nights a week. He didn't come every
22 night of the week so it was some nights that he wouldn't even
23 be in there when I took Angie there. But another thing that I
24 changed is I found out about Foley's and I started attending
25 Foley's also.

1 Q. Okay. So you started going out of your way to that
2 place in Saluda you were talking about?

3 A. I did.

4 Q. And why was that?

5 A. Well, to get some distance from me and B'Boy because
6 I was scared of B'Boy from what he did and he's such a large
7 man that I didn't want to be around him unless I had to.

8 Q. Now, at the time that you were dating Angie, are you
9 crying out to her about how scared you are of her cousin?

10 A. No. I'm not. That's not a very manly thing to do
11 to tell your girlfriend that you're afraid of her cousin.

12 Q. But you started going to another bar that was out of
13 your way?

14 A. Yes.

15 Q. And I think you said, did you say you started
16 sitting somewhere differently within the pool hall itself when
17 you went?

18 A. I stayed all the way at the front similar to what I
19 did when we were on our meetings on Mondays.

20 Q. Okay. We've seen the interior video and we're gonna
21 see some more, but are you saying that when you walk in the
22 front door of the pool room, there's a bar to the right,
23 that's where you hung out exclusively?

24 A. Close to the front door as you can get.

25 Q. Did B'Boy hang out there?

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1 A. No.

2 Q. Where did he hang out?

3 A. Around all the way to end of the bar. It makes a
4 turn and he would always sit in the back part of the bar.

5 Q. Okay. Now, we heard from your friend Tony Friar,
6 right?

7 A. Yes, sir.

8 Q. And he testified regarding a discussion that he
9 observed and witnessed that was a similar topic of
10 conversation, correct?

11 A. Correct.

12 Q. And you sat here and you heard us talk about it and
13 the efforts in talking to you about your concern and then
14 going to B'Boy and trying to address it with him, right?

15 A. He did.

16 Q. And after he was unsuccessful in his efforts with
17 B'Boy, do you recall him talking to you about what was said?

18 A. He did.

19 Q. Were you informed from Tony that he had concerns
20 about B'Boy being a violent guy?

21 A. He did. He told me that coming up through school
22 that he basically fought a lot. He actually told me he fought
23 everyday, but I knew that was, you know, not true, but he said
24 he fought everyday in school.

25 Q. Okay. Did that give you additional cause to be

1 concerned about B'Boy?

2 A. Of course it did.

3 Q. So based on what you heard about his reputation but
4 also your personal experience?

5 A. Right. He warned me that I better be aware of
6 B'Boy.

7 Q. Okay.

8 A. Be careful around him.

9 Q. All right. Now, I want to fast forward you real
10 close in time to the May 7th incident. Let's talk about May
11 5th. So May 7th is a Monday, May 5th is a Saturday, right?

12 A. Right.

13 Q. Now, you've heard some testimony from Clayton this
14 week. Do you recall that?

15 A. I do.

16 Q. Now, you heard him testify that there was a moment
17 that night where he was working and you were there with Angie,
18 right?

19 A. That's correct.

20 Q. And that you got extremely belligerent about 50
21 cents on a bar tab and he needed to call his stepdad in for
22 backup?

23 A. Right. I heard that.

24 Q. Do you recall that at all?

25 A. No. I never saw a man come in and walk behind the

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1 bar. I knew most of the people that worked there and I don't
2 remember or recall another man coming in and standing over by
3 me behind the bar.

4 Q. Now, do you recall any dispute about a miscalculated
5 tab?

6 A. No. I brought it to their attention, but it was not
7 like I was gonna get up and try to start a fight over a 50
8 cent bar tab error.

9 Q. Okay. So there was some error?

10 A. There was.

11 Q. And you brought it to their attention?

12 A. I did.

13 Q. What did they do about it?

14 A. Nothing.

15 Q. Okay. Now, is that unusual kind of under the new
16 management?

17 A. It - it -- I don't know. I had it happen a couple
18 times. I didn't say anything, but it's not -- I didn't think
19 it was worth bringing up at that time, but this was two beers
20 and if they continued to have mistakes like that, other people
21 weren't gonna be as understanding as I was. That's the reason
22 I was trying to bring it to their attention so they could
23 correct what was wrong.

24 Q. Okay. But again, is that gonna make you stark
25 raving mad and start harassing staff and losing your cool to

1 the point where you might get kicked out?

2 A. No. That's - that's not the way I would do it.

3 Q. Did anybody tell you to leave that night?

4 A. No. They did not.

5 Q. Did the police ever get called on you that night?

6 A. No. They did not.

7 Q. Was that just a normal night pretty much in terms of
8 your interaction with the bar personnel?

9 A. Yes.

10 Q. They made a mistake on your tab, but you still spent
11 plenty of money in there?

12 A. Right. I notified the waitress, the waitress went
13 and got Clayton, Clayton came over, I told Clayton and Clayton
14 just shook his head and walked off.

15 Q. Okay. Now, Clayton ever tell you, Barry Jones, you
16 are never allowed back in here?

17 A. No, sir.

18 Q. Okay. Now, who, if anybody, were you actually
19 having an argument with that night?

20 A. Well, I wouldn't call it an argument.

21 Q. A disagreement.

22 A. I was bringing something up to Angie's attention.

23 Q. Okay. Let's talk about around this time I think you
24 said you dated Angie for about eight months?

25 A. Correct.

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1 Q. What is the state of your relationship from in month
2 eight, are we out of the honeymoon phase? What is the state
3 of it as best as you can tell this the jury?

4 A. We are out of the honeymoon stage and it got to be
5 to me that she wasn't fun to be around anymore.

6 Q. Okay. Now, this is obviously you were married for a
7 long time, loved your wife Dana. I think you started by
8 saying that when you met Angie, she was fun and she was in a
9 similar phase of her life?

10 A. Right.

11 Q. For what reasons was the relationship, as you say,
12 not fun anymore?

13 A. Well, she was continuously drinking more and more.

14 Q. Okay.

15 A. And she was - I felt like I was being smothered.

16 Q. You felt like you were being smothered by Angie?

17 A. Right.

18 Q. In terms of not having space or --

19 A. Right. When I would leave away from the house even
20 to go over to my dad's house to help him and do my normal
21 thing, if I was over there longer than what I was the previous
22 day, she would be texting where I was, things like that even
23 though I was just at my dad's.

24 Q. Was her ex-husband ever a topic of conversation?

25 A. Yes. Probably the last two months his name was

1 brought up several times. I told her that I didn't think that
2 was appropriate to be bringing up his name to me when I'm
3 dating her. It's not right to do that.

4 Q. Well, in what way was she bringing up his name?

5 A. She wanted me to be more like James.

6 Q. More like James smith?

7 A. Yeah.

8 Q. Okay. So she wants you to be more like her
9 ex-husband?

10 A. Yes, sir.

11 Q. And how did that make you feel?

12 A. I just -- I didn't like it. I thought that was just
13 a really cheap shot at me.

14 Q. Okay. So you didn't like being compared to
15 somebody's ex?

16 A. Correct.

17 Q. All right. So it sounds like you've testified that
18 you didn't really have too much of an issue with Clayton or
19 the bar management, right?

20 A. No. I didn't.

21 Q. That a mistake on the tab was not unusual?

22 A. No. It wasn't.

23 Q. But you were at the end of your rope so to speak
24 with the relationship with Angie around that time?

25 A. It was getting that way. I had told her, gave her

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1 some, I don't know what you want to call it, but I told her
2 that I didn't really want to hear that anymore. If she
3 continued to be that way, that I would be packing up and
4 leaving.

5 Q. Okay. Now, I want to play a video that's in
6 evidence that's been produced by the State as part of
7 discovery. It's actually a video that I think you made of
8 Angie that night. I'm gonna play it for you and you tell me
9 if you recognize this video.

10 (Playing video.)

11 BY THE WITNESS:

12 A. Yes, sir.

13 BY MR. L. SHEALEY:

14 Q. Does that look like Angie to you?

15 A. Yes, sir. That's the video that we watched.

16 MR. McNAIR: Your Honor, can we play that on the TV
17 as well so the family and everybody can see?

18 MR. L. SHEALEY: Yeah. If I can figure out how to
19 hook it up here. While we're doing that, can you help us
20 figure out how to hook up the Elmo?

21 BY MR. L. SHEALEY:

22 Q. Barry, do you remember that as Angie?

23 A. Yes. That's Angie.

24 Q. Do you recall where you're sitting or where you are
25 in the pool room?

1 A. We're sitting in the front part of the bar.

2 Q. Okay. Now, is B'Boy there that night as far as you
3 recall?

4 A. I'm not sure.

5 Q. Okay. I'm gonna play this video for you.

6 (Playing video.)

7 BY MR. L. SHEALEY:

8 Q. And we might play that one more time, but for right
9 now can you hear your voice in that video?

10 A. Yes, sir.

11 Q. And are you -- Why are you making a cell phone video
12 of your girlfriend?

13 A. She had told me several times that she wanted to
14 mold me into James, but she never admitted that she did it the
15 following day because of her drinking and I wanted to document
16 what she was saying so the next day she knew for sure what she
17 said that night.

18 Q. So you're saying she made a comment comparing you to
19 her ex-husband again?

20 A. Absolutely she did.

21 Q. But she had been drinking?

22 A. Correct.

23 Q. And so when you got that comment, of course, you've
24 already described how it makes you feel, you said you wanted
25 to document it?

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1 A. Right. Because she was gonna continue to drink when
2 she got home also as we'll get to.

3 Q. Okay. Now, and again, you're telling her, I got it,
4 right? I mean, you're making the recording?

5 A. Mm-hmm.

6 Q. Do you recall saying, tell me what you just said?

7 A. Correct.

8 Q. That you wanted to mold me into James?

9 A. Into James. Yes, sir.

10 Q. That's what you hear on that video?

11 A. That's what she said.

12 Q. Let's play it one more time just to be sure.

13 (Playing video.)

14 BY MR. L. SHEALEY:

15 Q. And I think at the end you said, that's exactly what
16 you said, correct?

17 A. That's what I said. Yes, sir.

18 Q. That comment didn't make you happy?

19 A. No. It didn't.

20 Q. Are you yelling and screaming?

21 A. No, sir.

22 Q. Do you see people in the background, other patrons
23 and bartenders and staff?

24 A. Yes, sir.

25 Q. Do they seem to notice you at all in this

1 conversation?

2 A. No, sir. I wasn't loud.

3 Q. Okay. But you and Angie were having a problem in
4 your relationship; is that right?

5 A. Yes. We did.

6 Q. Again, who is Angie's cousin?

7 A. Angie's cousin is B'Boy.

8 Q. All right. Now, did you leave that bar without
9 incident?

10 A. Yes. I did.

11 Q. Without being put on trespass notice?

12 A. Yes. I did.

13 Q. Without being told that you need to leave and never
14 come back?

15 A. That's correct.

16 MR. L. SHEALEY: All right. I think for right now
17 we'll work off that one. I appreciate it.

18 BY MR. L. SHEALEY:

19 Q. Now, that night was May 5th, right?

20 A. That's correct.

21 Q. And when you left the bar, did Angie want to go to
22 sleep and stop drinking?

23 A. No. She did not.

24 Q. And did you want to go to sleep?

25 A. I did.

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1 Q. Were you and Angie arguing about that?

2 A. Yes. We were.

3 Q. Okay. Did you ever reach out to your friend Officer
4 Mathis about that situation?

5 A. I did. I text Sergeant Mathis.

6 Q. Is that what we're looking at right here on this
7 text from May 6th now, 1:29 a.m. of the following day, can you
8 come by 206 Edisto to calm down my girlfriend?

9 A. That's my text to Sergeant Mathis, yes, sir.

10 Q. Well, I guess the first text you had was, are you
11 working tonight?

12 A. Right. He usually worked nights, but not every
13 night, of course, so I was just finding out if he was on
14 duty.

15 Q. And he advised you that he was. Yes, sir. I am.
16 Right?

17 A. Right. He did.

18 Q. So you reached out to him to calm down your
19 girlfriend?

20 A. Correct.

21 Q. Why didn't you call Edgefield County Sheriff's
22 Office?

23 A. I really didn't want to call 911 on Angie because
24 her ex-husband worked for them so I didn't know if I would be
25 the one going to jail or not.

1 Q. But did you really want her to get arrested or
2 anything that night?

3 A. No. I didn't.

4 Q. Did you want to get some sleep?

5 A. I did.

6 Q. Does Officer Mathis end up coming by y'all's place?

7 A. He did.

8 Q. And he says, yes, sir. On the way. Correct?

9 A. That's correct.

10 Q. And you gave him a thumbs up?

11 A. Yes, sir.

12 Q. So when he got there, what happens?

13 A. When he got there, I went outside and I met him at
14 his car. I met him so he didn't even have to get out of the
15 car. I explained to him what was going on and he asked me did
16 I want him to go inside and talk with Angie. About that same
17 time after we talked a little while, Angie came to the door
18 and stuck her head out the door and said that she was gonna
19 stop drinking and we were gonna go to sleep, so I told
20 Sergeant Mathis that I didn't think he would be needed and I
21 would text him if anything changed and he left and I went back
22 inside and we, shortly I went to sleep.

23 Q. Okay. Now, that was the end of that night?

24 A. Yes, sir.

25 Q. Okay. You and Angie's relationship sounds like it's

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1 not great, is that fair?

2 A. That's fair.

3 Q. I think you said it wasn't fun anymore?

4 A. Wasn't fun.

5 Q. So let's fast forward. That's Sunday. Tell me
6 about Monday, May 7th, the day of this incident, what were you
7 doing that day?

8 A. Well, eventually it was the routine day. I went and
9 checked on my dad, made sure he was okay. I came back,
10 decided I was gonna take some shirts to the dry cleaners in
11 Edgefield so before I left, Angie asked me if we were going
12 out that night. I told her no. We would probably grill
13 something out and stay at home and, you know, just watch some
14 TV so I left and went to the dry cleaners.

15 Q. All right. So you're running errands?

16 A. Yes, sir.

17 Q. And did you have occasion to stop by the pool
18 room?

19 A. I did. I was on the way back from the dry cleaners
20 and it happened to be, I don't know exactly, but between 4:00
21 and 4:45, somewhere in there and on Mondays we would, I would
22 refer to it as my meeting, that I would meet up with Kurt Kelz
23 and Randy Yonce and a couple more guys and we would catch up
24 what went on on the weekend.

25 Q. Is that a routine thing for you?

1 A. It is.

2 Q. I think you said Randy Yonce. We heard from him
3 this week, right?

4 A. Right. He was in here. Yes, sir.

5 Q. Now, when you get there, did anybody stop you at the
6 door and go, whoa, Barry. Saturday night was real bad for
7 you. You're not allowed to be here anymore.

8 A. No. No one said anything like that.

9 Q. Okay. And did you start having a couple beers?

10 A. I did.

11 Q. Do you recall who served you beers?

12 A. I do not.

13 Q. Okay. But whoever served you beers, did they say,
14 oh, Barry, I don't know, I don't know if I should do this
15 because you're about to get banned from this place?

16 A. No. No one said anything like that. No, sir.

17 Q. As far as you know it was just a regular meeting
18 Monday for you?

19 A. Right.

20 Q. Now, as you're getting these texts -- Well, sorry.
21 Let me ask you, when you leave and get there, are you getting
22 any texts?

23 A. I actually received from texts while I was driving
24 to the pool room, but for whatever reason I didn't hear it so
25 I don't know if I had my phone on silent. I don't know, but

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1 anyway, once I got inside, I saw where I had several text from
2 Angie.

3 Q. Okay. Was she happy that you had left?

4 A. Well, she didn't have any problem with me leaving to
5 go over there. It's just that, like I said, I felt smothered
6 because she started texting me, you know, where I was and I
7 hadn't been gone that long and I reckon she thought that I was
8 gonna be right back so she had text me, where are you? Answer
9 me. I don't remember exactly what she, what the exact words
10 were, but yeah, she wasn't happy. So when I did text her back
11 where I was, I told her that I was at the pool room.

12 Q. All right. Let's go over some of these that are in
13 evidence. Well, they're in evidence. I'm just gonna pull
14 another copy. So you said that she's not happy that you left.
15 I want to show you on this text already in evidence, but do
16 you see the highlighted text from Angie Smith, Johnston?

17 A. Yes. I do.

18 Q. So you had in your phone Angie Smith, right?

19 A. Correct.

20 Q. May 7th, 5:15, she's telling you hello?

21 A. Yes. She is.

22 Q. And at this time are you already at the pool hall?

23 A. I'm not sure.

24 Q. Okay. Let's move back a little bit. 5:06 she's
25 asking you if everything is okay. Is that because you're not

1 with her?

2 A. Correct.

3 Q. Now moving forward in time a little bit. Do you see
4 your text to Angie at 5:17, are you telling her about why you
5 haven't been responding?

6 A. Correct.

7 Q. Telling her that you're sorry. You just didn't hear
8 the phone. I'm heading to my meeting. What you doing? Do
9 you recall that?

10 A. Right.

11 Q. Do you recall her three minutes later texting you,
12 what? I can't believe you?

13 A. Right.

14 Q. And then giving you another text, do you recall
15 another minute later, we're not gonna make it like this. You
16 need to come talk to me. Do you recall that?

17 A. Yes. That's what she texted me.

18 Q. Do you recall her within the same minute saying, I'm
19 really pissed now. Do you recall that text from her?

20 A. Yes. I do.

21 Q. Are these text just coming in as you're sitting at
22 the pool hall with Randy Yonce and your other friends?

23 A. Yes. They are.

24 Q. And then at 5:22, if you don't come talk to me, it
25 won't being pretty when you get home. Do you recall that?

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1 A. Unfortunately I do.

2 Q. Now, you've heard Randy Yonce testify this week?

3 A. Yes, sir.

4 Q. When he's talking about how you're concerned that
5 Angie, when she gets there eventually might do something, are
6 these some of the reasons why?

7 A. Absolutely they are.

8 Q. Where she's telling you that she's pissed, right?

9 A. Right.

10 Q. Where she's telling you it's not gonna be pretty
11 when you get home?

12 A. Yes, sir.

13 Q. It wasn't pretty that Sunday morning or early that
14 Sunday morning, was it?

15 A. Right. It was not.

16 Q. Now, at 5:24 do you recall her insisting that you
17 answer her? She says, answer me.

18 A. Yes, sir.

19 Q. And then by 5:25 do you recall her threatening, I'll
20 come show out?

21 A. Yes, sir.

22 Q. And, of course, we've talked about this with
23 Mr. JoJo Mims, but after she tells you that she's gonna come
24 show out at 5:25, do you recall sending a text to JoJo Mims at
25 5:27?

1 A. I did.

2 Q. Do you recall telling him, I'm getting sick of
3 Angie's shit?

4 A. I did.

5 Q. Where he tells you, that's why I fly by myself?

6 A. He did.

7 Q. Okay. With this going on with Angie, do you have
8 B'Boy in your mind at all whatsoever at this point?

9 A. No. I don't.

10 Q. Okay. But do you recall him being at the bar at
11 that point?

12 A. Yes.

13 Q. Where was he sitting?

14 A. In the back like he always did.

15 Q. Okay. You had no interaction with him at that
16 point?

17 A. No. No problem.

18 Q. Again, he didn't stop you at the front door and go,
19 whoa, I got tasked from Clayton, you aren't supposed to be
20 here, sir?

21 A. No. I never heard nothing like that.

22 Q. If I can operate this machinery, I want to play you
23 a video that we have seen before, but we'll play it again
24 since we're talking about it.

25 (Playing video.)

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1 BY MR. L. SHEALEY:

2 Q. Do you recognize that?

3 A. Yes, sir. That's an inside view of the pool room
4 toward the front door.

5 Q. Do you know that man?

6 A. He's one that would frequent about once or twice a
7 month so I never caught his name.

8 Q. Okay. Do you recognize that silver car out there?

9 A. It looks like mine. Out by the road?

10 Q. Yes, sir.

11 A. Yes, sir. That's mine out by the road.

12 Q. Is that what you drove that day?

13 A. Yes, sir.

14 Q. At this point Angie, has Angie arrived at this
15 point?

16 A. Yes.

17 Q. Okay. Let's talk about that. That's important.
18 When she arrived, did she walk in and come sit right next to
19 you like she usually does?

20 A. No. She didn't acknowledge me at all.

21 Q. Did she go in the front door and go in a different
22 direction?

23 A. Right. She went around to the back of the bar and
24 set nearer next to B'Boy.

25 Q. Her cousin?

1 A. Right. Cousin B'Boy. Yeah.

2 Q. And you called the law on her the night before?

3 A. Right. Sergeant Mathis came over.

4 Q. And y'all just had this text exchange that we just
5 talked about?

6 A. Right.

7 Q. So when she doesn't come sit next to you, how does
8 that make you feel about Angie?

9 A. Just like her text we're leading up to, it was still
10 being a problem.

11 Q. Did you think she was gonna come and show out like
12 she said?

13 A. Well, I've seen her show out plenty of times, but
14 never in there.

15 Q. Did you think that she was coming pissed as she
16 said?

17 A. Yes.

18 Q. So what did you decide to do since she came and sat
19 next to B'Boy and she was in that mood?

20 A. I was leaving.

21 Q. Okay. Let's talk about, were you just leaving to
22 get away with her or had you made any definitive decisions
23 about your relationship with Angie?

24 A. I was finished with Angie at that point.

25 Q. Okay. You had been dating her eight months?

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1 A. Yes.

2 Q. When you say finished, does that mean what? Were
3 you going to break up with her?

4 A. I was going to move out and not stay with her
5 anymore or date her.

6 Q. Okay. That was the purpose of you leaving at that
7 point?

8 A. It was.

9 Q. To go move out?

10 A. Yes, sir.

11 Q. Get all your things from Angie's?

12 A. As much as I could. Yes. I was.

13 Q. Is breaking up with someone that you've been dating
14 for eight months an easy thing or a hard thing?

15 A. It's a hard thing.

16 Q. Even if the relationship has run its course, it's
17 still hard, right?

18 A. I still cared for her.

19 Q. Do you recognize that guy in the orange shirt?

20 A. That's me.

21 Q. Wearing shorts and sandals?

22 A. Yes, sir.

23 Q. And looks like sun glasses on your head?

24 A. Right.

25 Q. Is that you walking out as you described to go to

- 1 Angie's house to get your things and break up?
- 2 A. That's correct. I wanted to leave with Randy
- 3 Yonce.
- 4 Q. Is that Randy right behind you?
- 5 A. It is.
- 6 Q. You walk out to your car?
- 7 A. I do.
- 8 Q. Is that you out there getting into your car?
- 9 A. Yes. It is.
- 10 Q. Do you recognize that man?
- 11 A. Yes, sir. That's B'Boy.
- 12 Q. Coming out to your car?
- 13 A. Yes, sir.
- 14 Q. And is this an exterior view?
- 15 A. Yes, sir. That's me walking out to my car.
- 16 Q. Are you drunk right now?
- 17 A. No. I'm not.
- 18 Q. Is that Randy Yonce?
- 19 A. That's Randy leaving right behind me. We both paid
- 20 our tabs together and leaving.
- 21 Q. And what is on your mind?
- 22 A. Breaking up with Angie and getting as much stuff as
- 23 I can out of there and I know she's drinking so I really don't
- 24 want to have anymore interaction with her with her being angry
- 25 at me.

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1 Q. Do you recognize that man?

2 A. Yes, sir. That's B'Boy.

3 Q. What did he just do?

4 A. He hit the rear end of my car with his hand, the
5 right.

6 Q. I'll play it one more time.

7 A. The right rear fender.

8 Q. At this point did you know he was coming out to
9 you?

10 A. No. I didn't.

11 Q. Do you see that motion with his hands?

12 A. Yes, sir.

13 Q. Did you see that in your rear view mirror?

14 A. I did.

15 Q. Now, when he hit your right rear fender when you
16 testified that your mind is on breaking up with Angie, how did
17 it make you feel that her cousin that you had a problem with
18 before and who had threatened you was hitting on the back of
19 your car?

20 A. Well, first of all, it startled me because when I
21 was looking both ways to see if you're gonna pull out in
22 traffic and all of a sudden someone hits your car, it's loud
23 on the inside. You're not expecting anything so I looked in
24 the rear view mirror. I hear him at the time I'm pulling out.
25 After he hits my car, I hear him, you know, yelling at me.

1 Then he's raising his hands as basically I take it he's
2 calling me out so...

3 Q. So if I'm hearing you correctly, it's your belief in
4 that moment that he had some kind of aggressive intention
5 towards you?

6 A. Yes, sir.

7 Q. Again, when Angie got there in the middle of your
8 argument, she sat next to who?

9 A. B'Boy.

10 Q. Did you have any belief that he was coming out there
11 to have a quiet conversation about telling you to leave and
12 never come back?

13 A. No. I didn't. I didn't think of it being that
14 way.

15 Q. Now, after he hits your car and goes like this
16 (indicating), do you stop to engage him in any way?

17 A. No. I kept going. I was gonna go to Angie's and do
18 what I had to do there and be done with it.

19 Q. So you didn't think that was a good time to settle
20 your differences or anything like that?

21 A. No. I didn't want to do that.

22 Q. Had you had any thoughts about B'Boy at all that day
23 until he hit on the back of your car?

24 A. No. I hadn't. I had been keeping my distance from
25 him and everything was good.

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1 Q. Just now I want to show you a video that came into
2 evidence yesterday that you have seen from discovery or from
3 our production, enhanced video of him re-entering the bar. I
4 want you to tell me if you recognize it. Do you recognize
5 that man?

6 A. Yes, sir. That's B'Boy.

7 Q. Does he seem in your opinion knowing him like he's
8 scared or concerned?

9 A. No. He's actually smiling right there.

10 Q. So where do you go after you left the pool room?

11 A. Went to Angie's house.

12 Q. Did you, as you say, pack up all your things that
13 you had over there?

14 A. I packed up my valuables. I wasn't gonna get
15 everything.

16 Q. So your valuables. What kind of valuables did you
17 have at Angie's?

18 A. Well, I had all my medicine. I had my bills. My
19 mail. I had a safe with money in it. I had some other
20 things.

21 Q. You had guns?

22 A. I had my guns. I had ammunition. Weeks prior
23 I went to the range and took Angie with me and I had
24 ammunition, guns there and also I wanted to get, maybe sound a
25 little silly, but I wanted to get my Clemson shirts because me

1 and my wife went 15 years we had season tickets to Clemson and
2 she bought me many shirts that were from Clemson and I
3 treasured those shirts and I grabbed them. I had them
4 altogether in the closet so I snatched them together and
5 grabbed all my, grabbed all my Clemson shirts to put in the
6 car.

7 Q. So are you essentially grabbing all the valuables
8 and things you can get in one scoop and fit in your car?

9 A. That's a good way to put it. Yes, sir.

10 Q. Now, we've heard testimony about your guns. A lot
11 of them are sitting right there.

12 A. Right.

13 Q. You were a gun owner at the time, right?

14 A. Yes, sir.

15 Q. Enjoy your pistols. You had an AR-15?

16 A. Yes, sir.

17 Q. Those are things of value and money?

18 A. Absolutely.

19 Q. And I think you said you got your bills, your
20 mail?

21 A. Yes, sir.

22 Q. All your medication?

23 A. Got all my medication.

24 Q. Your toiletries?

25 A. I did.

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1 Q. Now, did you still have clothes and other items at
2 your dad's house?

3 A. Of course. Yes. I had 80 percent of my belongings
4 were there.

5 Q. Okay. Now, we heard in opening at this point that
6 you had murder on the mind. Did you have murder on your mind
7 at this point?

8 A. Did I have murder on my mind?

9 Q. Right.

10 A. No.

11 Q. Did you go and grab all your guns with the intention
12 and purpose of going back to that pool hall and settling this
13 score with B'Boy?

14 A. No. I did not.

15 Q. Why did you grab all your stuff?

16 A. Because I was moving out from Angie's --

17 Q. Okay.

18 A. -- and I wanted to get away so I wasn't just gonna
19 leave and leave all my valuables there and her push the issue
20 that I couldn't get'em back.

21 Q. Now, we've talked about this was a difficult day
22 when you're breaking up with Angie and then B'Boy hits the
23 back of your car so is B'Boy on your mind though?

24 A. Well, with him doing that, I knew he wanted
25 something and I took it that he possibly wanted to confront

1 me.

2 Q. Okay.

3 A. But that wasn't the main thing on my mind.

4 Q. Does that complicate the task that you have?

5 A. It does.

6 Q. Now, why didn't you just call Angie back to the
7 house if you were gonna break up with her? Get packed up.
8 Call her back and say I need to talk to you? Why not?

9 A. I haven't had good success with Angie at her own
10 house especially when she was drinking, she would be very
11 violent with me when we were at the house, but she's never
12 shown out away from the house. That's basically the best I
13 can explain it.

14 THE COURT: Mr. Shealey, if you could just give me
15 one moment. Ladies and gentlemen, I want everybody to
16 stand up real quick please in the jury box. Move your
17 body around a little bit.

18 (Jury responds.)

19 THE COURT: All right. Continue. All right.
20 Ladies and gentlemen, have a seat. Thank you.

21 BY MR. L. SHEALEY:

22 Q. All right. Now, we've covered a lot of ground,
23 we've got more to cover so let's keep pressing forward. So
24 we've talked about you leaving, you packing up. I asked you
25 if you had murder on the mind.

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1 A. Right.

2 Q. Okay. And I think you said you had Angie on your
3 mind, right?

4 A. I did.

5 Q. But you also had a complication, correct?

6 A. Right.

7 Q. And what's that complication?

8 A. B'Boy in the middle of when I'm trying to break up
9 with my girlfriend and he's coming out to my car and basically
10 I take it as a confrontation.

11 Q. Okay. So I asked you why you didn't just call Angie
12 back to the house to break up with her person to person.

13 A. Right.

14 Q. And you said you didn't, correct me if I'm wrong,
15 but I think you said we hadn't had success at the house. What
16 did you say?

17 A. Every time I had an argument with her, it was at the
18 house and it could become violent, but when I was out away,
19 she never showed out when people were around.

20 Q. Okay. And again, you had to call Officer Mathis the
21 night before?

22 A. Correct.

23 Q. So why didn't you just text her to break up, that
24 you're, you know, leaving, it's over?

25 A. I cared too much for her to be texting and breaking

1 up with someone.

2 Q. So that's not the appropriate way to break up with
3 someone in your opinion?

4 A. No, sir.

5 Q. So now let's talk about what is on your mind because
6 we've got some text messages. I want to refer you again to
7 some texts that we spent some time with on the State's case.
8 Do you see this text, looks like at 6:49 to Jojo Mims. Do you
9 recall hearing from Jojo Mims?

10 A. Yes. I do.

11 Q. And at that time who was Jojo to you?

12 A. Well, he was someone that I could text and he didn't
13 have a job so I wasn't working, I was retired so he was
14 someone I usually could text and not bother at work so I would
15 text him.

16 Q. Was he your friend?

17 A. Yes. He was.

18 Q. Is he a big guy?

19 A. Yes, sir. He is.

20 Q. Okay. So we had gone through some text messages
21 about your relationship with Jojo and catching up and drinking
22 pitchers of beer the other day, but this particular text you
23 ask him, Can you calm me down? Do you recall that text?

24 A. I do.

25 Q. What did you mean by that text?

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1 A. Well, I had a lot going on and I just needed
2 somebody to basically talk to at that time that could help me
3 with the situation I was in.

4 Q. Okay. Just to be clear, the situation you're in,
5 tell me if I'm wrong, is the task of breaking up complicated
6 by that person's cousin?

7 A. That's correct.

8 Q. Okay. Now, let's talk about this text. This is
9 some the State will spend a lot of time with you on. I'm
10 gonna kill that B'Boy.

11 A. That's right.

12 Q. Is that your premeditated plan that you literally
13 were telling your friend Jojo Mims that I'm gonna go out there
14 and kill that B'Boy?

15 A. No, sir. That was not my intent with that. I was
16 venting and I was frustrated with him, interjecting his,
17 whatever you want to call it, him coming out to my car. With
18 him coming out to my car, it was just more problems for me,
19 frustrated me, when I was - the day was about me and Angie and
20 me trying to break up with Angie.

21 Q. Okay. So that's not a literal text?

22 A. That is not a literal text. I have text things like
23 that before.

24 Q. So do you agree that you've text things venting in
25 humor or jest or whatever that aren't literal?

1 A. Right. I didn't mean that literally.

2 Q. Okay. Well, do you recall Jojo responding to you
3 about, yeah. They talked shit the last time me and my brother
4 was in there, but that's all I'm saying?

5 A. Right. I saw, I saw, I saw B'Boy and Jojo sitting
6 beside each other the last day Jojo was in there and he
7 stopped coming in there after that.

8 Q. Okay. So it was your understanding that Jojo was
9 confirming that B'Boy had given him a hard time too at some
10 point?

11 A. Absolutely. That's the way I took it.

12 Q. So when he got up here and testified there was some
13 dispute that had nothing to do with B'Boy or you, is that
14 truthful?

15 A. That is not truthful.

16 Q. And then you said, can you help me out? I don't
17 need that b-s.

18 A. Right.

19 Q. What are you talking about?

20 A. I don't need B'Boy interjecting or trying to beat me
21 up.

22 Q. Him banging on your car --

23 A. Right.

24 Q. -- in the middle of your task of breaking up?

25 A. Right.

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1 Q. You don't need it?

2 A. I don't need it.

3 Q. Now, at the same time are you also receiving some
4 texts from Angie?

5 A. I am.

6 Q. Now it's 6:48, do you receive a text from Angie?
7 Sorry. She read it at 6:48. Or it was read by you at 6:48.
8 But at 6:33 do you recall this text, You couldn't even come
9 and speak?

10 A. Right. Right. She did text me that.

11 Q. Is that referring to how you left the pool hall
12 without talking to her?

13 A. Right. I received that text message, I believe that
14 was when I was getting stuff out of her house.

15 Q. And then again at 6:33 is she telling you, Everyone
16 stared at me?

17 A. Right. She did.

18 Q. Was that more of the same from Angie?

19 A. It is.

20 Q. Now, was there a text that changed your mind in the
21 way that you thought you might be able to accomplish your
22 break up with Angie?

23 A. Right. It was a text she sent back to me that I
24 believe it said, See you soon. No fighting.

25 Q. So at 6:47 the last text you got from her she says,

1 See you soon. No fighting?

2 A. That's correct.

3 Q. So what does that mean to you?

4 A. That means that she's calmed down and it would be
5 safe to come back, you know, to talk to her and I knew she
6 seen B'Boy come out to my car, so I'm assuming also that she's
7 taking care of that situation also.

8 Q. Because some in this courtroom might ask, it's a
9 pretty stupid thing to go back to the pool room if Angie's
10 acting that way and B'Boy's just threatened you, right?

11 A. Correct.

12 Q. But you got a text saying, See you soon. No
13 fighting?

14 A. Right.

15 Q. So what was your plan at that point? Did you think
16 that you might be able to accomplish a break up?

17 A. I did and I also had text Sergeant Mathis. He was
18 available.

19 Q. Very important. Glad you brought that up. This
20 text, May 7th, 6:52.

21 A. 6:52. Yes, sir.

22 Q. Is this a text from you to Sergeant Mathis asking
23 are you available?

24 A. Yes, sir.

25 Q. Now, if you were about to commit a premeditated

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1 murder as the State is alleging, would you be reaching out to
2 your friend, a local police officer asking if he's
3 available?

4 A. No, sir. I would not do that.

5 Q. Why did you reach out to Officer Mathis?

6 A. I thought that he could come and ride up to the pool
7 room with me, I could get Angie out to the car, he could stand
8 there with me and everything would be safe.

9 Q. But did he respond to you?

10 A. Unfortunately he did not. Apparently he was not
11 working that day.

12 Q. But when you're reaching out to Jojo Mims and
13 Officer Mathis, what did you think that either of those people
14 would be in a position to do?

15 A. They would be able to keep me safe from B'Boy.

16 Q. But based on the text from Angie saying, see you
17 soon, no fighting, you came on back. What was your thought
18 about how things might go with the break up if you went to the
19 pool room?

20 A. Even though she had said, see you soon, no fighting,
21 I didn't feel comfortable with walking all the way inside the
22 bar even though she gave me that text. I wanted people to be
23 around where she wouldn't show out because of her drinking,
24 but I didn't feel comfortable with walking inside the bar with
25 what B'Boy had done to my car because we had not had any,

1 anything go on from the time he assaulted me in the bar that
2 night. We had stayed separate from each other, and the only
3 reason I was going back to the bar was because, was because of
4 Angie and what she text me.

5 Q. So I want to show you a video that will show you
6 arriving back at the bar.

7 A. Yes, sir.

8 (Playing video.)

9 BY MR. L. SHEALEY:

10 Q. Tell me when you recognize your vehicle.

11 A. That's me right there.

12 Q. That's your silver Mercedes?

13 A. Yes, sir.

14 Q. Using your turn signal?

15 A. I can't see that.

16 Q. Does it have tinted windows?

17 A. It does.

18 Q. And why did you choose to park right there in front
19 of the pool room?

20 A. Well, actually I could have parked, I couldn't park
21 any closer because that's the handicap spot that's right
22 there.

23 Q. Why didn't you park where you parked before at the
24 top of the parking lot?

25 A. Well, I didn't feel it was very smart to park all

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1 the way out by the road.

2 Q. Now, what was your -- Did you have any hope of what
3 you could accomplish by parking out front by the windows?

4 A. Yes. I figured Angie could see me. She said, See
5 you soon. No fighting. I was gonna give her a chance to come
6 out. If she didn't come out, I was gonna text or call her.

7 Q. If she came out, what were you gonna do?

8 A. I was gonna let her sit in the car and kind of go
9 easy about it all, tell her what I feel was going on with the
10 relationship and that I need a little more space and maybe we
11 could get together later or something, you know.

12 Q. Why didn't you just get out and walk inside the pool
13 room and break up with her in there? There's lots of people
14 in there.

15 A. Right. But also with B'Boy doing what he did to me
16 I didn't feel comfortable going in even though she said, See
17 you soon. No fighting.

18 Q. I'm gonna play the video again with you sitting
19 there. Well, that's where it ends.

20 THE COURT: Counsel, y'all just briefly come up
21 here.

22 (Side bar off the record.)

23 THE COURT: Ladies and gentlemen, let's take a short
24 break to refresh ourselves. As soon as you're ready to
25 come back in the courtroom, let me know. Five to 10

1 and 99 which are the text messages from Angie Smith but I
2 don't think I actually admitted them so I'm gonna seek to
3 admit those now.

4 THE COURT: Without objection?

5 MR. McNAIR: No objection.

6 THE COURT: Defense Exhibit 81, 82 and 99 admitted
7 into evidence.

8 BY MR. L. SHEALEY:

9 Q. So, Barry, we were just talking about and identified
10 you pulling back up to the pool room, right?

11 A. Yes, sir.

12 Q. And you said in summation, I believe, that you were
13 hoping that Angie would see you, come out, and you two have a
14 face to face break up?

15 A. That's correct.

16 Q. But it was not your plan to go inside, right?

17 A. That's correct.

18 Q. Why again?

19 A. Because with B'Boy coming out to my car, I knew
20 something was wrong and I wanted to stay away from that.

21 Q. Okay. And I want to start this video again after
22 you just pulled up.

23 (Playing video.)

24 BY MR. L. SHEALEY:

25 Q. And you've seen this video before, but you sit there

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1 in your car for a while, do you not?

2 A. I do.

3 Q. And then who is that?

4 A. That's B'Boy.

5 Q. I'll stop it right there. Now, when he comes to
6 your car, what is the conversation about?

7 A. Well, first, when he came, he was waiting on me to
8 get out of the car if you would watch where he paused there
9 right then.

10 Q. Did you get out of the car?

11 A. No. I didn't get out of the car. I rolled the
12 window down about six inches because I was scared of him. I
13 didn't roll the window all the way down because I didn't know
14 if he was gonna grab me and pull me out of the car. But when
15 he first, when he first started talking with me, the things
16 that came out of his mouth had to do with Angie.

17 Q. Okay. Such as?

18 A. Such as, Why did you call the law on my cousin? You
19 know she's family. And I don't like that.

20 One of the other things he was talking about was
21 that I had been taking Angie to that bar in Foley's that we
22 were talking about. That was two of the reasons there.

23 Q. You mean taking her there, meaning taking her away
24 from the pool room?

25 A. That's correct.

1 Q. Okay. So Angie, how you called the law?

2 A. Mm-hmm.

3 Q. Taking her away?

4 A. Correct.

5 Q. What else?

6 A. I can't really, I can't really recall. I know it
7 was a couple more things, but right there --

8 Q. About Angie?

9 A. Right.

10 Q. Okay. Well, let me ask you what you can recall.

11 Did he come out there and say, Mr. Jones, I've heard word from
12 my grandson that you've been a problem here and I'm gonna need
13 you to leave? If you can't get your act together, I need you
14 to leave and never come back. Did he say that?

15 A. Right. If I may, can I backtrack?

16 Q. Sure.

17 A. Okay. I remember now him telling me that it wasn't
18 nice for me to leave without speaking to her, that it had
19 embarrassed her.

20 Q. Okay. So again about Angie?

21 A. Correct.

22 Q. What was his demeanor?

23 A. He wasn't happy.

24 Q. So but he wasn't talking to you about official bar
25 business?

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1 A. No. Not at all.

2 Q. He was talking to you about B'Boy business?

3 A. Yes.

4 Q. What else did he want you to do during that
5 conversation?

6 A. He wanted to get me out of the car for one thing.
7 That was the main thing and I told him I was not getting out
8 of the car. I didn't want anything to do -- I wanted him to
9 let me - to go back inside and I will leave.

10 Q. Okay. Get you out of the car to do what?

11 A. Beat my a double s.

12 Q. Beat your ass?

13 A. Yes.

14 Q. And he had threatened you a month prior physically
15 with doing that same thing?

16 A. He did.

17 Q. And he had hit on the back of your vehicle 30
18 minutes, 40 minutes earlier?

19 A. That's correct.

20 Q. Did you have your car door locked or unlocked?

21 A. They were locked.

22 Q. What efforts did he make, if any, to try to get you
23 out of that car?

24 A. He pulled on my door handle to check and see if it
25 was locked or not.

1 Q. Okay. How did that make you feel?

2 A. That made it that much worse that he was gonna try
3 to go through the effort of getting me out of the car.

4 Q. Okay.

5 A. And I kept the window just cracked.

6 Q. All right. I'm not gonna play the entire 10 minute
7 or so of video that's been played once before and the jury's
8 gonna have it, but you recall him standing at your car having
9 a conversation with you for about that time, do you not?

10 A. For a long time. Yes. He was there.

11 Q. Did his tone and demeanor get more calm as it went
12 on or more aggressive?

13 A. It was more aggressive. He started talking about
14 what his grandson had told him about the bar. I was trying to
15 run, basically, I was basically trying to run the bar were the
16 things that you've heard today. I was basically trying to run
17 the bar.

18 Q. So if I'm hearing you correctly, he's bringing up
19 your criticisms about the way the place was run?

20 A. Correct.

21 Q. And accused you of you trying to run the bar?

22 A. That's correct.

23 Q. So he talked about Angie, how you called the law,
24 how you didn't speak to her when you left?

25 A. Right.

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1 Q. And now he's bringing up your criticisms and your
2 complaints?

3 A. Correct.

4 Q. Okay. Has he told you that you need to leave and
5 never come back because I'm doing official bar business?

6 A. No. He did not.

7 Q. Okay. Is he wanting to fight you?

8 A. Yes. He was.

9 Q. Does the conversation escalate?

10 A. Yes. It does.

11 Q. Do you get invited out by him to fight?

12 A. I do.

13 Q. Why don't you do that, just have a little fist fight
14 with B'Boy?

15 A. I'm not doing that. I'm not gonna fight B'Boy.

16 Q. Is he bigger than you?

17 A. Yes. He is.

18 Q. Is he stronger than you?

19 A. Yes. He is.

20 Q. Did you think he had the physical capacity to hurt
21 you with his hands?

22 A. He did and he was telling me what he could do to
23 me.

24 Q. Such as?

25 A. Such as he could beat my ass. He'd been fighting

1 all his life.

2 Q. Okay. And that's what he's telling you as this
3 conversation progresses?

4 A. That's correct.

5 Q. Now, we've heard a lot of conversation in this trial
6 and testimony about B'Boy's physical condition at the time of
7 someone who had a, recovering from a triple bypass heart
8 surgery and things of that nature.

9 A. I knew nothing about that.

10 Q. So he didn't, he didn't say, come out there and tell
11 you that. He never told you that in the bar?

12 A. No. He didn't. I think I testified I didn't talk
13 to him a whole lot in the bar.

14 Q. That was information that you didn't have?

15 A. I had no idea.

16 Q. He didn't say, yeah, I'm threatening you, but don't
17 get out because I might not be able to fight you like I want
18 to?

19 A. That's correct.

20 Q. You had no information on that?

21 A. No information. It's not the right thing to get out
22 and fight anyway if I could beat him up.

23 Q. Okay. Let's talk about your physical condition at
24 that time. Did you have any issues physically that would make
25 you not to want to engage in a fist fight with B'Boy?

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1 A. Well, it's not the right thing to do for one thing,
2 but I had been lifting weights and working out and I hurt my
3 about probably a year or a year and a half prior to this
4 incident and I had to stop lifting weights because of that.

5 Q. Okay. So your intention was not to get in any
6 conflict with him at all that day?

7 A. No. It wasn't.

8 Q. Did you say anything to him about leaving you alone
9 or going to get Angie?

10 A. I did. That's the first thing I told him, that I
11 didn't want to have any problems with him, for him to go back
12 inside and get Angie and I would leave.

13 Q. Okay. Did he leave your door?

14 A. No. He did not. He continued to hound me.

15 Q. Now, at some point did the conversation or him
16 talking to you escalate to the point where you felt that your
17 life was in danger?

18 A. I was threatened with a deadly weapon and that's
19 aggravated assault and I know that's serious and it took it to
20 the next level when he did that.

21 Q. I'm gonna play you a video that you have seen before
22 that's keying in on a crucial moment.

23 (Playing video.)

24 BY MR. L. SHEALEY:

25 Q. Did you see him lunge in at you?

1 A. Several times he did. Yes, sir. I could smell his
2 breath.

3 Q. Did he smell like he'd been drinking?

4 A. Yes, sir.

5 Q. Did he seem intoxicated?

6 A. Yes. He did.

7 Q. When he lunged in at your door window like we just
8 saw, how did that make you feel?

9 A. Of course it made me fearful of my life and I was
10 threatened. I was already scared of him, that's why I didn't
11 roll the window down but six inches.

12 Q. Were your headlights on at this point?

13 A. When I first came in, they weren't, but at this
14 point -- Well, I can't see from here, but at a point in time I
15 cranked up the car and my lights would have probably came on
16 then.

17 Q. Okay. Why did you crank up the car?

18 A. Because I was gonna try to leave.

19 Q. Okay. Now, let's play this again. Do you see that
20 motion he's making right there like this (indicating)?

21 A. Right.

22 Q. Does it look like, what does that motion look like
23 to you, his hands like this (indicating)?

24 A. Oh, you talking about, oh, yeah, when he's pointing,
25 pointing a gun.

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1025

1 Q. Does it look like what, a rifle?

2 A. I can't really see. If I could come up there
3 closer, I can tell you.

4 MR. L. SHEALEY: All right. Come down, if that's
5 okay with the Court.

6 THE COURT: Yes, sir.

7 THE WITNESS: (Complies.)

8 MR. L. SHEALEY: Maybe if you stand right here and
9 look at that TV there.

10 THE COURT: Mr. Jones, while you're down there,
11 please make sure that your voice is loud enough so the
12 court reporter can hear what you're saying.

13 THE WITNESS: Yes, sir.

14 BY MR. L. SHEALEY:

15 Q. You can look at my laptop. I'll back up just a
16 smidgen. Do you see that motion he made where he went like
17 that (indicating)?

18 A. Right. Like he was shooting.

19 Q. Do you recall that in realtime?

20 A. Yes. I do.

21 Q. Okay. Have a seat again please.

22 A. (Witness complies.)

23 Q. Now, I want to focus again on this next series of
24 actions that B'Boy takes. Are you watching the screen?

25 A. Yes, sir. I can't see that well without my

1 glasses.

2 Q. Step down here and watch it on my laptop then, if
3 you don't mind, so the jury can watch the screens.

4 A. (Witness complies.)

5 Q. Do you see that black object in his hands?

6 A. Right.

7 Q. Did you see that in realtime?

8 A. Yes. I did see it.

9 Q. What did you believe that object to be?

10 A. I don't believe it was anything. It was a gun.

11 Q. You know it's a gun?

12 A. Yes, sir. I'm three feet from it.

13 Q. And what is he doing right there?

14 A. He had already put the gun up and he was showing me
15 that it definitely was a gun.

16 Q. Right there and he draws his shirt away with his
17 left hand --

18 A. Right.

19 Q. -- to show you with his right hand here --

20 A. Right.

21 Q. -- in his waistband what did you see?

22 A. It was a gun.

23 Q. Okay. Now please have a seat.

24 A. (Witness complies.)

25 Q. I want to show you what's in evidence as Defendant's

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1 number 97, a blow up of that same image.

2 A. Yes, sir.

3 Q. Do you recognize that?

4 A. I do.

5 Q. Now, we can see his stomach there?

6 A. Yes, sir.

7 Q. And we can see his hand there?

8 A. Right. His hand's on his phone.

9 Q. Now, you know the difference between a phone and a
10 gun?

11 A. Yes, sir.

12 Q. Are you a person that's owned both of those items?

13 A. Yes, sir.

14 Q. Okay. Did you have any doubt in your mind that what
15 is in his waistband was a gun?

16 A. I know it's a gun. You can see it. I'm up that
17 close to it and he's pulling up his shirt and showing me it's
18 a gun.

19 Q. How did that make you feel?

20 A. Threatened. Threatened for my life.

21 Q. Did you think he could shoot you?

22 A. Absolutely he could have.

23 Q. Referring you to defendant's number 98 which is a
24 still shot somewhat blurry because it's been blown up, this
25 black object in his hands --

1 A. Right.

2 Q. -- is that a gun?

3 A. Yes. I couldn't see it the whole time he was doing
4 that because the angle I had on it, but I did see him draw the
5 gun and he showed it to me again when he pulled up his
6 shirt.

7 Q. Any doubt in your mind that that's a gun?

8 A. There's no doubt in my mind whatsoever.

9 Q. And I'll put that same photo up for the jury. That
10 object in his hand, that's a gun?

11 A. Right. Yes. It is.

12 Q. That's the same blow up of what we've got. That's
13 the gun in his waistband?

14 A. Yes, sir. It is.

15 Q. Is there any other reason in the entire world that
16 he would lift his shirt up to show you his waistband other
17 than to show you a gun?

18 A. No. His cell phone is on his pocket hanging way
19 below that.

20 Q. He didn't go like this, like I'm gonna call the
21 police?

22 A. No. He didn't.

23 Q. I'm gonna show you a zoomed in version of that same
24 interaction. I'm gonna show an enhanced zoomed in at the tale
25 end of your interaction.

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1 A. Right.

2 Q. Now, at this point does he eventually start telling
3 you to leave?

4 A. He does.

5 Q. Now, you wouldn't get out of the car? You wouldn't
6 fight him?

7 A. That's correct.

8 Q. Did that make him more mad or less mad?

9 A. More mad.

10 Q. Is he telling you to leave because he's now
11 remembering that he needs to talk about Clayton's bar business
12 or why is he telling you to leave?

13 A. Now he's frustrated because he couldn't get me out
14 of the car.

15 Q. Okay. Are you also telling him to leave, get out of
16 your personal space?

17 A. I am.

18 Q. And you were a patron of that bar that day?

19 A. Correct.

20 Q. At some point do you think he's about to leave?

21 A. I do.

22 Q. Is that when he starts walking towards the door
23 right there?

24 A. Yes, sir. I got some hope then.

25 Q. Now, clearly that black object attached on the other

1 side of his pocket, that's not a gun?

2 A. Right. That's way below the waistband. Yes, sir.

3 Q. That's what? What is that?

4 A. That's his phone down below.

5 Q. That's his phone?

6 A. Yeah.

7 Q. So you saw both a phone and a gun?

8 A. I seen both. Yes, sir. I did.

9 Q. Now, at some point does he spin on his heels and

10 re-engage you?

11 A. Well, previously he had been going back and forth so

12 sometimes I thought he was gonna leave or whatever, so I had

13 my eye on him because once he got the gun out, I wasn't gonna

14 let him get the gun out again.

15 Q. Okay.

16 A. I can't let him do that.

17 Q. Okay. When you saw all that gun brandishing, gun

18 showing, what action did you take?

19 A. I reached behind my passenger seat. I had a bag and

20 I reached on top and got the first gun I could get off the

21 top.

22 Q. Okay. Was this an ammo bag, like a gun bag?

23 A. Yeah.

24 Q. Is that something in evidence that we've seen a

25 picture of?

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1 A. It is.

2 Q. And was that part of the way you packed up out of
3 Angie's house?

4 A. That's correct.

5 Q. You just threw a lot of guns in multiple different
6 bags?

7 A. Right.

8 Q. Did you know that there was a gun accessible to
9 you?

10 A. Yeah. I had to extend my body to get to it.

11 Q. What gun did you grab?

12 A. It happened to be my wife's .38 special.

13 Q. Was that a gun that you were used to shooting or
14 practiced with?

15 A. I can't recall shooting that gun maybe once,
16 something like that. I bought it for her for self protection,
17 hammerless .38 special with a smaller grip.

18 Q. So did you grab that gun only at the point when you
19 saw B'Boy with a gun?

20 A. That is correct.

21 Q. You didn't go over there with a gun in your
22 pocket?

23 A. No. I didn't. Not at that time.

24 Q. Did you go over there with a gun in your lap?

25 A. No. I didn't.

1 Q. Now, you've had concealed weapons permit training
2 before, right?

3 A. Right.

4 Q. You used to have a concealed weapons permit?

5 A. Right.

6 Q. Now, again, we're talking about how you thought he
7 was about to walk inside?

8 A. Right.

9 Q. Is that what he does?

10 A. No. He doesn't, unfortunately.

11 Q. I'll play the video for you. He spins real quick
12 and turns around. Did you call him back to your car?

13 A. Absolutely not.

14 Q. Did you want him back in your face?

15 A. I wanted him to go inside, this would be over.

16 Q. Okay. We heard some testimony I think from maybe
17 Nicole Bibbs or maybe Brenda Edwards who's in the IGA parking
18 lot through the trees, through the bushes, through the trucks,
19 that claims that you said something like, Milledge?

20 A. I don't even call him Milledge anyway. No, sir.

21 Q. Okay. You only know him as what?

22 A. B'Boy.

23 Q. Did you call him back?

24 A. No. I did not.

25 Q. Did you want him to leave you alone?

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1 A. I did I pleaded with him to put the gun up and go
2 inside, nobody would get hurt. I pleaded for him, with him.

3 Q. Now, when he turned around very quickly and came
4 towards you, how did that make you feel?

5 A. He was coming, and not at this time, but as he gets
6 closer I think he does some hand gestures or whatever, he
7 tells me he's gonna get me out of the car.

8 Q. He's gonna get you out of the car?

9 A. Right. Once I had my gun on my lap, I rolled my
10 window all the way down then because I felt like I could
11 maneuver out or shoot him or whatever if he did come at me
12 that way possibly if I needed to.

13 Q. Okay. So after that entire conversation which
14 escalated and after seeing him brandish the gun and
15 threatening you to fight you physically, to shoot you with
16 that gun, were you gonna let him get right up into your window
17 knowing he's armed?

18 A. No. I'm not.

19 Q. Did you think that would be a safe thing to do?

20 A. It would not be a safe thing to do.

21 Q. And did he keep coming towards you?

22 A. He did.

23 Q. Again, when he turns right there, you don't get out
24 of your car, do you?

25 A. No. I don't.

1 Q. When he comes right there?

2 A. Right. He's telling me to leave right there. I'll
3 admit to that. He is.

4 Q. You don't get out of your car there?

5 A. No. I don't. I can't see his right hand now. I'm
6 watching him like a hawk.

7 Q. Why do you decide at some point to get out of the
8 car and shoot B'Boy?

9 A. There's a certain point where I can't see his right
10 hand. I know he's got a gun. I know he can draw it, and it
11 gets to the point where I don't feel safe at all. My life is
12 threatened and on the line and my heart's beating 150 beats
13 per minute.

14 Q. Okay. Do you want to live, Barry?

15 A. I do.

16 Q. Right there when he steps and turns past that yellow
17 post --

18 A. Piling. Yes, sir.

19 Q. -- is that when you take action?

20 A. That's the furthest I could let him go. Right.

21 Q. And you've seen him with a gun?

22 A. I seen - I believed he had a gun when he turned that
23 corner in his hand. I did.

24 Q. Now, you're aware of your own case and you're aware
25 that no gun was ever found on the scene?

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1 A. Right. I do.

2 Q. From your recollection did B'Boy have a lot of
3 friends in that bar?

4 A. Absolutely. He maybe had been going there 40
5 years.

6 Q. Did you have any friends left in that bar at that
7 point?

8 A. The friends that I was close to in that bar were the
9 ones that I met with on what I call the meeting and they were
10 gone. Randy left. Kurt left. And a couple more of the guys
11 I kind of socially knew, but a lot of my friends that I would
12 talk to that come in were not there that I went to high school
13 and stuff weren't there that day.

14 Q. Okay. Now, we entered in a video that actually
15 shows the aftermath of the shooting because the other video
16 didn't necessarily show all of that, but you've reviewed all
17 of the videos in this case?

18 A. I did.

19 Q. You've reviewed the work that my expert did on video
20 analysis in this case, right?

21 A. Yes, sir. I did.

22 Q. And you recall hearing from Roger Bryan in this
23 case, don't you?

24 A. I do.

25 Q. What I'm showing you, and you've seen this before,

1 is the enhanced and zoomed up video of the aftermath of the
2 shooting. Do you notice a lot of people milling around?

3 A. Right. Right.

4 Q. Nicole Bibbs right there?

5 A. That's correct.

6 Q. Roger Bryan right there?

7 A. That's Roger.

8 Q. This is Mr. Walter?

9 A. That's Roger Walter.

10 Q. And Mr. Hatcher out there?

11 A. Right. Looks like Lanyce.

12 Q. You recall Danny Dowling?

13 A. Right. I didn't know all these guys by name at that
14 time, but with all this going on I've learned their names.

15 Q. You see these people around B'Boy. I want you to
16 focus on Roger Bryan. Do you see right under him some black
17 object right there?

18 A. Yes. I do.

19 Q. Keep your eyes on that, Barry. It's still on the
20 ground?

21 A. I can't see that well.

22 Q. You still see a black object right there?

23 A. Yes, sir.

24 Q. Who is that, the woman walking out?

25 A. That's Mimi. That's Madison's grandmother.

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1 Q. Keep your eyes on the black object. Does it look
2 like Roger Bryan picks up that black object?

3 A. Yeah. He does.

4 Q. And you've heard his testimony this week that he's a
5 close friend of B'Boy's?

6 A. He is.

7 Q. Now, Barry, your car was running at some point. Why
8 didn't you just throw it in reverse like "Dukes of Hazard" and
9 get the heck out of there?

10 A. I tried to. When I cranked the car up, he realized
11 what I was gonna try to do and at that time he said that would
12 be last thing that I did if I tried to leave.

13 Q. Now, you've seen him with a gun at that point?

14 A. Right.

15 Q. To operate your vehicle do you have to have at least
16 one hand on the wheel?

17 A. Right. It was out of the question for me to take my
18 eyes off of him and to back out of there, whatever. I didn't
19 trust him. He had a gun. He'd already told me not to leave.
20 He was wanting to have his way with me, threatening me, so I
21 didn't want - I didn't trust that. He could easily shoot
22 me.

23 Q. Okay. But only later he tells you to leave because
24 he was unsuccessful?

25 A. That's correct.

1 Q. In having his way with you?

2 A. That's correct.

3 Q. Did he ever at any point say this is official bar
4 business on behalf of Clayton?

5 A. No. He did not.

6 Q. Did you want to shoot B'Boy?

7 A. No. I did not.

8 Q. Did you want to stay alive?

9 A. I did want to stay alive. Yes, sir.

10 Q. Now, Barry, at the time did you even know there was
11 surveillance video out there?

12 A. No. I did not.

13 Q. If you had known it, would that have changed the
14 course of your actions?

15 A. I would like to think it would have changed my
16 actions there because it would have been on the video.

17 Q. Did you feel more confident in whether you would be
18 believed by law enforcement if it's on video?

19 A. Definitely. With all his friends inside with that
20 happening I didn't stand a chance without video.

21 Q. Okay. Now, you left. You did not get out of your
22 car, call 911, try to talk to his friends. You didn't do
23 that?

24 A. No. I did not. I didn't feel comfortable with
25 that. With all his friends coming out that was not a smart

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1 thing to do.

2 Q. Did you think that that would be safe?

3 A. It would not be a safe thing to do, to stay there
4 with his friends coming out. I know B'Boy has a gun and
5 somebody could pick that gun up and attack me.

6 Q. Okay. Now, you shot him twice. Do you have -- I
7 mean, I assume you know he was injured at that point, but did
8 you know if he was not functioning or he couldn't get off a
9 shot or what did you know about his condition at that point?

10 A. I just knew he fell back to the ground and when I
11 looked at him, he wasn't going for his gun. I didn't see a
12 gun at that point in time. I felt the threat was over so I
13 got in my car and left as quick as I could.

14 Q. You didn't shoot your gun until it was empty at that
15 point, did you?

16 A. No. I had more rounds in there that I could have
17 shot.

18 Q. Why did you only shoot two?

19 A. Just enough to protect myself and stop the threat.

20 Q. Now, you agree that you quickly left the parking lot
21 and turned left very quickly, right?

22 A. Right. I hightailed it out of there.

23 Q. Okay. How come you didn't drive right to the
24 Edgefield County Sheriff's Office?

25 A. I wanted to get out of there, get to a safe spot. I

1 didn't feel comfortable with Edgefield County having anything
2 to do with this at that point in time. I felt safer to get in
3 touch with Sergeant Mathis from the Johnston Police
4 Department, that I maybe could tell him my story and have
5 better, fair treatment. I didn't feel I had done nothing
6 wrong at that point in time except defend myself.

7 Q. Okay.

8 A. I wasn't guilty of anything at that point in time.

9 Q. Okay. Now, again, Angie's ex-husband, a prominent
10 investigator in Edgefield?

11 A. He is.

12 Q. Signed your murder warrant?

13 A. He did.

14 Q. And the person you just shot is his
15 ex-cousin-in-law?

16 A. Cousin-in-law. Yes, sir.

17 Q. So you said you were concerned you wouldn't get fair
18 treatment if you called 911 --

19 A. Right.

20 Q. -- if Edgefield responded?

21 A. That's correct.

22 Q. You didn't drive to the Edgefield Sheriff's
23 Department?

24 A. No. I did not.

25 Q. You drove left. Did you have a plan?

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1 A. I didn't have a plan. I just wanted to get some
2 distance between me and the pool room with -- I didn't know if
3 one of those guys would try to follow me or not. Those were
4 close friends of his. I think it was testified that Lanyce
5 Hatcher knew him for 50 or 55 years, had to be like his
6 brother. I didn't know if they were gonna follow me and try
7 to get revenge on me because of shooting their good friend.

8 Q. Okay. So where did you go next? What did you do?

9 A. Well, I didn't really have a plan, but I wanted to
10 get some distance like I said from the pool room so I drove
11 toward Edgefield and I wanted to find a safe place to go and
12 just try to get in touch with Sergeant Mathis, but I actually
13 ended up going to BiLo at the time. I understand now they
14 have changed the name. I actually went to BiLo and bought a
15 12 pack of beer.

16 Q. Okay. We'll talk about it later, but we've seen a
17 12 pack of Michelob Ultra that's on your front seat later. Is
18 that the beer you're talking?

19 A. That's the exact beer I bought.

20 Q. Why would you buy beer at a time like this?

21 A. I was stressing pretty bad I felt like it would help
22 me calm, it would help calm me down and I could get in touch
23 with Sergeant Mathis.

24 Q. Okay. And you said I think that your heart had been
25 racing?

1 A. Yeah. Absolutely. Yeah.

2 Q. So you went into a BiLo in Edgefield?

3 A. Edgefield. Outskirts of Edgefield. Yes.

4 Q. Okay. Grabbed a 12 pack of Ultra Light?

5 A. I did.

6 Q. Did you drink it, chug one in the parking lot?

7 A. No. I did not.

8 Q. All right. What was your plan? What were you
9 thinking?

10 A. I wanted some remote place that I could just calm
11 down and get my thoughts together and go from there so I ended
12 up heading towards Greenwood. I went to school in Greenwood.
13 Excuse me. I know Highway 25, once you got out of town, was
14 remote and I didn't know every road or anything by no means,
15 but I knew it was a remote area. It wasn't populated very
16 much on the main road so I felt I could find a safe place out
17 that way so I headed toward Greenwood.

18 Q. Okay. You weren't headed towards Augusta?

19 A. No. I wasn't.

20 Q. That would be a different road?

21 A. Yes. That's completely the wrong way.

22 Q. Now, the State has an exhibit here they discussed
23 with Officer Florida which is number 40 that shows an
24 intersection. At some point when you're driving, did you come
25 across a police officer in a marked vehicle?

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1 A. I did. I didn't know who it was.

2 Q. At the time?

3 A. At the time I did not know, right. That's the
4 intersection looks like to me. Yeah.

5 Q. But we all now know who it was?

6 A. Correct.

7 Q. Florida?

8 A. It was Officer Florida.

9 Q. Okay. And when you saw this officer, what did you
10 do?

11 A. Well, actually, he was at the intersection before I
12 was, but I pulled up and he waited on me. He recognized the
13 car and I figured and so I ended up just going straight
14 across.

15 Q. Okay. And did you recognize his vehicle as one
16 being with the Edgefield County Sheriff's Office?

17 A. Yes. Yes. Yeah. I wasn't sure if it was - it
18 entered my mind that it possibly could be Officer Smith.

19 Q. Okay. So, well, you didn't know for sure?

20 A. No. I didn't.

21 Q. But that's his office?

22 A. That's correct.

23 Q. Now, did you speed up and haul butt?

24 A. No. I just got on Highway 25 just like normal and
25 he followed me.

1 Q. Okay. Now, what was he doing at the time he was
2 following you?

3 A. Well, he got up, he got up close to me. I figured
4 he was running my tag and then he backed off a little bit.

5 Q. Okay. Did that stay that way or did things start to
6 change in the way he followed you?

7 A. No. He backed off and I was expecting him to turn
8 the blue lights on and pull me over, but he didn't do that.

9 Q. He didn't pull you over?

10 A. No. He didn't. He had plenty of time to pull me
11 over.

12 Q. He didn't activate his blue lights?

13 A. No. He didn't.

14 Q. If he had activated his blue lights and initiated a
15 traffic stop, what would you have done?

16 A. I would have just pulled over. That would have been
17 the normal thing to do.

18 Q. Now, that's not Officer Mathis who you wanted to
19 turn yourself into?

20 A. Right. But I would have done that.

21 Q. Now, are you driving the speed limit?

22 A. Yes. I am.

23 Q. But he's behind you, but no lights or siren?

24 A. No.

25 Q. And what happens next?

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1 A. Well, we get on out to probably a 45 zone and I
2 notice he's laying way back and I don't know what he's doing.
3 I don't know, but I know at one time he, that's when he starts
4 being very aggressive behind the wheel as far as pulling up on
5 me really close like he's gonna run me off the road.

6 Q. Okay. Now, is that a change in the way he was
7 driving?

8 A. Yes. It was definitely a change.

9 Q. Describe what you mean by pulling up real close
10 trying to run you off the road?

11 A. Well, he backed away from me like almost out of
12 sight or whatever and then he would accelerate very fast up to
13 me.

14 Q. Did you think he was gonna hit you?

15 A. Yeah.

16 Q. Did he ever hit you?

17 A. No. He didn't.

18 Q. Okay.

19 A. He didn't touch my vehicle, but if I touched the
20 brakes, he would have hit my car.

21 Q. Did that startle you?

22 A. Yes. That's not a normal thing for a police officer
23 to do.

24 Q. Did you think there's a chance that you could run
25 off the road?

1 A. Yeah. Yes. Absolutely. I did.

2 Q. At some point did you see anything regarding Officer
3 Florida that made you more concerned?

4 A. He did that about three times and on the last time
5 when he came up on me, I could see in my rear view mirror he
6 was so close or whatever I could see that he had a gun in his
7 hand through the window driving.

8 Q. Driving with a gun in his hand?

9 A. Correct.

10 Q. What kind of gun?

11 A. Well, I didn't know it at the time, but I know what
12 most officers carry. It was a black gun.

13 Q. And we've seen other photos in this case of other
14 officers driving with guns in their hands?

15 A. That's correct.

16 Q. You saw that evidence come in?

17 A. I did.

18 Q. So when you saw a gun in his hands while driving and
19 also while running up on you and backing up, how did that make
20 you feel about his intentions towards you that day?

21 A. Not very good.

22 Q. Okay. Did you think that he was gonna give you fair
23 treatment?

24 A. No, sir. Something wasn't normal with his
25 actions.

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1 Q. Okay. Now, we've heard testimony that at some point
2 you were on the road out of town, the highway, and you ended
3 up on Pleasant Lane. Do you recall that?

4 A. I do.

5 Q. Tell us about that.

6 A. Okay. On his last run up on me, he finally backed
7 back like he normally was doing, he got so far back off of me,
8 that I saw a road to the right and I turned down it and it
9 happened to be, I didn't know what road it was, but it
10 happened to be, I believe, Pleasant Lane Road. I turned on it
11 to try to get away from him.

12 Q. So you recognize this exhibit of the State's where
13 this is Pleasant Lane?

14 A. Correct.

15 Q. This was the main highway?

16 A. Correct.

17 Q. So you would have been coming this way and veered
18 right real quick?

19 A. That's correct.

20 Q. And again, why did you try to do that?

21 A. To get away from sergeant, I believe he was Sergeant
22 Florida.

23 Q. All right. And what kind of distance behind you was
24 he at that point?

25 A. Well, that I don't know about. I don't know how to

1 judge that. That's kind of too far to judge.

2 Q. Did you see him in your rear view mirror?

3 A. Not at the time I turned.

4 Q. Were you hoping to lose him?

5 A. Yes. I was.

6 Q. Now, when you got down here, did you turn right onto
7 Log Creek?

8 A. I did. I took a quick right in there, whatever, and
9 threw it up in park.

10 Q. Okay. Now, we've heard some testimony about from
11 Florida that you did some kind of turn so that the front of
12 your car would have been facing Pleasant Lane. Did you do
13 that?

14 A. No. That's not true.

15 Q. Did you just veer off and park right on the right
16 side of the road?

17 A. Right. I pulled all the way in, got on the road,
18 threw it in park, that's when I got out.

19 Q. Now, tell this jury after the behavior that you're
20 experiencing from Officer Florida why you stopped. What did
21 you do?

22 A. Well, I definitely felt really bad. I had doubts
23 that he wasn't gonna give me fair treatment and being that
24 aggressive, I felt the only way I could protect myself with
25 somebody driving like that being a patrolman, showing me his

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1 gun like that, the only way I could protect myself with an
2 armed police officer trained like he was is to have something
3 that I could compare to with him if he were to attack me.

4 Q. An armed officer who is trained who is driving up on
5 you like he's gonna run you off the road who's got a gun in
6 his hand?

7 A. That's correct.

8 Q. So you didn't think that let's just say your wife's
9 .38 would save you against that kind of power?

10 A. Not with a trained officer like he was.

11 Q. Okay. So you said you got out and you got your
12 rifle?

13 A. I did. I put it in park, popped the trunk, went
14 out, got my AR-15, was putting it in my rear seat when he sped
15 by.

16 Q. Okay. So did you take that opportunity to have a
17 stand off and point it at him and maybe shoot at him?

18 A. No. I didn't.

19 Q. Okay. Did you point it at him at all?

20 A. I did not point it at all. I was putting it in my
21 trunk. Putting it in my back seat. Sorry.

22 Q. Do you believe that he might have probably seen you
23 with the rifle at that moment?

24 A. I'm sure he saw me when he drove by.

25 Q. Okay. But when he saw you with the rifle, you agree

1 he sped up?

2 A. Right. He was already going pretty fast anyway
3 probably to try to catch up with me.

4 Q. Okay. And you heard his testimony this week and you
5 agree and he agrees that he sped off at that moment?

6 A. Correct.

7 Q. But you were not facing Pleasant Lane?

8 A. I was not facing -- I pulled in there and stopped as
9 quick as I could to get some protection.

10 Q. And this is a video when Officer Florida has turned
11 around and is convening with Officer Kathmann. You've seen
12 this before, right?

13 A. Yes, sir.

14 Q. Do you see his window is down?

15 A. His windows are down from what I can see. You can
16 see his mirror all the way through the two glasses.

17 Q. Okay. Now, Log Creek is a dirt road, right?

18 A. It's a dirt road. Yes, sir.

19 Q. What's the condition of it? Is this like a hunting
20 road?

21 A. I would call it that. Yes, sir.

22 Q. It's dirt. You're in your Mercedes?

23 A. Correct.

24 Q. Are you looking and thinking that you can out run
25 Officers Florida and Kathmann? Did you even know Kathmann was

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1 there?

2 A. No. I didn't.

3 Q. Is it your opinion that you could out run Officer
4 Florida in his SUV down that dirt road?

5 A. No. I can't. Not in my car, I couldn't out run
6 him.

7 Q. Did you want to continue to be involved with him
8 pursuing you in a vehicle?

9 A. No. I didn't. I'd already got away from that
10 situation out on the main road so I didn't want him actually
11 coming up on me and doing the same thing that he was doing on
12 outside. That would kind of defeat the purpose of me going
13 away from there.

14 Q. Well, what is going through your mind as you're
15 driving down this unfamiliar road?

16 A. I just want to find somewhere safe that protects my
17 back. With him doing what he was doing, I wanted to have just
18 one way with the front of my car facing the road.

19 Q. Okay.

20 A. Somewhere safe.

21 Q. Did you end up finding some place that you thought
22 was safe?

23 A. I originally went past the place and I backed back
24 up into it.

25 Q. Okay. Now, was it your intention to find a place

1 that you could set up shop and waylay police officers?

2 A. No, sir. That was, had nothing to do with it.

3 Q. Okay. I guess if you wanted to do that, you could
4 do that right there, correct?

5 A. I could have done it right there. Yes, sir.

6 Q. I mean, if Officer Florida as he speeds past you
7 down a straight line and you've got a high powered rifle, I
8 guess if you wanted to end his pursuit of you, would that be a
9 good place to do it?

10 A. I could have done it there. If that's what my
11 intentions were, I could have done it right there.

12 Q. So what's going -- You said you found a safe place
13 that you thought would do what? What was your goal in that
14 safe place?

15 A. Well, I knew it was over. I wasn't gonna be able to
16 do what I wanted to do by turning myself into Sergeant Mathis,
17 but at this point in time I didn't really have a choice. I
18 was gonna turn myself in so I just stopped somewhere safe or
19 whatever and I had a little bit of time and I opened up,
20 actually I opened up a beer and started drinking a beer.

21 Q. Okay.

22 A. I knew they were gonna be coming down the road so it
23 was over.

24 Q. And you said that you went to the BiLo to get beer
25 to try to calm down?

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1 A. I did.

2 Q. Could you hear a car coming down the dirt road?

3 A. Eventually I did hear it.

4 Q. Did you hear any sirens?

5 A. No. No sirens.

6 Q. Okay. Did you assume that that was probably the
7 same officer that was following you?

8 A. Right.

9 Q. Officer Florida?

10 A. Right. I drank about half the beer probably, about
11 that much time.

12 Q. Okay. Now, did you decide to come out into the road
13 and maybe kneel and put your hands behind your back --

14 A. No.

15 Q. -- for that officer to know that you were absolutely
16 no threat whatsoever?

17 A. No. I did not do that.

18 Q. Why didn't you do that?

19 A. I didn't feel safe doing that with what had just
20 happened. He was not acting normal.

21 Q. So you said you were drinking a beer?

22 A. Correct.

23 Q. Where?

24 A. Outside my car.

25 Q. Were you standing up? Where exactly -- Was the door

- 1 open? Was it closed?
- 2 A. The door was open.
- 3 Q. So the door was open?
- 4 A. Yep.
- 5 Q. You were standing kind of in the apex?
- 6 A. Yes.
- 7 Q. And you were drinking a beer?
- 8 A. That's correct.
- 9 Q. And figured the gig was up. This is not Mathis, but
- 10 these guys, I'm gonna be detained?
- 11 A. Right. That's why I got a beer out. That's
- 12 correct.
- 13 Q. Were you lying in wait with your rifle trained on
- 14 police?
- 15 A. No.
- 16 Q. Okay. Now, when police ultimately came into the
- 17 clearing and you say you're drinking a beer, what happened
- 18 next?
- 19 A. Could you repeat that?
- 20 Q. When you're standing at your open door --
- 21 A. Right.
- 22 Q. -- and you hear a car come that you believe is
- 23 probably the police --
- 24 A. Right.
- 25 Q. -- and it drives into the clearing where you're

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1 standing and drinking your beer, what happened next?

2 A. I was standing up waiting. I had a beer in my hand
3 and as soon as I saw a blue car come into the opening, I
4 immediately saw someone pointing a gun at me from inside the
5 patrol car.

6 Q. While driving and pointing a gun like that
7 (indicating)?

8 A. That's correct.

9 Q. Did you hear any shots?

10 A. Well, yeah. I heard shots. Yes, sir.

11 Q. All right. And we've played the video. We're gonna
12 play it some more.

13 A. Okay.

14 Q. But did you have a gun trained on them when they
15 shot?

16 A. No. I did not.

17 Q. Did you shoot first?

18 A. No. I did not.

19 Q. So you were drinking a beer?

20 A. Yes. I was.

21 Q. Your plan was to surrender?

22 A. Yes. It was.

23 Q. And what is your instinctual reaction when you hear
24 shots?

25 A. I ducked down.

1 Q. Like this (indicating)?

2 A. Yes. I did.

3 Q. What is going through your mind when you think
4 you're about to -- You had a bad day, right? Let's just say
5 that.

6 A. I had.

7 Q. And you know you've got a lot going on. You're
8 gonna have some legal problems?

9 A. That's correct.

10 Q. You're not sure if James Smith and Edgefield will
11 believe you?

12 A. That's correct.

13 Q. But when this officer drove by, Officer James
14 Florida and shot through his open window at you, could you
15 ever have believed that was gonna happen to you?

16 A. I couldn't believe it was happening. That's
17 something you see on TV but...

18 Q. Did it cause you to fear for your life?

19 A. Absolutely.

20 Q. So when you said you ducked, do you know what the
21 car did that was driving by and shooting at you?

22 A. I could tell it stopped.

23 Q. Okay. At some point it stopped?

24 A. It did.

25 Q. And did you hear any further shots?

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

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1 A. I did. I heard three more shots and I was standing
2 up and one of those shots is the one that hit me.

3 Q. Okay. So you were hit?

4 A. Yeah. I was hit by him with one of the three shots.
5 I didn't get hit when he was driving by.

6 Q. Okay. But one of the quicken time three shots
7 afterward?

8 A. Correct. I was crouched down behind the door when
9 he stopped or whatever and I received a shot to my chest.

10 Q. And we've seen a picture of a bullet hole at your
11 door that comes through the interior of your driver's door. I
12 mean, you're no CSI expert, but is that where you were
13 standing?

14 A. That's where I was crouched down. Yes.

15 Q. Okay. And that bullet, how did it go?

16 A. It started right there, went across to my breast
17 bone, then it went all the way under my right chest, come out
18 the other side of my pectoral muscle and hit my arm, grazed my
19 arm and fell to the ground.

20 Q. So it didn't go through your arm?

21 A. It didn't go through my arm.

22 Q. But it slowed down enough to hit your arm and drop
23 somewhere on the ground?

24 A. Right. Well, I didn't know that then but I saw
25 pictures.

1 Q. You didn't know that then, but we've see pictures
2 now?

3 A. Right.

4 Q. Did you think that James Florida was trying to kill
5 you?

6 A. Well, I didn't know it was James at that time, but
7 somebody was trying to kill me.

8 Q. How did that make you feel?

9 A. Hopeless.

10 Q. At that point in time did you make a decision to
11 defend yourself?

12 A. I did. I made a decision no matter who was in the
13 car that I had to defend myself.

14 Q. Okay.

15 A. They were not giving me a chance to give up.

16 Q. Now, that beer you were drinking, what happened to
17 it after you getting shot at and getting shot in the chest?

18 A. Well, it flew backward somewhere.

19 Q. Okay. Were you wearing sunglasses at the time you
20 got shot?

21 A. Like when I left the thing, I had them on the top of
22 my head.

23 Q. I'm gonna show you defendant's 55. Have you seen
24 this picture before?

25 A. Yes, sir.

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

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1 Q. Do you recognize the beer in the grass with your
2 blood?

3 A. Beer's right there, blood, and there's my sun
4 glasses right there.

5 Q. Is that your back left tire?

6 A. It is.

7 Q. Is that the Michelob Ultra that you grabbed out of
8 your front seat and drinking?

9 A. Right. That's the first beer I had opened after I
10 got there.

11 Q. Is that your blood?

12 A. That is my blood.

13 Q. Those are the sun glasses that you were wearing?

14 A. That's my Oakleys. Yes, sir.

15 Q. You're saying when that bullet ripped through your
16 body, that you...

17 A. Yes, sir.

18 Q. I want to play this video for you and I'll try to
19 stop it and start it a little bit because I want to see if we
20 can take a real good look at what you're doing when Officer
21 Florida drives by and it's recorded by Officer Kathmann's
22 dashcam.

23 A. Right. Yes, sir.

24 (Playing video.)

25 BY MR. L. SHEALEY:

1 Q. Do you see yourself standing in this open door right
2 there?

3 A. May I come down there?

4 Q. Come down please. I know it's hard for you to see.

5 A. (Witness complies.)

6 Q. We've already heard the first volley of shots. Do
7 you see yourself standing there?

8 A. I can't see myself right there.

9 Q. Do you believe that you would have been ducking?

10 A. Right. Right. Definitely after hearing the
11 gunshots I wasn't standing.

12 Q. Now, you know, the State says that you were pointing
13 a gun and shooting a gun an Officer Florida out there,
14 right?

15 A. Right.

16 Q. Do you see yourself in that image?

17 A. No. I'm not standing up there aiming a gun.

18 Q. Now are you popping up from a ducked position?

19 A. I'm trying to figure out what in the world
20 happened.

21 Q. Just watch your car. You don't see your body, do
22 you?

23 A. No. I don't. No. I don't.

24 Q. Do you still see your body?

25 A. No. I don't.

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1061

1 Q. Do you start to see your body?

2 A. I do.

3 Q. Do you see you're head pop up a little bit --

4 A. Right.

5 Q. -- from a ducked position?

6 A. Correct.

7 Q. You see a little more of yourself?

8 A. Yes. I do.

9 Q. A little more of yourself?

10 A. I do.

11 Q. And then do you see yourself move towards the
12 vehicle, your vehicle?

13 A. Yes.

14 Q. All right. Take your seat again.

15 A. (Witness complies.)

16 (Video stopped.)

17 BY MR. L. SHEALEY:

18 Q. Now, Barry, this AR-15 styled rifle that you had,
19 were you fairly proficient with it?

20 A. I would like to say that. Yes, sir. I went to the
21 range quite often, shot many rounds with it.

22 Q. We heard testimony from various sources that this
23 path that Officer Florida took that was directly in front of
24 your vehicle was anywhere, was about 41 feet, I think came
25 from the SLED agent. I know we talked about it with CSI. If

1 you were lying in wait to waylay an officer driving by with
2 that rifle, would you have missed?

3 A. No. I wouldn't.

4 Q. Would you have missed at all?

5 A. I probably wouldn't have missed if I would have shot
6 15 times at him going across there.

7 Q. Okay. Now, he's driving basically a police force
8 Explorer Interceptor?

9 A. That's correct.

10 Q. Now, we looked at and there was talk of from Florida
11 that a shot did come through his door?

12 A. Right.

13 Q. At a very wide angle that I was telling him as a
14 large man the way it came through the rear of his B pillar to
15 his steering wheel, I asked him and you recall this?

16 A. Yes.

17 Q. That would have hit him, do you agree?

18 A. I would agree.

19 Q. Did you shoot at him at that point in time when he
20 entered the clearing?

21 A. No. Not during the clearing. No. I did not.

22 Q. Did he shoot at you?

23 A. Yes. He did.

24 Q. Ultimately you would shoot at him at some point,
25 right?

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1063

1 A. I did in defense when he wasn't giving me a chance
2 to give up.

3 Q. Now, we heard a lot of talk about how Florida once
4 he gets out, you've listened to this, you agree that he shoots
5 when he gets out three times at you, right?

6 A. That's correct.

7 Q. Let's listen to that.

8 (Playing video.)

9 BY MR. L. SHEALEY:

10 Q. Is that Officer Florida?

11 A. That's three shots. I don't know which one of those
12 hit me, but one of them hit me.

13 Q. Okay. One of those hit you?

14 A. Yes, sir.

15 Q. That's not your gun?

16 A. That's not my gun.

17 Q. The first volley was not yours?

18 A. It was not.

19 Q. So at this point in time when you're shot, do you
20 reach for that weapon that you thought might save your life?

21 A. I did. I got it out of the back seat.

22 Q. What weapon is that again?

23 A. That's my AR-15.

24 Q. Did it already have a magazine in it?

25 A. It did.

1 Q. And is that the same magazine that you mentioned
2 that you had been using at the range?

3 A. It was. It was one I left in it after the range.

4 Q. Okay.

5 A. I didn't even know how many was in it.

6 Q. When you grabbed that gun at that point out of your
7 back seat, did you decide to defend yourself against Officer
8 Florida?

9 A. I did. I could not see him because there was so
10 much greenery there. I knew the general direction that the
11 shots were coming from and I just shot toward that area to let
12 him know that to not come all the way to me and kill me.

13 Q. Okay. Well, the first time that you tried to shoot
14 were you successful?

15 A. The first time I shot I don't know if it was
16 successful or not.

17 Q. Did you end up having a jam?

18 A. Oh, no. I meant, when I went to shoot him, at him,
19 the gun was jammed. I had to drop to magazine to the
20 floorboard. I had to get my bag, my ammo bag to get another
21 metal magazine out, put it in, clear the jam, and then I was
22 able to shoot back.

23 Q. Okay. So let's talk about that. So you had a
24 plastic magazine in your rifle?

25 A. Right. The ones I use when I go to the range.

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1065

1 Q. And that was what was in your gun at the time that
2 you tried to take action to defend yourself?

3 A. That's correct.

4 Q. And you said it jammed?

5 A. It did.

6 Q. And you've heard testimony about a live round that's
7 on the ground. I mean, you're not thinking about that round
8 at that time, are you?

9 A. No.

10 Q. But you know your gun's not working?

11 A. Right.

12 Q. So you said you dropped your magazine?

13 A. That's correct.

14 Q. Are you bleeding at this point?

15 A. Yes. I am.

16 Q. Is this the plastic magazine that's found in the
17 driver's side floorboard of your vehicle?

18 A. That's it.

19 Q. Right there?

20 A. It is.

21 Q. That's the one that was in your rifle when you
22 picked it up?

23 A. That's the one I brought back from the range. Yes,
24 sir.

25 Q. Okay. Is that where you dropped it?

1 A. I cleared it out of the gun right there.

2 Q. All right. Did you try to go for any other
3 magazine?

4 A. I did. I ended up getting my ammo bag that I kept
5 my metal magazines in and pushed that metal magazine in and
6 tried to clear the jam and one came out and I was ready to go
7 then.

8 Q. That bag right there is where you got your metal
9 magazine?

10 A. That is correct.

11 Q. So you cleared your jam, put in your metal magazine
12 and you had a functional firearm at that point?

13 A. I did then. That should have been 30 rounds.

14 Q. Now, at some point, let's talk about this. You've
15 got, that's your white shirt you were wearing?

16 A. It is.

17 Q. It's got blood all over it?

18 A. It does. I removed my shirt to check my injuries.

19 Q. Why did you remove your shirt?

20 A. I wanted to check my injuries.

21 Q. Yeah. You just said that.

22 A. Right.

23 Q. So I've explored this shirt with crime scene, but it
24 only has one hole in it?

25 A. Correct.

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1067

1 Q. Is that from that round we discussed?

2 A. Yes, sir. That's the angle of the shirt. I later
3 found out that the hole was on my left side right where I had
4 been shot.

5 Q. I want you to study this video again. We just
6 talked about how Florida shot three times at you, one of those
7 hitting you?

8 A. Right.

9 Q. You cleared, you grabbed your rifle but discovered
10 it's jammed.

11 A. It took a while for me to be prepared to defend
12 myself back.

13 Q. Is this what's going on right now, you're trying
14 to --

15 A. That's correct.

16 Q. -- get your weapon functional?

17 A. That's correct.

18 Q. Now, when you shoot at him, you said you can't
19 really see him.

20 A. I can't see him at all.

21 Q. At that point what is your goal in shooting?

22 A. To let him know not to come and kill me.

23 Q. Okay.

24 A. I'm not gonna allow that.

25 Q. Is that Officer Florida saying shots fired

1 dispatch?

2 A. I know now. Yeah.

3 Q. Now, did you just shoot one time at him?

4 A. Right then, yes, sir.

5 Q. Did you hear his voice?

6 A. Yes. I did.

7 Q. Does it sound different from the first time he said
8 shots fired' to dispatch?

9 A. It does sound a lot more scared.

10 Q. Is that because you just shot at him for the first
11 time?

12 A. Yes, sir.

13 Q. Is that you shooting four more times?

14 A. Yes. It is.

15 Q. Now we can see Officer Kathmann. He's testified
16 that he was trying to provide a distraction or cover fire. Do
17 you have any idea where Officer Kathmann is?

18 A. I have no idea. I never put eyes on him.

19 Q. Did you ever shoot any rounds in his direction?

20 A. No. I didn't even know he was there. Couldn't see
21 him.

22 Q. Who was the threat in your mind to you?

23 A. Officer Florida was my threat.

24 Q. Okay. Now, in your recollection, are you shooting
25 at him as an aggressor or in response to his shots?

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1069

1 A. I responded to what he was doing, trying to
2 basically kill me without letting me give myself up.

3 Q. During this time is he saying, Barry, come on out.
4 I want to take you into custody?

5 A. No. He didn't. He only did that at the very end.
6 When other officers got, there he was doing that. I was
7 already down then.

8 Q. At this time he's not talking to you at all?

9 A. No. He's not.

10 Q. Making no commands?

11 A. No. He's not.

12 Q. Just shooting?

13 A. That's correct.

14 Q. Now, I want to point you to where he gets his
15 shotgun out. Do you see him at his open car door?

16 A. I do.

17 Q. I'm gonna play it. I have already cross examined
18 him. He agreed that he moved in, veered and got his
19 shotgun?

20 A. Correct.

21 Q. Do you see him coming to the back of his vehicle
22 now?

23 A. I do.

24 Q. Okay. Let's listen. Do you recall him shooting his
25 shotgun at you?

1 A. Right. It hit the rear of my car. I was crouched
2 down at that time behind my door taking cover and it, all nine
3 pellets hit the back side of my car. I could hear the
4 metal.

5 Q. Okay. Now, do you have a great line of sight on him
6 still?

7 A. I can't see him at all where I am. It's total
8 greenery.

9 Q. Okay. But you feel, you hear things and bullets
10 whizzing past you or buckshot?

11 A. I did.

12 Q. Did that make you scared for your life?

13 A. It did.

14 Q. Do you respond with using your rifle?

15 A. I did. Once he did that again, I wanted to let him
16 know he wasn't gonna kill me.

17 Q. Okay. Did you see him specifically?

18 A. No. I could not.

19 Q. Is that you shooting?

20 A. That's me responding to him with his buckshot.

21 Q. Okay.

22 A. He's not giving me a chance to give up.

23 Q. I want to point out to you again where we heard him
24 and discussed with him where he shoots his buckshot the second
25 time. Do you see him taking position again?

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1071

1 A. I do.

2 Q. I'll ask you to listen. Is that his buckshot?

3 A. Yes. It is.

4 Q. Now, let's talk about this. From the point in time
5 between his first buckshot blast and his second buckshot blast
6 what had you decided to do?

7 A. I decided to -- What I was doing wasn't working so I
8 got my white shirt that I had taken off to check my blood and
9 my injury, I took my white shirt off, walked around to the
10 front of the car all the way away from my car around so I had
11 a better angle at him because what he was doing was coming
12 behind his vehicle to get a vantage point on me and I had
13 never went out from the front of my door because I was taking
14 cover behind my door, but this time I took my white shirt,
15 I went around in front of the car to the other side of my car
16 where he could see me, and I had my white shirt in my hand and
17 I signaled I think everybody would know is I give up. I don't
18 want anymore, okay?

19 Q. Okay. Were you stressed at that point?

20 A. Yeah. I was stressed.

21 Q. You'd been shot?

22 A. I'd been shot.

23 Q. And he's continuing to shoot at you?

24 A. He's continuing to shoot at me.

25 Q. So you're saying that you took that white shirt that

1 you had already pulled off and ran around right into the open
2 to wave your flag of surrender to him?

3 A. That's correct.

4 Q. Did you have your rifle with you at that point?

5 A. No. I did not.

6 Q. Did you have any guns on you at that point?

7 A. At that point in time I had none.

8 Q. Would that be counter productive to surrendering?

9 A. That's correct.

10 Q. As you're standing there waving that at him, what
11 does he do?

12 A. I saw him come from behind the vehicle and he had
13 his shotgun so the best I could do was try to take cover
14 myself. I turned my body away from him like that and that's
15 when I caught three buckshot to my upper arm.

16 Q. Okay. Did you think in that moment that he was
17 trying to kill you?

18 A. Absolutely.

19 Q. Did you think that he was gonna allow you to
20 surrender?

21 A. He was not gonna allow me to surrender. He wanted
22 to kill me.

23 Q. And again, we looked at the hole in your white
24 shirt. There's no buckshot hole, correct?

25 A. No, sir. There's not.

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1073

1 Q. You weren't wearing that shirt when you got hit with
2 the buckshot?

3 A. That's correct.

4 Q. So based on that blast what did you do next?

5 A. I thought about going to another plan. I thought
6 about maybe I should go on the run to get away from him, go
7 through the fence that was behind me and take off so I started
8 backing myself up to put some weapons on me to have some
9 defense and I didn't think that was a very smart thing to do.
10 I was trying to give myself up and me going to run from them
11 was gonna be even more dangerous. That would be counter
12 productive of what I was trying to do.

13 Q. Now, you said you didn't think - you're in the
14 moment, you thought about running, you put a couple guns in
15 your pocket, and then you changed your plan, you didn't think
16 that was very smart. Barry, we're sitting here Monday morning
17 quarterbacking that entire day, are we not?

18 A. Yes. We are. It's not really fair.

19 Q. Well, it is what it is, but were you panicking?

20 A. Yes.

21 Q. Were you scared?

22 A. Yes. I was.

23 Q. Is it hard to think clearly when you're in that
24 state of mind?

25 A. Everybody is different, but I don't know many people

1 would be in a good state of mind with what I had going on with
2 all that shooting at me.

3 Q. Okay. So you're convinced that Florida is not going
4 to allow you to surrender?

5 A. Correct.

6 Q. You said that you believe he's going to kill you,
7 not detain you?

8 A. Without a doubt.

9 Q. You had a half a moment's thought that you might run
10 through the woods or something?

11 A. Right. I did that. I did think of that.

12 Q. Did you do that?

13 A. No. I did not.

14 Q. What did you decide to do instead?

15 A. I was under so much stress that I decided to kneel
16 down by my car and I said a prayer, I was gonna go see my wife
17 and I put the gun, the gun that a bought for her, I put it
18 under my chin and I went to take my life and it was
19 unsuccessful.

20 Q. Okay.

21 A. It shot up through, I did like that and apparently
22 it was a long trigger pull because it was her gun and I pulled
23 and turned and it went in my neck here and came out behind my
24 ear.

25 Q. That's the scar we see on your neck?

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1075

1 A. Yes.

2 Q. So did you feel like based on the actions of Florida
3 that you weren't going to have your day in court if he had
4 anything to say about it?

5 A. That is correct.

6 Q. Okay. And you said you tried to take your own life
7 with that .38 that was your wife's gun?

8 A. That's correct.

9 Q. And that, you know, you flinched, correct?

10 A. I did.

11 Q. And in making a decision that's very personal here
12 to try to take your own life, did it have anything to do with
13 your feelings about what happened with B'Boy?

14 A. No. Not at all. I didn't do anything wrong there.
15 My point with that was without video I would never be
16 believed.

17 Q. Were you feeling given what you said about Officer
18 Florida and not feeling like you were gonna be taken in
19 safely, did you feel -- What did you feel? Did you feel like
20 you were exercising some measure of control over your own
21 life?

22 A. Right. I just felt like I was being hunted like a
23 animal and I was trapped. I was trapped there and I couldn't
24 give myself up and I felt like that it would be easier for me
25 just to get it over with instead of being under such stress

1 not knowing what's gonna happen next. That was a lot going
2 through my mind that I just wanted it to end. I had been
3 through so much.

4 Q. Well, let me ask you this: Were you feeling some
5 sense of guilt about shooting in defense of your life against
6 Officer Florida? Is that why you tried to take your own
7 life?

8 A. Absolutely not.

9 Q. But you didn't want to be hunted like an animal. Is
10 that what you said?

11 A. That's correct.

12 Q. Now, after that, a third shot to your body during
13 that encounter, are you in great shape?

14 A. After being shot, no. It took a lot out of me with
15 all that was going on.

16 Q. That shot, that self inflicted wound, what did it
17 cause you to do?

18 A. Fall straight back to the side, I think, I
19 believe.

20 Q. Okay. At that point were you in any position to do
21 anything with the police or defend yourself further or do
22 anything but lie on the ground?

23 A. No. At one point I was wondering where my gun went
24 and I even had thoughts about if I could find the gun, to just
25 shoot myself again.

BARRY WAYNE JONES - DIRECT BY MR. L. SHEALEY

1077

1 Q. Okay. Now, we've seen this video play out a good
2 bit. I won't play it again, but there's a period of time
3 where there's really not any shots being fired, but police are
4 still trying to assess what you're doing and what's going on.
5 Do you recall that?

6 A. From looking on there, whatever, but as far as that
7 day I remember falling back and I remember at one point I
8 don't how much it was, I was asking for help. I said, you
9 know, please help me. Please help me.

10 Q. Do you ever recall Officer Florida telling you that
11 he's not gonna let you bleed out or anything of that nature?

12 A. No. I asked for help and he told me that he could
13 not do that. That's what I remember as far as I cannot do
14 that and also he told me even while I was laying back on the
15 ground, I couldn't hardly move at all, he told me that he was
16 gonna get his fully automatic AR-15 and come kill me.

17 Q. Okay. Now, at some point the police run in and pull
18 you out behind your car?

19 A. I was in and out so I know eventually they did.
20 Yeah.

21 Q. Are you in a great mental state at that point?

22 A. No. I really don't even remember a lot of the stuff
23 that went on.

24 Q. So if you said anything about, you know, I couldn't
25 even kill myself right or the only hole that hurts is the one

1 I did, do you recall any of that?

2 A. I don't recall any of that, but they said I said it
3 so I can't dispute it, but I don't remember it.

4 Q. Did you murder B'Boy?

5 A. No. I did not. I defended my own life.

6 Q. All these things that you had in your car, was that
7 so that you could go back to the pool hall, murder B'Boy, be
8 on the lamb for an extended amount of time? Is that why you
9 had all your stuff in your car?

10 A. No. Not at all.

11 Q. Why did you have your mail, your medicine, your
12 toiletries, your safe, your guns and the Clemson shirts that
13 your wife bought you, why is all that in your car?

14 A. Those are the most valuable things that I could get
15 from Angie in case she didn't allow me to come back the second
16 time to get the rest of my underwear and socks and stuff like
17 that.

18 Q. Okay. Did you have murder on your mind when
19 you went back to the pool hall?

20 A. No. I did not. The only reason I went back to that
21 pool room is because Angie Smith asked me to come back to that
22 pool room.

23 Q. But you were concerned about B'Boy?

24 A. I was.

25 Q. Did you shoot first and lie in ambush at James

1 Florida?

2 A. No. I did not.

3 Q. Did he shoot you first?

4 A. He did shoot me first.

5 Q. Did he try to kill you?

6 A. Yes. He tried to kill me.

7 Q. Was he successful in hitting you multiple times?

8 A. Yes. He did, or was. Excuse me.

9 Q. Did you only fire back to defend yourself?

10 A. I did. Video don't lie.

11 Q. You know that gun. How many bullets did you have in
12 the magazine of that metal magazine that you were able to put
13 in your rifle?

14 A. 30.

15 Q. You kept it fully loaded?

16 A. That particular one was my one that I always, I
17 wouldn't say always because I didn't have it in at that time,
18 but my normal procedure was to put my metal one back in there
19 once I came back from the range. Eventually it would have
20 been in there, but it wasn't in there that day.

21 Q. Okay. And we've heard the crime scene people say
22 that they found 12 fired shell casings from your rifle out
23 there?

24 A. I believe that's what they counted. Yes, sir.

25 Q. Okay. So we did some math with CSI Agent Tankersley

1 and with a little bit of struggle we determined that you had
2 18 remaining rounds in your magazine?

3 A. Correct.

4 Q. So if the magazine was fully loaded with 30, you
5 shot 12, 18 left, right?

6 A. Correct.

7 Q. So you had plenty more rounds if you wanted to kill
8 an officer out there, you could have done that?

9 A. I had more ammo also as the jury knows that, I don't
10 know how many rounds it was, but I could have shot for a long
11 time if that's what my goal was.

12 Q. Okay. Every bullet that you fired, do you feel that
13 it was in defense of your life?

14 A. It was.

15 Q. Do you think Officer Florida was trying to kill
16 you?

17 A. I do think Officer Florida was trying to kill me
18 that particular day.

19 MR. L. SHEALEY: Barry, please answer any questions
20 the State has for you.

21 THE COURT: Counsel, approach please.

22 (Side bar off the record.)

23 THE COURT: Ladies and gentlemen, we'll break for
24 lunch at this time. I'm gonna ask you to just, it's
25 12:20 now, I'd like you back in the jury room ready to go

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1 MR. McNAIR: One second, Your Honor.

2 THE COURT: Okay. Ready to go?

3 MR. McNAIR: Yes, sir.

4 THE COURT: Ready for the defense?

5 MR. L. SHEALEY: Yes.

6 THE COURT: Bring them in please.

7 (Whereupon, the jury entered the courtroom at 1:30
8 p.m.)

9 THE COURT: Mr. Foreman, ladies and gentlemen of the
10 jury, welcome back. Please be seated. We're going to
11 pick up where we left off. Just finished direct
12 examination. Start now with cross examination.

13 MR. McNAIR: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MR. McNAIR:

16 Q. Mr. Jones, you testified that the only reason
17 you went back to the pool room was to break up with Angie,
18 correct?

19 A. That's correct.

20 Q. All right. You also testified that you were scared
21 of Milledge Hall?

22 A. That's correct.

23 Q. He's a big guy? He's known to fight?

24 A. He is.

25 Q. Correct. He threatened you a month prior to beat

1 your ass all over the bar?

2 A. Yes, sir.

3 Q. He could mangle your body according to you?

4 A. Correct.

5 Q. You thought he wanted to fight when he beat on your
6 car as you were leaving the first time?

7 A. He hit my car.

8 Q. You previously described that as beating on your
9 car, did you not?

10 A. Hold on. Could you repeat that?

11 Q. You had previously described that as beating on your
12 car, have you not?

13 A. I have.

14 Q. Okay. And you thought he wanted you to get out an
15 fight?

16 A. I thought that was a good possibility. Yes.

17 Q. And the reason you fled after you shot him is
18 because all the people in the pool room were his friends?

19 A. Well, at that time I didn't know if all of them were
20 his friends because I had left and I didn't know who went in,
21 but the majority of the people that go there are B'Boy's
22 friends.

23 Q. You said all of your friends had left?

24 A. Well, and I also said that at the time I didn't
25 know. I had other friends that I would frequent with that

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1 I went to high school with would come in there so I didn't
2 know if any of those were in there or not.

3 Q. The majority of B'Boy's friends were in there and
4 that's why you fled because you were scared, right?

5 A. That's correct.

6 Q. All right. And so it makes perfect sense that
7 that's why you would go to Milledge Hall's establishment to
8 break up with his cousin in front of him and all his friends
9 in front of a big glass window where everybody could see you,
10 right?

11 A. She was gonna get in my car and do it. I wasn't
12 gonna do it out in the parking lot.

13 Q. Well, the same Angie that you said you were scared
14 to break up with alone?

15 A. Correct. At her house she had been violent with
16 me.

17 Q. You said she loses control when nobody else is
18 around. Do you remember saying that?

19 A. Correct.

20 Q. You said she gets pretty violent when she doesn't
21 get her way. Do you remember saying that?

22 A. I've said that before. Yes, sir.

23 Q. And then you said you wanted her to come outside and
24 sit in your car to go somewhere else. Do you remember saying
25 that?

1 A. That was one of the possibilities if we had to ride
2 around --

3 Q. So somebody who --

4 A. Could I finish please?

5 Q. Sure.

6 A. Okay. If it came to the point where I needed to
7 drive around, I would do that, but not in all cases. If
8 everything went like I felt like it should go, I would stay
9 there in the parking lot.

10 Q. So let me just get this right. A woman who you say
11 gets violent when she doesn't get her way, who loses control
12 when nobody else is around --

13 A. At her house. Yes.

14 Q. -- you want her to come sit in your car where you
15 can drive somewhere else?

16 A. That's one of the possibilities. I was gonna try to
17 do it --

18 Q. And sitting on a bag full of guns?

19 A. Well, those could be moved. There was no guns on my
20 front seat at that point in time. Those were bags.

21 Q. There's guns in that bag.

22 A. The bag could be easily moved.

23 Q. And the safe underneath it?

24 A. Yeah.

25 Q. And all the stuff on the floorboard?

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1 A. Yeah. It could be moved.

2 Q. Because you're in such a hurry to get back to the
3 pool room to break up with Angie?

4 A. I wasn't in a hurry to get back.

5 Q. You weren't?

6 A. No. I wasn't.

7 Q. Why did you pull all that stuff in your trunk
8 then?

9 A. I could have, but at the time I was packing up to
10 get back there so she wouldn't meet me at the house. That was
11 the whole point of me packing up fast. If she left the pool
12 room and came back to my house, at her house, that would be
13 the whole point of me leaving to go back up there. I did not
14 want to have her being at her house and me having to explain
15 to myself, that I'm breaking up with her because I knew that
16 wasn't going to go very well.

17 Q. So you threw all your guns on your front seat to get
18 back to the pool room to get her in your car?

19 A. Sir, all the guns weren't on the front seat. There
20 were guns on the back seat, behind the seat.

21 THE COURT: And I only raise my hand because I just
22 want the lawyers and the witness to work to allow the
23 attorney to ask his question and then allow the witness
24 to complete his response.

25 MR. HUBBARD: He's not allowing me to finish my

1 question, Your Honor.

2 THE COURT: Okay. I've asked you both so thank
3 you.

4 BY MR. McNAIR:

5 Q. The truth is you couldn't wait to get back to the
6 pool room because you were angry at Milledge, right?

7 A. That's not true.

8 Q. Okay. Well, you were angry when you sent that text
9 10 minutes prior, weren't you, that you were gonna kill that
10 B'Boy?

11 A. That was not meant to be.

12 Q. You admit you were angry --

13 MR. L. SHEALEY: Objection.

14 BY MR. McNAIR:

15 Q. -- when you sent that text?

16 MR. L. SHEALEY: Objection. I would ask the
17 Solicitor to allow my client to please answer his
18 question before he moves on.

19 THE COURT: Very well. Let's work together to
20 finish the question and allow the proper response. Thank
21 you.

22 BY THE WITNESS:

23 A. You interrupted me. Could you repeat the question
24 now?

25 BY MR. McNAIR:

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1 Q. You admit that you were angry when you sent that
2 text?

3 A. I was very concerned about B'Boy. I was.

4 Q. Do you remember testifying previously that you were
5 upset when you sent that text?

6 A. I was upset. I was concerned.

7 Q. Are you denying you said that?

8 A. I'm not denying I said anything.

9 Q. Okay.

10 A. You can pull it up, but I don't remember saying it
11 like that. I was afraid of B'Boy.

12 Q. And you were upset when he sent that text,
13 correct?

14 A. Yes.

15 Q. Okay.

16 A. Okay. I was upset. But --

17 Q. And you were put out with Angie?

18 A. Let me finish.

19 Q. You were put out Angie that day?

20 A. I'm still gonna -- Finish your question.

21 THE COURT: Finish your response, sir.

22 BY THE WITNESS:

23 A. Okay. I was upset because he was interjecting
24 hissself into mine and Angie's business that was going on and I
25 didn't feel like that was the proper time for him to be coming

1 out to my car, hitting on my car when I'm trying to leave and
2 go take care of business. I didn't want any problems with
3 him. All I wanted to do was to leave that establishment, go
4 to Angie's, pack my valuables that I could get out of that
5 house and take care of her only on the condition that she text
6 me back, See you soon. No fighting. I know she saw --

7 MR. McNAIR: Your Honor --

8 BY THE WITNESS:

9 A. I'm still talking.

10 MR. McNAIR: -- I would ask he be instructed to
11 answer my question and not go into some narrative.

12 MR. L. SHEALEY: Your Honor, he's answering the
13 question.

14 THE COURT: Mr. Shealey, Mr. McNair, the witness may
15 answer your question in a long manner but, Mr. McNair,
16 you're free to ask a question again if you don't get a
17 response to the question.

18 BY MR. McNAIR:

19 Q. Yes or no, you were put out with Angie that day?

20 A. I was what?

21 Q. Put out with Angie that day?

22 A. Put out?

23 Q. Over Angie. You were irritated with Angie?

24 A. I was gonna break up with Angie. That's true,

25 sir.

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1 Q. Okay. You thought Milledge Hall was spreading lies
2 about you, correct?

3 A. Previous --

4 Q. Okay.

5 A. -- he had.

6 Q. And then that day Angie walked in and sat right by
7 Milledge right in front of you, did she not?

8 A. In the back of the bar she did.

9 Q. And you didn't want Milledge interjecting himself in
10 between you and Angie's business, correct?

11 A. No. I was gonna break up with her.

12 Q. And then he told you to leave the only place you had
13 to go in Johnston, the pool room, didn't he?

14 A. He did tell me to leave but that was at the very end
15 of his conversation after eight minutes.

16 Q. And that made you angry, didn't it?

17 A. No. It didn't make me angry. I had to keep my eyes
18 on him because he had showed me a gun and I was not gonna take
19 my eyes off of him, grab the steering wheel and drive back
20 like that while he had a gun and he had threatened my life
21 with that gun.

22 Q. He threatened to shoot you if you left, right?

23 A. He did it one time. He threatened to get me out of
24 the car and I told him to, nobody needed to get hurt, to let
25 me leave and everything would be over, but he did not want to

1 do that because he wanted to have his way with me.

2 Q. He threatened to shoot you if you left, right? You
3 said that before.

4 A. That is correct.

5 Q. Okay. And so that's why he walks away from your car
6 because he doesn't want you to leave?

7 A. At the end he realized that I was not gonna get out
8 of the car. He kept telling me things to make me angry enough
9 to try to get out and fight with him and I told him I was not
10 getting out of the car to fight him.

11 Q. Okay. So when he's going like this (indicating),
12 it's, Barry, don't leave or I'll shoot you?

13 A. No. He did that -- excuse me -- he did that at the
14 very end after he had showed me a gun. I was not gonna take
15 my eye off of him at that point in time. Once he had already
16 showed me that gun I was not leaving until he went inside.

17 Q. So he told you to leave?

18 A. At the very end, yes, he did. You can see him in
19 the video doing that.

20 Q. And you still didn't leave?

21 A. No. I did not.

22 Q. Do you agree with me that somebody has the right to
23 eject somebody as a trespasser off their own property?

24 A. Yes.

25 Q. And if somebody refuses, that you have the right to

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1 use force to get them off your property?

2 A. I don't know all those laws. All I know is what
3 happened that day.

4 Q. You only know the laws concerning self defense?

5 MR. L. SHEALEY: Objection, Your Honor. Your Honor,
6 we've got a matter of law.

7 THE COURT: All right. Ladies and gentlemen, I'll
8 get you back in the jury room and I'll get you back out
9 here as soon as possible.

10 (Whereupon, the jury entered the jury room at 1:40
11 p.m.)

12 THE COURT: Mr. Shealey.

13 MR. L. SHEALEY: Your Honor, the State has
14 insinuated and attacked Mr. Jones' right to counsel by
15 asserting that he is schooled up in only the laws of self
16 defense in response to a question to the point that it
17 makes it seem like he's trained up or schooled up or, you
18 know, he's saying he doesn't know the law and it's being
19 thrust upon him that he somehow only knows the laws of
20 self defense very conveniently so I do think that's an
21 attack on his right to counsel. I think it's
22 inappropriate. I would be -- I think I have to ask you
23 for a curative instruction on that, but to disregard that
24 testimony or somehow unring that bell, but then, of
25 course, also the way the law is in South Carolina,

1 question.

2 MR. McNAIR: I'm not gonna ask it.

3 THE COURT: The motion for a mistrial is denied. I
4 don't see a need to do a curative instruction at this
5 time. If the trial goes on, if you need to re-address
6 this, if you need to do anything from a jury trial
7 standpoint, but I don't think there's been anything said
8 during cross examination that is highly prejudicial or
9 deprives him of a fair and impartial jury trial at this
10 time. Anything else before we bring the jury in?

11 MR. L. SHEALEY: No, Your Honor.

12 THE COURT: All right. Bring them out please.
13 While the jury is not here, regardless of who the witness
14 is, we have to allow the question to be asked before
15 answering and allow the response to be completed after
16 it.

17 (Whereupon, the jury entered the courtroom at 1:50
18 p.m.)

19 THE COURT: Ladies and gentlemen of the jury, please
20 be seated. We'll pick up where we left off.

21 MR. McNAIR: Thank you, Your Honor.

22 BY MR. McNAIR:

23 Q. Mr. Jones, this whole threat that you say Mr. Hall
24 made to you, that happened about a month prior to this
25 incident, correct?

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1 A. Yes. Inside the pool room.

2 Q. Yeah. And when you thought Mr. Hall was spreading
3 lies about you, you weren't scared to go up to him and
4 confront him about that, were you?

5 A. No. At that point in time he never showed any
6 aggression that I saw inside the pool room.

7 Q. So you didn't know about his reputation of fighting
8 his whole life like you testified to?

9 A. Not at that time I did not.

10 Q. And you continued to go to the pool room after that
11 even after he made that alleged threat to you, didn't you?

12 A. I did.

13 Q. And then nothing else happened after that between
14 you and Mr. Hall, correct?

15 A. No. It didn't. I stayed my distance.

16 Q. And Tony Friar knows you as well as anybody, doesn't
17 he?

18 A. I don't know about that, but he knows me from a
19 younger age all the way up to when we were working together.

20 Q. That's right. Okay. And you weren't scared to
21 fight Milledge Hall, were you?

22 A. Sir, he was tremendously bigger than I was.

23 Q. As in fatter?

24 A. He was, as already been testified in here, he was
25 six one, 300 pounds.

1 Q. He's old, he's overweight, he's got heart condition.

2 A. That's your point of view of him, not me.

3 Q. You were in pretty good shape though, weren't you?

4 A. I was in pretty good shape, but I hurt my back and I
5 hadn't worked out in about a year and a half. Previous to
6 that I kept myself in shape after my wife passed away.

7 Q. You're not scared to fight, are you?

8 A. That's a big question. I'll defend myself, but I
9 don't go around starting fights. I try not to.

10 Q. When you went outside, or when Mr. Hall came outside
11 to talk to you, y'all talked for almost 10 minutes, right?

12 A. I don't know the exact time or whatever.

13 Q. It was a substantial period of time?

14 A. It was.

15 Q. And for most of that time he was right beside your
16 window.

17 A. He was.

18 Q. And during that time you never felt threatened
19 enough to shoot, did you?

20 A. For me to shoot --

21 Q. Yeah.

22 A. -- him? No, sir. Not - I was not gonna shoot him
23 from inside the car like that.

24 Q. He never reached in your car or touched you,
25 correct?

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1 A. No. He only pulled on my door handle and put his
2 hands on the top and told me what he could do to me and then
3 he ended up showing me a gun and brandishing a gun.

4 Q. You made that clear. You've never seen him with a
5 gun before, right?

6 A. I had never seen him with a gun before that.

7 Q. And you weren't scared enough to call 911 as you sat
8 there, were you?

9 A. I was not gonna take my eyes off him to do that.

10 Q. You can't press three digits?

11 A. I didn't even have my phone. I didn't know where my
12 phone was at that point in time. I had it when I drove up,
13 but I wasn't thinking about calling 911 when I'm there. I
14 didn't think B'Boy was gonna end up pulling a gun on me.

15 Q. Well, when they found you at Log Creek, your phone
16 was right there in your center consol.

17 A. I don't know where it was --

18 Q. You didn't think to --

19 A. -- at that point in time.

20 Q. You didn't think to call --

21 A. I wasn't gonna take my eyes off to call 911. It
22 just wasn't an option to me there. I didn't think that was a
23 smart thing to do.

24 Q. You took your eyes off him to get your gun out your
25 bag, didn't you?

1 A. No. I didn't get it. I reached behind the seat and
2 grabbed the first gun on top of the bag. I never testified
3 that I looked at the gun. I grabbed the gun that I wouldn't
4 have normally have chosen, my wife's gun that I was not real
5 familiar with.

6 Q. Well, how did you know it was your wife's gun if you
7 didn't see it?

8 A. Because after the fact now I know it's the gun. I
9 didn't know it at the time. I didn't pay any attention to
10 what it was.

11 Q. It was just --

12 A. I grabbed and put it on my --

13 Q. -- reaching back feeling for a gun?

14 A. Yeah. On the seat.

15 Q. And the two people that walked passed your car, you
16 never shouted out to them for help, did you?

17 A. No. I didn't really notice anybody going by until I
18 saw it on the video.

19 Q. Well, they walked right in front of your car.

20 A. You know who I'm watching? I'm watching B'Boy. I'm
21 not watching people walking by my car. I got all my attention
22 on B'Boy.

23 Q. Right. And those people came from right behind
24 B'Boy.

25 A. (Indicating.)

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1 Q. And you really weren't scared he was gonna pull you
2 out of your window, were you?

3 A. Yes. I was.

4 Q. Then why did you roll down your window even more
5 while he was standing right beside you?

6 A. He wasn't standing beside me. When I did that, it
7 was after I reached, got my gun and I had seen his gun and I
8 wanted clearance with my window down at that point in time so
9 I could use my gun if I needed to. If he come to get me out
10 of the car while I was sitting in my car, I wanted the window
11 down so I could shoot him without shooting through the
12 window.

13 Q. So after you saw his gun is when you got your gun?

14 A. That's correct.

15 Q. All right. And that's when you rolled your window
16 all the way down?

17 A. That's correct.

18 Q. So two and a half minutes before you actually shot
19 him you had your gun and you had your window rolled all the
20 way down?

21 A. I don't know all the times like that. I don't. I
22 don't. I can't, I can't tell you that.

23 Q. Well, the video will speak for itself. When you
24 claimed you saw his gun, your testimony is that's when you got
25 your gun and that's when you rolled your window all the way

1 down?

2 A. When I had the opportunity after I saw his gun, I
3 got my gun. I don't know if it was right at that point in
4 time, but it was after the fact that I saw his gun that I got
5 mine. When I saw the opportunity that I could get my gun
6 without him attacking me or shooting me, I got my gun out.

7 Q. Okay. We'll let the video speak for itself in
8 relation to times, okay?

9 A. Yes, sir.

10 Q. So you had your gun with your window down for two
11 and a half minutes prior to you shooting him?

12 A. Like I said, I don't know the time frame.

13 Q. And during that time when he's right there by your
14 window and you have your gun and your windows down, you never
15 felt threatened enough to shoot him, did you?

16 A. Not to shoot him because at that point in time he
17 did not point a gun at me.

18 Q. You didn't feel -- Well, he didn't point a gun at
19 you when you shot him either, did he? You didn't feel
20 threatened enough to shoot him until he was six feet away, did
21 you?

22 A. When he came in front of my car, I could not see his
23 right hand. I knew he had a gun. He said he was coming to
24 get me out of the car when he was walking toward me, that's
25 when I made my move, when he turned that corner that I

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1 couldn't see his hand at the time, I believed he had a gun in
2 his hand at that point in time when he turned that corner.

3 Q. So he's this --

4 A. If he didn't --

5 MR. L. SHEALEY: Your Honor, they're trying to do
6 the best they can, but I would ask please let Mr. Jones
7 answer his question.

8 BY THE WITNESS:

9 A. Without approaching me please.

10 THE COURT: Well, okay. Counsel, approach me
11 please.

12 (Side bar off the record.)

13 THE COURT: Okay. Mr. Shealey, Mr. McNair,
14 Mr. Jones, everyone is trying the best they can.
15 Sometimes you have to wait a little longer and sometimes
16 the question starts to get asked when you start to talk.
17 People are doing the best they can. Let's move on.

18 BY MR. McNAIR:

19 Q. Are you done?

20 A. Could you repeat the question?

21 Q. You didn't feel threatened enough to shoot him when
22 you saw the gun and he was this close to you, right? But --

23 A. I didn't have the gun on me at that point in time.

24 Q. -- you did feel threatened enough to shoot when he's
25 this far away and you don't know whether he has a gun?

1 A. That's correct. Because he's coming at me, I can't
2 see his right hand, what he's doing, he tells me he's gonna
3 get me out of that car, and I'm not letting him get me out of
4 that car no matter if he's got a gun or not. When he turns
5 that corner, my window is down. If he had come any quicker
6 toward me, I would have shot him from inside the car.

7 Q. Okay. So when he's walking back to your vehicle,
8 that's when he's saying he's gonna get you out of the car?

9 A. Yes. He does.

10 Q. All right. I'm gonna get you out of the car, Barry.
11 That's what he's doing?

12 A. Right after that you can see him walk toward my car
13 after he does that he's dead set on getting me out of that
14 car. The video will not lie.

15 Q. Well, then, if he's saying he's gonna get you out of
16 the car, why are you scared he's got a gun and he will shoot
17 you?

18 A. Could you repeat that?

19 Q. If you're saying he's saying, he's coming back
20 saying I'm gonna get you out of the car, then why are you
21 scared he's got a gun and going to shoot you? He's telling
22 you he's gonna get you out of the car.

23 A. He's gonna get me out of the car. Was he gonna
24 shoot me? I don't know.

25 Q. So why did you shoot him?

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1 A. Because I didn't know if he had a gun or not.

2 Q. So shoot first, ask questions later, huh?

3 A. I cannot weight for him to come all the way around
4 the corner with his gun. If I see the gun, I'm gonna see what
5 comes out of the gun.

6 Q. The same thing you did with Officer Florida, shoot
7 first, ask questions later.

8 A. That's not true.

9 Q. We'll get to that in a minute. You agree with me
10 watching this video that whatever Milledge Hall had in his
11 hand that he's waving around, it goes right back into that
12 clip. It goes right back into the spot where his phone clip
13 is.

14 A. His phone's down real low, sir.

15 Q. And tell me this: When he's got that in his hand
16 and he's pointing to the cameras, what's he saying, Barry, I'm
17 gonna shoot you on camera?

18 A. I don't remember what he said. I was scared to
19 death. I don't remember everything that he said to me. He
20 said a lot of things.

21 Q. He pointed the cameras out to you, didn't he?

22 A. No. He did not point out cameras.

23 Q. What's he pointing at, Barry, clouds?

24 A. I don't know what he's pointing at, but he's not
25 telling me, oh, there's a camera up there.

1 Q. You would agree with me that where we see him
2 pointing on the video there are actually cameras on the
3 building?

4 A. When I look now, I can see it there.

5 Q. Okay. So more likely than not he's pointing at
6 cameras on the building, right?

7 A. No, sir.

8 Q. Oh, okay. What's he pointing at?

9 A. I don't know, sir.

10 Q. Then how do you know? How do you know that he's not
11 pointing at the camera if you don't know what he's pointing
12 at?

13 A. But what I'm saying is, he didn't tell me he was
14 pointing at the cameras.

15 Q. So you only know things that people tell you?

16 A. Pardon.

17 Q. You only know things that people tell you?

18 A. In a situation like that, yes.

19 Q. Is that how you knew Milledge Hall had a gun or did
20 you see it?

21 A. I saw his gun.

22 Q. Well, do you recall testifying previously that you
23 believed it was a gun because he told you it was a gun?

24 A. I don't remember that. He told me he --

25 Q. He told you what?

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1 A. He told me he was gonna get me out of the car with
2 the gun.

3 Q. How does that work?

4 A. You would have to ask him that.

5 Q. Now, after you shot Milledge, you knew the police
6 were coming, right?

7 A. Yes. They normally come to something like that.
8 Yes, sir.

9 Q. And you didn't stick around to tell them this story
10 that you're telling today?

11 A. No, sir.

12 Q. Because you're scared of all those people at the
13 pool room?

14 A. I'm scared that one may come out and have a gun or
15 get B'Boy's gun off of him.

16 Q. Can you tell us which one of those people on video
17 that you're scared of and that has ever threatened you in the
18 past?

19 A. I'm not, I'm not looking at all that, sir.

20 Q. Okay. You didn't reach out to the police, you
21 didn't drive two minutes down the road to the Johnston Police
22 Department, correct?

23 A. That's correct.

24 Q. Where your buddy Officer Mathis worked?

25 A. That's correct. I texted him previously and he

1 didn't return my text. I did look for that.

2 Q. You didn't try and call him after this, did you?

3 A. I did not.

4 Q. Instead you drove to the most remote location you
5 could find, didn't you?

6 A. At that point in time at the very, very end, yes,
7 with the circumstances that Mr. Florida got behind me, that's
8 what it ended up being.

9 Q. Well, if you're scared of law enforcement, why not
10 drive to Greenwood or Aiken? 25, it goes back to where you're
11 from in Georgia, doesn't it, where you lived in Georgia?

12 A. No. It does not.

13 Q. You could have driven all the way to Georgia.

14 A. No. It does not.

15 Q. You could have stopped at a Walmart. You could have
16 stopped at a BiLo where you got the beer.

17 A. Right.

18 Q. You could have called 911 from your car, right?

19 A. I didn't feel comfortable calling 911 because of the
20 Angie's ex-husband worked for Edgefield County Sheriff's
21 Office.

22 Q. Well, let's talk about that. Officer Mathis did not
23 work for Edgefield and you didn't call him.

24 A. That's correct.

25 Q. Okay. You knew there was an Edgefield County patrol

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1 vehicle behind you, right?

2 A. That's correct.

3 Q. And you had friends in high places at the Edgefield
4 County Sheriff's Department, didn't you?

5 A. Who's that?

6 Q. You told Officer Mathis you were good friends with
7 Chris Wash who's the Sheriff's right hand man, didn't you?

8 A. Yes. I'm friends with Chris Wash.

9 Q. He was second in command at the Edgefield County
10 Sheriff's Department.

11 A. Right.

12 Q. Then why you worried about Jimmy Smith? You know
13 the boss.

14 A. I didn't look at it that way. I didn't know really
15 the position of what Chris was. I just knew he worked for
16 them.

17 Q. So you're not scared of everybody at the Edgefield
18 County Sheriff's Department. You had a friend there and you
19 could have called him if you wanted to, couldn't you?

20 A. Well, I didn't know if I had his number or not. I
21 didn't really think about calling him. When all this goes on,
22 you're not thinking in the same manner as someone in here with
23 not all of the action that went on.

24 Q. Well, before this happened, you actually trusted and
25 liked law enforcement, didn't you?

1 A. In talking about with --

2 MR. L. SHEALEY: Objection.

3 BY MR. McNAIR:

4 Q. You were --

5 MR. L. SHEALEY: Objection. May we approach, Your
6 Honor.

7 (Side bar off the record.)

8 BY MR. McNAIR:

9 Q. Isn't it true that you prayed for law enforcement?

10 A. I did what with them?

11 Q. You told Officer Mathis that you prayed for all the
12 officers in the county. Do you recall that?

13 A. I do.

14 Q. So if you're praying for them, you trust them and
15 you like them, don't you?

16 A. I pray for all officers on the line of duty and all
17 of my friends.

18 Q. Well, then why did you shoot at them?

19 A. Because I was shot at first and didn't have a
20 choice.

21 Q. We'll get to that in a minute. Now, you admit that
22 at the intersection of Meeting Street and Crest Road that you
23 knew that was a marked patrol vehicle, correct?

24 A. I did.

25 Q. And you did not see anything in Officer Florida's

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1 hand, did you, at that time?

2 A. At that point in time, no. I couldn't see who was
3 in the car.

4 Q. And today you're saying, I guess, as he's following
5 you down Highway 25 that you saw a gun in his hand?

6 A. I did. When he got up close behind me, I did.

7 Q. Well, do you recall testifying previously that you
8 don't know what was in his hand?

9 A. It was a black object in the, in the, in the,
10 through his window.

11 Q. But you said you didn't know what it was under oath
12 before. Do you remember that?

13 A. I don't.

14 Q. Your testimony back in September, I can see he had
15 something in his hand. I didn't know what to think. I don't
16 know what it was. But today all of a sudden you know it's a
17 gun. That's pretty significant, isn't it, Mr. Jones?

18 A. I figured it was a gun.

19 Q. Why didn't you say that back in September? That was
20 important back then too, wasn't it?

21 A. It was. I'm not perfect. I don't say everything
22 exactly. When you're up here, it's pretty nerve-racking up
23 here.

24 Q. So you forget pretty significant facts?

25 A. It could be.

1 Q. Okay. And you deny that you pointed an AR-15 at
2 Officer Florida at Pleasant Lane and Log Creek?

3 A. I do.

4 Q. Okay. You don't know Officer Florida, do you?

5 A. No.

6 Q. You didn't know him before this day?

7 A. No. I did not.

8 Q. So he just made that up on the radio that day?

9 A. No. When I went to put it into my backseat or
10 whatever, I'm sure he saw it. I testified to that.

11 Q. Okay. But you deny that you pointed it at him?

12 A. That's correct.

13 Q. Okay. You heard the radio though. He said that you
14 pointed it at him, right?

15 A. After the fact. Yeah.

16 Q. Okay.

17 A. I heard that, but I did not point it at him at that
18 point in time.

19 Q. And you would agree with me that if somebody points
20 an AR-15 at a law enforcement officer, they're allowed to
21 shoot back, correct?

22 A. I don't know the law on that.

23 Q. Okay. And you would agree with me that prior to
24 Officer Florida and Officer Kathmann getting there that day,
25 you had backed into a cut out off of Log Creek Road and you

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1 were standing in the apex of your door?

2 A. I was.

3 Q. And that was the first time that you saw Officer
4 Kathmann, wasn't it?

5 A. I never saw Kathmann. I don't remember seeing him
6 at that point in time.

7 Q. You didn't know there were two vehicles there that
8 day?

9 A. When I saw Sergeant Florida come into view and I saw
10 the gun, I tried to duck down as fast as I could.

11 Q. Are you saying you didn't know there was another
12 patrol vehicle there that day?

13 A. I heard some other fire.

14 Q. I bet you did.

15 A. Yeah. But I didn't know where it was coming from.

16 Q. Well, it sounded pretty close, didn't it?

17 A. Not really. Wasn't as close as Florida's sounded.

18 Q. Well, that time you knew you were trapped, didn't
19 you?

20 A. Yeah. I admitted I felt trapped. That's the reason
21 the things happened that did happen because I wasn't being
22 given a chance to give myself up. I felt trapped. I didn't
23 have anywhere to go. I testified to that.

24 Q. So now you're admitting you knew there were two
25 officers there and you knew you were trapped, correct?

1 A. I knew there was two officers there. I was trapped
2 and they were not giving me a chance to give up so I defended
3 myself to keep from being killed.

4 Q. And you admit that prior to Log Creek, you didn't
5 want to die?

6 A. Prior to Log Creek I didn't want to die. That's
7 correct.

8 Q. Prior to being trapped and knowing you couldn't
9 escape, you didn't want to die?

10 A. No. I did not.

11 Q. Now, you were asked on direct if you've ever been
12 belligerent and drunk and had police escort you out due to bad
13 behavior and you said, no, sir?

14 A. Correct.

15 Q. So you're saying you have never been drunk at a bar
16 and had --

17 A. He was referring to the pool room. I'm sorry to
18 interrupt you.

19 Q. I think it's referred to as a bar.

20 A. I've been going in there a long time so I have no
21 idea about that. I don't remember being like that and being
22 escorted out. I'm not sure.

23 Q. Now, we watched a video from your cell phone that
24 you recorded of Angie.

25 A. Correct.

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1 Q. And do you remember previously you testified that
2 you didn't recognize that video and you denied taking that
3 video? Do you remember that?

4 A. I don't know that I denied that video. I didn't
5 remember that video after this long a time. It wasn't, at
6 that time it wasn't a significant thing in my life because of
7 the fact that it was about Angie and what I was gonna show
8 Angie.

9 Q. Well, why do you remember it today then if you
10 didn't remember it a couple months ago?

11 A. Because I saw it and heard what it said once it was
12 cleared up.

13 Q. Well, we heard it and saw it back in September.

14 A. We couldn't understand what was being said.

15 Q. And isn't it true that she was really telling the
16 bartenders about you that night?

17 A. That is definitely not the truth.

18 Q. She was telling them what you were making her do?

19 A. That's definitely not true.

20 Q. That you were making her dress up like your
21 ex-wife?

22 A. That is not true.

23 Q. She was talking about breaking up with you?

24 A. That is not true.

25 Q. And you were trying to intimidate her on that video,

1 weren't you?

2 A. No. I was not.

3 Q. Now, Mr. Shealey asked you about murder on your
4 mind, but you were in Angie's house at 6:33 loading up all
5 your guns, weren't you?

6 A. Amongst a lot of other things too.

7 Q. Well, not a lot of other things.

8 A. All my valuables I was loading up.

9 Q. Mostly guns and a toothbrush?

10 A. I wouldn't say that.

11 Q. And you were at her house at least by 6:33 because
12 you said you received a text from her at that time and then at
13 6:49 you sent that text about killing B'Boy.

14 A. I don't remember the times and all that. All I know
15 is that I did, I'm not denying that I sent text messages.

16 Q. Well, you will admit that shortly after leaving
17 Angie's house with a car full of guns, you're texting
18 somebody, Joe Mims about wanting to kill B'Boy?

19 A. That's what come out. I didn't mean it literally.

20 Q. Of course you didn't. Again, you said you wanted to
21 tell Mathis your story, but you never called him?

22 A. I always text him. I never had called him before.

23 Q. Well, certain situations lend themselves to a phone
24 call rather than a text, don't they?

25 A. Looking back on it I probably should have called

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1 him, but I'm not perfect in no manner so things that I could
2 go back and change today I would have changed that day, but I
3 didn't have a choice in some of the matters that happened that
4 day.

5 Q. Okay. So you were in your car after the pool room
6 for approximately 30 minutes prior to the shoot out at Log
7 Creek?

8 A. Inside the bar you mean when I went there the first
9 time?

10 Q. Mmm-mm. After you shot Milledge Hall prior to the
11 shoot out at Log Creek, you're in your car for about 30
12 minutes.

13 A. Yes. Somewhere around there. Yeah.

14 Q. And during that time your phone is in your center
15 console?

16 A. I don't remember where it was at that time. I
17 remember looking to see if Mr. Mathis had responded to my
18 text.

19 Q. Okay. During the time --

20 A. So the whole time I'm driving I may have been
21 looking at my phone. I'm not sure.

22 Q. During the time you're in your car, this isn't some
23 type of high speed chase?

24 A. No. It's not.

25 Q. You're just driving along?

1 A. Me driving by myself?

2 Q. Yep.

3 A. Yeah. I was.

4 Q. You had plenty of time to call somebody. You had
5 plenty of time to call Officer Mathis, Chris Wash, anybody
6 else you trusted or stop somewhere where there were other
7 people around if you were truly scared, but the only place you
8 stopped was BiLo.

9 A. I needed to calm myself down so I was gonna call
10 Sergeant Mathis where he would believe my story. I didn't
11 know there was a camera there. If I had known there was a
12 camera, a lot of things would have been done different. I
13 didn't -- All his friends there, nobody was gonna believe what
14 happened that day.

15 Q. So after you just killed a man, you're standing in
16 the grocery store in line holding a case of beer?

17 A. I bought a 12 pack to calm down.

18 Q. Your testimony is that the first seven shots that we
19 hear on that video are from Sergeant Florida, correct?

20 A. I don't know the number of shots, but I know that
21 all the shots that were shot were from his pistol, not from my
22 AR-15.

23 Q. Okay. When we listen to the video and you hear four
24 shots back to back, a little pause, and then three more --

25 A. Those would all be his.

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1 Q. -- those are all his even though the first four
2 sound different from the second three, those are all his?

3 A. Correct.

4 Q. Okay. Even though the first four sound very like
5 the AR shots that you do admit to firing, correct?

6 A. I can't get into all that analyzation. That would
7 be up to someone else. All I know is that he fired four plus
8 three shots at me first before I ever returned fire and he was
9 not letting me give up. That's what I'm testifying to.

10 Q. So you're familiar with firearms, right?

11 A. Yes. I'm a gun owner and I go to the range.

12 Q. So a Glock 22 will hold 16 total, 15 plus one,
13 right?

14 A. I have one. Yes, sir.

15 Q. So if Florida shot the first seven shots that we
16 hear on the video, he should have nine left, correct, if he
17 was fully loaded?

18 A. Correct.

19 Q. But he had 10.

20 A. Pardon?

21 Q. He had 10 left.

22 A. Something like that. Yeah.

23 Q. So that doesn't line up with him firing the first
24 seven shots if he had a fully loaded --

25 A. I don't know what happened to the count and all

1 that. From what I understand when I was watching this that
2 there's a discrepancy in the count, but I don't know about
3 that. All I know is I was shot at four times and then three
4 times. What happened after that I don't know. All I know is
5 that his pistol shot at me seven times before I returned fire.
6 He did not give me a chance to give up. How many rounds when
7 he turns it in or whatever, that could be changed. I'm not
8 saying it changed. I'm just telling you what I know.

9 Q. You agree with me that the first four shots sound
10 very much like the shots you admit to shooting with a .223?

11 A. No. .223 is definitely a different sound than a .40
12 caliber. They're not even close. If you can't tell that
13 difference, then you haven't been around guns that often.

14 Q. And you will admit to me that when Florida and
15 Kathmann first got there, you had the AR in your hand?

16 A. I deny I had an AR-15 in my hand when Sergeant
17 Florida entered that opening.

18 Q. Then in State's 35 that we get from Kathmann's
19 dashcam where you're in the apex of your door, what is that
20 black object in your hands?

21 MR. L. SHEALEY: Your Honor, he's gonna have to show
22 the witness the exhibit if he want's him to identify an
23 object.

24 THE COURT: Thank you.

25 BY MR. McNAIR:

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1 Q. Do you see this black object in your hand right
2 there?

3 A. No. I don't.

4 Q. We'll let the jury look at it. So, Mr. Jones, to
5 summarize your testimony here today, you want us to believe
6 that a 63 year old man who had triple bypass surgery was gonna
7 pull you out of your vehicle through the window?

8 A. I didn't know his age and I did not know he had any
9 heart problem. I knew he was telling me he'd been fighting
10 all his life and he would beat my little ass all around the
11 bar so he was not a stranger to intimidating and bullying
12 people. That's what I can tell you.

13 Q. You want us to believe that a man that nobody ever
14 saw carry a pistol had some type of semi automatic pistol,
15 correct?

16 A. He did that day, sir.

17 Q. You want us to believe that somebody at the pool
18 room took that gun before the police got there?

19 A. I never said that. All I know is that I saw it on
20 video. Video don't lie. Somebody was there, got a black
21 object, put it in a bag, looked around and left. What that
22 was, I don't know. That's up to the jury to decide what they
23 see is taken from near him.

24 Q. You want us to believe that Milledge Hall never told
25 you to leave.

1 A. He never told me to leave until the end when he knew
2 he wasn't gonna get me out of the car and beat me, then he
3 told me to leave. I agree to that. He did.

4 Q. He really told you to leave minutes after you got
5 there when Lanyce Hatcher was walking by, didn't he?

6 A. No. He didn't.

7 Q. He told you to leave eight minutes before you shot
8 him?

9 A. No. He did not.

10 Q. So Nicole Bibbs and Lanyce Hatcher, they're all
11 mistaken?

12 A. They're not telling the truth.

13 Q. Not telling the truth.

14 A. That's up to the jury to decide who is telling the
15 truth and who is not.

16 Q. You're exactly right.

17 A. That's right.

18 Q. You're exactly right. You believe law enforcement
19 was out to get you because Jimmy Smith was Angie's ex.

20 A. I've heard - I've heard --

21 Q. How long have they been divorced?

22 MR. L. SHEALEY: Objection, Your Honor. Please let
23 the witness answer the question.

24 THE COURT: Okay. The witness can answer the
25 question.

BARRY WAYNE JONES - CROSS BY MR. McNAIR

1122

1 BY THE WITNESS:

2 A. I don't know how long they had been divorced. All I
3 know is she's brought his name up several times to me and I
4 corrected her on the situation that I did not like that. I
5 did not appreciate that.

6 BY MR. McNAIR:

7 Q. Did you ever meet Jimmy Smith?

8 A. I did not.

9 Q. So Florida is lying about you pointing an AR at him
10 --

11 A. Yes. He is.

12 Q. -- according to you?

13 A. Yes. He is.

14 Q. Florida and Kathmann are lying about you shooting
15 first.

16 A. Yes. They are.

17 Q. Okay. And you just happened to have a car loaded
18 with guns because you were breaking up with Angie?

19 A. That's correct.

20 Q. All right. And you just happened to send Joe Mims a
21 text 20 minutes prior to killing Milledge Hall that you didn't
22 really mean?

23 A. Right.

24 Q. So to summarize your testimony, everybody is lying
25 but you?

1 A. That's correct.

2 THE COURT: Any redirect?

3 MR. B. SHEALEY: Yes, Your Honor, briefly.

4 REDIRECT EXAMINATION

5 BY MR. L. SHEALEY:

6 Q. Barry, May 7th, 2018, was that a complicated
7 traumatic day?

8 A. Very much, sir.

9 Q. Okay. I've used the phrase Monday morning
10 quarterbacking. Do you know what that means?

11 A. I do.

12 Q. So we had a game on Sunday and now we're analyzing
13 game in the cold light of the day, right?

14 A. Right.

15 Q. Trying to figure out why that quarterback threw off
16 his back foot, threw the interception because we wouldn't have
17 done it that way, right?

18 A. Right. Hindsight is 20/20.

19 Q. When you're taking these actions and under the
20 stress of what Milledge Hall is doing, or what Officer Florida
21 is doing, is it very easy for you to have a very refined
22 assessment and calculated decision about what to do next?

23 A. No. It's hard. I mean, you got a million things
24 going on in your head and just try the best you can to do
25 what's reasonable.

BARRY WAYNE JONES - REDIRECT BY MR. L. SHEALEY

1124

1 Q. Now, you agree we're three and a half years later,
2 all these lawyers have this evidence and video analysis,
3 right?

4 A. Yes, sir.

5 Q. We have enhanced things, we've thought about things,
6 correct?

7 A. Correct.

8 Q. That table and this table have been thinking about
9 your life for three and a half years.

10 A. Yes, sir.

11 Q. And you had an hour, right?

12 A. All that happened within an hour. Yes, sir.

13 Q. How long did you have when B'Boy went like this
14 (indicating) and showed you his gun?

15 A. I don't remember. A couple minutes maybe.

16 Q. How many moments did you have when you're drinking
17 your beer standing at your door thinking, well, I'm gonna give
18 up and Florida drives by and shoots a volley of shots at
19 you?

20 A. I basically thought it was over at that point in
21 time when I stepped out and opened a beer. I bought a 12 pack
22 to try to chill out. I knew I wasn't gonna be able to drink
23 all of them, try to get calmed down so I can figure my next
24 step about turning myself in. I didn't feel comfortable
25 turning myself in to the Edgefield County Sheriff's Office.

1 Q. As Florida is shooting at you, as you testified, you
2 said your action was to duck?

3 A. It was.

4 Q. And then more shots come in and you're getting
5 hit?

6 A. That's correct.

7 Q. We've seen pictures of your beer and sunglasses back
8 behind you, right?

9 A. Right.

10 Q. And you're in pain?

11 A. A good bit. Yes, sir.

12 Q. And you get shot again?

13 A. I do trying to give up.

14 Q. So it's really easy for us to sit back here in the
15 cold light of day and analyze and pick apart your actions,
16 isn't it?

17 A. Yes. It doesn't feel fair.

18 Q. Now, Mr. McNair is a talent cross examiner of
19 witnesses. I will give him that, but I want to point out a
20 couple parts where I feel like he's trying to get your words
21 twisted up a little bit, okay?

22 A. Yes, sir.

23 Q. Now, he's trying - we've all heard, we heard Officer
24 Florida's testimony, right?

25 A. Yes, sir.

BARRY WAYNE JONES - REDIRECT BY MR. L. SHEALEY

1126

1 Q. He admitted that he had 16 rounds in his gun that
2 day including in the chamber, correct?

3 A. Right.

4 Q. We know from him and from Agent Tankersley that it
5 was only returned with 10, right?

6 A. Right.

7 Q. That's six remaining. You would agree?

8 A. Yes.

9 Q. Okay. But did you notice how Mr. McNair tried to
10 say seven shots were fired by Officer Florida?

11 A. If that's what he said. Yes, sir.

12 Q. Seven is not six. It's more than six, isn't it?

13 A. Yes. It is.

14 Q. Did you notice what he was trying to do with you
15 there?

16 A. I just tried to answer the best I could.

17 Q. Okay. Did you have a refined count as Officer
18 Florida is shooting at you and your instinct is to duck
19 whether it's one, two, three, four?

20 A. That's why I told him before I wasn't sure how many
21 shots there were.

22 Q. Now, we can see here at some points in this video
23 and clearly tell whether it's one, two, or three shots coming.
24 Are you an expert in gunshot analysis?

25 A. No. I'm not. I can tell the difference between an

1 AR and a pistol, but I'm not no expert.

2 Q. But you know when you're being shot at, right?

3 A. I definitely know I'm being shot at. I don't have
4 to be an expert for that.

5 Q. Now, you also said that we heard that Kathmann say
6 that you shot first at Officer Florida. You heard that
7 question that you just received?

8 A. Yeah. I did hear that.

9 Q. Now, do you recall Officer Kathmann's testimony with
10 him saying I assume?

11 A. I don't remember.

12 Q. Okay. You don't remember. All right. Let's go
13 back to the pool hall. There's a couple points I want to talk
14 about. Now, there's a lot of talk about your window.

15 A. Right.

16 Q. Do you recall that?

17 A. Right.

18 Q. And you testified that at first for long periods of
19 time of that approximate 10 minute conversation your window
20 was cracked six inches.

21 A. Right. I didn't really even want to crack it down
22 six inches but with B'Boy, he's not gonna allow me to not open
23 the door and not let him talk so against my gut feeling I did
24 lower it down enough where he could at least talk to me.

25 Q. Okay. And that goes on for several minutes,

BARRY WAYNE JONES - REDIRECT BY MR. L. SHEALEY

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1 correct?

2 A. Correct.

3 Q. And at some point we've seen the video where he
4 lunges, makes a rifle noise and eventually shows you his gun
5 after pointing a gun around, you grabbed your gun. You've
6 testified to that.

7 A. I did. I reached back and grabbed my gun.

8 Q. Now, when he's pointing his gun or brandishing his
9 gun, do you have any idea why he's pointing in the way he's
10 doing with his gun?

11 A. I don't. I don't remember exactly everything he
12 said that day. I was just scared. I don't know.

13 Q. You don't remember everything he said, but you do
14 remember the gun I imagine?

15 A. Absolutely. I was definitely not -- I pleaded for
16 him to put the gun up, nobody needed to get hurt. I finally
17 got him to put the gun up and I made a decision right then
18 that he was not gonna get his gun out again. I was not gonna
19 allow him to get that gun out. Once he put it up, I had my
20 gun and that was it.

21 Q. Now, there was a lot of talk about exactly when you
22 rolled your window all the way down. You didn't roll your
23 window all the way down right after he did this (indicating),
24 did you?

25 A. I don't remember exactly when it was. I know it's

1 when I started my car to try to leave because I had the power
2 and able to roll it down.

3 Q. That was a thought. You didn't actually leave. You
4 didn't put it in reverse?

5 A. No. I didn't.

6 Q. Okay. But at some point during the conversation you
7 had your gun down. Is it when he's walking away?

8 A. Ask that again.

9 Q. I mean not your gun down. Your window comes down at
10 some point. We can't see it on that exact video because that
11 window would be facing on the opposite side of the camera?

12 A. Right. Even my front windshield is tinted also.

13 Q. Okay. But at some point after you see his gun as
14 the conversation progresses, is that when you --

15 A. Yes.

16 Q. -- lower your window?

17 A. Yes.

18 Q. Is that because you're concerned enough that
19 you want to be able to use your gun if necessary?

20 A. Absolutely.

21 Q. Now, at some point again it looks like he's about to
22 walk away?

23 A. Right.

24 Q. And, you know, you repeatedly said that he asked you
25 to get out to fight?

BARRY WAYNE JONES - REDIRECT BY MR. L. SHEALEY

1130

1 A. He did.

2 Q. That he's pulled on your door to try to get you?

3 A. Yes. He did.

4 Q. And you've said that he was frustrated by the fact
5 that you wouldn't get out. Do you recall that?

6 A. Yes. He called me a punk a double s college boy.

7 Q. Okay. Now, at the time at the very end when he
8 looks like he's gonna go inside but decides to change his mind
9 and re-engage, how does that make you feel?

10 A. He's coming back.

11 Q. Now, at some point we can see him do this
12 (indicating)?

13 A. Right. Right. He's telling me to leave, leave like
14 that.

15 Q. Is he saying leave because my grandson doesn't want
16 you at this bar?

17 A. No. He didn't.

18 Q. Why does he want you to leave?

19 A. Because he can't get his way with me. That's what I
20 feel.

21 Q. Okay. And after that moment what does he do next?

22 A. He tells me as he's walking toward me he's gonna get
23 me out of my car. Right.

24 Q. Do you let him get up to your car?

25 A. I'm not, I'm not, I'm not letting him get that close

1 to me.

2 Q. There is talk about the video of Angie at the bar
3 that you made.

4 A. Yes.

5 Q. And some questions about how you've seen that video
6 before in a prior hearing where you were confronted with it,
7 right?

8 A. Correct.

9 Q. On that particular version of the video that was
10 unenhanced and in the moment could you even hear what was
11 being said?

12 A. I couldn't hear what I said.

13 Q. So based on that what did we do?

14 A. Get it cleared up.

15 Q. We got it cleaned up?

16 A. Cleaned up. Yes, sir.

17 Q. Is the cleaned up version what we've put now in
18 evidence?

19 A. Right.

20 Q. And now you can hear it?

21 A. Right.

22 Q. So now we can hear, you would you agree, that you're
23 documenting of how she's accusing - or wanting to mold you.

24 A. Mold me into James, her ex-husband.

25 Q. Okay. So is that a conversation between y'all about

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1 that?

2 A. Yes.

3 Q. And part of the relationship that was ending?

4 A. Yes. It was.

5 Q. Now, you said, and I wrote it down because it
6 resonated with me, that you wish you could change some things,
7 that you're not perfect. You agree with that?

8 A. I'm definitely not perfect.

9 Q. Again, we are Monday morning quarterbacking that
10 every blow by blow moment that day?

11 A. Yes, sir.

12 Q. And you wish you could take some things back?

13 A. Yes, sir.

14 Q. I mean, you said you went - you were conflicted. On
15 one hand you want to have the break up with Angie, but you are
16 concerned about B'Boy, right?

17 A. I am.

18 Q. I mean, you're not plotting or planning to murder
19 him, are you?

20 A. No. Like I said before, the only reason I went back
21 is because I had got that encouraging text message from Angie,
22 see you soon. No fighting.

23 Q. Right. So you assumed once you got there, you could
24 peaceably end the relationship with her?

25 A. I did.

1 Q. We've see how you reached out to different people
2 for help including a police officer?

3 A. Correct.

4 Q. But who came out, Angie or B'Boy?

5 A. B'Boy.

6 Q. Now, I guess in hindsight if you could just take it
7 all back, would you have just driven to your dad's house?

8 A. I would have.

9 Q. And just saw her when you saw her?

10 A. Yes.

11 Q. Okay. And we wouldn't be in this place at all?

12 A. We wouldn't.

13 Q. But hindsight, yes, it is 20/20, isn't it?

14 A. Yes, sir.

15 Q. But the reality of your day was that you did the
16 best that you could with the information you had?

17 A. I did.

18 Q. But once you got to the pool hall, did you want to
19 die?

20 A. I did not want to die that day.

21 Q. Did you feel like that was a real possibility from
22 B'Boy with what you saw he had?

23 A. Absolutely.

24 Q. Did he have a gun?

25 A. Yes. He did.

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1 Q. Did you want to die on Log Creek Road?

2 A. No. I didn't.

3 Q. What were you holding when Officer Florida drove in
4 the clearing?

5 A. A beer.

6 Q. What did he do?

7 A. Started shooting at me immediately.

8 Q. Why did you return fire ultimately?

9 A. That he wasn't giving me a chance to give up so I
10 had to protect myself.

11 Q. Did you want to die on Log Creek Road?

12 A. No. I didn't. I was trapped.

13 MR. L. SHEALEY: Thank you. Nothing further.

14 THE COURT: Recross.

15 MR. McNAIR: Very briefly.

16 RECROSS EXAMINATION

17 BY MR. McNAIR:

18 Q. Now, Milledge did come tell you that he had spoken
19 to Clayton that day, didn't he?

20 A. No. He did not.

21 Q. You deny that Milledge told you that Clayton had
22 told him about the problem that they were having with you at
23 the bar?

24 A. Did B'Boy say something to me about that?

25 Q. Yes.

1 A. Yes. He did.

2 Q. Okay. So Milledge did talk to you about the
3 problems that Clayton had told him about, right?

4 A. He did.

5 MR. McNAIR: Okay. Thank you.

6 THE COURT: All right. The witness may step down.
7 Counsel, we'll take a short break. Ladies and gentlemen,
8 I'm gonna get you back in the jury room. Refresh
9 yourselves. Let the bailiff know when everyone has had a
10 chance to refresh themselves. Please don't discuss the
11 case.

12 (Whereupon, the jury entered the jury room at 2:30
13 p.m.)

14 THE COURT: All right. Take a short recess here.
15 The next witness is who?

16 MR. L. SHEALEY: Dr. Eagerton.

17 THE COURT: All right. Then this will be a shorter
18 witness. All right. Thank you.

19 (Short break.)

20 THE COURT: When the jury is seated, we're ready for
21 our next witness?

22 MR. L. SHEALEY: Yes, sir.

23 MR. HUBBARD: Yes, sir.

24 (Whereupon, the jury entered the courtroom at 2:45
25 p.m.)

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1 THE COURT: Mr. Foreman, ladies and gentlemen of the
2 jury, please be seated. Ready for our next witness?

3 MR. L. SHEALEY: Yes, Your Honor. The defense would
4 call Dr. David Eagerton.

5 Thereupon,

6 DAVID H. EAGERTON
7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat. Once you're seated,
9 state your full name spelling your last please.

10 THE WITNESS: David H. Eagerton, E-a-g-e-r-t-o-n.

11 DIRECT EXAMINATION

12 BY MR. L. SHEALEY:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. Dr. Eagerton, where do you currently work?

16 A. At Campbell University, Buies Creek, North
17 Carolina.

18 Q. What do you do there?

19 A. I'm the Chair of the department of Pharmaceutical
20 Sciences, Chair the department and teach pharmacology,
21 biochemistry, things like that.

22 Q. Obviously where did you graduate college?

23 A. University of South Carolina.

24 Q. Do you have any additional training in schooling?

25 A. I do. I have a bachelor of science degree in

1 biology from the University of South Carolina. I have a Ph.D.
2 in pharmacology from the University of South Carolina, and
3 after I got my Ph.D., I started to work with the South
4 Carolina Law Enforcement Division as a forensic toxicologist,
5 commonly known as SLED. As a forensic toxicologist I
6 underwent specialized training in forensic toxicology and
7 became board-certified in forensic toxicology.

8 Q. Now, explain to the jury what it means to work in
9 forensic toxicology or be a forensic toxicologist.

10 A. Sure. Well, forensic toxicology is a small part of
11 the field of toxicology which is a small part of the field of
12 pharmacology. Pharmacology is the study of drugs and how they
13 affect living systems and toxicology deals with when things
14 become toxic or harmful. Forensic toxicology is a small part
15 where it deals with matters of law and the type of cases we
16 typically do would be death investigation cases, we're looking
17 at impairment at a particular time for things like DUI cases
18 or even sexual assault cases.

19 Q. So your time at SLED, I think you said you were the
20 head of the toxicology department?

21 A. I was. I was the chief toxicologist for a little
22 over 12 years.

23 Q. And were you ever called to testify, review in
24 courts regarding toxicology matters pertaining to blood
25 alcohol?

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1 A. Absolutely.

2 Q. And after SLED, did you go anywhere else after
3 SLED?

4 A. Yes, sir. I retired from SLED and I became one of
5 the founding faculty members of the Presbyterian College
6 School of Pharmacy and I was there for, I don't know, from
7 2009 until 2017, I was there until I had the opportunity to go
8 to Campbell to be the department chair.

9 Q. Okay. Now, are you a published author in the fields
10 of pharmacology and forensic toxicology?

11 A. Yes, sir.

12 Q. And approximately how many times have you testified
13 in a court of law regarding those subjects?

14 A. Over a hundred times.

15 MR. L. SHEALEY: Your Honor, at this time I would
16 offer Dr. Eagerton as an expert in the areas of
17 pharmacology and forensic toxicology.

18 MR. HUBBARD: No objection.

19 THE COURT: All right. Ladies and gentlemen, this
20 witness will be qualified in the area of pharmacology and
21 forensic toxicology and can give opinion testimony in
22 that area. It doesn't mean you must accept the opinion,
23 but it is evidence for you to use in any way that you see
24 fit. Proceed.

25 MR. L. SHEALEY: Thank you, Your Honor.

1 BY MR. L. SHEALEY:

2 Q. Dr. Eagerton, did I retain you to work on the case
3 of Barry Jones?

4 A. Yes, sir. You did.

5 Q. Okay. And did I provide you records to help do your
6 work in this case?

7 A. Yes, sir.

8 Q. Describe to the jury what kind of records I provided
9 to do your work in this case.

10 A. Well, primarily medical records. There were medical
11 records from two different individuals, one was primarily
12 autopsy information and the other was hospital records, things
13 of that nature.

14 Q. Right. Well, concerning, you don't know the players
15 in this case, but we've got Barry Jones and we've got a
16 decedent here, Mr. Milledge Hall. Did I provide you with a
17 SLED toxicology record regarding Mr. Hall?

18 A. Yes. You did.

19 Q. Did I provide you with medical records from his
20 treatment after his injury?

21 A. Yes. You did.

22 Q. Okay. And did I provide you records that determined
23 a time of death?

24 A. Yes, sir. There was indication of time of death in
25 those records. Yes.

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1 Q. Okay. And is this one of those cases where the time
2 of injury is different than the time of death?

3 A. Yes, sir. It is.

4 Q. Okay. And how does that affect a toxicologist's
5 job?

6 A. Well, you have to take that into account. That's
7 one of the many challenges of being a toxicologist and
8 interpreting the results of your work. Part of being in
9 toxicology, a toxicologist is actually doing the analysis and
10 determining what drugs or poison are present in the blood or
11 body fluid or tissue, whatever you have that you have to
12 analyze, and then you have to try to figure out what that
13 means and if it's a death investigation or a DUI or something
14 like that, oftentimes the sample is taken at some point after
15 the incident in question so you have to try to calculate or
16 figure out what the amount of substances that were present
17 that would have been present at the time in question not so
18 much at the time that the blood was collected because it's
19 very seldom collected at the same time that the incident
20 occurs. It's usually collected after that.

21 Q. In this particular case did I provide you with
22 records showing that a time of injury for Milledge Hall was on
23 May 7th?

24 A. Yes, sir. I believe that's correct.

25 Q. Okay. And the time of sample taking was sometime

1 later, maybe May 9th?

2 A. Well, yes, sir. The sample was taken at autopsy,
3 but you really stop, in between there you stop at the time of
4 death because for these matters you're talking about the drug
5 or the blood or the drug eliminating from the blood or
6 becoming lower and lower in concentration because you're not
7 taking any more drug into your body, that stops pretty much at
8 the time of death and the autopsy was done within about 24
9 hours or so and the body was improperly - it was properly
10 stored so it wasn't like laying out in the environment where
11 you had to worry about the environmental conditions that can
12 affect the level of your drugs in your system. So in a sense
13 in this case at the time of death was everything that we
14 measured there was essentially at the time of death.

15 Q. Okay. And in reviewing the medical records I
16 provided you concerning Mr. Hall, did you have occasion to
17 note whether he self reported alcohol consumption?

18 A. I believe he did. I don't recall specifically.

19 Q. Okay. But those are some of the records you
20 reviewed as part of your analysis what he would have done?

21 A. Yes, sir. And I believe from what I recall there
22 was some indication that he would have consumed approximately
23 six beers.

24 Q. Yes. That's what I was asking. And based on review
25 of the SLED toxicology, his own self reporting medical

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1 records, do you have an opinion to a reasonable degree of
2 scientific certainty concerning his blood alcohol level at the
3 time of his injury?

4 A. I do.

5 Q. And what is that?

6 A. At the time of his injury based on the information
7 that we have, his blood alcohol level would have been
8 somewhere around .12 percent.

9 Q. .12 percent?

10 A. Yes, sir.

11 Q. Now, with your time at SLED and working, I guess, on
12 DUI cases and things like that, do you know what the inference
13 rate for being impaired to drive a vehicle is in South
14 Carolina?

15 A. Yes, sir. I do.

16 Q. And what is that?

17 A. .08 percent.

18 Q. .08?

19 A. .08.

20 Q. And you're saying that Mr. Hall was at .12?

21 A. Yes, sir.

22 Q. So as a pharmacologist, and you know what drugs and
23 alcohol can do to a person's central nervous system I
24 assume?

25 A. Yes, sir. I do.

1 Q. Okay. Does being under the, and consuming that
2 level of alcohol, .12, what types of behavior changes, if any,
3 would you see in an individual?

4 A. Well, what you would see is alcohol itself is what
5 we classify as a central nervous system depressant. Your
6 central nervous system is your brain and your spinal cord, but
7 we're essentially just talking about your brain, and so being
8 a depressant doesn't mean it causes you to be depressed. It
9 means it actually slows down or stops brain function so it
10 depresses brain activity and so even at low levels alcohol has
11 an effect. Usually you have enough other brain power
12 available that you can compensate for it, but as that blood
13 alcohol level starts to increase and you start to lose the
14 ability to compensate for the areas that you're shutting down,
15 and so what you see at the low levels is you start to see the
16 effects on your more highly developed frontal lobe parietal
17 part of your brain, and that's the part of your brain that's
18 responsible for things like judgment and decision making and
19 things like that, and that's what's affected first at fairly
20 low levels. And then as your blood alcohol level increases,
21 it starts to affect more primitive parts of your brain,
22 ultimately affecting your eyesight, hearing and ultimately
23 breathing. You can consume so much that it can actually cause
24 you to stop breathing and you die. That would be alcohol
25 poisoning. But typically at low levels, and when I talk about

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1 low levels, I'm talking about 0.04, .05 is where it really
2 starts to become significant where you start to see some
3 impairment of things like judgment and decision making.

4 Q. So at .12 are you saying that you certainly would
5 see impairment of judgment and decision making?

6 A. Yes, sir. Like I said, it starts out, it will start
7 out low and as you get higher, it just becomes more and more
8 intense like because you're affecting more and more parts of
9 your brain as you get higher levels.

10 Q. Can that level of alcohol increase aggression in
11 somebody?

12 A. Well, what it typically does is it suppresses your
13 self control so if you have some sort of reaction that you
14 might normally be angered or be more aggressive you may have
15 without alcohol, you may have the ability to control your
16 emotions and your feelings. Whenever you've got alcohol on
17 board at those levels it's gonna impair your ability to
18 control those feelings and so oftentimes what you see is some
19 overt aggression is not uncommon in people with blood alcohol
20 of that level.

21 Q. Even if maybe when they're sober, they're not
22 typically acting in that way; is that fair?

23 A. Yes, sir. That's fair. In fact, you typically,
24 well, not typically, but it's not unusual to see somebody who
25 is very happy, calm, nice person, that whenever they start

1 drinking they become mean and nasty. That's not unusual. And
2 then you also can see people who are mean and nasty become a
3 lot more calmer and nicer individuals after they've had a few
4 drinks too. So you can see some exaggeration of behaviors
5 that may be different from what you would normally think of
6 them when they are sober.

7 Q. And it probably depends on the individual?

8 A. And it absolutely depends on the individual.

9 MR. L. SHEALEY: That's all I have for you, Dr.
10 Eagerton.

11 THE COURT: Any cross examination?

12 MR. HUBBARD: Yes, sir.

13 CROSS EXAMINATION

14 BY MR. HUBBARD:

15 Q. So people respond differently?

16 A. Yes, sir. Alcohol affects everybody the same way.
17 It's a central nervous system depressant no matter who you
18 are, but people respond differently depending on their brain
19 connections and their experience with alcohol and really their
20 mood can sometimes affect their response as well.

21 Q. You cannot say to a reasonable degree of scientific
22 certainty how Milledge Hall would respond to alcohol?

23 A. I cannot. That is correct.

24 Q. How much are you being paid to be here today?

25 A. \$400.00 an hour.

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1 Q. So what are we up to now?

2 A. I don't know.

3 Q. How many hours have you put in roughly?

4 A. Right now not counting today I've probably got six
5 or seven hours into this.

6 Q. Six or seven hours at \$400.00 an hour?

7 A. Yes, sir.

8 Q. Okay. The clock's ticking?

9 A. The clock's ticking.

10 MR. HUBBARD: Thank you.

11 MR. L. SHEALEY: Briefly.

12 THE COURT: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MR. L. SHEALEY:

15 Q. Have you sent me a bill yet, Dr. Eagerton?

16 A. No. I haven't.

17 Q. And does the fact that you're paid money for your
18 work in your area of expertise affect your analysis in any way
19 about the records you reviewed?

20 MR. HUBBARD: Your Honor, bolstering. I object.

21 THE COURT: Overruled. Overruled.

22 BY MR. L. SHEALEY:

23 Q. The fact that -- Go ahead.

24 A. Well, I was just gonna say, I mean, I only charge
25 money because I have to take time off from my real job and it

1 is my personal time. I drove here from North Carolina so a
2 little compensation is nice.

3 Q. Right. And I will get your bill, I guess, later?

4 A. I suppose so.

5 MR. L. SHEALEY: Thank you, doctor.

6 THE COURT: Any recross?

7 MR. HUBBARD: No, sir.

8 THE COURT: All right. The witness is excused.

9 (Side bar off the record.)

10 THE COURT: Ladies and gentlemen, during the break,
11 also, it's 3:00, we're not gonna finish today, okay? So
12 we're gonna be coming back Monday. During this break if
13 you need to make any phone calls to update people on
14 that, that would be fine and we'll get you back in here
15 in 15 minutes or so, I suspect. Okay. You okay,
16 Mr. Foreman? Let's go ahead go to the back, you update
17 people as you need. We will be coming back Monday.
18 Thank you.

19 (Whereupon, the jury entered the jury room at 3:00
20 p.m.)

21 THE COURT: All right. I know you're setting up
22 there, Mr. Shealey. You about ready?

23 MR. L. SHEALEY: Very soon if I can get this thing
24 working again.

25 THE COURT: Okay. So the purpose of this break is

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1 apart and I think he's more than qualified to do that for
2 this jury. So that's what we'll do subject to objections
3 of course. Is the jury ready to come back in?

4 MR. L. SHEALEY: I would seek to mark the shootout
5 recreation as a Court exhibit for purposes of the
6 record.

7 THE COURT: Of course.

8 MR. L. SHEALEY: It is number 100.

9 THE COURT: Yes. And all that testimony of the
10 expert as proffered for the record.

11 (Whereupon, Court's Exhibit #5 marked for
12 identification.)

13 (Whereupon, the jury entered the courtroom at 4:35
14 p.m.)

15 THE COURT: Ladies and gentlemen of the jury, please
16 be seated. We'll proceed on with our next witness.
17 Thank you.

18 MR. L. SHEALEY: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. L. SHEALEY: The defense would call Chris
21 Robinson.

22 Thereupon,

23 CHRISTOPHER NELSON ROBINSON

24 after having been first duly sworn, testified as follows,

25 THE CLERK: Please have a seat. Once you're seated,

1 state your full name spelling your last please.

2 THE WITNESS: Christopher Nelson Robinson,
3 R-o-b-i-n-s-o-n.

4 DIRECT EXAMINATION

5 BY MR. L. SHEALEY:

6 Q. Good afternoon, Mr. Robinson.

7 A. Good afternoon.

8 Q. Where are you from?

9 A. Sharpsburg, Georgia.

10 Q. Okay. Graduated high school?

11 A. I did.

12 Q. Where did you go to college?

13 A. I went to Berry College in Rome, Georgia where I
14 attended and received a bachelor of science degree in
15 chemistry.

16 Q. Have you ever worked in the law enforcement field?

17 A. Yes, sir.

18 Q. Where have you worked?

19 A. I worked at the Georgia Bureau of Investigation for
20 10 years as a firearms examiner. I then became the director
21 of the crime lab for the City of Atlanta Police Department,
22 worked there for two and a half years, and now I own my own
23 company Chris Robinson Forensics for the past 11 years.

24 Q. So as working for the crime lab in the Atlanta
25 Police Department, what were your duties there?

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1 A. I was the director of the crime lab, but I was also
2 the primary crime examiner for the entire police department.

3 Q. Okay. You worked on cases for law enforcement?

4 A. Yes, sir.

5 Q. You testified in court about guns and ballistic
6 comparisons, things of that nature?

7 A. Yes, sir.

8 Q. You also worked for another law enforcement agency,
9 you said, GBI, Georgia Bureau of Investigation?

10 A. Yes, sir.

11 Q. And you were a firearms examiner?

12 A. Yes, sir.

13 Q. And so now you are in private practice. You have
14 your own company?

15 A. I do.

16 Q. Now, have you obtained any additional training that
17 aids you in your work?

18 A. Yes, sir.

19 Q. Do you have any additional certifications?

20 A. Yes, sir.

21 Q. Are you certified as a firearm and tool mark
22 examiner by the Georgia Bureau of Investigation?

23 A. Yes, sir.

24 Q. Have you been certified as a gunshot residue analyst
25 by the Georgia Bureau of Investigation?

1 A. Yes, sir.

2 Q. Have you been certified as a blood stain and pattern
3 analyst?

4 A. Yes, sir. By the Henry Lee Institute in
5 Connecticut.

6 Q. And according to our case have you been certified as
7 a crime scene reconstruction analyst?

8 A. Yes, sir. By the Henry Lee Institute in Connecticut
9 and the Georgia Bureau of Investigation.

10 Q. All right. And have you been certified as a
11 shooting reconstruction analyst?

12 A. Yes, sir. By the Henry Lee Institute in Connecticut
13 and the Georgia Bureau of Investigation.

14 Q. So in laymen's terms do you have training and
15 experience in crime scenes?

16 A. Yes, sir.

17 Q. Figuring out what happened?

18 A. Yes, sir.

19 Q. Whether that's looking at bullet holes; is that
20 right?

21 A. Yes, sir.

22 Q. Looking at blood on the ground and what that may
23 mean to a particular scene?

24 A. Yes, sir.

25 Q. Collecting evidence?

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1 A. Yes, sir.

2 Q. Analyzing evidence?

3 A. Yes, sir.

4 Q. Have you had occasion to testify in courts before?

5 A. Yes, sir.

6 Q. How many times have you testified in courts of law
7 about cases such as this?

8 A. 734 times today.

9 Q. Okay. Have you testified for both the prosecution
10 and defense?

11 A. Yes, sir.

12 Q. Have I paid you money as part of your work in this
13 case?

14 A. Yes, sir.

15 MR. L. SHEALEY: At this time, Your Honor, I would
16 seek to qualify Mr. Robinson as a crime scene
17 reconstruction analyst and firearms expert.

18 THE COURT: Without objection?

19 MR. HUBBARD: Court's discretion.

20 THE COURT: All right. This witness will be
21 qualified as a firearms expert and a crime scene
22 reconstructionist.

23 MR. L. SHEALEY: Expert.

24 THE COURT: An expert in crime scene reconstruction
25 and can give opinion testimony in that area. That

1 doesn't mean you have to accept the opinion, but it's
2 evidence for you to use in any way you see fit.

3 MR. L. SHEALEY: Thank you, Judge.

4 BY MR. L. SHEALEY:

5 Q. Now, Mr. Robinson, as part of the work that I asked
6 you to do in this case, did I provide you a lot of materials
7 from this case?

8 A. Yes, sir.

9 Q. Specifically did I provide you a lot of materials
10 from a shootout that happened on Log Creek Road?

11 A. Yes, sir.

12 Q. Did I provide you with he the full SLED report?

13 A. Yes, sir.

14 Q. And there was an Agent Tankersley that's SLED's
15 crime scene investigator, did I provide you with her report
16 and notes?

17 A. Yes, sir.

18 Q. Did I provide you with all the pictures from the
19 case file?

20 A. Yes, sir.

21 Q. Did I provide you with bullet comparison worksheets
22 even?

23 A. Yes, sir.

24 Q. And have you reviewed all of that in preparation for
25 your testimony today?

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1 A. Yes, sir.

2 Q. Did I provide you with Officer Kathmann's dash
3 camera?

4 A. You did.

5 Q. Now, when looking at Agent Tankersley's report, was
6 there something that was readily apparent that was not done by
7 Agent Tankersley?

8 A. Yes, sir.

9 Q. And what was that?

10 A. There was no trajectory analysis performed on the
11 vehicle.

12 Q. Now, trajectory analysis, why is that important?

13 A. It allows us to understand the pathways of the
14 bullet as it passes through the vehicle in order to determine
15 where the shots were fired from.

16 Q. So if you've got a complex scene with bullets going
17 in different directions, different makes and calibers, by
18 trajectory analysis does that help tell you what direction the
19 bullet may have been coming from?

20 A. Where the shots were fired from, yes, sir.

21 Q. Is that important in your experience to get a full,
22 accurate assessment of a crime scene?

23 A. Yes, sir.

24 Q. And you said that wasn't done in this case?

25 A. It was not.

1 Q. Now, is that one of the things that I asked you to
2 do in this case?

3 A. Yes, sir.

4 Q. Did you and I, were we able to locate Barry Jones'
5 vehicle?

6 A. Yes, sir.

7 Q. Okay. Now, I want to show you just while we're
8 here, does that look like Barry Jones' vehicle --

9 A. Yes, sir.

10 Q. -- that we found at the Edgefield Sheriff's
11 Department vehicle lot?

12 A. Yes, sir.

13 Q. And do you recognize other case file photos in this
14 case of bullet, bullet holes, projectile points? You've seen
15 all these photos. Do you remember these?

16 A. Yes, sir.

17 Q. Is this a photo of you in your truck at the actual
18 Log Creek scene?

19 A. Yes, sir.

20 Q. We went out there, didn't we?

21 A. We did.

22 Q. Do you recognize these photos that we took out there
23 based on Agent Tankersley's measurements?

24 A. Yes, sir.

25 Q. We found all kinds of items of evidence. You

CHRISTOPHER ROBINSON - DIRECT BY MR. L. SHEALEY

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1 recognize all these photos?

2 A. I do.

3 Q. Did you also make a diagram yourself or add some
4 measurements or some trajectory to Agent Tankersley's
5 diagram?

6 A. I did.

7 MR. L. SHEALEY: At this time, Your Honor, I would
8 seek to admit Defendant's 101 through, 101, 105, 106, I
9 think all the way through, sorry, 104, 103, 104, I'm out
10 of order, but 101 through 117.

11 THE COURT: Without objection? Subject to
12 objection?

13 (Side bar off the record.)

14 THE COURT: All right. Defendant's exhibits 101
15 through 117, Mr. Shealey?

16 MR. L. SHEALEY: Yes.

17 THE COURT: Those will be admitted subject to the
18 State's objection.

19 MR. SHEALEY: Thank you, Your Honor.

20 BY MR. L. SHEALEY:

21 Q. Now, Mr. Robinson, is this where we found Mr. Jones'
22 vehicle?

23 A. Yes, sir.

24 Q. Did you perform a trajectory analysis into the
25 defects or bullet holes of that vehicle?

1 A. Yes, sir.

2 Q. Explain to the jury how you do that.

3 A. You place a trajectory rod into the defects or the
4 holes in the vehicle and you determine the angle that the
5 buckshot pellets or the bullets passed into the vehicle.

6 Q. Were you able to determine trajectory angles on
7 several defect points?

8 A. Yes, sir.

9 Q. Are those specifically defect points A, I, J and H?

10 A. Yes, sir.

11 Q. Did you determine that those were .40 caliber impact
12 points?

13 A. Yes, sir.

14 Q. What were the other dents or impact points on
15 Barry's vehicle?

16 A. Buckshot pellets from the shotgun.

17 Q. In your training and experience you can tell the
18 difference between those two?

19 A. Oh, yes, sir. The dimensions of the defect. The
20 .40 was much wider than the buckshot pellets.

21 Q. And we also went out to Log Creek Road, did we
22 not?

23 A. We did.

24 Q. And it's important for a good crime scene analyst to
25 try to go to the scene and assess it, correct?

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1 A. Yes, sir.

2 Q. These are some pictures we took and this is actually
3 your truck backed into the same area where Barry's vehicle was
4 backed in that day, right?

5 A. Yes, sir.

6 Q. Now, your truck is obviously a lot bigger than
7 Barry's car, isn't it?

8 A. Correct.

9 Q. But did you back in your truck that way based on
10 Agent Tankersley's, basically her crime scene diagram?

11 A. Yes, sir.

12 Q. And we also, she had measurements on her diagram?

13 A. No, sir. I mean, she had some measurements.

14 Q. Measurements in distance between vehicles?

15 A. No, sir. I mean, yeah. 157.9 feet, 157 feet 9
16 inches between those two.

17 Q. Right. And so we tried to assess or approximate the
18 position of Officer Florida's vehicle in relation to Barry's
19 vehicle?

20 A. Yes, sir. 68.5 feet.

21 Q. Is that an approximation of a photograph taken from
22 the approximate position of where Officer Florida's vehicle
23 would have rested that day?

24 A. Yes, sir. We measured it out with a, I brought an
25 angle finder and a distance determination device so we could

1 do a laser finder. Yes, sir.

2 Q. Okay. And we also found the same defect point in
3 the gate that Agent Tankersley did, correct?

4 A. Yes, sir.

5 Q. That's another view of it?

6 A. Yes, sir.

7 Q. Now, I want to show you what we did that Agent
8 Tankersley did not do. Did I ask you to take your trajectory
9 analysis, the angles of the bullets as they entered Barry's
10 car and add them through a scientific method to Agent
11 Tankersley actual diagram?

12 A. Yes, sir.

13 Q. Did I ask you to highlight those in red so they
14 could be visible?

15 A. Yes, sir.

16 Q. And this is 117 that I believe is already in
17 evidence. Is this another blown up copy of that same work
18 that you just did?

19 A. Yes, sir.

20 Q. All right. It might be easier for me to use the
21 laser pointer, but let's talk about some of those trajectory
22 analysis that you've done. Were you able based on your
23 analysis to determine that at least three of the initial
24 impact points that you determined were related to a .40
25 caliber bullet came from a position more in front of Barry's

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1 vehicle as opposed to a position that Agent Tankersley had as
2 the resting place of Florida's vehicle?

3 A. Yes, sir.

4 Q. And that would be those three lines right there?

5 A. Correct.

6 Q. And then you've got, it looks like two other lines
7 here, one going to is it Barry's door?

8 A. Correct.

9 Q. Is that defect A in your opinion?

10 A. Correct.

11 Q. And then one going to the gate where we know Officer
12 Florida had a bullet hit the gate?

13 A. Correct.

14 Q. And you have reviewed this evidence and you're aware
15 of what Officer Florida per his own account was armed with
16 that day in terms of magazine capacity, correct?

17 A. Correct.

18 Q. 15 plus one?

19 A. Yes, sir.

20 Q. And you've also reviewed the findings of SLED that
21 when his magazine was returned, it was nine plus one, correct,
22 equaling 10?

23 A. Correct.

24 Q. So you're aware that there are six rounds shot by
25 Officer Florida at least per your assessment of this case?

1 A. Correct.

2 Q. You're also aware from reviewing the pictures and
3 these markers, were you aware that four rounds were recovered
4 in this, four shell casings were recovered in this approximate
5 area?

6 A. Correct.

7 Q. And two shotgun shell casings here?

8 A. Correct.

9 Q. So based on that, we're shooting six times, but only
10 recovering four shell casings, what would that mean to you?

11 A. That would mean there's two shell casings that are
12 missing.

13 Q. As someone who's investigating a crime scene, would
14 that be a big point of concern or interest?

15 A. Yes, sir.

16 Q. Why is that?

17 A. I want to find where those are because they may tell
18 you again, backing up, what you're already trying to state,
19 your hypothesis is that I've already done these angles and I
20 like to look inside the car, see if there are any cartridge
21 casings found in Officer Florida's car or find any cartridge
22 casings on the roadway.

23 Q. But you would want to be looking extensively on the
24 roadway and in the car?

25 A. Yes, sir.

CHRISTOPHER ROBINSON - DIRECT BY MR. L. SHEALEY

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1 Q. As a firearm expert, tell the jury, if you were to
2 shoot a firearm out of your moving vehicle while driving,
3 where would the casings eject?

4 A. They eject to the right rear of the gun itself.
5 Now, it could deflect off the windshield, they could deflect
6 off the dashboard, they could deflect off the rear view
7 mirror, so they can bounce anywhere in the car. You could
8 find them all over your car.

9 Q. And you're aware that in this area there were no
10 shell casings recovered from Officer Florida, correct?

11 A. Correct.

12 Q. But if he were shooting out of his moving vehicle
13 there and they were ejecting into the car, would you expect to
14 recover his shell casings there?

15 A. No, sir.

16 Q. Now, if he had gotten out after stopping his
17 vehicle, and you've reviewed the dashcam, right?

18 A. Yes, sir.

19 Q. And you noticed that he fires approximately three
20 shots after he gets out of his vehicle?

21 A. Yes, sir.

22 Q. You also note Agent Tankersley's diagram that
23 there's four shell casings there?

24 A. Correct.

25 Q. Could that four shelling casings have come out of

1 the vehicle and onto the ground when he stepped out?

2 A. Yes, sir.

3 Q. Would you expect that the other missing shell
4 casings, if he had shot from his moving vehicle, would be
5 contained within that car somewhere?

6 A. Yes, sir.

7 Q. Now, you and I did a little recreation of shooting
8 inside a moving vehicle, didn't we?

9 A. We did.

10 Q. And I don't want to talk to you about the sound of
11 it or anything like that, but I do want to talk to you about
12 what we discovered, and you were doing the shooting, right,
13 not me?

14 A. Correct.

15 Q. When you shot, did you shoot the same gun that
16 Officer Florida had?

17 A. Yes, sir.

18 Q. And when you shot that gun, do you recall that we
19 recovered some shell casings in some pretty hidden places?

20 A. Yes, sir.

21 Q. I want to show you what's in evidence as defendant's
22 104. Now, you recognize that as the driver's seat of the
23 vehicle we did the experiment in?

24 A. Yes, sir.

25 Q. Is that under the driver's seat?

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1 A. Yes, sir.

2 Q. And that's the actual mat peeled back to reveal the
3 cavity under the driver's seat?

4 A. Yes, sir.

5 Q. And do we have shell casings right there?

6 A. We do.

7 Q. I want to show you a closer up of that same photo.

8 Are those the three shell casings that were recovered after
9 that experiment under the driver's seat?

10 A. Yes, sir.

11 Q. And did we also find one on the passenger side on
12 the floorboard?

13 A. Yes, sir.

14 Q. .40 caliber?

15 A. Yes, sir.

16 Q. Now, in inspecting Barry's car, you did your
17 analysis, I want to talk to you about the actual bullet holes
18 that you reviewed from Agent Tankersley's photos. Do you
19 recognize that document, defect A in that photo?

20 A. Yes, sir.

21 Q. Now, is that the one that is right at Barry's
22 driver's door?

23 A. That is correct.

24 Q. And per your recollection it penetrates his door?

25 A. It does.

1 Q. Is that made by a .40 caliber in your opinion?

2 A. Yes, sir.

3 Q. What angle of trajectory did you put on that one?

4 A. It was nine degrees to the right so it's traveling
5 as it entered the door it's just nine degrees off center.

6 Q. In your opinion is that consistent with one of these
7 shots that goes into the door?

8 A. Correct.

9 Q. Is that another photo of that same hole number A?

10 A. Yes, sir.

11 Q. Now I'm gonna show you number I, or letter I. Is
12 that another impact point that you identified as a possible
13 .40 caliber?

14 A. Yes, sir.

15 Q. What angle did you have with this?

16 A. 10 degrees.

17 Q. Okay. That's number J. Do you recognize that
18 photo?

19 A. Yes, sir.

20 Q. You identify that consistent with a .40 caliber
21 impact point?

22 A. Yes, sir.

23 Q. What angle did you have on that?

24 A. That was 11 degrees.

25 Q. And this is letter H. Can you identify that as a

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1 .40 caliber impact point?

2 A. Yes, sir.

3 Q. What angle did you have on that?

4 A. 14 degrees.

5 Q. And this is a photo that shows kind of H and J in
6 the same photo, right?

7 A. Yes. It is. And it's down there at the bottom.

8 Q. Correct. And this photo more of the back of the car
9 you see several that you think are buckshot points?

10 A. Yes, sir.

11 Q. Were you able to count those up?

12 A. Yes, sir.

13 Q. How many buckshot impact points did you, or pellet
14 points did you identify?

15 A. Nine.

16 Q. Based on your analysis of the shotgun round that
17 Officer Florida was shooting that day, how many pellets would
18 it have?

19 A. Nine.

20 Q. Now, I want to show you some photos of Officer
21 Florida's car. Do you recognize that photo from the crime
22 scene photos?

23 A. Yes, sir.

24 Q. And is that a defect?

25 A. Yes, sir.

1 Q. That kind of comes that way in your opinion?

2 A. Yes, sir.

3 Q. Do you recognize that as a closer up of the same
4 defect?

5 A. Yes, sir.

6 Q. And this is a real close up of that same, right?

7 A. Yes, sir.

8 Q. .223 hole. Looks a little different than a .40
9 caliber hole?

10 A. Yes, sir.

11 Q. Or a buckshot impact point?

12 A. Yes, sir.

13 Q. Do you recognize that this is a photo that shows
14 again from a slightly different angle that point going that
15 way and across the driver's seat? Do you see that?

16 A. Yes, sir.

17 Q. Did you note that it was a defect point on the
18 steering wheel?

19 A. Yes, sir.

20 Q. Now, looking at that photograph, you did not put a
21 trajectory rod in that vehicle, did you?

22 A. I did not.

23 Q. But looking at it in the path that that round
24 traveled, is that consistent with a round that was shot from
25 somebody shooting directly in front of them at a moving

CHRISTOPHER ROBINSON - DIRECT BY MR. L. SHEALEY

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1 vehicle that's in front of them?

2 A. No, sir.

3 Q. Now, you've watched the dashcam video, right?

4 A. Yes, sir.

5 Q. And you realize that Officer Florida stopped his
6 vehicle down the road away, right?

7 A. Yes, sir.

8 Q. Do you have an opinion about whether that is more
9 consistent with being hit, that impact point coming through
10 from that position?

11 A. It's the position where Mr. Jones was at his vehicle
12 shooting at Officer Florida's car after it stopped, correct.

13 Q. Okay. Just so we're clear, is it your expert
14 opinion that that would not have been caused by Mr. Jones
15 shooting from this position, correct?

16 A. No, sir. No, sir.

17 Q. That would have been caused by Mr. Jones shooting
18 after Florida had stopped his car?

19 A. Correct.

20 Q. And based on your analysis and the path of flight of
21 that bullet, would it have ripped right across the seat if a
22 driver were in there?

23 A. Oh, yes, sir.

24 Q. Did you note any blood in this seat?

25 A. No, sir.

1 Q. And you know that no one was hit there, Officer
2 Florida was not hit with a .223 round?

3 A. Correct.

4 Q. Okay. Now, you know that Barry, from analysis of
5 his magazine, had multiple rounds left in his magazine?

6 A. Yes, sir.

7 Q. He didn't shoot all of his rounds, correct?

8 A. He did not.

9 Q. That magazine held 30?

10 A. Correct.

11 Q. He had 18 left?

12 A. Yes.

13 Q. I want to show you what's in evidence as State's
14 number 85. Now, this is a photo of a projectile that Agent
15 Tankersley identified. Do you recall that being pretty much
16 right at the apex of the door where Barry was?

17 A. Yes, sir.

18 Q. Can you determine based on looking at projectile
19 what it was consistent with being?

20 A. It's a .40 caliber bullet.

21 Q. With blood on it?

22 A. Correct.

23 Q. In your opinion, is that the bullet, the projectile
24 that went through defect A?

25 A. Yes, sir.

CHRISTOPHER ROBINSON - DIRECT BY MR. L. SHEALEY

1199

1 MR. HUBBARD: What photo was that again?

2 Defendant's number what?

3 MR. L. SHEALEY: This is State's number 85.

4 MR. HUBBARD: State's 85. Thank you.

5 BY MR. L. SHEALEY:

6 Q. Now, you're qualified as an expert in firearms,
7 correct?

8 A. Yes, sir.

9 Q. And you had a chance to listen and review the
10 dashcam video that we have in evidence?

11 A. Yes, sir.

12 Q. Are you confident in your ability to distinguish
13 between an AR-15 style rifle that shoots a .223 round versus a
14 .40 caliber handgun?

15 A. Yes, sir.

16 Q. Explain to the jury why those two guns might sound
17 vastly different?

18 A. Well, I think you just said it, sir. One's a
19 pistol, one's a rifle. The pressure in a rifle cartridge is
20 about 165,000 pounds per square inch. A '40 caliber pistol is
21 gonna be about 115 to 120,000 pounds per square inch. The
22 velocity of the .223 is 3300 feet per second, the velocity of
23 the .40 is a thousand feet per second so the speed, the
24 pressure, just the overall size, a .40 is very small compared
25 to a .223. The sound is vastly different for an AR-15. To

1 anyone who ever shoots weapons, it's a distinct sound that you
2 can just hear in an AR-15 and it's much louder than that .40
3 caliber pistol.

4 Q. It's not just a loudness, it's a distinction,
5 correct?

6 A. Oh, absolutely.

7 Q. Tell me if I'm right or wrong, but am I correct in
8 laymen's terms saying that a .40 caliber is more of a pop,
9 pop, pop, whereas a AR-15 is more of a crack followed by a
10 (indicating)?

11 A. That's correct.

12 Q. In laymen's terms?

13 A. Yes, sir. Sure. Yes, sir.

14 Q. And you've studied and analyzed the video from
15 Officer Kathmann's dashcam, right?

16 A. Yes, sir.

17 Q. Do you have an opinion about the first shots that
18 you hear as Officer Kathmann is entering that clearing about
19 what weapon you're hearing?

20 A. Yes, sir.

21 Q. And what is that?

22 A. It's a .40 caliber pistol.

23 Q. Do you have any doubt in your mind about that versus
24 it being an AR-15 rifle?

25 A. None whatsoever.

CHRISTOPHER ROBINSON - DIRECT BY MR. L. SHEALEY

1201

1 Q. And having reviewed the video, is it really clear to
2 you when the AR-15 rifle starts cranking up?

3 A. Yes, sir. Yes, sir.

4 Q. Okay. I'll play this for you what you've already
5 reviewed.

6 (Playing video.)

7 BY MR. L. SHEALEY:

8 Q. Is that still your opinion that is a .40 caliber
9 pistol?

10 A. Clearly.

11 Q. And these next shots that come from the direction of
12 Officer Florida's vehicle, is that a .40 caliber?

13 A. Yes, sir.

14 Q. Now, that, what is that?

15 A. That's the AR-15, sir.

16 Q. I want to play that again.

17 A. Okay.

18 Q. Because after the first shot, I want you to tell if
19 you hear that distinctive (indicating) afterwards.

20 A. Yes, sir.

21 Q. Do you hear that? Is that what we're talking
22 about?

23 A. Yes, sir. It's elongated. Yes, sir.

24 Q. And again, is that an AR-15?

25 A. Yes, sir.

1 Q. Is that night and day to you?

2 A. Yes, sir.

3 Q. A quick follow up. Let's talk about the accuracy of
4 an AR-15 type rifle versus a Glock handgun. Which one is more
5 accurate and why?

6 A. The rifle is more accurate because the sights are
7 further apart. The closer the sights, the better accuracy you
8 must have to hit what you're aiming at. With the rifle the
9 sights are more spread out so that gives you more accuracy
10 because the sights are spread out, and it's a rifle. It has a
11 flat trajectory when it fires.

12 Q. Okay. Now, looking at this crime scene diagram
13 again, we note the measurements from Agent Tankersley that put
14 the front of Barry's vehicle all the way to the wood line as
15 being only 49 feet, right?

16 A. Correct.

17 Q. So if we want to try to assess what the distance
18 would be maybe to the middle of the road, what would your
19 opinion be on that?

20 MR. HUBBARD: What was the question again? I'm
21 sorry?

22 MR. L. SHEALEY: I'm asking his opinion on what the
23 distance would be from the path of travel from Florida's
24 vehicle approximately to Barry's car.

25 BY THE WITNESS:

CHRISTOPHER ROBINSON - DIRECT BY MR. L. SHEALEY

1203

1 A. At perpendicular or straight ahead? Is that what
2 you're asking me?

3 BY MR. L. SHEALEY:

4 Q. Yes. That's what I'm asking you.

5 A. It would be about 50 feet from the middle of the
6 road, then you have to also go back to the front of the car
7 back to Barry's door there so again I'm adding a few feet for
8 that so I would say about 53 feet approximately.

9 Q. Now, with the accuracy of that rifle and if Barry
10 were in a position to lie in wait for someone who's proficient
11 with his firearm, you've already testified that that hole in
12 Florida's door did not come at that point. If Barry had shot
13 that first volley of shots, in your expert opinion, would he
14 have missed?

15 A. If you're proficient at all, no, sir. You cannot
16 miss a vehicle. No, sir. You would have to be trying to miss
17 if you missed the car at all.

18 Q. Okay. And you've noted also from your review of
19 some of these photos, I think a magazine in Barry's driver's
20 floorboard that was plastic?

21 A. Yes, sir.

22 Q. You noted it had blood on it?

23 A. Yes, sir.

24 Q. When something like that has blood on it, what does
25 that tell you?

1 A. That means something has happened to Mr. Jones that
2 caused him to be bleeding or losing blood.

3 Q. Is that a significant factor for someone who is
4 trying to assess a crime scene?

5 A. Yes, sir.

6 Q. So it means that at the point in time that he dealt
7 with that magazine he was already pleading?

8 A. Correct.

9 Q. Did you note blood on the gun bag on the front
10 seat?

11 A. Yes, sir.

12 Q. Does that indicate that Mr. Jones is bleeding at the
13 time he's reaching in there?

14 A. Yes, sir.

15 Q. Is that what we call blood transfer?

16 A. Yes, sir.

17 Q. CSI terms?

18 A. Yes, sir.

19 Q. Okay. And again, do you have any doubt in your mind
20 as an expert in firearms that the first shots that occurred
21 that day were from a Glock .40 caliber handgun?

22 A. No, sir.

23 MR. L. SHEALEY: I don't have anything further at
24 this time.

25 THE COURT: Cross examination.

CHRISTOPHER ROBINSON - CROSS BY MR. HUBBARD

1205

1 MR. HUBBARD: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. HUBBARD:

4 Q. Christopher Robinson?

5 A. Yes, sir.

6 Q. You wouldn't happen to be the same Christopher
7 Robinson that had a bumpy career at GBI in Georgia?

8 A. Yes, sir.

9 Q. You're that same person?

10 A. Yes, sir.

11 Q. The same one that back in November of 2000 got a
12 reprimand?

13 A. Yes, sir.

14 Q. Reprimand for, what was it, accidentally grabbing
15 files that weren't assigned to you?

16 A. No. Not in 2000. No, sir.

17 Q. Maybe I'm confusing it with the reprimand in 2002.
18 You got one in 2002, correct?

19 A. Yes, sir.

20 Q. You were logging in work hours, you logged in you
21 worked a hundred hours and it was really 50 something hours?

22 A. No, sir. You're looking at the file. I was cleared
23 of that. Somebody accused me of lying about my overtime.

24 They were fired --

25 Q. Well --

1 A. Let me finish. They were fired because they accused
2 me of lying about my overtime. I got that cleared up.

3 Q. But November 14th, 2006, you got another reprimand
4 from GBI, and let's be a little more specific about that, in
5 the form of a letter for discussing analytical results with a
6 defense attorney without proper notification to the
7 prosecution verbalizing personal beliefs about the case and
8 assuming the intent of the DA's Office, demeaning another
9 witness in a meeting, behaving in an unprofessional manner
10 while in court and failing to follow DOFS procedures. What
11 are DOFS procedures?

12 A. Procedures set fourth by the Department of Forensic
13 Science of the Georgia Bureau of Investigation.

14 Q. You ended up resigning?

15 A. Hang on. Let me explain that. What happened on
16 that incident was, I went to court, I called the DA, I told
17 them the shot was a contact shot on the case, a man came in
18 the window of his car and was trying to attack this
19 individual, the individual put the gun right to his head and
20 pulled the trigger and killed the man. I told the DA this.
21 When I showed up in court, I knew the defense attorney. I
22 said, did they tell you what I said? He said no. So I told
23 him the truth. We go into court, he tells the Judge, the
24 Judge dresses down the State Attorney and almost throws the
25 entire case out, they pull me off the stand, take me in the

CHRISTOPHER ROBINSON - CROSS BY MR. HUBBARD

1207

1 back room, I called the medical examiner right there in front
2 of everybody so I got in trouble for standing up for the truth
3 there.

4 Q. So that's all you were doing when you got a
5 reprimand and you ended up resigning, correct?

6 A. I quit to become the director of the crime lab for
7 the City of Atlanta Police Department.

8 Q. When did you become director of the crime lab?

9 A. 2008.

10 Q. When did you resign from SLED, or from GBI or leave
11 GBI?

12 A. 2008.

13 Q. And you lasted in Atlanta at the crime lab for two
14 years?

15 A. Two and a half.

16 Q. You also had a letter of separation there because
17 you didn't follow procedures?

18 A. Yes, sir. I purchased some software so the two
19 systems could talk to each other. I have the signature of my
20 major right here on this file that I keep with me. He signed
21 off on the purchase. When the bill came in for \$37,000.00,
22 the City of Atlanta was broke at that time and didn't want to
23 pay the bill, I was the director so they fired me.

24 Q. But you also didn't tell the truth about that. You
25 misrepresented what you had done --

1 A. No, sir.

2 Q. -- in order to get a rush on purchasing?

3 A. No, sir.

4 Q. That you had already purchased ammunition and the
5 vendor was requesting payment?

6 A. I didn't lie. I just ordered the ammunition. Yes,
7 sir.

8 Q. So you were separated from them as well?

9 A. No. I quit the GBI. I was separated from Atlanta,
10 correct.

11 Q. So you quit GBI and you did what with Atlanta?

12 A. I became the director of the crime lab.

13 Q. All right. Now, as an expert, how many actual crime
14 scenes have you gone out and worked where you collected
15 evidence? Or let me -- I'll make it easier. When was the
16 last time you went out to a crime scene and collected evidence
17 as a law enforcement officer?

18 A. I guess that would have been in 2009, I went to a
19 crime scene where there was a stabbing.

20 Q. So it's been quite a while?

21 A. Sure.

22 Q. This diagram that was done with your input, defense
23 number 117, when you went out there to actually do these
24 angles, we saw your pickup truck out there, right?

25 A. No, sir. That's from the car itself. Those angles

CHRISTOPHER ROBINSON - CROSS BY MR. HUBBARD

1209

1 are from the car.

2 Q. Hang on. When we saw your pickup truck, was that
3 when you were putting it here in the photographs?

4 A. No.

5 Q. Where was it?

6 A. The truck was sitting right there. I didn't do the
7 angle that you're talking about.

8 Q. What's that?

9 A. The truck had nothing to do with these angles you're
10 talking about. I was parked there to get an idea of where
11 Officer Florida's car was.

12 Q. So you had to do approximations?

13 A. No. We took the measurements from the officer.

14 Q. Well, you just had very general measurements. I
15 think you mentioned that.

16 A. No. She said 68 feet 5 inches, and she said 49
17 feet, she said 157 feet 9 inches is her measurements.

18 Q. Angle of vehicle and that exact position was an
19 approximation, correct?

20 A. The angle that were in that car are exact based on
21 the trajectory rods. The angles that I draw on this car is
22 the position that she put that car in.

23 Q. I'm not talking about this. I'm talking about when
24 you went out there with your vehicle and y'all were doing your
25 measurements out there, right?

1 A. What measurement?

2 Q. When you went out there to do your trajectory
3 angles.

4 A. We didn't do trajectory angles.

5 Q. You did it by just looking at the vehicle?

6 A. Yes. And I drew it on this diagram. That's
7 correct, sir.

8 Q. And let me get this straight too. Well, let's do
9 this. Again, using defense exhibit 117, there is no question
10 no casings at all were found in this open area here?

11 A. Correct.

12 Q. None?

13 A. Correct.

14 Q. And you're also aware that no casings whatsoever
15 were found in Sergeant Florida's vehicle?

16 A. I'm aware that they didn't find any is what they
17 said.

18 Q. Well, they searched. You didn't. You would agree
19 with me zero casings were found, correct?

20 A. I agree.

21 Q. You agree zero casings, but you've testified to this
22 jury with your own experiment there would be casings in that
23 vehicle, correct?

24 A. Yes, sir.

25 Q. So are you saying we have somebody out there who

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1 doesn't know what they're doing?

2 A. Oh, it's a possibility. Yes, sir. I have testified
3 many times against police officers and people not doing their
4 job. Absolutely.

5 Q. So a sloppy investigation, even though photographs
6 were taken of the interior and none were found, you're willing
7 to sit up here and say someone's sloppy?

8 A. Sure.

9 Q. Because your theory goes against photographs
10 documented by another professional?

11 A. Yes, sir.

12 Q. Okay. And we also found casings in Barry Jones'
13 car, two?

14 A. Yes, sir.

15 Q. You agree he was standing in the apex of his door
16 shooting?

17 A. Yes, sir.

18 Q. So two of those went in his vehicle?

19 A. Yes, sir.

20 Q. Those were found?

21 A. Yes, sir.

22 Q. Now, let's go to the sound of shooting. When you
23 first heard four shots, you said those are clearly a .40
24 caliber Glock, right?

25 A. Yes, sir.

1 Q. So you can listen to a sound and go that's a .40
2 caliber versus a .45 or .38?

3 A. Well, there wasn't a .45 at this scene. There
4 wasn't a .38 at this scene.

5 Q. So you're just going on .40 versus a .223?

6 A. Correct. And a shotgun.

7 Q. And a shotgun. So when we watch this video, we've
8 watched it a million times and we hear those first shots, four
9 shots?

10 A. Correct.

11 Q. You say those are a .40?

12 A. Absolutely.

13 Q. Absolutely. And then you hear three more and you
14 say those are a .40?

15 A. Correct.

16 Q. Now, help me out here. That's seven, right?

17 A. Well, I think it was three in the beginning and
18 three in the second. I think there was three in the roadway.
19 Do you see my picture? Three in the roadway and there's gonna
20 be three more at Officer Florida's car.

21 Q. You just testified a while ago you heard four shots
22 and those were from a .40?

23 A. I didn't testify. You said what sound did you hear.
24 I said they were a '40. I didn't say the number of shots.

25 Q. All right. Let's let the jury count when they

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1 listen. You and I don't have to do the math.

2 A. Sure.

3 Q. But you would agree with me if that's seven shots,
4 10 rounds are still in Florida's gun when it's recovered, nine
5 in the magazine, one in the chamber, that's 17. His pistol
6 doesn't hold 17. It holds a max of 16.

7 A. Correct.

8 Q. So if this jury hears four shots that you say is a
9 Glock or a .40, and then they hear three more that you say is
10 a .40, then your math is off?

11 A. Go ahead.

12 Q. Okay. And maybe so is your ear?

13 A. Okay.

14 Q. Okay. Now, when we hear what you say clearly that's
15 an AR-15, sound travels differently, doesn't it, depending on
16 a number of variables, right?

17 A. Sure.

18 Q. So we don't know because it's coming from Kathmann's
19 dashcam if Barry Jones went from firing at Sergeant Florida
20 and turned to Kathmann and fired. That could affect the
21 sound, could it not, because a round is coming closer to
22 Kathmann?

23 A. It would, but there's no evidence that he fired at
24 Officer Kathmann.

25 Q. You weren't here when Sergeant Florida testified to

1 that, so are you just accepting defense facts?

2 A. I'm looking at the cartridge casing placement.
3 There is no evidence that he turned toward Officer Kathmann
4 based on the ejection pattern of his weapon.

5 Q. So you're saying that just didn't happen because you
6 can look at an ejection round even though somebody is moving
7 around, falling down and cops have been all over there where
8 that fell you can now say this man did not fire at Kathmann?

9 A. There's no evidence that he fired at Officer
10 Kathmann.

11 Q. But you would agree when you're looking at those
12 rounds in that apex of the door, those casings everywhere, you
13 have a man shooting, he goes down and you have officers all
14 over the place running in, some kicking guns out of the way,
15 but that doesn't affect your opinion whatsoever?

16 A. No, sir.

17 Q. No, sir. Good gracious. No, sir. But also an
18 AR-15 would sound differently if Kathmann who's got the
19 recording device the first time you hear it his door is closed
20 versus his door is now open and it can record more clearly, it
21 gets louder, right?

22 A. Yes. There's a difference in the sound.

23 Q. And you didn't account for that?

24 A. I don't hear a muffled sound. I hear the AR clearly
25 when he fires it. It's not muffled at all by a window being

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1 closed.

2 Q. Because your ears are great? You're an expert?

3 A. I think 23 and a half years, yes, sir, I think I'm
4 an expert in guns. I'm an expert in sound, yes, sir, of
5 different weapons.

6 Q. An expert with a bumpy past --

7 A. Yes, sir.

8 Q. -- to where you are now?

9 A. Yes, sir.

10 Q. Now, I'm looking for one photo that was put up.
11 And, Mr. Robinson, it's the slug that was found outside of the
12 defendant's vehicle you said a .40 caliber?

13 A. Yes, sir.

14 Q. How did you determine that's a .40 caliber?

15 A. The size, shape and it's got polygonal rifling like
16 a Glock.

17 Q. You saw that from a photograph?

18 A. Yes, sir.

19 Q. A photograph with no measurement?

20 A. Yeah. You can see kelt rifling versus polygonal
21 rifling. It's impressed so it's definitely a Glock bullet.

22 Q. Here we go. You can look at that which has no scale
23 on it, it can be blown up or shrunk, you can look at that and
24 you say that's a .40 caliber?

25 A. Yes, sir.

1 Q. Even though that could be a blown up shot that's not
2 actual size?

3 A. Yes, sir.

4 Q. Because you're an expert. You don't need a scale.
5 You've got your eyes.

6 A. Yes, sir.

7 Q. Yes, sir. How much does it cost to retain you?

8 A. \$2500.00.

9 Q. \$2500.00. How much does it cost for you to come in
10 and testify in court?

11 A. 1500.

12 Q. We're up to four thousand. How much does it cost
13 for you to work on a case hourly?

14 A. I think it's right about \$7000.00 for this total
15 case.

16 MR. HUBBARD: I'm done, Your Honor.

17 THE COURT: Redirect.

18 MR. L. SHEALEY: I'm not done. Thank you, Judge.

19 REDIRECT EXAMINATION

20 BY MR. L. SHEALEY:

21 Q. So you didn't see any evidence that Officer Kathmann
22 was shot at all whatsoever?

23 A. No, sir.

24 Q. Is that based on the literal pattern of shell
25 casings around Barry's car?

1 A. Correct. Also there's no defects in Officer
2 Kathmann's car.

3 Q. Right. No detects at all?

4 A. No.

5 Q. And we're talking a lot about these shots.
6 Ultimately for the jury the initial shots in your expert
7 opinion are from a Glock, a .40 caliber?

8 A. Absolutely.

9 Q. And you're not trying to determine between a .40 and
10 a .45. It's whether it's a Glock police gun or a high powered
11 rifle, right?

12 A. Correct.

13 Q. Is that hard for you?

14 A. No, sir.

15 Q. Okay. And the Solicitor is trying very hard to say
16 that it's four shots initially. You counted three?

17 A. I did.

18 Q. Right. But you agree it does sound a little bit
19 different than the other three?

20 A. It does.

21 Q. And Officer Kathmann's vehicle is reversing,
22 correct?

23 A. Correct.

24 Q. Now, if someone, you're talking about sound and gun
25 recognition and firearms, if someone is shooting their gun

1 while also depressing the mic on their police issued radio and
2 it's being broadcast through the radio coming into Kathmann's
3 car, could that explain the possible perceptive difference in
4 the sound?

5 A. Correct.

6 Q. You know, Mr. Hubbard has made a great point of
7 noting that there's no shell casings found in Officer
8 Florida's car whatsoever?

9 A. Yes, sir.

10 Q. Does that mean that they weren't there?

11 A. No, sir.

12 Q. I mean, this is a crime scene investigation where
13 they didn't care to even stick a trajectory rod into a defect
14 hole, did they?

15 A. Correct.

16 Q. Does that make you think that perhaps they're not
17 that thorough?

18 A. Yes, sir. I guess.

19 Q. Did you see in all the crime scene photos that we
20 had anybody looking under the seats or see any photos directly
21 under the floormats in the areas that we found our shell
22 casings?

23 A. I did not.

24 Q. You did not see that. Let's talk about your
25 reprimands. Does that affect your skill and ability and

CHRISTOPHER ROBINSON - REDIRECT BY MR. L. SHEALEY

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1 training to do what you did today?

2 A. No, sir. After I was released by Atlanta, they had
3 me come back and testify three times for them so I don't think
4 they were that concerned about any ability. I was fired for
5 administrative purposes.

6 Q. Is that a large and highly politicized police
7 department?

8 A. It is.

9 Q. Okay. And it has nothing to do with assessments and
10 opinions you're giving today?

11 A. No, sir.

12 Q. And you're also paid for your time, right?

13 A. I am.

14 MR. L. SHEALEY: Thank you.

15 THE COURT: Recross.

16 MR. HUBBARD: I have nothing. I'm done.

17 THE COURT: Very well. The witness may step down.

18 Counsel, come up real quick.

19 (Side bar off the record.)

20 THE COURT: Ladies and gentlemen, I'll send you back
21 to the jury room for a minute and I'll get you back very
22 shortly. Please go to the jury room. Don't discuss the
23 case.

24 (Whereupon, the jury entered the jury room at 5:10
25 p.m.)

1 THE COURT: All right. Briefly refresh ourselves.
2 We need a few minutes to figure out a game plan with the
3 lawyers and figure out where we're going to go from here.

4 (Short break.)

5 THE COURT: The jury elected to do another witness.
6 We'll plow forward and go from there. Defense ready to
7 proceed with their next witness?

8 MR. L. SHEALEY: Yes, sir.

9 THE COURT: State ready to proceed?

10 MR. HUBBARD: Yes, sir.

11 THE COURT: Bring in the jury please.

12 (Whereupon, the jury entered the courtroom at 5:20
13 p.m.)

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, please be seated and we'll continue with our final
16 witness of the day.

17 MR. L. SHEALEY: Thank you, Your Honor. The defense
18 calls Chief Rick Myers.

19 Thereupon,

20 RICHARD W. MYERS
21 after having been first duly sworn, testified as follows,

22 THE CLERK: Please have a seat. Once you're seated,
23 state your full name spelling your last please.

24 THE WITNESS: My name is Richard W. Myers,
25 M-y-e-r-s.

RICHARD MYERS - DIRECT BY MR. L. SHEALEY

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1 DIRECT EXAMINATION

2 BY MR. L. SHEALEY:

3 Q. Chief Myers, how long have you been in law
4 enforcement?

5 A. 44 years.

6 Q. Okay. I called you Chief Myers, is that because
7 much of your time has been as a chief of police?

8 A. 32 of those years.

9 Q. Okay. And has that been in multiple locations?

10 A. Six states.

11 Q. Okay. And you've got a college degree?

12 A. I have both a bachelor's and master's from Michigan
13 State University.

14 Q. Do you have any graduate degrees? You said the
15 master's?

16 A. Master's in criminal justice.

17 Q. Do you have any additional training with the FBI?

18 A. Yeah. I was privileged enough to be invited to all
19 three of the FBI's premier leadership development programs,
20 the FBI National Academy 156th session, the FBI law
21 enforcement executive development seminar. I think I went to
22 the 26th session and then the National Executive Institute
23 which is reserved for the major cities.

24 Q. Okay. And as a police chief have you had the
25 responsibility of commanding and instructing numerous police

1 officers?

2 A. I served as chief in agencies part-time as small as
3 five officers and in my largest I had about a thousand
4 employees.

5 Q. Okay. I'm looking through your resume and I see
6 some notable places. Just briefly, were you the police chief
7 in Ferguson? Am I reading --

8 A. No. Sanford --

9 Q. Sanford, Florida?

10 A. -- Florida. After the Trayvon Martin homicide, the
11 city manager in Sanford needed an interim chief until they
12 could stabilize the agency and hire a permanent chief. He
13 told me it was gonna be three to five months, but I was there
14 just under a year and helped that community and helped them
15 find a permanent chief.

16 Q. So stabilized in the wake of the Trayvon Martin
17 case?

18 A. Yes.

19 Q. So have you had other kind of deployments so to
20 speak in that similar nature?

21 A. I was on a team that went to Ferguson that the
22 United States Department of Justice put a small team together
23 of chiefs who have worked on civil rights issues and whatnot
24 to go and kind of advise them. Also, you may recall after
25 Ferguson there were some Baton Rouge officers murdered and

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1 there was quite a bit of attention in that community and I was
2 a part of the team that helped out the Baton Rouge area.

3 Q. All right. But you've been in Colorado Springs,
4 Manitou Springs, Sanford, City of New Port News, for example,
5 correct?

6 A. That was my last chief's job. Yes.

7 Q. Have you ever been on part of a board for something
8 called CALEA?

9 A. CALEA is the Commission on Accreditation for Law
10 Enforcement Agencies. It's the international credentialing
11 body that develop standards against which the departments are
12 measured for, most departments have policies and procedures,
13 but to be accredited you have to prove you're doing what your
14 policies say. So there are three year terms and you're term
15 limited after three terms so I served a full nine years on the
16 commission, the final two I was the president and chairman of
17 the commission.

18 Q. Okay. So that's a commission that does
19 accreditation of police agencies?

20 A. Yes, sir.

21 Q. And I see just on this previously SLED diagram it
22 says CALEA. SLED is a CALEA accredited agency?

23 A. Yes, sir.

24 Q. Now, have you been a published author?

25 A. Yes. I've contributed to several works both

1 chapters. I currently have with a colleague professor a
2 textbook that's to be published next month on "Leading
3 Policing In An Era Of Crisis And Reform."

4 Q. Have you been published in the areas of police use
5 of force before?

6 A. Uhm, I can't recall ever being published on use of
7 force, but I have, my current job, I'm a consultant and one of
8 my clients I'm appointed as part of the Federal Monitor Team
9 for a large Midwest city under a consent decree and part of
10 what I have to do is audit their use of force cases among many
11 other things. As you know, when a department is under consent
12 decree it's not because they're doing a great job and we are
13 responsible for auditing all the areas of compliance they have
14 to fall into.

15 Q. And as a police chief in numerous places, have you
16 ever had occasion to assess and analyze your own officers use
17 of force in various scenarios?

18 A. Yes. Yes. Of course. I kind of developed a
19 reputation as a reformer and so one of the things when I take
20 on a department was kind of assess where the agency was in
21 terms of its relationship with the community and that pivots
22 on transparency, use of force, having appropriate policies and
23 the like and I've terminated officers for excessive force.

24 Q. You have terminated officers for excessive force?

25 A. Yes.

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1 MR. L. SHEALEY: Your Honor, at this time I would
2 seek to admit Chief Myers as an expert in the areas of
3 police practice and policy as well as police use of
4 force.

5 MR. HUBBARD: No objection.

6 THE COURT: All right. Ladies and gentlemen, this
7 witness will be offered, qualified as a witness in the
8 area of police practices and policy and police use of
9 force and can give opinion testimony in that area. It
10 doesn't mean you have to accept his opinion, but it's
11 evidence for you to use in any way you see fit.
12 Proceed.

13 BY MR. L. SHEALEY:

14 Q. Chief Myers, I don't think we need to show you
15 pictures and review video and all that. Did I retain you in
16 this case?

17 A. Yes.

18 Q. And did I send you a lot of information about this
19 case?

20 A. Quite a bit.

21 Q. Did I send you a lot of information, documents,
22 photos, videos about the Log Creek crime scene?

23 A. Yes.

24 Q. Did I also send you video of the pool hall shooting
25 event?

1 A. Yes.

2 Q. In its entirety, correct?

3 A. Yes.

4 Q. Let's talk about the pool hall side of things. Now,
5 in that video I want to focus on after the shooting. There's,
6 do you agree there's a period of time about four or five
7 minutes where people are standing around? You agree with
8 that?

9 A. They're standing around and huddled over the
10 shooting victim. Yes.

11 Q. Okay. Now, at some point an officer, you can see an
12 officer respond initially in the video?

13 A. Yeah. I saw one police car arrive and maybe a
14 couple minutes later a second and then a third goes screaming
15 down the road. Yeah.

16 Q. Okay. And did you note in those videos where number
17 1 and 2 police car arrive, they don't initially go to Mr. Hall
18 at all in any shape or fashion?

19 A. I was really shocked by that. They made no effort
20 to assess his injuries, offer first aid or care. I mean, the
21 first responsibility on arrival of a shooting scene is to look
22 out for the victim. If they're already deceased, you can go
23 into the next important phase. If they're still alive, you
24 should take every life saving effort you can and I saw nothing
25 of that from the first two responding officers.

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1 Q. In watching that video and all the people pour out
2 and kind of hover around Mr. Hall and sit there, even once law
3 enforcement arrived, is that a proper police procedure? What
4 should have been done with those witnesses?

5 A. Well, the proper thing to do, as I said, would be to
6 immediately attend to the victim. At that time with all the
7 bystanders if you weren't engaged in CPR or something that
8 just took a hundred percent of your time, you should begin to
9 try and manage the crime scene. So crime scene management
10 involves isolating witnesses, getting the names of witnesses
11 and contact information, discouraging them from talking with
12 each other, hence the isolation and creating a safe zone. You
13 have all seen the yellow and black banner tape creating a zone
14 around the crime scene and eventually as more personnel show
15 up, somebody gets assigned with a log so you're logging every
16 one who goes in that crime scene, every police officer, no one
17 else should go in there and that way you can backtrack and
18 know with certainty who has been inside the crime scene.

19 Q. Is the purpose of securing a crime scene in that way
20 also to have witnesses not necessarily discuss the matter with
21 each other, is that to collect and preserve evidence?

22 A. Yes. In today's world where forensic science has
23 really advanced, something as simple as a hair fiber,
24 certainly a shell casings, if there is one, any kind of
25 weapon, blood, all that is important evidence that the crime

1 scene investigator needs to gather and run various tests on.

2 Q. Based on the review of the video and the file in the
3 case are you aware that any of those measures were taken to
4 preserve that scene?

5 A. I didn't see any of that.

6 Q. Okay. Now, have you been made aware by review of
7 the file that there was no physical gun recovered from that
8 pool hall crime scene?

9 A. Yes.

10 Q. Now, the fact that there's no gun physically
11 recovered from the pool hall scene, in your experience as a
12 long time police chief, is that indicative that, does that
13 mean necessarily that there was no gun used in that event?

14 MR. HUBBARD: Speculation.

15 MR. L. SHEALEY: He's an expert.

16 MR. HUBBARD: Speculation.

17 THE COURT: So noted. He can answer the question.

18 BY THE WITNESS:

19 A. Actually, that's not that uncommon and there's two
20 circumstances that it happens. Often in urban environments
21 where the police are, it's an officer involved shooting and a
22 large crowd will gather suddenly, if there's only one or two
23 officers on scene, they can't control the crowd, control the
24 crime scene and a gun can be removed. There's quite a famous
25 case in the District of Columbia where a detective shot a

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1 teenager who the detective claimed shot at him first with a
2 .32. No .32 was found at the scene. The next day the mayor
3 stands next to the victim's family saying we're gonna get to
4 the bottom of this. Then they ran ShotSpotter which is a shot
5 detection company and they were able to definitively show that
6 a .32 caliber gunshot went off prior to the officer's larger
7 caliber and it exonerated the officer in that case. The
8 second time it happened so is when it's not necessarily an
9 officer involved shooting, but people who are well known to
10 the victim want to make the scene look good so they can pull a
11 gun and get it out of there and I don't know how often that
12 happens. The first scenario happens more often.

13 BY MR. L. SHEALEY:

14 Q. Okay. Understood. So that's not uncommon when you
15 have a shooting scene particularly if the scene is not
16 preserved?

17 A. Yes.

18 Q. Now, I want to turn your attention to the second
19 side of this case. And you've reviewed documents and dashcam
20 video and everything else that I provided you. Now, we're now
21 thinking about, I wanted you to turn your attention to Officer
22 Florida's mindset as he is pursuing what he would know at that
23 time as a suspect wanted for a shooting event of some sort at
24 the pool hall, right? And is it fair to say that as we step
25 into the shoes of an officer and analyze that officer's

1 decision making, is it fair to say that it's on a spectrum of
2 proportionality?

3 A. Proportionality is always a factor. It's certainly
4 is a factor in use of force, necessity, proportionality and
5 objective reasonableness, but in overall tactics I would think
6 proportionality is part of the training.

7 Q. Let me ask you this question, it's fairly blunt.
8 Just because an officer is responding to what might be a
9 dangerous situation or a shooting suspect, does that mean that
10 they get to shoot that person when they see them?

11 A. Not unless, under the law, not unless there's an
12 imminent threat that the officer can articulate.

13 Q. Okay. But it might give them a sense of heightened
14 alertness or awareness based on their training knowing that
15 they might be dealing with someone armed versus a speeding
16 ticket or something like that?

17 A. As I analyzed the mechanics or the tactics used in
18 this case, a single unit behind a potential felon that they
19 want to take into custody, you're trained to not necessarily
20 try and pull that car over until you get a backup there so
21 staying back a safe distance, observing, he didn't turn his
22 lights and siren on, I think that probably was a good tactic
23 because he didn't - that can do one of two things, either you
24 get involved in a chase and you're pushing the person or it
25 forces the issue, the person pulls right over and all of a

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1 sudden you're in a high risk stop all by yourself so I think
2 that was a good decision.

3 Q. Okay. But if Officer Florida let's say had run up
4 behind Mr. Jones and tried to run him off the road, would that
5 be a proportionate response to following a suspect wanted in a
6 shooting?

7 A. It would violate all the training that says keep
8 back at a safe distance until you have adequate backup to make
9 that contact with the offender.

10 Q. Okay. Now, you've read the case file and you're
11 aware that Officer Florida has alleged that he saw my client
12 Mr. Jones back into this area and as he drove by, that
13 Mr. Jones had trained his rifle on him. You're aware of that
14 in the case file?

15 A. Yes.

16 Q. Now, you're also aware that Officer Florida at that
17 point says he speeds by, correct?

18 A. Yes.

19 Q. Now, if Mr. Jones had been pointing a rifle at him
20 at that point, would Officer Florida have been justified to
21 shoot Mr. Jones in that moment?

22 A. That meets the definition of imminent threat and I
23 believe he would be lawfully be authorized to use deadly force
24 at that moment.

25 Q. Okay. But you're aware from the case file that

1 Officer Florida did not, in fact, shoot Mr. Jones at that
2 point?

3 A. I think he probably exercised better judgment and
4 got himself out of harm's way if he was having contact like
5 that.

6 Q. Okay. Well, we know he sped this way prior to
7 shooting?

8 A. Right. Right.

9 Q. But we also know from further down the road that Mr.
10 Florida doesn't have a problem shooting his gun, right?

11 MR. HUBBARD: Your Honor, I object to that.

12 THE COURT: If you can rephrase, Mr. Shealey.

13 BY MR. L. SHEALEY:

14 Q. You're aware from the case file that Officer Florida
15 ultimately shoots his gun, right?

16 A. Yes.

17 Q. Okay. So let's talk about down the road. You're
18 aware that my client has per the case file backed into this
19 little clearing and that the State's theory is that he and per
20 Officer Florida's account has trained a rifle at Officer
21 Florida. You read that?

22 A. Yes.

23 Q. And that when Officer Florida drives into that
24 clearing, that my client shoots his rifle at him several
25 times. You've read that?

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1 A. Yes.

2 Q. Okay. Now, let's talk about that and use of force
3 and proportionality. Now, if my client, let's just say,
4 hadn't even fired a gun but had trained it at him, would
5 Officer Florida be justified in shooting immediately in
6 response to that?

7 A. In my opinion he would be because the pointing of a
8 deadly weapon at either a police officer or someone else
9 justifies that officer in using deadly force in an attempt to
10 mitigate the threat.

11 Q. Okay. But if on the flip side of that if Barry was
12 standing there and not holding a gun or pointing a gun in
13 any way, would Officer Florida be justified in shooting him
14 although he doesn't have a gun and isn't in imminent threat?

15 A. I think that would be an unlawful use of force.

16 Q. If that were the set up, that would be an unlawful
17 use of force?

18 A. Yes.

19 Q. Would that be an excessive use of force?

20 A. Yeah. Under the definition of *Graham v. Connor*, I
21 would say the first question is necessity. There is no
22 imminent threat if someone is not pointing a gun at you even
23 if you know that, or believe that previously they pointed a
24 gun at you. The minute that threat diminishes and until
25 another threat arises you can't just play catch up by using

1 deadly force from what happened down the road.

2 Q. So if Officer Florida believed that Barry Jones had
3 pointed a rifle at him down the road even though he didn't see
4 him with a rifle pointed in the moment that he came in that
5 clearing, that would not give him cause to start shooting at
6 Barry?

7 A. It would not.

8 Q. He would have to see a gun pointed at him in that
9 moment to start shooting at Barry; is that right?

10 A. I don't know that I would say he had to see a gun
11 pointing at him. I think if he saw a gun in your client's
12 hand, why would you wait for someone to raise it and point it
13 at you? You know, a police officer's reaction time is always
14 gonna take longer than a bad actors action time so if they're
15 armed at that moment, they do pose a threat. I wouldn't have
16 a problem with him shooting, but in the absence of a gun being
17 held, it's a bad shoot.

18 Q. Okay. And you're aware that Officer Florida, his
19 account is that he didn't shoot, he was shot at and only
20 returned fire when he stopped and got out?

21 A. Yes.

22 Q. Now, you've heard from the file that Officer Florida
23 didn't have a functional dash camera?

24 A. Yes.

25 Q. Is that good? Is that a good thing?

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1 A. It's a terrible thing.

2 Q. Why is that a terrible thing?

3 A. Well, look how much evidence we would have seen in
4 this case. It would have made the jury's job a lot easier if
5 there had been dashcam video or body worn video. The
6 equipment was installed by his employer and in his statement
7 he said it hadn't been working for a couple of months. All
8 the cops that ever worked for me would have had that car in
9 redline or deadline or whatever term the agency uses and say
10 give me a car with a working camera or I'm not taking this car
11 out. It's an officer safety device. It's an evidence device
12 and I can't believe it when two months and still wasn't
13 working.

14 Q. Okay. Now, you've also known from the file and
15 known from just testimony in court today that when CSI at the
16 end of the day collected Officer Florida's guns compared with
17 what he stated his gun was loaded with, that he was missing
18 two shell casings. Are you aware of that?

19 A. That CSI overlooked two shell casings.

20 Q. Well, they never found two shell casings.

21 A. Right.

22 Q. That he had shot six times per his gun count but
23 they only found four shell casings?

24 MR. HUBBARD: Your Honor, I object to the question.
25 It assumes facts that are really vague.

1 MR. L. SHEALEY: Your Honor, he's read the file,
2 it's completely in the file, and he's been sitting here
3 for the testimony.

4 MR. HUBBARD: If he wants to rephrase his question,
5 that would be fine, but to state it as fact, I object.

6 THE COURT: Very well. The witness can answer the
7 question based, based upon - answer the question as
8 posed.

9 BY MR. L. SHEALEY:

10 Q. You're aware we're missing two shell casings?

11 A. Yes.

12 Q. Now, as someone that has been a police chief for as
13 long as you have, is that an important thing to figure out
14 what in the world is going on when you're missing two shell
15 casings in an officer involved shooting?

16 A. CSI never should have left that scene until they
17 knew where every shell casing was. I had a big crime scene,
18 an active shooter incident at a church where people were
19 killed back in 2007 and the crime scene people worked 24 hours
20 to make sure that every single shell casing, the trajectory,
21 they had strings going all over that church to make sure that
22 everything was accounted for and that's what you do at a crime
23 scene.

24 Q. Now, you're aware from review of file that Officer
25 Florida was interviewed by SLED about a month later?

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1 A. Yes.

2 Q. With his attorney?

3 A. Yes, sir.

4 Q. Now, would that have been an appropriate time to
5 inquire vigorously of Officer Florida about that missing shell
6 casing?

7 A. It's logical if the crime scene analyst still hadn't
8 found it to pose the question to the officer, do you know what
9 happened to the missing shell casings?

10 Q. Okay. Did you see any questioning about that at all
11 in the statement or in the follow up questions?

12 A. No.

13 Q. Okay. And the fact that trajectory rods were not
14 entered into the vehicles at all to determine path of bullets,
15 does that seem like an acceptable thing in this case?

16 A. It's problematic especially since SLED came in and
17 did the investigation. SLED has all the bells and whistles
18 for investigating crime scenes. They can create 3D models,
19 they could have used lasers since it was night and done the
20 trajectory with lasers. They could have done it the old
21 fashion way with the string. The whole point is in an officer
22 involved shooting scenario or even in a garden variety
23 homicide, you want to account for every single projectile
24 fired. Where did it go? For example, the one on the gate,
25 they found that one. Good. They should. And it shows the

1 limitations that police officers have for accuracy, for
2 example, and that in a combat situation you're not gonna hit
3 your target a hundred percent of the time. How did they rule
4 out which tree a slug might have gone into, for example. I
5 mean, I was very disappointed that there were no trajectory
6 analysis.

7 Q. Okay. And again, just one more time because it's
8 important, if Barry Jones was standing unarmed in his doorway
9 when Officer Florida entered the clearing, would Officer
10 Florida have justification for shooting his gun at Barry at
11 that moment?

12 A. Not if he was unarmed.

13 Q. Okay. Would that be unlawful?

14 A. I believe it would be.

15 Q. Would it be excessive?

16 A. Definitely excessive.

17 MR. L. SHEALEY: Nothing further, chief.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MR. HUBBARD:

21 Q. A few questions, Mr. Myers. When you first looked
22 at that video at the pool room, you notice that officer that
23 pulled up and sat there?

24 A. Yes, sir.

25 Q. And sat there?

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1 A. Yeah. Well, he actually got out of the car.

2 Q. He's on his radio.

3 A. And a woman from the crowd around the victim walked
4 over and talked with him for a while.

5 Q. Are you aware that that agency isn't even involved
6 in this case?

7 A. No.

8 Q. Wouldn't change your opinion on what he should have
9 done?

10 A. Correct.

11 Q. But it wasn't Edgefield County Sheriff's Department.
12 I don't know if you knew that by reading the file.

13 A. I didn't, but you're right, he has an obligation in
14 assisting as a responding officer to attend to the victim
15 first.

16 Q. And I know you mentioned the yellow tape, but were
17 you aware too this being a .38, maybe yellow tape should be
18 there, maybe we should all agree to that, how you handle
19 witnesses, that's great in a perfect world, but you understand
20 there were no casings? It's a .38?

21 A. Right.

22 Q. There was no blood so no evidence there. The victim
23 was still there when law enforcement got there. Even if
24 things could have been done better in that regard at least we
25 can say certain things weren't lost, correct?

1 A. I don't know that there wasn't blood. When somebody
2 takes two rounds, typically they bleed.

3 Q. Well, we even had testimony from witnesses there and
4 body cam video bleeding is internal?

5 A. Okay.

6 Q. No exist wound. I didn't know if you saw that in
7 your files?

8 A. No.

9 Q. The victim is on his back, he bleeds out later that
10 night so we don't have any of that. So even if things could
11 have been done better in this scenario certainly vital things
12 that you might see in another scene were absent here?

13 A. Definitely they were absent.

14 Q. When I say absent, I'm talking about like casings
15 and blood, things like that?

16 A. Right. Right. Okay. So were the actions of the
17 officers absent.

18 Q. Sure. And you mentioned no gun being recovered.
19 The most common issue that you've seen with a gun disappearing
20 is officer involved shootings?

21 A. Well, in my experience most often.

22 Q. That's what I'm asking, your experience?

23 A. Yes.

24 Q. But you have no evidence that -- Obviously this
25 wasn't a police involved shooting at the pool room?

RICHARD MYERS - CROSS BY MR. HUBBARD

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1 A. Right.

2 Q. And you have no evidence that a gun did walk away in
3 this case?

4 A. I have no idea.

5 Q. Now, going to Log Creek, Sergeant Florida, you agree
6 when he got in behind the suspect Barry Jones, it was a good
7 idea that he didn't run up on him and that he kept his
8 distance? You agree that was a good idea?

9 A. If he kept his distance the entire time, it was a
10 good idea.

11 Q. And kept his lights off. He didn't try to --

12 A. Make a stop.

13 Q. -- do a felony stop?

14 A. Correct.

15 Q. One officer doing a felony stop is a disaster, would
16 you agree? Could be.

17 A. It has high probability of high risk to the
18 officer.

19 Q. And if an officer can give himself time to get
20 backup, that's the best decision to make?

21 A. Yes.

22 Q. And you would agree that's what happened here?

23 A. I believe so.

24 Q. So Sergeant Florida did good there?

25 A. If he maintained a distance, he did good.

1 Q. I know there's an allegation, but you also, I don't
2 know if you heard him testify?

3 A. No. I didn't.

4 Q. Okay. There's that allegation. That's it. When he
5 gets to the intersection of Log Creek and Pleasant Lane, you
6 mentioned that if he, in fact, did see Barry Jones standing
7 there with an AR-15 pointed at him, he didn't have to wait for
8 Mr. Jones to shoot at him, he could have used deadly force
9 there?

10 A. That's correct.

11 Q. If he saw Barry Jones with an AR-15 not even maybe
12 just held like this (indicating), he could have used deadly
13 force?

14 A. Yeah. It wouldn't have been as cut and dried --

15 Q. Sure.

16 A. -- but I think it would have been okay.

17 Q. Wouldn't one factor that you with your experience
18 would say, did the man with the AR-15 just come from a scene
19 where he just shot somebody?

20 A. Right. It's the totality and that would certainly
21 be a factor.

22 Q. And Sergeant Florida drove by him and used no deadly
23 force?

24 A. Yes.

25 Q. That was good?

RICHARD MYERS - CROSS BY MR. HUBBARD

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1 A. I think it was the safer thing to do.

2 Q. Very safe. And then when he drove down the road and
3 obviously there's a dispute who fired first, but if he drove
4 down Log Creek and didn't get fired upon and again saw a man
5 aiming a AR-15 at him, if he got out and fired first, he'd be
6 justified?

7 A. I believe so.

8 Q. And if he was fired upon, he would absolutely be
9 justified?

10 A. Of course.

11 Q. Now, you mentioned Florida's dashcam. You
12 understand he did report that? It's in the file where he
13 reported that to his supervisors?

14 A. Yes.

15 Q. In fact, the assistant chief of, or the deputy chief
16 of Edgefield --

17 A. Sheriff's Office.

18 Q. Yeah, Sheriff's department. It's late. I'm having
19 a hard time talking. So he did what he could do, right?

20 A. Reporting it is a good thing, but after two months
21 why was he still driving that car?

22 Q. Well, you understand this is an agency where not all
23 cars even have those, and you know a man risks his job if he
24 doesn't get on the road, so should we put the onus on the
25 officer or on supervisors?

1 A. I would call that a policy failure.

2 Q. Right. Supervisors run policy, correct?

3 A. Yes.

4 Q. All right. So that was a failure and you understand
5 that was a prior administration. I don't know if you knew
6 that.

7 A. No.

8 Q. Okay. But certainly nothing that Officer Florida or
9 Sergeant Florida should be penalized for?

10 A. Well, he is the supervisor if he's the sergeant.

11 Q. For his vehicle when he reports up the chain. If he
12 makes sure his people have the dashcams and he takes the lone
13 car, you can't criticize him for that, the car without it?

14 A. My criticism is that the agency should have fixed it
15 and he should have exercised his discretion to say I don't
16 feel safe taking this car out. You know, if he reported the
17 brakes had failed, would you expect him to drive the car with
18 no brakes?

19 Q. Certainly, but there are a lot of police cars
20 driving around in this world right now with no dashcam, but
21 all of them have brakes?

22 A. Let's hope.

23 Q. Okay. Now, missing shell casings. That's what the
24 defense has said, there's missing shell casings, but you
25 understand from what you've read that's just an allegation

RICHARD MYERS - CROSS BY MR. HUBBARD

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1 that there are missing shell casings.

2 A. I think the CSI report, I don't have it in front of
3 me, my recollection is they totaled up the number of shots and
4 they were short with the number of shell casings.

5 Q. But you could agree that if his gun wasn't fully
6 loaded even though he reported it was, that would also account
7 for it. There's no casings out on Log Creek. It might be an
8 officer failed to maintain his gun fully loaded and reported
9 it fully loaded when it wasn't. That could be the case?

10 A. Always a possibility. He's probably not trained to
11 do that but...

12 Q. Sure. But it happens. Not should have, but it
13 happens, right?

14 A. There's always potential of human failure.

15 Q. And were you aware that when we talk about locating
16 casings out on Log Creek, they actually, SLED actually brought
17 a metal detector out there to assist to make sure that they
18 got everything? Were you aware of that?

19 A. No. But it makes sense.

20 MR. HUBBARD: It does. I believe that's all I've
21 got for you, Mr. Myers. Thank you.

22 THE COURT: Redirect.

23 MR. L. SHEALEY: Ever so briefly.

24 REDIRECT EXAMINATION

25 BY MR. L. SHEALEY:

1 Q. I think one of the reasons that you suggested about
2 how guns could go missing from a scene is sympathetic victim,
3 people sympathetic to a victim?

4 A. Yes.

5 Q. We've talked about Mr. Hubbard's critique of Officer
6 Florida's driving in regarding to a felony stop, and you've
7 said, you agreed that if he's keeping a safe distance, then
8 that would be proper?

9 A. Yes.

10 Q. But we would know that whether he was keeping a safe
11 distance or whether he was running up on Barry if he had a
12 functional in car camera, wouldn't we?

13 A. We would indeed.

14 Q. And you've already expressed your feelings on how
15 that is the equivalent of driving a car with no brakes?

16 A. Yes.

17 Q. Now, Officer Kathmann, you've read his file, he
18 actually bought his own camera, his own dash camera, right?

19 A. Yes.

20 Q. That is how important it was to him?

21 A. Commendable to him.

22 Q. I guess if he can do that, then Officer Florida
23 could have done that?

24 MR. HUBBARD: Objection, Your Honor. Objection.

25 MR. L. SHEALEY: He's an expert.

RICHARD MYERS - REDIRECT BY MR. L. SHEALEY

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1 THE COURT: Well, let me just say --

2 MR. L. SHEALEY: I've got one more question.

3 MR. HUBBARD: I'll tell you what. I'll let the
4 question go and I'll have a re-up.

5 THE COURT: Thank you.

6 BY MR. L. SHEALEY:

7 Q. Now, this is important. We've heard again this
8 assertion from the State that maybe Officer Florida had a
9 slack gun, maybe he didn't know the exact count of his
10 magazine, right? You just heard that?

11 A. Yes.

12 Q. Again, you've read the file, right?

13 A. Yes.

14 Q. You've read his typed prepared statement that he
15 made a month after this incident with his lawyer, right?

16 A. Yes.

17 Q. That specifically says in exact detail that he had
18 15 plus one in the chamber as is his practice, correct?

19 A. Yes.

20 Q. And if an officer makes it his practice, that's what
21 he does on a daily basis, right?

22 A. I would say in my experience the one thing cops are
23 gonna know for certainty is if they have a fully loaded
24 weapon.

25 Q. All right. And you've read the file that reports

1 that his magazine was returned with nine plus one in the
2 chamber so that's 10, right?

3 A. Yes.

4 Q. That's based on Florida's own words and SLED's own
5 investigation?

6 A. And the capacity of the weapon.

7 Q. Correct. Which again leaves us with six fired
8 rounds that night, correct?

9 MR. HUBBARD: Objection to that. That again is a
10 conclusion.

11 MR. L. SHEALEY: Math is not a conclusion, your
12 Honor.

13 THE COURT: Stop. Overruled. Address it on
14 recross.

15 BY MR. L. SHEALEY:

16 Q. 16 minus 10, what is your conclusion on that?

17 A. If the evidence showed that there were six rounds
18 fired, there should be six shell casings on that scene.

19 Q. But you're aware that Agent Tankersley, the CSI only
20 found four?

21 A. Correct.

22 Q. Which means how many are we missing?

23 A. Two.

24 MR. L. SHEALEY: Thank you.

25 THE COURT: Recross.

RICHARD MYERS - RECROSS BY MR. HUBBARD

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1 RECROSS EXAMINATION

2 BY MR. HUBBARD:

3 Q. Which could have been live rounds that were never
4 fired because Sergeant Florida never put them in his weapon?

5 A. Potentially.

6 Q. Okay. And were you aware that Edgefield County
7 prohibits officers from buying their own dashcams, at least
8 they did at that time?

9 A. Wouldn't surprise me.

10 MR. HUBBARD: Thank you.

11 THE COURT: The witness is excused. Counsel,
12 briefly.

13 (Side bar off the record.)

14 THE COURT: All right. Ladies and gentlemen, first
15 of all, thank you for your patience. Appreciate you
16 hanging round for the last witness for the day. The good
17 news is you don't have to come tomorrow and you don't
18 have to come Sunday. But we will be here Monday morning
19 at 8:45 and we'll pick up and we will finish up Monday.
20 Thank you very much. Have a good weekend. Do not
21 discuss the case or do any independent research. Thank
22 you again for your patience. See you on Monday.

23 (Whereupon, the jury was released for the evening at
24 6:00 p.m.)

25 THE COURT: Okay. We'll be in recess until 8:45,

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1 MR. L. SHEALEY: The defense calls Scott Ballard.

2 Thereupon,

3 SCOTT ALAN BALLARD

4 after having been first duly sworn, testified as follows,

5 THE CLERK: Please have a seat. Once you're seated,
6 state your full name spelling your last please.

7 THE WITNESS: Scott Alan Ballard, B-a-l-l-a-r-d.

8 DIRECT EXAMINATION

9 BY MR. L. SHEALEY:

10 Q. Good morning, Mr. Ballard.

11 A. Good morning.

12 Q. Real quick, Mr. Ballard, how old are you?

13 A. I'm sorry.

14 Q. How old are you?

15 A. I'm 57.

16 Q. Okay. You graduated college?

17 A. Yes. University of California, Log Angeles.

18 Q. What did you study?

19 A. Criminal psychology.

20 Q. All right. Now, have you ever served in the
21 military in any capacity?

22 A. Six years in the Navy.

23 Q. Okay. What did you do for the Navy?

24 A. I worked for Navy Intelligence.

25 Q. Okay. After the military, what did you do next

SCOTT BALLARD - DIRECT BY MR. L. SHEALEY

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1 professionally?

2 A. When I left the military, I went to work for a
3 company called G7 International. It's a protection company
4 that recruited, trained and installed private protection
5 personnel, contractors around the world. It is a family owned
6 company.

7 Q. Okay. And have you ever worked for any firearms
8 manufacturers?

9 A. I have contracted for Glock, Smith and Wesson, and I
10 was an employee for Sig Sauer for seven years.

11 Q. Okay. Tell us what you did at Sig Sauer?

12 A. At Sig Sauer I was a senior instructor and I
13 instructed everything in firearms related to use, use of
14 force, safe handling from a basic level of 101 kind of level,
15 what we called it, all the way up to advanced and long range
16 precision rifle. Also, I was a master armorer for Sig and an
17 armorer for many other brands.

18 Q. What does it mean to be a master armorer?

19 A. It means that I trained other armorers to teach the
20 classes as well as I can work on any of the guns. I'm
21 certified on every gun and make.

22 Q. Okay. So where have you worked after Sig?

23 A. I worked for myself as a contractor. I sub out to
24 do use of force training and instruction as well as I work for
25 a company of out Chesterfield called Armed Citizen Defensive

1 Solutions and I instructed for them as well.

2 Q. What do you instruct?

3 A. Primarily there it's use of force, simunitions based
4 scenario based training, so it's role playing kind of, but
5 it's with marking cartridges that are in inert firearms, they
6 can't fire live rounds, and they fire a paint coded marking
7 cartridge and we use that to train force on force to teach
8 people about use of force, decision making, everything that's
9 necessary for them to be able to make proper decisions when
10 faced with a stressful situation.

11 Q. Okay. So you are a use of force instructor, is that
12 what you're saying?

13 A. Yeah. Certified by Sig Sauer and also by
14 Simunitions which is the parent company, it's ATK.
15 Simunitions is the company that makes the equipment. They
16 won't sell the equipment unless you're a certified
17 instructor.

18 Q. And those are Scott Ballard's ideas of what's
19 appropriate use of force. Those are regulated curriculum?

20 A. Uhm, Yeah. Well, what we - it's the combination of
21 many things. So there's the United States Concealed Carry
22 Association, there's the National Rifle Association, there's
23 Simunitions, there's also the IALEIA which is the
24 International Association of Law Enforcement Instructors, all
25 of that come together where we work off of what we've created

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1 as the best standards and practices, so it's the best use of
2 what's available at the time with regards to the equipment but
3 also with regards to actual use of force, trying to get people
4 to understand that if we're not all working from the same
5 page, from that same, you know, best practices, then, you
6 know, a lot of people get mixed messages.

7 Q. Okay. So you train citizens on use of force
8 techniques and practices?

9 A. Yes.

10 Q. Have you ever trained law enforcement on use of
11 force techniques and practices?

12 A. Yes. I did quite a bit of that at Sig Sauer. In
13 addition to Sig Sauer I was assigned to work for the State
14 Department to be the contractor. Sig Sauer sold a lot of
15 firearms to Columbia and Peru. I was assigned to those two
16 countries to teach them use of force as well as how to use the
17 transition training and I ended up writing the use of force
18 guidelines for both countries working with their
19 commandants.

20 Q. Teaching their police forces use of force?

21 A. Yes, sir. The national police.

22 MR. L. SHEALEY: Okay. Your Honor, at this time I
23 would offer Mr. Ballard as an expert in use of force as
24 well as firearms.

25 THE COURT: Without objection?

1 MR. McNAIR: No objection, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, this
3 witness is qualified as an expert witness in the area of
4 use of force and firearms and can give opinion testimony
5 in that area. It doesn't mean you have to accept the
6 opinion, but it's evidence for you to use any way you see
7 fit.

8 BY MR. L. SHEALEY:

9 Q. Now, Mr. Ballard, I retrained you in this case,
10 correct?

11 A. Yes.

12 Q. And did I send you a lot of information in this
13 case?

14 A. Quite a bit. Yes.

15 Q. Particularly did I send you surveillance footage
16 concerning a shooting incident at a pool hall in this case?

17 A. Yes, sir. Quite a bit of it, specifically the front
18 area of the pool hall, the parking area.

19 Q. All right. And you had a chance to review that?

20 A. Yes.

21 Q. And you understand that Mr. Jones is on trial here
22 concerning that shooting as one of the allegations, right?

23 A. Yes, sir.

24 Q. And would you agree that the video is almost ten
25 minutes long in its entirety I guess from the point when one

SCOTT BALLARD - DIRECT BY MR. L. SHEALEY

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1 subject in a gray shirt comes out to my client's car, would
2 you agree?

3 A. Yes, sir.

4 Q. Now, having watched that video and as a use of force
5 instructor, what, if anything, would you note about the way
6 that scene unfolded?

7 A. Well, what I noted was that there was a large man
8 acting in a menacing manner towards the vehicle, towards the
9 window of the vehicle at the driver's side door and I noted
10 that he seemed agitated. He certainly was not acting in a
11 calm demeanor and it could cause for me if I were in that
12 situation to fear, you know, that this might escalate and I
13 would be concerned about looking for a way out of that
14 situation.

15 Q. Okay. So that was just based on your take of body
16 language?

17 A. Yeah. I'm just looking strictly at the behavior.
18 There's a lot of pre-fight indicators in there.

19 MR. McNAIR: Your Honor, I'm gonna object at this
20 point to speculation. He's trying to interpret body
21 language. He's not qualified as an expert in that field.

22 THE COURT: Well, he testified as to the manner in
23 which the video shows the person's behavior as to what
24 was in his - as far as what he witnessed with his own
25 eyes. He can testify to that. Let's not go inside

1 between anyone's ears.

2 MR. L. SHEALEY: Sure.

3 BY MR. L. SHEALEY:

4 Q. But, Mr. Ballard, you've testified that you are a
5 use of force instructor with Simunitions?

6 A. Yes, sir.

7 Q. And I think you said that's where you set up advance
8 classes where people actually have not just paint ball but you
9 set up live movement instruction to decide when someone is
10 considered a threat or not?

11 A. Yes. The scenarios in that, it's scenario based
12 training and we have professional role players and that
13 scenario base training is taken from real life accounts,
14 things that we know that have happened, you know, either after
15 actual reports or police reports, media news outlets, we take
16 all of the information we can get and we recreate type
17 scenarios like that because it's most likely what we expect
18 our students to see.

19 Q. All right. And when someone, you have a student and
20 you're teaching them how to prepare for themselves in the real
21 world as let's just say a concealed weapons permit holder, do
22 you teach them, instruct them to look for cues of aggression,
23 agitation, furtive movements for example?

24 A. Exactly. We're telling them to look for pre-fight
25 indicators, and this is part of, you know, part of the basic

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1 instinct of any person is, you know, protection, self
2 preservation and when that self preservation kicks in in the
3 average person, you know, they're going to start to pay closer
4 attention to what they perceive to be the threat.

5 Q. Okay. Now, as you teach your students, do you teach
6 them that what matters is whether someone who might be a would
7 be attacker, has a greater size and strength, is that a factor
8 that has to be accounted for?

9 A. Well, absolutely. It falls under the category of
10 disparity of force. When we teach disparity of force, that
11 premise is in there because we're talking about a situation
12 where somebody my size, for example, attacking somebody maybe
13 a hundred pounds, so that creates a disparity of force between
14 those two individuals, whereas if that smaller person were
15 trapped, especially by a larger person, the larger person
16 could inflict great bodily injury or death.

17 Q. Okay. And in this case particularly during the
18 approximate nine or ten minute window when the larger man in a
19 gray shirt is at my client's car, did you ever notice my
20 client get out of his car --

21 A. I did not.

22 Q. -- at that point?

23 A. I did notice him at the end.

24 Q. Right. Is that what you mean by disparity of force
25 and being trapped?

1 A. Well, the person in the vehicle, until I saw who it
2 was, saw him leave, you're client leave his vehicle, I just
3 assumed there was a person inside that vehicle. The person in
4 the vehicle was trapped not necessarily by a disparity of
5 force, but an inability to escape or evade this large person
6 who was at the door. Any attempt to open the door would be
7 shut back on him or he could have been entrapped in the car
8 with a large person falling in or pushing in on top of them
9 trapping them in the seat.

10 Q. Now, was there a point in time when the actions of
11 the person outside the car to you seemed to enhance their
12 threat ability?

13 A. What I saw was what we teach and is oftentimes
14 referred to as a furtive movement, and what I saw was the left
15 hand of the person outside of the car reach across in what
16 appears to be a very practiced draw stroke where he reaches
17 across and lifts up his shirt. It's a very smooth movement
18 that only comes with a lot of practice. Is it possible that
19 he got lucky and did it perfectly? Yeah. But we tend not to
20 rely on luck. It was a very smooth furtive movement where it
21 I looked like he was exposing.

22 Q. A smooth movement that you said seemed practiced?

23 A. Yes.

24 Q. As if it wasn't the first time that that person had
25 done that before?

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1 A. Yeah. It looked like something that we would teach
2 in class on a pretty regular basis especially when a person is
3 carrying off of their hip and carrying it forward in an
4 appendix carry position which is a very popular method of
5 carrying for concealed weapons for civilians these days.

6 Q. I want to draw your attention to this video which
7 you've been provided as part of this analysis. Does that look
8 familiar to you?

9 A. Yes. It does.

10 Q. Now, that object in his hands, when you teach a
11 student when they see some object being moved around in
12 someone's hands, what is your teaching to a student on that in
13 this type of scenario?

14 A. Well, what we teach students is to watch the hands
15 because the hands are death. It's the same thing as law
16 enforcement is taught. You have to watch the hands. The
17 first thing a police officer asks is show me your hands. And
18 it's the same things. Obviously a civilian can't demand that,
19 but a civilian can try to watch that for something in the
20 hands, something moving around, some type of object especially
21 for a person who feels threatened would elevate their sense of
22 self preservation.

23 Q. We're gonna continue on with this video.

24 (Playing video.)

25 BY MR. L. SHEALEY:

1 Q. Is that the smooth practiced drawing motion that you
2 discussed?

3 A. Yeah. Because he comes all the way across his body
4 and pulls up the appropriate side of his shirt. He doesn't
5 just go to the middle. He reaches all the way across to make
6 sure he exposes what he's trying to reach for.

7 Q. Now, if you're a right hand shooter and you're a
8 concealed weapons carrier meaning your gun is in your
9 waistband or something like that, would you need traditionally
10 one hand to remove the clothing, the other hand to reach your
11 weapon?

12 A. With this particular carry style where you have an
13 open shirt that's closed to the front, you can't do the
14 typical sweeping of the jacket so what he has to do is he has
15 to reach across and lift it up. Now, the standard carry
16 position for most people is at three o'clock or behind on the
17 hip except for nowadays it's very popular to carry in the
18 appendix position, and we reach over, we lift up the
19 concealment garments, so sweatshirts, T-shirts, button up
20 shirts like that, I dress similar like that, casually all the
21 time when I work button down shirt and that's how I draw my
22 sidearm.

23 Q. So in your classes how do you teach your students to
24 think about that type of movement?

25 A. In that particular case when they see a movement

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1 like that, that's a furtive movement combined with a pre-fight
2 indicators, menacing behavior, large gestures, what appears to
3 be some type of an aggression, when we combine all those
4 together, now we're starting to add up to fearing for one's
5 life, and then when we see a brandishing type motion, you
6 know, to me I would instantly go into a situation and I would
7 teach my students to instantly go into this is a fight or
8 flight moment.

9 Q. And you said you've taught police officers before on
10 use of force?

11 A. Yes.

12 Q. And what would you teach them about that in dealing
13 with a suspect?

14 A. For a police officer to have gotten that far, then
15 they're behind on the curve. They are way behind the curve.
16 The fact that they are trapped in their car, but in addition
17 to that, you know, something like that, that furtive movement,
18 people get shot for that all the time. Police officers have a
19 right to defend themselves just like civilians do. That
20 particular motion there, you know, most of the police officers
21 I've taught as long as their minds are prepared would be
22 shooting through the windshield.

23 Q. I want to draw your attention towards kind of the
24 end of this video.

25 (Playing video.)

1 BY MR. L. SHEALEY:

2 Q. Now, you recall after the very long conversation
3 with the furtive movement at the window at some point do you
4 recall the man in the gray shirt walking away?

5 A. Yes. He's breaking contact.

6 Q. Now, what do you see there when he quickly turns on
7 his heels and goes back towards the car?

8 A. So what I see here, I see an assailant who has
9 broken contact. He's moving away so the person in the car can
10 start to relax a little bit, but they still have to stay on.
11 They still have to stay tuned in and they still have to keep
12 their eyes on the target and they have to keep their eyes on
13 what they view as the threat so when he turns around, he's now
14 initiating another attack or another engagement. He had the
15 opportunity to walk away. He chose to turn around and go back
16 so this to me reaffirms everything that I've already seen
17 which there's intent, the summation of this man's actions so
18 far shows that he intends to do something.

19 MR. McNAIR: Objection. Speculation as to
20 somebody's state of mind.

21 MR. L. SHEALEY: Your Honor, I think he's talking
22 about the intent of his actions.

23 THE COURT: Why don't you redirect the question.
24 Clarify that please.

25 BY MR. L. SHEALEY:

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1 Q. So what do you teach your students when an assailant
2 decides to re-engage after disengaging? Is that a dangerous
3 situation?

4 A. We tend to teach them to take that much more
5 seriously. The opportunity to disengage was given, they
6 disengaged, but they turned around an re-engaged, that
7 heightens that threat level.

8 Q. Now, Mr. Jones who is sitting in his car this entire
9 time, would you expect him or is he required in a use of force
10 scenario to throw his car in reverse and just get out of
11 there, let's say, while --

12 MR. McNAIR: Objection. Asking for a legal
13 opinion.

14 MR. L. SHEALEY: I'm not asking for a legal opinion.
15 I'm asking for his teaching and training about whether
16 someone can throw a car in reverse or not with a man with
17 a gun. I can rephrase.

18 THE COURT: Yeah. Please do so. Sustained.
19 Rephrase.

20 BY MR. L. SHEALEY:

21 Q. When you've got a menacing threat as you've
22 described and a furtive movement with a smooth brandishing,
23 would you expect and do you teach your students to turn their
24 back on that threat?

25 A. Never.

1 Q. Okay. So would you expect, I mean, you wouldn't
2 expect - at what point can a student that you're teaching turn
3 their back on a threat?

4 A. When the threat is either gone or is no longer
5 posing a threat so their actions change, behaviors change,
6 they disengage and move away.

7 Q. Okay. Now, I'm gonna show you, I'll start this
8 video again with re-engaging.

9 (Playing video.)

10 BY MR. L. SHEALEY:

11 Q. Now, the time that Barry opens his door there, do
12 you see that Mr. Hall is past that post?

13 A. Yeah. He's turned and he's squared back off towards
14 Mr. Jones.

15 Q. As a use of force instructor, what do you make of
16 the idea that someone is re-engaging and has squared off on
17 their subject?

18 A. It's a pre-fight indicator. It shows intent, that
19 he is intending to come towards him. It's what we see with
20 fights all the time. If you square off on somebody, it's part
21 of the primal posturing, that behavior to try to intimidate so
22 when I see him turn and square off, I'm seeing a very serious
23 person with intent.

24 Q. Okay. Have you ever heard of the 21 foot rule?

25 A. Yeah. The 21 foot guideline was created by Sergeant

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1 Dennis Tueller, by the Salt Lake City Metro, or the Salt Lake
2 City Unified now, and what the Tueller Drill or the Tueller
3 Rule was designed for is that a law enforcement officer with
4 an open carry standard retention holster could not draw and
5 fire on a charging assailant before that assailant could close
6 21 feet and it's since been adapted more to 30 feet when it
7 comes to concealed carry as well as for civilian use which is
8 generally always concealed carry.

9 Q. Okay. Just so the jury can understand, so this rule
10 or guideline was developed by law enforcement when dealing,
11 with engaging someone who's an armed suspect?

12 A. Armed in some manner. Yes.

13 Q. Whether it's a knife or a gun?

14 A. Yes. A weapon of some sort.

15 Q. And the rule, help me if I'm misunderstanding this,
16 but the law enforcement officer would be allowed to engage
17 that threat within that 21 feet. And why is 21 feet
18 important?

19 A. Because that's the distance that the assailant could
20 close and strike before the officer could draw his weapon and
21 fire accurately.

22 Q. And that's a trained law enforcement officer?

23 A. That's a trained law enforcement officer with an
24 open carry level two, the standard which you see most police
25 officers carry a retention holster, and again, it's expanded

1 out over time because that rule is pretty old. That guideline
2 was developed many years ago.

3 Q. Okay. And for someone who's not a highly trained
4 police officer but is just learning and getting their
5 concealed weapons permit, what is the teaching on that?

6 A. We tell people 30 feet. Again, we're talking about
7 an average human, you know. We're not talking about track
8 stars versus somebody with some type of disability. We're
9 talking about the average human can close that 30 feet before
10 somebody can get their weapon out.

11 Q. The fact that Barry steps out of his car only at
12 this point once Mr. Hall has gone past this post, would you
13 say that's about four or five feet?

14 A. Approximately. Yeah.

15 Q. So is that in keeping with the rule within the 21
16 foot rule?

17 A. Well, he's actually, Mr. Jones is way behind the
18 curve there so, yes, he's in trouble. As soon as Mr. Hall
19 cleared the front of the car where I believe he paused for
20 quite a while, and by quite a while, about five seconds, he
21 turns that corner, goes around that orange cone and that
22 yellow post and squares off, Mr. Jones is well inside of that
23 21 foot rule, he's in trouble.

24 Q. So your teaching would have been to take action
25 quicker?

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1 A. Yes.

2 Q. When you teach your students how to deal with an
3 armed threat or disparity of force, is it your teaching that
4 you have to wait until the assailant has their hands around
5 your neck before you can do anything? What is your teaching
6 on that?

7 A. Well, that's the 21 foot or 30 feet. We can't wait
8 whether we're armed law enforcement or private responsible
9 armed citizen, we can't wait for a threat to complete its act
10 before we act because then there's no reason for self defense.
11 We've already experienced that grief, bodily injury or death,
12 that damage, so we have to act in order to stop that person
13 from doing what we reasonably would believe they are going to
14 be doing.

15 Q. Now, I want to turn your attention to the other
16 scene in this case and I have prepared a couple short clips of
17 evidence that's already in evidence that you've reviewed. Do
18 you recognize this disk?

19 A. Yes.

20 MR. L. SHEALEY: We're talking about Officer
21 Densmore's bodycam and Officer Kathmann's dashcam. At
22 this time I would seek to introduce defendant's number
23 118 into evidence. These are shortened clips, about four
24 second clips of previously admitted evidence for
25 comparison purposes.

1 THE COURT: Okay. So those are shortened clips of
2 what's already in evidence?

3 MR. L. SHEALEY: Yes, sir.

4 MR. McNAIR: I haven't seen it, but I don't think I
5 have any objection to that.

6 THE COURT: Assuming they are what they are, that's
7 defense exhibit what?

8 MR. L. SHEALEY: 118.

9 THE COURT: Defendant's Exhibit 118 is admitted into
10 evidence. Are the clips enhanced?

11 MR. L. SHEALEY: They are not enhanced. They are
12 just straight from discovery.

13 THE COURT: All right. Very well.

14 BY MR. L. SHEALEY:

15 Q. Mr. Ballard, obviously I've had you review the
16 dashcam footage from Officer Florida at the Log Creek Road
17 incident extensively, correct?

18 A. I don't believe I saw Officer Florida.

19 Q. I'm sorry. Kathmann. The only dashcam video that
20 we have.

21 A. Yes. I've seen Kathmann's dashcam.

22 Q. And I want to show you these two shorter clips
23 first. This is, I'm playing you one that you reviewed of just
24 the initial shots. Tell me if you recognize this.

25 (Playing video.)

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1 BY MR. L. SHEALEY:

2 Q. Do you recognize that?

3 A. Yes. I do.

4 Q. Now, before we move any further, do you have an
5 opinion on what caliber guns we are hearing in those initial
6 shots?

7 A. Those first three shots that I'm hearing, I'm
8 hearing a medium caliber handgun.

9 Q. A medium caliber handgun?

10 A. Yes.

11 Q. And you're aware that the task you're asked to
12 determine here in your expert opinion, we're talking about a
13 medium caliber handgun or a assault rifle firing a .223?

14 A. Yes.

15 Q. As an expert in firearms, describe the differences
16 in sound and why just briefly you would expect to hear these
17 differences in sound?

18 A. Well, when we're talking about medium caliber
19 handgun rounds, we're talking about something in the 9
20 millimeter, .357 Magnum, .357 Sig, a .45, ACP, even a .40
21 Smith and Wesson category. There's quite a few rounds in
22 there, but they all sound about the same way. Magnum rounds
23 sound a little bit louder, but they all sound very similar.
24 You've got a large cross section. For example in a .40
25 caliber round it's 4/10th of an inch and it's traveling,

1 general law enforcement rounds between 1130 and maybe 1300
2 feet per second. I know it sounds fast, but it's relatively
3 slow in comparison. Ballistically it's slow it's slow and
4 it's a large cross section that's pushing the air out of the
5 way. It generally is loaded with about five grains of powder.
6 It's very small being discharged by a small pistol primer
7 which again is a low power so what you hear is a sub velocity.
8 It does break the speed of sound, but not really in a manner
9 that is prolonged, you know, in comparison to high velocity
10 rifle round so that a .40 caliber or any medium caliber round,
11 a medium caliber handgun round is gonna sound more, it's gonna
12 be a lower push because it is literally pushing. As the
13 bullet moves through the air, it's pushing the air out of the
14 way and that's where we get that sound. Now, the low powder
15 charge gives a lower report compared to a rifle. It doesn't
16 have a large crack. It's got more of a thump to it, more of a
17 thud, and people describe it as a low boom and that has a
18 tendency to be confusing because we generally describe shotgun
19 rounds as a low boom, but this has more of a thud type sound
20 to it. You do hear it. It does impact on the ear, but you
21 don't hear all of the extraneous noise that you hear with a
22 high velocity round.

23 Q. All right. Describe this high velocity round we're
24 gonna hear in this case. Why does it sound different? How
25 does it sound different?

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1 A. Well, in this particular case the .223 round based
2 on what I observed in the pictures and the road, it's a Speer
3 gold dot soft point .223 Remington bullet. It's a longer
4 case. It's a 45 millimeter long case and it has an extremely
5 large powder charge behind it. The bullet itself is only,
6 it's less than a quarter of an inch, it's .22, and it has a
7 large powder charge behind it. It's being charged with a
8 small rifle primer which is a larger charge. Now, in addition
9 to that, when that bullet is fired, it leaves the muzzle
10 according to the manufacturer at 3000 feet per second. This
11 is where we get that difference 1300 feet or 1130 is
12 relatively slow. So now you've got a bullet coming out of the
13 muzzle that is hypersonic and as it starts to go away from the
14 muzzle, all of the gases from that firing, from that
15 discharge, so the propellant ignites inside the case builds up
16 pressure, seals the chamber shut and pushes the bullet through
17 the rifling down the barrel, all of those gases that are
18 pushing that bullet have to escape. A few of them escape up
19 through a gas tube in order to cycle the action, but the rest
20 of them come out of the muzzle so you get a really loud blast
21 and it's kind of a crack because that crack is the bullet
22 itself, small bullet pushing the air out of way very, very
23 quickly so you get that sound. As the bullet leaves and moves
24 away you start to get kind of a doppler effect where you get
25 the degrading sound as it gets further away, but you'll hear

1 that doppler effect. It's very much different between having
2 an F-35 go by at mach compared to a big large cargo plane
3 going by slow.

4 Q. When you talk about the doppler effect, I mean, just
5 for laymen's terms you've got this crack and is that the
6 (indicating)?

7 A. Yes. The doppler effect is the sound you hear a lot
8 with racing as a car goes by so the sound is (indicating.) So
9 that doppler effect is that trailing away. That bullet is
10 still moving away at a hypersonic speed and so you get that
11 doppler effect where you just generally get an echo if at all.
12 In this particular case you don't get much of an echo.
13 There's a lot of trees and not a lot of echoing going on.

14 Q. So, now, we just heard a short, maybe four, five
15 second clip off the original video of Officer Kathmann's dash
16 camera. Now, that camera is recording from what's inside his
17 vehicle, right?

18 A. Yes.

19 Q. We also can hear it coming in through the radio,
20 right?

21 A. Yes.

22 Q. I want to play you another clip that is from another
23 officer, Officer Densmore who is driving en route to the scene
24 but is not actually on the scene when the first shots come
25 out.

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1 (Playing video.)

2 MR. L. SHEALEY: I'm going to play that one more
3 time.

4 (Playing video.)

5 BY MR. L. SHEALEY:

6 Q. That's sounds almost virtually identical to
7 Kathmann's dashcam, doesn't it?

8 A. Yes. It does. It's a little distorted because
9 we're going through multiple microphones and radios now, but
10 it's going through the deputy's radio as he's firing while
11 driving. It's then going back through, it's gonna go through
12 a repeater, it's gonna come through a speaker that's inside
13 the car or radio for Officer Kathmann and then it's gonna get
14 picked up by a microphone on his dashcam recording, so I'm
15 expecting that there's gonna be some distortion in that
16 sound.

17 Q. Okay. You said you believe it's going through the
18 deputy's radio, Florida's as he's driving and firing?

19 A. I believe so. Yes.

20 Q. And that would account for why we hear it on another
21 officer's radio who's miles away?

22 A. That's the only way I can figure you're able to hear
23 that. It's certainly not getting picked up on Officer
24 Kathmann's radio.

25 Q. Now, you would agree, though, that the first shots

1 which you've identified coming from a medium caliber handgun,
2 right?

3 A. Yep.

4 Q. And we know that my client was shooting a rifle that
5 day. You're aware from review of the file that Officer
6 Florida had a .40 caliber Glock 22 pistol, right?

7 A. Yes.

8 Q. But you would agree that those first shots, how many
9 shots would you say there are, the first volley of shots?

10 A. The first volley of shots is three shots.

11 Q. Three shots. You would agree that that sounds
12 somewhat different than when he gets out of his car and starts
13 shooting, right?

14 A. Oh, yes. There's a little bit of difference
15 there.

16 Q. How do you account for that?

17 A. I believe number 1, we're coming through the radio
18 more than anything. You know, we're recording stuff that's
19 going through the microphones and repeaters and back through
20 another radio and another microphone. You're gonna get a
21 distortion. The radios in vehicles or even on hand held's,
22 these are very small speakers. Very small speakers have a
23 tendency to distort sound.

24 Q. And when he gets out of his car and is shooting
25 after he's parked, you don't see him attached to a radio at

SCOTT BALLARD - DIRECT BY MR. L. SHEALEY

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1 that point?

2 A. No. I do not.

3 Q. Playing the original video.

4 (Playing video.)

5 BY MR. L. SHEALEY:

6 Q. Now, so in your mind a hundred percent not a .223
7 rifle?

8 A. It's not a .223 rifle to me. No.

9 Q. Now, you say three shots. Now, the State wants to
10 get up here and they'll probably ask you, try to say, well,
11 that's four shots. It sounds distorted to me, but explain, do
12 you think that first sound we hear is a pistol or is it some
13 other --

14 A. I think the first sounds you hear is him bumping the
15 microphone on something possibly as he reaches across hits it
16 on the steering wheel. In that particular situation you've
17 got elevated heart rate, you've got elevated breathing. He's
18 in flight or fight. He's trying to stay alive because he
19 perceives something. But in this particular case he's got a
20 microphone or something in his hand. He's got a side arm in
21 his hand and if you started bumping those together, you're
22 gonna get noise across the radio, especially if your mic is
23 keyed.

24 Q. Now, you agree when Officer Florida shoots there,
25 that's clearly three shots?

1 A. That's three shots.

2 Q. And that sounds different than what we heard when he
3 first drove by, right?

4 A. It's slightly different, yeah, but I don't hear a
5 difference in the qualify of what I'm looking for with regards
6 to a crack or a push or thump, the lower sound.

7 Q. No doubt in your mind that that's Officer Florida
8 shooting a medium caliber handgun?

9 A. I have no doubt in my mind.

10 Q. Now, you do note when my client per your review
11 shoots for the first time. I have it marked 3, I want to play
12 it for you.

13 (Playing video.)

14 BY MR. L. SHEALEY:

15 Q. That.

16 A. That's a high velocity rifle sound.

17 Q. Does that have the crack that you're talking
18 about?

19 A. The blast, that initial blast is much higher, it's
20 much louder and you can hear that crack and you can hear it as
21 it starts to trail away.

22 Q. And that's the doppler effect?

23 A. Yes.

24 Q. Let's play it one more time.

25 (Playing video.)

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1 BY MR. L. SHEALEY:

2 Q. So five shots in total there?

3 A. There is one delay, volley of four.

4 Q. All of those from a rifle?

5 A. To me all of those are high velocity rifle rounds.

6 Q. There's a good example. You noted for me to compare
7 and contrast between a Glock and my client's rifle around at
8 the 3:34 mark, see if you recall this. So you've got Officer
9 Kathmann shooting here in this embankment, but you also hear
10 it in quick succession compared to my client's shooting
11 again?

12 A. You hear high velocity rounds followed by medium
13 caliber rounds and they're two very distinct sounds.

14 Q. And that's very easy for you to identify?

15 A. On right there especially it's very easy to
16 identify. I've fired millions of rounds in my life and I've
17 been next to people on ranges who have fired hundreds and
18 hundreds of thousands of rounds.

19 Q. Do you note Officer Florida there shooting a
20 different weapon?

21 A. It sounds like a different weapon. It sounds like a
22 shotgun. It's a lower boom.

23 Q. Again, that da-da-da-da. What are you hearing
24 there?

25 A. That's a volley of five high velocity rifle

1 rounds.

2 Q. Okay. It came in immediately after the shotgun
3 blasts?

4 A. Yes. So in that particular case you can fire a
5 handgun that quickly, but it's not likely you're gonna be
6 accurate. When you're firing a rifle, it's much easier to
7 control a volley of five like that. It's very easy to fire
8 and maintain control so even once we hear that it's a high
9 velocity round, we're still listening for the controlled fire
10 and this is a situation here where those five rounds, there's
11 nothing missing in between them. There's no other noises,
12 just five rounds very quickly.

13 Q. Now, an AR-15 style .223 rifle, is that an accurate
14 weapon in your opinion?

15 A. They can be.

16 Q. Okay. Is there a reason why a rifle generally is
17 more accurate than let's say a short barreled handgun?

18 A. There's several reasons. It's easier to control.
19 The AR type rifle that we're talking about here is a
20 relatively small recoiling rifle that has a very light push so
21 it's very easy to control. The biggest thing that makes them
22 more accurate is the length of the bore and the sight radius.
23 So a handgun is a relatively small sight radius which gives
24 you a lot of movement and a lot of play whereas with a rifle
25 you have two hands holding it in a very controlled fashion and

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1 that longer sight picture is much more easier to maintain
2 that. You can maintain control of it because you have a lot
3 more of body involved and there's a lot more triangulation
4 with regards to how the arms and everything are used against
5 the body in order to create stability so the rifle typically
6 is much more accurate.

7 Q. And so if a man was proficient with his rifle and
8 from about 45 to 50 feet was lying in wait and trained to
9 shoot a slow moving large police vehicle, would you expect him
10 to miss?

11 MR. McNAIR: Objection. Speculation.

12 MR. L. SHEALEY: He's an expert in firearms, Your
13 Honor.

14 THE COURT: Expect him to miss. Overruled.

15 BY THE WITNESS:

16 A. I wouldn't expect him to miss the vehicle, no.
17 That's a pretty large target.

18 MR. L. SHEALEY: Okay. Nothing further at this
19 time.

20 THE COURT: Cross examination.

21 CROSS EXAMINATION

22 BY MR. McNAIR:

23 Q. Mr. Ballard, the majority of your analysis of that
24 pool room video we've watched was based on the assumption that
25 the victim was actually armed, correct?

1 A. The videos that we just watched were based on the
2 assumption that?

3 Q. The victim actually had a gun?

4 A. Oh, okay. So The man in the gray shirt?

5 Q. Yes.

6 A. All right. I, uhm, no. I see there's a disparity
7 of force issue here.

8 Q. Would it change your analysis -- First of all, you
9 don't know what was being said, do you?

10 A. No.

11 Q. Okay. Would it change your analysis if you knew
12 that the man who was shot was telling the defendant to leave
13 the premises?

14 A. No. That was a very odd way of going about it. If
15 you're giving somebody a trespass warning, it's not done in an
16 aggressive manner. All that would be doing would be
17 escalating.

18 Q. Okay. So it's an aggressive and furtive movement
19 for somebody to go, leave, leave (indicating)?

20 A. If you're giving somebody a trespass warning, when a
21 police officer gives a trespass warning to somebody, they
22 don't wave their arms about and gesture wildly. They would
23 warn the person that they're no longer permitted on the
24 premises.

25 Q. Okay. So to you that's an aggressive movement that

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1 would entitle somebody to use force?

2 A. It's an aggressive movement that would cause a
3 person to believe that they could be at risk.

4 Q. So that scares you for somebody to say leave?

5 A. It makes me notice them. It makes me look for other
6 behavior, other pre-fight indicators.

7 Q. You agree with me that if you tell somebody to leave
8 your premises and they refuse, that you could use force to
9 make them leave, correct?

10 A. I don't understand South Carolina law to that
11 extent.

12 Q. You can tell somebody to leave your premises,
13 correct?

14 A. Yeah.

15 Q. Okay. Now, you described the victim in this case as
16 making furtive movements --

17 A. Yes.

18 Q. -- correct? So telling somebody to leave, is that a
19 furtive movement?

20 A. No. It's an aggressive gesture.

21 Q. That's aggressive? That's an aggressive movement?

22 A. Yeah.

23 Q. Okay. Pointing at cameras on the building with your
24 phone, is that also an aggressive gesture?

25 A. It appeared to be. Yes.

1 Q. That's aggressive?

2 A. Yes.

3 Q. Okay. So you'd be authorized to use force in that
4 situation as well?

5 A. No.

6 Q. Well, then, why is it aggressive then? If somebody
7 wouldn't feel threatened by that, why are you terming that
8 aggressive behavior?

9 A. Because waving ones arm about and now we have him
10 leaning forward can be viewed as aggressive by many people.

11 Q. Oh. So to be non aggressive you need to stand there
12 and not move and talk in a monotone voice?

13 A. That would be ideal.

14 Q. That would be it?

15 A. That's what police officers are trained to do.

16 Q. That would be acceptable to you?

17 A. That would be an ideal situation.

18 Q. Okay. So if you don't act ideally, then you're
19 justified in using force?

20 A. No. There's a combination of things that have to go
21 into effect.

22 Q. So if somebody makes furtive movements to leave and
23 then points at cameras, that's aggressive and you can use
24 force?

25 A. No. It's the same answer. It's something that

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1 makes me notice them and look for other pre-fight
2 indicators.

3 Q. You said the victim seemed like he was practiced in
4 how he lifted up his shirt. What does that mean, he's done
5 that a lot?

6 A. It means that he's done it more than once, he's done
7 it quite a few times to be that smooth with that. In order to
8 get the shirt that high, a common mistaken on that draw his to
9 not lift the shirt high enough in order to come across the
10 middle and not get the shirt properly. He reached all the way
11 across and brought that shirt up high enough where he was
12 exposed.

13 Q. So that's something he's either done to other people
14 or practiced in the mirror?

15 A. Or practiced on a range.

16 Q. Are you aware that nobody knew him to ever carry a
17 pistol?

18 MR. L. SHEALEY: Objection, pitting of witnesses.

19 MR. McNAIR: No, sir. That goes into his opinion.

20 THE COURT: Overruled.

21 BY MR. McNAIR:

22 Q. Are you aware that nobody knew him to ever carry a
23 pistol?

24 A. Yes.

25 Q. Would that affect your opinion as to whether or not

1 that was practiced?

2 A. No.

3 Q. Oh, it wouldn't?

4 A. No.

5 Q. The fact he's not -- How could he practice something
6 he's never done?

7 A. Well, you're operating under the assumption that
8 just because other people don't know, doesn't mean that he
9 doesn't carry. Do I look like I carry a gun?

10 Q. Do you?

11 A. Not right now, but I do.

12 Q. Now, when you watched that video and you described
13 that as practiced, did you see how his shirt got caught on
14 something?

15 A. I saw his hand lift up. I didn't see --

16 Q. Are you aware he had a phone clip on his belt?

17 A. I thought the phone clip was on his pocket.

18 Q. Who told you that?

19 A. It's just what I saw hanging when I saw the phone
20 hanging off of his pocket.

21 Q. Well, when he pulls up his shirt, do you see it
22 getting caught on something?

23 A. No. I saw a clean smooth draw.

24 Q. Okay. Well, we'll let the jury watch it.

25 A. Okay.

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1 Q. Again, you have no context, when you're up here
2 interpreting body language, you have no context about what's
3 being said in that moment, do you?

4 A. No.

5 Q. You were not informed that the victim was telling
6 the defendant to leave the premises?

7 MR. L. SHEALEY: Your Honor, objection. That's the
8 State's opinion. That's not uncontroverted fact in this
9 case.

10 THE COURT: Rephrase the question, Mr. McNair, what
11 he based his opinion on.

12 BY MR. McNAIR:

13 Q. Let's move to the Log Creek scene. Now, your
14 opinion is that the first, I hear four and then three. The
15 defense can say three and three, but when I listen to that
16 video with my just normal ears, the first shots sound
17 different, the first three to four shots sound different than
18 the next three, but you're saying that's all from the same
19 weapon?

20 A. Yes.

21 Q. Why do they sound different?

22 A. I believe that there's a difference in sound based
23 on the fact that the muzzle is inside of a vehicle so you've
24 got a lot of sound containment there, it's going through a
25 radio and then going through a repeater and going back through

1 another radio and then going into a microphone on a dashcam.

2 Q. Well, when you're referring to Kathmann's shots from
3 his dashcam, his shots are gonna sound different on his
4 dashcam than Officer Florida's shots who is a distance away,
5 correct?

6 A. Yes, sir. There's a proximity difference there.

7 Q. Right.

8 A. As well as Kathmann's shots are directly into the
9 microphone. They're not going through a radio.

10 Q. And your testimony is that a radio bump can sound
11 like a gunshot?

12 A. I don't hear a gunshot. I only hear three. I don't
13 hear four.

14 Q. Well, you were saying that it could sound like some
15 type of loud radio bump. Could it sound like a gunshot?

16 A. It could give you the impression that there was
17 another sound, another thud type sound, that lower sound that
18 you hear from a medium caliber handgun, yes.

19 Q. So are you saying that what we may be hearing on
20 that video is a radio bump and not a gunshot?

21 A. It's possible, but I'm not a sound expert. I'm just
22 giving an opinion on that.

23 Q. How much are you being paid?

24 A. I'm sorry.

25 Q. How much have you been paid?

SCOTT BALLARD - REDIRECT BY MR. L. SHEALEY

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1 A. I haven't been paid anything yet, but I get paid

2 \$350.00 an hour.

3 Q. So what's your bill up to at this point total?

4 A. A little under 4000.

5 MR. McNAIR: No further questions.

6 THE COURT: Redirect.

7 MR. L. SHEALEY: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. L. SHEALEY:

10 Q. Just so we're clear, I want to take your attention
11 back to the pool hall video and we had lots of questions, I
12 guess, by Mr. McNair about this being a furtive movement
13 (indicating.) That's not by itself a furtive movement. I
14 think you testified that this (indicating) is a furtive
15 movement, right?

16 A. Yes.

17 Q. This (indicating) is what caused the threat to make
18 someone fear they're about to be shot with something,
19 correct?

20 A. Yes.

21 Q. That is the smooth practiced draw you've described
22 by Mr. Hall, right?

23 A. Yes. He's coming across with his left hand. Yes.

24 Q. That's the kind of movement that get cops shooting
25 people all day, every day and cleared for that type of

1 movement, right?

2 A. Yes.

3 Q. This by itself would not give someone cause to
4 kill?

5 A. No. It's menacing. It's not threatening.

6 Q. Right. And you're aware that whether there's a gun
7 or not, that you train your citizens that you train in your
8 class to act on appearances, correct?

9 A. We train them to deal with only what they see in the
10 moment, otherwise what happens is a what if situation and then
11 they reach a moment of hesitation and the moment of hesitation
12 or disbelief is what gets them killed.

13 Q. Now, there were some questions about what you knew
14 about whether Mr. Hall was trying to eject a trespasser at
15 that point and I haven't really filled your head with all that
16 and the underlying facts, have I?

17 A. No. I don't have an audio so I don't know what was
18 being said.

19 Q. Right.

20 A. They could have been, it could have been any number
21 of things, but the physical behavior is what I was paying
22 attention to.

23 Q. And you did review the file enough to know that Mr.
24 Hall had a .12 blood alcohol while he's doing all that out
25 there, right?

SCOTT BALLARD - REDIRECT BY MR. L. SHEALEY

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1 A. Yes.

2 Q. And what is your opinion about a lawful bar owner
3 trying to put someone on trespass notice in that kind of
4 condition?

5 A. Its, it's extremely unprofessional. It's unethical.
6 I would say it borderlines on putting them in an actionable
7 position. You're setting a person into what is a conflict.
8 You're giving somebody a trespass warning. It's not good
9 news, right? So when you're giving them that, you need the
10 person issuing that warning to be calm, clear headed, you
11 know, almost like a disinterested party. This is why a lot of
12 trespass warnings are given by law enforcement.

13 Q. Right. Now, I think on cross I think the Solicitor
14 asked you a question about how someone just has to stand there
15 calmly and tell someone to leave and you, I think you said
16 that would be ideal, right?

17 A. That's the ideal situation. Yes, sir.

18 Q. And you said that's what officers are trained to do
19 when trying to de-escalate, not escalate, right?

20 A. Yes.

21 Q. Now, taking us back to Log Creek, do you have any
22 doubt in your mind that the first three shots you hear, second
23 shots we hear, the three shoots are all from that medium
24 caliber handgun?

25 A. I have no doubt in my mind.

1 Q. You're not a sound engineer necessarily or a radio
2 technician, are you?

3 A. No. I'm not.

4 Q. But you know what a gun sounds like?

5 A. I know what firearms sound like. Yes.

6 Q. Okay. And we're sitting here debating whether
7 there's four shots coming in or three shots at first. What
8 you know is that you heard three shoots based on distinctive
9 characteristics that a firearms expert can recognize, right?

10 A. Yes.

11 Q. That fourth sound, I think you've said you know it's
12 not a gun, you can't a hundred percent say why you hear that
13 fourth bump noise, but you're surmising it's because Officer
14 Florida is shooting into his depressed microphone which might
15 be --

16 A. Or shooting next to it.

17 Q. Next to it.

18 A. That could explain it. That's a large blast of the
19 muzzle so...

20 Q. Right. We've been doing some shell counts. Let's
21 just play you're an expert, you can answer hypotheticals.
22 Let's just say if all those first shots and let's just say,
23 let's agree with the Solicitor's Office that there were four
24 shots fired by my client, okay? Let's play that game. You
25 with me?

SCOTT BALLARD - RECROSS BY MR. McNAIR

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1 A. Yes.

2 Q. But with the shots that we can a hundred percent
3 document him shooting by the distinct .223 noise, that would
4 put us up to about 17, 16 shell casings being, should have
5 found on scene that day if he shot those first, right?

6 A. Yes. Approximately.

7 Q. And we know that only 12 were found, right?

8 A. Yes.

9 MR. L. SHEALEY: Thank you.

10 THE COURT: Any recross?

11 MR. McNAIR: Real quick.

12 RECROSS EXAMINATION

13 BY MR. McNAIR:

14 Q. If you're on my property and I said leave, you don't
15 authorize somebody to use force in that situation, do you?

16 A. No. As soon as you moved your coat, I looked down
17 at your hand and I saw the reflection of glass, that's not a
18 firearm to me, and I would say fine, I'm gone. See you
19 later.

20 Q. And I don't deserve to get shot in that situation,
21 do I?

22 A. If I'm on your property and you do that?

23 Q. Yes.

24 A. You do not deserve to get shot.

25 Q. Right. And if somebody points an AR-15 at the

1 police, are they authorized to use force at that point?

2 A. Are the police authorized to use force?

3 Q. If somebody points an AR-15 at a police officer, is
4 that police officer authorized to use force at that point?

5 A. Yes, in conjunction with department policy. Yes.

6 MR. McNAIR: Thank you.

7 THE COURT: All right. The witness may step down.

8 MR. L. SHEALEY: Your Honor, at this time the
9 defense would rest.

10 THE COURT: Very well. Ladies and gentlemen, the
11 defense has rested. I've got some things to take up with
12 the attorneys. I'll ask you to go back to your jury
13 room. Remain there for a little bit. We'll get you back
14 out here at some point. Please don't discuss the case.
15 We'll have you back out here shortly.

16 (Whereupon, the jury entered the jury room at 10:00
17 a.m.)

18 THE COURT: All right. At this time the defense
19 renews all prior motions?

20 MR. L. SHEALEY: We will be. Mr. Secord may make
21 another directed verdict.

22 THE COURT: Okay. All right.

23 MR. SECORD: Your Honor, for purposes of our
24 directed verdict motion, I would respectfully request
25 that arguments made on behalf of our directed verdict

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1 THE COURT: Sure. If you don't, which is fine, if
2 you do, fine, but if you don't, we'll get into jury
3 charges next.

4 MR. HUBBARD: Yes, sir.

5 (Short break.)

6 BAILIFF: All rise.

7 THE COURT: All right. Please be seated. All
8 right. We had an extensive charge conference. We're
9 making some changes to the jury instructions at this
10 time, but just to kind of go through, the main issues on
11 which to make a record here, I believe, Mr. Shealey and
12 Mr. Secord, most of the standard charges, reasonable
13 doubt, credibility of witnesses, presumption of
14 innocence, malice, we had concerns with. I did - the
15 main ones, we added some language to the self defense
16 charge providing more language regarding the act of
17 appearance section which cleared up at this time.
18 Specifically to the defendant's requested charge on stand
19 your ground and defending your occupied vehicle, I'll let
20 you respond, but my decision as I have discussed already
21 is that I will not charge stand your ground or right to
22 defend yourself in an occupied vehicle. My basis was
23 that we had had a substantive immunity hearing back in
24 September where I denied immunity and I was already
25 charging a fairly expansive self defense charge as it was

1 from State versus Smith.

2 THE COURT: Okay.

3 MR. SECORD: Those are our motions regarding the
4 current version of the Court's charges and I just wanted
5 to quickly go through the proposed defense charges that
6 we discussed at the charge conference in chambers. It's
7 my understanding that defense request for charge number 4
8 is denied.

9 THE COURT: Correct.

10 MR. SECORD: We would just object to that. Defense
11 requested charge -- Did I just say number 4?

12 THE COURT: You did.

13 MR. SECORD: Am I correct that defense request
14 charge number 5 was denied?

15 THE COURT: Correct.

16 MR. SECORD: We object to that. My understanding is
17 defense requested charge number 6 was denied?

18 THE COURT: No. It's granted in part. I didn't
19 take your charge verbatim, but I took the spirit of the
20 charge.

21 MR. SECORD: Yes, sir. I guess we would just object
22 to any, to a lack of reference to a refined assessment
23 from State v. Rash and State v. Starns. That's all
24 I want to put on the record regarding that.

25 THE COURT: All right.

1 MR. SECORD: Am I correct that the defendant's
2 requested charge number 8 was denied?

3 THE COURT: It was denied to the extent that I
4 didn't charge that language verbatim, but I thought the
5 meaning of the charge was captured in the current self
6 defense language.

7 MR. SECORD: I understand. I would just reiterate
8 our objection that there being no charge regarding the
9 use of the language duty to retreat.

10 THE COURT: Okay.

11 MR. SECORD: I believe defense requested charge
12 number 9, that the State is in agreement that that's
13 appropriate.

14 THE COURT: I believe 9 and 10, maybe not line for
15 line, word-for-word, but the meaning of both of those
16 charges is to be included in the final charge.

17 MR. SECORD: Yes, sir. Defendant's requested charge
18 number 11 was --

19 THE COURT: Not applicable. Okay. I think both
20 parties are fine with number 12.

21 MR. SECORD: Yes, sir. That's my understanding.
22 Regarding defendant's requested charge number 13, I
23 believe that Your Honor said that the Court felt as
24 though that information was covered satisfactorily in the
25 Court's current version of the charges.

1 THE COURT: Mr. Foreman, ladies and gentlemen of the
2 jury, please be seated. Welcome back again. I hope you
3 had a nice lunch. Ladies and gentlemen, the parties have
4 presented their evidence in this case. It's now time for
5 the attorneys to make their closing arguments. The
6 arguments of the attorneys are not evidence in this case.
7 Their statements and arguments are meant to help you
8 understand the evidence and apply the law to the
9 evidence. You should disregard any remarks, statement or
10 argument which is not supported by the evidence presented
11 during the trial or the law that I'll explain to you
12 after the arguments.

13 MR. HUBBARD: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. HUBBARD: Thank you, Your Honor.

16 May 7th, 2018 Barry Jones made a conscience
17 decision, a conscience decision to shoot and kill, to
18 murder Milledge Hall, a conscience decision and
19 everything he did after that spoke to that decision. It
20 spoke guilt. Fleeing from the pool room and all the time
21 that he had before he had an encounter with law
22 enforcement never once, not once reaching out to anyone
23 with a badge.

24 You saw when he pulled out of the pool room, he
25 turned left. Had he turned right, he could have gone to

1 the Johnston Police Department. He didn't have any
2 enemies there. He could have gone there and said I've
3 got to report something. I got in a situation. I just
4 shot someone in self defense. I'm scared. I need
5 protection. Help me. No. He had his friend Mathis. He
6 didn't call him. He had his friend in Edgefield County
7 Chris Wash. Didn't call him. He fled because he knew he
8 had murdered a man. He knew he had done wrong and he was
9 willing to use lethal force to stay free, even to kill a
10 police officer and in this case the officer who drew that
11 unlucky straw is Sergeant James Florida, off duty, simply
12 trying to do his job as a cop. They're never off duty.
13 That lethal force was used because he knew he had
14 brutally shot a man at the pool room. He knew he was
15 guilty. And then when he is trapped on Log Creek, no way
16 out, he even said it in his words, trapped like an
17 animal, he attempted to take his own life, evidence he
18 knows he did something wrong at the pool room and
19 shooting at James Florida.

20 Now, he's brought up self defense. I was afraid. I
21 was in fear for my life. So let's talk a little bit
22 about the law, but whatever I say is commentary on the
23 law. The Judge is gonna give you the law in the jury
24 charge. When I'm all done, when the defense is done,
25 he's gonna read the law, but one of those things is gonna

1 be murder, the unlawful intentional killing of another
2 human being with malice aforethought. So the question
3 is, what is malice? It could be hatred. It could be ill
4 will. Anything like that. Hatred, ill will, harboring a
5 grudge, that bad intent. He's gonna tell you that. If
6 that exists at the time he pulled the trigger, it's
7 murder. If you have ill will towards someone when you
8 pull the trigger, it's murder. And attempted murder is
9 pretty much the same thing except you attempted to take
10 another human life and in this case the specific life of
11 James Florida. Isn't that present here?

12 We have to prove it as members of the State beyond a
13 reasonable doubt. The Judge is gonna tell you that's not
14 some scientific term. It's not beyond every little doubt
15 that you might have. It's not something you can put in a
16 mathematical formula. And the defense loves their
17 numbers, except when they're wrong. It is evidence that
18 leaves you firmly convinced of the defendant's guilt.
19 That's it. Firmly convinced.

20 Then you have self defense. The Judge is gonna give
21 you a pretty long charge on that. Here's a chart on just
22 the meat of it. Usually there's four factors to self
23 defense and if you fail any one of these factors, you're
24 out, self defense doesn't apply, you cannot be at fault.
25 The defendant was without fault bringing on the

1 difficulty. If you're at fault in bringing on the
2 difficulty, no self defense. Wasn't this man at fault
3 refusing to leave a place he was told he needed to leave?
4 Keep that in mind. The defendant must have actually
5 believed he was in imminent danger of losing his life or
6 sustaining serious bodily injury or he actually was in
7 such imminent danger. Imminent danger. It's right
8 there. It's gonna happen. If the defense is based on
9 the defendant's actual belief of imminent danger, a
10 reasonable prudent person of ordinary firmness and
11 courage would have entertained the same belief. It's not
12 what Barry Jones thought. It is what a reasonable
13 prudent person of ordinary firmness and courage would
14 have thought.

15 Here's why we say that in the law. If somebody is
16 in the Navy SEALs, there's a lot of things that might not
17 scare you, they've been through it a lot. But we have
18 other folks, they're scared of everything so the law
19 doesn't want to just leave it up to a defendant because a
20 defendant is always gonna say I'm scared of everything.
21 Or if the defendant was actually in imminent danger, the
22 circumstances were such as would warrant a person of
23 ordinary prudence, firmness and courage to strike the
24 fatal blow in order to save themselves from serious
25 bodily harm or losing their own life, and the defendant

1 had no other probable means of avoiding the danger of
2 losing his own life or sustaining serious bodily injury
3 other than to act as he did. In this particular instance
4 he had no way out?

5 Barry Jones had so many ways out. Barry Jones had
6 ways out, folks. Y'all saw that. He sat there in that
7 parking lot a long time. Could have left any time he
8 wanted. He left earlier. So let's talk about that and
9 let's start talking about why Milledge Hall even went out
10 there to begin with. And I want to play just a little
11 snippet of the 911 call before there's any police
12 interference, before there's any collusion with
13 witnesses. Listen to Nicole Bibbs.

14 (Playing audio.)

15 He told him to stop coming up here and disrespecting
16 people. That's what you heard from the beginning.
17 That's why Milledge Hall went out there, not to kick his
18 a-s-s as Mr. Jones said, not to shoot him, not to fight
19 him, but to say you can't keep coming up here like this.
20 This is the 911 call before anybody's been interviewed.

21 Now, that first video Nicole Bibbs talked about
22 Barry being in there and she talked about talking to
23 Milledge and Milledge had some kind of communication with
24 Barry Jones, she doesn't know what and you see Barry
25 Jones leave. Roger Bryan says something of the sort too.

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1 Barry's leaving. Milledge goes out. He doesn't run
2 after him. He walks out after him. You watch. I'm not
3 gonna play every video. Y'all have seen them so many
4 times. He literally walks out like this (indicating) and
5 he clearly sees him, Barry Jones sees him and he's
6 backing up, taps on his car. Barry Jones says he hits
7 his car and then clearly Barry Jones sees him, Milledge,
8 he drives off, and Milledge is going like (indicating.)
9 Well, I guess I won't be talking to him today. You don't
10 see him upset as he's coming back. You watch. I'm
11 talking to you without playing it. Y'all can go play it
12 and judge my words. He sees somebody else coming in. He
13 talks and comes in. He's smiling. He's okay. Milledge
14 Hall doesn't bear a grudge against this man. This is
15 business. But that man over there hates Milledge Hall.

16 So when Milledge gets back in, he tells the folks
17 there, Nicole Bibbs, listen, if he comes back, let me
18 know. We'll call law enforcement and put him on trespass
19 notice. Just call law enforcement. By the second video
20 we see time's gone by. Roger Bryan said Milledge Hall is
21 telling me what he's gonna do. I'm gonna go out and tell
22 him if he can't behave, he can't come back. Well, what
23 happens in between that first video and the second?
24 That's where those text messages are so important because
25 we know at 6:25 Barry Jones leaves the pool room.

1 Now, there are other text. Y'all have them all in
2 evidence, but this isn't about his anger at Angie Smith.
3 This is Milledge and at 6:49 Jones sends the message to
4 his buddy Joe Mims, can you come calm me down? Why is he
5 asking that? He's desperate. You even heard there was a
6 text to Mathis and he said that doesn't make sense.
7 Yeah, it does. This man knows where his heart is going.
8 He knows if he goes on that path, he's not coming back.
9 You can't go back once you pull a trigger and this man is
10 bent, fatally bent on doing that. He's got one last
11 attempt. Can somebody calm me down. Because you know
12 who used to always calm him down? Angie. She's not
13 around. He's done with her. He's gone home to pack.
14 Can somebody calm me down? 6:56. Can you help me? I
15 don't need that b-s. But look right before it. I'm
16 gonna kill that B'Boy. This isn't an idol threat. Look
17 what it is. 6:49. By 7:00 back at the pool room. Ten
18 minutes later Milledge is dying. You cannot say that is
19 just a lighthearted threat, blowing off steam. That is
20 real and reaching out is real too. Calm me down please
21 because I'm gonna kill that man.

22 You have to ask yourself what kind of man is Barry
23 Jones? What is going on with him? Well, you heard he's
24 breaking up with his girlfriend. You heard his wife
25 passed away. He's got stuff in this life. But what

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1 about Milledge? Why Milledge? He seems to have a notion
2 of how he's gonna handle Angie. I'm done with her, but I
3 hate Milledge. Why? He gave us evidence, new evidence
4 of an alleged scene in a bar where he comes up to
5 Milledge and confronts him about spreading rumors.
6 That's the seed of all of this, about his personal life.
7 Milledge had no idea how it intertwined with his wife.

8 Now, Barry says it happened long before this.
9 Milledge's wife said, I was there. It was before our
10 grandson even owned this place. I'm sitting there.
11 Milledge doesn't show out. He doesn't deny it, but he
12 doesn't show out when confronted. He just says the best
13 thing you can do is just go have a seat. Milledge must
14 not have thought a whole lot about that, but that man
15 could never let it go. Remember he had a buddy that even
16 mentioned it. So whether it's true or not the word's
17 out. Milledge is spreading rumors still about his
18 personal life. And what happens when that man goes to
19 the bar the first time that day? He's there as he
20 exchanges words with Angie. She comes and what does she
21 do? Does she come sit with him? She sits with Milledge.
22 Of all people, of all people you're picking him over me?
23 You who have been complaining about me, you're gonna talk
24 to him? That guy who's gonna spread our stuff all over
25 the place? He's done. He is so done. He's done with

1 her, but he hates Milledge Hall. Hates him.

2 He goes home, packs his belongings and he tells you
3 I'm gonna come back and break up with Angie. Now, that
4 was the most absurd story. I'm gonna break up with Angie
5 because I care for her. I want do it face-to-face. That
6 sounds loving. Look where he's gonna do it. He's gonna
7 do it right there, right there at the bar in full view of
8 everybody including Milledge Hall. How is that supposed
9 to work out? How is that taking a woman who he says is
10 volatile, even violent and I'm afraid how she's gonna
11 react so I'm gonna do this in front of everybody, all of
12 her friends including Milledge. Well, folks, do you
13 really believe that?

14 You can't see on this one, but right here, that's
15 the front seat of that car, the front seat of that car.
16 Where is she gonna sit? He just went to pack up. If
17 he's coming back to talk to her, why did he do that?
18 Because it's not like he doesn't have a lot of room in
19 the trunk. But notice what he has. In the trunk he has
20 that gray bag that has toiletries. So he opened the
21 trunk when he went back to Angie's, but everything else
22 in that car has to do with guns. You're gonna break up
23 with a volatile woman, come sit in my car with loaded
24 guns? What man does that? What woman would want to do
25 that? Does that make sense? Does that sound believable?

1 It doesn't. You have to ask yourself what else did this
2 man say. What else is he saying that's not believable.
3 But there you are. Oh, she can move these guns. That
4 was Barry's thing. She can move these bags. Notice
5 where everything is in the car. I'm not gonna go through
6 every single one of them. Guns on the front seat. He
7 can reach down to the floorboard. It's a small car.
8 Right behind the front passenger seat, but right behind
9 him there's no guns. He can't reach those.

10 Why did he put all of those in the car? And the
11 beer. Do you really think he went and bought beer after
12 he shot Milledge Hall or do you think maybe he brought it
13 along with him, a little bit of liquid courage. Does it
14 make sense that he pulled the trigger on Milledge Hall
15 and the whole world is looking for him and he's gonna
16 stand in line in BiLo? He wants you to believe that. If
17 you can't believe that, you've got to ask yourself, why
18 is he lying?

19 Now, I'm gonna play you -- Well, maybe I won't be
20 playing that. Tell you what, before we get to that,
21 let's start a little bit earlier because we didn't do
22 that last time. Let me get somebody with technical
23 skills. That's why they don't let me around computers.
24 All right.

25 (Playing video.)

1 This is how it starts. Milledge Hall is going.
2 Now, he's not running out. He's not storming out. He's
3 gonna go talk to Barry Jones. Roger Bryan says he's even
4 gonna be nice about it. If you can't behave, you can't
5 come in. Look at the white pickup truck pulling up. Do
6 y'all remember who that is? Lanyce Hatcher. You can see
7 it on this TV. Pulling in. Lanyce is the guy that's
8 known Milledge for 50, 55 years. This is how all this
9 started right here.

10 So by the time Lanyce is getting out of his truck
11 you will see in just a minute, Milledge is engaged in a
12 full argument at this point because Barry Jones isn't
13 there to talk. Barry Jones is pushing buttons. Barry
14 Jones is in power. He's got guns, but he needs somebody
15 to push him. And as Lanyce is walking by, what does he
16 hear? He hears Milledge say, no. What you're gonna do
17 is leave and not come back. Right there. Right there,
18 folks. And if he stays a minute longer, isn't he
19 bringing on the difficulty? Where is the imminent threat
20 right there? He's told to leave. There's no gun, even
21 no phone at that point. Leave. You now have a duty to
22 back up and leave. You are on someone else's property
23 just like somebody can't pull up at any of our
24 properties, sit there and argue about leaving. You tell
25 them to leave, they have to. They don't get to make up

1 their minds whether they're gonna obey you or not. They
2 had a duty to leave. A duty to leave.

3 Now, let's go to that next quote that you heard so
4 much about, the gun versus the phone. Now, the
5 conversation has gotten heated and Milledge is there
6 waving around what we say is a phone, they say is a gun,
7 and right there, oh, my gosh, he just flashed. I want
8 y'all to watch that again and again. He's waving
9 something like this. He's pointing at cameras. Why
10 would he have a phone out? I'm gonna call the cops.
11 That's for you to decide. Nicole Bibbs hears that. I'm
12 gonna call Edgefield County giving him a chance to get
13 out of here. Three numbers 911. You're on camera right
14 there, right there. There's two of them. There's two
15 right there. Why would he have a gun to be pointing at
16 cameras? Why would he have a gun out when he knows he's
17 on camera? That doesn't make sense. They can't explain
18 that.

19 And where does the gun go? This mysterious gun goes
20 right back to a phone clip. So this must be a special
21 gun. It fits in a phone clip. And the shirt pull, you
22 heard that expert, oh, he's done it a lot of times. He's
23 practiced that. Pulling his gun. Apparently that expert
24 who got four grand didn't watch close enough because
25 we're gonna play again and Milledge is putting it in his

1 phone clip and you see his shirt get caught and when he
2 pulls his shirt up, you will see over on the side where
3 his shirt comes unloosened on his phone. Let's watch it
4 one more time.

5 (Playing video.)

6 He's pointing, he's pointing, he's pointing, and
7 he's trying to get it in there. See, it's a phone clip
8 right there. Right there. Watch, pop. Did you see it?
9 Phone into a phone clip. Where is the gun? Now that man
10 over there, Barry Jones, swore that that was a gun. That
11 was a gun. Oh, I was right there. It's a black gun. I
12 know guns. That's a gun. That's what all their experts
13 are here for, to tell you that's a gun. And if it's a
14 gun, then Barry Jones gets to do X, Y and Z. It's a
15 phone. Nobody saw a gun out there that day. That's the
16 only man that says that, so everybody else must be lying,
17 but you can believe Barry.

18 Right here, still photo, look what's in that hand.
19 This is not enhanced. This is not touched up. We
20 haven't paid a penny for this. No \$9000.00 to have
21 somebody come fly in. Please, folks, what gun looks like
22 a smoke stack? What gun looks like a smoke stack? We'll
23 talk about this later because when the defense gets up
24 here, that is gonna change. A lot about these photos is
25 gonna change. I'm gonna talk about that. What gun looks

1 like that.

2 Now, their expert says right now Barry Jones is
3 trapped in his car. Really? By a man with a phone. He
4 can back up any time he wants. It didn't stop him last
5 time. Trapped in his car. Seriously? And again,
6 Milledge Hall right there. Why would he be pointing a
7 gun at all? He knows there's cameras, but he knows
8 something else. He just went to the doctor that day, the
9 cardiologist about his heart. Had two heart attacks,
10 triple bypass. It's a good reminder that morning, Mr.
11 Hall, behave. You can't get real wild. You can't be
12 fighting. He knows that or he would drop dead if he got
13 in a fight, folks. He's in no condition to fight. He's
14 not out there to fight. He's telling this guy to leave,
15 and Milledge Hall has got one problem, he's trying to
16 reason with an unreasonable man. Milledge Hall is
17 convinced I don't need to call 911. This guy's gonna
18 listen to me. Milledge takes too long trying to make
19 sense with a guy that doesn't make sense at all.

20 Let's go to the shooting and again I'm gonna play
21 you some snippets. He keeps saying, leave, leave, leave.
22 Where's the threat? Where's the threat? They're still
23 arguing. Look, even as he's going here they're arguing.
24 See? Leave. He spins around and you got two witnesses
25 who say why. They heard his name called. Who called it?

1 Barry Jones. But still he's not going back there to
2 fight. He's saying leave, leave. And right there, backs
3 up a little bit and not soon enough. Where was the
4 imminent threat? Where is the gun in Milledge's hands?

5 Now, their expert today, oh, you know, you got that
6 21 foot rule, 30 foot rule. Look, Milledge Hall, he
7 wasn't charging him. And Barry Jones called him back.
8 Two people testified to that. Ms. Bibbs, Nicole Bibbs.
9 Now, she couldn't remember initially about was it B'Boy.
10 Remember when she talked with us, it had been almost two
11 years and she's not seen notes, she's not seen the video.
12 We just asked Nicole and we turned that over to defense.
13 She knows there was a reason why he turned around. It
14 had to do with that man bringing him back.

15 And then Ms. Edwards, remember her? Shopping right
16 next door at the IGA. She hears it too. She hears,
17 "Milledge." She hears the argument. There's not a line
18 of trees that blocks everything. You can see that
19 parking lot. If you've been out to Johnston, you know
20 what I'm talking about. She can see and she can hear
21 arguing and she hears, "Milledge," and he walks back and
22 gets shot. Why does Barry Jones call him back? There's
23 no self defense when you call the threat to you. Barry
24 Jones is a coward and he's pushing buttons. He's there
25 to do this. He's got his liquid courage. He's

1 determined I'm gonna do this and Milledge Hall is walking
2 away. He's got one chance. Bring him back and he sees
3 him and Milledge doesn't have a chance and he pulls the
4 trigger not once but twice.

5 And then let me ask you this: Wasn't he able to
6 leave right there? Wasn't he, when Milledge Hall was
7 walking away? Why did he keep engaging him. He could
8 have left and he should have. He had no right being
9 there. He was told to leave and even Barry Jones says in
10 this clip you see where he tells me to leave, but I chose
11 not to because I had my terms. That's not how it works,
12 folks.

13 So what does a guilty man do? He flees. No 911.
14 No going to Johnston PD, no Mathis, no Chris Wash, and
15 everybody there, they're a bunch of liars. They all
16 collude, they come out around Milledge Hall, they all
17 find the gun and hide it. They're all willing to come to
18 court and lie. Maybe they're lying for Milledge Hall and
19 to put an innocent man in prison. That's Barry Jones.
20 Do you remember the last thing he said to Mr. McNair? So
21 is everyone else lying? Everyone else is lying. Only
22 Barry Jones is telling the truth. Can you believe that
23 man? The same man who said the first thing he did after
24 this was go buy beer. Can you believe Barry Jones? Is
25 he even a little bit believable? I'm gonna go stand in

1 line at BiLo with my 12 pack and buy beer while law
2 enforcement's running up and down the roads looking for
3 me. Seriously? So then you add Nicole Bibbs, Roger
4 Bryan, Lance Hatcher, the old man, they're all liars.
5 They've all conspired. They all have it in for poor old
6 Barry Jones.

7 And then we get to Log Creek. James Florida. James
8 Florida who is now off duty, heading home. No. Actually
9 off duty and goes and has dinner with his wife, his
10 daughter, grandkids down in North Augusta, the pizza,
11 doesn't have his vest on at that point, his body cam is
12 left at the station, he doesn't have a dashcam, but he's
13 all dressed, goes and has pizza, they're coming home, he
14 and his wife they're right here and he sees the gray
15 Mercedes. He's already heard about the shooting in
16 Johnston. Remember, he calls in and they're like,
17 Florida, we've got enough folks here. We're covered.
18 We're covered. But he's listening to the radio. He's a
19 good cop. He hears about the gray Mercedes. He sees it.
20 He tells his wife, sweetheart, I'm gonna be a little
21 late. That could have been the last phone call he ever
22 made to her. Those could have been the last words she
23 ever heard. Honey, I'm gonna be a little late like in
24 forever.

25 He gets the tag of Mr. Jones and he pulls it up and

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1 so he doesn't look obvious, he's gonna fall in behind him
2 and follow him, but he keeps a good distance. No lights.
3 No siren. You heard their expert Mr. Myers, he says
4 that's what a good cop does. It's crazy to try to do a
5 felony stop on somebody that you know is a shooter by
6 yourself. It makes sense. Give them some distance, tone
7 it down, get some backup, go in together. Florida is
8 thinking. He's thinking right.

9 Now, by the time he gets to this other intersection
10 Pleasant Lane and Log Creek, he has called in all their
11 directions everywhere they've gone so law enforcement
12 knows. They know where to find him. Pleasant Lane, Log
13 Creek. He says, if you remember, Florida says I lost him
14 there for a little while, but I got up to Pleasant Lane,
15 I started going down real slow and when I got up here,
16 who was standing with his car turned around standing in
17 the apex of his door holding that AR-15? Barry Jones.
18 Barry Jones tells you he saw Florida right here at this
19 intersection in Edgefield, right here in town. He knew
20 he was following him. Florida wasn't sure until then.
21 Florida darts past him, calls in dispatch, he's got a
22 rifle. Y'all heard it. It's on the camera and video.
23 He's got a rifle.

24 Now, when Barry Jones got on the stand, you heard a
25 really crazy story, but for a man who says he buys beer

1 right after shooting somebody, what do you expect? And
2 that crazy story is this: Yeah, I saw him pulling way
3 back there and all of a sudden he comes up like he's
4 gonna ram me. He's driving and he's got his gun in his
5 hand. That is just absolute lunacy. Why would Florida
6 do that? What in Heaven's name would make Florida want
7 to do that? He knows he can't stop this guy by himself.
8 It's crazy. Barry Jones had to tell you that story. He
9 didn't have a choice because, you see, Florida saw he had
10 an AR-15 and Barry Jones had explained why Florida knew
11 about that. So his story is a crazy cop, I don't know, I
12 feel unsafe. I stopped my car to get out and go in my
13 trunk and get my gun. Well, folks, that doesn't make a
14 lot of sense either, because in his trunk he says where
15 he keeps his gun. Look at that photograph. You see a
16 bag. There's clearly a bag right there for an AR-15.
17 What's on top of it? His toiletry bag.

18 Now, are you gonna believe he stops here, pulls in,
19 trunk facing out, opens that trunk, moves that bag off
20 his gun bag, unzips it, pulls his AR-15 out and puts that
21 bag back on top and shuts the trunk? That AR-15 is
22 already in the car. It was never in the backseat. It's
23 already in the car ready to go. And so is Barry Jones.
24 When Florida drove by, he's in the apex of his door ready
25 to go and when Florida drives on, he turns around and

1 goes on down Log Creek Road. That's when Kathmann pulls
2 up. That's the dashcam. And Barry Jones doesn't know
3 there's a second cop now. Barry Jones is heading on down
4 to get ready for Florida because he knows he's gonna come
5 after him so he backs in this little opening right here
6 and, yes, he's gonna waylay him. Or do you believe he's
7 sitting there drinking a beer after that incident?
8 Seriously. Drinking a beer. You flash a gun at a cop
9 and you go drink a beer? It's absurd. He's there
10 waiting to kill Florida. He does not know there's a
11 second cop, not until he sees Kathmann right up here.

12 And, folks, State's 35 and State's 36 is when he
13 realized, oh, my, God, there's two cops. And when y'all
14 get back there, I want y'all to take a close look at
15 these. These are unenhanced blowups. Didn't cost a
16 penny and see if he's got a beer in his hands. When you
17 get up there and look against his shirt and see if you
18 don't see the barrel of an AR-15. Did he shoot at
19 Kathmann? Most certainly did. Why wouldn't he? Back
20 him off. But now something has happened. He's trapped.
21 He's trapped and he does shoot. And there's all these
22 questions about, they've got their experts, their ears
23 are apparently great. Oh, that's not a .223. That's a
24 medium caliber pistol. Come on. You've heard so much
25 about how things sound. With Florida firing his gun

1 first, boom, boom, boom, and he's got a witness behind
2 him. Would a bad cop do that? A cop from another agency
3 behind him? A cop with a dashcam? Give me a break.

4 The man who fired first is sitting right over there.
5 He fired for effect and, oh, look, he would have torn
6 Florida's car up. Look where he hit. The door, folks.
7 He shot the places where Florida was in the driver's seat
8 side and the back corner window where he fired his
9 shotgun. It doesn't matter if you believe that Florida
10 is sitting in the car or not. Barry Jones said it's not
11 fair that people would judge me when I'm in an emotional
12 state of things I said or did. Florida is convinced he's
13 sitting there when those shots come through. And you
14 know what? He might have been, but even if he's not,
15 that man right there fired to kill. He's not firing to
16 scare him. He's firing right where Florida is. He's
17 firing to kill. That's attempted murder. It's
18 deliberate. It's violent. It's murder.

19 So all the cops get there and something else that
20 shooting tells you, it's a guilty sense of knowledge that
21 what he did at the pool room was wrong, wrong enough for
22 him to take a chance to kill a cop. Then, you know, all
23 cops are corrupt according to him. He feels surrounded.
24 He tells you I'm trapped like an animal. So then you
25 have the suicide attempt. Remember his exchange with

1 Florida. Let me bleed to death. Florida says no. I
2 can't let you do that. When Barry Jones gets on the
3 stand, Barry is saying, I was trying to turn myself in
4 and Florida said, no, I can't let you do that. Does that
5 make sense? Because when that is said, there are other
6 cops there. A road cop. No. I'm not gonna let you turn
7 yourself in.

8 Florida did everything right. He controlled that
9 situation. He showed restraint on how many times he
10 pulled the trigger. He made sure his fellow officers
11 went home alive and you know what, he made sure that man
12 went home alive too. Not just home, but alive. But he's
13 a bad cop. Let me bleed to death. Then when he's
14 caught, what does Barry Jones say? I tried to kill
15 myself and I couldn't even do that. What does that mean?
16 I tried to get away. I tried to kill Milledge. My plan
17 is falling apart. Trying to get away. I got followed.
18 Florida came in behind me. I tried to pick off the one
19 cop I thought if I could get rid of him I could get away.
20 That didn't work. I tried to kill myself. I couldn't
21 even do that. Couldn't even do that. Wish y'all would
22 have killed me. You should have let me die. The only
23 hole that hurts is the one that I put in my neck.

24 Then he takes the stand and tells you why he did it.
25 Now, is it because of Angie? Because his wife died of

1 cancer? Nothing about that. It's all because he's
2 trapped. He's caught. He's busted. He has nowhere to
3 go. He talks about running through the woods. He
4 couldn't do that wearing sandals and shorts. I'm out.
5 I'm done. So he takes this gun right here, this
6 revolver, he holds it up to his chin, but when he tells
7 you the story, he goes, this was my wife's pistol. He
8 wanted you to feel sorry for him. I was gonna go be with
9 her. That's an explicit reach out to you. Please feel
10 bad for me. Please feel bad for me. I just killed a
11 man. Almost killed a cop, but feel bad for me because
12 I'm important. I need you to feel bad for me.

13 He said something else. I wish I would have made it
14 to Augusta. A guy owes me 300 grand. He had a plan,
15 a long plan. If I can get there. It was done. So he
16 puts the gun to his chin. Remember his lawyer, did you
17 flinch? Did you flinch? No. Barry Jones can't admit
18 that. He says, no, it's this long trigger pull that
19 threw it off. It's the gun's fault, not Barry's. It's
20 not that Barry chickened out, but truthfully it is. The
21 one person that Barry Jones loves more than anyone else
22 in this world is Barry Jones and he couldn't part with
23 himself. Not yet. Not yet.

24 So he brings in his witnesses to trash Milledge
25 Hall. Randy Yonce sitting there, sees Angie Smith. He

1 doesn't really add anything to their case. Certainly
2 doesn't touch Milledge. Tony Friar. Oh, Milledge is a
3 fighter in elementary school. A fighter in elementary
4 school. And then he talks about rumors that Milledge is
5 spreading about Barry Jones getting fired. Do you think
6 this good friend of the defendant's, Tony Friar, might
7 help stir things up for this man sitting over here? And
8 Mr. Cornwell, I can't remember his first name, oh,
9 Milledge is a bad guy. He's rough around the edges so
10 therefore it must be okay to kill him.

11 Folks, they scoured this county looking for people
12 who could find anything bad about Milledge Hall. That's
13 it. That's what you get right there. Oh, he had a gun
14 in his truck 20 years ago when he was in his 40's.
15 That's it? That's all you can find on a man who's lived
16 here all his life? It's actually a pretty good
17 endorsement that he ain't a bad guy.

18 So they bring in the experts. Mr. Lacey,
19 Mr. Pixels, the video guy, and I want to tell you that I
20 agree with defense, yeah, he doesn't care about guns and
21 cell phones. He doesn't care. He's a businessman. My
22 client wants something. I'm gonna provide it to them.
23 I'm gonna get paid. I'm going back to Virginia. He says
24 how it works. Pixels, you blow them up, it adds pixels,
25 it's a mathematical algorithm, does it automatically, but

1 what he does is enhance, black, white. He determines
2 where on the scale that is. But he wants to satisfy his
3 client, so they're gonna show you a lot of these enhanced
4 photos and pay attention to this, a lot of the shadows,
5 because he said, this man said when you darken it, it
6 darkens all the shadows. So you're gonna see photos with
7 a lot of solid black. That's how dark they want it to
8 be. That's how dark it had to be to turn a cell phone
9 into a gun. Nine grand for that.

10 David Eagerton on alcohol. He said his blood level
11 was low, but when you look back it was a .12. You know,
12 as experts we can look back at what it was hours ago.
13 Okay. That's fine. Well, can you tell us, Mr. Expert,
14 how Milledge Hall would respond to alcohol? You talked
15 about how alcohol does things. It makes some people
16 happy, some people angry. Can you tell us how Milledge
17 Hall would respond? The answer is no. What a waste of
18 testimony. You got an education on alcohol, but you
19 didn't learn anything about Milledge Hall. Nothing.

20 And then I don't even know if we should call this
21 guy an expert, Christopher Robinson. Folks, I'm gonna
22 tell you something, I'm gonna be blunt, he's a fraud,
23 absolute fraud. Man can't wear a badge anymore,
24 anywhere, anyplace. He worked at a prestigious place,
25 GBI, Georgia Bureau of Investigations. Very prestigious.

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1 There for three years, sanctioned repeatedly until they
2 let him go in lieu of firing so he can resign. You know
3 you hit the bottom of the barrel when you bring in
4 Christopher Robinson. Be bounces on his feet and gets a
5 job with Atlanta PD. Isn't that frustrating how a bad
6 cop can get into another job? I don't know why that
7 happens. Atlanta PD kept him two years before they
8 realized they had a bad cop too and they got rid of him.
9 Let him go. They parted their ways so now he works for
10 himself so no one can fire him and he comes to courtrooms
11 like this and collects what was it, seven plus grand. He
12 can get abused for 30, 40 minutes, an hour for seven
13 grand. Mr. CSI. I'm gonna tell you what SLED did wrong
14 and what the county did wrong. And here is what's
15 amazing, he doesn't even do his own chart. He builds on
16 the one from SLED and he does angles, but he does them in
17 a way no other expert would.

18 You heard their other expert, Chief Myers. That
19 man's been around. That man, he's been in law
20 enforcement. His problem with what SLED did is they
21 didn't do angles that night because when you do them, you
22 have to do them with the cars as they were. You can't
23 move them, but what this guy does is he goes and looks at
24 the defendant's car, figures out angles for holes and
25 then he looks at the SLED artist's drawing, she's not

1 even an artist, a CSI agent's drawing which says
2 repeatedly not to scale and he tries to use that for
3 scientific presentation. Uses the angle of the car as
4 she drew it. Seriously? Are we to take you seriously?
5 You're using a drawing? He's a fraud. He does something
6 else too. States 85, I showed you this when he was up
7 there. He looks at this. This is a spent round. He
8 says it's a .40 caliber round fired by a Glock.

9 Now, this photo has been kind of blown up a little
10 bit. How do you know it's .40 caliber? Well, he knew
11 what kind of weapons they were. That's it. No expert in
12 this world will look at a photo like this without
13 measurements, without actual measurements to see what it
14 is because a .40 will look like a .45, will look like a
15 nine millimeter. Then he says, I can tell by the
16 markings it's a Glock. Every other expert in the world
17 does that in a lab with microscopes comparing them to
18 other test fired shots. This man looks at a photograph.
19 He's a fraud. A complete absolute disgrace to law
20 enforcement.

21 Chief Myers, not a bad guy, and he says if you
22 believe the story Jones tells you, yeah, you got a bad
23 cop. Anybody trying to ram a car, that's bad. Anybody
24 trying to shoot to kill when there's not a high level
25 situation, bad, but if you believe Florida, he did

1 everything right. The only bone I got to pick with
2 Mr. Myers is he says Florida was responsible for the
3 dashcam.

4 Now, I want to tell you something, that chief has
5 probably been a chief all over the country and in some
6 parts of the country there are unions so if an officer
7 says, I'm not driving this car because it's not safe, he
8 ain't gonna get fired if there's a union that will back
9 him up. That's not here. If Florida says I'm not
10 driving this car, they're like, turn over the keys, your
11 badge, your gun. So Florida had a decision to make and
12 he's old school. He did this job long before there were
13 dashcams. He's willing to risk his life to save yours
14 and mine and they call him a bad cop.

15 Scott Ballard, you heard him today, you know, focus
16 completely on Milledge Hall. Doesn't even look at the
17 beginning of the video. Doesn't look who actually
18 escalates this situation. Doesn't care about whose
19 property it's on. What kind of expert is that? And then
20 he's gonna tell you those loud sounds you hear, those are
21 really .40 caliber pistol sounds and there's only really
22 three because they're trying to get to six for whatever
23 reason. Six because Florida had 10 rounds left over.
24 And he was willing to help him do it. Hitting a radio
25 sounds like firing a gun. Really? And the big problem

1 is, and I'll use Mr. CSI's thing here, no casings are
2 found right here where the shooting supposedly occurred
3 when Florida was driving by. None. Mr. CSI says, oh,
4 well, they're in his car. No. A thorough search is
5 done, documented. So his conclusion therefore, this
6 expert's conclusion is that SLED is either incompetent or
7 corrupt.

8 So now you've got the story. Everybody at the pool
9 room is a liar and all the cops are corrupt except for
10 Kathmann even though he's messing around too. So that's
11 where we are. Everything in this case shows Barry Jones
12 is guilty and that he knows he's guilty. He made the
13 decision to kill Milledge Hall. He put it in writing and
14 minutes later carried it out. He's fleeing because he
15 knows he did wrong. He tried to kill Sergeant Florida
16 because he knows he's got to get away. He did wrong.
17 Well, folks, no more running. Time is up. It's got to
18 stop right here.

19 All we're asking for you to do is tell that man what
20 he already knows is true, that he's guilty of the murder
21 of Milledge Hall, he's guilty of the attempted murder of
22 Sergeant Florida. Speak that truth to that man. Let it
23 sink in.

24 THE COURT: Does anybody need a quick break before
25 we continue on? Okay. We'll take a quick break. Go

1 back to the jury room. Please don't discuss the case.
2 We'll bring you right back. Thank you.

3 (Whereupon, the jury entered the jury room at 2:30
4 p.m.)

5 THE COURT: I got head nods from the jury to take a
6 break.

7 MR. HUBBARD: It's hot in here too, Your Honor.

8 THE COURT: So let's take a short recess, start in
9 the next 10 minutes at the most.

10 (Short break.)

11 BAILIFF: All rise.

12 THE COURT: Please be seated. Thank you. Defense
13 ready to proceed?

14 MR. L. SHEALEY: Yes, Your Honor.

15 THE COURT: Everybody in the courtroom? Nobody
16 outside?

17 THE CLERK: Yes, sir.

18 THE COURT: Okay. Let's bring them back in.

19 (Whereupon, the jury entered the courtroom at 2:40
20 p.m.)

21 THE COURT: All right. Mr. Foreman, ladies and
22 gentlemen of the jury, please be seated. We have now an
23 opportunity to hear closing argument from the defense.

24 MR. L. SHEALEY: May it please the Court.

25 THE COURT: Yes, sir.

1 MR. L. SHEALEY: I want to start by thanking you
2 guys. You guys have been very patient and diligent and
3 we've gotten to know each other for over a week now and
4 it hasn't been easy, you've been very diligent and I
5 appreciate that. I asked you to stay with me, that I was
6 gonna give you some tools to resist against the urge to
7 decide a case on an improper basis, to decide a case on
8 prejudice or passion or anger. I'm gonna continue to
9 give you these tools, but you certainly have been
10 listening and I appreciate that.

11 This case is about a man, Barry Jones, who chose to
12 live. Life is about choices and in those moments of
13 critical importance on May 7th, 2018 Barry didn't want to
14 die. He chose to live. I want to talk to you about one
15 of my favorite movies called "Twelve Angry Men". It's a
16 1950's movie. It's a black and white. It's got Henry
17 Fonda. Some of you are probably too young. Some of you
18 might be just the right age, but it stands for a very
19 appropriate principle, and I've got this actual frame in
20 my office. You can see the glare off my lights in this
21 picture, and it is this, it's about jurors that listen to
22 a murder case. They've heard all the evidence and they
23 got back in that deliberation room and there was an urge
24 for a quick decision and guilt, right? It's a killing
25 with a knife. What have we been talking about, and they

1 instantly raised hands for a vote. What was it, like 11
2 to 1 right off the bat and Henry Fonda, of course, is the
3 star of the show. He says hold on. Hold on. We've got
4 a job to do here. We've got to weigh this evidence.
5 We've got to think critically which is what I asked you
6 to do at the start of this case, and at the end of the
7 day they thought critically and they did their duty as
8 jurors.

9 What I want you to do and what I've asked you to do
10 and which I know you will not do is be whipped up into a
11 modern day lynch mob. To not decide this case based on
12 anything other than logic, reason, the evidence that's
13 come from that witness stand. No passion, no prejudice,
14 no anger.

15 I told you what our Supreme Court says about Barry
16 Jones, any man or woman charged with a crime. It is that
17 they're innocent until proven guilty beyond a reasonable
18 doubt. They are cloaked in a robe of righteousness and
19 the only way they can be found guilty is if the State
20 through evidence that they have proven is able to strip
21 them of that robe. It's just symbolism, but it makes a
22 good point. He sits there righteously innocent against
23 these charges and the State has all the burden of proof.

24 You've heard evidence of self defense and they're
25 right, Barry Jones is claiming self defense against

1 Milledge Hall so not only does the State have to prove
2 murder with malice aforethought, an unlawful killing,
3 they have to prove attempted murder with malice
4 aforethought, an unlawful specific attempt to kill. Once
5 self defense is entered in the case at the pool room,
6 they then have to disprove self defense beyond a
7 reasonable doubt. Disprove it. And you've heard some of
8 the elements of self defense as asserted by the
9 Solicitor. You're gonna hear a lot about it from the
10 Judge. So one, have they proven their case? Two, can
11 they disprove self defense now that it's in evidence?
12 This is a very hard thing to do. It's meant to be hard.

13 Beyond a reasonable doubt. You may recall when I
14 first got up here last week and talked to you, I made an
15 analogy it's kind of like a football field. The State
16 starts at their own end zone. Here they are. Let's just
17 called this the State and they have to drive up field to
18 try to prove their case and if every time someone, Nicole
19 Bibbs gets crossed and denies the video, every time
20 Sergeant Florida gets cross examined and realizes that
21 his shell count is off, they get driven back, driven
22 back, driven back.

23 You know, and I would honestly argue that maybe the
24 State made it to about the 20 yard line when you think
25 about evidence. To be beyond a reasonable doubt they

1 would have to get through to the other end zone, but
2 every time they take a step back, they get cross
3 examined, they got knocked back, knocked back, knocked
4 back, and after all the evidence you've heard in this
5 case including our case, they have fumbled in their own
6 end zone.

7 Our justice system is hard to think about, guys.
8 It's not necessarily what you want or you think is right
9 as a juror. It's what the law commands. We've got the
10 football analogy up here. You've heard me talk about
11 Monday morning quarterbacking. We're sitting here going
12 Barry Jones could have done this and Barry Jones could
13 have done this. Why didn't he do that. Why didn't he do
14 that. Their job has to be to prove that malice came out
15 of his gun with every bullet that is not self defense.
16 Their job is not to prove that he could have maybe done
17 something better. Your job is not to sit here and go,
18 I wonder how this would have gone if he had never went
19 back to the pool hall. That's not the job. That is not
20 the criminal justice system. It is meant to be hard on
21 them because the system would much rather prefer to not
22 get a conviction than to convict an innocent man. So you
23 have to clear your minds if you have any preconceived
24 notions about what you think it is. It's gonna be what
25 the Judge tells you it is. But it's not Monday morning

1 quarterbacking.

2 One of the main witnesses you heard from is Clayton
3 Hall, Milledge Hall's, B'Boy's own grandson. Now, I know
4 he loves his grandfather dearly. No one can dispute
5 that. All these people that came in here that were
6 friends, his widow, they loved him dearly. He meant
7 something to them, but you also have to think about what
8 that means in terms of what they say on the witness
9 stand. They want a conviction. They want their idea of
10 justice. Clayton Hall, convenient camera custodian. He
11 came in here and told you that he had complete control of
12 all the cameras in that pool room including coverage of
13 almost every square inch of the interior. So why do we
14 only have one interior angle from the limited time
15 showing Barry Jones leave at a relatively benign kind of
16 calm time followed by Milledge? Why do we only have
17 that? And then Milledge coming back. Why don't we have
18 all the photos of the bar where Clayton's gun would have
19 been that he testified to? Why don't we have video of
20 Milledge making preparations to come out and confront
21 Barry when he comes back to the pool hall? Why don't we
22 have all that? Why didn't Investigator Smith demand
23 this? Why are we sitting here asking this question three
24 years later? Investigator Smith isn't here to answer for
25 that. I wish he were. I don't know what he would say,

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1 but we know that law enforcement didn't require it. They
2 basically received selected footage from the grandson of
3 the guy who ultimately was dead.

4 Clayton says that the only gun he had in the bar was
5 his revolver. Don't you think the State after trying to
6 prove that, that would be something different, that would
7 it have been in his granddaddy's waistband, would have
8 brought you a picture for that? We would have seen it.
9 Let's just settle this. They didn't bring you that.
10 We've got no picture of that. We just have to take young
11 Clayton's word for it. He acknowledged that the first
12 time he ever brought up any of this very belligerent pool
13 hall stuff was three years later when he was first
14 interviewed by the State. First time it was ever brought
15 up is when they have to think and say, well, why would
16 your granddaddy be acting that way on that video? Why
17 would he be going out there lifting his shirt up like
18 that. What's going on here? What can we say about that.
19 Three years is the first time anybody ever heard about
20 that. Clayton agreed with me. He told you that.

21 We brought you witnesses. We didn't have to bring
22 you anything, but we chose to because we had nothing to
23 hide. Remember the burden is entirely on the State. We
24 brought you Jerry Holloway, the old bar owner. He
25 doesn't want to be here. He doesn't want to be here at

1 all. I had him under subpoena, but he didn't lie. He
2 said Barry never gave me any problems. He wasn't
3 belligerent. Never called my staff on him. Never had a
4 problem with him.

5 We brought you Brandy Truesdale. She's been knowing
6 Barry for years from going to a different bar and
7 restaurant. Said he was a perfect gentleman, swept up
8 the floors, never had to call the police, never had to
9 put him on trespass notice. She knew him at this time.
10 He was not a problem at the bar. This was a personal
11 problem between him and B'Boy that had nothing to do with
12 the bar. That bar puts people on trespass notice when
13 they have problems. Clayton told you about three
14 different people that were put on trespass notice. You
15 know who was never put on trespass notice not even after
16 this? Barry Jones. Do you know who was put on trespass
17 notice? Angie Smith.

18 Clayton described this magical night that he talked
19 about three years later to the Solicitor's Office for the
20 first time about how there's a dispute about the drinks
21 and just Barry had gotten so bad he just needed to draw
22 a line in the sand and inform Barry that it's time to
23 leave, but we weren't gonna do it then because Barry was
24 a little drunk, and we didn't have to call the police
25 because he wasn't so drunk and we didn't have to force

1 him out or anything like that, but we just made a
2 decision, so we had a conversation with his granddad. He
3 said, you know what, my plan is, not you B'Boy, my plan
4 is the next time I see Barry once everything is calm and
5 we're all sober, I'll let him know he's not wanted around
6 her anymore. We don't want his business because Barry
7 was a patron.

8 So Clayton testified that, well, my grandfather, no,
9 he's not an official employee. No, he doesn't pay taxes
10 here. He's not on the payroll. But he just wanted to
11 help out so he kind of took it upon himself to do what
12 needed to be done. The idea, I guess, is that when
13 Clayton says, well, I want to ban Barry, that B'Boy is
14 just gonna take it upon himself. No. B'Boy already had
15 a personal problem with Barry. If there's any truth to
16 this idea that there's gonna be a ban happening, it only
17 made him more happy to have a confrontation with Barry.
18 But here's what Clayton said. He agreed it would not be
19 professional to try to ban Barry while he's intoxicated,
20 while either Barry's intoxicated, but certainly not the
21 person who is doing the banning.

22 Every bar in the State has liquor liability
23 insurance. Your employees can't be drinking and doing
24 things like banning or doing things like brandishing
25 guns. It's against the law number 1. It's also against

1 your insurance policy. Most bars have and restaurants
2 have a million dollar policy. B'Boy, if you want to
3 believe the State's theory that he was just doing bar
4 business at a .12 blood alcohol who decides to let Barry
5 in for a little while that day and then follow him out
6 and then confront him not once but twice at his car was
7 not acting in official bar capacity, he was acting in
8 B'Boy capacity, he was drunk. He was belligerent by his
9 actions. We brought you a former SLED toxicologist to
10 say exactly that. He wouldn't have been allowed to drive
11 a car in the State of South Carolina with an inference of
12 .08. B'Boy was .12. .12.

13 He describes -- I don't know if you guys drink
14 alcohol on occasion or not, but most people know what it
15 does. It causes you to lose your inhibition. To have
16 errors in judgment. To do things that you might not
17 normally do. Some people get aggressive. Some people
18 get happy and sad and flop around. I didn't see any
19 happy or sad flopping around in that video with B'Boy.

20 Here's something else I want to bring. The fact
21 that he may have been recovering from some kind of heart
22 surgery has nothing to do with this case. Has nothing to
23 do with this case. Barry Jones certainly was not advised
24 of that when B'Boy is six one, 300 pounds, coming at his
25 car acting the way he did. Just because B'Boy maybe

1 shouldn't haven't been doing certain things, doesn't mean
2 he's gonna follow his doctor's advice. Doctor might say,
3 B'Boy, you can't pick a fight until six months later.
4 No. I guarantee you his doctor's advice was not to drink
5 six beers that day.

6 The prior threat in this case matters tremendously.
7 Barry told you about it. This is personal between them.
8 The reason why it's personal is because Barry, after 27
9 years, retired from SRS which everybody around these
10 parts knows is a very good job. He had a security
11 clearance. He worked there with his wife. She died of
12 cancer. It was agonizing. He met her there. He just
13 couldn't stand to work there anymore. He's not telling
14 you that because he wants to garner your sympathy. He's
15 telling you because he did not get fired from that great
16 job that he wanted to keep working so when he heard B'Boy
17 about a month prior to this incident just casually
18 talking about that at the bar saying he was fired, not
19 retired, he took the opportunity to talk to him about it.

20 Barry Jones is not shy. I don't think that any of
21 you got the idea from him on the witness stand that he's
22 shy. So when he hears something like, that's so deeply
23 personal, he's gonna talk to you about it and say where
24 did you hear that? He didn't go there and punch B'Boy in
25 the face or push him out of his bar stool. He said where

1 did you hear that from? And B'Boy wouldn't tell him.
2 B'Boy said, don't worry about it. You know, get out of
3 here. Stood up, jumped out of his chair and said, I'm
4 gonna beat your little ass all about this bar. And Barry
5 Jones described it as a physically intimidating gesture
6 from a man much larger. He doesn't want to be told what
7 to say or not say. He's spreading the lie if he wants
8 to. It upset Barry. Barry didn't fight him then, didn't
9 do anything, but that threat he told him made him very
10 weary. He started going to a different bar, Foley's in
11 Saluda. He started sitting at a different part of the
12 pool hall. Now he sat in the front part of the pool hall
13 where you saw him walking out that day. He kept his
14 distance. He wasn't gonna cry to Angie or complain or
15 grovel, but he was worried. It scared him deeply.

16 Look at the text messages that you have in evidence,
17 a month prior he reaches out to Officer Mathis, a man in
18 the community that he trusts, who works for Johnston
19 Police Department. He says, hey, are you available? I
20 need to talk to you, and they never caught up. He was
21 wanting to talk about this problem with B'Boy. He
22 reaches out to Officer Mathis when he has problems really
23 of any nature. Why didn't he reach out to the Sheriff's
24 Office? Why didn't he just pick up the phone and call
25 911? How conflicted is this case?

1 The guy who signs off on his murder warrants is the
2 ex-husband of the woman he was dating at the time who he
3 was breaking up with and she was running around with
4 B'Boy, her cousin, who came out to confront him about it
5 and got shot, and they act like, well, geez, you should
6 just go call 911. No. Barry only expected to get fair
7 treatment with any law enforcement dealings from either
8 Officer Mathis, but he couldn't trust anybody who would
9 necessarily believe what he would say if he just called
10 Edgefield County. James Smith is there. Guess what?
11 James Smith had these videos showing B'Boy lifting up his
12 shirt and he still signed off on the murder warrants for
13 the death of his ex-cousin-in-law. Conflict, conflict,
14 conflict. Doubt, doubt, doubt. Makes you wonder why
15 Investigator Smith didn't get all the videos. I think we
16 know the answer to why.

17 B'Boy comes out to confront or fight Barry twice
18 that day. We've got the self defense. The first prong
19 is did you bring about the difficulty. Did you start the
20 problem. They want to say Barry did for coming back to
21 the pool hall and trying to break up with Angie. No.
22 B'Boy coming to Barry's car twice is starting the
23 problem. If Barry had stormed in there looking for
24 somebody armed, yeah, that's bringing about the
25 difficulty, but walking calmly to your car once and

1 having B'Boy smack it and go like this or sitting calmly
2 in your car and having B'Boy lurch out there to
3 eventually show you a gun, that is bringing about the
4 difficulty by B'Boy.

5 (Playing video.)

6 There's Barry walking to his car. He's decided to
7 break up with Angie. He's not concerned. He's not
8 looking over his shoulder. No one has told him anything
9 that day. They served him two or three drinks. No one
10 barred him at the door. No one said anything about this
11 alleged idea that he couldn't be there. Here comes B'Boy
12 lumbering out. Barry doesn't even see him until right
13 there, smack. Barry doesn't stop his car and get out.
14 Hey! B'Boy makes a motion. What is a man supposed to
15 think about that? How is that good behavior by anybody
16 affiliated with the bar at .12 blood alcohol. That is
17 picking a fight, ladies and gentlemen.

18 Barry was driving and already made the plan to go to
19 Angie's house. The relationship had run its course.
20 You've got text messages. Barry had to call the police
21 the night before on Angie. Officer Mathis came, calmed
22 her down. B'Boy's cousin. And this happens the next
23 day. Y'all have broken up with other people or you've
24 been broken up with. It's tough especially the longer
25 you've been dating somebody. Eight months Barry had been

1 dating Angie at this point, living in her home. It's a
2 tough thing to do and now that job has been made even
3 tougher by her cousin.

4 When he comes back inside, I think the State tried
5 to elicit some testimony that he was gravely concerned,
6 now we got to ban Barry. We're concerned about this.
7 Who is B'Boy looking at? Smiling. This is fun for him.
8 This is predator/prey and he is the predator. Coming in
9 talking to Angie who is there. Talking to Roger Bryan.
10 He is not on bar business. He's on B'Boy business.

11 I asked you in opening to not be fooled by a red
12 herring in this case. Lawyers always talk about red
13 herring. Red herring this, red herring that. Here's
14 what a red herring is. I figure I might as well explain
15 it. It's something that's meant to mislead. It's
16 something that's meant to distract. It's something
17 you're meant to latch on to to falsely take you down a
18 rabbit hole. And I told you that right in the beginning
19 of this case that this text, I'm gonna kill that B'Boy,
20 was a red herring. It was something the State would
21 seize on, and it's like, oh, it's all literal. Just
22 believe it. It's murder. It's malice. No. It's a red
23 herring.

24 Here's Sherlock Holmes and Watson checking out a
25 clue that was falsely laid for them to get them off the

1 scent. I want you guys hot on the trail of this case. I
2 don't want you guys distracted by a red herring. Read
3 all of the texts, all of them. The last person he texted
4 was Officer Mathis, would have been minutes before he
5 actually got in the pool hall. Are you available?
6 You're either the dumbest murderer in the entire world or
7 you're looking for help. It's not murder. He's venting.
8 I hope, I pray to God that I am not judged one day by all
9 the stuff on my phone. I pray, because everything on my
10 phone is not literal, guys.

11 There's the text. Where is the summary board? The
12 summary board is conspicuously missing a few things. I'm
13 very interested in the, I'm gonna kill that B'Boy text.
14 Can you calm me down. Guess what malice isn't? Being
15 upset, being excited. Malice is cold, calculated evil in
16 your heart. Even by their own summary board at 6:49 he's
17 asking for a friend to calm him down. He's excited.
18 He's frustrated. He told you. He is upset. He's got
19 breaking up with his girlfriend on his mind and also this
20 guy that threatened him before is hitting the back of his
21 car. But what they're reading out is what's right up on
22 this board. He comes back because Angie sends him a text
23 message saying, see you soon. No fighting. So he
24 decides to come back and the very last text that we have,
25 period, by Mr. Jones in this case is to Officer Mathis at

1 6:52. Are you available? Nobody reaches out to their
2 friendly neighborhood officer if they're about to commit
3 a murder. He reached out for help.

4 Again, Monday morning quarterbacking. Barry could
5 have done this. Barry could have done that. He's
6 reaching out to an officer. He doesn't have murder on
7 his mind. He's looking for help. He told you right from
8 that witness stand I wanted someone to diffuse the
9 situation. Maybe if someone could go there with me. He
10 also reached out to Joe Mims. Can you come calm me down?
11 Another guy we heard from, a big guy who claims that his
12 own text about, yeah, they talked shit the last time I
13 was in there, has nothing to do with B'Boy. Looked us
14 all in the eye with a straight face and said that.

15 This small town of Johnston had to pick a side. One
16 guy's dead and one guy's charged. The popular side is
17 the side of not the guy charged. You don't text a police
18 officer if you're about to commit murder 10 minutes
19 earlier. You don't do it because he wasn't planning to
20 do it. And again, here's why he reaches out to Officer
21 Mathis one month prior. When you are on days and you
22 have time, I need to talk to you. That was right after
23 the threat by B'Boy one month prior during the debate
24 about whether he was retired or fired. They want to say
25 he's a bad, belligerent guy that disrespects the pool

1 hall. Well, here he is reaching out to Officer Mathis on
2 February 24th that same year. That's in evidence.
3 Miranda is at the pool room closing. She has no males
4 present. Officer Mathis. On the way. That's not a text
5 message of a man that has no regard or respect for the
6 pool room or its staff. That was a convenient lie agenda
7 to explain one thing, how do we explain B'Boy's behavior
8 on the video? We have to find a reason why he would be
9 doing that. Oh, he's quasi banning him. Okay. Well,
10 why?

11 All right. Well, let's figure it out. It ain't,
12 because Barry is belligerent. It's a personal problem
13 between Barry and B'Boy. And again, last text, are you
14 available? Barry went back for Angie. He didn't go get
15 all his guns and toiletries and mail and pills and
16 Clemson shirts his wife bought him just so he could go
17 commit a murder. No. He left the pool hall in the first
18 place because Angie came in there. She was pissed. Read
19 the text. I'm really pissed now. If you don't come talk
20 to me, it won't be pretty when you get home. Answer me.
21 I'll come show out. Barry texting Jojo Mims, and he says
22 that's why I fly by myself. You couldn't even come and
23 speak. Everyone stared at me. And then, finally, see
24 you soon. No fighting.

25 This was about Angie. And guess who we didn't hear

1 from this week? Angie. If it wasn't about Angie, they
2 would have brought you Angie. They didn't bring you
3 Angie because it was about Angie. We didn't have to
4 bring you anything, nothing, but we brought you
5 everything you needed to do to resist against the State's
6 attempts to make you decide this case on an improper
7 basis. You didn't hear from Angie though. Ask yourself
8 why. You didn't hear from a lot of people at that pool
9 hall, a lot of those people milling around. Ask yourself
10 why. You did hear from people who adored B'Boy. He
11 employed or his family employed Nicole Bibbs. She worked
12 there. Good friends with Betty Edwards, family. Lanyce
13 Hatcher, best friend for 40 plus years. I want to say
14 that Lanyce heard a direct request for Barry by B'Boy to
15 leave. Lanyce told you that wasn't in his statement.
16 That wasn't in my statement when I was given the
17 opportunity to tell law enforcement everything important
18 in this case right on scene. No. I wasn't there. Yeah.
19 He's my best friend. Watch the video. If you're best
20 friend was engaged, embroiled in this terrible argument
21 where he looks like he's confronting the man and telling
22 him to leave, would you even look up? Maybe take a
23 second glance at your best friend? You would. You might
24 even stand there and make sure everything is okay.
25 But Lanyce didn't hear any of that because none of that

1 was happening at that point. He wasn't being told to
2 leave. That occurred much later once B'Boy couldn't get
3 him out to fight, once B'Boy couldn't get his
4 satisfaction and was frustrated. Later, sure, leave, but
5 that did not happen when Lanyce walked by otherwise
6 Lanyce would have turned his head at least a little bit.

7 B'Boy isn't doing bar business. He's doing B'Boy
8 business. Now, I know the Solicitor up here, he doesn't
9 care for these enhanced videos. They didn't do that.
10 This did cost quite a bit, and it's not costing a lot
11 because of me instructing some former FBI employee to put
12 a gun somewhere? No. Expertise costs money. I wish I
13 didn't have to spend my client's money on that, but if I
14 don't, you might convict him based on seeing an
15 unenhanced video. Maybe that's why Investigator Smith
16 charged anyway, he's just looking a low quality grainy
17 video. I'm not putting a gun in his hand. I'm showing
18 you the gun that's in his hand. Let's be clear, he has
19 both a gun and a cell phone. We're not saying he never
20 had a cell phone. The cell phone is right here clipped
21 this waist. The gun is in his waistband. He's
22 right-handed. We're not saying he didn't have a cell
23 phone. But guess what's also not in evidence? There's
24 no gun in evidence and there's no cell phone in evidence.
25 Where did it go?

1 Look in here. You see a lot of guns, a lot of
2 unrelated guns meant to scare you. Man, Barry Jones
3 enjoys the Second Amendment Right to bear arms. About
4 ten of those guns have nothing to do with this case, but
5 they're meant to scare you, meant to make you decide this
6 case on an improper basis, but again, stay with me. I'm
7 giving you the tools to pick yourself up by your own boot
8 straps if needed and resist against that nonsense. There
9 is both the cell phone and the gun. My pointer is not
10 working. See the video. There it is again. This is
11 that menacing motion that Scott Ballard told you about
12 today, .12 blood alcohol, rifle motion, black object in
13 his hand, what Scott Ballard called a furtive movement
14 that any cop would shoot you dead any day of the week if
15 you did that today. Make no mistake, if a cop had
16 stopped you for any reason and you had acted like that,
17 you would be a dead citizen. Dead. And they're trained
18 to do that.

19 You heard from a guy today Scott Ballard that has
20 trained cops before and trains everyday citizens to
21 defend themselves, and it's based on that behavior and
22 seeing a gun that Barry Jones felt scared for his life.
23 He felt there was an imminent threat. He saw a gun. He
24 knows the difference between a cell phone and a gun. But
25 here's the other thing. It doesn't matter if there

1 wasn't a gun. You're gonna hear from the Judge that when
2 a man or a woman is allowed when considering self defense
3 to act on appearances. If someone makes you think
4 they've got a gun or any kind of deadly weapon, you're
5 allowed to believe that. You don't have to wait for them
6 to get the drop on you. You don't have to wait until
7 someone has a gun to your temple before you can defend
8 yourself. No. That is not the law of our land. So if
9 B'Boy honestly didn't have a gun that day, then that was
10 about the dumbest thing he could have ever done, and if
11 he did that, God bless him. He got himself killed for
12 doing that. Any cop would have taken the same action
13 that my client did that day, but I will tell you he did
14 have a gun that day, because you see it. You see it in
15 that video. And you see it right there.

16 I get a little offended when the State wants to say
17 that I did some kind of sprinkling magic and brought in a
18 guy who worked at the FBI to put a gun in this man's
19 hand. I don't know what it is. It looks like a gun and
20 when you have that action of that smooth drawing motion,
21 what else could it be? The State has yet to answer my
22 question that I posed in opening statement. When you're
23 talking about maybe calling the police, you go like this
24 (indicating) if you're gonna threaten to call the police.
25 You don't go like this (indicating) if you're gonna

1 threaten to call the police. You're showing him what you
2 got. What did he tell Tony Friar a month prior when Tony
3 who knows both of them said, hey, why are you spreading
4 those lies about Barry Jones? He said I don't care
5 (indicating). I got something for him.

6 He's got something for him. He brought it out there
7 that day. Milledge, B'Boy brought about the difficulty
8 trying to do, they're gonna say, trying to do bar
9 business. No. No. No. If he did, he was violating the
10 law doing it, .12, armed while not an employee of that
11 bar. I also showed you where the gun went or what
12 certainly looks a hell of a lot like a gun through our
13 enhanced video, and I'm glad I enhanced that video. I'd
14 do it again and pay twice as much. And you know what,
15 here's the other thing I want you to note. Lots of
16 evidence was flying in. The State only gave you that
17 video that stopped after the shooting. I had to
18 separately and specially provide a new disk that says,
19 we'll see it in there, like a full unedited pool room
20 original because they didn't want to show you all the
21 stuff that happened after the fact. The State didn't
22 want you to see something. You deserve better than that.
23 You deserve the full evidence. We all as citizens
24 deserve the full evidence. Why am I bringing this to you
25 when I don't have anything to prove? Barry Jones doesn't

1 have anything to prove. Why did we have to bring you the
2 full evidence so that you can see this?

3 (Playing video.)

4 Roger Bryan who testified, good friend of Barry
5 Jones, right there in the blue, there's a dark object on
6 the ground that he just put a towel over, and right there
7 in his hands he picks it up. Why did I have to show you
8 that? Why does the State not have no answer for that?
9 They could have brought Roger Bryan back to talk about
10 that. No. No. No. No. Doubt. They brought you
11 Nicole Bibbs and Betty Edwards. I hope this wasn't lost
12 on you. Betty, I love her. She was their last witness
13 because she was the closer. She was focusing. She had
14 y'all laughing. She had me laughing even though she was
15 damaging as hell to my case, trying to be. She was very
16 focused. She is the former teacher of Nicole Bibbs,
17 their star witness, Nicole Bibbs who called 911, and
18 claims the literal 911 call was that Milledge told him to
19 not disrespect the place or something like that. And I
20 talked to her about her five different statements and she
21 just unraveled. I showed her the video of how she told
22 officers on the scene that, well, he must have, he must
23 have called him back. She didn't say he called him back.
24 She didn't say I heard Barry Jones call B'Boy back. She
25 said he must have because she can't understand why he

1 would have walked back. He walked back because he wanted
2 to continue to pick a fight, not because Barry Jones
3 called him.

4 Her statement unraveled even further. She told the
5 Solicitor in an in-house meeting and agreed that, yeah, I
6 even heard him blow his horn. He blew his horn, got his
7 attention, he came back over, and she had to totally
8 retract that. In her next Solicitor in-house statement
9 she agreed she is not having fun because her story
10 changes and changes and changes. She said she saw it all
11 at the door, and then she said she saw it all from behind
12 the bar. She doesn't know what. What she knows is that
13 her boss was shot. And I'm sure she loved the man. And
14 what we all know is that Betty Edwards is right there
15 talking to her former student. What? And guess what?
16 She comes in and says something eerily similar. She
17 either claims she was at the IGA parking lot, a parking
18 lot away, I'll show you the pictures as well, cars and
19 trees are in front, she was focusing, she wanted to get
20 her steps in. She was very clever. She was a smart
21 lady. She's friends with Milledge. She didn't park all
22 the way by the IGA entrance. No. She parked closer to
23 the pool hall side so she could have seen it. She could
24 have heard it. That is the source of their information
25 right there.

1 She's talking to Nicole Bibbs her former student.
2 What happened? Betty goes there all the time to get
3 food, salads, cheeseburgers, and she rolled up that day,
4 and my brother pointed out something very important.
5 After the shots it took four minutes for her to get
6 there. She kind of got caught off guard by that. She
7 said, oh, I didn't want to be the second one to get shot.
8 Ha, ha, ha. No. No. You were unaware of what happened.
9 You were driving by maybe to get a cheeseburger. If you
10 saw that shooting go down and you heard something, an
11 argument, you would have gone right over or you would
12 have called 911. And my brother also pointed out that
13 she's coming from the far side entrance of the IGA, she
14 wasn't coming from the area where she was parked.
15 There's two entrances to that IGA. She came from the far
16 side. Maybe she wasn't even at the IGA, but her story
17 matches up with Nicole who is lying. They love Milledge
18 and he's lying there dead and everybody is concerned.
19 Doubt.

20 And there's the photo that proves that she could not
21 have looked, had any kind of view of what was going on
22 and there she is, by the way, talking to another person
23 you didn't hear in this case who is visibly upset. B'Boy
24 is down. They're all friends with B'Boy. She's getting
25 emotional about it. She's trying to say that she parked

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1 right over here down a hill in another parking lot and
2 have x-ray vision that allowed her to see through these
3 two trucks right here where the incident happened. No.
4 No. She's good, but she ain't that good. She heard
5 about it from being on scene and the police weren't doing
6 anything. You heard from Officer Rick Myers, the chief,
7 it was woeful. No crime scene tape. Everybody's allowed
8 to just mill around and talk about what happened. It's
9 cop 101 when you respond to a scene like this to isolate
10 witnesses so they are getting their recollection from
11 their own memory, not from what their friends say, not
12 what their former school teacher says, not from what
13 their former student says. She could not have seen that.

14 Roger Bryan, I've already pointed him out to you in
15 a way that the State tried to hide from you picking up a
16 black object on the ground that looks a lot like a gun.
17 There he is on scene. He agrees even though that Angie
18 came in running her mouth next to B'Boy about all of her
19 complaints about Barry that day, came in, didn't sit next
20 to Barry like normal, was upset telling anybody and
21 everybody loudly getting B'Boy amped up to go confront
22 her boyfriend of his cousin who he already doesn't like.
23 And on direct he'll tell you he was just nervous. That's
24 what he said. You guys heard that. When asked what that
25 was in his hands, he said "pistol." I couldn't believe

1 it. Mr. Secord asked him again on cross. You said that.
2 Do you recall that? Yeah. I recall saying that, but it
3 was just nerves. Was it? Was it? It's a pretty odd
4 thing to confuse. Sometimes the truth just comes out
5 whether you want it to or not. The same man who can be
6 seen picking up that black object.

7 Barry left because he was scared. He had just shot
8 somebody who had tried to kill him, who had a gun, who
9 was threatening him and all that man's friends are
10 pouring out of that pool hall. He didn't feel it was
11 safe. He said his plan was to try to make contact with
12 Officer Mathis, but Officer Mathis hadn't responded to
13 him and he doesn't feel like he can pick up the phone and
14 call Edgefield County because he just shot basically the
15 relative of the man who had ultimately signed his murder
16 warrant, the ex-husband of the girl he was just breaking
17 up with or trying to.

18 So he has no plan. He's driving, but he wants to
19 get some beer and cool off. The Solicitor thinks that's
20 just farfetched. It's just crazy. It's just crazy. Is
21 it? I know after a hard day of court I go home and have
22 myself a glass of wine. In a situation like this I don't
23 know what you would do, but we bring you evidence that
24 matches the case. I'm gonna show it to you again.
25 Here's how you know he didn't already have that beer,

1 that box open for liquid courage as the Solicitor said so
2 he could jones up enough stones to kill B'Boy in cold
3 blood. There's only one beer removed from that box.
4 Look at it. You've got a picture. Y'all know what a 12
5 pack looks like. There's one beer removed and there's
6 one beer on the ground out on Log Creek Road behind his
7 car with his sunglasses as they were blown down when he
8 had a drive-by shooting occur. He didn't have that box
9 of beer in his car at the time he was at the pool hall.

10 Barry told you he wishes there's a lot of things he
11 could have done differently. This trial is not whether
12 Barry Jones is a perfect man, it's about whether they can
13 prove murder and attempted murder beyond a reasonable
14 doubt. Yeah, if Barry hadn't gotten that beer, he
15 probably wouldn't have found Officer Florida. Maybe he
16 would have run into an officer that was a good cop.
17 Maybe he wouldn't have run into an officer at all. He
18 would have made it to Greenwood or found Officer Mathis
19 and turned himself in peacefully without this whole
20 nightmare of a case. I don't know, but I don't think it
21 defies the belief to think that after you almost lost
22 your own life and you were forced to shoot that you might
23 want a beer especially if you're a daily drinker or a
24 regular drinker.

25 Florida. Windows rolled down, claims that Barry got

1 ahead of him and waited right here, had an opportunity to
2 do a three point turn so that he could sit there with his
3 rifle trained and waiting for Officer Florida to come
4 down the road. That was his testimony. Now, Barry says
5 no. Florida was acting crazy and we can talk about the
6 evidence that might support some bad Florida behavior
7 that day was that he was backing off at a distance at
8 first, but then running up on him, backing off, running
9 up on him, and he felt like he was trying to be run off
10 the road. Now, you know how we know if that were
11 happening or not? If Florida had a dashcam that worked,
12 we would know. Florida had a gun in his hand at that
13 point per Barry. Florida says, oh, man, I wouldn't do
14 that. That would be dangerous. Yes. It would. But his
15 colleagues had guns in their hands as they were driving
16 to the scene. That's why I put those photos in evidence.
17 It's not crazy. They're all scared. They don't train
18 particularly well. I will say that.

19 Small town. It is what it is. Half of these guys
20 were off duty, got bad equipment. It doesn't mean that
21 Barry Jones or that any of us deserve any less proper
22 police treatment when we deal with them just because
23 they've got a low budget or aren't trained well. We
24 deserve proper police treatment. We don't deserve a
25 bunch of cowboys coming off duty, no bodycams, no

1 dashcams, and missing shell casings. That's what we got.
2 You know how you know that's a lie when Barry was trained
3 on him? Because they're saying that Barry is purposely
4 lying in wait. I think the Solicitor's words were to
5 waylay an officer so that he can escape. All right.
6 Well, I guess that makes sense. Well, why didn't he do
7 it right there? That would have been the perfect place.
8 You only got one cop on you. You've got a long road. If
9 he speeds by, train, train on him, turn that thing to
10 switch cheese, because that's not Barry's intent. That's
11 not what he wanted to do. He was scared based on the
12 behavior of Officer Florida with a gun in his hand enough
13 to get the one weapon out of his car that he might have a
14 chance in hell of living through this encounter and that
15 was his rifle which was in his trunk in its gun bag.

16 Now, the Solicitor wants to tell you that, oh, no,
17 that couldn't be because look, there's a toiletry bag on
18 the gun bag. What? That photo was taken way later by
19 SLED after driving down a bumpy Log Creek Road in your
20 Mercedes and then backing into the cut and the Solicitor
21 wants to say, oh, the gun was all ready out and available
22 so he just told you a lie. It couldn't have been.

23 Barry believes and told you that as he was getting
24 that rifle out based on Florida's actions that Florida
25 drove by, he likely saw him putting it in his car in the

1 back seat and, you know, we hear Florida on the radio
2 saying AR-15. Okay? I believe that. I think he
3 probably saw it and he got scared. He was coming from
4 off duty. He knows he's responding to a felony stop and
5 now he sees a guy with an AR-15 not pointing. We know
6 and Rick Myers, chief, told you in that moment if Barry
7 were pointing his weapon at Officer Florida, that he
8 would have been completely justified in shooting.
9 Florida's windows are down because he wants to be more
10 prepared than anybody. He told you that. If Barry Jones
11 had been pointing a gun right there as Florida drove by,
12 Florida would have unloaded on him. He doesn't have any
13 problem shooting. We know that much. But Barry Jones
14 wasn't pointing a gun. He was getting his gun out. And
15 you know how we know that he wasn't pointing a gun? Is
16 because one, he didn't get shot, but we've also got some
17 inconsistent behavior. Florida claims that when - that
18 he sped by there. We'll talk about it down the road, but
19 that's how you know Barry Jones wasn't pointing a gun at
20 the moment of the shooting is because Florida didn't
21 speed by. Florida was shooting first and jumped out of
22 the roadway.

23 The reason why I brought you this evidence today is
24 we're asking you to do something very difficult. I don't
25 believe any of you are gun experts. Many of you are gun

1 owners. Some of you might have a lot of guns, but we
2 have brought you two experts. You can give them as much
3 weight as you want, but they are experts in their field
4 and they know what a gun sounds like, they know what a
5 rifle sounds like, they know what a Glock sounds like,
6 and I brought you two experts to say that the first shots
7 were medium caliber handguns consistent with a Glock like
8 Florida's. They do not have that distinctive
9 (indicating) crack, pow of a rifle. Those are their
10 expert opinions and you are to consider that. The Judge
11 will tell you what weight to give experts.

12 But here's the thing that I'm actually kind of
13 impressed with my own self that we discovered. The
14 sounds that you hear coming from recorded by Officer
15 Kathmann's dashcam sounds exactly the same as what is
16 coming through Officer Densmore's body cam as he's miles
17 away. How could that be? It's because Florida is
18 shooting those first shots while holding his radio and
19 driving which we know he's been talking about. Hey, I
20 saw an AR-15 going down Log Creek Road. As soon as he
21 sees Barry for whatever reason, because he's untrained or
22 he's off duty or he had a hard day, he just starts
23 shooting, and he's got that microphone depressed because
24 he already had it depressed and his first blast goes
25 right into it and that is why it sounds the same on

1 Densmore's camera as it does on the camera over there.
2 Even Officer Kathmann says that he was hearing it with
3 his own ears, but also being broadcast through his radio
4 and that is only because of Florida who is the only one
5 in a position to broadcast it through his radio.

6 Listen, this is the dashcam from Kathmann that
7 you've heard a million times, but just for the purposes
8 of this experiment.

9 (Playing audio.)

10 Then over here the person who is saying 2503, that's
11 Densmore and you will hear it sound exactly the same.
12 That would not be happening unless Florida were shooting
13 across his body with his microphone on. That would not
14 be happening unless it was coming through the radio.
15 When Florida goes down that road, Barry is ducking behind
16 his door. They want to show you, they really want you to
17 look at this blown up photo of Barry standing. I don't
18 know what's in his hand or if there's anything in his
19 hand. It's grainy. It's pixilated. I don't know if
20 it's his mirror or what, but I can tell you it looks like
21 he's standing right there. I totally agree with you, or
22 with them, but what they're not telling you, what they
23 don't want you to think about is that Florida has already
24 shot at that point. We're gonna play this in a second.
25 Barry gets shot by those first six shots from

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1 Florida and one of them goes right through his door and
2 that's that bullet number 29 that they don't want you to
3 think about that our expert said is a Glock projectile
4 with red blood on it, okay? It slowed down just enough
5 and went through that door and Barry said it ripped
6 across his chest and you see here is a picture with one
7 hole in his white shirt and it came out and stopped at
8 his arm. It didn't break his arm. All right. That's
9 the only hole in his shirt even though he's shot again
10 with buckshot later when his shirt is off. But that is
11 that bullet and for some reason they don't want you to
12 think that Florida hit. He's a good shot. He hit a lot.
13 And there's the beer he was holding, right there, the one
14 beer when he decided, well, you know what, this isn't
15 going my way. I couldn't get Mathis, but I'm tired of
16 this guy chasing me. I'm gonna get somewhere safe. I
17 don't want to be driving. Gives up.

18 Whoa, and there's his prescription, sunglasses right
19 there and there's his blood. One beer. Look at that box
20 of beer. It's opened with one beer missing. That's what
21 he was doing when he was standing there preparing to
22 surrender. It didn't work out right. This isn't about
23 Barry Jones. What could he have done better, should have
24 done better. He was making the best at a bad moment with
25 adrenalin running hot through his body and I've taken

1 audio out of this so you can just focus on what's moving.
2 This is Kathmann's dashcam. Again, as we comes into the
3 clearing, shots happening right there. Frame by frame by
4 frame by frame. Just start to see Barry's car. Shots
5 have already happened. You notice from watching the
6 video, shots have happened at this point. You see the
7 apex of his door but he's not standing, he's crouching
8 just like he told you because when those shots came in,
9 his instinct was to duck. There he is. He ducks and
10 then as Florida drives by he starts to emerge and stands
11 wondering what in the heck just happened. You can see
12 him standing up now visible where he was not visible
13 before.

14 Yet they only want you to talk about this photo
15 after the shots have already occurred to say that that's
16 Barry lying in wait. Shots have already happened. Just
17 like Barry told you, he crouched behind his door and then
18 is standing up when the shots go and Florida parks to get
19 out and shoot three more times. They really do not like
20 our crime scene expert. Not only that, he got
21 reprimanded. I didn't know about that. Is that some big
22 GBI, Atlanta police that ordered some stuff when he
23 shouldn't have ordered it or whatever. But guess what?
24 I wouldn't have had to bring him to you if SLED had done
25 their job. You all heard from Agent Tankersley. She

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1 didn't even care enough to stick a trajectory rod in the
2 bullet impact point just to tell where is it coming from
3 because they're not seeking truth regarding Officer
4 Florida. They're looking to clear him. I hate to say
5 that, but it's not politically correct when cops get
6 arrested and cops do bad things, but like I told you, all
7 across this country there's bad lawyers, bad judges, bad
8 doctors, bad cops. They're human just like anybody else.
9 They can be, have hatred in their heart. They could be
10 having a bad day and might have been doing this since
11 1985. I don't know.

12 But we had to hire him because he's got the skills,
13 the training, and the ability and we found that car,
14 Barry Jones' car and we actually did what SLED could have
15 done and told you exactly how those first three shots
16 came right in at angles that are very acute, very much in
17 front of this vehicle. They are not wide angles
18 consistent with Florida getting out and shooting three
19 times here. That's why we brought it to you because
20 that's what science is. Science does not lie. Math does
21 not lie. We accounted for all of those shots. We also
22 accounted for the nine pellet impact points on the back
23 of Barry's car from one of those shotgun blasts. We'll
24 talk about the other.

25 Agent Tankersley could have told you the same thing.

1 She could have put all this into her own diagram, but she
2 didn't do it. She told you that she just eyeballed it,
3 but one thing she did tell you is that the only person
4 that's missing shell casings for sure is James Florida.
5 She was responsible for collecting his weapon. They want
6 to act like, just listen to this, if it gets brought up
7 again, just listen to it, they want to act like, yeah,
8 shell casing, shmell casing. Yeah, miss a round, slack
9 round. We don't really know. No. Just like Chief Myers
10 told you, every officer knows exactly what their gun is
11 loaded with because their life may depend on it. He put
12 it in his statement to SLED Agent Turner a month later
13 with his lawyer there, his official statement, he said
14 that gun had a 15 magazine plus one, that's 16 total. We
15 know that Tankersley recovered it with nine plus one.
16 That's ten total.

17 I'm sorry I'm beating a dead horse, but I want to
18 make sure you understand this now. She would have known
19 from day one that Florida was missing two shell casings
20 because he's got four right here, numbers 3, 4, 5, 6, but
21 his gun shot six times that day and there's only four
22 shell casings and that's why I took a lot of time with
23 him. He tried to say he was shooting four times right
24 here and I made him listen. 1, 2, 3, because he only
25 shot three times right there. So why are there four

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1 shell casings? And the reason I did that is to show that
2 one of them at least came out with him from his vehicle
3 because when you shoot from inside your vehicle, those
4 shell casings go back and to the right. They eject.
5 That's how they cycle. So all of his other shell
6 casings, those other three initial shots would have been
7 in that vehicle, one of them spilled out, the other two
8 were in that vehicle and, yes, SLED never found them.
9 They weren't doing a bang up job here, guys. They
10 weren't tearing that vehicle apart.

11 I showed you pictures of where I found my own shell
12 casings in my own experiment shooting, way in the
13 crevices under my car and there it is. As is my practice
14 I keep 15 rounds loaded in my magazine and one in the
15 chamber. We just did the math on that. This is what he
16 told Tankersley the day of, this is what he told Agent
17 Turner a month later with his lawyer in his official
18 statement. There's the shell casings. The sneaky shell
19 casings from my own experiment. And math doesn't lie.
20 We just did the math. He fires six times. We only have
21 four shell casings.

22 Now, I think I heard Rick Hubbard come up here and
23 say, yeah, he's not the only one. Kathmann is missing a
24 shell casing. Well, no. Go back in your mental
25 stenographer in your mind and listen in your own head to

1 the testimony of Tankersley. I asked Agent Tankersley
2 specifically, did all of his shell casings add up? Do
3 you think I would have brought it up if he isn't missing
4 shell casings? No. I wouldn't. He was a good cop doing
5 the best he could taking instructions from Florida.
6 Florida is saying he was being shot upon, shots fired,
7 shots fired. Kathmann just believed him. He couldn't
8 see. No one shot at him. He's just shooting distraction
9 rounds into the ground whether that's safe or not,
10 probably not, but he was not missing a shell casing. All
11 of his casings counted up to what was left in his gun
12 when it was returned to SLED. The only person in this
13 case who is missing shell casings is Florida.

14 Barry's shell casings, go in there and count them
15 up. He shot 12 times. His magazine held 30. It was
16 returned with 18 in place, 12 shots. After Florida
17 shoots at him six times, you can hear my client go, bang,
18 bang, bang, bang, bang, five. There's a little period
19 where there's some crossover firing and you can hear him
20 shoot two times. Today when I was talking to expert
21 Scott Ballard to show the contrast between Kathmann's
22 Glock and my client's rifle and then again a little later
23 after Florida shoots his shotgun for the second time, my
24 client shoots five more times, bang, bang, bang, bang,
25 bang. And you can hear Kathmann go, whoa, kind of at the

1 same time. You can hear that. Because, yeah, when
2 someone shoots an AR-15, you know it. It's scary.
3 That's 12.

4 My client's shell casings add up. Kathmann's shell
5 casings add up. Florida is missing two shell casings.
6 Doubt. There they are. Those are Florida's shell
7 casings that he knows are out there. He knows what SLED
8 has done by the time he comes in a month later with his
9 lawyer. Doot, doot, doot, doot. And in his statement I
10 asked him about it. He doesn't get specific at all about
11 what he shoots with his Glock. He gets real specific
12 that he shot two times with his shotgun and he did
13 because he knows that's not a problem for him, but he
14 doesn't get specific about when or how he shot his Glock
15 because he did a drive-by shooting on an unarmed man
16 because he was scared or tired or untrained or ill
17 equipped or whatever. The only one that tried to commit
18 attempted murder was Officer Florida on Barry Jones.

19 You've heard from Chief Rick Myers. Great guy.
20 Stand up guy. Been a chief for 50 years, been all across
21 this nation fixing police departments in the wake of
22 Ferguson or Trayvon Martin problems. All kinds of
23 problems in police departments. He goes there. He's the
24 pinnacle of what is right and good with law enforcement
25 and he answered a number of hypotheticals and again, if

1 Barry had been pointing a gun on Pleasant Lane and Log
2 Creek, he was like, yeah, Officer Florida could have shot
3 at him legally, justifiably and he didn't which is why
4 you know it didn't happen because Florida has no problem
5 shooting. But more importantly when I asked him if
6 Barry, even though Florida says he saw him with a gun and
7 I think probably Florida saw him with a gun at Pleasant
8 and Log Creek because he was putting his gun in his rear
9 seat based on Florida's behavior, what he said, Chief
10 Myers said, even if he seen something scary like that two
11 or three minutes earlier and even if he's responding to a
12 high risk felony stop, he has to exercise judgment in
13 every moment. There has to be proportionality in
14 everything he sees.

15 I said if Barry Jones was standing there unarmed and
16 Florida drove by and shot him while not posing an
17 imminent threat, would that be excessive force? Yes he
18 told you. Would it be unlawful? Yes he told you. What
19 does that mean?

20 You're gonna get an instruction from the Court on
21 this. It's a tough thing to think about this and police.
22 I told you in my opening we want to respect police. We
23 want to listen to them. We hope that they have our best
24 interest at heart. I hope if I get pulled over on the
25 way back to Columbia tonight that officer is gonna treat

1 me fairly and he's gonna do his job. We all hope that,
2 but we know it doesn't always happen and you're gonna get
3 an instruction from this Judge that says the law is this:
4 Even if Officer Florida had a lawful reason to arrest
5 Barry Jones that day, he did, he was a suspect in a pool
6 hall shooting, certainly had a lawful reason to be there,
7 but if Barry Jones wasn't an imminent threat to him, then
8 as Chief Myers told you, to shoot an unarmed man, even if
9 it was scary, is excessive force and our law in South
10 Carolina says that we have the right as citizens to use a
11 reasonable amount of force to defend ourselves against
12 excessive force even by police.

13 So yes, it is not a self defense charge per se
14 specifically like you're gonna get against B'Boy. It's
15 the same basic thing. If that officer is doing his job,
16 or if he's trying to be Judge, jury, and executioner on a
17 citizen, if he's not trying to detain him and he's just
18 trying to shoot you and you aren't posing a threat in
19 that moment, you can defend yourself. You don't have to
20 die. Barry Jones made a choice that day to not die.
21 Every time he shot, his 12 shots were always in response
22 to Florida, always in controlled bursts in response to
23 being shot at or being shot, being shot at with a
24 shotgun.

25 Barry Jones told you that at some point it got so

1 crazy, he had already been shot across his chest and then
2 he felt the buckshot come past him, that he had took his
3 white shirt which he had removed which you see in
4 evidence and ran out to the other side of the car and
5 waved it like a white flag, the universal symbol I
6 surrender. Now, you might think that's just crazy. Rick
7 Hubbard might come in here and say malarkey. But we know
8 Florida shot his shotgun twice and we know the first time
9 Barry was down behind his door when he took his first
10 shot and my expert told you how all nine of those pellets
11 were accounted for, but only nine. The other shot would
12 have had nine too. So where did it go?

13 Well, if Barry is running around to the other side
14 of his car and doesn't have a backdrop of his own
15 vehicle, we know he took three in his shoulder. He told
16 you that. That's uncontroverted evidence and he's
17 standing with the woods as his backdrop. That's where
18 the remaining shotgun pellets went. He wasn't at his
19 car. Everything Barry says checks out with this
20 evidence. He told you how he grabbed his rifle after
21 being shot at in a drive-by shooting from Florida. He
22 tried to shoot it just to defend himself. It jammed. He
23 just had this plastic magazine from the range that he had
24 used from the last time. So he's already shot. That
25 magazine is right on his floorboard. Look at the

1 pictures. It's got his blood on it. And then while
2 bleeding because he's already shot, he digs around in his
3 gun bag which is right there in his front seat, putting
4 blood on it because he's already shot and puts in his
5 proper full metal magazine that's loaded with 30, clears
6 the round and was able to defend himself. Everything he
7 said is matched up. The only person in this entire case
8 that doesn't match up is Florida and what doesn't match
9 up is B'Boy. Bully'Boy. Not on bar business. But on
10 B'Boy business.

11 You know, the State wants to come up here and talk
12 about suicide and that Barry, it was just guilt. It was
13 just guilt. I hate that. That was a very personal thing
14 that Barry Jones told you about and I hate that we even
15 had to talk about it. It has nothing to do with the way
16 he felt about his actions against Milledge Hall. He
17 hated that he had to do that, but he's not guilty of it.
18 He wanted to live. He hated that he had to shoot at
19 Officer Florida several times to prevent himself from
20 being killed, but he wanted to live. But at the point in
21 time when he comes out and tries to surrender and gets
22 shot with buckshot again, he's thinking he's just being
23 hunted like a dog. He's not getting, as he said, fair
24 treatment. They're not trying to detain him. They're
25 trying to execute him.

1 He has been waiting for his day in court for three
2 and a half years, but he almost didn't get it. So I hate
3 that they're gonna sit here and tell you that suicide,
4 something that's so personal, a deeply personal choice is
5 evidence of guilt. No. They're trying to get you to
6 decide this case on an improper basis and I want to give
7 you the tools to resist against it. You've all been
8 listening and I know you will. I know you will. This
9 case is full of doubt, full of it. Full of it.

10 Now, I don't get to talk to you again. Mr. Hubbard
11 is gonna get up here and talk to you again and he's gonna
12 try to convince you to see it his way. But every time he
13 does, ask him, sir, are you trying to get me to decide
14 this case on an improper basis? Are you trying to tug at
15 my emotional heart strings to make me think about this
16 case in terms of fear, hate, prejudice. Don't do it.
17 Don't let yourself get sucked down that rabbit hole. If
18 he picks up this AR-15 and waves it around, ask him why.

19 Barry Jones is innocent of these charges. The State
20 has not removed his robe of righteous. He is not guilty.

21 THE COURT: All right. Ladies and gentlemen, before
22 we hear from the State on reply, I'll just ask everybody
23 to stand up and just stretch your legs a little bit.

24 Ladies and gentlemen, just to be clear, everyone is
25 ready, everyone is okay to move forward; is that correct?

1400

1 I don't see anybody asking for a break so okay. Continue
2 on. Thank you.

3 MR. HUBBARD: You Honor, I've said everything I had
4 to say in my first closing. Everything I needed to say I
5 said in that first closing, ladies and gentlemen. Either
6 everybody is lying and every cop is corrupt, or Barry
7 Jones is telling the truth. That's it. Every cop is
8 either incompetent, corrupt, or everybody is lying
9 according to Barry Jones. If you buy a little bit, you
10 got to buy the whole thing from Barry Jones so there it
11 is.

12 THE COURT: Members of the jury, it is my duty as
13 the trial Judge to instruct you on the law applicable to
14 this case. And in that regard, it is your duty as jurors
15 to accept, and apply the law as I now state it to you.

16 Furthermore, it is your exclusive duty to decide all
17 of the issues of fact in this case, and to determine the
18 effect, value, weight, and truth of the evidence. All
19 the parties have a right to expect that you will
20 carefully consider and evaluate the evidence, and apply
21 the law of this case to it, so that, in the end, all
22 parties will receive a fair and impartial trial.

23 During this trial you and I have separate duties to
24 perform. As the trial Judge, it is my responsibility to
25 preside over this trial and to rule upon the

1 admissibility of evidence offered during the trial. In
2 that regard, you are to consider only the evidence before
3 you. Thus, you are to consider only the testimony which
4 has been presented from the witness stand, together with
5 any exhibits admitted into the record of this case.

6 If you have any preconceived idea as to what the law
7 is, or what you think the law ought to be, and it does
8 not agree with what I tell you the law is, you are
9 obligated under your oath to abandon these
10 preconceptions, because you are sworn to accept the law
11 as I now state it to you.

12 In this trial, you are the sole and exclusive Judge
13 of the facts. Do not infer that I have any opinion about
14 the facts in this case from anything I have said or done
15 during the course of this trial. In this regard, the law
16 simply does not permit me to have an opinion about the
17 facts. As jurors, it is your duty alone to determine the
18 effect, value, weight, and truth of the evidence
19 presented during the course of this trial.

20 The evidence from which you are to decide what the
21 facts consist of in this case are (1) the sworn testimony
22 of witnesses both on direct and cross examination; (2)
23 the exhibits which have been admitted into evidence; and
24 (3) any facts to which all the attorneys have agreed and
25 stipulated.

1 Now, what is not evidence. The following things are
2 not evidence and you must not consider them as evidence
3 in deciding the facts of the case; (1) statements and
4 arguments of the attorneys; (2) questions and objections
5 of the attorneys; and (3) any testimony that I have
6 instructed you to disregard.

7 While argument of counsel is a beneficial part of
8 every trial, you should remember that the statements made
9 by counsel are not evidence. In presenting arguments,
10 counsel often refer to evidence. However, you should
11 base your verdict on the evidence as you remember it.
12 Therefore, if there are any conflicts between the
13 recollection of counsel about the evidence and your own
14 recollection, you should rely on your own understanding
15 of the evidence.

16 Now, evidence may be direct or circumstantial.
17 Direct evidence is testimony by a witness about what the
18 witness personally saw or heard or did. Circumstantial
19 evidence is indirect evidence. In other words, it is
20 proof of one or more facts from which one can find
21 another fact. You may consider both direct and
22 circumstantial evidence equally. Crimes may be proven by
23 circumstantial evidence. The law makes no distinction
24 between the weight or value to be given to either direct
25 or circumstantial evidence. However, to the extent the

1 State relies on circumstantial evidence, all of the
2 circumstances must be consistent with each other, and
3 when taken together, point conclusively to the guilt of
4 the accused beyond a reasonable doubt. If these
5 circumstances merely portray the defendant's behavior as
6 suspicious, the proof has failed.

7 The State has the burden of proving the defendant
8 guilty beyond a reasonable doubt. This burden rests with
9 the State regardless of whether the State relies on
10 direct evidence, circumstantial evidence, or some
11 combination of the two.

12 Furthermore, it is your job as jurors to determine
13 the credibility or believability of the witnesses who
14 have testified in this case. You must evaluate the
15 evidence and determine which evidence convinces you of
16 its truth.

17 In determining believability of a witness who
18 testified in this case, you may believe one witness over
19 many, or many over one. You may believe a part of the
20 testimony of a witness and reject the remaining part.
21 You may believe the testimony of a witness in its
22 entirety or reject it in full. You may consider whether
23 the witness has an interest in the results of the trial,
24 whether the witness is prejudiced toward either party,
25 the opportunity for the witness to have seen the matters

1 and things about which the witness may testify, and the
2 way the witness acts on the witness stand.

3 Now, the rules of evidence ordinarily do not permit
4 witnesses to testify to opinion or conclusions. An
5 exception to this rule exists for witnesses we call
6 expert witnesses. A witness who, by education and
7 experience, has become an expert in some art, science, or
8 profession, may give an opinion as to the subject the
9 witness claims to be an expert in, and may also give the
10 reasons for the opinion.

11 You should consider any expert opinion given by a
12 witness like any other evidence, give it the weight you
13 think it deserves. If you decide that an expert witness'
14 opinion is not based on sufficient education and
15 experience, or if you decide that the reasons given that
16 support the opinion are not sound, or that the opinion is
17 outweighed by other evidence, you may disregard the
18 opinion entirely.

19 An expert witness' testimony is to be given no
20 greater weight than that of other witnesses simply
21 because the witness is an expert, and you do not have to
22 accept an expert's opinion, even though it is
23 uncontradicted.

24 The indictments in this case allege two different
25 offenses against the defendant. Defendant Barry Jones is

1 charged with the murder of Milledge Hall and the
2 attempted murder of James Florida.

3 Each indictment charges a separate and distinct
4 offense. You must decide each indictment separately on
5 the evidence and the law applicable to it uninfluenced by
6 your decision as to any other indictment. A defendant
7 may be convicted or acquitted on any or all of the
8 offenses charged. You will be asked to write a separate
9 verdict of guilty or not guilty for each indictment.

10 The fact that the defendant was arrested, charged,
11 and indicted in this case is not evidence and cannot be
12 considered by you as evidence of guilt in this case, nor
13 does it create any presumption or inference of guilt.
14 These documents are simply the formal written instruments
15 which contain the charges made against the defendant.

16 The defendant has pled not guilty to these
17 indictments, and that plea puts the burden on the State
18 to prove the defendant guilty. A person charged with
19 committing a criminal offense in South Carolina is never
20 required to prove his or her innocence.

21 I charge you that it is an important rule of law
22 that the defendant in a criminal trial no matter what the
23 seriousness of the charge may be, will always be presumed
24 to be innocent of the crime for which the indictment was
25 issued unless guilt has been proven by evidence

1 satisfying you of that guilt beyond a reasonable doubt.
2 This presumption of innocence does not end when you begin
3 your deliberations, but it accompanies the defendant
4 throughout the trial unless you reach a verdict of guilt
5 based on evidence satisfying you of that guilt beyond a
6 reasonable doubt.

7 Presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the defendant
9 which remains with the defendant unless it has been
10 stripped from the defendant by evidence satisfying you of
11 the defendant's guilt beyond a reasonable doubt.

12 The presumption of innocence is not a mere legal
13 theory. It is not just a legal phrase. It is a
14 substantial right to which every defendant is entitled
15 unless you, the jury, are satisfied from the evidence of
16 the defendant's guilt beyond a reasonable doubt.

17 Now, the State has the burden of proving the
18 defendant guilty beyond a reasonable doubt. Some of you
19 may have served as jurors in civil cases where you are
20 told it's only necessary to prove that a fact is more
21 likely true than not true, such as the greater weight or
22 preponderance of the evidence. In criminal cases, the
23 State's proof must be more powerful than that. It must
24 be beyond a reasonable doubt as to each element of each
25 offense charged.

1 What is a reasonable doubt in the law? A reasonable
2 doubt is a kind of doubt that would cause a reasonable
3 person to hesitate to act. Proof beyond a reasonable
4 doubt is proof that leaves you firmly convinced of the
5 defendant's guilt. There are very few things in this
6 world that we know about with absolute certainty, and in
7 criminal cases the law does not require proof that
8 overcomes every possible doubt. If, based on your
9 consideration of the evidence, you are firmly convinced
10 the defendant is guilty of the crimes charged, you must
11 find the defendant guilty. If on the other hand, you
12 think there's a real possibility that the defendant is
13 not guilty, you must give the defendant the benefit of
14 the doubt and find him not guilty.

15 Mere suspicion, however strong, is not enough to
16 sustain a conviction. Suspicion implies a belief or
17 opinion as to guilt based upon facts and circumstances
18 which do not amount to proof.

19 A statement alleged to have been made by the
20 defendant has been admitted into evidence in this case.
21 While the Court has determined that the statement is
22 admissible, I instruct you that you make the ultimate
23 decision of whether the defendant made the statement. If
24 the defendant did not make the statement, you must --
25 Excuse me. If the defendant did make the statement, you

1 must determine whether the statement was made by the
2 defendant voluntarily of his own free will. This means
3 that the statement was not caused by pressure, force,
4 fear, threats, coercion, or intimidation, or by hope or
5 promise of leniency or a reward of any kind. In
6 determining whether the statement was voluntary, you
7 should consider both the characteristics of the defendant
8 and the details of the questioning.

9 Some of the factors that you must consider are: The
10 age of the defendant, the defendant's education or lack
11 of education, the defendant's mental ability or capacity,
12 the defendant's IQ or intelligence, the defendant's
13 background and environment, the place and length of
14 detention, the nature of the questioning, the advice or
15 lack thereof to the defendant of his constitutional
16 rights including, but not limited to, the right to remain
17 silent; that any statement could be used against him in a
18 court of law; the right to have a lawyer present; that if
19 he could not afford a lawyer, a lawyer would be appointed
20 to represent him without any cost; or that he could stop
21 making a statement at any time.

22 You must carefully consider all the surrounding
23 circumstances before you give any weight to an alleged
24 statement. The State has the burden of proving beyond a
25 reasonable doubt that the alleged statement was

1 voluntary. If you determine it was, you may give the
2 statement any further consideration you deem proper. You
3 must decide what weight, if any, should be given to the
4 alleged statement. If you determine that the alleged
5 statement was not the free and voluntary statement of the
6 defendant, you should not consider the statement at all.

7 In order to establish criminal liability, criminal
8 intent is required. The dictionary defines intent as
9 "the state of a person's mind that directs his actions
10 toward a specific object."

11 Criminal intent must be proven by the State beyond a
12 reasonable doubt. Criminal intent is a mental state, a
13 conscience wrong doing. It is up to you to determine
14 what the defendant intended to do, based on the
15 circumstances shown to have existed. A specific intent
16 crime requires that the defendant had the intent to cause
17 a particular result or that the defendant had the
18 specific intent in committing the act. A person acts
19 with specific intent when his conscience objective is to
20 cause the specific result proscribed by the statute
21 defining the events.

22 The State is required to prove the element of malice
23 beyond a reasonable doubt for the charge of murder as
24 well as for the charge of attempted murder. The proof of
25 malice must be independently proven for each charge. In

1 other words, if you were to find proof beyond a
2 reasonable doubt of malice for one charge, you may not
3 use such proof as evidence of malice for the other
4 charge.

5 If you are not satisfied that the State has proven
6 the element of malice beyond a reasonable doubt, you must
7 find the defendant not guilty.

8 The defendant has been charged with murder. The
9 State must prove beyond a reasonable doubt that the
10 defendant committed an unlawful killing of Milledge Hall
11 with malice aforethought.

12 Malice is hatred, ill-will, or hostility towards
13 another person. It is the intentional doing of a
14 wrongful act without just cause or excuse and with an
15 intent to inflict an injury.

16 Malice aforethought does not require that malice
17 exists for any particular time before the act is
18 committed, but malice must exist in the mind of the
19 defendant just before and at the time the act is
20 committed. Therefore, there must be a combination of
21 previous evil intent and the act. Malice is shown when a
22 person speaks words which express hatred or ill will for
23 another or when the person prepared beforehand to do the
24 act which was later accomplished.

25 The defendant is also charged with attempted murder.

1 In order to prove this crime, the State must prove the
2 defendant attempted to kill Officer James Florida with
3 malice aforethought.

4 Again, malice is hatred, ill will, or hostility
5 toward another person. It is the intentional doing of a
6 wrongful act without just cause or excuse with an intent
7 to injure another and indicates a wicked or depraved
8 spirit on doing so.

9 Malice aforethought does not require that malice
10 exist for any particular time before the act is
11 committed. Malice must exist in the mind of the
12 defendant at the same time as the act, and cannot develop
13 after the act occurred. Therefore, there must be a
14 combination of the previous evil intent and the act.

15 Attempted murder can be committed only when the
16 defendant's act, or acts, are accompanied by malice.
17 Malice is shown when a person speaks words which express
18 hatred or ill will for another or when it is the
19 performance of an act or acts which tend, but fail, to
20 kill a human being.

21 Specific intent means that the defendant consciously
22 intended the completion of the killing of another, but
23 failed to do so. If you, the jury, find that the State
24 has proven beyond a reasonable doubt that Barry Jones's
25 specific intent was to kill James Florida with malice

1 aforethought, then you must find him guilty. However, if
2 you find that the State has not proven beyond a
3 reasonable doubt that it was Barry's Jones's specific
4 intent to kill James Florida with malice aforethought,
5 then you must find him not guilty.

6 The defendant has asserted self defense in this
7 case. Self defense is a complete defense. The State has
8 the burden of disproving self defense by proof beyond a
9 reasonable doubt. The following are elements required to
10 establish self defense.

11 First, the defendant must be without fault in
12 bringing on the difficulty. If the defendant's conduct
13 was the type which was reasonably calculated to lead to,
14 and did provoke deadly assault, the defendant would be at
15 fault in bringing on the difficulty and would not be
16 entitled to an acquittal based on self-defense.

17 The second element of self-defense is that the
18 defendant was actually in imminent danger of death or
19 serious bodily injury or that the defendant actually
20 believed he was in imminent danger of death or serious
21 bodily harm.

22 If the defendant was actually in imminent danger, it
23 must be shown that the circumstances would have warranted
24 a person of ordinary firmness and courage to strike the
25 fatal blow to prevent death or serious bodily injury, it

1 must be shown that a person of ordinary firmness and
2 courage to strike the fatal blow to prevent the death or
3 serious bodily injury.

4 The defendant does not have to show that he was
5 actually in danger. It is enough if the defendant
6 believed he was in imminent danger and a reasonably
7 prudent person of ordinary firmness and courage would
8 have had the same belief. One who acts in self-defense
9 may act on appearances. He may be mistaken. The law
10 does not hold him to a refined assessment of the danger,
11 provided, he acted as the person of ordinary coolness and
12 courage would have acted or should have acted in meeting
13 the appearance of the danger. It is for you to decide
14 whether the defendant's fear of immediate danger of death
15 or serious bodily injury was reasonable and would have
16 been felt by an ordinary person in the same situation.

17 The relative sizes, ages, and weights of defendant
18 and the victim may be considered in deciding the apparent
19 or actual need for force in self-defense and amount of
20 force needed.

21 Evidence of prior difficulties between the defendant
22 and the victim may be considered in deciding whether a
23 threat existed, whether the defendant had a reason to
24 believe a threat existed, and how serious the threat was.
25 Evidence of prior difficulties may also be considered by

1 you as showing the animus or attitude of the parties to
2 each other, to assist in determining who was the
3 aggressor.

4 In a case where self-defense has been raised, you
5 may consider the victim's reputation for turbulence and
6 violence in the community as it bears on self-defense.
7 In considering the actions of the defendant, you are
8 warranted in considering the bad character and reputation
9 for turbulence and acts of violence of the victim. If
10 the defendant knew the victim was of such character and
11 reputation that he would be warranted in construing his
12 actions more harshly and acting upon hostile appearances
13 more readily than he would have been entitled to do to a
14 man of good character and reputation.

15 Threats made by the victim may be considered in
16 deciding whether the defendant actually believed he was
17 in immanent danger of death or serious bodily injury or
18 was actually in imminent danger.

19 The intoxication of the victim may be considered in
20 deciding whether the defendant's fear of death or bodily
21 harm was reasonable.

22 The final element of self-defense is that the
23 defendant had no other probable means of avoiding the
24 danger of losing his own life or sustaining serious
25 bodily injury than to act as he did in this particular

1 instance.

2 Now, a person cannot be required to make an exact
3 calculation as to the degree or amount of force which
4 may be needed to avoid death or serious bodily harm.
5 Therefore, in self-defense, the defendant has a right to
6 use the force needed to avoid death or serious bodily
7 harm. The defendant has the right to use so much force
8 as appeared to be necessary for complete self-protection,
9 and which a person of ordinary reason and firmness would
10 have believed to be needed to prevent death or bodily
11 harm. If the defendant is justified in defending himself
12 in firing the first shot, then the defendant is also
13 justified in continuing to shoot until it is apparent
14 that the danger to his life and body has ceased.

15 If you have a reasonable doubt of the defendant's
16 guilt after considering all the evidence including the
17 evidence of self-defense, then you must find him guilty.
18 On the other hand, if you have no reasonable doubt of the
19 defendant's guilt after considering all the evidence
20 including the evidence of self -- Let me read that again,
21 folks.

22 If you have a reasonable doubt of the defendant's
23 guilt after considering all of the evidence including the
24 evidence of self-defense, then you must find him not
25 guilty. On the other hand, if you have no reasonable

1 doubt of the defendant's guilt after considering all of
2 the evidence including the evidence of self-defense, then
3 you must find him guilty.

4 An individual, under the appropriate circumstances,
5 has the right to utilize the amount of resistance
6 reasonably necessary to defend themselves in the event
7 excessive force is utilized incident to a lawful arrest.
8 This evidence must clearly show that the accused complied
9 fully with all requirements placed upon citizens subject
10 to lawful arrest and resisted only to the extent
11 necessary to protect himself from physical harm.

12 Now, ladies and gentlemen, a verdict in this case
13 cannot be based upon, sympathy, passion, prejudice or
14 emotion, or some other consideration not found in the
15 evidence. I charge you that as jurors you must decide
16 the issues involved in this proceeding based solely upon
17 the evidence which you hear during the course of this
18 trial. Your verdict must be without bias and prejudice
19 to any party. You can not allow yourselves to be
20 governed by sympathy, by prejudice, by passion, by public
21 opinion, or by some other consideration not found in the
22 evidence.

23 Let me say something about your deliberations.
24 "Deliberation" is defined as "careful consideration,
25 weighing up with a view to decision."

1 The genius of our jury system is that it allows 12
2 good men and women, from 12 different backgrounds, life
3 experiences and perspectives to consider the evidence,
4 talk about it, and ultimately reach a verdict.

5 We call them deliberations for a reason. You're to
6 consider the evidence in this case carefully and
7 deliberately and discuss it in a calm, thorough, and
8 courteous manner.

9 Listen to the views of all your fellow jurors,
10 consider other people's points of view, and talk through
11 and discuss the evidence. And remember, if you're doing
12 something deliberately, you are not in a big hurry and
13 you should not be in a big hurry here. This case is very
14 important to all parties and this trial is their only day
15 in court.

16 When you retire to the jury room, you should discuss
17 the case with your fellow jurors to reach a verdict, if
18 you can do so. Your verdict must be unanimous.

19 Each of you must decide the case for yourself, but
20 you should do so only after you have impartially
21 considered all the evidence, discussed it fully with the
22 other jurors, and listened to the views of your fellow
23 jurors. Do not be afraid to change your opinion if the
24 discussion persuades you that you should. But do not
25 come to a decision simply because other jurors think it

1 is right.

2 It is important that you attempt to reach a
3 unanimous verdict but, of course, only if each of you can
4 do so after having made your own decision. Do not change
5 an honest belief about the weight and effect of the
6 evidence simply to reach a verdict. In other words, do
7 not change your opinion solely for the sake of reaching a
8 unanimous verdict.

9 Now, I will give you a copy of these instructions in
10 written form. During your deliberations, you may refer
11 to the instructions to guide your decision making. You
12 must consider the instructions as a whole and not follow
13 some and ignore others. Please return the instructions
14 to the Court at the time your verdict is rendered.

15 Now, there are two possible verdicts which you may
16 find in this case: Guilty or not guilty. There is no
17 significance whatsoever in the order in which I state the
18 possible verdicts; it is simply one must be stated first.

19 Ladies and gentlemen, your verdict must be a
20 unanimous one. Mr. Foreman, when the jury agrees on a
21 verdict, you will write the verdict on the verdict form,
22 then knock on the jury room door and inform the bailiff
23 that you have reached a verdict. At that time, we will
24 receive you back into the courtroom.

25 I ask that you now return to the jury room but do

1 not begin deliberations until you are told to do so by
2 the clerk or the bailiff to do so. There are matters I
3 need to take up with the attorneys before you can begin
4 your deliberations. I will also be sending back the
5 verdict form, Mr. Foreman, which you will complete at the
6 appropriate time. So at this time please return to the
7 jury room. Do not discuss the case yet. We'll give you
8 further instructions later. Thank you.

9 (Whereupon, the jury entered the jury room at 4:25
10 p.m.)

11 THE COURT: Okay. Counsel, any comments?

12 MR. HUBBARD: Nothing from the State, Your Honor.

13 MR. SECORD: Just briefly, Your Honor, we renew our
14 motions for defendant's requested charges.

15 THE COURT: Very well.

16 MR. SECORD: And object obviously to the Court's
17 denial of those and specifically reassert our motions for
18 defendant's requested charges 17 and 18 which both
19 pertain to trespass based on the State's closing argument
20 in which he referred several times on the issue of
21 trespassing, ejecting, trespassing. Thank you very much.

22 THE COURT: Very well. All right. If the lawyers
23 will just work together with the clerk for gathering up
24 the evidence and once you have the evidence gathered,
25 we'll get the alternates up here. Stand easy for now.

1 (Short break.)

2 THE COURT: The Clerk of Court indicated that the
3 jurors wanted to watch the videos so we have a Clerk of
4 Court laptop that is clean that we're putting in the jury
5 room so they can put CD's in the computer to play videos
6 as they see fit, the ones that are in evidence. The
7 State had no objection and the defense had no objection.
8 That's where we are. Thank you. Court's Exhibit number
9 6, I think. Yes. It's number 6.

10 (Whereupon, Court's Exhibit #6 marked for
11 identification.)

12 (Whereupon, jury deliberations began at 4:40 p.m.)

13 BAILIFF: All rise.

14 THE COURT: Please be seated. I'm sorry. Thank
15 you. All right. We received a note of some sort from
16 the jury and the gist is, the jury is split at this time.
17 Procedure essentially calls for us to bring the jury out
18 and read an Allen Charge. The state of things, of
19 course, keep on working, deliberate, come to a verdict if
20 they were able to do so. We're gonna read them an Allen
21 charge and send them back. I spoke with the attorneys
22 and we were going to send a note back after they returned
23 to the jury room just essentially asking them if they
24 would rather come back tomorrow morning fresh and start
25 deliberating fresh or continue to work into the evening.

1 Essentially we didn't want to force that hand on them
2 without getting some input from them, so that's the
3 purpose of it. We'll send that note. Okay. Anything
4 before I bring in the jury?

5 MR. HUBBARD: No, sir.

6 MR. L. SHEALEY: No.

7 THE COURT: All right. Let's bring them in.

8 (Whereupon, the jury entered the courtroom at 7:10
9 p.m.)

10 THE COURT: Ladies and gentlemen of the jury, please
11 be seated. All right. Mr. Foreman, ladies and gentlemen
12 of the jury, you stated that, I received your note, you
13 state that you're unable to agree on a verdict in this
14 case and as I instructed you earlier, the verdict of the
15 jury must be unanimous. When a matter is in dispute, it
16 isn't always easy for two people to agree, so when 12
17 people must agree, it becomes even more difficult. In
18 most cases absolute certainty may not be reached or
19 expected. However, you have a duty to make every
20 reasonable effort to reach a unanimous verdict. In doing
21 this you should consult one another, express your views,
22 and listen to the opinions of your fellow jurors. Tell
23 each other how you feel and why you feel that way.
24 Discuss your differences with open minds. Although the
25 verdict of the jury must be unanimous, every one of us,

1422

1 every one of you, has the right to your own opinion. The
2 verdict you agree to must be your own verdict, the
3 results of your own convictions, and you should not give
4 up your firmly held beliefs merely to be in agreement
5 with your fellow jurors. The majority should consider
6 the minority's position. The minority should consider
7 the majority's opinion. You should carefully consider
8 and respect the opinions of each other and re-evaluate
9 your position for reasonableness, correctness, and
10 impartiality. You must lay aside all outside matters and
11 re-examine the questions before you based on the law and
12 evidence in this case.

13 If you do not agree on a verdict in this case, I
14 must declare a mistrial. In that case it does not mean
15 anybody wins, it just means at some time in the future I
16 will try this case with some other jury sitting where you
17 now sit. The same participants will come and the same
18 lawyers will ask basically the same questions and get
19 basically the same answers and we'll go through this
20 whole process again. You were selected in the same
21 manner from the same source as any future jury will be,
22 and there is no reason for me to suppose that the case
23 will ever be submitted to 12 more intelligent and
24 conscientious and competent jurors than you or that more
25 or clearer evidence will be produced on one side or the

1 other. Therefore, at this time I ask you to return to
2 the jury room and continue your deliberations and with
3 the goal of reaching a verdict if you are able. As you
4 continue deliberations, you may send me a note, if
5 necessary, to update me as needed, but at this time I
6 will ask you to return to your jury room and continue
7 deliberations. Thank you.

8 (Whereupon, the jury entered the jury room to
9 continue deliberations at 7:15 p.m.)

10 THE COURT: All right. I've got a note that we
11 discussed back in chambers I'm gonna send them that
12 states, while you're deliberating, do you prefer to
13 continue deliberating tonight or go home for the evening
14 and return to the courthouse tomorrow morning to continue
15 your deliberations? I might wait a minute or two to send
16 it back to them, let them get reseated, and I'll have the
17 Clerk of Court pass this note back to them so we'll see
18 what other updates we get, if any, and just stand at ease
19 for now. Thank you.

20 (Jury deliberations.)

21 BAILIFF: All rise.

22 THE COURT: Please be seated. All right. I have
23 been informed that we have a verdict. Anything before we
24 bring the jury in for the verdict? Is the State ready to
25 proceed?

1 MR. HUBBARD: Yes, sir.

2 THE COURT: Is the defense ready to proceed?

3 MR. L. SHEALEY: Yes, sir.

4 THE COURT: Bring the jury in please. Ladies and
5 gentlemen, we've frankly been together since December
6 3rd. A lot has happened in this case, whatever verdict
7 the jury returns, I need everyone in the courtroom to
8 maintain the dignity of the Court and ensure that you
9 maintain control of ourselves whatever that verdict is.

10 (Whereupon, the jury entered the courtroom at 8:05
11 p.m.)

12 THE COURT: Mr. Foreman, ladies and gentlemen of the
13 jury, please be seated. Everyone be seated.
14 Mr. Foreman, I've been informed that you've reached a
15 verdict; is that correct?

16 FOREMAN: Yes.

17 THE COURT: Okay. Is your verdict unanimous?

18 FOREMAN: Yes.

19 THE COURT: Please hand it to the bailiff.

20 FOREMAN: (Proffering.)

21 THE COURT: Mr. Clerk, please publish the verdict.

22 THE CLERK: State of South Carolina, County of
23 Edgefield, in the Court of General Sessions. State of
24 South Carolina versus Barry Jones. As to the indictment
25 of 2018-GS-19-00418 for the charge of murder, we

1 unanimously find Barry Jones guilty. As to the
2 indictment 2018-GS-19-00420 for the charge of attempted
3 murder we unanimously find the defendant Barry Jones not
4 guilty.

5 THE COURT: Anything for the jury before they're
6 discharged from the State?

7 MR. HUBBARD: No, sir, Your Honor.

8 THE COURT: Defense?

9 MR. L. SHEALEY: We would ask to poll the jury.

10 THE COURT: Very well. Mr. Clerk, by numbers
11 please.

12 THE CLERK: Yes, sir. The verdict of the jury
13 reported to the Court on 2018-GS-19-00418 for the charge
14 of murder of guilty, juror number 163, was this your
15 verdict in the jury room and is it still your verdict?

16 JUROR #163: Yes.

17 THE CLERK: Or you can just raise your hand if it
18 is. Juror number 77.

19 JUROR #77: (Raising hand.)

20 THE CLERK: Juror number 66.

21 JUROR #66: (Raising hand.)

22 THE CLERK: Juror number 127?

23 JUROR #127: (Raising hand.)

24 THE CLERK: Juror number 64?

25 JUROR #64: (Raising hand.)

1 so our justice simply can't function without people like
2 you who come into the courthouses and serve as jurors on
3 these important cases so on behalf of all of us, thank
4 you for your time this week. When you depart, you're
5 free to discuss this case. I hope being a juror was a
6 good experience for you, and hopefully if you have an
7 opportunity to serve again, you will come back again, but
8 otherwise you're free to go for the evening and for good
9 and thank you again for your service. Have a good
10 evening.

11 (Whereupon, the jury was released from further jury
12 duty.)

13 THE COURT: Okay. Would you guys prefer ten days or
14 make motions now?

15 MR. L. SHEALEY: Ten days would be probably better,
16 Judge.

17 THE COURT: The record will reflect the defendant
18 has ten days to submit all post trial motions. Okay.
19 Everyone can be seated please. How much time to move
20 into the next phase? How much time do y'all need to move
21 into the next phase as far as sentencing?

22 MR. McNAIR: We are printing the sheet right now,
23 Your Honor.

24 THE COURT: Okay.

25 MR. SECORD: Your Honor, may I make one request

1 member in a different way, but everyone leaves this
2 building hurting. That shouldn't be lost on anyone.

3 But I believe it was Mr. Hall's daughter who
4 mentioned that they had prayed and Ms. Hall mentioned
5 that as well and you have to believe in your faith and
6 the future. All sides will. Obviously this didn't have
7 to happen. Tragic isn't really the proper word, but it's
8 just so sad and unfortunate that the events that occurred
9 on that hour or less of time on May 7th, 2018 ended in
10 the way that it did.

11 But given as you exit the courthouse today it's my
12 hope that this level of closure will be a step moving
13 forward for both families in general.

14 Mr. Jones, on the charge of murder you are committed
15 to the Department of Corrections for a period of 35
16 years. That is all. Court is adjourned.

17 WHEREUPON, THE TRIAL WAS CONCLUDED.
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25

STATE OF SOUTH CAROLINA)
 COUNTY OF EDGEFIELD)

IN GENERAL SESSIONS COURT
 Warrant Nos: 2018A1910100216,
 2018A1910100226-30

The State of South Carolina,)

vs.)

DEFENDANT'S REQUEST TO
 CHARGE # 6

RECEIVED

JAN 11 2022

Barry Jones,)

Defendant.)

SC Court of Appeals

Self Defense – Acting on Appearances

If one reasonably believes he is in danger of death or serious bodily harm, then he is entitled to defend with deadly force if necessary, even though in fact he was not in such danger, for the law says he is entitled to act on reasonable appearances.

The law of self-defense encompasses preventive action taken to protect one's life if such action is taken in anticipation of danger and in response to an immediate threat.

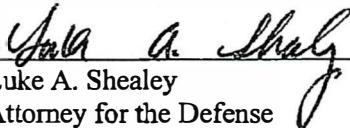
One who acts in self-defense may act on appearances. He may be mistaken. The law does not hold him to a *refined assessment* of the danger, provided, of course, he acted as the person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger. He doesn't have to wait until his assailant gets the drop on him. He has a right to act under the law of self-preservation and prevent his assailant getting the drop on him; if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, one who acts in self-defense must take steps first to prevent such assailant from getting the drop on him. *See State v. Rash*, 182 S.C. 42, 50 (1936), *State v. Starnes*, 340 S.C. 312, 322 (2000).

In determining whether the defendant's belief in the apparent danger and in the necessity of his actions meets the objective standard, you should consider a hypothetical person of ordinary firmness but one who shares the physical characteristics of the defendant such as age, general physical condition, and sex in contrast to those physical characteristics of the aggressor.

Factors that would give the defendant the right to judge the conduct of his adversary more harshly than otherwise would include, but are not limited to the following: (1) age difference; (2) prior "bad blood" or prior difficulties between the two; (3) the deceased's alcohol or drug consumption; (4) prior threats by the deceased against the defendant; (5) the deceased's reputation for violence.



Brian R. Shealey
Attorney for the Defense



Luke A. Shealey
Attorney for the Defense

December 12, 2021
Columbia, South Carolina

EDGEMONT COUNTY
CLERK OF COURT
SEP 11 2022

STATE OF SOUTH CAROLINA) 59
COUNTY OF EDGEFIELD)

The State of South Carolina,)

vs.)

Barry Jones,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS

Warrant Number: 2018A1910100216;

2018A1910100226-30

NOTICE OF MOTION FOR HEARING
PURSUANT TO S.C. CODE § 16-11-440

TO: SOLICITOR RICK HUBBARD

YOU ARE HEREBY NOTIFIED that the above-captioned defendant, through his attorneys will move before the Court the week of September 6th, 2021 for a hearing pursuant to S.C. Code § 16-11-440, and for such other relief as requested in the attached motion.

RECEIVED

JAN 11 2022

SC Court of Appeals

Luke A. Shealey

Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Brian R. Shealey, Jr.

Brian R. Shealey, Jr.
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Columbia, South Carolina

This 1st day of September, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

The State of South Carolina,)

vs.)

Barry Jones,)

Defendant.)

IN THE COURT OF GENERAL SESSIONS
Warrant Number: 2018A1910100216;
2018A1910100226-30

MOTION FOR HEARING
PURSUANT TO S.C. CODE § 16-11-440

The above-captioned defendant, through his attorneys, Luke and Brian Shealey, hereby moves that an evidentiary hearing be held pursuant to S.C. Code § 16-11-440.

1. Defendant was arrested in Edgefield County on or about August 20th, 2018 and charged with Murder, two (2) counts of Attempted Murder, two (2) counts of Possession of a Weapon During a Violent Crime and Discharging a Firearm into a Vehicle. Defendant retained Brian and Luke Shealey of the private bar to represent him.

2. The Defendant, through his counsel, requests a hearing pursuant to S.C. Code § 16-11-440, as he is immune from prosecution under this provision.

NOW THEREFORE attorney for Defendant moves that this Court conduct an evidentiary hearing regarding Defendant's immunity from prosecution under S.C. Code § 16-11-440 and enter such Order deeming Defendant immune from prosecution.

(Signature page to follow)

Luke A. Shealey

Luke A. Shealey
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Brian R. Shealey, Jr.

Brian R. Shealey, Jr.
The Shealey Law Firm, LLC
1507 Richland Street
Columbia, SC 29201
803-929-0008

Columbia, South Carolina

This 1st day of September, 2021

STATE OF SOUTH CAROLINA)
 COUNTY OF EDGEFIELD)

IN THE COURT OF GENERAL SESSIONS
 Warrant Number: 2018A1910100216;
 2018A1910100226-30

2021 SEP 2 AM 11:59
 The State of South Carolina,

vs.

CERTIFICATE OF SERVICE

Barry Jones,

Defendant.

I certify that on this date I served the Notice of Motion and Motion for Hearing Pursuant to S.C. Code § 16-11-440 in the above-captioned case on The State of South Carolina by delivering copies of these documents to the State's attorney of record, Solicitor Rick Hubbard, by delivering said copies to his office located at the Solicitor's Office, 205 East Main Street, Suite 309, Lexington, SC 29072, and leaving them with his clerk or other person of authority at said office.

Luke A. Shealey

Luke A. Shealey
 Attorney for Defendant

Columbia, South Carolina

This 1st day of September, 2021

RECEIVED

JAN 11 2022

SC Court of Appeals