

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
Jan 16 2025
SC Court of Appeals

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MASON CHRISTOPHER YARBOROUGH,

APPELLANT

APPELLATE CASE NO. 2023-000694

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

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

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

ATTORNEY FOR APPELLANT

J. ANTHONY MABRY
Senior Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-6305

E. L. CLEMENTS, III
Solicitor, 12th Judicial Circuit
180 N. Irby Street, Suite 1101
Florence, South Carolina 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED APRIL 17-20, 2023	1
DEFENSE MOTION TO EXCLUDE JAIL CALLS BY MR. SWILLEY	13
RESPONSE OBJECTING BY MR. WHITE	15
COURT’S RULING FINDING JAIL CALLS ADMISSIBLE	21
DEFENSE MOTION TO EXCLUDE PRIOR BAD ACTS OF DEFENDANT	22
RESPONSE BY MR. WHITE	26
COURT DEFEERS RULING ON DEEFNSE MOTION TO EXCLUDE PRIOR BAD ACTS OF DEFENDANT	29
DEFENSE MOTION TO EXCLUDE PHOTOS OF UNRELATED WEAPON	30
RESPONSE BY MR. WHITE	32
COURT’S RULING FINDING DEFENDANT STATEMENT ADMISSIBLE PURSUANT TO <u>JACKSON V. DENNO</u>	34
COURT’S RULING FINDING TATTOO EVIDENCE ADMISSIBLE	34
COURT’S RULING FINDING DEFENDANT STATEMENT ADMISSIBLE AND LIMITING MENTION OF NEGOTIATIONS	36
COURT REITERATES RULING FINDING JAIL CALLS ADMISSIBLE.....	36
COURT’S RULING DENYING DEFENSE MOTION TO EXCLUDE PRIOR BAD ACTS	37
OPENING STATEMENT BY MR. WHITE.....	40
OPENING STATEMENT BY MR. JOYNER	44
TESTIMONY	
ALESHA SMITH	
Direct Examination by Mr. White	54
DEFENSE OBJECTION TO STATE’S EXHIBIT NO. 7 (911 CALL) BY MR. SWILLEY ...	57

RESPONSE BY MR. WHITE	57

COURT’S RULING FINDING STATE’S EXHIBIT NO. 7 (911 CALL) ADMISSIBLE	59

TESTIMONY

ALESHA SMITH

Continued Direct Examination by Mr. White	62

Cross-Examination by Mr. Swilley	64

JUSTIN BOSTICK

Direct Examination by Mr. White	66

CHASE MCDANIEL

Direct Examination by Mr. White	74

Cross-Examination by Mr. Swilley	97

Redirect Examination by Mr. White	100

MELIA STEELE

Direct Examination by Mr. White	101

DEFENSE OBJECTION TO BAD CHARACTER EVIDENCE BY MR. SWILLEY	112

COURT’S RULING LIMITING DIRECT EXAMINATION ON BAD CHARACTER

EVIDENCE	113

TESTIMONY

MELIA STEELE

Continued Direct Examination by Mr. White	113

Cross-Examination by Mr. Swilley	114

Direct Examination by the Court	119

Continued Cross-Examination by Mr. Swilley	120

Redirect Examination by Mr. White	124

ROGER COX

Direct Examination by Mr. White	129

Cross-Examination by Mr. Swilley	140

DANIEL ROGERS, III

Direct Examination by Mr. White	144

Cross-Examination by Mr. Swilley	150

Redirect Examination by Mr. White	150

JAMES GREEN

Direct Examination by Mr. White	152

Cross-Examination by Mr. Joyner	164
Redirect Examination by Mr. White	167
EMERSON YARBOROUGH	
Direct Examination by Mr. White	169
MOTION TO ADMIT PRIOR INCONSISTENT STATEMENT OF WITNESS EMERSON YARBOROUGH BY MR. WHITE.....	178
RESPONSE OBJECTING BY MR. JOYNER.....	179
COURT’S RULING FINDING PRIOR STATEMENT INADMISSIBLE	181
TESTIMONY	
EMERSON YARBOROUGH	
Continued Direct Examination by Mr. White.....	182
Cross-Examination by Mr. Joyner	203
Redirect Examination by Mr. White	226
MOTION TO ADMIT PRIOR INCONSISTENT STATEMENT OF WITNESS EMERSON YARBOROUGH BY MR. WHITE.....	231
RESPONSE OBJECTING BY MR. SWILLEY	232
COURT’S RULING FINDING PRIOR INCONSISTENT STATEMENT ADMISSIBLE....	234
DEFENSE OBJECTION TO ADMISSION OF PRIOR INCONSISTENT STATEMENT ...	236
COURT REITERATES RULING FINDING PRIOR INCONSISTENT STATEMENT ADIMISSIBLE	238
TESTIMONY	
CHRISTOPHER NEAL	
Direct Examination by Mr. White	241
MEGAN TEMPLE	
Direct Examination by Mr. White	247
CHRISTOPHER OWENS	
Direct Examination by Mr. White	252
Cross-Examination by Mr. Swilley.....	260
Redirect Examination by Mr. White	272

DOCTOR THOMAS BEAVER	
Direct Examination by Mr. White	273
Cross-Examination by Mr. Swilley.....	299
Redirect Examination by Mr. White.....	311
Recross-Examination by Mr. Swilley	315
DOCTOR THOMAS OWENS	
Direct Examination by Mr. Swilley	318
Cross-Examination by Mr. White	347
Redirect Examination by Mr. Swilley	354
SCOTT BALLARD	
Direct Examination by Mr. Joyner.....	358
DEFENSE MOTION TO QUALIFY WITNESS BALLARD AS AN EXPERT IN BALLISTICS, FIREARMS, AND SHOOTING INCIDENTS BY MR. JOYNER.....	368
STATE’S OBJECTION TO QUALIFYING WITNESS BALLARD AS AN EXPERT IN BALLISTICS BY MR. WHITE	368
RESPONSE BY MR. JOYNER	369
CONTINUED OBJECTION TO QUALIFYING WITNESS BALLARD AS AN EXPERT IN BALLISTICS BY MR. WHITE	370
COURT DEFERS RULING ON QUALIFICATIONS OF WITNESS BALLARD.....	371
TESTIMONY	
SCOTT BALLARD (<i>IN-CAMERA</i>)	
Direct Examination by Mr. Joyner.....	373
STATE’S MOTION TO EXCLUDE TESTIMONY OF WITNESS BALLARD BY MR. WHITE	385
RESPONSE OBJECTING TO MOTION BY MR. JOYNER	386
CONTINUED OBJECTION TO QUALIFYING WITNESS BALLARD AS AN EXPERT IN BALLISTICS BY MR. WHITE.....	389
RESPONSE BY MR. JOYNER	390
COURT’S RULING QUALIFYING WITNESS BALLARD AS AN EXPERT IN FIREARMS ONLY	392

OBJECTION TO QUALIFYING WITNESS BALLARD AS AN EXPERT IN SHOOTING INCIDENTS BY MR. WHITE	392

COURT’S RULING FINDING TESTIMONY ON SHOOTING INCIDENTS ADMISSIBLE BUT DECLINING TO QUALIFY WITNESS BALLARD AS AN EXPERT	395

COURT’S RULING DECLINING TO QUALIFY WITNESS BALLARD AS AN EXPERT IN BALLISTICS	395

COURT’S RULING LIMITING TESTIMONY OF WITNESS BALLARD REGARDING INJURY	396

COURT’S RULING LIMITING TESTIMONY OF WITNESS BALLARD REGARDING PSYCHOLOGY OF POST-INCIDENT INTERVIEWS	397

TESTIMONY

SCOTT BALLARD

Continued Direct Examination by Mr. Joyner	401
Cross-Examination by Mr. White	408

LYNN YARBOROUGH

Direct Examination by Mr. Joyner	409
Direct Examination <i>in-camera</i> by Mr. Joyner	411
Cross Examination <i>in-camera</i> by Mr. White	417

STATE’S MOTION TO LIMIT QUESTIONING OF WITNESS LYNN YARBOROUGH	418

RESPONSE OBJECTING BY MR. JOYNER	417

COURT’S RULING LIMITING TESTIMONY OF WITNESS LYNN YARBOROUGH	421

TESTIMONY

LYNN YARBOROUGH

Continued Direct Examination by Mr. Joyner	422
Cross-Examination by Mr. White	431

STATE RESTS	440

DEFENSE RENEWAL OF ALL PRIOR MOTIONS AND OBJECTIONS AND MOTION FOR A DIRECTED VERDICT	442

COURT’S RULING DENYING ALL PRIOR MOTIONS AND OBJECTIONS AND DENYING MOTION FOR DIRECTED VERDICT	442

CHARGE CONFERENCE	443
DEFENSE REQUEST TO CHARGE INVOLUNTARY MANSLAUGHTER BY MR. SWILLEY	443
RESPONSE OBJECTING BY MR. WHITE	444
CONTINUED TO REQUEST TO CHARGE INVOLUNTARY MANSLAUGHTER BY MR. SWILLEY	445
COURT DEFERS RULING	447
CONTINUED CHARGE CONFERENCE.....	447
COURT’S RULING DECLINING TO CHARGE INVOLUNTARY MANSLAUGHTER...	453
CHARGE ON THE LAW	463
CLOSING ARGUMENT BY MR. WHITE	477
CLOSING ARGUMENT BY MR. SWILLEY	494
CLOSING ARGUMENT IN REPLY BY MR. WHITE	514
JURY NOTE	521
JURY NOTE	524
VERDICT	526
SENTENCING	532
COURT’S EXHIBIT NO. 2 (JURY NOTE)	534
INDICTMENT	535
CERTIFICATE OF COUNSEL	537

[THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT: STATE’S EXHIBIT NO. 6 (911 CALL), STATE’S EXHIBIT NO. 7 (911 CALL), STATE’S EXHIBIT NO. 74 (JAIL CALLS), STATE’S EXHIBIT NO. 75 (MASON YARBOROUGH INTERVIEW), STATE’S EXHIBIT NO. 86 (PHONE CALL LOG), STATE’S EXHIBIT NO. 89(CARE HOUSE VIDEO), AND DEFENSE EXHIBIT NO. 28 (JAIL CALLS 11-2-2020)]

STATE OF SOUTH CAROLINA	) COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	) 2021-GS-21-02662
	)
	)
	)
	)
State of South Carolina	) TRANSCRIPT OF RECORD
vs.	)
Mason Christopher Yarborough	)
	) Florence, South Carolina
DEFENDANT	) April 17-21, 2023

B E F O R E:

THE HONORABLE D. CRAIG BROWN.

A P P E A R A N C E S:

J. RYAN WHITE, ASSISTANT SOLICITOR
TODD TUCKER, DEPUTY SOLICITOR
Attorneys for the State

MATTHEW SWILLEY, ESQ.
J.R. JOYNER, ESQ.
Attorneys for the Defendant

KESHIA REED
Official Court Reporter

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
1				
2				
3	Christopher Owens			
4	Mr. White	49		57
5	Mr. Swilley		56	
6				
7	Opening Statements			
8	Mr. White	98		
9	Mr. Joyner	102		
10				
11	Alesha Smith			
12	Mr. White	112		
13	Mr. Swilley		122	
14				
15	Justin Bostick			
16	Mr. White	124		
17				
18	Chase McDaniel			
19	Mr. White	136		162
20	Mr. Swilley		159	
21				
22	Melia Steele			
23	Mr. White	163		186
24	Mr. Swilley		176	
25				

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Roger Cox				
4	Mr. White	191			
5	Mr. Swilley		202		
6					
7	Daniel Rogers				
8	Mr. White	209		215	
9	Mr. Swilley		215		
10					
11	Jamie Green				
12	Mr. White	217		232	
13	Mr. Joyner		229		
14					
15	Emerson Yarborough				
16	Mr. White	234		291	
17	Mr. Joyner		268		
18					
19	Christopher Neal				
20	Mr. White	306			
21					
22	Megan Temple				
23	Mr. White	312			
24					
25					

1		<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Christopher Owens				
4	Mr. White	317		337	
5	Mr. Swilley		325		
6					
7	Dr. Thomas Beaver				
8	Mr. White	338		376	
9	Mr. Swilley		364		380
10					
11	Dr. Thomas Owens				
12	Mr. Swilley	394		430	
13	Mr. White		423		
14					
15	Scott Ballard				
16	Mr. Joyner	434			
17	Mr. White		484		
18					
19	Lynn Yarborough				
20	Mr. Joyner	485			
21	Mr. White		507		
22					
23	Jury Charge	540			
24					
25					

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Closing Arguments

Mr. White	553			

Mr. Swilley	570			

Mr. White	590			

Verdict of the Jury	602			

Certificate of Reporter	617			

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-1	Miranda Warning	55	322
4	S-2	Riffle		152
5	S-3	Bullet Magazine		153
6	S-4	Bullet from Chamber		153
7	S-5	3 Bullets & 3 Cartridge Cases		223
8	S-6	9-1-1 Call		120
9	S-7	9-1-1 Call		120
10	S-8	CAD Report		121
11	S-9	Photo		138
12	S-10	Photo		138
13	S-11	Photo		138
14	S-12	Photo		138
15	S-13	Photo		138
16	S-14	Photo		138
17	S-15	Photo		138
18	S-16	Photo		138
19	S-17	Photo		138
20	S-18	Photo		138
21	S-19	Photo		138
22	S-20	Photo		138
23	S-21	Photo		138
24	S-22	Photo		138
25	S-23	Photo		138

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	S-24	Photo		138
4	S-25	Photo		138
5	S-26	Photo		138
6	S-27	Photo		138
7	S-28	Photo		138
8	S-29	Photo		138
9	S-30	Photo		138
10	S-31	Photo		138
11	S-32	Photo		138
12	S-33	Photo		138
13	S-34	Photo		138
14	S-35	Photo		138
15	S-36	Photo		138
16	S-37	Photo		138
17	S-38	Photo		138
18	S-39	Photo		138
19	S-40	Photo		138
20	S-41	Photo		138
21	S-42	Photo		138
22	S-43	Photo		138
23	S-44	Photo		138
24	S-45	Photo		138
25	S-46	Photo		138

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	S-47	Photo		138
4	S-48	Photo		138
5	S-49	Photo		138
6	S-50	Photo		138
7	S-51	Photo		138
8	S-52	Photo		138
9	S-53	Photo		138
10	S-54	Photo		138
11	S-55	Photo		138
12	S-56	Photo		138
13	S-57	Photo		138
14	S-58	Photo		138
15	S-59	Photo		138
16	S-60	Photo		138
17	S-61	Photo		158
18	S-62	Photo		127
19	S-63	Photo		127
20	S-64	Photo		127
21	S-65	Photo		127
22	S-66	Photo		156
23	S-67	Photo		127
24	S-68	Photo		127
25	S-69	Photo		127

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-70	Photo		127
4	S-71	Photo		127
5	S-72	Spent Shell Casing		155
6	S-73	Text Message		188
7	S-74	Jail Calls		310
8	S-75	Mason Yarborough Interview		323
9	S-76	Photo		345
10	S-77	Photo		345
11	S-78	Photo		345
12	S-79	Photo		345
13	S-80	Photo		345
14	S-81	Photo		345
15	S-82	Photo		345
16	S-83	Photo		345
17	S-84	Firearm Report		226
18	S-85	Direction of Travel Document		351
19	S-86	Phone Call Log		309
20	S-87	MUSC Autopsy Report		363
21	S-88	Body Diagram Drawing		352
22	S-89	Care House Video		315
23				
24				
25				

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1				
2				
3	D-1	Photo		270
4	D-2	Photo		288
5	D-3	Photo		415
6	D-4	Photo		415
7	D-5	Photo		415
8	D-6	Photo		415
9	D-7	Photo		415
10	D-8	Photo		415
11	D-9	Photo		415
12	D-10	Photo		415
13	D-11	Photo		415
14	D-12	Photo		415
15	D-13	Photo		415
16	D-14	Photo		415
17	D-15	Photo		415
18	D-16	Photo		415
19	D-17	Photo		415
20	D-18	Photo		415
21	D-19	Photo		415
22	D-20	Photo		415
23	D-21	Photo		415
24	D-22	Photo		415
25	D-23	Photo		415

1	<u>E X H I B I T S</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	D-24	Photo		415
4	D-25	Photo		415
5	D-26	Photo		415
6	D-27	Photo		415
7	D-28	Jail Calls 11-2-2020		514
8	D-29	Photo of Text Messages		501
9	D-30	Photo of Text Messages		501
10				
11	C-1	Note from Jury		133
12	C-2	Note from Jury		597
13	C-3	Note from Jury		600
14	C-4	Jury Charge		616
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THE COURT: All right, the State ready to
2 proceed?

3 MR. WHITE: Yes, sir, Judge.

4 THE COURT: Defense counsel?

5 MR. SWILLEY: Yes, sir.

6 THE COURT: Call your case please.

7 MR. WHITE: Thank you, Judge. At this time the
8 State would call the case of The State vs. Mason
9 Yarborough indictment 2021-GS-21-02262 for one count of
10 murder.

11 THE COURT: All right. Ladies and gentlemen,
12 the State has called the case of South Carolina vs. Mason
13 Christopher Yarborough. Mr. Yarborough is charged by an
14 indictment which reads that Mason Christopher Yarborough
15 did in Florence County on or about October 30, 2020,
16 willfully, feloniously kill the victim, Donald Yarborough,
17 with malice aforethought either expressed or implied by
18 means of gunshot. And the victim did die as a proximate
19 result thereof on or about October 30, 2020, in Florence
20 County in violation of section 16-3-0010 South Carolina
21 Code of Laws.

22 Before we move forward, ladies and gentlemen,
23 with selecting a jury, there's certain questions that I
24 must ask you. But let me emphasize to you all as I said
25 before, Mr. Yarborough is charge by an indictment with the

1 THE COURT: All right. Well, I'll certainly
2 give you, Mr. Swilley whatever time you need to look at
3 them.

4 MR. SWILLEY: Judge, before I mention, I'll
5 watch them first, so I can bring that up. I don't know
6 what's on there.

7 THE COURT: Well, certainly going to allow you
8 whatever time you need look at them, okay.

9 MR. SWILLEY: Thank you, your Honor. Your
10 Honor, also I very recently I was tendered with some jail
11 calls or jail recordings of Mr. Yarborough on the phone
12 with one of the witnesses in the case his mother Ms. Lynn
13 Yarborough your Honor. And during those phone calls, you
14 know, and I'm sure the State will let you listen to them,
15 but there's some things that Mr. Yarborough says
16 pertaining to his brother statement that he gave. During
17 the course of -- there's two phone calls particularly that
18 we're moving to suppress. I think those happened on
19 January the 27th of 2023.

20 Mr. Yarborough says something to the effect of,
21 you know, talk to Emerson. Emerson's statement was false,
22 it was a lie. He talks about it's problematic. He also
23 goes on to say to discuss, I guess, plea negotiations with
24 his mother. And, Judge, I think that's extremely
25 problematic. It talks about -- and, again, it's kind of

1 like what Deputy Owens talked about it's a layperson's
2 version of process. He talks about -- it mentions rather
3 the murder, voluntary, involuntary manslaughter prison
4 sentences. He says, you know, we talked about trying to
5 resolve the case. Basically tells his mother to relay I
6 believe myself some information about some plea
7 negotiations. And, Judge, those in particular, I think
8 are extremely problematic should be excluded under 403
9 because they're very confusing and under 410 as well.

10 Judge, I anticipate the State is going to try
11 and play these videos, try to show that Mr. Yarborough is
12 trying to get his brother to say something differently.
13 But he never says specifically tell him to say X or Y just
14 says just instructs him to talk to Emerson. I think he
15 says have Matt meet with Emerson or something to that
16 effect. I think the State's going to try to frame is that
17 he's trying to perpetuate his brother to say something
18 favorable to him. But, you know, I'll let the Court
19 decide, Judge, I'm moving to suppress that call just based
20 on those two grounds particularly the part about any kind
21 of interactions as far as any kind of negotiations or plea
22 negotiations or negotiations to resolve the case. I think
23 that's extremely improper for a jury and doesn't fall --
24 shouldn't be admitted pursuant to the rule of evidence.
25 So, I guess, the State will play the tape or the recording

1 and let you decide.

2 THE COURT: Mr. White.

3 MR. WHITE: Judge, I can certainly play it for
4 you. And I agree with Mr. Swilley that the bits about
5 plea negotiations. And I think there's some discussion
6 about, you know, the murder, voluntary manslaughter,
7 involuntary manslaughter, I can certainly clip all that
8 out, but the information that's contained in the jail call
9 that I'm concerned with has to do with bias here, Judge.
10 It was a big factor in this trial. Back on October 29th,
11 October 30th, Emerson Yarborough gives a statement to law
12 enforcement on scene. The next day he goes to the Care
13 House gives a statement to Meg Temple there and it's
14 recorded and both statements are consistent with each
15 other and they're consistent with another witness who will
16 testify Melia Steele. And that he's adamant that there
17 was no grabbing of the gun. There was no struggle over
18 the gun. There was no fight. There was just simply his
19 last words being woe, woe, woe, woe, woe before he's shot.

20 Now, this call comes in, Judge, and I'll let you
21 be the judge of it on January 27th of 2023 as we're
22 preparing for trial, we start trying to get this young man
23 in here. And I think you were cc'd on our efforts to do
24 that last week. Finally, after sending that -- it took us
25 sending that to get the young man to come up here. And

1 the young man that walked into my office was an angry
2 young man who didn't want to cooperate with me, didn't
3 want to look at me, didn't want to talk to me at all and,
4 oh, by the way his statement to me in my office was
5 exactly the statement that is being discussed on these
6 jail calls, exactly. So, I mean, you can be the judge of
7 it, Judge. I think clearly under 608(c) that it comes in
8 to show this is bias. And I can go further into the law
9 when you deem it appropriate, but at this juncture, I'd
10 ask to go ahead and play these calls, so the Court can
11 hear them.

12 THE COURT: All right.

13 (WHEREUPON, jail calls being played for the
14 Court.)

15 MR. WHITE: Judge, you heard it. To me, it's
16 just concerning. Under Rule 608 specifically 608(c) of
17 the South Carolina Rules of Evidence evidence of bias,
18 prejudice or any motive misrepresent may be shown to
19 impeach the witness either by examination of the witness
20 or by evidence otherwise deduced, evidence otherwise
21 deduced is what we're dealing with here, Judge. And
22 specifically State v. Brewington it spells out this is an
23 old case from back in '76, that's been cited as precedent
24 time and time again. It lays out exactly what we got
25 going on here, Judge.

1 Since, it is a function of the jury to determine
2 the credibility of witnesses and the weight to be given
3 their testimony as a general rule anything having a
4 legitimate tendency to throw light on the accuracy,
5 truthfulness and sincerity of a witness maybe shown and
6 considered in determining the credit to be given according
7 to his testimony. And, Judge, I mean there is not more
8 perfect example of that than this jail call. I mean, this
9 kid was saying a completely different story. And then you
10 have this jail call and you heard it. He says I need you
11 to have a heart to heart. I talk to my attorney and he's
12 going to have to say that he lied and the reason he lied
13 is because he's angry at me.

14 Judge, when in my office, that's exactly what he
15 told me. I mean verbatim. I couldn't get him to say
16 anything other than that. And, furthermore, Judge, you
17 heard in the defendant's own statement that he admits that
18 this kid was in the garage with him when it happened. He
19 said that he had to escort him out of the garage. Well, I
20 asked the kid, I asked the young man, I said then tell me
21 what happened. If it's a lie and you just made it all up
22 because you're angry, then please tell me what happened.
23 He said I was outside when it all went down. I didn't see
24 nothing. I didn't hear nothing. I don't know nothing.
25 And when we finally had to conclude the interview, he

1 stormed out of my office like I was public enemy number
2 one.

3 So, Judge, I think -- you know, I agree with
4 Mr. Swilley there are portions that need to be redacted
5 out of there when it's talking about, you know, legal
6 conclusions or legal matters. And I'll be happy to do
7 that, but the substance of this statement must be played
8 to the jury. I mean, I think it goes to the very heart of
9 credibility, and credibility is really going to be the
10 heart of this case. So I think that it should be allowed
11 and I should be allowed to play it.

12 THE COURT: Mr. Swilley.

13 MR. SWILLEY: Judge, under 608(c) bias or motive
14 misrepresent may be shown to impeach the witness. I mean,
15 Emerson is not on the phone in these calls. I think that
16 if Mr. White wanted to ask him about it or did someone get
17 you to change your story. You can certainly ask him that,
18 but as far as Mr. Emerson Yarborough, I don't think
19 there's any -- I don't see how he can be impeached with
20 bias of conversation to third parties. I don't see how
21 that will really hold up. I mean, they just can't play
22 pretty much any statements to other people. There's got
23 to be a nexus between the two. I don't think that they
24 can show that in this case. Your Honor, I think he can
25 argue that, you know, it would seem he can try to argue

1 that he's changed his story, but there's no evidence
2 that's going to be -- testimony otherwise that Emerson
3 Yarborough changed his statement on behest of anybody
4 else.

5 And getting to another issue, I know anything
6 the defendant says didn't consider hearsay, but certainly
7 anything that the mother says would be considered hearsay
8 as well since her being a third party. And it's an
9 out-of-court statement presumably offered to prove the
10 truth of the matter asserted. So I think you run into
11 that problem as well with the jail call, your Honor. But
12 certainly in the jail call he never says it, he never
13 instructs it specifically you need to tell him to change
14 his story to this. He says hopefully he'll say that it's
15 not -- that he was just mad and takes it back or whatever,
16 but he never specifically says tell him to do this, tell
17 him he needs to do this, tell him he needs to change this,
18 tell him he specifically say this.

19 All he said was talk to him and have a heart to
20 heart with him. Let Matt talk to him, that's all he says.
21 And it's unduly confusing to suggest that that in of --
22 it's going to be unduly confusing for the jury for them to
23 argue -- for the State to argue that it's him trying to
24 get Emerson to change his testimony when he doesn't do
25 that or to lie when he doesn't do that. He said just talk

1 to Emerson. This is not what he says is not true when you
2 talk to him see what he got to say if it was really said.
3 And that's the biggest issue with the jail call your
4 Honor. I mean, he can cross-examine Mr. Yarborough --
5 sorry.

6 THE COURT: No, go ahead.

7 MR. SWILLEY: I mean, he can cross-examine
8 Emerson Yarborough -- well, I guess he can't cross him if
9 he's calling him in his case in chief. He can ask him
10 about it certainly, but I don't think he can try to
11 impeach him with a conversation. I don't see the nexus in
12 that. If he was a party to that conversation, it would be
13 fair game, but that's not the case.

14 I think Rule 613 as well does not for
15 impeachment with extrinsic evidence your Honor. And I
16 think that's actually State vs. Michael Williams which I
17 have a copy of to discuss that matter as well I could hand
18 up to the Court. And I think this evidence would be
19 collateral evidence or impeachment of a collateral matter
20 under 613.

21 THE COURT: All right, anything else, Mr.
22 Swilley?

23 MR. SWILLEY: Not as to this matter your Honor.

24 MR. WHITE: Just 613 is a completely different
25 issue. We're dealing in 613 with impeach by inconsistent

1 statements as separate and apart from what we're dealing
2 with here. And there's no requirement under the law that,
3 it has to be a nexus on 608(c), but there is. There is a
4 nexus, and it's not like this kid is off in other state.
5 You can hear it on the phone call. He's within earshot of
6 this conversation.

7 In fact, he says at the end tell Mason I love
8 you. He says tell him I love him back. And he says
9 throughout the statement -- this statement fucks me excuse
10 my language, but that's what he says. This statement is
11 going to screw me. He says exactly what the young man has
12 told me. And my investigator was present in that
13 conversation and she'll be able to testify if he testifies
14 any differently. So that, you know, that will come in in
15 two forms. So I think it's proper under 608(c). It's
16 separate and apart from 613 impeachment for prior
17 inconsistent statement.

18 THE COURT: All right. Well, based upon what
19 I've heard here today and I'll look more closely at
20 Brewington, but just for planing purposes for you all, I
21 would say that any discussions in the call as it relates
22 to charges, reduction of charges et cetra or I don't think
23 that needs to be for the jury. Those issues would be for
24 the Court to determine based upon the evidence and
25 testimony presented in the courtroom. And I'm not exactly

1 sure what may be presented over the course of this trial.
2 And I got a good idea, but ultimately it's for the Court
3 to decide whether any lesser-included offenses will be
4 charged based upon the evidence presented during the
5 course of the trial because I don't think it will be
6 appropriate for -- to allow that.

7 And with regards to discussion by the defendant
8 in these phone calls provided that the State can
9 authenticate the phone calls and authenticate who's making
10 the phone calls, I do believe that such would be
11 admissible under the rules, but be up to defense counsel
12 to make sure that you object to it at the appropriate time
13 especially in light of the fact that these are being done
14 pretrial, okay. So to preserve any errors there or
15 possible errors on my part as it relates to the admission
16 of that make sure you object at the appropriate time
17 during the course of the trial, okay.

18 MR. SWILLEY: I will, your Honor.

19 THE COURT: All right, anything else?

20 MR. SWILLEY: There is, Judge. One more thing
21 the former girlfriend of Mr. Yarborough Melia Steele I
22 anticipate the State is going to try to elicit testimony
23 of prior bad acts. I think she -- even though
24 Mr. Yarborough was not charged with anything as it pertain
25 to her on that incident in question, I believe what she's

1 going to testify to is that her and Mr. Yarborough had a
2 dispute I think at some point that evening. She allege
3 that he pushed her. And when they had the argument, she
4 leaves, get to -- goes back to her grandmother's house.
5 And then the incident with Mr. Chris Yarborough happens
6 and then she is gone.

7 I think at some point that evening she comes
8 back to [REDACTED] Lake City Highway. However, your Honor I
9 think the State is going to try to elicit testimony that
10 she was assaulted by Mr. Yarborough at a much more
11 egregious way than previously alleged. I think that
12 there's going to be some pretty serious testimony from her
13 based upon the information I have. I don't know just yet,
14 but I think she's going to testify that he did more to her
15 than she had initially said.

16 Your Honor, I think that anything she says as
17 far as what Mr. Mason Yarborough -- what she allege he did
18 to her is going to fall under Rule 404(a) his character
19 evidence of prior bad acts. Judge, it's only really two
20 ways to get in prior bad acts is 404(b), which is the Lyle
21 exception and then res gestae. And I don't think that her
22 allegations -- her allegations of him physically abusing
23 her falls under either one of those. Your Honor, I don't
24 think that it would -- you know, it's not going to pertain
25 to any quote in Rule 404(b) evidence of other crimes,

1 wrongs or acts is not admissible to prove character of a
2 person in order to show action in conformity therewith.
3 It may, however, be admissible to show motive, identity,
4 the existence of a common scheme or plan, the absence of
5 mistake or accident or intent. I don't think they can
6 enter any evidence in to show any of those exceptions.
7 And your Honor as it pertains to any kind of res gestae,
8 Miss Steele I think it's uncontested that she was not
9 present at the time that Mr. Chris Yarborough was shot. I
10 think she was well far away from the residence at that
11 time.

12 Judge, I think that the jury is not going to
13 need to hear about anything -- it's not going to be
14 necessary that the jury hears about any allegations that
15 she has. Under res gestae theory, recognizes that and
16 some other bad acts maybe an interval part of the crime
17 with which the defendant is charged or maybe needed to aid
18 the fact finder in understanding the context in which the
19 crime occurred. Maybe admissible for prior bad acts or
20 furnishes part of or the context of a crime where is
21 necessary to a full presentation of the case or so
22 intimately connected with an explanatory of the crime.
23 All of which whatever she's going to allege that he did is
24 none. I mean, it doesn't have anything to do with what
25 happened when Chris Yarborough walked in there and when he

1 was shot with that riffle. In the manner that -- what the
2 State says happens or our theory of the case is your
3 Honor. But whatever happened between him and Melia
4 shouldn't come in under 404(b) and shouldn't come in under
5 res gestae theory. It's purely character evidence of
6 prior bad acts. And the State is going to try to
7 introduce it to show conformity therewith alleging he's a
8 violent person and that he, you know, abuse his girlfriend
9 and therefore he must wanted to shoot his father and that
10 couldn't come in your Honor under either theory. I got
11 State vs. King that weighs out the res gestae theory. I
12 can hand up to the Court.

13 THE COURT: Thank you.

14 MR. SWILLEY: And your Honor I don't know the
15 actual particular -- the absolute particulars of what she
16 would testify to concerning those allegations because
17 they're not ---

18 THE COURT: What -- oh, I'm sorry.

19 MR. SWILLEY: --- there's nowhere in the
20 discovery as far as anything worse than she mentioned that
21 he pushed her. I think there's a text message at some
22 point said she got hit by a pool stick that the State
23 plans on entering into a text message of purportedly sent
24 by Miss Steele to Ms. Yarborough that I got recently. I
25 believe that's where it is. It's a photograph, but that's

1 all the allegations I have as it pertains to her as far
2 as -- I don't know what she's going to testify to
3 tomorrow, but based on conversation I had, I think it's
4 going to be something far more egregious than what is
5 initially alleging.

6 THE COURT: All right. Mr. White.

7 MR. WHITE: Judge, without the context, there's
8 no explanation for why Chris Yarborough leaves his bed,
9 wakes up in the middle of the night and goes out and this
10 takes place. The violence that occurred specifically to
11 Melia Steele and his agitated state of mind is the reason
12 for all this. It's a reason she leaves. It's a reason
13 she calls her grandmother to come pick her up. It's the
14 reason she calls back to tell Chris Yarborough to go check
15 on Mason outside because he's in such a way that I'm
16 afraid that he might hurt Mason as well or Emerson as well
17 excuse me.

18 And, Judge, you know, Mr. Swilley argue res
19 gestae. I think he argued it for the State. I mean,
20 we're the trier of fact and without it, I don't know how
21 the trier of fact puts, you know, two and two together.
22 There's a big piece of the puzzle missing here, Judge.
23 And under Rule 404, it specifically offers an exception to
24 show motive, identity, the existence of common scheme or
25 plan or the absence of mistake or accident or intent and

1 that's what we're dealing with here. The absence of
2 mistake or accident or intent. It goes to his intent.
3 And it also goes to rebut an accident by the defense.
4 Judge, it's not just isolated to this one incident. This
5 young man, Mason Yarborough, was out of control for a year
6 leading up to this. I mean, and person after person you
7 talk to his behavior became more and more erratic. His
8 obsession with firearms became more and more prevalent.
9 And there's going to be testimony that he was quick to
10 pull out a gun. He was quick to get violent, and on this
11 occasion, it was no different.

12 And although people were certainly certainly
13 mourning, nobody was shocked. And I think when the call
14 came out people started getting the call they went there
15 realizing that they were responding to something that
16 Mason Yarborough had done. And, Judge, I think that all
17 of that is going to come into play because it goes to
18 specifically to his intent. His state of mind. Judge,
19 this was -- this was a man -- this is a murderous
20 individual who was just looking for a victim. And there
21 towards the end, Judge, he gets fired I think June of
22 2020. And this happens in October.

23 And between the time that he gets fired and the
24 time that this happened, I'm telling you anybody could
25 have got it. Anybody could have been killed and it's just

1 a miracle that law enforcement left the scene of that
2 crime and there was only one body. But, again, Judge,
3 this goes to res gestae. It goes to absence of mistake or
4 accident and it certainly goes to his intent, and his
5 intent was in fact a murderous. So I think it should be
6 allowed. I understand Mr. Swilley's argument, but
7 respectfully I don't agree.

8 THE COURT: All right.

9 MR. SWILLEY: Judge, I didn't really anticipate
10 the State telling me that they're going to try to
11 introduce evidence of any other prior bad acts of Mr.
12 Yarborough, but what it sounds like that the State's
13 theory of, well, he's just a murderous maniac, so we get
14 to enter any bad acts or any prior bad acts or character
15 evidence that we want to prove conformity therewith and
16 that's the reason why 404 exist, so they can't do that.
17 Didn't have anything to do with what happened in that
18 garage with Mr. Yarborough and his father.

19 MR. WHITE: And, again, there's an exception to
20 conformity therewith. It's absence of accident, and it's
21 intent and that's key here. I'm not offering it to show
22 that he acted in conformity with anything that he's ever
23 done, but I am and I made no bones about it. I am
24 offering evidence to refute absence of accident which
25 they're going to claim and his intent at the time of these

1 murders -- this murder.

2 THE COURT: All right, I'll take a look at State
3 vs. King you handed up. And that's what it was?

4 MR. SWILLEY: I think it was State vs. King
5 that's correct.

6 THE COURT: All right. I'll take a look at it
7 and let you know.

8 MR. WHITE: Thank you, Judge.

9 THE COURT: All right, anything else?

10 MR. WHITE: Nothing on behalf of the State,
11 Judge.

12 MR. SWILLEY: Your Honor, I don't believe I have
13 anything else in limine at this time.

14 THE COURT: All right. We'll stand down until
15 nine o'clock in the morning. I want you all back here at
16 nine o'clock in the morning and I'll make my rulings on
17 all these matters.

18 MR. WHITE: Yes, sir, Judge.

19 (WHEREUPON, the proceedings were concluded for
20 the day to be reconvened on April 18, 2023.)

21 THE COURT: All right, anything from the State
22 at this time anything further?

23 MR. WHITE: No, sir, Judge.

24 THE COURT: Defense counsel?

25 MR. SWILLEY: There is, Judge, a couple things I

1 would ask the Court. The State's given me photographs of
2 the scene they want to introduce. The only two I have an
3 objection on there's a picture of what appears to be --
4 two pictures of what appears to be a black revolver. One
5 is laying on a looks like a shelf. One is disassembled
6 under a pencil sharpener in the garage of [REDACTED] Lake City
7 Highway. Judge, I just move to -- I would object to those
8 being that they are not probative to anything. It's not
9 the weapon that shot Mr. Yarborough. I don't think that
10 they're really relevant, so there's that. Also, Judge, I
11 do want to make a motion to sequester the witnesses in the
12 case.

13 THE COURT: I'm listening.

14 MR. SWILLEY: That's what I'm asking. We're
15 happy to sequester our witnesses as well. I think two of
16 ours is not here and I think all the other ones are
17 actually on the State's list. I believe with the
18 exception of one or two that I don't believe are here. So
19 I'm asking the Court or the witnesses to be sequestered
20 during the testimony of the trial and they not speak to
21 anybody, any other witnesses about their testimony as well
22 or after they testify.

23 THE COURT: All right. Thank you.

24 MR. SWILLEY: And, your Honor, also, I didn't
25 bring this up yesterday. I'm not sure if the State -- you

1 know, the State has a text purportedly from witness Melia
2 Steele to the deceased Mr. Yarborough where she asked him
3 to go down to the house. You know, Judge, it kind of
4 segues back into the motion I had yesterday to suppress
5 any prior bad acts of Mr. Yarborough. She claims that he
6 -- and I presume to means to be Mr. Yarborough hit me with
7 a pool stick and threw me around, please get Emerson he's
8 terrifying him. He had to run off when he wasn't paying
9 attention to me. He put the pistol in his mouth in front
10 of Emerson. When I told Emerson to go get you, he said he
11 wouldn't because it only make it worse. Then she request
12 that he move her clothes into his room.

13 Your Honor, if the State plans on introducing
14 that, I just ask that the part about the prior bad acts
15 towards Miss Steele be redacted. Also, I was given a, I
16 guess, copious volume of what appears to be some text
17 messages that would appear from -- I think these are
18 Mr. Yarborough, Mr. Mason Yarborough a friend of his.
19 Judge, talking about what maybe like an existence of an
20 apparition or something in the house, that's what I glean
21 from this. I don't see how that's really relevant to
22 anything. I don't know if the State plan on introducing
23 that or not.

24 Also, I was given some photographs or screen
25 shots of -- and, I guess, these are social media posts

1 that don't -- I don't know if the State's trying to
2 introduce any social media post or not. I don't know if
3 they're from Mr. Yarborough or from a different social
4 media account. Now, that I'm middle aged, I don't
5 understand this stuff any more. The Facebook came out in
6 like 2004, but all this other stuff doesn't really make
7 any sense to me. Judge, I can't tell if this
8 Mr. Yarborough or somebody post from Mr. Yarborough's
9 account while there's a picture of him maybe in jail from
10 the phones. And then there's a picture of a post or a
11 text message. I don't know if they're going to try to
12 enter this stuff into evidence or not.

13 There's one where it looks like Mr. Yarborough
14 is holding a whiskey bottle and a gun at some point. And
15 then there's looks like a text from Jessie Wayne Morris as
16 a screen shot, some other social media post. I don't know
17 if the State's introducing that, but I don't think it's
18 relevant. If it were to be relevant, which it's not
19 certainly more substantial and more prejudicial than
20 probative under Rule 403.

21 THE COURT: All right. Mr. White.

22 MR. WHITE: Judge, I'll try to address it all if
23 I can remember it all, but the part of the gun in the
24 photograph I think that it is relevant. It goes to
25 intent. The evidence, Judge, is going to be that he

1 started waiving his gun around first and this is the gun
2 that he was putting on people. And this is the gun that
3 he put in his own mouth and he admitted that in his
4 statement, so that's coming out. And, Judge, I think it's
5 relevant for that purpose.

6 I'm not sure what Mr. Swilley addressed next. I
7 think it was the text message. There is -- so the way
8 this thing will unfold, Judge, is Melia Steele is afraid
9 so she leaves that location where this murder takes place.
10 And when she's on the way out, she sends a text message to
11 Chris Yarborough who's asleep inside. Later on, she then
12 calls him and that's what kind of wakes him up. And then
13 he goes down there to check on everybody who was down at
14 the garage and that's when the murder takes place.

15 Judge, as far as the substance of that, I think
16 she can testify to everything that happened to her. You
17 know, that is a res gestae argument. That's what, you
18 know, initiated all this is her statement as to what
19 happened to her and what occurred inside that garage.
20 However, the text message I simply provided that because
21 it was provided to me. I will not be able to lay a
22 foundation to that text message to get that into evidence.
23 And that goes for the majority of the items that I turned
24 over to the defense. I don't think I'll be able to lay a
25 proper foundation. However, those social media posts that

1 are sent while he's inside -- when he's in prison and he's
2 sending social media post out from prison, if he takes the
3 stand, then certainly I'm going to inquire about those. I
4 think I've addressed everything, but if I've missed
5 anything, let me know, Judge.

6 THE COURT: All right. Anything?

7 MR. SWILLEY: Not at this time, your Honor.

8 THE COURT: Okay. All right. When we broke
9 yesterday, I heard several different matters first of
10 which was the statement given by the defendant pursuant to
11 or subsequent to his arrest. Defense counsel acknowledged
12 that the statement was given freely, voluntarily,
13 knowingly and intelligently after having been advised of
14 his Miranda rights. However, even in light of the defense
15 counsel acknowledging such would -- proceeded with a
16 Jackson vs. Denno hearing regardless of any stipulations
17 or agreement by defense counsel, the Court would find that
18 the defendant his statement was given freely, voluntarily,
19 knowingly and intelligently after having been advised of
20 his Miranda Rights while in custody.

21 Now, as it relates to various portions of that
22 statement of which defense counsel objected to, and I'll
23 try to hit these in order. The first as it relates to the
24 tattoo I will note for the record that during the
25 interview of the defendant there was some discussion about

1 the tattoo on the defendant's left arm. I think that it
2 need to be context or at least context in which the Court
3 viewed it as the defendant was being questioned. The
4 defendant asked if he could stand up to catch his breath.
5 It was apparent to me as I reviewed this video statement
6 given by the defendant that he was nervous, that he was
7 under stress from the events for which he had been
8 arrested for. And it appeared to me that after he had
9 asked Officer Owens if he could stand up or that the
10 discussion transitioned into the tattoo more so in an
11 effort to try to calm the defendant down or relax him so
12 to speak. Again, it was apparent from me as I reviewed
13 the video of the defendant was under stress, was nervous
14 and what I believe was a result of, again, the events that
15 occurred the evening before. So as it relates to defense
16 counsel's objection to that, I'm going to overrule that.
17 I'm going to allow that to come in.

18 Now, as you go through the interview, I think
19 once you get to that portion and I don't have the time
20 numbers. I didn't write that down. Well, I did write it
21 down approximately 1304 mark at least on the video of what
22 you all gave me yesterday. It may be different than what
23 you all had, I don't know. But on the video statement
24 yesterday, I think once Officer Owens conveys to the
25 defendant that he is going to seek a murder warrant, then

1 any discussions relating to plea negotiations or reduction
2 of charges, et cetera, I do not believe that that needs to
3 be part of anything that's put before the jury.

4 The issue of Officer Owens making the comment of
5 the rule of gun safety not to point a gun something you
6 don't intend to shoot. I do not see anything that's
7 overly prejudicial to the defendant as it relates to that
8 statement I'll allow that. I think that was approximately
9 the 1306 mark. But anything further, I think it at
10 approximately the 1307, 1308 mark as it relates to again
11 plea negotiations or reduction of charges, et cetera, I
12 don't think that's appropriate and would order that be
13 stricken.

14 As it relates to the jail calls of the
15 defendant, I think I ruled on that yesterday, but to the
16 extent there's any confusion on that provided the State
17 can authenticate those phone calls. The Court would allow
18 that. And I guess it needs depends on the context and
19 what under circumstances the State intends to introduce,
20 I'm not sure which certainly maybe objectionable at that
21 point, but at this juncture I do not -- would not exclude
22 those based upon what I heard in arguments yesterday.

23 As it relates to prior bad acts of the
24 defendant, I do believe that it is -- and I read several
25 cases yesterday before I left and when I returned to the

1 office here this morning. I read each of the cases that
2 defense counsel handed up yesterday State v. Brewer 768 SC
3 2D 656. I read the State vs. Washington 431 SC 619. The
4 State v. Brewington 267 SC 97, State v. Williams 409 SC
5 455. As it relates to the prior bad acts of the
6 defendant, I do believe that what occurred on the
7 evening -- afternoon and evening leading up to the offense
8 for which the defendant has been charged, I do believe
9 that such would be part of the res gestae of which the
10 State would be allowed to present. Anything other than
11 that, I think goes outside the scope of what we're dealing
12 with here today. One of the things on the video statement
13 of the defendant -- well, let me ask this. Were there any
14 other portions, Mr. Swilley, as it relates to the video
15 that you had any objections to?

16 MR. SWILLEY: Beg the Court's indulgence.

17 THE COURT: All right.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. SWILLEY: Nothing else, your Honor, on the
20 video than what we've already put on the record.

21 THE COURT: Okay, all right.

22 MR. WHITE: And, Judge, we are just narrowing
23 this to the time frame of the day of, you know, up until
24 midnight little bit after, then I think the portion in the
25 video that talks about, you know, there's getting hit with

1 a pipe and there's some choking going on. I think that
2 would need to come out according your ruling.

3 MR. SWILLEY: Judge, you know, I think we're
4 going to ask that -- except for the parts where we already
5 objected to, we're asking for the entire video to stay in.
6 We're trying to use res gestae to show that with
7 Mr. Yarborough and Miss Steele what they're going to
8 attempt to do. I think the fact that, you know, there's
9 been some kind of assault suffered in the past by
10 Mr. Yarborough to Mason Yarborough I think is relevant as
11 to whether or not Mr. Yarborough was in fear of his
12 father. I think that should stay.

13 THE COURT: I'll allow that to remain in. I
14 think it kind of go both ways.

15 MR. WHITE: Yeah, I think so to, I agree with
16 you, but does that not open the door to, you know,
17 character evidence or that ---

18 THE COURT: I'm not going to allow it.

19 MR. WHITE: Okay. Judge, I guess that's all I
20 have for you.

21 THE COURT: As it relates to sequestration of
22 witnesses, I'll grant that request. I don't know who your
23 witnesses are. I mean, I got a list of them just like --
24 from what you all gave me. I don't know any of them other
25 than Mr. Owens -- Investigator Owens, but I'll allow you

1 all or require that you all self police that so speak. I
2 don't know your witnesses, okay. As it relates to the
3 photographs of the pistol, I'll address or make that
4 ruling at the time depending on what the circumstances
5 are. All right. Anything else?

6 MR. SWILLEY: No, your Honor.

7 THE COURT: I think I've ruled on everything
8 that you all brought to my attention yesterday.

9 MR. WHITE: Yes, sir. Thank you, Judge.

10 THE COURT: All right. We'll stand down for
11 just a few minutes and go from there.

12 (WHEREUPON, a break was taken.)

13 THE COURT: All right. Anything from the State
14 before I bring the jury out?

15 MR. WHITE: No, sir, Judge.

16 THE COURT: Defense counsel?

17 MR. SWILLEY: No, your Honor.

18 THE COURT: All right, bring me the jury please,
19 sir.

20 (WHEREUPON, the jury came into open court.)

21 THE COURT: All right. We have all the jurors
22 present. Good morning, ladies and gentlemen, hope you all
23 are doing well today and ready to proceed here this
24 morning. Before we begin, I'm going to ask the clerk --
25 madam clerk, will you swear the jury please?

1 you will then be in a position to determine what the facts
2 are and to apply the law to those facts and thus render a
3 verdict.

4 Now, later in the case, ladies and gentlemen, a
5 foreperson will be selected to preside over deliberations
6 in the jury room. It will be the foreperson's added duty
7 to be the jury's spokes person here in court. It will
8 also be the foreperson's duty to write the verdict, but I
9 will give the foreperson further instructions about that
10 at the conclusion of the case. Now, in order to preserve
11 everyone's rights, I'll give the parties an opportunity to
12 object to anything that I have said any exceptions or
13 objections to anything that I've said to the jury by the
14 State?

15 MR. WHITE: None on behalf of the State, Judge.

16 THE COURT: Defense counsel.

17 MR. SWILLEY: No, your Honor.

18 THE COURT: Ladies and gentlemen, we will now
19 begin the trial of the case. The State's recognize for
20 opening statement.

21 MR. WHITE: One bullet created two victims. One
22 bullet created two victims. October 29th of 2020 around
23 midnight, the defendant in this case Mason Yarborough at
24 the home of his father, Chris Yarborough, grabbed an
25 assault riffle an SKS. He grabbed it, he racked the

1 chamber, putting a bullet into the chamber, picked that
2 gun up, he leveled, it flipped off the safety and he made
3 the decision to pull the trigger. And when he did, victim
4 number one seeing what was coming turned to run. He
5 turned away from the barrel of the gun and the defendant
6 fired any way. And that bullet between these two fingers,
7 pass those two fingers and struck victim one in the back
8 of the head, that wound is characterized as a graze wound.
9 It graze the side of victim one's face tearing anything
10 left in its path. It was a gruesome gruesome injury. And
11 victim one from the force of that SKS spun and fell and
12 died right where he laid. And the defendant walked up to
13 victim one's lifeless body covered and laid in blood and
14 he said how do you like that dad. Victim one was Chris
15 Yarborough. He was 49 years old. He was the father of
16 the defendant.

17 Victim two witness the entirety of the incident.
18 He witness the defendant get the gun. He witness him rack
19 the bullet into the chamber. He witness him pick the gun
20 up. He witness him flip off the safety. He witness him
21 pull that trigger and he witness the defendant shoot Chris
22 Yarborough killing him instantly. Victim two ran to
23 safety. And that night law enforcement arrived on scene
24 and they speak victim two. And he tells Investigator
25 Chris Owens that Chris Yarborough was not arguing with the

1 defendant. He did not reach for the gun. He did not grab
2 the gun. Later on that day, victim two gave an interview,
3 recorded interview. In it, he repeats the same thing. He
4 says that Chris Yarborough's last words on this earth were
5 woe, woe, woe, woe, woe. Victim two was 13 years old.
6 His name is Emerson Yarborough son of Chris, younger
7 brother of the defendant.

8 Since that time Emerson has been living with his
9 mother who has been in constant contact with the
10 defendant. We've got him on jail calls discussing
11 changing the young man's statement. They want him to get
12 on that stand and they want him to tell a story that
13 conflicts with the story he told to law enforcement. The
14 story he gave in that interview because they know, the
15 defendant knows if you believe what Emerson Yarborough
16 said the night this happened, if you believe what Emerson
17 Yarborough said the day after this happened, then this is
18 nothing but cold-blooded murder. But if he gets on that
19 stand and he says I didn't see nothing. I don't know
20 nothing. Then the defendant can argue, oh, this was just
21 an accident, I didn't mean to.

22 I want you to keep in mind, ladies and
23 gentlemen, when Emerson Yarborough takes that stand he is
24 the victim here. And whatever he says from that stand I
25 don't want you to hold it against him. This is a young

1 man caught in an impossible situation. He witness his
2 brother, his older brother shot, murder his father. And
3 now his own mother is leaning on him to change a story.

4 As he will take that stand tomorrow, he will be
5 15 years old. I can't imagine. One bullet created two
6 victims. Victim one can't speak. Victim two did. He was
7 adamant that there was no justification for the
8 defendant's actions. There was no argument. There was no
9 struggle over a gun. There was no grabbing the gun. He
10 simply said woe, woe, woe, woe as the defendant took his
11 life from him.

12 Ladies and gentlemen, we're going to layout a
13 case for you this week and that young man is going to be a
14 big part of it. I want you to listen to what he says. I
15 want you to hear what he doesn't say. I want you to focus
16 on what he tells law enforcement the night of. I want you
17 to take special attention to what he told the forensic
18 interviewer the next day. Then I want you to hear a jail
19 call where the defendant and his mother are conspiring to
20 to have this young man change his story, get on that stand
21 and tell you something other than what he told the night
22 this happened when it was fresh in his mind. And I know
23 when you hear all that and you put it all together, you'll
24 be convinced that this is cold-blooded murder. Thank you.

25 THE COURT: Mr. Joyner.

1 MR. JOYNER: Thank you, Judge. This case is
2 about man who saw red. Chris Yarborough was the kind of
3 man who only saw red. You see many of us we see many
4 covers. We feel many emotions. And we have a lot of
5 different tools that we use to manage our emotions to cope
6 with them. Well, Chris Yarborough was not that way.
7 Chris Yarborough saw one color red. He felt one primary
8 emotion anger. And he had one tool to cope with his anger
9 and that tool is violence. Violence and abuse is what he
10 subjected his son ---

11 MR. WHITE: Judge, we need to approach. In
12 fact, I think we have a matter of law.

13 (WHEREUPON, a bench conference was held in the
14 presence of the jury, but out of the hearing of the
15 jury.)

16 THE COURT: Go ahead.

17 MR. JOYNER: Thank you, Judge. As I was saying,
18 ladies and gentlemen, Mr. Yarborough, Chris Yarborough had
19 one way of dealing with his anger and that was violence
20 and that was abuse. He subjected his son, Mason, to the
21 violence and to the abuse his entire life. His entire
22 life he subjected him to that violence and abuse. And on
23 the night in question, the night that this accident
24 occurred, he subjected him to more violence and more
25 abuse.

1 Now, the Solicitor is most definitely right
2 about one thing. Chris Yarborough he is a victim, but he
3 is not a victim of his son Mason. Chris Yarborough is the
4 victim of his own impulsive anger. He is the victim of
5 his own uncontrollable violence. And ultimately Chris
6 Yarborough is a victim of his own reckless and violent
7 decisions that he made on the night of this accident, that
8 is the truth.

9 Now, I want to take you back to a few hours
10 before this accident occurred. Chris Yarborough and his
11 wife, Lynn, are divorced. They had two children together
12 Emerson and Mason. Mason is the older son. Emerson is
13 the younger. There was some discussion earlier that day
14 that was a Thursday about Chris picking up his younger
15 son, Emerson, earlier. Throughout the discussion, it was
16 clear that he was in a bad mood and it was worse than
17 normal. Well, you'll see that Mason communicated with his
18 mother. He communicated with his younger brother.
19 Emerson said dad's in a bad mood. I'm going to come with
20 him to pick up Emerson to make sure that he don't take
21 anything out on Emerson. I'll be there to run
22 interference, so they pick him up. They go back to their
23 house and Chris Yarborough, Mason's father goes into his
24 house. Chris resides in the house over a hundred feet
25 away, approximately a hundred feet away in a garage, a

1 separate building and that is where Mason resides. Mason
2 resides in a separate building.

3 Now, when they went back to Mason's residence,
4 dad was in his house. And in Mason's residence was Mason,
5 his younger brother Emerson and his girlfriend Melia. And
6 they were in there. There's a pool table. You will see
7 photos of all of this. They were shooting pool talking
8 and Emerson and Melia get into an argument. She's young.
9 They're all young people and Emerson and Melia are
10 bickering back and forth just like young people do from
11 time to time. And Mason says y'all stop, just please just
12 shut up with this nonsense. Well, Mason ends up taking
13 his little brother's side. He doesn't take his
14 girlfriends side in this argument and she gets mad about
15 that. So now instead of it being Emerson and Melia
16 arguing, now it's Mason and Melia arguing and they're
17 going back and forth, back and forth.

18 Well, ultimately Melia gets mad and wants to
19 leave, so she leaves. Mason doesn't want her to go. He
20 doesn't want to be there by himself, but she ultimately
21 leaves and he lets her go. Well, he then calls his mother
22 and he says, mom, I don't want to be here by myself please
23 come get me. He was upset one of his best friends had
24 committed suicide the week before. And they had his
25 funeral just a few days before, and he was just grieving.

1 And he was terribly upset about the whole situation and he
2 didn't want to be alone. And so he called his mom, mom,
3 come get me, I want go home with you. His mother gets up
4 and heads that way.

5 Well, in the meantime, she's coming there
6 because she lives about 15 minutes away. Now, it's just
7 Emerson and Mason in the garage there. And they shoot
8 some pool and everything is fine. Emerson, the younger
9 brother, picks up the phone and calls his mom. He says,
10 mom, I talk to my brother, Bubba, is what he called him.
11 I talk with Bubba that's what he called him is fine now.
12 He's calm down, don't worry about anything. Everything is
13 fine. But unbeknownst to him, Melia was still very very
14 mad about not being taken number one, not being his first
15 pick in whose side to take. So unbeknownst to either of
16 the brothers, Melia has gone and communicated with their
17 dad, Chris, because she knew about Chris. She knew about
18 his attitude and she knew that Mason was terrified of him.
19 And that would be the best way for her to get back at him
20 for not taking her side was to call his daddy and tell his
21 daddy because she knew what his daddy would do. So
22 everything's fine. They have no idea that she's
23 communicating anything to Chris Yarborough.

24 Emerson is sitting on the futon. He's talking
25 to his mom and nobody is alert. Nobody's spidey senses is

1 going off. Nobody's stress because everything is calm
2 now.

3 As he's talking to his mother, his father shows
4 up and his father comes in through a roll-up door, which
5 is another room. The evidence will show that Mason was in
6 between the two rooms. His father was in another room
7 where the roll-up doors are and Emerson was against the
8 way sitting on a futon in the first room. You'll see that
9 the evidence will ultimately show that when Mason saw his
10 dad come in that his dad was irate. He was very angry
11 what is the shit going on in here, what is going on.
12 Well, he was immediately terrified when he saw his dad.
13 He was immediately terrified. And he said, dad, please
14 just leave go back to your house and leave me alone. His
15 dad upon being questioned and told to leave balls his fist
16 up and literally shows his teeth. Mason knows what's
17 coming. Mason knows what's coming. So Mason picks up his
18 gun, does not point it at his father, but he picks up his
19 gun and he holds it like this and he says, dad, leave me
20 alone, go back to your house, go back to your house.

21 Well, his father at that moment completely flips
22 out, rushes up to him grabs the end of the barrel of the
23 gun with his right hand. With his left hand, he goes to
24 punch Mason. Mason again is holding the gun like this, so
25 if his father approaches him his right hand, the barrel is

1 on his father's right-hand side. His father grabs the
2 gun, goes punching. Mason turns away to avoid being
3 struck. When he turns away, he feels the gun's jerk
4 forward and he feels it going backward, the gun has fired.

5 Now, he didn't see the shot, but he knows the
6 shot because he's holding the gun in his hand. And he
7 looks back and he sees that his father has been shot in
8 the side of his face. He see his father stumble back a
9 few steps and he fall backyards on his back. Now, Mason
10 is immediately immediately in a horrible panic. He drops
11 the gun. He goes and looks at his father and checks on
12 his dad. The pictures are gruesome you will see. They
13 are terrible, and there's blood everywhere. It's a
14 terrible, terrible scene. But he checks on his father,
15 dad, are you okay, are you all right.

16 And in the process of checking on his dad, he
17 gets blood on his hands. He literally gets blood on his
18 hands covered with blood. He knows that he can't help his
19 father. So he gets up in a panic. He leaves the gun
20 there in the garage. And you can see how he exited the
21 room because there's blood on the futon where the futon
22 was by the door where he moved it. There's blood on the
23 door where he pushed it open. You'll see his bloody hand
24 prints where he pushed the door open and left. We can
25 prove all of that. The evidence is very clear.

1 He leaves. He immediately calls his mom. He
2 says, mom, daddy grabbed the gun and it went off. She
3 said call 9-1-1, call 9-1-1, so he does. He immediately
4 calls 9-1-1 and he's just in complete panic. I mean, he's
5 frantic. As he's calling 9-1-1, you'll hear the state
6 that he's in. You'll hear his state of mind. And he
7 tells them where he's going. He's running down the road
8 to his neighbor's house. His neighbor Clay Prosser. And
9 he tells him daddy was mad. He was angry when he came in,
10 and he grabbed the gun and it went off. The gun went off.
11 You'll hear all of those things. You will see all of the
12 evidence.

13 And ultimately law enforcement comes and he was
14 in fact where he told him down the street at this
15 neighbor's house. Now, one of the questions you may be
16 asking is why does the young man need to pick up a gun to
17 persuade his father to leave him alone. He had to do it
18 because he's testified of his father. He was terrified of
19 his father because he knew what his father would do and he
20 knew what the father had done in the past.

21 Now, in spite of that, the evidence will show
22 all the things that he had endured over his life that he
23 loved his father. He loved him very much. He wanted to
24 be like his dad. When he turned 18, he left. His mom had
25 custody. And he left to be near his dad. His father was

1 in the military, so he joined military. His father worked
2 as an electrician, so he worked as electrician. His
3 father loved working on cars, so he wanted to work on cars
4 too. He never intentionally hurt his father.

5 Now, as the evidence is presented in this case
6 there a few key things I ask that you look at. One of the
7 key things is where did this accident occur. You will see
8 Mason did not go crazy on a rampage and run up to his
9 father house a hundred feet away and shoot him up not at
10 all. In fact, it was the opposite. His father left the
11 safety and comfort of his own home and went over 100 feet
12 to a different building where Mason lived and he violently
13 assaulted Mason. The evidence will show that.

14 The second thing that the evidence will show is
15 that he didn't go on a murderous rampage and shoot him a
16 bunch of times. A single shot was fired only one shot.
17 The evidence will show that that single shot that was
18 fired was accidentally fired when Chris Yarborough grabbed
19 the end of the barrel and jerked it. We can show you
20 through the evidence that the injury to Chris' finger is
21 not from the bullet. The bullet injury goes through.
22 This is an injury you'll see to the length of his index
23 finger because he had his index finger over the gas
24 points. The muzzle of the barrel, the end of barrel has
25 three little slits in it and that is a port that allows

1 gases to escape. And those gases come out in a very very
2 high pressure.

3 In fact, they come out at such a high pressure
4 that the gas can cause a terrible injury. You will see,
5 you will notice that my middle finger, my index finger and
6 my thumb are together. You will notice that the dark
7 gunshot residue and the black gases and the soot are
8 exactly those three places on Chris Yarborough's hand.
9 They're on the pad of his thumb. They're on his middle
10 finger on the inside, and they're on this side of his
11 index finger, that is how he got the injury. And that is
12 how the gun accidentally discharge when he jerked it
13 toward himself. The evidence will show that it was a shot
14 that came from the front, it did not come from the back.
15 It did not come from the back.

16 The evidence will also show that Mason never
17 fled away from the police. He never tried to run and
18 hide. He was freaked out and in a panic, he went to his
19 neighbor's house, but he told them, hey, that's where I am
20 right down the road at my neighbor's house. And
21 ultimately you'll hear about Emerson and what he has to
22 say.

23 And in closing, ladies and gentlemen, I'll say
24 this and this is the truth of this case. Chris Yarborough
25 was not a perfect man. He was not a perfect man by any

1 stretch of the imagination, but he did not deserve to die.
2 He did not deserve to be shot not at all. His son, Mason,
3 he's not perfect by no means is he perfect, but he didn't
4 shoot his dad on purpose. And he didn't want his dad to
5 die. He loved his dad.

6 And look when you got two imperfect people, when
7 you put them together, you've got a deeply flawed
8 relationship. That's what you have. And that's how
9 relationships are because nobody's perfect and theirs
10 wasn't perfect and it was deeply flawed. And that deeply
11 flawed relationship ultimately culminating in a tragic
12 family accident and that's the truth. This is a horrible,
13 horrible accident. Mason loved his father and would
14 never, never intentionally hurt him. And because it was
15 an accident I beg you, I beg you to find Mason not guilty.
16 Thank you.

17 THE COURT: Call your first witness please.

18 MR. WHITE: Thank you, Judge. At this time the
19 State would call Alesha Smith. Judge, beg the Court's
20 indulgence, I think she's in the restroom at the moment.

21 (WHEREUPON, a pause in the proceedings.)

22 THE COURT: Is everyone on the jury okay? Does
23 anyone need a bathroom break? Everybody okay, okay.

24 (WHEREUPON, a pause in the proceedings.)

25 THE CLERK: Ma'am, if you'll please step up to

1 the witness stand and place your left hand on the Bible
2 and raise your right hand. Do you swear or affirm the
3 testimony you give in this case to be the truth, the whole
4 truth, and nothing but the truth so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please be seated and state your full
7 name for the record.

8 THE WITNESS: Alesha Smith.

9 WHEREUPON,

10 Alesha Smith,

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

12 DIRECT EXAMINATION

13 BY MR. WHITE:

14 Q Ms. Smith, tell us where are you employed?

15 A Florence County Emergency Management.

16 Q And how long have you been employed there?

17 A For 14 years.

18 Q And in what capacity are you currently employed?

19 A Currently, I am the central dispatch manager for the
20 9-1-1 center.

21 Q And what do you guys do there at dispatch? If you
22 could tell us -- how dispatch operates?

23 A We take calls, 9-1-1 calls into the center and then
24 we dispatch to appropriate units to the scenes.

25 Q Now, on October 29th of 2020, did the dispatch

1 dispatch officers to a location on Johnsonville Highway in
2 Lake City?

3 A That is correct.

4 Q And were there 9-1-1 calls associated with that call?

5 A Yes, sir.

6 Q And have you had a chance to review those calls?

7 A I have, yes, sir.

8 Q And the CAD report that goes with them?

9 A Yes, sir.

10 Q I'm going to show you State's Exhibits 6 and 7 if you
11 could tell me if you recognize these particular items?

12 I'll just hold them up for you like that.

13 A Yes, sir, I do.

14 Q How do you recognize them?

15 A Because that is the calls -- the 9-1-1 calls that we
16 produce whenever a request is made.

17 Q How are 9-1-1 calls stored at the dispatch center?

18 A They stored on a data base.

19 Q And whenever an agency makes a request, can you pull
20 it and send it to that agency?

21 A Yes, I can.

22 Q Was that request made?

23 A Yes, sir, it was.

24 Q Was it made by the Solicitor's office?

25 A It was, yes, sir.

1 Q And are these the calls that was sent by dispatch to
2 the Solicitor's office?

3 A Yes, sir.

4 MR. WHITE: Judge, I move State's Exhibit 6 and
5 7 into evidence.

6 MR. SWILLEY: Your Honor, first of all see what
7 type of calls are on there. Your Honor, I think we --
8 there's a matter of law as regard to State's Exhibit 7
9 that I may not have been resolved if we could approach.

10 (WHEREUPON, a bench conference was held in the
11 presence of the jury, but out of the hearing of the
12 jury on the record.)

13 MR. SWILLEY: I apologize this is ---

14 THE COURT: I asked you all yesterday to get
15 together on all this stuff and there were any issues to
16 let me know.

17 MR. SWILLEY: My apologies. This is the one
18 that was brought up yesterday with the mother where she
19 repeats what the child has said. I don't think you made a
20 ruling on that.

21 THE COURT: I never heard that nor was it ever
22 brought to my attention yesterday.

23 MR. SWILLEY: I thought we brought the one where
24 the mother repeats about what the child told her on the
25 9-1-1, you know, call bring that issue up.

1 THE COURT: I heard nothing on that yesterday.

2 MR. SWILLEY: I have no objection as to State's
3 Exhibit Number 6. I would just like to quickly put an
4 objection to State's Exhibit 7. I had that issue. I
5 apologize for not bringing that up.

6 MR. WHITE: It's excited utterance. I mean, I
7 think it comes in.

8 MR. SWILLEY: It's hearsay within hearsay and
9 there's no exception.

10 THE COURT: I mean, the issue boils down to -- I
11 think it certainly could come in based upon the timing of
12 it, excited utterance et cetra, but, I mean, I'll reserve
13 ruling on the admissibility of it right now. I'll address
14 it shortly.

15 MR. WHITE: I was going to ask to publish it.

16 (WHEREUPON, a bench conference was held in the
17 presence of the jury, but out of the hearing of the
18 jury has ended on the record.)

19 THE COURT: All right. Ladies and gentlemen,
20 I'm sorry to do this, but I need to ask you to step to the
21 jury room for just a minute or a few minutes. Do not
22 discuss the case. I'll get you back out here in just a
23 few minutes, okay.

24 (WHEREUPON, the jury retire to the jury room.)

25 THE COURT: Let's hear it. As I sat up here at

1 side bar I asked you all to get together yesterday on
2 these items of evidence nothing was ever brought to my
3 attention yesterday concerning this State's Exhibit Number
4 7, which is evidently a 9-1-1 call from Ms. Lynn
5 Yarborough. First, been brought to my attention any
6 objection to this particular 9-1-1 call, first issue or
7 objection that's been brought to my attention was this
8 morning. I will hear it. How long is this call, Mr.
9 White?

10 MR. WHITE: I believe it's ten minutes, Judge.
11 It's substantially shorter than that.

12 THE COURT: Can you play that please?

13 MR. WHITE: Yes, sir.

14 (WHEREUPON, 9-1-1 call being played for the
15 Court.)

16 THE COURT: Is that it?

17 MR. WHITE: Yes, sir, Judge.

18 MR. SWILLEY: With this 9-1-1 recording, there's
19 another recording that we don't object to where Mr.
20 Yarborough makes a call to 9-1-1 tells them his father
21 been shot and where he is. This call is Ms. Lynn
22 Yarborough who makes at least a subsequent 9-1-1 call. In
23 this call particularly, she says that my little one says
24 you heard it he's afraid that -- he doesn't want me to
25 come to the house because he's afraid that my older son

1 might hurt me. Where is that the 9-1-1 call that would be
2 an excited utterance, but we don't know the context in
3 which it was said by Mr. Emerson Yarborough, although
4 hearsay within hearsay could be admissible or has to be an
5 hearsay exception for both. I don't think we have that
6 for what she said Emerson said in this 9-1-1 recording.
7 Also, Judge, really more than 9-1-1 recording is needless
8 introduction to cumulative evidence just the fact there
9 was an emergency, there was a shooting. I mean, the first
10 number six I think substantiates that.

11 THE COURT: Mr. White.

12 MR. WHITE: I mean, this call is made. You can
13 clearly hear the stress in her voice. It's made while
14 she's still under the excitement of what has transpired.
15 And, you know, I believe that that falls within the
16 exception to the rule. Excited utterance is made for this
17 sort -- just this sort of thing and I'd ask to publish it
18 to the jury.

19 THE COURT: All right. Over the defendant's
20 objection, I'm going to allow it. I believe the statement
21 was made -- clearly made after the incident had occurred
22 which would clearly indicate that it was made under such
23 stress and excitement and that stress or excitement
24 pursuant to the utterance, the Court believes it was
25 caused by the startling event or condition, so I'm going

1 to allow it, but will note your objection. All right.

2 Anything else?

3 MR. WHITE: No, sir, Judge.

4 MR. SWILLEY: No, your Honor.

5 THE COURT: All right. While the jury's out,
6 I'm going to stand down for just a minute. You may step
7 down, but don't discuss your testimony. When I come back
8 in here, I'll get you back up here. And then I'll bring
9 the jury in and we'll resume at that time. But I'm going
10 to take a short break since I have all the jurors out.

11 MR. WHITE: Yes, sir, Judge.

12 (WHEREUPON, a break was taken.)

13 THE COURT: All right. We have the defendant
14 back in the courtroom. Let me ask this question, I know
15 that looking over here in front of my court reporter
16 there's a multitude of items of evidence which have been
17 marked as exhibits. Have you all gone through these,
18 Mr. Swilley?

19 MR. SWILLEY: Your Honor, just the photographs
20 and now the 9-1-1 recordings.

21 THE COURT: And you have gone through all of
22 that?

23 MR. SWILLEY: Yes, sir. I've gone through --
24 I've seen the CAD report. I have no objection to that.
25 Your Honor, I see these look like rounds to the SKS. I

1 don't have any objection to those and I don't know what's
2 in exhibit five.

3 MR. WHITE: Those the test fired rounds.

4 MR. SWILLEY: Test fired rounds no objection to
5 those. I assume this is the SKS. This the trigger pull
6 gauge.

7 MR. WHITE: Well, he test fired the riffle
8 against the shell casing found.

9 MR. SWILLEY: That's on the report you gave me.

10 MR. WHITE: Yes.

11 MR. SWILLEY: No objection to that.

12 MR. WHITE: So this the overhead.

13 MR. SWILLEY: No objection to that.

14 MR. JOYNER: We can look at the gun now too and
15 stipulate to that if you like.

16 THE COURT: That's fine. I mean, it's still
17 under seal, isn't it?

18 MR. WHITE: Yes, sir.

19 THE COURT: We can just wait on that. All
20 right, anything else before I bring the jury back out from
21 the State?

22 MR. WHITE: No, sir, Judge.

23 THE COURT: Defense counsel.

24 MR. SWILLEY: No, your Honor.

25 THE COURT: Ms. Smith, if you'd come back up

1 please, ma'am. Bring me the jury please.

2 (WHEREUPON, the jury came into open court.)

3 THE COURT: All right, we have all the jurors
4 back in the courtroom. Prior to us taking a break, the
5 State moved to introduce State's Exhibit 6 and 7 I believe
6 it was into evidence.

7 MR. WHITE: Yes, sir.

8 THE COURT: The Court is allowing those exhibits
9 to be admitted into evidence subject to defense counsel's
10 objection, so noted for the record.

11 (WHEREUPON, State's Exhibit Nos. 6 and 7 were
12 admitted into evidence.)

13 MR. WHITE: Judge, I'd ask for permission to
14 publish it.

15 THE COURT: Yes, sir.

16 (WHEREUPON, 9-1-1 call played for the jury.)

17 BY MR. WHITE:

18 Q Ms. Smith, while those calls are going on, are you
19 guys at dispatch generating a report?

20 A Yes, sir, we are.

21 Q And is that report accessible as the same as these
22 calls?

23 A Yes, sir, it is.

24 Q And did y'all turn over a report in connection with
25 this case to the Solicitor's office?

1 A Yes, sir, we did.

2 Q I'm going to show you State's Exhibit 8 if you can
3 tell me if you recognize that document?

4 A Yes, sir, it's the CAD report for that call.

5 Q And is this a CAD report that's filled out just like
6 every 9-1-1 call that comes in?

7 A Yes, sir.

8 Q And that's a connection with this particular case and
9 the calls we just heard?

10 A Yes, sir, it is.

11 MR. WHITE: I move State's Exhibit 8 into
12 evidence, Judge.

13 THE COURT: Any objection?

14 MR. SWILLEY: No objection, your Honor.

15 THE COURT: So admitted.

16 (WHEREUPON, State's Exhibit No. 8 was admitted
17 into evidence.)

18 BY MR. WHITE:

19 Q And I want to point out to you, Ms. Smith, that on
20 the front says location of occurrence. Could you read me
21 the address and location of the occurrence.

22 A It's 3775 Johnsonville Highway.

23 Q Does that happen sometimes when calls come up --
24 somewhere some place other than where the incident
25 location is?

1 A It does and also with originally with the situation
2 being like it was, we mapped because we didn't get a
3 numeric to start off with. We just needed to get people
4 going that way and we could confirm the number after
5 while.

6 Q I understand. If you could flip to page two and see
7 if at some point during that log you guys correct the
8 address and I think it's on page two if you'll take a
9 look?

10 A [REDACTED] Lake City Highway.

11 Q And is that your understanding that's where the
12 incident occurred?

13 A Yes, it says confirming [REDACTED] Lake City Highway.

14 MR. WHITE: Okay, thank you, Ms. Smith. Judge,
15 I have nothing further.

16 THE COURT: Cross-examination.

17 MR. SWILLEY: Briefly.

18 CROSS-EXAMINATION

19 BY MR. SWILLEY:

20 Q Ms. smith, and when you gather these 9-1-1 calls I
21 believe there were several other calls that were actually
22 made to 9-1-1 other than the two, is that correct?

23 A Yes.

24 Q Okay. I think there were ten, is that correct?

25 A I'm not 100 percent sure on the number, no, sir.

1 Q You recall there were several, right?

2 A Yes.

3 Q And there were several made with Mr. Yarborough, is
4 that correct, other than the one we just heard?

5 A Yes.

6 Q Okay. Now, I think he stayed on the phone for a
7 pretty significant amount of time with 9-1-1 before the
8 police got there and took custody of him.

9 A Yes, sir.

10 MR. SWILLEY: Thank you, Ms. Smith. I don't
11 have anything further.

12 MR. WHITE: Nothing further, Judge.

13 THE COURT: Ma'am, you may step down. Thank
14 you.

15 (WHEREUPON, the witness leaves the witness
16 stand.)

17 MR. WHITE: Judge, I'd ask that Ms. Smith could
18 be released from her subpoena?

19 THE COURT: Any objection?

20 MR. SWILLEY: No objection, your Honor.

21 THE COURT: Ms. Smith, you may step down.
22 You're released from your subpoena. You're free to go
23 have a nice day.

24 (WHEREUPON, the witness leaves the witness
25 stand.)

1 THE COURT: Call your next witness please.

2 MR. WHITE: Thank you, Judge. At this time the
3 State would call Justin Bostick.

4 THE CLERK: Sir, if you'll please place your
5 left hand on the Bible and raise your right hand. Do you
6 swear or affirm the testimony you give in this case to
7 tell the truth, the whole truth, and nothing but the truth
8 so help you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Please be seat and state your full
11 name for the record.

12 THE WITNESS: Justin Bostick.

13 WHEREUPON,

14 Justin Bostick,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WHITE:

18 Q Officer Bostick, where are you employed?

19 A Sir.

20 Q Where are you employed?

21 A Timmons ville police department.

22 Q And how long have you been employed there?

23 A Round about a year and a half.

24 Q And what do you do for the Timmons ville police
25 department?

1 A Patrol officer.

2 Q Now, back when this incident occurred that brings you
3 here today October 29th, October 30th of 2020, where were
4 you employed at that time?

5 A Florence County sheriff's office.

6 Q In what capacity were you employed with the Florence
7 County sheriff's office?

8 A Deputy sheriff.

9 Q What does a deputy sheriff do?

10 A Mostly respond to calls patrol the area.

11 Q And did you respond to the call at [REDACTED] Lake City
12 Highway?

13 A Yes, sir.

14 Q And how did that call come out? What did you -- what
15 was your understanding of what you were responding to?

16 A Dispatch gave a call out over the radio. And my
17 understanding was there was an incident that took place at
18 that location involving Mr. Yarborough and his father.

19 Q Okay. And were you aware if there was a shooting
20 that occurred there?

21 A Yes, sir.

22 Q And when you arrived on scene and you get dispatched
23 to a scene of a shooting, what are some of your duties,
24 your role when you arrive on scene there?

25 A Secure the scene, locate the suspect, try to get any

1 potential victims to safety or make sure they're no longer
2 a threat for EMS get on scene basically.

3 Q And did you do that in this particular case?

4 A Yes, sir.

5 Q When you arrived was the suspect on scene?

6 A No, sir.

7 Q I'm going to show you State's Exhibit 62 through 71.
8 Could you tell me if you recognize those photos? I think
9 I've shown them to you before and they provided by the
10 defense?

11 A This is Mr. Yarborough's residence.

12 Q And is it a fair and accurate depiction of the scene
13 as you encountered it that night?

14 A Yes, sir.

15 Q Now, it was -- obviously, it was nighttime. Those
16 were taken during the day, but those are clearly the home
17 that you encountered on the incident date?

18 A Yes, sir, it is.

19 Q Okay. Thank you.

20 MR. WHITE: Judge, we're just dealing with
21 State's Exhibits 62 through 65 and 67 through 71 and I
22 would move those into evidence.

23 MR. SWILLEY: No objection.

24 THE COURT: All right, so admitted without
25 objection.

1 (WHEREUPON, State's Exhibits Nos. 62-65 and
2 67-71 were admitted into evidence.)

3 MR. WHITE: Judge, permission to publish?

4 THE COURT: Yes, sir.

5 BY MR. WHITE:

6 Q And, Officer Bostick, I'm just going to show you
7 these photographs so the jury can get an idea of the
8 residence as you encountered it showing you first State's
9 Exhibit 62. Is that the residence at [REDACTED] Lake City
10 Highway?

11 A Yes, sir.

12 Q And if you'll just speak up so everybody can hear
13 you?

14 A Yes, sir.

15 Q Thank you. And is that in Florence County?

16 A Yes, sir.

17 Q And is it your understanding that this residence
18 belong to the victim Chris Yarborough.

19 A Yes, sir.

20 Q Okay. State's Exhibit 63 is this another photograph
21 of the same?

22 A Sir.

23 Q Is this another photograph of the same thing?

24 A I can't see it.

25 Q Do you see it on the screen?

1 A No, it's nothing on it.

2 Q Okay. State's Exhibit 63 is this another photograph
3 of the same thing?

4 A Yes, sir.

5 THE COURT: Hold on a minute, Mr. White.

6 (WHEREUPON, a pause in the proceedings.)

7 THE COURT: Are the monitors on in the jury box?

8 Okay. You can show him the photograph and then you can
9 put it on the Elmo or whatever they call the thing. The
10 jury's monitors are on and they can see it without having
11 to walk down there.

12 MR. WHITE: Yes, sir.

13 BY MR. WHITE:

14 Q Sixty-three is this a zoomed out photograph of the
15 same thing?

16 A Yes, sir.

17 Q Is this the residence that you arrived at?

18 A Yes, sir.

19 Q And to the left is that the driveway where you pulled
20 in?

21 A To the left of that residence, yes, sir.

22 Q Okay. I'm going to show you State's Exhibit 64 you
23 familiar with that?

24 A Yes, sir, that's the garage.

25 Q Is that the garage in the back?

1 A Looks like a garage like slash -- I think he was
2 using the front part as a living area.

3 Q Is that the garage where the incident took place?

4 A Yes, sir.

5 Q State's Exhibit 65 can you see it from here?

6 A Yes, sir.

7 Q Sixty-five is that a close-up photograph of the same
8 thing?

9 A Same thing.

10 Q And did you clear with other officers did you clear
11 that area?

12 A Yes, sir.

13 Q And did you see the deceased in that garage?

14 A Yes, sir, towards the back half of it.

15 Q Okay. State's Exhibit 67 and 68 you recognize those
16 photographs?

17 A I do not recall a pool being there.

18 Q Are you aware that there was a pool there?

19 A Yeah, I never saw it.

20 Q Is this in between the house and the garage there I
21 think you can see it in the back?

22 A I never saw it.

23 Q Well, I'm showing it to you.

24 A Yeah, I see it now, but I didn't seen it then.

25 Q Okay. And, again, 68 is a photograph of the pool,

1 correct?

2 A Yes, sir.

3 Q Sixty-nine is that the garage there in the back?

4 A Yes, sir.

5 Q Okay. And 70 and 71 this is around the backside of
6 the property?

7 A Yes, sir.

8 Q Did you see that from where you were?

9 A Yes, sir.

10 Q Okay. Now, you mention that when you arrived on
11 scene, you clear the property including the garage, but
12 the suspect was not there?

13 A Yes, sir.

14 Q Was he later apprehended?

15 A Yes, sir.

16 Q Was he brought back to the incident location? You
17 got to answer yes or no?

18 A Yes, sir, I'm sorry.

19 Q That's all right, I'm sorry. Did you have occasion
20 to come in contact with him?

21 A Yes, sir, I placed him in the back of my patrol car.

22 Q You placed him in the back of the patrol car?

23 A No, two other officers did.

24 Q Did you come in contact with him and see him in the
25 back of that patrol car?

1 A Yes, sir.

2 Q What was his demeanor in the back of the patrol car?

3 A He was kind of irate. He was -- I say frantic. He
4 was kind of frantic.

5 MR. WHITE: Beg the Court's indulgence one
6 moment. Officer Bostick, that's all I have for you.
7 Please answer any questions the defense may have.

8 THE COURT: Mr. Swilley, Mr. Joyner.

9 MR. SWILLEY: No questions from us, your Honor.

10 THE COURT: All right. Sir, you may step down.
11 Thank you.

12 MR. WHITE: Judge, may we approach for just a
13 moment. I'd ask that Officer Bostick be released from his
14 subpoena, so he can go back to work.

15 THE COURT: Any objection?

16 MR. SWILLEY: No objection, your Honor.

17 THE COURT: Sir, you're free to go. You are
18 released from your subpoena have a nice day.

19 (WHEREUPON, the witness leaves the witness
20 stand.)

21 THE COURT: Mr. Swilley, can you approach
22 please?

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury, but out of the hearing of the
25 jury.)

1 Chase McDaniel,
2 after first having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. WHITE:

5 Q Investigator McDaniel, tell us if you could tell us
6 where are you employed?

7 A For the florence County sheriff's office.

8 Q And how long you been employed there?

9 A For the past five years.

10 Q And what is your role now currently with the
11 sheriff's office?

12 A Criminal investigator.

13 Q And back when this incident occurred were you
14 similarly employed?

15 A Yes, sir.

16 Q Were you assign specifically to the crime scene unit?

17 A Yes, sir.

18 Q And is that what worked on the day in question?

19 A Yes, sir.

20 Q And was that October 29th, October 30th of 2020?

21 A Yes, sir.

22 Q And did you respond out to that location to process
23 the crime scene?

24 A Yes.

25 Q In that capacity, what do you do when you go to the

1 crime scene and specifically a crime scene like this where
2 there's been a murder. What was your role when you
3 arrive?

4 A Normally, when we identify where the crime scene is
5 actually and then we start our processing of the scene
6 once we identify where exactly the incident took place.

7 Q And when you say processing what is that mean? What
8 all goes into processing the crime scene?

9 A We start by photographing, gathering evidence,
10 fingerprinting. It just depends on what we got going on
11 in the case.

12 Q And did you do that here?

13 A Some of it, yes, sir.

14 Q And did you photograph the crime scene?

15 A Yes, sir.

16 Q I'm going to show you if I could show you State's
17 Exhibit 9 through looks 60, Investigator McDaniel. If you
18 could tell me if you recognize those photographs?

19 A Yes, sir.

20 Q You recognize those photographs. How do you
21 recognize them?

22 A I took these photographs.

23 Q They're an accurate depiction of the crime scene as
24 you encountered it on that evening?

25 A Yes, sir.

1 MR. WHITE: Judge, I move nine through 60 into
2 evidence.

3 THE COURT: Any objection?

4 MR. SWILLEY: Briefly, your Honor.

5 (WHEREUPON, a pause in the proceedings.)

6 MR. SWILLEY: No objection.

7 THE COURT: Without objection so admitted.

8 (WHEREUPON, State's Exhibits Nos. 9-60 were
9 admitted into evidence.)

10 BY MR. WHITE:

11 Q Let's walk through them if you don't mind,
12 Investigator McDaniel. I'm going to put them up on this
13 Elmo and you let me know if you can see it on that screen
14 or if the screen ever goes out, we'll have to drop back
15 and punt. I'm going to start with State's Exhibit 9.
16 Before I do, is this a residence that you responded to?

17 A Yes, sir.

18 Q And the actual crime scene was in a shed, is that
19 right, or not a shed but a garage?

20 A Garage area, yes, sir.

21 Q Where was that in relation to the actual house, the
22 actual residence?

23 A If you're standing at the front of the house where
24 you see the front door, front windows, it was to the left
25 of it and back.

1 Q Okay. And when you were coming in the driveway is
2 that how you entered the residence coming through the
3 driveway?

4 A Yeah, if you turn into the residence, you went around
5 the carport and then go straight to the back.

6 Q And you could see it from the driveway?

7 A Yes, sir.

8 THE COURT: Hold on, Mr. White. Are you all
9 screens on in the jury box? Okay, I just want to make
10 sure. All right, go ahead.

11 MR. WHITE: Thank you, Judge.

12 BY MR. WHITE:

13 Q All right. State's Exhibit 9 what are we looking at
14 here?

15 A This is the garage area that's just behind the
16 residence to the left of it just behind the main house.

17 Q State's Exhibit 10?

18 A This was the entrance to what I call the man cave
19 area where look like they have social gatherings or
20 something like that. That was the entrance to that
21 location.

22 Q So if you go in there, that's the man cave area, is
23 that right?

24 A Right.

25 Q Show you State's Exhibit 11 Investigator McDaniel, if

1 you continue on around that garage and kind of go between
2 that Mustang there and the house is on your left, what do
3 you find if you head that down that little pathway?

4 A If you walk to the right of the door go in between
5 the Mustang where the Mustang's on your right, the
6 building is on your left. As you continue walking to your
7 left, will be an entrance to an actual garage area where
8 you work on a vehicle in that section.

9 Q And would that be a garage door that would lead you
10 to that area?

11 A Yeah.

12 Q And if you look through the man cave area,
13 Investigator McDaniel, can you see that door that's
14 painted through the man cave?

15 A Right.

16 Q Is that door -- I'm sorry you got to answer yes or
17 no.

18 A Yes.

19 Q Thank you, Investigator McDaniel. Will that door
20 also lead you to that garage area?

21 A Yes.

22 Q Okay. State's Exhibit 12 is this as you're walking
23 into the man cave area?

24 A Yes, sir.

25 Q Okay. State's Exhibit 13 you can see there's a red

1 pattern on the door as you're entering. What do that
2 appear to you to be?

3 A It appeared to be some blood.

4 Q Okay. State's Exhibit 14 what are we looking at
5 here?

6 A It appears to be a futon that was sitting right next
7 to the door appeared to have like some blood on it as
8 well.

9 Q And, again, this is actually walking into the man
10 cave area, is that right?

11 A Yes, sir.

12 Q And this is a good photograph of the man cave area
13 State's Exhibit 15. Now, again, if you walk through that
14 door that's painted, there is what lead you to the garage
15 area that you were referring to you can access from around
16 to the right?

17 A Yes, sir.

18 Q And then if you look there's another doorway to the
19 left of that particular doorway. What does that doorway
20 lead you to?

21 A The door to the left of the door to go to the garage,
22 I'm not sure what it led to. I believe it was locked at
23 the time. And then the next door was open and it led
24 just to another room.

25 Q Okay. Was that another garage area there?

1 A It was a storage room look like some type of storage
2 area.

3 Q State's Exhibit 16 is a closeup of that red mark on
4 the door, is that right?

5 A Yes, sir.

6 Q And State's Exhibit 17 shows the entry way to that
7 area that you described as a storage area, is that right?

8 A Yes, sir.

9 Q Now, we're going to go back around that area if you
10 were facing the man cave door on around to the right and
11 to the left. State's Exhibit 18 is that the entry way
12 that you were referring to?

13 A Yes, sir, that's the actual entrance to the garage
14 area with the garage roll-up door and the car is inside.

15 Q And is this where you found Christopher Yarborough?

16 A Yes, sir.

17 Q State's Exhibit 19 what does this picture depict?

18 A This is a picture of once again that entrance to the
19 garage area and the roll-up door and body of the deceased
20 laying in that area. You can see the door that leads back
21 to the man cave area in this picture as well.

22 Q So if you go beside that filing cabinet that door
23 there lead you back into the man cave area, is that right?

24 A Yes, sir.

25 Q State's Exhibit 20 what do we see here?

1 A This is the threshold of that garage area roll-up
2 door. There's a -- what appears to be a shoe print which
3 has blood on it. We determine that that was actually the
4 coroner's shoe and it was not in play. He was processing
5 the scene going through everything and stepped there,
6 stepped in the blood and step there and left those trails.

7 Q And was this particular a bloody scene?

8 A Yes, sir, very bloody.

9 Q State's Exhibit 21 then I'm going to show you in
10 rapid succession State's Exhibit 22 and 23 and State's
11 Exhibit 24 is that all show the same thing?

12 A Yes, sir.

13 Q And then State's Exhibit 25 shows the same, but is
14 that the deceased lying there as well?

15 A Yes, sir.

16 Q Okay. And you taking all these photographs because
17 it's important to orient yourself and investigators to lay
18 out of this particular location, is that right?

19 A Yes, sir.

20 Q And what -- do you have patterns by what you take
21 pictures? And how are you determining what to take
22 pictures of and that sort of thing?

23 A We usually start just take overrule pictures of the
24 target area where the incident took place and then we work
25 our way in and then we start getting specific down to

1 specific things that are in play with the incident.

2 Q Now, you now took a lot of photographs way more than
3 this, is that right?

4 A Yes, sir. Yes, sir.

5 Q But a lot them because you're doing that is it fair
6 to say that they're repetitive?

7 A Yes, sir.

8 Q Okay. And State's Exhibit 26 and what are we looking
9 at here?

10 A This is the area where we've located Mr. Yarborough,
11 the deceased, and it just shows a lot of blood and where
12 it went everywhere in the room. That's what it shows.

13 Q Is that the doorway back to the man cave?

14 A Yes, sir.

15 Q State's Exhibit 27?

16 A Yes, sir, this just shows the area where the incident
17 happened and still leading to that door back to the man
18 cave area.

19 Q Okay. State's Exhibit 28?

20 A Yes, sir, this is a photograph of Mr. Yarborough as
21 he was when I arrived and how we found him.

22 Q State's Exhibit 29?

23 A Another photograph of Mr. Yarborough in the garage
24 area how we found him.

25 Q Okay. State's Exhibit 30?

1 A This is some more close-up shot of Mr. Yarborough.

2 Q And State's Exhibit 31 is another angle and I just
3 want you to orient us to make sure that we know where we
4 are?

5 A Yes, sir. This is if you come into the garage I walk
6 to the front of the Mustang vehicle and took a shot from
7 that angle going out.

8 Q And, again, going straight out of the garage door and
9 to the right as that door that leads to the game room?

10 A Yes, sir.

11 Q Okay. State's Exhibit 32 what are we looking at
12 here?

13 A These were some riffles that were inside of that
14 vehicle that's parked in the garage. They were just
15 laying there.

16 Q Now, those are in the -- the Mustang that's
17 photographed inside the garage where he's lying next to,
18 is that right?

19 A That's right, yes, sir.

20 Q Okay. State's Exhibit 33?

21 A This was just another angle of a picture of
22 Mr. Yarborough how we found him.

23 Q And State's Exhibit 34 is this -- you kind of going
24 around the car and then you're coming back to kind of
25 cover every direction in the garage, is that right?

1 A Yes, sir.

2 Q Okay. Okay. State's Exhibit 35?

3 A Just another picture of the floor and leading to that
4 door going to the man cave area.

5 Q Okay. State's Exhibit 36 what are we looking at
6 here?

7 A That appears to be Mr. Yarborough's right hand index
8 finger.

9 Q And did there appear to be an injury to that hand is
10 that why you're documenting it?

11 A Yes, sir.

12 Q State's Exhibit 37?

13 A This a more detail picture of his hand and the injury
14 and the black substance on his hands.

15 Q State's Exhibit 38 I will warn the jury very graphic.
16 State's Exhibit 38 and we seen one side of his face. Is
17 this the other side?

18 A Yes, sir. At this point we had to actually move his
19 body so that we could accurately take a picture of that
20 side and the corner and I with some others helped move his
21 body. And then started taking the photographs of it.

22 Q Okay. State's Exhibit 39 what do we see there?

23 A It appears to be just some blood on the file cabinet
24 area there.

25 Q Is that blood that kind of going down the file

1 cabinet?

2 A Yes, sir.

3 Q And that pattern there?

4 A Yes, sir.

5 Q Okay. Is this State's Exhibit 40 show the relation
6 to that pattern to the blood on the floor?

7 A Yes, sir, it does.

8 Q Okay. State's Exhibit 41 what we see here?

9 A This is an entrance to the door in the garage leading
10 to the man cave area. And then there was a pair of socks
11 sitting on top of a -- what appears to be blood of a
12 pistol.

13 Q Did you uncover the socks from that pistol?

14 A Yes, sir.

15 Q Did you photograph it State's Exhibit 42?

16 A Yes, sir. That's a photograph of the pistol that I
17 took the socks off. I located this pistol on that little
18 countertop leading into that -- right next to that door.

19 Q State's Exhibit 43?

20 A I took a photograph when I opened the weapon up and
21 cleared it to make it safe and that's where I located it
22 with live ammo on the inside of it.

23 Q State's Exhibit 44?

24 A Took a photograph of the bottle of Crown Apple
25 sitting right there near the file cabinet.

1 Q Okay. State's Exhibit 45 I think you mention you
2 kind of do general photographs and then you come back and
3 take photographs of specific things State's Exhibit 45 I
4 believe we saw this earlier, is that right?

5 A Yes, sir.

6 Q And are those -- is that a black Mustang that was in
7 the garage where the decedent lie?

8 A Yes, sir.

9 Q State's Exhibit 46 I think we're back in the man
10 cave, is that right?

11 A Yes, sir.

12 Q And we're looking at that doorway to what you call
13 the storage room, is that correct?

14 A Yes, sir.

15 Q And, you know, I know you're looking for items of
16 evidence. One item in particular that you're looking for
17 would that be the murder weapon?

18 A Yes, sir.

19 Q And did you find it within that room the storage
20 room?

21 A Yes, sir.

22 Q Here is State's Exhibit 47 is that a photograph as
23 you're walking through the doorway?

24 A Yes, sir.

25 Q State's Exhibit 48 just come a little bit closer, is

1 that right?

2 A Yes, sir.

3 Q Okay. I'm going to jump ahead a little bit here.

4 State's Exhibit 52 I know it is a lot of stuff there. Can
5 you see?

6 A This is where I was taking the photographs trying to
7 find where it was and I located it the butt of the weapon.
8 You can see the trigger and the magazine and all that
9 right there in between all that stuff that's different
10 things like that.

11 Q And was it just lying there or was it covered. Did
12 you have to uncover it?

13 A It was just lying there.

14 Q Okay. State's Exhibit 53 is that a closeup of the
15 same?

16 A Yes, sir, just a closeup. When I got closer, I just
17 continued taking pictures of it as I saw it.

18 Q Okay. Did you retrieve that gun?

19 A Yes, sir.

20 Q Okay. Jumping back to State's Exhibit 49 this is the
21 doorway that leads to the garage, correct?

22 A Yes, sir.

23 Q State's Exhibit 50 is a closeup of the same, is that
24 right?

25 A Yes, sir.

1 Q And then State's Exhibit 51 closeup of the blood spot
2 on the floor, but also shows that blood on the door, is
3 that right?

4 A Yes, sir.

5 Q Did that blood pattern there seem similar to the
6 blood pattern that was inside on the cabinet?

7 A Yes, sir.

8 Q Cascading down?

9 A Yes, sir.

10 Q Okay. State's Exhibit 54 what are we looking at
11 here?

12 A That's the front end of the weapon that we located
13 inside of the man cave in that storage room area that had
14 the -- go further down it would have the blue tape on the
15 handle.

16 Q Okay. I will show you that one now State's Exhibit
17 55?

18 A Yes, sir, that's the picture of the weapon inside
19 that room.

20 Q State's Exhibit 56 and 57 is that the photograph of
21 the same gun?

22 A Yes, sir, photograph of the same gun.

23 Q Now, what, if anything, did you do with that gun?

24 A We removed the gun from the location. We took the
25 magazine out and cleared it. There were several rounds

1 that were in it. I turned it into evidence at the
2 sheriff's office.

3 Q Are you aware of that gun and any shell casings
4 recovered from the scene were processed or sent to
5 processing by SLED?

6 A Yes, sir, it was.

7 Q After processing was it sent back to the sheriff's
8 office?

9 A Yes, sir.

10 Q And was stored in y'all facility until time for
11 trial?

12 A Yes, sir.

13 Q If I showed you the gun, Investigator McDaniel, would
14 you be able to recognize it?

15 A Yes, sir.

16 Q Investigator McDaniel, is this the gun that you
17 recovered from the storage room inside that garage at the
18 home of Chris Yarborough?

19 A Yes, sir.

20 Q Is this the gun you photographed?

21 A Yes, sir.

22 Q Is this the gun you sent to SLED for processing?

23 A Yes, sir.

24 MR. WHITE: Judge, I would move State's Exhibit
25 2 into evidence.

1 THE COURT: Any objection?

2 MR. SWILLEY: No objection.

3 THE COURT: Without objection so admitted. It's
4 the firearm?

5 MR. WHITE: Yes, sir, Judge.

6 (WHEREUPON, State's Exhibit No. 2 was admitted
7 into evidence.)

8 BY MR. WHITE:

9 Q I'm going to show you what's been marked as State's
10 Exhibit 4. If you could take a look at that and tell me
11 if you recognize that particular item?

12 A Yes, sir, this is the bullet that was removed from
13 the chamber of the weapon.

14 Q So that's removed from the chamber of this weapon
15 that I just showed you and the jury?

16 A Yes, sir.

17 Q And you recognize it from the markings that you have
18 there on the -- are those your initials did you make
19 those?

20 A Yes, sir.

21 MR. WHITE: Judge, I move State's Exhibit 4 into
22 evidence.

23 THE COURT: Any objection?

24 MR. SWILLEY: No objection.

25 THE COURT: Without objection so admitted.

1 (WHEREUPON, State's Exhibit No. 4 was admitted
2 into evidence.)

3 BY MR. WHITE:

4 Q State's Exhibit 3 same question tell me how you
5 recognize these items here?

6 A These are all the bullets that were removed from the
7 magazine and these are my writings that I removed and
8 placed in this bag.

9 Q Okay. Thank you, Investigator McDaniel.

10 MR. WHITE: I move State's Exhibit 3 into
11 evidence.

12 THE COURT: Any objection?

13 MR. SWILLEY: No objection.

14 THE COURT: So admitted.

15 (WHEREUPON, State's Exhibit No. 3 was admitted
16 into evidence.)

17 BY MR. WHITE:

18 Q Investigator McDaniel, we're almost done here. I got
19 a couple more questions and one more item of evidence to
20 show you just quickly. State's Exhibit 58 is this walking
21 back out of the man cave and back towards the driveway
22 towards the house?

23 A Yes, sir.

24 Q And there's a mark a red mark there did you notice
25 that is why you photographed it?

1 A Yes, sir.

2 Q What do that appear to be?

3 A It appear to be some blood on the wall.

4 Q I got two more photographs. I'm going to show you
5 Investigator McDaniel if you'll orient us again just so
6 we're clear where these photographs are in relation to the
7 rest of the buildings. State's Exhibit 59 what are we
8 looking at here?

9 A This is if you're standing by the garage area this
10 point where Mr. Yarborough was until the right walking
11 into the roll-up door to the garage. This is to the right
12 going into that.

13 Q State's Exhibit 60 is this a closeup of the same?

14 A Yes, sir.

15 Q And this the shell casing that's inside the same area
16 where Mr. Chris Yarborough was laying, is that correct?

17 A That's correct.

18 Q What, if anything, did you do with that shell casing?

19 A I collected that shell casing and turned it into
20 evidence.

21 Q Okay. And what, if anything, happened to that shell
22 casing from that point forward?

23 A We sent it to SLED to be processed as well.

24 Q And was it processed?

25 A Yes, sir.

1 Q Was it then sent back to your office?

2 A Yes, sir.

3 Q Now, State's Exhibit 72 you could tell me if you
4 recognize that item there?

5 A I do recognize the item, yes, sir.

6 Q And that bag that it's in what is that? Is that
7 SLED's bag?

8 A This is a standard SLED bag whenever evidence is
9 transported to SLED, it goes into the in-take area. The
10 evidence is placed inside of their bag and then stored
11 there for them to process. And then we receive it back
12 sealed in our location.

13 Q And then you bring it up here to the courthouse for
14 trial, is that right?

15 A Yes, sir.

16 MR. WHITE: Judge, I move State's Exhibit 72
17 into evidence.

18 THE COURT: Any objection?

19 MR. SWILLEY: No objection.

20 THE COURT: Seventy-two?

21 MR. WHITE: Yes, sir, Judge.

22 THE COURT: Without objection so admitted.

23 (WHEREUPON, State's Exhibit No. 72 was admitted
24 into evidence.)
25

1 BY MR. WHITE:

2 Q I want to move one item of evidence. I don't think
3 you've ever seen this photograph, but you can tell me if
4 you recognize it or recognize the area. This is State's
5 Exhibit 66. If you could tell me if you recognize what's
6 depicted in this photograph?

7 A Yes, sir, that will be the inside of the garage at
8 the Yarborough residence looks during the daytime.

9 Q And you were there at nighttime, correct?

10 A Yes, sir.

11 Q But despite you being there at night and this picture
12 being taken in the day, is it fairly and accurately depict
13 the scene as you encountered it on the incident date?

14 A Yes, sir.

15 MR. WHITE: Judge, I move State's Exhibit 66
16 into evidence.

17 MR. SWILLEY: No objection.

18 THE COURT: Without objection 66 so admitted.

19 (WHEREUPON, State's Exhibit No. 66 was admitted
20 into evidence.)

21 BY MR. WHITE:

22 Q This is the last photograph I'm going to show you
23 State's Exhibit 66 the incident location. This is that
24 black Mustang, is that right?

25 A Yes, sir.

1 Q And it just gives a good overall view of the area in
2 which this incident took place, is that right?

3 A That's correct, yes, sir.

4 Q And, again, you can see the filing cabinet, is that
5 correct?

6 A Yes, sir.

7 Q And pass the filing cabinet and take a right into the
8 man cave?

9 A Yes, sir.

10 Q And that would be the area where Mr. Chris Yarborough
11 was found, is that right?

12 A That's correct.

13 Q Okay. Once you rap up at the scene and you took all
14 those items of evidence back with you, it's my
15 understanding that you photographed Mr. Yarborough back at
16 the law enforcement center, is that correct?

17 A Yes, sir.

18 Q I'm going to show you this photograph that's been
19 marked as State's Exhibit 61. If you could, tell me if
20 you recognize this photograph?

21 A Yes, sir, that's the photograph of a tattoo that he
22 had on his forearm.

23 Q Did you take this photograph?

24 A Yes, sir.

25 MR. WHITE: Judge, I move State's Exhibit 61

1 into evidence.

2 MR. SWILLEY: Same objection in limine.

3 THE COURT: Objection so noted, overruled by the
4 Court.

5 (WHEREUPON, State's Exhibit No. 61 was admitted
6 into evidence.)

7 BY MR. WHITE:

8 Q Is this a photograph that you took at the law
9 enforcement center of the Defendant Mason Yarborough?

10 A Yes, sir.

11 Q And does that depict the firearm on his forearm?

12 A Yes, sir.

13 Q Let me ask you -- I should have left my glove on. If
14 you would, Investigator McDaniel, open that box up for me
15 so I can pull this one out here hold that open for me.
16 That photograph of the firearm on his forearm does it
17 look -- and you seen this firearm when it had the magazine
18 in it, correct?

19 A Yes, sir.

20 Q When it has a magazine in it, does that forearm
21 tattoo look substantially similar to this firearm?

22 MR. SWILLEY: Objection, your Honor, as to
23 relevance.

24 THE COURT: Overruled.

25 A Yes, sir, it looks very similar to the tattoo on his

1 arm.

2 Q Thank you, Investigator McDaniel.

3 MR. WHITE: Beg the Court's indulgence for one
4 moment. Investigator McDaniel, that's all I have for you.
5 Thank you please answer any questions defense may have,
6 okay.

7 CROSS-EXAMINATION

8 BY MR. SWILLEY:

9 Q Briefly, Investigator McDaniel, you were the on-call
10 forensic technician that evening, is that correct?

11 A That's correct.

12 Q That means if anything happened that required the
13 need of an evidence technician, you would have to respond
14 to that, is that right?

15 A That's correct, yes, sir.

16 Q Is your responsibility to take all the physical
17 evidence and make sure it got where it needed to go,
18 right?

19 A Yes, sir.

20 Q And that was your duty, is that correct?

21 A Yes, sir.

22 Q Okay. And during the course of that you took several
23 photographs that Mr. White asked you about, correct?

24 A Yes, sir.

25 Q I'm sorry.

1 A Yes, sir.

2 Q And those are all taken by yourself, is that right?

3 A That's correct.

4 Q Okay. And also you made sure that that weapon right
5 there and those shells and those shell casings got to the
6 evidence locker, is that right?

7 A That's correct.

8 Q I think they actually went to -- before they went to
9 the evidence locker they went down somewhere else, is that
10 right?

11 A They went to our evidence locker that we have in the
12 office and then they go to the evidence room.

13 Q Correct. And then it is your responsibility to make
14 sure they get to SLED too, is that right?

15 A No.

16 Q That's another person's responsibility, is that
17 correct?

18 A That's correct.

19 Q Okay. And the person that's responsible to get to
20 SLED is the, I guess, evidence custodian?

21 A The evidence technicians.

22 Q Technicians?

23 A Yeah.

24 Q Not yourself, is that correct?

25 A That's correct.

1 Q Okay. And I think you made sure that everything you
2 took that in evening got put in the evidence -- from the
3 locker to the evidence room, is that right?

4 A That's correct.

5 Q And I think whoever the on-call evidence technician
6 is at that time take it to SLED, is that right?

7 A That's correct.

8 Q Okay. And once you take it to the evidence room, you
9 don't follow up with it after that, do you?

10 A No, sir.

11 Q Okay. Going back I think you said -- you testified
12 about that spent shell casing that you saw. You only
13 found one shell casing during the, I guess, search of this
14 residence, is that right?

15 A Yes.

16 Q Okay. Based on your investigation, there's only one
17 shot fired, is that correct?

18 A Yes.

19 Q Okay. And I think you said you located that spent
20 shell casing to the right of the roll-up door door close
21 to the exit, is that correct?

22 A That's correct.

23 Q Okay.

24 MR. SWILLEY: One moment please, your Honor. I
25 have nothing further, your Honor.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 Q Now, just the last question about that shell casing.
4 You don't -- you weren't there at the time of the
5 incident, were you, Investigator McDaniel?

6 A No, sir.

7 Q So you don't know how that shell casing came to be
8 found where you ultimately retrieved it?

9 A No, sir.

10 MR. WHITE: Thank you so much.

11 THE COURT: Anything else, Mr. Swilley?

12 MR. SWILLEY: No, your Honor.

13 THE COURT: Sir, you may step down. Thank you.

14 (WHEREUPON, the witness leaves the witness
15 stand.)

16 MR. WHITE: Judge, I would ask if Investigator
17 McDaniel would be released from his subpoena so he can get
18 back work.

19 THE COURT: Any objection?

20 MR. SWILLEY: There is none, your Honor.

21 THE COURT: Sir, you're released from your
22 subpoena. You're free to go have a nice day. Call your
23 next witness please.

24 MR. WHITE: Thank you, Judge. At this time the
25 State would call Melia Steele.

1 THE CLERK: Ma'am, if you'll go up to the stand
2 and place your left hand on the Bible and raise your right
3 hand. Do you swear or affirm the testimony you give in
4 this case to be the truth, the whole truth, and nothing
5 but the truth so help you God?

6 THE WITNESS: I swear.

7 THE CLERK: Please be seat and state your full
8 name for the record.

9 THE WITNESS: Melia Keon Steele.
10 WHEREUPON,

11 Melia Steele,
12 after first having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WHITE:

15 Q Melia, I know you're soft spoken, but you need some
16 help just kind of speak into that microphone, so the court
17 reporter can hear and the jury can hear everything you say
18 okay.

19 A Okay.

20 Q Melia, thanks for being here with us. I'm going to
21 ask you some questions get you out here as quickly as
22 possible. Where you living now Melia?

23 A Coastal Carolina Conway.

24 Q And are you in school there?

25 A Yes.

1 Q And what are you studying?

2 A Psychology.

3 Q And how long have you been at Coastal?

4 A I just transferred this semester since January.

5 Q Now, at some point in the past were you living in
6 Florence specifically in Johnsonville?

7 A Johnsonville, yes.

8 Q And were you living at [REDACTED] Lake City Highway?

9 A For two weeks.

10 Q Okay. And were you living there with the defendant
11 in this case Mason Yarborough?

12 A Yes.

13 Q Now, that property -- did that property belong to
14 Chris Yarborough?

15 A Yes.

16 Q And was Mason his son?

17 A Yes.

18 Q How did you know him? What was y'all's relationship?

19 A I met him through a friend's brother. He was also
20 friends with them. And we began dating shortly after I
21 met him.

22 Q So y'all were dating you were in a relationship?

23 A Uh-huh.

24 Q And you say you were there living there. Where were
25 y'all staying?

1 A In the shop in the back.

2 Q Okay. So we were just talking about with one of the
3 officers a man cave area?

4 A Yeah.

5 Q Is that where y'all were living?

6 A Yes.

7 Q And where were y'all sleeping?

8 A In the shop there.

9 Q All right. And you been staying there for about how
10 long?

11 A Two weeks.

12 Q Do you recall the date that all this took place?

13 A It was before October 29th.

14 Q Okay. If I told you that law enforcement was called
15 on October 29th and October 30th, would that surprise you?

16 A No.

17 Q Okay. And were you on October 29th leading up to
18 October 30th at the midnight hour were you there at the
19 home of Chris Yarborough?

20 A Yes.

21 Q And if you could start with earlier in the day what
22 were you guys doing?

23 A I don't remember earlier in the day.

24 Q All right. Well, do you remember when Mr. Roger, I
25 think, y'all call him Dickey was getting home from work?

- 1 A Yes.
- 2 Q Okay. Was everybody hanging out around the shed?
- 3 A I don't remember. What do you mean by everybody?
- 4 Q Everybody who was living there. Well, let me ask you
5 this. Who all was living at that home at the time?
- 6 A Dickey, Chris, me, Mason and then Emerson and Corbin
7 would be there.
- 8 Q Okay. And Emerson and Corbin are those Chris'
9 youngest children?
- 10 A Yes.
- 11 Q And, of course, Mason is Chris' oldest child, is that
12 right?
- 13 A Yes.
- 14 Q And when you -- Dickey does he go by Roger?
- 15 A I think so.
- 16 Q And is that the cousin of Chris?
- 17 A Yes.
- 18 Q And he was living there at that time as well?
- 19 A Yes, sir.
- 20 Q Okay. So you remember when Roger got off work, is
21 that right?
- 22 A Yeah.
- 23 Q Everybody that you named where were they when Roger
24 got off work? Let's start with this where were you at
25 that time?

1 A I don't remember earlier in day, I'm sorry.

2 Q That's okay. Start us where you do remember?

3 A I remember being in the shop with Mason and Emerson.

4 Q Okay. And when you remember being in the shop with
5 Mason and Emerson are you talking about in the man cave
6 area or in the garage.

7 A Yes, where the TV was.

8 Q Okay. Is that the same area where the pool table
9 was?

10 A Yes.

11 Q Okay. And when you remember being in there with them
12 where was everyone else?

13 A They were inside they were getting ready for bed.

14 Q Okay. And they gone inside to go to sleep?

15 A Yeah, because it was in the evening time, yeah.

16 Q Okay. And then from there walk us through what
17 happened?

18 A I was -- we were deciding how I was going to get to
19 school the next morning. I had to take -- it was during
20 Covid, but I had to go in for like testing. And Mason had
21 sold his truck said he wasn't going to be able to drive
22 me. We were figuring out how I was going to get there and
23 his dad Chris was going to take me. And then he wanted me
24 to sleep inside instead of in the shop. And I was
25 confused by that because I had been sleeping in the shop.

1 Keep going?

2 Q Yeah, please.

3 A And then it ended up turning into an argument. Prior
4 to that, they were playing pool with each other Emerson
5 and Mason and turn into an argument between me and Mason.
6 It got violent very fast.

7 Q Okay. And what do you mean by that?

8 A It got violent.

9 Q Okay. Tell us what he did?

10 A He hit me with a pool stick and he choked me. And I
11 remember my purse and I had my laptop in it and it was
12 slung all the stuff was slung everywhere.

13 Q Okay. And what happened next?

14 A He held a gun to his head and threatened to kill
15 himself. He held a gun to my head and threaten to kill me
16 and he also threatened to kill the dog that was out there
17 too.

18 Q Okay. Where was Emerson during all this?

19 A Emerson at one point had walked out of the shop to go
20 back into the house to get ready for bed, but when he
21 heard the yelling start -- because he was only a few steps
22 away. And when he heard the yelling start, he came back
23 in was asking his brother to stop.

24 Q And did Mason put his hands on you at all?

25 A Yes.

1 Q Okay. Tell us about that?

2 A He choked me and he hit me with a pool stick and he
3 tossed me around.

4 Q What was his demeanor was he angry?

5 A Angry, but like almost broken off from reality.

6 Q Okay. And what kind of things was he saying to you?

7 A That I was the reason why he was miserable. That I
8 was like the problem in his life. And he was also telling
9 Emerson how he like had to watch this growing up stuff
10 like that.

11 Q Okay. Did you have any reason to believe what he was
12 saying?

13 MR. SWILLEY: Objection, your Honor, calls for
14 speculation.

15 THE COURT: I'll allow it. If she knows the
16 answer, she can answer it.

17 A No.

18 Q Okay. Let me ask you would Mason often say things
19 that turned out to be untrue?

20 MR. SWILLEY: Objection, your Honor.

21 THE COURT: Sustain the objection on that.

22 BY MR. WHITE:

23 Q How did his behavior make you feel?

24 MR. SWILLEY: Objection as to relevance.

25 THE COURT: Overruled. I'll allow her to answer

1 that question.

2 A Can you repeat the question?

3 Q How did Mason's behavior -- you said he was erratic
4 and he acted violent in hitting you and that sort of
5 thing. How did that make you feel?

6 A I was scared. I was terrified.

7 Q Okay. And because of that what, if anything, did you
8 do?

9 A I messaged my grandma which is when his behavior
10 became even more erratic when I messaged her to ask her to
11 get there. He threatened to murder her if she came to the
12 property to pick me up. And he threatened that if I left
13 he would call the cops and said I was trespassing and I
14 did all the damage in the shop.

15 Q Okay. And despite that, did you ask your grandmother
16 to come get you?

17 A Yes.

18 Q And did she?

19 A Yes.

20 Q At some point did you contact Chris Yarborough?

21 A Yes.

22 Q And why did you contact Chris?

23 A Because I wanted Emerson out of there.

24 Q Okay. You were afraid for Emerson?

25 A Yes.

1 Q And how did you contact Chris?

2 A By phone, so texted him and called him.

3 Q At some point did you get him on the phone?

4 A Yes.

5 Q What, if anything, did you tell him?

6 A Everything that happened, that I was -- I tried to
7 get Emerson to come with me. He didn't want to leave his
8 brother, but I was still scared. I couldn't stay.

9 Q Okay. And ultimately did you learn that something
10 tragic had occurred?

11 A Very shortly after, very shortly.

12 Q Did you learn that Mason had shot Chris?

13 MR. SWILLEY: Objection, your Honor, hearsay.

14 THE COURT: Restate your question?

15 BY MR. WHITE:

16 Q Did you arrive back on scene when law enforcement was
17 there?

18 A Yes.

19 Q And did you learn that Chris was deceased?

20 A Yes.

21 Q Did you learn that they had taken Mason Yarborough
22 into custody for shooting his father?

23 MR. SWILLEY: Objection, your Honor, as to
24 leading.

25 THE COURT: I'll allow it.

1 BY MR. WHITE:

2 Q And you can answer that question.

3 A Yes.

4 Q Okay, thank you. Now, when you were on scene, did
5 law enforcement speak with you?

6 A Yes, yes.

7 Q You told them what had happened?

8 A Uh-huh, yeah.

9 Q Okay. And since that time have you spoken to our
10 office the Solicitor's office, is that right?

11 A Yes.

12 Q And you also spoken to Mr. Swilley, is that correct?

13 A Over the phone I believe is who that was.

14 Q Okay. And did you tell him the same thing that you
15 told me today?

16 A Yes.

17 Q Now, I do want to ask you ---

18 MR. WHITE: Beg the Court's indulgence for one
19 moment.

20 (WHEREUPON, a pause in the proceedings.)

21 BY MR. WHITE:

22 Q Melia, when you said that you had seen -- and let me
23 ask you, what did you say about what he did with that gun
24 you say he threatened to kill himself?

25 A Uh-huh, he held it to his head.

1 Q Okay. And ---

2 A I believe at one point he put it in his mouth, but I
3 am not completely positive.

4 Q Do you recall if this is the gun that he used?

5 A Yes.

6 THE COURT: What exhibit is that?

7 MR. WHITE: I'm sorry, Judge, this is State's
8 Exhibit 42.

9 THE COURT: Okay.

10 BY MR. WHITE:

11 Q This is the gun that he put to his head and
12 threatened to kill himself?

13 A Yes.

14 Q And you're saying he also put this gun in his mouth?

15 A Yes.

16 Q Okay. Now, during this general time was Mason's
17 behavior often erratic?

18 A Yes, for the two-week period that I was living there
19 it was very ---

20 MR. SWILLEY: Objection irrelevant, your Honor.

21 THE COURT: Restate your question.

22 BY MR. WHITE:

23 Q During this period was his -- Mason's behavior often
24 erratic?

25 THE COURT: Hold on a minute.

1 MR. SWILLEY: Objection, your Honor, Rule 404.

2 THE COURT: I'll sustain the objection.

3 MR. WHITE: Judge, my only argument will be
4 they've opened the door to ---

5 THE COURT: Hold on a minute. You all approach
6 a minute.

7 MR. WHITE: Yes, sir.

8 (WHEREUPON, a bench conference was held in the
9 presence of the jury, but out of the hearing of the
10 jury on the record.)

11 THE COURT: They open the door when?

12 MR. WHITE: Well, they were talking about how
13 abusive this man is. He's the one that always sees red
14 and that can't be further from the truth.

15 MR. SWILLEY: Didn't say anything about Mason
16 Yarborough. I didn't do anything open up the door to
17 Mason's character whatsoever, it's all about Christopher
18 Yarborough.

19 MR. WHITE: But I can offer ---

20 THE COURT: You can offer character rebuttal as
21 it relates to the father under the Rule 404(a) I believe
22 it is.

23 MR. WHITE: I can't offer evidence to rebut the
24 primary aggressor? I would just offer it, Judge, to acute
25 accident or mistake and offer it for intent, which it

1 shows both.

2 THE COURT: I think it go beyond from the case
3 law I read, you're going beyond -- and it's got nothing to
4 do when the incident occurred giving you the leeway on the
5 res gestae as to what happened here. So what happened in
6 the past I don't think it's really relevant at this point.

7 MR. WHITE: Okay.

8 MR. SWILLEY: Thank you, Judge.

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury, but out of the hearing of the
11 jury on the record as ended.)

12 BY MR. WHITE:

13 Q So you recognize the hand gun you've established
14 that, Melia. I just got a couple more questions for you
15 and then I will be done. Mr. Willie, if you'll be so kind
16 if you'll hold this box open for me, sir. Thank you. Let
17 me ask you, Melia, do you recognize?

18 A Yes.

19 Q Who own this? Who this belong to?

20 A Mason.

21 Q And had you ever seen him fire it before?

22 A Yes.

23 Q Did he seem to have any problem firing it?

24 A No.

25 MR. WHITE: Beg the Court's indulgence.

1 THE COURT: All right.

2 MR. WHITE: Melia, thank you so much, that's all
3 I have for you. Please answer any questions the defense
4 may have.

5 CROSS-EXAMINATION

6 BY MR. SWILLEY:

7 Q After you left that [REDACTED] Lake City Highway that
8 evening you came back shortly thereafter?

9 A Yes.

10 Q Okay. And you spoke to police Investigator Owens at
11 the time that fellow right there with the mustache. You
12 remembering talking to him?

13 A I don't know.

14 Q Don't remember or you do remember?

15 A No, I don't remember that.

16 Q You don't recall speaking with Investigator Owens?

17 A It was three years ago.

18 Q Is that a no?

19 A It's a no.

20 Q Okay. You don't recall telling Mr. Owens -- you
21 don't recall telling Mr. Owens any of those things you
22 told Mr. White today, do you?

23 A I recall telling someone. I don't know who that
24 someone was.

25 Q Okay. You would agree at the time all those

1 allegations you made about Mason you didn't tell to
2 anybody that night of the shooting of Chris Yarborough,
3 correct?

4 A That he hit me with a pool stick and ---

5 Q All that stuff ---

6 THE COURT: Hold on a minute let her finish her
7 answer. Go ahead, ma'am.

8 A What are you asking me?

9 THE COURT: Restate your question, Mr. Swilley.

10 MR. SWILLEY: Yes, your Honor.

11 BY MR. SWILLEY:

12 Q All those allegations you made about Mason, right,
13 you said he assaulted you, didn't tell anybody that the
14 evening of the incident?

15 A Yes, I did.

16 Q All right, every single thing you just said today?

17 A I said that he hit me with a pool stick. He choked
18 me. He threaten to shoot me and threaten to shoot my
19 grandma.

20 Q You told law enforcement that that evening?

21 A I told whoever I spoke with.

22 Q Whoever you spoke with that evening just so we're
23 clear?

24 A If you want to be correct about it, it would be that
25 morning.

1 Q Okay, that morning?

2 A Yes.

3 Q October 30th, 2020?

4 A Yes.

5 Q You told someone what you just told the Court here
6 today. You told someone in law enforcement that, is that
7 correct?

8 A Yes.

9 Q Okay. You did say that that's your testimony here
10 today, is that correct?

11 MR. WHITE: I believe she's answered it.

12 THE COURT: Asked and answered. Next question
13 please.

14 BY MR. SWILLEY:

15 Q And, Miss Steele, as far as any kind of physical
16 manifestations of any injuries, there weren't any that
17 evening, were they? Is that correct?

18 A Can you repeat that?

19 Q You didn't have physical manifestations, any physical
20 showing of any showing of any injuries, no bruises, no
21 cuts, no scrapes anything like that that evening, did you?

22 A No.

23 Q That's a no?

24 A That was a no.

25 Q Okay. And I don't think you took any photographs or

1 anybody took any photographs of any physical
2 manifestations of any injuries that evening, did they?

3 A No.

4 Q Okay. After that, you and Mason stayed in a
5 relationship, is that correct?

6 A Yes.

7 Q Okay. And I believe in fact you and Mason, I guess,
8 talked on the phone after that incident, is that correct?

9 A Yes.

10 Q Okay. I think you even discussed getting married
11 after that incident, is that correct, over the phone?

12 A Excuse me.

13 Q Is that correct?

14 A No.

15 Q Okay. And I think you actually went with Mason's
16 mother and Emerson to Myrtle Beach shortly thereafter that
17 incident, is that correct?

18 A I don't remember.

19 Q Okay. And I think you stayed with Mason several
20 weeks after October 30th 2020, is that correct?

21 A Yes.

22 Q Okay. And I think that evening when Mason got upset,
23 you left to call your grandma. You didn't call the
24 police, did you?

25 A I didn't leave to call my grandmother.

1 Q Okay. That evening you didn't call the police at
2 all, did you? Or that evening that early morning, is that
3 correct?

4 A Yes.

5 Q You did call the police or you did not?

6 A No.

7 Q Okay. And I think you -- I think your grandmother I
8 think came and picked you up at some point that early
9 morning, is that correct? Is that right?

10 THE COURT: You need a break. All right, we're
11 going to take a break for just a minute, step to the jury
12 room. Do not discuss the case at all, bring you back out
13 here in just a minute, okay.

14 (WHEREUPON, the jury retire to the jury room.)

15 THE COURT: Where's my bailiff? You'll get her
16 some water please, ma'am. Miss Steele, you need to step
17 down for just a second?

18 THE WITNESS: I'm okay.

19 THE COURT: Miss Steele, I'm going to do this,
20 okay. While I sent the jury out, there's 13 of them. And
21 if any of them have to go to the restroom, we could be
22 sitting here for a few minutes. I'm going to let you step
23 down. Don't discuss your testimony with anyone. And I'm
24 going to let everybody take a short break here, okay. And
25 once I come back in here, I'll bring you back up here and

1 then I'll bring the jury in and we'll continue, okay. All
2 right, we'll stand down for just a minute.

3 (WHEREUPON, a break was taken.)

4 THE COURT: All right, anything from the State
5 before I bring the jury back out?

6 MR. WHITE: No, sir, Judge.

7 THE COURT: Defense counsel.

8 MR. SWILLEY: Nothing further than we already
9 discussed.

10 THE COURT: All right, Miss Steele, if you'll
11 come on back up here please, ma'am. All right, Miss
12 Steele, I'll remind you that you're still under oath,
13 okay. And when we broke court, I asked you or instructed
14 you not to talk about your testimony with anyone. Did you
15 comply with the Court's instruction on that?

16 THE WITNESS: I complied.

17 THE COURT: Okay. All right, anything else?

18 MR. SWILLEY: I didn't hear what you she said.

19 THE COURT: She complied that's what she said.
20 Isn't that what she said?

21 COURT REPORTER: Yes, sir.

22 THE COURT: That's what she said. All right,
23 anything else, Mr. Swilley, before I bring the jury out?

24 MR. SWILLEY: No, your Honor.

25 THE COURT: All right, bring me the jury please,

1 sir.

2 (WHEREUPON, the jury came into open court.)

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, I apologize for you all having to
5 be back there as long as you were. When I sent you all
6 back to the jury room, I decided to take a break as well.
7 And when I took a break, I had to return a couple phone
8 calls. And so I apologize for you all having to sit back
9 there and wait, but I appreciate your patience at this
10 time. We'll continue the case. Mr. Swilley, you're so
11 recognized you may continue, sir.

12 CROSS-EXAMINATION CONTINUED

13 BY MR. SWILLEY:

14 Q Miss Steele, I guess, I just wanted to ask you that
15 evening when you left the house you didn't call 9-1-1, did
16 you?

17 A No.

18 Q Okay. And I can't recall asking you this already or
19 if you answered. You didn't call the police, did you?

20 A No.

21 Q Okay.

22 A I knew somebody had already called the police.

23 Q Okay. Miss Steele, you did reach out to Chris
24 Yarborough though?

25 A Yes.

1 Q And I think you sent Mr. Yarborough a text message,
2 didn't you?

3 A Yes.

4 Q All right. And I think you said that -- and that's
5 when you allege that you were hit with a pool stick and
6 you were threw around, is that correct?

7 A I don't remember.

8 Q You don't recall being asked that? Or you don't
9 recall saying that to Mr. Chris Yarborough?

10 A I don't remember what I specifically said in the text
11 message, no.

12 Q Okay. You don't recall the last thing you asked him
13 was to get your container full of clothes, you don't
14 recall that?

15 A No.

16 Q Okay. Miss Steele, going back to that night, you
17 didn't sustain any broken ribs, did you?

18 A No.

19 Q Didn't sustain any spinal injuries, did you?

20 A No.

21 Q Didn't sustain any concussions, did you?

22 A No.

23 Q Didn't have to get stitches, did you?

24 A No.

25 Q And the ambulance was not called for you, was there?

1 A No.

2 Q You didn't have to go to the medical doctor after
3 this, did you?

4 A No.

5 Q Okay. And I think that evening you said you were
6 worried about Emerson, is that correct?

7 A Yes.

8 Q Okay. And I think that evening you would acknowledge
9 that you were mad at Mason when you left, is that correct?

10 A Excuse me.

11 Q You were mad at Mason when you left the house, is
12 that correct?

13 A When I left to go get picked up by my grandmother?

14 Q Is that correct?

15 A No, I was terrified.

16 Q Okay. You called Chris Yarborough on the phone,
17 didn't you?

18 A Yes.

19 Q Okay. You kept after that night -- you kept in
20 pretty regular contact with Mason as well, isn't that
21 correct?

22 A What would you consider regular?

23 Q Spoke with Mason multiple times a week, is that
24 correct?

25 A I don't remember.

1 Q Okay. But you spoke with Mason and you were still in
2 a relationship with Mason several weeks after, correct?

3 A How can you be in a relationship with someone who's
4 in jail.

5 Q I got to ask you ---

6 THE COURT: Ma'am, he gets to ask the questions
7 you got to answer them.

8 A I'm confused what do you mean?

9 Q You were still in a relationship with Mason after
10 October the 30th, is that correct?

11 A I don't know.

12 Q You don't know if you were in a relationship or not?

13 A I don't know.

14 Q Okay. I think you broke up with Mason several weeks
15 after this incident, is that correct?

16 A I told him I didn't want to talk on the phone or
17 anything.

18 Q Just so we're clear, that was several weeks after
19 October 30th, is that correct?

20 A Yes.

21 Q Okay. Is that a yes I'm sorry?

22 A That was a yes.

23 Q Okay.

24 MR. SWILLEY: Beg the Court's indulgence.

25 (WHEREUPON, a pause in the proceedings.)

1 BY MR. SWILLEY:

2 Q Miss Steele, you didn't lose consciousness that
3 evening, did you?

4 A No.

5 Q Okay. You never gave any kind of formal interview
6 after that to law enforcement, did you?

7 A I don't know what formal means.

8 Q You never gave any kind of -- after that evening or
9 at all, you never came in and met with any police about
10 what happened that evening?

11 A No, they told me they would call me on the phone one
12 day and they didn't.

13 Q Okay.

14 MR. SWILLEY: Nothing further, your Honor.

15 THE COURT: Any redirect?

16 MR. WHITE: Yes, sir, just briefly.

17 REDIRECT EXAMINATION

18 BY MR. WHITE:

19 Q Melia, Mr. Swilley wants to characterize that you
20 were still in a relationship with Mason, but he was in
21 jail ---

22 THE COURT: Let him finish his question please,
23 and then if you have an objection -- if he objects, let me
24 respond before you answer, okay. State your question
25 please.

1 BY MR. WHITE:

2 Q Mason, was in jail during this time, is that right?

3 THE COURT: Hold on. Do you have an objection
4 to that?

5 MR. SWILLEY: Your Honor, I do as to relevance.
6 It's on redirect pursuant to your line of questioning.
7 I'll allow it. You may answer the question.

8 A Can you repeat the question?

9 Q Mason, was in jail during this time, is that right?

10 A Yes.

11 Q And he was calling you, is that right?

12 A Yes.

13 Q And at some point you stopped him from calling you,
14 is that right?

15 A Yes.

16 Q And that's what he's characterizing as a
17 relationship, is that correct?

18 A Yes.

19 Q Now, the night that this happened you did talk to law
20 enforcement and you told them everything, is that right?

21 A Yes.

22 Q And you didn't have to call 9-1-1 because you came
23 back to the incident location and you met with law
24 enforcement?

25 A Yeah, I came back like very shortly after law

1 enforcement was already there.

2 Q And you told -- the story that you told today you
3 told it to law enforcement that night, is that right?

4 A Yes.

5 Q And you also told it to investigators in our office,
6 is that right?

7 A Yes.

8 Q And you told it to Matt Swilley on the phone, is that
9 right?

10 MR. SWILLEY: Objection to leading.

11 THE COURT: I'll allow it.

12 A Yes.

13 Q And you told it to Mr. Swilley, is that correct?

14 A Yes.

15 Q I'm going to show you State's Exhibit 73 if you could
16 tell me -- and I'll show it to Mr. Swilley.

17 MR. SWILLEY: No objection.

18 MR. WHITE: Judge, I move State's Exhibit 73
19 into evidence.

20 THE COURT: All right, 73 is admitted without
21 objection.

22 MR. WHITE: Thank you, Judge.

23 (WHEREUPON, State's Exhibit No. 73 was admitted
24 into evidence.)
25

1 BY MR. WHITE:

2 Q Melia, if you could tell me if you recognize this
3 text message?

4 A Yes, I recognize those.

5 Q Is that the one that you sent to Chris?

6 A Yes.

7 Q Is that the one you sent to Chris before you
8 ultimately called him?

9 A I believe -- I don't remember the order like if I
10 called him before or after this message, but I do know
11 that I sent this message and I did call him.

12 Q And you spoke to him on the phone?

13 A Yes.

14 Q But this is the message that you sent and that Mr.
15 Swilley brought up, is that right?

16 A Yes.

17 Q This is State's Exhibit 73. If you could, would you
18 mind reading it for us, just you can start with he hit me?

19 A He hit me with a pool stick and threw me around,
20 please just get Emerson he's terrifying him. I had to run
21 off when he wasn't paying attention to me. He put the
22 pistol in his mouth in front of Emerson. When I told
23 Emerson to go get you, he said he wouldn't because it
24 would only make it worse, would you please move the bottom
25 container and the smaller container that's in the living

1 room into your bedroom, so Mason won't ruin my clothes,
2 that's all that I have left.

3 MR. WHITE: Beg the Court's indulgence, that's
4 all that I have for you, Melia. Thank you so much.

5 THE COURT: All right, any recross?

6 MR. SWILLEY: There is none.

7 THE COURT: Thank you. Ma'am, you may step
8 down.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: Call your next witness please.

12 MR. WHITE: At this time I would call Roger Cox.

13 THE CLERK: Sir, if you'll please place your
14 left hand on the Bible and raise your right hand. Do you
15 swear or affirm the testimony you give in this case be the
16 truth, the whole truth, and nothing but the truth so help
17 you God?

18 THE WITNESS: I do.

19 THE CLERK: Please be seated and state your full
20 name for the record.

21 THE COURT: Roger Cox.

22 WHEREUPON,

23 Roger Cox,

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

25 DIRECT EXAMINATION

1 BY MR. WHITE:

2 Q Good afternoon, Mr. Cox.

3 A Good, how you doing?

4 Q I was going to ask you a few questions about Mason
5 Yarborough and Chris Yarborough if that's all right with
6 you?

7 A Yes, sir.

8 Q During this time October 30th, October 29th,
9 October 30th 2020 were you living with Chris Yarborough?

10 A I did. I was there about six months.

11 Q So you had been living at that location for six
12 months, is that right?

13 A Yes, sir.

14 Q Who all at that time and on that night was living
15 there at that home?

16 A It was Chris and myself and Corbin, Emerson, Mason,
17 and Melia was there.

18 Q Okay. And all of those individuals were living there
19 either in the big house or in the shed or the garage?

20 A Yes, sir.

21 Q Now, Mason is that Chris's eldest son?

22 A It is.

23 Q And then Emerson is who?

24 A He's the middle child. He's the second one for him
25 from Lynn.

1 Q And Corbin is the youngest?

2 A Yeah, he's the baby from the second wife.

3 Q Now, why were you -- how did you come -- I know this
4 is kind of a personal question, Mr. Cox, but how did you
5 come to start staying there?

6 A I was going through a divorce, rough marriage. And
7 Chris invited me to come up and stay with him to get out
8 of the home I was in.

9 Q Were you and Chris close?

10 A Yes, we grow up together more like brothers.

11 Q Okay. You're actually cousins, but you're more like
12 brothers?

13 A Yes, sir.

14 Q Now, at that time were you working?

15 A I was.

16 Q Where were you working?

17 A I was working at the IGA in St. Stephens.

18 Q And where was Chris working?

19 A He worked for the electrical company Gregory Electric
20 in Florence.

21 Q Okay. And were y'all working every day?

22 A Except Friday's. I think both of us had Friday's off
23 together.

24 Q Okay. Now, on this day, I think that was
25 October 29th had been working that day?

1 A I did.

2 Q And do you remember about what time you got home?

3 A Somewhere about around seven because I had mediation
4 for my divorce here.

5 Q Okay. And when you got home where was everybody?

6 A The kids was in the shop shooting pool. And Chris
7 had met me across the yard and started talking about my
8 mediation. We talked a little bit back and forth about
9 it. And he had some things he wanted me to help him with
10 the next morning, so I told him I was going to turn in and
11 go to bed early. And he said he didn't feel good, so he
12 was going to do the same thing.

13 Q Okay. How was acting when y'all were talking?

14 A Other than being disagreeing on my behalf of my
15 divorce, he was good. As far as I know, he was good.

16 Q Calm?

17 A Calm, yes.

18 Q Just normal Chris?

19 A Right.

20 Q Now, at some point you said y'all went inside and
21 went to sleep, is that right?

22 A Yes, sir.

23 Q Do you remember about what time that was?

24 A I'm guessing around nine o'clock.

25 Q Okay. And when you said y'all went in and went to

1 sleep, who all went?

2 A It was myself, him and Corbin went in.

3 Q Okay. Again, Corbin is the youngest child, is that
4 right?

5 A It is.

6 Q And did you have a bedroom inside the home?

7 A I stayed in one of the boys' room time frame I was up
8 there.

9 Q Okay. And then when y'all went inside to go to
10 sleep, who stayed outside?

11 A Emerson and Mason and Melia.

12 Q Okay. And then you went to bed. Do you remember
13 what happened next?

14 A Yes, sir, in the middle of the night, they woke me up
15 banging on the bedroom door.

16 Q And who woke you up?

17 A Emerson.

18 Q Okay. Can't tell me what he said, but how was he
19 acting?

20 A He was real nervous and upset. He had a cell phone
21 in his hand and he spoke to me and ask me to talk to mom.
22 And at that moment I didn't know who mom was because I
23 been asleep for several hours. And I answered the phone
24 and when I answered the phone, it was Lynn.

25 Q Okay. And that's Lynn Yarborough is Emerson and

1 Mason's mother, is that right?

2 A Yes, sir.

3 Q Okay. Did you -- what did you do next?

4 A She ask me to go check on Chris.

5 MR. SWILLEY: Objection to hearsay.

6 THE COURT: I'll allow that.

7 BY MR. WHITE:

8 Q You can tell us what she said?

9 A She ask me to go check on Chris. Well, when I looked
10 down the hallway, I'm standing in the bedroom hallway door
11 jam. And when I look back, Corbin was standing in Chris'
12 door jam. So I thought maybe I was going to have to go to
13 the bedroom check on him. And he said, no, he's in the
14 shop. So when I went outside, it was all lit up out
15 there, and I called for Chris several times at the door
16 and I couldn't get no answer. Then I called for Mason a
17 couple times, I didn't get no answer. And when I turned
18 around and started up the driveway is when the police and
19 deputy sheriff's start coming in.

20 Q And did you learn ultimately that Chris had been shot
21 and was laying in there?

22 A I did not know right up front, no, because little bit
23 later while they was doing their investigation.

24 Q Okay. And you said up until this point you had been
25 living there for about six months?

1 A Yes, sir.

2 Q And did you come home every day during that six
3 months were you there at that house?

4 A Yeah, I did.

5 Q Okay. And during that time, did you ever see -- I
6 mean, at this time, right, Mason Yarborough is not a young
7 kid, is he?

8 A No, sir.

9 Q He's a 21-year-old adult, is that right?

10 A Yes, sir.

11 Q Twenty-one-year-old adult that Chris is allowing to
12 live at his ---

13 MR. SWILLEY: Objection to leading.

14 THE COURT: I'll allow it go ahead.

15 BY MR. WHITE:

16 Q Is he -- is Chris allowing Mason to live there?

17 A Yes, sir.

18 Q Is Mason paying any rent?

19 A Not that I know of.

20 Q Okay. And in fact at some point Chris got Mason a
21 job at Gregory Electric, isn't that right?

22 A He did. He was working with his father.

23 Q Did he last very long?

24 MR. SWILLEY: Objection to relevance.

25 THE COURT: Rephrase your question.

1 BY MR. WHITE:

2 Q What ultimately happened to Mason Yarborough at that
3 job that Chris Yarborough got for him?

4 THE COURT: Can the lawyers approach a minute
5 please?

6 (WHEREUPON, a bench conference was held in the
7 presence of the jury, but out of the hearing of the
8 jury on the record.)

9 MR. SWILLEY: It's the same thing, Judge, it's
10 character evidence. He's going to bring up the fact he
11 got fired from his job, which is not relevant.

12 MR. WHITE: J.R. said in his opening that he
13 went into Gregory Electric because he wanted to be an
14 electrician like his dad.

15 MR. SWILLEY: That's not he said he became an
16 electrician like his father. Didn't say anything about
17 Gregory Electric.

18 THE COURT: All right, I'm going to sustain the
19 objection. You can go along the lines of they certainly
20 brought out that his dad was abusive. He lived in that
21 house. The relationship between the two six months I
22 think you can go into that based upon what you said and
23 what you brought out here.

24 MR. WHITE: Yes, sir.
25

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury, but out of the hearing of the
3 jury on the record has ended.)

4 BY MR. WHITE:

5 Q I am sorry, Mr. Cox. So let me ask you this, Mason
6 was living there full-time, is that right?

7 A Yes, sir.

8 Q And then the youngest boys were there -- they were
9 sharing custody, is that right?

10 A They was. All of them would show up -- well, both
11 small kids would show up on Thursday's, and they stayed
12 either one week. They stayed Thursday and Friday and go
13 home. The following week they stayed Thursday, Friday,
14 Saturday and Sunday.

15 Q Okay. Was that like clock work?

16 A Yes, sir.

17 Q And did he like to hunt?

18 A He has hunted, yes, he enjoyed it.

19 Q Did he like to teach the boys to hunt?

20 A He did.

21 Q Did he teach them gun safety?

22 A He did.

23 Q And was he big on gun safety?

24 A He was very strong on gun safety.

25 Q Did he take a lot of time with the boys?

1 A He did.

2 Q Okay. Did you ever see him strike the boys?

3 A I did not.

4 Q Never?

5 A Never in my presence.

6 Q In the six months leading up to this, you never saw

7 him strike Mason Yarborough?

8 A I did not.

9 Q Did you ever see him strike Corbin Yarborough?

10 A No, sir.

11 Q Did you ever see him strike Emerson Yarborough?

12 A No, sir.

13 Q Were there times when you wish he would have struck

14 Mason Yarborough?

15 MR. SWILLEY: Objection, your Honor, same

16 objection.

17 MR. WHITE: I will withdraw.

18 THE COURT: Sustained.

19 BY MR. WHITE:

20 Q I want to ask you or I want to show you rather if I

21 could find it just bear with me one second, Mr. Cox.

22 Well, I don't think I have to show you the jury saw it.

23 Now, I'm sure they remember it. Let me ask you this,

24 you're familiar with that shop and that garage area?

25 A Very much.

1 Q And Chris was big into Mustang's, is that right?

2 A Yes, sir.

3 Q Were you also big into Mustang's?

4 A Yes, sir, we are.

5 Q And what would y'all do with the Mustang's out there?

6 A We work on them in the afternoons time to time, take
7 them down the road and run them out together.

8 Q And, you know, we kind of got oriented to the shop
9 here it is State's Exhibit 9 that's the shop, is that
10 right?

11 A Yes, sir.

12 Q And when you walk into that front door would you
13 characterize that as the man cave, is that right?

14 A It was.

15 Q Is that where Mason and Melia were living?

16 A It was.

17 Q And we saw earlier some paintings and there was a
18 painting all over the wall and the door like a wilderness
19 area. Who painted all that?

20 A Chris painted it hisself.

21 Q Was he a good artist?

22 A Very much.

23 Q Did he like to paint a lot?

24 A He did. He really enjoyed it. He sit down and free
25 hand and draw about anything that crossed his mind.

1 Q And Chris was in the military, is that right?

2 A Yes, he was in the National Guard.

3 Q Okay. And how long was in the National Guard?

4 A A long time, a long time.

5 Q And you said he practiced gun safety?

6 A He did.

7 Q And I saw I visited the property that he had a big
8 gun safe, is that right?

9 A Yes.

10 Q Was he big on gun safety and storing those guns away?

11 A Yes, there was a place for them. It wasn't laying
12 round.

13 Q Were you aware that guns -- I think two or three
14 riffles were laying out in that Mustang that black
15 Mustang?

16 A There were several riffles laying in the bottom of
17 the black Mustang several laying across the table.

18 Q Was that odd to you?

19 A Very odd.

20 Q Would Chris had ever done anything like that?

21 A No, sir.

22 Q Okay. And all your time with Chris six months that
23 you were there and even before this, what kind of guy was
24 Chris?

25 MR. SWILLEY: Objection, your Honor.

1 THE COURT: Overruled. He can answer the
2 question.

3 A Very nice fellow to be around. I enjoyed his
4 company. More like one of my best friends that I've lost.

5 Q Was he good to you?

6 A Yes.

7 Q Was he good to those boys?

8 A He was.

9 Q Was he good to those boys? Was he good to Mason?

10 A He was.

11 Q Was he good to Mason despite what Mason saying about
12 him now?

13 MR. SWILLEY: Objection, your Honor, calls for
14 speculation.

15 THE COURT: Overruled.

16 BY MR. WHITE:

17 Q Was Chris good to Mason?

18 A Yes, sir.

19 MR. WHITE: Beg the Court's indulgence one
20 moment. Mr. Cox, that's all I got for you. Please answer
21 any questions the defense may have, okay.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. SWILLEY:

25 Q Mr. Cox, you resided with him you said Chris

1 Yarborough your best friend, right?

2 A Yes.

3 Q I think he let you move in with him for about six
4 months, right?

5 A He did.

6 Q Just so we're clear, you lived with him for about six
7 months up until the time he passed away, is that correct?

8 A Yes.

9 Q Okay. And there wasn't any other time you had
10 resided with Mr. Yarborough, had you?

11 A No, we were back and forth as kids. I mean coming up
12 we was every weekend we stayed with one another.

13 Q Like sleep overs when you're boys?

14 A Right.

15 Q Right. And you went I think was it Pleasant Hill
16 high school too with Chris is that where you went?

17 A No, sir, I didn't.

18 Q Okay, but you knew him when you were boys growing up,
19 right?

20 A Yes, sir.

21 Q Okay. And I think you knew him all the way your
22 entire life as far as you can remember, is that right?

23 A His mother is my aunt.

24 Q Okay. You're cousins so that would be -- is that a
25 yes?

1 A Yes.

2 Q Okay. And you lived with him during this period of
3 time this six-month period, and that was because of your
4 divorce situation, is that correct?

5 A Yes, sir.

6 Q Okay. Mr. Cox, I think you testified you worked at
7 the IGA during this time, is that right?

8 A I did.

9 Q And that was a full-time job, wasn't it?

10 A It was.

11 Q I think was it usually seven to seven, was it second
12 shift or ten to seven?

13 A Not quite that long. I leave the house about four
14 o'clock in the morning and I get back about four or five
15 o'clock in the afternoon.

16 Q Okay.

17 MR. SWILLEY: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 MR. SWILLEY: Nothing further, your Honor.

20 THE COURT: Any redirect?

21 MR. WHITE: No, sir, Judge.

22 THE COURT: Mr. Cox, you may step down. Thank
23 you.

24 MR. WHITE: Judge, may we approach?

25 THE COURT: Yes.

1 this trial. All right, anything else from the State
2 before I bring the jury out?

3 MR. WHITE: No, sir, Judge.

4 THE COURT: Defense counsel.

5 MR. SWILLEY: No, your Honor.

6 THE COURT: Bring me the jury please, sir.

7 (WHEREUPON, the jury came into open court.)

8 THE COURT: Mr. Foreman, ladies and gentlemen of
9 the jury, I hope you all had a nice evening yesterday and
10 are ready to proceed here today. At this time I recognize
11 the State call your next witness please.

12 MR. WHITE: Thank you, Judge. At this time the
13 State would call Daniel Rogers.

14 THE CLERK: Sir, if you would can you please
15 step up to the stand and place your left hand on the Bible
16 and raise your right. Do you swear or affirm the
17 testimony you give in this case to be the truth, the whole
18 truth, and nothing but the truth so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated and state your full
21 name for the record.

22 THE WITNESS: My name is Daniel David Rogers,
23 III.

24 WHEREUPON,

25 Daniel Rogers, III

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. WHITE:

4 Q Good morning, Mr. Rogers, thank you for you being
5 here with us this morning. I'm going to ask you a few
6 questions and get you back out the door starting with
7 where you're from?

8 A I'm from Florence born and raised.

9 Q And where are you employed currently?

10 A I'm currently the maintenance manager for the City of
11 Florence.

12 Q And at some point did you also work for Gregory
13 Electric?

14 A I did about six months ago I left there.

15 Q And how long did you work for Gregory Electric?

16 A About seven years.

17 Q And in what capacity did you work for Gregory
18 Electric?

19 A I started and finished as the regional manager of
20 that Florence division.

21 Q Now, did you know the victim in this case Chris
22 Yarborough?

23 A I did.

24 Q How did you know him?

25 A I hired him as a superintendent, and he worked there

1 for probably close to two years but less than that. He
2 was a superintendent for our largest client Ruiz Foods.
3 As a client, we picked up really in the first month that I
4 hired on and just kind of keep a friend, make a friend
5 kind of thing. So he primarily dealt with them sometime,
6 but, you know, sometimes other things when we need him
7 somewhere else.

8 Q And what is a superintendent do at Gregory Electric?

9 A Well, they -- I mean, they start by making
10 relationships with the client. I mean, that's the number
11 one thing. Our client motto was to truly take something
12 off someone's plate, you know, maintenance managers and
13 plant managers they all got too much to do. And so if you
14 can truly just take something off their plate where they
15 know they don't have to mess with anything, it's just
16 turnkey, turnkey. Then that's where you get repeat
17 business. So, I mean, I'd say client relations is
18 probably the primary thing, but then, you know,
19 understanding your job and your craft. And then leading a
20 team of people to go from the start they're in the process
21 of helping to bid the work, you know, to first find out
22 what jobs are going on and shake it out and find the jobs,
23 help bid the work, you know, order material, organize
24 material, so that it falls within the job and the right
25 order, organize staffing, whether it's with our own

1 employees or with temporary staffing agencies, execute the
2 job, do commissioning start up and training for the
3 maintenance staff if it's needed. The office pretty much
4 takes care of billing, but aside from that, you know,
5 there's still sort of approving, you know, looking over
6 billing even that too.

7 Q So a superintendent is a very involved job, is that
8 fair to say?

9 A It's definitely very involved.

10 Q How was Chris Yarborough as a superintendent for
11 Gregory Electric?

12 A I mean, I say for my seven years, he's probably the
13 best we ever had. He was a great guy and really -- you
14 know, the people at Ruiz Foods loved him and so did like
15 mechanical contractors. I mean, you know, he was able to
16 go and get a lot of work that we maybe otherwise wouldn't
17 have gotten because he could kind of go in there and, you
18 know, cut up with the engineers and cut up with the
19 maintenance managers or talk to, you know, the project
20 managers of the mechanical groups, you know, various
21 mechanical groups that we're working say, hey, you know,
22 hey, Chris we got this job coming up, you know,
23 mechanically, but it's going to be an electrical portion
24 you might want to go, you know, kind of put your name in
25 the hat for it. And he was just all around good guy, you

1 know. All his guys like working for him. All the temps
2 were always, you know, I mean, they were little bit fair
3 weathered the temp agency people sometimes. So it's like
4 what kind of job is there who's the superintendent, you
5 know. And when they knew Chris was the superintendent
6 there, they were always eager to go on his jobs. He was
7 well liked.

8 Q Well, liked. Did you ever see him lose his temper?

9 A Never, no.

10 Q Did you ever see him lose his cool?

11 A No, I never seen him lose his cool.

12 Q At some point about, I think, about six months prior
13 to his death, were you aware that he got Mason Yarborough,
14 his son, a job at Gregory Electric?

15 A I did. I hired Mason.

16 Q Okay. And did you ever witness him be abusive
17 towards Mason?

18 A Never.

19 Q Okay. Did you ever see him lose his cool with Mason?

20 A No, I did not.

21 Q Now, about how many hours a week was Chris working?

22 A We worked a lot of hours. I mean, we're always at
23 the mercy of the client. So, you know, if they're closed
24 or down for production on the weekend, then we're expected
25 to be there, so kind of the nature of the job. You know,

1 I mean, I say at least probably average a good 50 hours a
2 week, but then it fluctuated. I mean, sometimes we might
3 work, you know, the holiday weekend or a long weekend and
4 to try and push a project through, but, I guess, if you
5 probably averaged it out, you know, I mean, there weren't
6 a whole lot of 40 hour weeks, probably 50 hours on
7 average. But sometimes, you know, we do seven days a
8 week. It's whatever it took to please the client.

9 Q Now, you were notified on October 30th of 2020 of
10 Chris Yarborough's death?

11 A I was.

12 Q And at that time was Chris Yarborough still working
13 and employed by Gregory Electric?

14 A Yeah, he was.

15 Q And how did you and Gregory Electric take that loss?

16 MR. SWILLEY: Objection, your Honor, I think
17 that falls outside the scope of relevance.

18 THE COURT: I'll allow it overruled.

19 A It was a terrible loss for us and for Ruiz Foods. I
20 mean, it was our biggest client. It's real hard to
21 replace, you know, somebody like that knows the people,
22 knows the plant, knows how to get things done. He was the
23 jack of all trades. It was -- whether it was automation.
24 We did a lot of automation controls or robotics type stuff
25 or, you know, fire alarm or fire suppression systems on

1 fryers or, you know, data telecom. We did all that kind
2 of stuff for them, you know, fiber optics. He could, you
3 know, wasn't really much I could throw at him that he --
4 you know, needed a hand on. He wasn't squeaky wheel, you
5 know. Some people are in the squeaky wheel and, you know,
6 they get a lot of time. Chris was self-sufficient, you
7 know, person that I didn't have to worry about going
8 behind. He took care of business, so it made it -- you
9 know, it was difficult losing him. I mean, we were able
10 to maintain a good relationship with Ruiz Foods, but it
11 required me to step up to the plate hugely and try to fill
12 that role myself while, you know, still trying to play
13 regional manager, which was hard, but we made through it,
14 but it was definitely difficult time for everybody.

15 Q Would you say -- well, let me ask you this. I'll
16 just ask you one more question and then I'll let you go.
17 I know you need to get back to work. At the time of Chris
18 Yarborough's death he was still employed by Gregory
19 Electric, is that right?

20 A Yes.

21 Q At the time of Chris Yarborough's death was Mason
22 Yarborough still employed by Gregory Electric?

23 MR. SWILLEY: Objection, your Honor, relevance.

24 THE COURT: I'll sustain the objection.

25 MR. WHITE: Thank you, Mr. Rogers. I appreciate

1 it. Please answer any questions the defense may have,
2 okay. Thank you.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. SWILLEY:

6 Q Mr. Rogers, it be true to say you can define your
7 relationship with Mr. Yarborough as professional, right?

8 A I mean, I would consider us friends, but
9 professional, yes.

10 Q That's how you met him through your profession?

11 A Yes.

12 Q And that's how you interacted with Mr. Yarborough was
13 through the job, right?

14 A Through the job.

15 Q Yes, sir. And just to be clear, you met
16 Mr. Yarborough the day you hired him, I guess, is that
17 true to say?

18 A That's true.

19 MR. SWILLEY: Thank you, Mr. Rogers.

20 MR. WHITE: Just briefly, Judge.

21 REDIRECT EXAMINATION

22 BY MR. WHITE:

23 Q You said at a minimum it was 50 hours a week. Is it
24 fair to say y'all spent a lot of time together?

25 A We spent a lot of time together. In fact, I mean,

1 the week leading up to Chris' death, I mean, we were
2 bidding a job together, so we -- the way my office is set
3 up there's a lot of about four screens and a big screen TV
4 and then my planing table is over here. And so, you know,
5 from probably a week or maybe a week and a half, I mean,
6 we worked, I mean, in the same office basically together,
7 you know, for ten hours a day. I mean, so, yes, it's a
8 professional relationship, but it's impossible not to
9 become friends with somebody that, I mean, you're working
10 this close in an environment with, you know.

11 Q And, again, at some point Mason Yarborough also
12 worked there, is that right?

13 A He did.

14 MR. SWILLEY: Objection, your Honor, same
15 objection.

16 THE COURT: I'll allow him to answer the
17 question.

18 A He did work there for a time, yes.

19 MR. WHITE: Okay. Thank you, Judge, nothing
20 further. Thank you, Mr. Rogers.

21 THE COURT: Anything else, Mr. Swilley?

22 MR. SWILLEY: Nothing further, Judge.

23 THE COURT: Sir, you may step down. Thank you.

24 (WHEREUPON, the witness leaves the witness
25 stand.)

1 THE COURT: Call your next witness please.

2 MR. WHITE: Thank you, Judge. At this time the
3 State would call Jamie Green.

4 THE CLERK: Please step up to the stand and
5 place your left hand on the Bible and raise your right
6 hand. Do you swear or affirm the testimony you give in
7 this case to be the truth, the whole truth, and nothing
8 but the truth so help you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Please be seated and state your full
11 name for the record.

12 THE WITNESS: James Green.

13 WHEREUPON,

14 James Green,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. WHITE:

18 Q Good morning, Mr. Green.

19 A Good morning.

20 Q If you could tell the jury where you are employed?

21 A I'm employed by the South Carolina Law Enforcement
22 Division commonly referred to as SLED.

23 Q And in what capacity are you employed by SLED?

24 A I'm a forensic firearms examiner in the forensic
25 services laboratory.

1 Q And what does that mean? What do you do there?

2 A We examine firearms and firearm related evidence to
3 see if fired bullets or fired cartridge casings were fired
4 from a particular firearm if the firearm was submitted.
5 In the absence of firearms, we can look at a group of
6 cartridge cases and bullets and possibly tell the
7 submitting agency how many firearms are represented in
8 those cartridge cases and bullets. We also examine tools
9 and tool mark related evidence if somebody uses a screw
10 driver to pry open a door things like that.

11 Q And could you tell the jury and the Court your
12 qualifications, your education and experience, as well
13 your training that led you to that particular position?

14 A I have a bachelor and master's degree both from
15 Charleston Southern University, went through the South
16 Carolina police academy. Then when I was hired at SLED, I
17 started the SLED forensic firearms and tool mark course of
18 instruction. It's about a three, three and a half year
19 course of instruction studying under court qualified
20 firearms examiners in the forensic type fashion learning
21 to do what I do now.

22 Q And about how many times do you think you've
23 testified as an expert in court before?

24 A Number's actually a 107, twice in federal court and
25 105 times in state court.

1 Q And do you remember what you were qualified as an
2 expert in?

3 A Firearms identification.

4 Q Now, about -- I know this is going to be a tough
5 question. How many firearms and firearm related evidence
6 do you say you look at and examine a month?

7 A A month -- it depends on the size of the case. When
8 I worked the Dillon Roof case out of Charleston, that was
9 so large it took me about two months just to work one
10 case, but normally I'd say I probably work two or three
11 cases a week involving anywhere from one piece of evidence
12 to 30 to 40 sometimes 50 pieces of evidence.

13 MR. WHITE: Judge, at this time I move Mr.
14 Green, Jamie Green as an expert in the field of firearm
15 analysis.

16 MR. JOYNER: No objection.

17 THE COURT: Firearm analysis?

18 MR. WHITE: Yes, sir, Judge.

19 THE COURT: All right. Ladies and gentlemen,
20 before we go any further, let me give you this brief
21 instruction. I tell you that normally a person cannot
22 give opinion testimony. Normally, a person must testify
23 or when they testify they must testify as to either what
24 they saw, heard or sense by smell or something of that
25 nature. However, there is an exception when someone is

1 qualified because of education or experience. And those
2 situations they are permitted to give opinion testimony in
3 certain areas if the Court qualifies them to do so. This
4 witness is being qualified as an expert in the area of
5 firearms analysis to give opinion testimony in that area.
6 That does not mean that you must accept the opinion, but
7 is evidence for you to use in any way that you see fit and
8 give it the weight and credibility that you believe is
9 appropriate. Any exception or objection to what I just
10 told the jury, Mr. White?

11 MR. WHITE: No, sir, judge.

12 MR. JOYNER: No, sir.

13 THE COURT: Go ahead.

14 BY MR. WHITE:

15 Q Now, Mr. Green, did you analyze items of evidence in
16 this particular case?

17 A Yes, sir, I did.

18 Q And what did you analyze?

19 A I had submitted to me one fired cartridge case and a
20 riffle.

21 Q And what were you asked to do? How did you begin
22 your process and what were you looking for in this case?

23 A When stuff like this is submitted to the laboratory,
24 the submitting agency wants us to be able to tell him
25 whether or not the fired cartridge case submitted was

1 fired by the firearm that was submitted. The way we're
2 able to do that is during manufacturing process and
3 subsequent use and abuse -- actually specifically during
4 the manufacturing process tiny microscopic scratches are
5 left on the working surface is firearms or cartridge cases
6 that be in the chamber, on the bridge face and on the
7 firing pin. As you use them, you just fire them, they
8 become more and more individual. During the barrel making
9 process, tiny marks are also left in the barrel that
10 impart themselves on the bullets as the bullet passes
11 through the barrel. What we do is in this instance we'll
12 get a gun, we'll get a fired cartridge case. And we'll
13 test fire the firearm to make sure that we through those
14 test specimens came from the gun because we shot them
15 ourselves. And then we'll use our comparison microscope,
16 which is the primary tool we use is two microscopes
17 connected by a single optical bridge that let's us look at
18 two objects simultaneously. So what we're doing is we're
19 looking for what we call the IIC's Individual Identifying
20 Characteristics of firearms almost like -- to see if those
21 markings on the firearm were in part onto the fired
22 bullet or the fired cartridge case.

23 Q And you did that in this particular case?

24 A Yes, sir.

25 Q I'm going to show you what's already been moved into

1 evidence State's Exhibit 2. If you could tell me is this
2 the firearm that was submitted to your agency to you
3 specifically?

4 A Yes, sir, it was.

5 Q And this is the firearm that you test fired?

6 A Yes, sir.

7 Q Did you have any issues with it when you were test
8 firing it?

9 A No, sir. When I had it, it worked as I would expect
10 it to.

11 Q It did what it was design to do, it expelled a
12 bullet?

13 A Yes, sir.

14 Q And what caliber bullet was test fired from this?

15 A That riffle is a Chinese made SKS riffle chambered at
16 7.62 by 39 millimeters 78 caliber.

17 Q I'm going to show you if I could what's been marked
18 as State's Exhibit 5. Could you tell me if you recognize
19 this particular item?

20 A Yes, sir, State's Exhibit 5 this is a SLED test fired
21 envelope and these are the test specimens that I fired
22 from the State's Exhibit 2. I fired three cartridges, so
23 they'll be three fired cartridge cases and three fired
24 bullets in this envelope.

25 MR. WHITE: I move State's Exhibit 5 into

1 evidence.

2 THE COURT: Any objection?

3 MR. SWILLEY: No, objection, your Honor.

4 THE COURT: So admitted.

5 (WHEREUPON, State's Exhibit No. 5 was marked for
6 identification only.)

7 BY MR. WHITE:

8 Q And so it's my understanding you then compared those
9 items of evidence to this shell casing recovered from the
10 scene, is that correct?

11 A Yes, sir.

12 Q I'm going to show you what's been moved into evidence
13 as State's Exhibit 72 is that the shell casing in
14 question?

15 A Yes, sir. This is the State's Exhibit 72 is the
16 fired cartridge case I examined to SLED item one in this
17 case.

18 Q And what were the results of your examination?

19 A State's Exhibit 72 was fired by the State's Exhibit 2
20 riffle.

21 Q Okay. Thank you, sir. Now, I want to ask you about
22 one more thing that was in your report and I'll ask you
23 about the report generally in just a second. You
24 indicated that you conducted a test to see what the
25 trigger pull was on this particular item the riffle.

1 Would you tell us about that?

2 A Yes, sir, any time we get a firearm in a case that is
3 asked to be compared with something else whether it be a
4 fired bullet or fired cartridge case, we perform a trigger
5 pull weight on that firearm. And all trigger pull weight
6 is a measurement expressed in pounds for how much weight
7 it takes to pull the trigger make the gun go off.

8 Q And what was the trigger pull weight on this
9 particular firearm?

10 A When I tested it, it was approximately five and three
11 quarter pounds.

12 Q And just so the jury understand is that a normal
13 trigger pull?

14 A Yes, sir, that's what I was expecting to see like a
15 AK type riffle or SKS type riffle and the weight I think
16 about five and three quarter pounds. It's a little bit
17 more than a half a gallon of water, a half a gallon of
18 water weighs about four pounds. So it be like lifting a
19 little bit more of a half gallon of water with the one
20 finger.

21 Q Did you reduce your findings to a report?

22 A Yes, sir.

23 Q And did you generate that report and turn it over to
24 the Solicitor's office?

25 A Well, when we -- to answer your question, it's a

1 little bit more steps than that. We will write a draft
2 report along with our findings and then someone will
3 review that report. And then it's published to the
4 internet on a secure server where the submitting agency
5 can get a copy and then provide it to the Solicitor's
6 office if needed.

7 Q And when you say someone reviews it is that your peer
8 review system?

9 A Yes, sir.

10 Q Can you tell us a little bit about the peer review
11 system?

12 A Yes, sir, whenever we give opinions like this
13 cartridge casing was fired by this gun, everything in our
14 lab specifically firearms department is hundred percent
15 micro verified. So what that means is I'll go to -- let's
16 say you're another examiner in my department. I'll come
17 to you say, hey, I need a micro. You'll come over to my
18 microscope area. And you'll look at the evidence and the
19 test independently arrive at your own conclusion and then
20 read my conclusions. If you agree, you initial and date
21 the day you did the micro. And then I'll package it up,
22 write a draft report, send it off to go home. And then
23 I'll give you my case file and the draft report. You go
24 through every single page, make sure everything is
25 technically correct, make sure everything is grammatically

1 and everything is there like it's suppose to be. And then
2 you approve the report. All of that is part of our
3 internal qualify system where we're an accredited lab. So
4 we have certain international guidelines we have to
5 follow. The peer review process are apart of those
6 guidelines. Every time we give an opinion another
7 examiner looks at everything in the case file, looks at
8 the evidence by myself and approves the report.

9 Q And that peer review process and that examiner is
10 overlooking your report is that person also an expert?

11 A Yes, sir.

12 Q And that was done in this particular case?

13 A Yes, sir, it's done in every case..

14 Q And did they agree with your opinion in this case?

15 A Yes, sir, if not, there would not have been a report.

16 Q I'm going to show you State's Exhibit 84. Is this
17 the report that you generated?

18 A Yes, sir, it is.

19 MR. WHITE: Judge, I move State's Exhibit 84
20 into evidence.

21 THE COURT: Any objection?

22 MR. JOYNER: No, objection, your Honor.

23 THE COURT: Without objection, so admitted.

24 (WHEREUPON, State's Exhibit No. 84 was admitted
25 into evidence.)

1 MR. WHITE: Beg the Court's indulgence for one
2 minute.

3 (WHEREUPON, a pause in the proceedings.)

4 BY MR. WHITE:

5 Q And you mentioned -- obviously, that's in the box
6 there, that's an SKS, is that correct?

7 A Yes, sir.

8 Q But you also mentioned AK-47. Could you tell us the
9 similarities between the two weapons?

10 A They are both chambered in their initial caliber
11 unless somebody mess with it. They're both chambered by
12 76 by 39. They're both gas activated semiautomatic
13 riffles in their pure form not the true assault rifle
14 form. They're both piston driven. The SKS has a two
15 piece piston. The AK has a one piece piston. And they
16 were designed for people without a lot of education to be
17 able to use in the field. When my dad was in Vietnam, he
18 saw a lot of them with the people who got no education,
19 but they were fighting U.S. forces. These firearms were
20 originally design to do just be a symbol relatively
21 rendered ingenuitive but simple designed firearm.

22 Q Now, are you also familiar with the term hair
23 trigger?

24 A Yes, sir.

25 Q And what is that mean?

1 A A hair trigger is a slang term used in the industry
2 or the firearms grouping where you can get a very very
3 light trigger pull. To me, a hair trigger is one that you
4 look at almost. You barely touch it and it goes off.
5 It's unsafe. When you get a really really light trigger
6 pull, you have to do something to the firearm for that to
7 happen. You have to either cut a coil on the spring,
8 which is not how you're suppose to do it or you change the
9 internal parts nothing about State's Exhibit 2 I know
10 change from what it should be except for the butt that was
11 cut off and doesn't affect the function of the firearm at
12 all. Hair trigger means like a one pound trigger pull
13 where you look at it and you barely touch it and it goes
14 off. This what I found on State's Exhibit 2 is what I
15 would expect to see in an AK or SKS about a five and three
16 quarter six pound trigger pull, so it's going to be fairly
17 standard.

18 Q Okay. And the last question for you, do you just
19 analyze and compare the gun and the bullets fired that you
20 fired from that gun with shell casings recovered from the
21 scene, correct?

22 A Yes, sir.

23 Q You can't testify in your expert capacity to whether
24 this trigger was accidentally or intentionally pulled, is
25 that right?

1 A Correct. I can tell you that the cartridge case was
2 fired by the gun. I can't tell you in what circumstances
3 the gun was fired.

4 MR. WHITE: Beg the Court's indulgence.

5 BY MR. WHITE:

6 Q I know I said last question, but one more for you.
7 Did you have an opportunity to examine the safety
8 mechanism that was on this gun?

9 A Yes, sir.

10 Q Was it in working order?

11 A Yes, sir, it was.

12 MR. WHITE: Okay, thank you. I have nothing
13 further.

14 THE COURT: Mr. Joyner.

15 MR. JOYNER: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MR. JOYNER:

18 Q Mr. Green, so you said that the gun was in perfect
19 working order?

20 A I'm losing my hearing. Could you speak up please?

21 Q I'm sorry. The gun was in perfect working order,
22 correct?

23 A When I had it, yes, sir. May I?

24 Q No, I'm sorry forgive me?

25 A Yes, sir. When I had it, State's Exhibit 2 worked

1 just like it should, but everything made by man is subject
2 to mess up at sometime. So we could all go to the range
3 today and shoot, we may encounter an issue with it today
4 that was not present or didn't happen when I fired it.

5 Q And you would agree that the SKS riffle ejects the
6 spent shell casing to the right?

7 A That's getting into ejection patterns which we don't
8 do specifically, but as a very general rule, if I'm
9 holding the firearm like you should, this way with the
10 barrel pointing that way magazine pointing down to the
11 ground, the way that firearm is designed the cartridge
12 case should very generally eject or extract and eject
13 slightly back into the right almost like glocks do because
14 of the way the ejector is. However, when I been firing
15 guns before specifically my glock, I've had the cartridge
16 cases go that way which makes no sense how it happened,
17 but it does. So it's a very general rule firearms are
18 like State's Exhibit 2 should go back and to the right,
19 but once again things happen and they can go in a
20 different directions.

21 Q And, of course, you fired this gun?

22 A Yes, sir.

23 Q Okay. And you been declared including today an
24 expert 108 times in your career?

25 A Yes, sir.

1 Q You just clearly identified the differences between a
2 SKS and an AK-47?

3 A Yes, sir.

4 Q Okay. And having been intimately familiar with those
5 guns and having fired that one, you would agree that the
6 ejection pattern for that gun is the spent shell casing
7 ejects to the right?

8 A Well, this gun I did not test the ejection pattern.
9 When I shot it, there is a big clothe tube that covers
10 the top of our tank. So I don't want to get face down in
11 there, so I didn't see where it went, but as a general
12 rule ---

13 MR. JOYNER: I don't have any further questions.

14 MR. WHITE: I'd ask him to finish ---

15 THE COURT: Hold on, hold on, hold on please.
16 Just let him finish his answer. You can finish your
17 answer please, sir.

18 A Since, I was shooting in there, I didn't see where it
19 went. However, like I said as a general rule, firearms
20 like this should go back and to the right.

21 THE COURT: All right, any other questions?

22 MR. JOYNER: No further questions. Thank you.

23 THE COURT: Any redirect?

24 MR. WHITE: Just briefly.

25 REDIRECT EXAMINATION

1 BY MR. WHITE:

2 Q Once it is expelled, there's lots of things that
3 could happen to a shell casing once it's expelled, is that
4 right?

5 A You mean once it's on the ground that kind of thing?

6 Q That's right.

7 A Yes, sir. I wasn't there I don't know. However, I
8 have testified in trial before where they a fired
9 cartridge case 150 yards away from the scene. It turned
10 out EMS came out to the scene and got stuck in the tire
11 tracks. And when they left, it fell back out. So there's
12 a whole bunch of different factors that I can't account
13 for to determine where something might end up when it's
14 all said and done.

15 MR. WHITE: Okay, nothing further. Thank you,
16 Mr. Green.

17 MR. JOYNER: Nothing more, your Honor.

18 THE COURT: Sir, you may step down. Thank you.

19 (WHEREUPON, the witness leaves the witness
20 stand.)

21 THE COURT: Call your next witness please.

22 MR. WHITE: Thank you, Judge. At time this time
23 the State would call Emerson Yarborough.

24 THE CLERK: If you'll go up to the witness stand
25 right over there. And place your left hand on the Bible

1 and raise your right hand. Do you swear or affirm the
2 testimony you give in this case to be the truth, the whole
3 truth and nothing but the truth so help you God?

4 THE WITNESS: Yes, ma'am.

5 THE CLERK: Walk around to that stand, have a
6 seat and tell us your full name please.

7 MR. JOYNER: Judge, if we may, may we approach
8 briefly.

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury, but out of the hearing of the
11 jury on the record.)

12 MR. JOYNER: Judge, one of the things I just
13 wanted to bring to the Court's attention is Rule 608(c).
14 He's certainly able to impeach him, but the rule is clear
15 that if he agrees to the impeachment the statements that
16 he's making that extraneous evidence is inadmissible. He
17 can't enter in the video if he admits to what he has said.

18 MR. WHITE: That's Rule 613. You're incorrect
19 under 608(c). 608(c) I can introduce extrinsic evidence
20 if 613.

21 MR. JOYNER: 613(b) he can't enter the video if
22 he agrees that he said an inconsistent statement in the
23 video.

24 THE COURT: Let's hear what the testimony is
25 first.

1 MR. WHITE: Yes, sir.

2 (WHEREUPON, a bench conference was held in the
3 presence of the jury, but out of the hearing of the
4 jury on the record has ended.)

5 WHEREUPON,

6 Emerson Yarborough,
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. WHITE:

10 Q Good morning, Emerson.

11 A Good morning.

12 Q How you doing?

13 A I'm all right.

14 Q I understand, I understand you're in a bad spot. And
15 young man if I could avoid putting you on the stand, I
16 would. I'm trying to make this as painless as possible
17 and get you back to your life, okay. That sound like a
18 deal?

19 A Yes, sir.

20 Q Emerson, where are you from?

21 A I'm from Johnsonville, South Carolina.

22 Q And you doing a good job speaking into that
23 microphone, but just -- that way you don't have to project
24 your voice so loud. You said you from Johnsonville?

25 A Yes, sir.

- 1 Q Do you live there now?
- 2 A Yes, sir.
- 3 Q Are you in school?
- 4 A Yes, sir.
- 5 Q Where do you go to school?
- 6 A Johnsonville High School.
- 7 Q And where do you live or who do you live with I
- 8 should say?
- 9 A I live with my mother.
- 10 Q And what's your mom's name?
- 11 A Lynn.
- 12 Q Is her last name Yarborough?
- 13 A Yes, sir.
- 14 Q And how long have you lived with her?
- 15 A I don't know a specific year.
- 16 Q At some point -- let me ask you this is your dad
- 17 Chris Yarborough?
- 18 A Yes, sir.
- 19 Q At some point did Chris and your mom -- your mom and
- 20 your dad share custody?
- 21 A Yes, sir.
- 22 Q And then at some point you started living obviously
- 23 with just your mom, is that right?
- 24 A Yes, sir.
- 25 Q Okay. I'm going to ask you some tough questions now.

1 I'm just going to get into, okay. October 29th of 2020 --

2 I know it's tough. On that date, where were you staying?

3 A I was at my dad's house.

4 Q And who all was living there at that time?

5 A Living or staying?

6 Q Staying or living.

7 A My little brother, my older brother and my dad.

8 Q Okay. Was your cousin or I think people refer to him
9 as uncle or cousin was Roger Cox was he living there too?

10 A Yes, sir.

11 Q Okay. And you said your brother -- what's your
12 youngest brother's name?

13 A Corbin.

14 Q And what is your oldest brother's name?

15 A Mason.

16 Q And they were all living there too?

17 A Yes, sir.

18 Q And was Mason's girlfriend living there for a time?

19 A Not living. It was more just staying every once in a
20 while.

21 Q I got it. So all the men that you mentioned were
22 there full time and she was staying, is that right?

23 A Corbin was back and forth just like me. I went every
24 other weekend.

25 Q Okay. And so this your dad's weekend?

1 A Yes, sir.

2 Q You and Corbin were going to spend the weekend with
3 your dad?

4 A Yes, sir.

5 Q Do you need something?

6 A Y'all got water. I left mine.

7 Q We'll get you water.

8 THE COURT: Mr. Willie. He will get you a
9 water.

10 BY MR. WHITE:

11 Q I can keep asking you some questions while you get
12 some water or do you want to wait?

13 A That's fine.

14 Q Okay. Let me ask you this, on the 29th about what
15 time did you get to your dad's house?

16 A I don't know the exact time or specific.

17 Q That's fine. Okay. Sometime you get there and when
18 you get there, who all was there?

19 A I want to say everybody that I mention me, oldest
20 brother, youngest brother, dad and I think Melia or I
21 believe so.

22 Q Okay. Drink that water and drink as much as you
23 need. Any time you need to stop to take a sip do it,
24 okay.

25 A All right.

1 Q What were y'all doing early in the afternoon?

2 A We were just sitting in the office playing pool
3 messing around.

4 Q Okay. Who was playing pool?

5 A Me and my brother.

6 Q All right. Where was Melia?

7 A I want to say she was laying down or sitting down.
8 She was just in there.

9 Q Okay. In that same room?

10 A Yes, sir.

11 Q And we heard it described is like a game room or man
12 cave is that where you guys were?

13 A Yes, sir.

14 Q Okay. And where was everyone else so, I guess,
15 everyone else would have been Corbin, Roger and your dad
16 where were they?

17 A I think dad was wanting to go inside. I think he was
18 in the house and for the other two -- I think Corbin was
19 also in the house with him. But for my uncle I do not
20 know.

21 Q Okay. All right. At some point obviously we know
22 something happens. Will you tell us what happened?

23 A I mean, I didn't really see much. I was just -- he
24 got a little upset. He just got upset.

25 Q When you say he?

1 A My brother.

2 Q Your brother being Mason?

3 A Yes, sir.

4 Q All right. So he gets upset and what happened?

5 A Him and Melia got into an argument. She ended up
6 leaving. He was -- he was calm down.

7 Q Okay. And then what happened?

8 A I mean, I was on the phone with my mom. I don't
9 really remember much.

10 Q Okay. So that's all you know about the incident?

11 A Yes, sir, for the most part.

12 Q Okay. Now, what I'm going to ask you some things
13 about what you said. If you talk to -- so that night
14 would have been the 29th on into the early hours of the
15 30th. Do you recall talking to Investigator Chris Owens
16 about what had happened?

17 A I remember talking to him, yes, sir.

18 Q Do you remember telling him that you were in the
19 garage with Mason and Melia?

20 A The office, yes, sir.

21 Q Okay. Do you remember telling him that after Melia
22 left Chris came out to the garage, your dad?

23 A I mean, I believe I said that, yes, sir.

24 Q Do you recall telling him that Mason became visibly
25 upset when your dad walked in?

1 A I do not recall.

2 Q You don't remember that. Do you remember that Mason
3 asked your dad if Melia had called him?

4 A I do not.

5 Q Do you remember that you said that Chris said no?

6 A I don't.

7 Q You don't remember telling Investigator Owens that
8 your dad said he just woke up and just coming to check on
9 everybody?

10 A I don't know.

11 Q Okay. You don't remember that?

12 A Not right off, no.

13 Q Okay, that's all right. And that's why I'm walking
14 you through it, okay. I know it's been while ago. Do you
15 remember telling Investigator Owens that was right after
16 it happen, that three of you all meaning you, Mason and
17 your dad were in very close proximity to one another?

18 A Can you explain that more?

19 Q Yeah, you told Investigator Owens that right when
20 this was happening that you and your dad, your older
21 brother Mason were right close to one another. Do you
22 remember saying that?

23 A I don't.

24 Q Okay. That's all right. Do you remember telling
25 Investigator Owens that you didn't see your dad make any

1 attempt to grab the gun?

2 A I mean, I don't remember.

3 Q You don't remember saying that?

4 A I don't remember saying that.

5 Q Do you remember saying that the two of them meaning
6 Mason and your dad were not arguing at all?

7 A I don't remember.

8 Q Okay. Do you remember after you talked to
9 Investigator Owens and you told him all that, that later
10 on that day you went to the Care House for an interview?

11 A I remember going.

12 Q Okay. Do you remember going in a room and there was
13 a dog there and you were kind of scratching the dog's head
14 do you remember that?

15 A Yes, sir.

16 Q And do you remember giving a statement to Ms.
17 Temple who's the director of the Care House?

18 A Yes, sir.

19 Q Okay. Do you remember that when she asked you why
20 you were there you said it was because of your dad?

21 A Yes, sir.

22 Q And do you remember kind of getting choked up when
23 she asked you about that?

24 A Yes, sir.

25 Q Do you remember telling her when she asked you what

1 happened said you were playing pool with your brother,
2 that his girlfriend was doing school work because it was
3 virtual? Do you remember saying that?

4 A I don't know.

5 Q You don't remember say that?

6 A I believe -- I don't remember saying it, but I
7 believe that is what she was doing just don't remember
8 stating it.

9 Q Do you remember saying they started to argue?

10 A Yes, sir.

11 Q You said that. You said -- do you remember saying
12 you didn't know what it was over?

13 A No, sir.

14 Q You don't remember that. Do you remember saying they
15 started yelling at each other?

16 A Yes, sir.

17 Q Okay. Do you remember saying that he got really mad
18 at her?

19 A He was upset.

20 Q Okay. Do you remember telling Meg that she was
21 scared?

22 A I don't know.

23 Q You don't know.

24 A I just don't remember.

25 Q Okay. I mean, do you not remember a lot of what you

1 said during that interview?

2 A Not really.

3 Q Okay. It's good portions of it that you just can't
4 remember saying?

5 A It was all a blur.

6 Q Okay. So as it stands right now you're saying you
7 don't remember a good bit of that statement?

8 MR. JOYNER: Judge, I object to the leading
9 nature of the question.

10 THE COURT: Overruled.

11 A I'm not saying I did not say it, I'm saying I do not
12 remember.

13 MR. WHITE: Judge, I think we have just a brief
14 matter of law.

15 THE COURT: All right. Ladies and gentlemen,
16 I'm going to ask you to step to the jury room for just a
17 minute. Do not discuss the case. I'll get you back out
18 here in just a few minutes, okay.

19 (WHEREUPON, the jury retire to the jury room.)

20 THE COURT: Yes, sir.

21 MR. WHITE: Judge, obviously under 613 extrinsic
22 evidence can be admitted if the witness is confronted with
23 the time, place substance of what is asked during the
24 interview. And if he denies not remembering, I just ask
25 him are there large portions of this that you do not

1 remember and he said that that's true he does not remember
2 large portions of this. So I would move to play his
3 statement and have the jury decide for themselves. I move
4 under 613(c), Judge, or perhaps it's B to have that
5 admitted. I would also move to have it admitted under
6 608(c), Judge, that it shows bias or motive to
7 misrepresent. I think present here your Honor, I mean,
8 young man, you know, I'm doing my best with him, but he
9 can't remember what's said. I think I should be able to
10 move the statement in at this point.

11 MR. JOYNER: Your Honor, he hasn't made a denial
12 that he said anything on that video. He said I'm not
13 saying I didn't say it. He's just saying he doesn't
14 specifically remember. He's not just saying blanket I
15 don't know. He's not making any denial to this. I don't
16 think that the State gets to play the video certainly not
17 the entirety. I think just because he said -- he doesn't
18 deny it was made. There's been no denial. And it's not
19 608 was no biases that's come across because he can't
20 remember. 608 is going to be applicable, but your Honor I
21 don't think -- I think, you know, if Mr. White asked me if
22 he says -- if he remembers it, if he said a specific thing
23 he were just to say, no, then I think he can impeach him
24 with what he said with the video at that point, but he
25 hadn't said no. He's saying I'm not denying that I said

1 it. I just don't recall specifically. I don't think that
2 allows the State to publish or produce prior inconsistent
3 statement at that point.

4 MR. WHITE: And, Judge, the rule with extrinsic
5 evidence or prior inconsistent statement by a witness is
6 not admissible unless the witness is advised of the
7 substance of the statement, time and place it was
8 allegedly made. A person to whom it was made is given the
9 opportunity to explain or deny the statement. If a
10 witness is not admitted that he has made the prior
11 inconsistent statement, extrinsic evidence of such
12 statement is admissible. Well, that's what we have here.
13 He can't remember saying it. I mean, so, you know, it's a
14 functional equivalent of exactly the rule. He -- I asked
15 him do you remember saying a large portion of this video.
16 So I don't think -- again, under the doctrine of
17 completeness, I don't think I should have to piecemeal
18 this evidence when he's saying -- when I walked him
19 through, you know, the first good bit of this and he's
20 saying I don't remember large portions of what I said in
21 that interview.

22 THE COURT: All right. Anything else?

23 MR. JOYNER: Judge, again, it's only the witness
24 does not admit that that he has said it. I think he has
25 admitted he said it. I'm not saying I didn't say it. I

1 just don't specifically recall it. It's not in denial.
2 You know, that video I think it's about what 30 minutes or
3 so. I mean, there's copious amounts of hearsay from the
4 interviewer in that video as well. And, Judge, I think,
5 you know, just because if he were saying I don't
6 specifically recall a large portion of it doesn't give the
7 State the authority to play the video certainly not in its
8 entirety.

9 THE COURT: All right. I'm going to stand down
10 for just a minute. Mr. Yarborough, I'm going to let you
11 step down while I take a short break. Do not discuss the
12 case at all. Do not discuss your testimony at all. And
13 when I come back in here, I'll have you come back up here
14 before I move any further, okay.

15 THE WITNESS: Yes, sir.

16 THE COURT: Stand down for just a minute.

17 (WHEREUPON, a break was taken.)

18 THE COURT: All right. Mr. Yarborough, you can
19 come back on up here please, sir. All right. Anything,
20 further by way of argument from the State at this point?

21 MR. WHITE: No, sir, Judge.

22 THE COURT: Defense counsel.

23 MR. SWILLEY: Not at this time, Judge.

24 THE COURT: All right. Based upon the testimony
25 that's been elicited from the stand at this juncture

1 looking at Rule 613 subsection B, at this juncture the
2 witness has not explicitly denied making those statements.
3 His testimony has been that he does not recall. And he
4 has not denied making those statements. He simply said
5 that he does not recall making those statements.
6 Therefore, I'm denying the State's request at this point
7 to play those recordings based upon his answers to the
8 questions of this witness at this juncture. All right.

9 MR. WHITE: Yes, sir, Judge.

10 THE COURT: Anything else before I bring the
11 jury out?

12 MR. WHITE: No, sir, Judge.

13 MR. SWILLEY: No, Your Honor.

14 THE COURT: All right, bring me the jury please,
15 sir.

16 (WHEREUPON, the jury came into open court.)

17 THE COURT: All right. We have all the jurors
18 back in the courtroom. Mr. White, you may continue, sir.

19 MR. WHITE: Thank you, Judge.

20 BY MR. WHITE:

21 Q All right, Emerson, we'll keep going, okay. It's all
22 right with you. We think we left off you said you didn't
23 remember saying that Mason got really mad at Melia, is
24 that right?

25 A I don't remember that.

1 Q Don't remember. Do you remember saying she was
2 really scared?

3 A No, sir, I do not.

4 Q You don't remember that?

5 A I don't remember much from that time.

6 Q Okay. Do you remember saying that Mason was acting
7 really dumb?

8 A I do believe so.

9 Q You remember that. Do you remember telling Meg that
10 he wasn't himself when they got in an argument?

11 A I don't know.

12 Q You don't remember that. Do you remember telling Meg
13 that you heard him yelling through the door?

14 A Yes, sir, that's whenever I -- yes, sir, I do
15 remember that.

16 Q You remember that part. Do you remember telling her
17 that that's when you walked around back and said what's
18 happening?

19 A I don't recall.

20 Q You don't remember that. Do you remember telling Meg
21 that he was throwing stuff all around the shop for no
22 reason?

23 A I believe so.

24 Q Okay. So you remember saying that. Do you remember
25 doing that?

1 A Doing what?

2 Q Doing -- walking back there and seeing him throwing
3 stuff around the shop?

4 A Yes, sir.

5 Q Okay. You said that you weren't in the shop?

6 A I wasn't. I was outside the garage door.

7 Q Okay. But you saw him throwing stuff?

8 A Yes, sir.

9 Q Okay. Do you remember saying -- telling Meg that he
10 started hitting Melia?

11 A I don't remember.

12 Q You don't remember telling Meg Temple that your
13 brother started hitting Melia?

14 A I don't remember.

15 Q Do you remember telling Meg that she left and you
16 were just trying to talk to him?

17 A Yes, sir.

18 Q You remember that?

19 A Yes, sir.

20 Q Okay. Do you remember saying that y'all called your
21 mom?

22 A Yes, sir.

23 Q Okay. Do you remember saying that your brother and
24 your mom got in a big argument on the phone?

25 A I don't. I don't.

1 Q You don't remember saying that?

2 A No, sir.

3 Q Do you remember saying that Melia called your dad to
4 come out there to check on you to make sure you were okay?

5 A I believe so.

6 Q And you remember that happening that night too? Do
7 you remember saying it?

8 A I remember saying it, but, yeah, I remember.

9 Q Okay. Do you remember telling Meg, Ms. Temple, that
10 your dad just -- or your brother just grabbed the gun,
11 pointed it and shot him?

12 A I do not remember.

13 Q You don't remember saying that. Do you deny saying
14 it?

15 A No, sir. I don't deny it. I just ---

16 Q Just don't remember it.

17 A I don't remember.

18 Q Okay. You remember saying that your brother walked
19 over his body and said how you like that dad?

20 A I remember saying that, yes, sir.

21 Q You remember saying you ran inside to help your
22 younger brother?

23 A Yes, sir.

24 Q You remember doing that?

25 A Yes, sir.

1 Q Okay. You remember getting your dog and going in
2 there and trying to protect your younger brother?

3 A Yes, sir.

4 Q Do you remember calling your mom and telling her not
5 to come there until law enforcement arrived?

6 A I told her do not show up at the house.

7 Q Okay. Do you remember telling her or telling Meg
8 that you did that because you didn't want Mason to hurt
9 her?

10 A I remember saying it, yes, sir.

11 Q Okay. You remember telling Meg at the time all this
12 happened that your dad, Roger and Corbin were all in the
13 house asleep?

14 A Yes, sir.

15 Q Okay. Do you remember telling Meg that your dad
16 texted your brother and said you need to come in for y'all
17 to finish up the pool game and you need to come inside and
18 go to sleep?

19 A I don't remember.

20 Q You don't remember that?

21 A No, sir.

22 Q Do you remember that's when you said Melia and Mason
23 got into a really big argument?

24 A I do not remember.

25 Q Okay. Do you remember telling Ms. Temple that he was

1 throwing stuff? Mason was throwing stuff all over the
2 shop inside the office?

3 A Inside the office, yes, sir.

4 Q So you do remember that?

5 A Yes, sir.

6 Q You remember seeing that?

7 A Yes, sir.

8 Q Okay. But you just testified that you weren't inside
9 the shop?

10 A I was outside the garage door, it was rolled up.

11 Q Okay. So you were outside the garage door, but you
12 remember telling Meg that you were inside and you remember
13 being inside?

14 A I had walked out, and then when I got back to the
15 garage door I seen him.

16 Q Okay. Do you remember telling Meg that Melia was
17 crying?

18 A I don't remember.

19 Q Okay. Do you remember telling Meg that you saw Mason
20 hit her?

21 A I don't remember.

22 Q Do you remember telling Meg that's when Mason went
23 and grabbed the guns?

24 A I don't remember.

25 Q I mean, do you remember him grabbing guns?

1 A I mean, not right off top of my head, no.

2 Q All right. So that doesn't jump out to you when he
3 went and grabbed the guns?

4 A No, sir.

5 Q So you don't remember that happening and you don't
6 remember telling Meg about it?

7 A I just do not remember telling her anything.

8 Q Do you remember telling Meg that when Melia tried to
9 call her mom that Mason said who you calling, who you
10 calling, and got on top of her and said who you calling
11 and held her down and took her phone. Do you remember
12 telling Meg that?

13 A Yes, sir.

14 Q Okay. But you don't know that actually happening?

15 A I do, but I don't remember any -- like any hitting.

16 Q So you do remember him holding her down and taking
17 her phone and screaming at her who you calling?

18 A To an extent, yes, sir.

19 Q Okay. So you were inside the house or the little
20 room?

21 A After he got down throwing stuff, I walked in.

22 Q Okay. So you saw him assaulting her?

23 A I don't remember him ever hitting her.

24 Q Okay.

25 A I do not remember.

1 Q Okay. Do you remember saying that you saw he was on
2 top of her and holding her down?

3 A Yes, sir.

4 Q Okay. Do you remember telling Meg that he went and
5 got the revolver and you said he was just acting psycho?

6 A I remember saying it.

7 Q You remember saying that. Do you remember him acting
8 that way?

9 A I remember him acting different, yes, sir.

10 Q Okay. Was he angry?

11 A At that time, yes, sir.

12 Q Okay. You told Meg and I think law enforcement that
13 he wasn't acting normal. He was just really mad?

14 A I do believe so.

15 Q Okay. You remember telling Meg that he went and got
16 the .22 revolver I think we saw a picture of it?

17 A Say that again please?

18 Q Yeah, that's no problem. You told Ms. Temple that in
19 that interview that he went and got a .22 revolver while
20 he and Melia were arguing, he went got a .22 pistol. Do
21 you remember telling her that?

22 A Not right off.

23 Q Okay. Do you remember him doing it?

24 A No. No, sir.

25 Q Okay. You admit ---

1 A Not saying -- I mean, I might have, but I just that
2 night was such a blur for me.

3 Q I got you. But you do admit that you told Ms.
4 Temple that?

5 A I didn't say that. I do not remember.

6 Q Okay. So everything you remember you're saying you
7 deny saying it or you don't remember saying it?

8 A Say that again?

9 Q Do you deny saying these things or are you don't
10 remember saying these things?

11 A Whenever I say I do not remember, I do not remember
12 telling her or I don't remember saying it. Not saying I
13 haven't or it didn't happen. I'm just saying I can't go
14 back and think.

15 Q Well, let me ask you this. You know, I've got it on
16 my computer there. If I played it for you, would it
17 refresh your recollection?

18 A I mean ---

19 MR. JOYNER: Objection.

20 THE COURT: Sustained.

21 BY MR. WHITE:

22 Q Do you remember telling Meg that he grabbed the
23 pistol he said I'll show you and threw the pistol on the
24 pool table?

25 A Not right off.

1 Q You don't remember saying that?

2 A I do not remember.

3 Q Okay. You don't remember that happening?

4 A Not right off, no, sir.

5 Q Because you would agree these are very specific
6 details that you told Meg would you agree to that?

7 A I mean, yeah.

8 Q And most of it matches what Melia said would you
9 agree to that?

10 A I don't know.

11 MR. JOYNER: Objection.

12 THE COURT: I sustain the objection.

13 BY MR. WHITE:

14 Q And then you told Meg that she got up and ran out and
15 you were in there by yourself. Do you remember saying
16 that?

17 A Yes, sir.

18 Q Okay. You remember saying that. And you said that
19 Mason said he won't do anything, but you didn't trust him.
20 Do you remember telling her that?

21 A I don't know.

22 Q You don't remember that?

23 A No, sir, not right off.

24 Q Okay. Do you remember telling Ms. Temple that you
25 tried to run out and he slung some cabinet down and you

1 couldn't get out?

2 A No, sir.

3 Q You don't remember saying that. Do you remember him
4 saying that he just had to bury his friend because he
5 committed suicide?

6 A He was upset, yes, sir.

7 Q So you do remember that?

8 A Yes, sir.

9 Q So that happen?

10 A Yes, sir.

11 Q Okay. But that happened inside, right?

12 A What you mean?

13 Q Well, you don't remember saying all the stuff that
14 happened inside of the game room, is that right?

15 A I don't remember.

16 Q Okay. But were you inside the game room or were you
17 outside the game room?

18 A When what?

19 Q When that comment was made?

20 A Can you say that?

21 Q You told Meg that he was upset and he was not acting
22 like himself and that he had just said he had to bury one
23 of his friends?

24 A And what are you asking me?

25 Q When that comment was made, you admitted to hearing

1 that comment was it inside the game room or outside the
2 game room?

3 A He was outside of the game room or the office
4 whatever.

5 Q Okay.

6 A And I was -- I want to say I was in the doorway.

7 Q Okay. But you heard that?

8 A Yes, sir.

9 Q You told Meg that he was just screaming?

10 A I do not remember.

11 Q Do you remember telling her that he went to the
12 refrigerator and just started slamming the door over and
13 over?

14 A I do not remember.

15 Q You don't remember that. You don't remember telling
16 her that or don't remember it happening?

17 A Both I just don't remember.

18 Q Do you remember saying he went back into the office
19 and he started to calm down, but then he got on the phone
20 with your mom and then he got riled back up again?

21 A To an extent, yes, sir.

22 Q You do remember that?

23 A Him getting on the phone.

24 Q And you agree that happen inside the house?

25 A He came back.

1 Q Okay. So you heard him on the phone with your mom?

2 A I was next to him.

3 Q Okay. So right beside him then?

4 A Yes, sir.

5 Q Okay. And then did you recall telling Meg that he
6 called her the B word B-I-T-C-H?

7 A I believe so.

8 Q Do you remember saying or do you remember him telling
9 her that or do you remember it happening?

10 A Yes, sir.

11 Q You do remember that part?

12 A Yes, sir.

13 Q Do you remember telling Meg that he said you need to
14 stop getting into my business?

15 A I do not remember.

16 Q You don't remember that. Do you remember telling Meg
17 that he was cussing her out?

18 A I don't remember.

19 Q Okay. And you remember at that time once he got off
20 the phone with her that's when he went and got the other
21 gun?

22 A I don't remember.

23 Q You don't remember that. Do you remember telling Meg
24 it was a riffle type thing?

25 A I do remember saying that.

1 Q You do remember telling her that. Do you remember it
2 happening?

3 A I do not, it's so hard to go back.

4 Q But you remember telling her that, but do you
5 remember it happening?

6 A Him getting it?

7 Q Yeah.

8 A I mean, I don't believe so if I said that, yes, sir.

9 Q Okay. Well, I mean, I'm not trying to confuse you?

10 A It's hard to go back.

11 Q I understand. And I know you're in a bad spot.

12 Listen, I get it. Do you remember telling Meg that he got
13 the gun and he chambered it.

14 A I do not remember.

15 Q Okay. You don't remember saying that. Do you
16 remember saying he racked it back?

17 A I do not remember.

18 Q Do you remember telling her that you said he sat it
19 on the table?

20 A I do not remember.

21 Q Do you remember telling her that you said please
22 don't hurt yourself?

23 A I do remember.

24 Q You do remember that?

25 A Yes, sir.

- 1 Q Okay. And that happened inside, right?
- 2 A Yes, sir. When I told him, yes, sir.
- 3 Q Okay. But you said you weren't on the inside?
- 4 A I told you I had walked back into the office.
- 5 Q So you just walking back and forth?
- 6 A No, sir, sitting down next to him.
- 7 Q Okay. I got you. You remember saying that he put
- 8 the futon against the door to kind of like block it?
- 9 A I don't remember saying that.
- 10 Q You don't remember saying that? But you don't deny
- 11 that you said it?
- 12 A I do not deny it, but I just do not remember.
- 13 Q Do you remember telling Meg that your dad came out
- 14 there and just said what's going on?
- 15 A I don't remember.
- 16 Q Okay. Do you remember saying Mason said I'll show
- 17 you?
- 18 A I do not remember.
- 19 Q Do you remember saying he pulled a gun?
- 20 A I do not remember.
- 21 Q Do you remember demonstrating it with your hands and
- 22 showed how he pointed the gun at your dad?
- 23 A I do not know.
- 24 Q Do you remember saying that he shot him?
- 25 A I don't remember.

1 Q You don't remember that. Do you remember telling Meg
2 that he said how do you like that dad and then he ran
3 away?

4 A I do remember saying that.

5 Q You do remember saying that?

6 A That, yes, sir.

7 Q Do you remember that happening?

8 A No, sir.

9 Q Okay. And then she asked you was that the last thing
10 your dad said. Do you remember when she asked you that?

11 A Not right off, no, sir.

12 Q Okay. Do you remember telling her that, no, that
13 wasn't the exact last thing that he said. The last thing
14 he said before he shot him your dad said woe, woe, woe,
15 woe. Do you remember telling Meg that?

16 A I do not recall. I can't.

17 Q Okay. Do you remember she asked you about what kind
18 of gun it was and you said it was a riffle a SKS?

19 A Yes, sir.

20 Q Okay. But you didn't see that?

21 A I didn't see what?

22 Q Well, you say you don't remember that happening the
23 night of, right, because you weren't in there?

24 A I was in there.

25 Q You were in there. When it happened?

- 1 A I told you I was sitting down, yes, sir.
- 2 Q Okay. You were in there when your father was shot?
- 3 A Yes, sir.
- 4 Q Okay. Do you remember meeting with me and my
- 5 investigator Roxane over there?
- 6 A Last week.
- 7 Q Yeah, a week ago you remember that?
- 8 A Yes, sir.
- 9 Q Remember telling us that you didn't see nothing. You
- 10 didn't hear nothing. You don't know nothing. You were
- 11 outside of the ---
- 12 A I don't remember saying I was outside.
- 13 Q Okay. Well, you said you didn't see nothing. You
- 14 didn't hear nothing. You don't know nothing?
- 15 A I said something along the lines of that, yes, sir.
- 16 Q Okay. And you didn't really want to talk to me, did
- 17 you?
- 18 A No, sir.
- 19 Q Okay. You talked to Matt though, haven't you?
- 20 A Yes, sir.
- 21 Q Okay. Matt, tells you when to come up to court,
- 22 doesn't he?
- 23 A I mean, I don't know how to answer that.
- 24 Q Okay. Well, Matt talks to your mom and your mom
- 25 brings you up to court, right?

1 A I don't know how to answer that.

2 Q Okay. You don't talk us. We don't call you up here,
3 right?

4 A I don't understand.

5 Q I'm really not trying to trick you at all. How many
6 times have you talked to Mr. Swilley?

7 A I mean, I don't know the number.

8 Q More than once?

9 A Yes, sir.

10 Q More than twice?

11 A Yes, sir.

12 Q More than three times?

13 A Yes, sir.

14 Q More than four times?

15 A I don't know.

16 Q Okay. But you'll talk to him as much as he wants,
17 but you don't want to talk to me about what you told law
18 enforcement and what you told Ms. Temple?

19 A Say it that again?

20 Q You'll talk to Matt as much as he wants, right? When
21 he calls, you go talk to him?

22 A I mean, yes, sir.

23 Q You talk about what you gone say here on the stand?

24 A No, sir.

25 Q Y'all just talk about like sports and stuff?

1 A No, sir.

2 Q Okay. And then, again, you tell like 30 minutes into
3 this interview, you tell Meg how you like that dad. And
4 that you watched it and it wasn't pleasing. Do you
5 remember telling her that?

6 A I remember saying it, but I do not remember watching
7 it.

8 Q You don't remember watching it happen?

9 A Yes, sir.

10 Q But you told her that you watched it happen?

11 A I know.

12 Q And you would admit that the things that you tell her
13 are very specific and they can only be known if you
14 actually watched it?

15 MR. JOYNER: Objection calls for speculation.

16 THE COURT: Overruled.

17 A No, sir.

18 Q You don't agree with that?

19 A I do not.

20 Q But you knew what he shot your dad with?

21 A Yes, sir.

22 Q But you didn't see it?

23 A I never said that.

24 Q Okay. You remember telling Meg that you called your
25 mom and you told her that Mason had just shot your dad?

1 A I was on the phone the whole time.

2 Q Okay. You remember telling Meg that you told her not
3 to come down there because you were afraid that Mason
4 might hurt your mother?

5 A I remember saying that.

6 Q You did say that?

7 A Yes, sir.

8 Q Okay. So you were afraid of Mason?

9 A No, sir.

10 Q You weren't afraid?

11 A No, sir.

12 Q But you were afraid that he might harm your mother?

13 A I just didn't want her to be over there.

14 Q Okay. I understand. Do you remember running to
15 your brother's side and keeping him safe?

16 A No, sir.

17 Q You don't remember running to Corbin little Corbin?

18 A Oh, yes, sir, I do remember that.

19 Q So you did run to Corbin?

20 A Yes, sir.

21 Q And you got him and you got your dog and you got in
22 your dad's bed, didn't you?

23 A Yes, sir.

24 Q You were doing that to keep him safe?

25 A Just comfort.

1 Q Trying to comfort him. Okay. And you remember
2 saying that Mason was running in and out the house and
3 yelling?

4 A I don't remember saying that.

5 Q Okay. All right. You really don't remember anything
6 except what you said to law enforcement or Ms. Meg, do
7 you?

8 A Never saying that I didn't say it, I just do not
9 recall.

10 Q Okay. So you don't remember what happened. You
11 don't remember saying what happened?

12 A To an extent.

13 Q Okay. And you've talked to Mr. Swilley several times
14 about that?

15 A Not -- say it again?

16 Q You talk to Mr. Swilley several times about coming up
17 here and testifying?

18 A I haven't talk to him.

19 Q Okay. Are y'all friends, are y'all buddies?

20 A I know him.

21 Q Okay. I mean, where would y'all meet?

22 A I mean, anywhere we could talk.

23 Q Okay. Where would those places be?

24 A His office.

25 Q Okay. His law office?

1 A I mean, I believe so. I don't know.

2 Q So you gone up there three or four times to just talk
3 about, you know, whatever's going on?

4 A I don't remember the exact number.

5 Q Okay. All right. Did your love your father?

6 A Yes, sir.

7 Q You love your brother? I know it's tough. You're in
8 an impossible situation young man. Emerson, I'm sorry to
9 even have to do this to you. I apologize. You ever need
10 anything you let me know. That's all I got for you, okay.

11 THE COURT: Cross-examination in just a second.
12 You need a break? Are you okay?

13 THE WITNESS: I should be good.

14 THE COURT: Okay, you let me know if you need a
15 break, okay. Mr. Joyner.

16 MR. JOYNER: Thank you, your Honor.

17 CROSS-EXAMINATION

18 BY MR. JOYNER:

19 Q Emerson, you loved your father very much?

20 A Yes, sir.

21 Q And you and your father, Chris, you guys had a very
22 good relationship, didn't you?

23 A Yes, sir.

24 Q Okay. And if somebody intentionally murdered your
25 father, what would you want to happen to that person?

1 A As much time as he could get.

2 Q You want him to go to prison as much time as
3 possible?

4 A Yes, sir.

5 Q Okay. Because they would have killed your father on
6 purpose?

7 A Yes, sir.

8 Q Okay. How long do you want your brother to go to
9 prison?

10 MR. WHITE: Objection. Objection.

11 THE COURT: Sustained.

12 BY MR. JOYNER:

13 Q Emerson, this accident happened in the garage?

14 A Yes, sir.

15 Q Okay. And that's where your brother, Mason, lived in
16 the garage?

17 A Yes, sir.

18 Q Now, there was a futon in the garage?

19 A Yes, sir.

20 Q And he -- that's where he slept at night?

21 A Yes, sir.

22 Q Okay. And your father lived in the house?

23 A Yes, sir.

24 Q And the house is approximately a hundred feet away?

25 A Give or take somewhere.

1 Q Okay. Emerson, I'm showing you what has been marked
2 as Defense Exhibit 1 can you recognize that?

3 A Yes, sir.

4 Q Would you please describe what it is?

5 A Overview of where I use to live and the distance from
6 the house to the shop to the garage.

7 Q And is that a fair and accurate depiction?

8 A Yes, sir.

9 MR. JOYNER: Judge, I would move that it be
10 entered into evidence at this time.

11 THE COURT: Defense Exhibit Number 1. Any
12 objection?

13 MR. WHITE: No, sir, Judge.

14 THE COURT: Without objection so admitted.

15 (WHEREUPON, Defendant's Exhibit No. 1 was
16 admitted into evidence.)

17 BY MR. JOYNER:

18 Q This accident happened a little bit after midnight on
19 October 30th?

20 A Yes, sir.

21 Q Okay. And that would have been very early Friday
22 morning?

23 A Yes, sir.

24 Q Okay. And you gave a statement later that day?

25 A Yes, sir.

1 Q Approximately 12 hours later you gave that statement?

2 A Yes, sir.

3 Q Okay. And is it accurate to say that you were upset
4 when you gave that statement?

5 A Yes, sir.

6 Q You were angry also?

7 A Yes, sir.

8 Q You were upset about the accident?

9 A Yes, sir.

10 Q And would you agree with me that you weren't in a
11 good mental state at that time?

12 MR. WHITE: Judge, the only thing I would object
13 to his characterization as an accident. This young man
14 says he didn't see anything. He doesn't know what
15 happened.

16 THE COURT: I'll sustain the objection rephrase
17 your question please, sir.

18 BY MR. JOYNER:

19 Q The incident you gave this statement approximately 12
20 hours after this incident?

21 A Yes, sir.

22 Q And you would agree that you were not in a good
23 mental state?

24 A I agree.

25 Q And you only had a couple hours of sleep?

1 A Yes, sir.

2 Q And it was a very traumatic event for you?

3 A Yes, sir.

4 Q And the anger that you felt caused you to say some
5 false things?

6 A Yes, sir.

7 Q Okay. And to be honest at the time you really wanted
8 to make your brother look as guilty as possible, didn't
9 you?

10 A Yes, sir.

11 Q You wanted to incriminate your brother as much as you
12 possibly could?

13 A Yes, sir.

14 Q Okay. Why did you do that?

15 A Because I just -- at the time, I mean, I just I don't
16 know I was very upset with everything that, you know, just
17 happened. I was very upset with him.

18 Q And you said that your brother earlier was acting
19 psycho?

20 A Yes, sir.

21 Q Okay. Now, but you don't remember him pointing a gun
22 at you?

23 A No, sir.

24 Q He wasn't acting psycho because you don't remember
25 him pointing a gun at Melia?

1 A I don't.

2 Q And you don't remember your brother ever hitting you?

3 A I don't.

4 Q Specifically, you don't remember your brother ever
5 specifically hitting Melia with a pool stick?

6 A I don't.

7 Q You don't remember your brother breaking a pool stick
8 over Melia's back?

9 A I don't.

10 Q You don't remember your brother ever choking Melia?

11 A I do not.

12 Q You don't remember your brother ever threatening to
13 kill you that night?

14 A Never. He never said that.

15 Q Okay. You don't remember your brother ever
16 threatening to kill Melia that night?

17 A I do not.

18 Q Okay. And even more, you don't remember your brother
19 ever threatening to kill Melia's grandma that night?

20 A I do not.

21 Q Okay. You don't remember every hearing any of those
22 things?

23 A I do not.

24 Q Okay. Now, in fact, after this incident
25 approximately six weeks later in December, your brother

1 had a court hearing?

2 A Yes, sir.

3 Q Okay. And Melia and Melia's grandmother attended
4 that court hearing?

5 A Yes, sir.

6 Q They attended it with you and your mother?

7 A Yes, sir.

8 Q And they attended it to be there in support of Mason?

9 MR. WHITE: Objection calls for speculation. He
10 doesn't know.

11 THE COURT: Sustained.

12 BY MR. JOYNER:

13 Q Did they ride with you to this hearing?

14 A Yes, sir.

15 Q And did Melia's grandmother speak at this hearing?

16 MR. WHITE: Objection calls for hearsay.

17 THE COURT: I'll allow the question. He hadn't
18 asked her what she said.

19 BY MR. JOYNER:

20 Q She did speak at this hearing?

21 A Yes, sir.

22 Q And she did speak on Mason's behalf?

23 A Yes, sir.

24 Q And this was in December?

25 A Yes, sir, I believe so.

1 Q And this was between six weeks and two months after
2 this incident occurred?

3 A Yes, sir.

4 Q Okay. Now, you don't remember Mason ever kidnapping
5 you that night?

6 A I do not.

7 Q You don't remember him ever kidnapping Melia that
8 night?

9 A I do not.

10 Q He didn't barricade the room that night?

11 A He did not.

12 Q You don't remember him holding you or Melia hostage?

13 A I do not.

14 Q In fact, Melia got mad and wanted to leave?

15 A Yes, sir.

16 Q And Melia did leave?

17 A Yes, sir.

18 Q You don't remember Mason forcing her to stay and
19 never letting her leave?

20 A I do not.

21 Q Now, there was some talk earlier about Mason being in
22 a sad state because of a friend passing away. Now, the
23 date that this incident occurred just a few short days
24 earlier Mason a had friend that died?

25 A Yes, sir.

1 Q And you remember an incident with his friend passing
2 away?

3 A Yes, sir.

4 Q His friend committed suicide?

5 A Yes, sir.

6 Q And it was a terrible time for Mason?

7 A Yes, sir.

8 Q It hurt him deeply. In fact, he went to the funeral?

9 A Yes, sir.

10 Q Okay. But would you describe the time around there
11 was Mason grieving like you would normally grieve when a
12 person you loved had passed?

13 MR. WHITE: Calls for speculation.

14 THE COURT: I'll allow that.

15 A Yes, sir.

16 Q Based on your appearance was it normal grieving?

17 A Yes, sir.

18 Q Okay. Now, the night in question you do not remember
19 Mason ever threatening to kill anyone that night?

20 A I do not.

21 Q You don't remember him ever threatening to kill you?

22 A I do not.

23 Q You don't remember him ever threatening to kill
24 Melia?

25 A I do not.

1 Q You don't remember him ever once saying I'm going to
2 get a gun and run into that house and kill Corbin?

3 A He never said that.

4 Q You don't remember him ever saying I'm going to run
5 into that house and kill Uncle Roger?

6 A I do not.

7 Q You don't remember him ever saying I'm going to go
8 into this house and kill my dad Chris Yarborough?

9 A I do not.

10 Q You don't remember him saying any of those things?

11 A I don't.

12 Q Okay. In fact, based on your knowledge of Mason and
13 your father, Mason loved your father very much?

14 A Yes, sir.

15 Q He wanted to be like his dad?

16 A Yes, sir.

17 Q Now, you will admit that you made a prior statement
18 that your father use to beat on Mason a lot?

19 A Yes, sir.

20 Q And -- but Mason still loved him any way?

21 A Yes, sir.

22 Q Okay. And he loved you?

23 A Yes, sir.

24 Q And he protected you?

25 A Yes, sir.

1 Q Okay. Your mother and your father your married 16
2 years and then they got a divorce, is that correct?

3 A Yes, sir.

4 Q And your mother had primary custody?

5 A Yes, sir, I believe so.

6 Q And you would visit on the weekends with your father?

7 A Yes, sir.

8 Q Okay. Now, when Mason turned 18, he wanted to be
9 close to your father?

10 A Yes, sir.

11 Q He immediately moved out from living with your mother
12 to living with your father?

13 A Yes, sir.

14 Q To be near him?

15 A Yes, sir.

16 Q And your father he was in the military?

17 A Yes, sir.

18 Q And Mason joined the military also?

19 A Yes, sir.

20 Q Your father worked as an electrician?

21 A Yes, sir.

22 Q Mason wanted to pick up that trade also?

23 A Yes, sir.

24 Q Your father enjoyed working on cars?

25 A Yes, sir.

1 Q Mason liked to work on cars?

2 A Yes, sir.

3 Q Had hunting was another thing they had in common?

4 A Yes, sir.

5 Q So keeping those ideas in mind, you never remember
6 your brother saying I want to kill dad?

7 A I don't.

8 Q Dad's going to get what he deserved for beating me
9 all these years?

10 A I don't.

11 Q He never said I want dad dead?

12 A Never.

13 Q Okay. Because in fact based on what you knew of
14 their relationship, he loved his father?

15 A Yes, sir.

16 Q Now, you mentioned earlier that you were on the phone
17 with your mother when this incident occurred?

18 A Yes, sir.

19 Q And Melia was not present at the time that this
20 incident occurred?

21 A She was not.

22 Q In fact, she had left over 15 minutes but prior to
23 that?

24 A Yes, sir, give or take.

25 Q Okay. And Mason was upset because she left?

- 1 A Yes, sir.
- 2 Q He loved her?
- 3 A Yes, sir.
- 4 Q He didn't want her to leave?
- 5 A He did not.
- 6 Q But she left?
- 7 A Yes, sir.
- 8 Q And after she left, you and he were there together?
- 9 A Yes, sir.
- 10 Q And you were able to sort of massage his feelings a
11 little bit and calm him down?
- 12 A Yes, sir.
- 13 Q Okay. And but right before or excuse me -- or right
14 after Melia left you called your mother ---
- 15 A Yes, sir.
- 16 Q --- on the phone and you gave the phone to your
17 brother?
- 18 A Yes, sir.
- 19 Q And what did he say?
- 20 A He was talking to her. He said something along the
21 lines of I believe I'm good me and Emerson sitting here
22 talking something along the lines of that.
- 23 Q And originally he asked his mother to come pick him
24 up?
- 25 A Yes, sir.

1 Q He didn't want to be there alone?

2 A He did not.

3 Q Okay. And so you guys hung up the phone with your
4 mother because she was going to come pick you up -- she
5 was going to come pick Mason up?

6 A Yes, sir.

7 Q In the meantime, you and Mason talked and he calm
8 down?

9 A Yes, sir.

10 Q And because he was calm, you called your mother back?

11 A Yes, sir.

12 Q And you said, mama, don't worry about it. I got
13 Bubba calm down?

14 A Yes, sir.

15 Q And you refer to Mason as Bubba as well. You said,
16 mama, I got Bubba calm down. Don't worry about anything.
17 Everything is fine?

18 A Yes, sir.

19 Q Okay. And because everything was fine there wasn't
20 any tension in the air, was there?

21 A There wasn't.

22 Q Everything was relaxed and cool now?

23 A Yes, sir.

24 Q Because it was just the two of you guys there?

25 A Yes, sir.

1 Q And I want to describe it like this because I think
2 this is important. Prior just prior to this incident
3 while you were on phone with your mother, it wasn't like
4 your spidey senses were up because you were anticipating
5 something to happen?

6 A I was calm. I was on the phone with my mom talking.

7 Q Okay. And as it goes to Melia had been with your
8 brother for a couple years?

9 A Yes, sir.

10 Q Okay. And she had spent a lot of time around your
11 family?

12 A Yes, sir.

13 Q Okay. And she had been there to witness Mason and
14 his father's relationship?

15 A Yes, sir.

16 Q And she knew he was afraid of his dad, didn't she?

17 MR. WHITE: Objection.

18 THE COURT: Sustained.

19 BY MR. JOYNER:

20 Q Okay. Now, you were sitting on the futon and you
21 were talking to your mother?

22 A Yes, sir.

23 Q Everything was calm weren't really -- your spidey
24 senses wasn't going off. You weren't really paying
25 attention to anything. And when the incident happened,

1 your father was in a different room than the room where
2 you were sitting on the futon, correct?

3 A Yes, sir.

4 Q Okay. And the futon sits low to the ground?

5 A Yes, sir.

6 Q In fact, there's a photo I believe in evidence. And
7 in between the futon and the pool table or excuse me -- in
8 between the futon and the door that goes into the other
9 room where your father was, there is a pool table?

10 A Yes, sir.

11 Q And the pool table sits in between the futon and that
12 other room?

13 A Yes, sir.

14 Q So I know you said you don't remember, but even if
15 you had been looking, there would have been a pool table
16 blocking your view?

17 A Yes, sir.

18 Q At some point while you are on the phone -- again,
19 you're really paying attention to what's happened
20 something startled you?

21 A Yes, sir.

22 Q And do you remember what it was?

23 A No, sir, not really.

24 Q Okay. But something certainly startled you to the
25 point that you immediately exited the building?

1 A Yes, sir.

2 Q Okay. Now, where you were sitting on the futon the
3 door that you exited was right beside you?

4 A Behind me, yes, sir.

5 Q Was right behind you. The futon was pushed up
6 against the door?

7 A Yes, sir.

8 Q It was pushed up against the door because the room
9 was so small and the pool table took up a lot of space.
10 The futon is not pushed up against the door to barricade
11 the door nothing at all like that?

12 A It wasn't there for that.

13 Q Okay. You remember something startled you and you
14 immediately slid the futon back and open the door and ran
15 out?

16 A Yes, sir.

17 Q I mean, how long would that have taken you from the
18 moment that whatever it was that startled you?

19 A I would say five to six seconds I got up, pulled it
20 around.

21 Q Okay. And during that time that you were startled
22 and immediately exited the building, you never hung up
23 with your mother?

24 A I didn't.

25 Q Okay. In fact, you stayed on the phone with her the

1 entire time?

2 A Yes, sir.

3 Q Okay. Now, you told the Solicitor earlier how about
4 that dad that Mason said that?

5 A Yes, sir.

6 Q And apparently you said that to -- in an interview.
7 And you don't deny saying that?

8 A I do not.

9 Q Okay. But the truth is you didn't hear that?

10 A I didn't.

11 Q You said heard it, but you didn't hear it?

12 A I did not.

13 Q You couldn't have heard it because you were not in
14 the same building?

15 A That's correct.

16 Q And in fact after you exited, there was two rooms
17 over where your father was?

18 A Yes, sir.

19 Q Okay. So you do not ever remember hearing that?

20 A I do not.

21 MR. JOYNER: Judge, beg the Court's indulgence
22 one of the State's Exhibits I want to show.

23 THE COURT: Yes, sir.

24 (WHEREUPON, a pause in the proceedings.)

25

1 BY MR. JOYNER:

2 Q Emerson, I want to show you what's already entered
3 into evidence as State's Exhibit 45. Do you recognize
4 that?

5 A Yes, sir.

6 Q Please describe what that is?

7 A Why they are there?

8 Q No, what is it?

9 A My dad's car with his gun in it.

10 Q Okay. Now, whose guns are those?

11 A Two are his and one is mine.

12 Q Okay. Now, again, these are your father's guns?

13 A Yes, sir.

14 Q One is yours?

15 A Yes, sir.

16 Q Why are they in that car?

17 A Because whenever my brother moved out into the
18 office, he didn't want them laying around and nobody knew
19 the safe code, so he just put them in the car out of the
20 way.

21 MR. WHITE: Judge, may we approach?

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury, but out of the hearing of the
24 jury on the record.)

25 MR. WHITE: What this is and where is this taken

1 and what relevance that is?

2 MR. JOYNER: Your Honor, Uncle Roger testified
3 yesterday that dad always kept his guns locked away safely
4 in a safe. That is a photo from 2017 that Emerson took.
5 And that was just a normal occurrence that there's eight
6 guns in that photo where they would be sitting out in the
7 open often. I think we're allowed to offer that as
8 rebuttal evidence to impeach what Uncle Roger said. And
9 it is direct information because he's the one that in fact
10 took that photo.

11 MR. WHITE: He testified whether or not he knew
12 they kept the guns up, but he can't authenticate that
13 picture.

14 MR. JOYNER: Well, we sure can because he took
15 the picture.

16 THE COURT: Well, if he can authenticate it.

17 (WHEREUPON, a bench conference was held in the
18 presence of the jury, but out of the hearing of the
19 jury has ended on the record.)

20 BY MR. JOYNER:

21 Q Emerson, I am showing you what has been marked as
22 Defense Exhibit 2. Do you recognize that picture?

23 A Yes, sir.

24 Q In fact, you took that picture?
25

1 A Yes, sir.

2 Q And what does that picture describe?

3 A It just shows there were guns everywhere laying
4 around the house, the shop.

5 Q And now I know that picture was taken some years ago.
6 When was that photo taken?

7 A 2017.

8 Q Okay. And is that just a fair and accurate depiction
9 of the time?

10 A Yes, sir.

11 Q Okay.

12 MR. JOYNER: Judge, I would move that Defense
13 Exhibit 2 be entered into evidence at this time.

14 THE COURT: Any objection?

15 MR. WHITE: No, sir, Judge.

16 THE COURT: Without objection so admitted.

17 (WHEREUPON, Defendant's Exhibit No. 2 was
18 admitted into evidence.)

19 BY MR. JOYNER:

20 Q It was normal for your father to have guns laying
21 around basically every where, wasn't it?

22 A Yes, sir.

23 Q Like he has here?

24 A Yes, sir.

25 Q Because there's eight guns in this picture in just

1 the one location?

2 A Yes, sir.

3 Q Your father would keep guns in a pantry, wouldn't he?

4 A Yes, sir.

5 Q He would keep guns in cabinets?

6 A Yes, sir.

7 Q In fact, he would often keep guns between the
8 cushions of the couches and chairs also, wouldn't he?

9 A Yes, sir.

10 Q He would often answer the door with a gun behind his
11 back, wouldn't he like this?

12 A Yes, sir.

13 Q You saw that numerous times?

14 A Yes, sir.

15 Q Okay. Those are all things that your father would
16 do?

17 A Yes, sir.

18 MR. JOYNER: Beg the Court's indulgence one
19 moment.

20 THE COURT: Yes, sir.

21 BY MR. JOYNER:

22 Q Emerson, you have in fact spoke with me and
23 Mr. Swilley prior to this case, haven't you?

24 A Yes, sir.

25 Q And you have told the truth here today on the stand?

- 1 A Yes, sir.
- 2 Q You're under oath and you have not lied today?
- 3 A I have not.
- 4 Q Did I ever try to get you to lie?
- 5 A No, sir.
- 6 Q Mr. Swilley is sitting at the table. Did he ever try
- 7 to get you to lie?
- 8 A No, he has not.
- 9 Q Did your brother, Mason, ever try to get you to lie?
- 10 A No, he has not.
- 11 Q What about your mom did she try to get you to lie?
- 12 A No, sir.
- 13 Q Okay. But somebody tried to get you to change your
- 14 story, didn't they?
- 15 A Yes, sir.
- 16 Q Somebody intimidated you, didn't they?
- 17 A Yes, sir.
- 18 Q Scared you?
- 19 A Yes, sir.
- 20 Q They threatened you?
- 21 A Yes, sir.
- 22 Q Who did that?
- 23 A Ryan White.
- 24 Q Solicitor White?
- 25 A Yes, sir.

1 Q When did he do that?

2 A I don't know an exact time, but I would say like last
3 week I believe.

4 Q Where were you when he did this?

5 A In like a conference room in this Solicitor's office.

6 Q Was it Solicitor White that said you could go to jail
7 if you don't tell the right story?

8 A Yes, sir.

9 Q Said he get you charged with perjury if you didn't
10 tell the right story?

11 A Yes, sir.

12 Q It was Solicitor White that told you that you would
13 never be able to put your head down if you didn't tell the
14 right story?

15 A Something along the lines of that, yes, sir.

16 Q You didn't tell the story he wanted you to tell?

17 A Yes, sir.

18 Q And it was Solicitor White that did all those things?

19 A Yes, sir.

20 Q Okay.

21 MR. JOYNER: No further questions, Judge.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. WHITE:

25 Q These defense attorneys got you trained up good, Son.

1 You met with these individuals several times, right?

2 A Yes, sir.

3 Q And they've gone over your testimony, right?

4 A I guess, if that's what it is.

5 Q Okay. I mean, you went over with these two
6 individuals on several occasions about what you were going
7 to say here on the stand?

8 A We talked but nothing.

9 Q Okay. They showed you this picture, didn't they?

10 A I know the picture.

11 Q So you knew ---

12 THE COURT: What picture is that, Mr. White?

13 MR. WHITE: I'm sorry, Judge, that's
14 Defendant's Exhibit 1.

15 THE COURT: Thank you. I'm sorry.

16 BY THE COURT:

17 Q You knew that they were going to show you this
18 picture on the stand, right?

19 A I mean, I believe so, yes, sir.

20 Q Okay. Because they were preparing you for your
21 testimony, right?

22 A They had talked about it.

23 Q Okay, they talked about what you were going to say in
24 court?

25 A They were just running me through it how it was going

1 to work. I mean, I don't understand. It's my first time
2 ever.

3 Q Okay. And, you know, I wanted you to come up and
4 meet with me and Roxane, didn't I?

5 A Yes, sir.

6 Q Okay. And you're saying I intimidated you?

7 A You did.

8 Q Okay. When I asked you about what's your spring
9 break plans, that was intimidating?

10 A Not that part.

11 Q When I said, I hope you have a good time on spring
12 break that was intimidating you?

13 A No, sir.

14 Q When I said young man, all I want you to do is get up
15 there and tell the truth, but I want to know what your
16 story is today. That was intimidating you?

17 A You wanted me to say the same lies that I said in the
18 video.

19 Q Did you tell me anything in that interview at all?

20 A When I was in the conference room?

21 Q Yeah. Did you tell me anything?

22 A Here and there I did.

23 Q You told me that you didn't know nothing. You didn't
24 hear nothing. You didn't see nothing, right?

25 A I mean, I was talking.

1 Q Okay. And I did remind you what perjury was. I
2 wanted you to understand that, right?

3 A You kept telling me something along those lines of if
4 I lie under oath or something like that.

5 Q Okay, that's the truth. I mean, that's real. I
6 wasn't trying to intimidate you, right, just telling you
7 the truth?

8 A It just felt like you were trying to get me to switch
9 my story up.

10 Q Okay. Well, what it feels like and what it is is two
11 different things, isn't that right?

12 A Yes, sir.

13 MR. JOYNER: Judge, objection.

14 THE COURT: Overruled.

15 BY MR. WHITE:

16 Q Is that right?

17 A Yes, sir.

18 Q Okay. You told Mr. Joyner who, you know, helped you
19 rehearse your statement. You told him that in that
20 original statement you were upset, you were angry, you
21 were mad, right?

22 A I did say that.

23 Q So all that would come across in that statement,
24 right?

25 A I mean, I was upset.

1 Q You were angry is what he said?

2 A I was.

3 Q You were mad, right?

4 A Yes, sir.

5 Q Okay.

6 MR. WHITE: Beg the Court's indulgence. Thank
7 you young man. I appreciate you telling the truth up
8 here, okay.

9 THE WITNESS: You welcome.

10 THE COURT: Anything else, Mr. Joyner?

11 MR. JOYNER: Nothing, your Honor.

12 THE COURT: Sir, you may step down. Thank you.

13 (WHEREUPON, the witness leaves the witness
14 stand.)

15 THE COURT: Can the lawyers approach please?

16 (WHEREUPON, a bench conference was held in the
17 presence of the jury, but out of the hearing of the
18 jury.)

19 THE COURT: All right. Ladies and gentlemen,
20 it's almost noon. I'm trying figure out who the next
21 witness may be and how long that witness may be, okay.
22 What I'm going to do is I'm going to do go ahead and let
23 you go to lunch. I'm going to ask you to be back here at
24 1:30. Do not discuss the case at all. We'll resume as
25 promptly at that time as possible. You all have a nice

1 lunch. I'll see you back at 1:30.

2 (WHEREUPON, the jury is excused for a lunch
3 break.)

4 THE COURT: Yes, sir, Mr. White.

5 MR. WHITE: Judge, I think at this point I
6 understand 613. I'm fully aware of 613, but I want to
7 point the Court to 608 and specifically State vs.
8 Brewington. Judge, I think that how this is
9 differentiated the kid's statement how this is separate
10 and apart from 613 in this case is specifically because he
11 says that his motive to lie was he was angry, he was
12 upset. Mr. Joyner brought that up several times
13 throughout his cross-examination. He brought up his
14 mental state. Judge, I think because of that the
15 statement can be offered and provided that I can lay the
16 proper foundation to be moved into evidence to show bias,
17 motive to lie.

18 And I've mentioned it in pretrial. I want to
19 quote it again State vs. Brewington, Judge. Since, it is
20 the function of the jury to determine the credibility of
21 witnesses and the weight to be given their testimony. As
22 a general rule, anything having a legitimate tendency to
23 throw light on the accuracy, truthfulness and sincerity of
24 a witness may be shown and considered in determining the
25 credit to be according to his testimony. And his demeanor

1 when he's given that statement is anything but upset,
2 angry or some ---

3 THE COURT: Is it a video statement?

4 MR. WHITE: Yes, sir, Judge.

5 THE COURT: Okay.

6 MR. WHITE: And I think that the jury according
7 to 608(c) and under State v. Brewington should be allowed
8 to assess his demeanor at the time. I think they called
9 into question and quite frankly I think they've opened the
10 door to it. So provided that I can put Meg Temple on the
11 stand and lay the foundation, proper foundation for this
12 statement, I think the State should be allowed to publish
13 it.

14 THE COURT: All right.

15 MR. SWILLEY: Judge, I think he misconstrues the
16 context your Honor. He testified that he was mad at his
17 brother and that's why he made the statement. I believe
18 that's what the young man testified to. It wasn't made in
19 anger. He never said that. He said he made it -- he said
20 he simply said something that wasn't true because he was
21 mad at his brother. And I believe he said he blamed his
22 brother for his father's death. You know, 608(c) says
23 bias or prejudice or any motive to misrepresent, showing
24 that video is not going to show any bias or prejudice or
25 motive to misrepresent. It's just a prior -- it's just

1 receive a statement. That he hasn't denied at any time.

2 THE COURT: Well, the Court would disagree with
3 you on that because his testimony just now was that
4 Mr. White wanted him to tell the same lies. Up until
5 then, he had said I don't remember. I don't remember. I
6 don't remember. But his testimony just then was is that
7 Mr. White through you alls questioning on
8 cross-examination was that Mr. White wanted him to tell
9 the same lies as in that video, that was his statement.
10 That was directly what he said from the witness stand. Up
11 until then, it was I don't remember. I don't remember. I
12 don't remember. And then he agree on one thing, and he'd
13 agree on another thing. And he agree on another. And
14 then it was I don't remember. I don't remember. I don't
15 remember. Up until just a minute ago, when he said
16 exactly what I just said because I wrote it down verbatim.
17 That Mr. White wanted me to tell the same lies as in the
18 video. He never said they were lies before. And I think
19 you certainly got an issue there based upon that testimony
20 at that point. So I'm going to take a look at it. Anyway
21 I'll take a look at it and I'll et you know.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: All right. When we broke, the State
24 had made a motion to at some point play the video
25 interviews of the witness Mr. Emerson Yarborough -- hold

1 on just a second. The State had moved based upon Emerson
2 Yarborough's testimony to have permission to play the
3 video statements of Mr. Yarborough that were given I think
4 on -- is it the 29th and the 30th, Mr. White?

5 MR. WHITE: Yes, sir, or I think it was actually
6 both on the 30th. First was on the 30th just after
7 midnight and then later on.

8 THE COURT: The incident occurred on the 29th
9 and the statement was given on the 30th, correct?

10 MR. WHITE: Yes, sir.

11 THE COURT: All right. During Mr. Yarborough's
12 testimony on direct examination, his testimony concerning
13 those statements were consistent in that he did not
14 remember a number of things that witness never said that's
15 not true or gave contrary testimony to what those
16 statements were. During cross-examination and redirect,
17 Mr. Yarborough testified that anger caused him to say
18 false things. He also testified that he wanted to make
19 his brother look as guilty as possible because at the time
20 he was very upset about everything that had happened. He
21 also testified that Mr. White wanted him to tell the same
22 lies as in the video.

23 Up until that point or before that testimony, I
24 do not believe that pursuant to the rules his testimony
25 was inconsistent which would allow extrinsic evidence to

1 be put before this jury under Rule 608(b). I will note
2 for the record under Rule 608(b) -- I'm sorry under
3 613(b). Extrinsic evidence of prior inconsistent
4 statement by a witness is not admissible unless the
5 witness one is advised of the substance of the statement
6 of which he was advised of such through direct
7 examination. He was further advised of the time and place
8 of those statements were made. He was advised as to whom
9 those statements were made to. He was given an
10 opportunity to explain or deny the statements. Once the
11 defendant testified that these statements were given out
12 of anger, being upset, and further that the State,
13 Mr. White, the State -- Mr. White on behalf of the State
14 wanted him to tell the same lies as in the video. At that
15 point of the anger, upset and Mr. White wanting him to
16 tell the same lies as in the videos, it's this court's
17 view that at that point, his testimony became inconsistent
18 with that which is in the video.

19 I believe it is within the jury's per view to
20 view the videos to determine whether those statements were
21 given out of anger, whether he was upset, mad, or what
22 have you. I further believe that it is within the jury's
23 per view to see the video statements for them to
24 determine, for them to determine whether Mr. Yarborough
25 was telling the truth when he gave those statements on

1 October the 30th, whether those statements were true or
2 whether what he testified to today during the course of
3 this trial were true. And I do believe that such
4 supported by case of State vs. Brewington 267 S.C. 97,
5 which stands for the proposition that it is the function
6 of the jury to determine credibility of witnesses and the
7 weight to be given to their testimony. As a general rule
8 anything and I emphasize anything, having a legitimate
9 tendency to throw light on the accuracy, truthfulness and
10 sincerity of a witness may be shown and considered in
11 determining the credit to be accorded a witness'
12 testimony. Therefore, the Court will allow such video
13 recording to be played subject to you alls defense
14 counsels' objection.

15 MR. WHITE: Thank you, Judge.

16 MR. JOYNER: Judge, if I may, there's no element
17 that requires an inconsistency in Rule 613(b). Rule
18 613(b) simple says that he has to be given the opportunity
19 to be either admit that he made the statement. He can say
20 I made it and it was a lie. As long as he admits making
21 that prior statement, then extrinsic evidence of the
22 statement is not allowed. There is no inconsistency or
23 no -- there is none of that. It specifically says however
24 if a witness admits making the prior statement, extrinsic
25 evidence that the prior statement was made -- is

1 inadmissible. And he admitted all along that he made the
2 statement. He just admitted that he wasn't telling the
3 truth when he made it. There's -- this rule, Judge, Rule
4 613(b) has no veracity or truthfulness requirement as it
5 relates to extrinsic evidence. That's what -- that's what
6 the rule says is very clear.

7 THE COURT: Well, in addition to Rule 613, I
8 believe that it would be -- it would come in under 608(c)
9 even if I'm wrong on that, I believe it would come in,
10 and, again, I think it's for the jury to determine whether
11 or not he was telling the truth today or whether or not he
12 was telling the truth when he gave those statements.

13 MR. JOYNER: Judge, if I may just briefly very
14 respectfully.

15 THE COURT: Yes, sir.

16 MR. JOYNER: 608(c) dealing with bias, I think
17 based on the fact that you have already, to my knowledge
18 and correct me if I'm wrong, approved the jail call to
19 come in and says have a heart to heart with Emerson, that
20 extrinsic evidence is certainly admissible under your
21 Honor's ruling under 608, but I don't believe that this
22 particular instance applies in 608 because it doesn't
23 prove a bias. This specific instance is more appropriate
24 Rule 613 because he admitted it. He did exactly what the
25 rule requires, and we're still punishing the defendant

1 because of a witness' compliance with the rules of
2 evidence.

3 THE COURT: Well, all due respect, Mr. Joyner,
4 your objection is noted. I've made my ruling.

5 MR. JOYNER: Yes, sir.

6 THE COURT: And if I'm wrong, then, you know,
7 the appellate court can say, but I think that based upon
8 my analysis, based upon what I've looked at, again, you
9 may be right and I may be wrong. I think I'm right. I'm
10 calling it like I see it. But your objection is noted
11 with all due respect.

12 MR. JOYNER: Yes, sir, absolutely.

13 THE COURT: Okay.

14 MR. SWILLEY: Your Honor, sorry to ---

15 THE COURT: Well, I mean, I'm not going to allow
16 you and Mr. Joyner to go back and forth on arguing this
17 issue. It's already been argued. Mr. Joyner's been
18 arguing it on this issue respectfully. Respect what he's
19 argued to me here today. I've made my ruling on it, okay.

20 MR. WHITE: Judge, just briefly for the record
21 on that, when I attempted to move this Emerson interview
22 into evidence, I snipped out the first -- I don't know
23 probably about 20 minutes because at the beginning of this
24 interview the interviewer does say in this room we tell
25 the truth. Don't you know what the truth is that sort of

1 thing. I think that would be improper.

2 THE COURT: I think it would be improper
3 pursuant to case law not specifically as it relates to
4 this type of case, but more so on the -- you see that more
5 so on the CSC cases and whatnot.

6 MR. WHITE: Yes, sir, that has been cut out of
7 the interview.

8 MR. JOYNER: And, Judge, as it relates to the
9 redactment where the witness admitted because I
10 specifically asked him you said brother was acting psycho
11 because he admitted to that. I would respectfully request
12 that that portion be redacted because he did admit to it
13 on the stand.

14 THE COURT: Well, I'm going to allow it. I
15 understand where you're coming from on that. I'm going to
16 allow it to be played from where they cut it out, but I'll
17 note your objection.

18 MR. JOYNER: I understand. Yes, sir. Thank
19 you, Judge.

20 THE COURT: Anything else before I bring the
21 jury out?

22 MR. WHITE: No, sir, Judge.

23 THE COURT: Defense counsel.

24 MR. SWILLEY: No, your Honor.

25 THE COURT: All right, bring me the jury please.

1 (WHEREUPON, the jury came into open court .)

2 THE COURT: All right. We have all the jurors
3 back. I know I asked you all to be back here at 1:30 and
4 I appreciate you all being back here at 1:30 like you were
5 asked. You all can blame it on me all right not on
6 anybody else, but I wasn't back there twiddling my thumbs,
7 okay. I promise you, okay. So I apologize that you all
8 had to wait, but I appreciate your patience, okay.
9 Mr. White, you may continue. Call your next witness
10 please.

11 MR. WHITE: Thank you, Judge. At this time the
12 State would call Chris Neal.

13 THE CLERK: Sir, if you'll please place your
14 left hand on the Bible and raise your right hand. Do you
15 swear or affirm the testimony you give in this case to be
16 the truth, the whole truth, and nothing but the truth so
17 help you God?

18 THE WITNESS: Yes, I do.

19 THE CLERK: Please be seated and state your full
20 name for the record.

21 THE WITNESS: My name is Christopher Neal.

22 WHEREUPON,

23 Christopher Neal,
24 after first having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. WHITE:

2 Q Good afternoon, Mr. Neal. If you could, tell us
3 where are you employed?

4 A I'm employed with the Florence County sheriff's
5 office and I work in the detention center.

6 Q And how long have you been employed there?

7 A I been with the sheriff's office for 31 years past 12
8 have been in the detention center.

9 Q So you're familiar with the comings and goings of the
10 jail out there, is that right?

11 A Yes, sir.

12 Q And would one of those things be the jail call
13 system?

14 A Yes, sir, I'm responsible for the jail phone system,
15 the inmate phone system.

16 Q Just briefly, how does the inmate phone system work?

17 A The inmate phone system is set up where each inmate
18 when they're booked in they receive an ID number and a
19 four digit pin. We have telephones in booking and then
20 there are telephones in each housing unit as well as we
21 now have tablets that they're able to make phone calls on
22 those. They are required to enter their ID number and
23 their four digit pin to access the system.

24 Q Now, those four digit pins do inmates out there do
25 they often swap pins?

1 A I probably get about a request or so a day to have
2 somebody's pin changed. It's not uncommon from one inmate
3 to use another inmates account because he doesn't have any
4 money on his account or for any kind of reason.

5 Q They often do it as well to hide the fact that
6 they're the one calling from that particular pin?

7 MR. SWILLEY: Objection, your Honor, calls for
8 speculation.

9 THE COURT: I'll allow him to answer the
10 question if he knows it.

11 A We have seen that occur.

12 Q Now, when someone is booked in at the detention
13 center, are they notified that these calls are recorded?

14 A It is posted on the wall that all jail calls are
15 recorded and subject to be used in court as well as at the
16 beginning of each phone call, that states that all phone
17 calls with the exception of privileged phone calls with
18 attorneys.

19 Q Okay. And are you able or is the person able to
20 click through the familiar to bypass the part that says
21 these calls are being recorded?

22 A If you are familiar with the system, if you've
23 already gotten calls, at the time of the recording it
24 asked you to press one to accept or two to reject. If you
25 know to press one, certainly you can just hit one and

1 it'll skip through everything and just go ahead and let
2 you start talking.

3 Q Okay. I'm going to show you if I could what's been
4 marked as State's Exhibit 86. If you could tell me if you
5 recognize this particular document?

6 A It looks like one of our call logs.

7 Q And is that call log that can be access by you at any
8 time?

9 A Yeah, we interface with the jail call system through
10 a computer through an internet interface and this looks
11 like it was pulled up on the computer screen and these
12 calls were searched up.

13 Q And that jail system and that call log can that be
14 accessed by your department as well as other agencies such
15 as the Solicitor's office?

16 A Yeah, any law enforcement officer with a valid
17 reasoning to access the system, if they'll send me a
18 request, particularly if I don't know who they are to have
19 access to the system and I can grant them access to the
20 system where they can listen to all the jail calls.

21 Q And is that call log pertaining to inmate Mason
22 Yarborough?

23 A It looks like he's listed on here, yes.

24 Q And you can search through the call system to see,
25 you know, by name, is that right?

1 A It's pretty flexible search ability and let's you
2 search by the inmates name that made the call by the
3 specific place that call was made and you can also search
4 the number that the inmate called.

5 MR. WHITE: Judge, at this time I'd move State's
6 Exhibit 86 into evidence.

7 MR. SWILLEY: Same objection.

8 THE COURT: Objection so noted overruled.

9 (WHEREUPON, State's Exhibit No. 86 was admitted
10 into evidence.)

11 BY MR. WHITE:

12 Q I'm going to show you what's been marked for
13 identification purposes as State's Exhibit 74. If you can
14 tell me if you recognize that particular item?

15 A Yes.

16 Q Are those jail calls associated with the call log
17 that I just showed you?

18 A I believe so, yes.

19 Q And you had an opportunity to listen to those, is
20 that right?

21 A Yes.

22 Q Is that -- are you familiar with the calls that were
23 played and is that your system that they were played on?

24 A Yes, sir, the calls that I heard came off of my
25 system.

1 Q Okay, very good.

2 MR. WHITE: Judge, at this time I move State's
3 Exhibit 74 into evidence.

4 MR. SWILLEY: Same objection.

5 THE COURT: So noted the Court's ruling remain
6 the same.

7 (WHEREUPON, State's Exhibit No. 74 was admitted
8 into evidence.)

9 MR. WHITE: Permission to publish, Judge.

10 THE COURT: Hold on just a second.

11 MR. WHITE: Yes, sir.

12 (WHEREUPON, a pause in the proceedings.)

13 THE COURT: All right, go ahead, sir.

14 MR. WHITE: Judge, I would ask for an
15 instruction to the jury as to redaction.

16 THE COURT: All right. Ladies and gentlemen,
17 there have been -- has been a portion or portions of this
18 phone call they may or could have been redacted, okay.
19 And that's being done pursuant to rulings by the Court
20 evidentiary rulings. And pursuant to any such redactions,
21 I will instruct you that you're not to draw any adverse
22 inferences or favorable inferences to the State or to the
23 defendant, okay. Any exception or objection to what I've
24 said to the jury from the State?

25 MR. WHITE: None on behalf of the State?

1 THE COURT: Defense counsel.

2 MR. SWILLEY: No, Your Honor.

3 THE COURT: All right.

4 (WHEREUPON, jail calls played for the jury.)

5 BY MR. WHITE:

6 Q Mr. Neal, this last question for you. I showed you
7 this State's Exhibit 86. I neglected to ask you what's
8 the date that these calls are made?

9 A The two check calls on 1-27-2023.

10 Q Okay, very good.

11 MR. WHITE: Thank you, sir, have nothing further
12 for you.

13 THE COURT: Cross-examination.

14 MR. SWILLEY: No questions of this witness your
15 Honor.

16 THE COURT: Sir, you may step down. Thank you.

17 (WHEREUPON, the witness leaves the witness
18 stand.)

19 MR. WHITE: I ask that Mr. Neal be released from
20 his subpoena.

21 THE COURT: Any objection?

22 MR. SWILLEY: There is an objection, your Honor,
23 in case he may need to be called in the defense case in
24 chief.

25 THE COURT: Well, I say that he's still under

1 subpoena, but he's free to go right now.

2 MR. WHITE: Sounds good, Judge. Thank you.

3 THE COURT: Call your next witness please.

4 MR. WHITE: Judge, at this time the State would
5 call Meg Temple.

6 THE CLERK: Ma'am, if you'll please go up to the
7 stand. And place your left hand on the Bible and raise
8 your right hand. Do you swear or affirm the testimony you
9 give in this case to be the truth, the whole truth, and
10 nothing but the truth so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Please be seated and state your full
13 name for the record.

14 THE WITNESS: Megan Temple.

15 WHEREUPON,

16 Megan Temple,
17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WHITE:

20 Q Good afternoon, Ms. Temple. Thanks for being here
21 with us. I'm going to ask a few questions starting with
22 where are you employed?

23 A I am employed with the Care House of the Pee Dee.

24 Q And in what capacity are you employed?

25 A I'm the executive director there, but I'm also

1 trained as a therapist and an interviewer.

2 Q And how long have you been in that role?

3 A Almost ten years.

4 Q And what do you do as far as interviewing at the Care
5 House? How does that work?

6 A So forensic interview is a semi-structured
7 information gathering interview that allows for some
8 adjustments to development in order to gather as much
9 information on a possible situation may have with a
10 potential person.

11 Q Is that usually conducted with minors?

12 A It is, yeah.

13 Q And is it at the request of law enforcement?

14 A It is.

15 Q And on the incident date or the day after
16 October 30th of 2020, did you conduct a forensic interview
17 of Emerson Yarborough?

18 A I did.

19 Q And at that time what kind of room was it conducted
20 in?

21 A We have two forensic interview rooms. They are small
22 rooms. They hold two chairs. They're as a -- double, you
23 know, two-sided mirror. And there is an observation,
24 cameras and stuff set up in there. And it's really -- the
25 idea is to be comfortable, but to not insight any kind of

1 imagination, so they're pretty just plain rooms.

2 Q And you mentioned those had capability to be
3 recorded?

4 A Yes.

5 Q Was this one in particular recorded?

6 A It was.

7 Q Was that recording turned over to law enforcement to
8 the Solicitor's office?

9 A It was.

10 Q I'm going to show you if I could State's Exhibit 89.
11 If you can tell me if you recognize that particular item?

12 A Yes.

13 Q Does this contain the interview that you conducted
14 with Emerson Yarborough?

15 A It does.

16 MR. WHITE: Judge, I would move State's Exhibit
17 89 and I would ask for a redaction instruction on this as
18 well.

19 THE COURT: All right, subject to defense
20 counsel's objection, so noted for the record.

21 MR. SWILLEY: Thank you, Your Honor.

22 THE COURT: Court's rulings remain the same.
23 Again, there's some redactions in here pursuant to some
24 rulings that I've made. Again, my instructions as it
25 relates to that remain the same, okay.

1 (WHEREUPON, State's Exhibit No. 89 was admitted
2 into evidence.)

3 MR. WHITE: Judge, permission to publish the
4 interview.

5 THE COURT: Go ahead.

6 (WHEREUPON, State's Exhibit 89, a video, is
7 being played for the jury.)

8 MR. WHITE: Ms. Temple, thank you. Please
9 answer any questions the defense may have, okay.

10 THE COURT: Mr. Swilley.

11 MR. SWILLEY: No questions, your Honor.

12 THE COURT: Ma'am, you may step down. Thank
13 you.

14 MR. WHITE: I would ask that Ms. Temple be
15 released from her subpoena.

16 THE COURT: Any objection?

17 MR. SWILLEY: No objection.

18 THE COURT: All right, ma'am, you are released
19 from your subpoena. You're free to go have a nice day.

20 (WHEREUPON, the witness leaves the witness
21 stand.)

22 THE COURT: Call your next witness please.

23 MR. WHITE: Judge, may we approach just a
24 minute.

25 THE COURT: Yeah.

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury, but out of the hearing of the
3 jury.)

4 THE COURT: All right. Ladies and gentlemen,
5 we're going to take a short break. I'm going to ask you
6 to step to the jury room. Do not discuss the case, get
7 you back out here in just a few minutes, okay.

8 (WHEREUPON, the jury retire to the jury room.)

9 THE COURT: All right, we'll stand down a few
10 minutes.

11 (WHEREUPON, a break was taken.)

12 THE COURT: All right, anything from the State
13 before I bring the jury out?

14 MR. WHITE: No, sir.

15 THE COURT: Defense counsel.

16 MR. SWILLEY: No, your Honor.

17 THE COURT: All right, bring me the jury please,
18 sir.

19 (WHEREUPON, the jury came into open court.)

20 THE COURT: All right. We have all the jurors
21 back in the courtroom. Mr. White, call your next witness
22 please.

23 MR. WHITE: Thank you, Judge. At this time the
24 State would call Investigator Chris Owens to the stand.

25 THE CLERK: Please place your left hand on the

1 Bible and raise your right hand. Do you swear or affirm
2 the testimony you give in this case to be the truth, the
3 whole truth, and nothing but the truth so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Please be seated and state your full
6 name for the record.

7 THE WITNESS: Christopher Allen Owens.

8 WHEREUPON,

9 Christopher Owens,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WHITE:

13 Q Investigator Owens, if you could tell us where are
14 you employed?

15 A I'm employed at the Florence County sheriff's office.

16 Q And how long you been with the sheriff's office?

17 A I been in law enforcement for 20 years. I been
18 employed with the sheriff's office for 16 years.

19 Q And in what capacity are you currently employed?

20 A I'm currently an investigator over property crimes.

21 Q And how long have you been an investigator?

22 A About eight years.

23 Q And on the incident date, we discussed a lot is
24 October 29th, 30th of 2020 were you similarly employed?

25 A Yes, sir.

1 Q Were you the on-call investigator at that time?

2 A I was.

3 Q And did you have occasion to respond to [REDACTED] Lake
4 City Highway in Johnsonville?

5 A Yes, sir.

6 Q And is that where this incident took place?

7 A Yes.

8 Q Is that in Florence County?

9 A It is in Florence County.

10 Q Now, when you arrived on scene, was the suspect Mason
11 Yarborough there at that time?

12 A He was not.

13 Q Did you encounter some other folks and talk to them
14 there on scene?

15 A Yes.

16 Q Did you talk with his girlfriend Melia Steele?

17 A I did.

18 Q Did you talk to his younger brother Emerson
19 Yarborough?

20 A I did.

21 Q What was Emerson's demeanor when you spoke to him?

22 A When I spoke with Emerson, I guess, his demeanor he
23 was calm. Occasionally, he may sniffle a little bit,
24 maybe have to stop for a few seconds while he was talking,
25 but he was actually pretty calm.

1 Q Did both Melia and Emerson tell you what happened?

2 A Yes.

3 Q At some point did you learn that Mason Yarborough was
4 taken into custody?

5 A Yes, so as -- of course, as I arrived on scene, you
6 know, been sometime has passed since the actual incident.
7 As I was arriving at the house, I heard on the radio that
8 deputies were down the road and they had just taken him
9 into custody.

10 Q And did they bring him back to the incident location?

11 A Yes, they did.

12 Q At that time did you attempt to speak to him?

13 A Yes, I did.

14 Q And did you Mirandize him before speaking to him?

15 A Yes, I did.

16 Q And we've probably all heard it on TV, but what are
17 your Miranda rights?

18 A Your Miranda rights are the rights that are basically
19 protect you during questioning. It's basically an
20 explanation of every right that you have mainly so you
21 having the right to remain silent and not answer any
22 questions, making sure that you understand that an
23 attorney can be with you when you answer the questions.
24 If you decide that you don't want your attorney present
25 when you speak to me, you still have the right to stop

1 questioning to consult an attorney before any other
2 further questioning if you wish.

3 Q And you went over all those rights with him?

4 A Yes, sir.

5 Q Did he waive those rights and agree to speak to you?

6 A He did.

7 Q Did you none the less did you speak to him?

8 A No, sir. I tried, but we spent the first, you know,
9 estimated five or six minutes. He was in the back of a
10 patrol car. We spent the first five or six minutes he had
11 ask for some water. And so we spent that amount of time
12 trying to find somebody that had an unopen bottle of
13 water. And then afterwards just his demeanor, I couldn't
14 tell if he was just the way he was acting if he was just
15 excited about what had just occurred or if he was
16 intoxicated or if he was on drugs. So I decided then that
17 I wasn't going to ask him to tell me about the incident
18 that night just on the side of caution and to make sure
19 his rights were protected.

20 Q Okay. Now, later on, do you in fact bring him in for
21 an interview?

22 A Next -- well, been the same day probably about 12
23 hours later give or take?

24 Q And was that interview conducted at the law
25 enforcement center at the sheriff's office?

1 A It was, yes.

2 Q Where was the room where you conducted this interview
3 describe it for me?

4 A We have two interview rooms at the sheriff office.
5 They are located on the main hallway behind the restricted
6 door of course. They are cinder block walls with video
7 recording equipment in there. And there's is a table and
8 some chairs.

9 Q Air condition?

10 A Yes.

11 Q Comfortable in there?

12 A Yes.

13 Q Now, at that time did you use what's called Miranda
14 warning form to go over each and every one of his Miranda
15 rights again?

16 A I did.

17 Q I'm going to show you State's Exhibit 1 if you could
18 tell me if you recognize that particular document?

19 A Yes, sir.

20 Q Did you go over each and everyone of the rights that
21 are indicated on this form?

22 A Yes, sir.

23 Q And did he waive these rights?

24 A Yes, sir.

25 Q And did he sign and say that he wanted to speak to

1 you?

2 A Yes, so after -- there's five rights there. After
3 explaining each one of those rights, the next two
4 questions underneath are, you know, do you understand your
5 rights. If he does, then he is to actually, you know,
6 spell out word, yes. And then out to the side he would
7 initial. Underneath it, it would say, you know, having
8 these rights in mind do you still want to speak to me
9 without an attorney. Again, he would write the word yes
10 or no and initial. Underneath that, he would sign it. I
11 think it may have a place for his address. And then I
12 would also sign it and put the time of the signature.

13 Q And was all that done here?

14 A It was.

15 MR. WHITE: Judge, I move State's Exhibit 1 into
16 evidence.

17 THE COURT: Any objection?

18 MR. SWILLEY: No objection, your Honor.

19 THE COURT: Without objection so admitted.

20 (WHEREUPON, State's Exhibit No. 1 was admitted
21 into evidence.)

22 BY MR. WHITE:

23 Q And you mention that you did conduct an interview, is
24 that right?

25 A I did conduct an interview.

1 Q Was it recorded?

2 A It was recorded.

3 Q Is it audio video recorded?

4 A Audio and video.

5 Q And was that video then turned over to the
6 Solicitor's office?

7 A It was.

8 Q I'm going to show you State's Exhibit 75 if you could
9 tell me if you recognize that item?

10 A Yes, sir, this is the video of Mason Yarborough's
11 interview.

12 Q And it contains a recording of the interview you
13 conducted that day?

14 A It does and that's my handwriting on the front of the
15 disk.

16 Q And is it a fair and accurate depiction of the
17 interview that you conducted with Mason Yarborough on
18 October 30th of 2020?

19 A Yes, sir.

20 MR. WHITE: Judge, I move State's Exhibit 75
21 into evidence.

22 MR. SWILLEY: No objection, your Honor.

23 THE COURT: All right, so admitted.

24 (WHEREUPON, State's Exhibit No. 75 was admitted
25 into evidence.)

1 MR. WHITE: And would ask permission to publish
2 and a redacted charge.

3 THE COURT: All right. Ladies and gentlemen,
4 the State's preparing to show you all this video
5 statement. Again, there been some redactions in there
6 pursuant to some rulings that I made, some legal rulings
7 that I made. Again, my instructions to you all as it
8 relates to redactions remain the same. No improper
9 whether it be in favor or against no such inferences shown
10 drawn on behalf of -- in favor of the State or the defense
11 in this matter, okay. You may to proceed.

12 MR. WHITE: Thank you, Judge.

13 (WHEREUPON, a video of the defendant's statement
14 is played for the Court.)

15 BY MR. WHITE:

16 Q Investigator Owens was the defendant statement
17 inconsistent with the statement of his younger brother
18 Emerson?

19 MR. SWILLEY: Objection, your Honor.

20 THE COURT: I'll allow him to answer it.

21 A Yes, it was.

22 Q And any time during the defendant's statement, did
23 you see him shed a tear?

24 A He kept his hands over his face. And then there were
25 other periods in the interview where you can see him

1 standing up holding his chest and saying he was having
2 trouble breathing. With all the movement and with him
3 covering his eyes, I really couldn't tell.

4 Q Did you at any time during that interview hear him
5 say that he was defending himself from his dad because his
6 dad was punching him in the face?

7 A No, sir.

8 Q Did you hear him say that he was getting punched in
9 the face and there was a struggle over the gun?

10 A No, sir.

11 Q Is the first time that you ever heard that is when
12 Mr. Joyner said it in his opening statement?

13 A That is correct.

14 Q Did Emerson Yarborough ever call you or reach out to
15 the sheriff's office to say, hey, all that stuff that I
16 told you all back then I made it up?

17 A Absolutely not.

18 MR. WHITE: Beg the Court's indulgence just one
19 moment. Investigator Owens, that's all I have for you.
20 Please answer any questions the defense may have.

21 CROSS-EXAMINATION

22 BY MR. SWILLEY:

23 Q Hi, Investigator Owens.

24 A Hey.

25 Q Investigator Owens, you -- going back to Mason's

1 statement that evening the evening that he was in the
2 police car, I guess, when you arrived at [REDACTED] Lake City
3 Highway. I think you testified on direct that you made an
4 attempt to interview him at that point, is that correct?

5 A I did.

6 Q And I think you said you decided that it would --
7 it's not something you wanted to do at that point because
8 of his demeanor, is that right?

9 A That's true.

10 Q Earlier a witness I think earlier in the week
11 testified that he was frantic or hysterical, is that
12 correct?

13 A Yes, that's correct.

14 Q And would you agree with that statement?

15 A Not so much when I dealt with him. It wasn't that he
16 was frantic. It was -- it's hard to describe. It's not
17 that I thought -- I didn't think that he was frantic. I
18 didn't think he was shocked or in shock. I just felt like
19 he had probably -- and I had a witness tell me that he had
20 been drinking. And I felt like that that was probably
21 what -- was a big factor in the way he was acting.

22 Q And you agree he was distraught, is that correct?

23 A Yes.

24 Q Okay. And I think during that interview you
25 attempted to interview him. He wasn't being uncooperative

1 during that particular interview, was he, before you
2 terminate it?

3 A The first one in the car?

4 Q Yes, sir.

5 A No, no, he wasn't uncooperative.

6 Q He wasn't uncooperative on any interview, was he?

7 A No, sir.

8 Q Okay. And I think that evening you asked where the
9 SKS riffle was located and I think he told you where it
10 was?

11 A Well, he tried to. I don't know if he couldn't
12 remember what he did with it or what the situation was.
13 He tried to tell me where it was at, he thought he had
14 thrown it down. I really couldn't make out where he was
15 trying to tell me to look for it. But there was enough --
16 he said enough that I was able to narrow down that at
17 least he believed it was still in the shop because I
18 had -- at that point in time I had looked at the crime
19 scene, but I did not go poking around because our
20 forensic's guy had gotten there and I don't like to walk
21 into a crime scene until he's, you know, documented the
22 way it was when I found it. So I had done a search on the
23 outer perimeter in the grass toward the direction that I
24 thought he might have traveled to see if he had dropped it
25 out there and I had not found it. After speaking with

1 him, like I said, it wasn't like he said, hey, man, it's
2 in this room here. It's going to be over here. What he
3 was telling me was I could kind of figure out exactly what
4 he was trying to -- where it was, but he said enough that
5 I was able to judge that it was inside the shop.

6 Q Okay. And you found it?

7 A Yes, we did find it.

8 Q Okay. And I think the next day you like Mr. White
9 said you you went in the interview room read him his
10 rights and based upon your understanding, he understood
11 those rights?

12 A Yes.

13 Q Okay. And he could have said no, correct?

14 A That he didn't understand his rights?

15 Q No, he could have said no to the interview is what
16 I'm asking?

17 A Oh, absolutely.

18 Q And there would have been no adverse consequences for
19 that in and of itself, would there have been?

20 A No, sir.

21 Q All right. But he proceeded to speak with you,
22 right?

23 A That's correct.

24 Q And at no time during that interview did you feel the
25 need to be aggressive or confrontational with him, did

1 you?

2 A No, sir.

3 Q All right. Didn't have to raise your voice at all,
4 did you?

5 A That's really not my style, but, no, I didn't.

6 Q And you terminated the interview after you gotten all
7 the information needed from Mr. Yarborough, is that
8 correct?

9 A I wanted him to have the opportunity if he so chose
10 to give me his version or his side of the story. I felt
11 like we had reached a point where I had gotten, you know,
12 his side of the story and I thought it was a good place to
13 stop the interview.

14 Q All right. And you -- that was the only interview
15 you memorialized of Mason Yarborough, correct?

16 A Yes.

17 Q Didn't feel the need to interview him at any time
18 after that, right?

19 A No, sir.

20 Q And I think that as far as any other -- that was
21 pretty much the recorded interview you conducted during
22 the course of your investigation, is that correct?

23 A Yes, sir. The only one that I personally recorded,
24 yes.

25 Q Right, right. You were the lead investigator in this

1 case, right?

2 A I was the only investigator, yes.

3 Q Lead and only investigator, right?

4 A Yes, sir.

5 Q Okay. And I think the next day after you submitted
6 your warrant, that was the end of your investigation,
7 correct?

8 A It's not so much the end of the investigation that
9 there was a conclusion there, of course, with having a
10 warrant, but that's not always the end of everything. I
11 had previously decided that they had I spoke with Emerson
12 on the scene that night. I wanted to get feel for what
13 had occurred from his viewpoint, but at the same time with
14 him being a minor, and it being a traumatic event, I felt
15 that the Care House was the more appropriate place to
16 interview him because they are trained to deal with
17 situations like this. So even after I did the warrant, I
18 mean, I have to get the Care House report, the CD's for
19 all that. It doesn't just end with the warrant, but I
20 didn't re-interview him.

21 Q Right. And after that, you produce -- you come up
22 with a written narrative report, right?

23 A Yes.

24 Q Okay. And I think your narrative report in this case
25 I believe it's got the location and incident, right?

1 A Yes, sir.

2 Q That's correct. And it's got the decease name, is
3 that correct?

4 A Yes.

5 Q And it's got Mr. Mason Yarborough's name on there, is
6 that correct?

7 A That's correct.

8 Q And it's also got the correct law enforcement case
9 number on there too, right?

10 A That is correct.

11 Q Okay. And this isn't the first -- any case you make,
12 any case you're the lead investigator, you got to make an
13 incident report, right?

14 A The incident report would definitely be done by the
15 deputies or that's how it gets to me.

16 Q Right.

17 A Are you talking about my actual ---

18 Q Your investigative report.

19 A This is -- we call it an investigator narrative.

20 This is more for me to come to testify with because, I
21 mean, we're looking at this case is back in 2020. There's
22 no way that I'm going to be able to remember every single
23 thing that happened, but I do like to give a narrative in
24 narrative form, so that the Solicitor's office also has a
25 copy that can kind of see what was said, who I talk to,

1 what I did, yes, sir.

2 Q You learned how to do that, you know, when you became
3 an investigator, right?

4 A Way before that.

5 Q At the criminal justice academy, right?

6 A Yes, sir.

7 Q Twenty years ago was when you went through that,
8 right?

9 A Yes, sir.

10 Q All right. And you been in law enforcement for 20
11 years, right?

12 A Yes, sir.

13 Q Written many investigative reports?

14 A Yes, sir.

15 Q These investigative narratives they're very
16 important, right?

17 A Yes.

18 Q Okay. And so when you write these reports these
19 reports they have to be accurate, right?

20 A Yes, to the best of my ability.

21 Q And they got to be precise, right?

22 A Yes.

23 Q And they got to be complete, is that correct?

24 A Yes, sir.

25 Q And can't -- you don't want to have any missing

1 information, right?

2 A No, sir.

3 Q And you want to have all the important pertinent
4 information in there, right?

5 A That's correct.

6 Q And you can say that's true about this investigative
7 report, right? I keep calling it an investigative report
8 this investigative narrative, right?

9 A Yes.

10 Q You're confident that that's all true about this
11 narrative report, correct?

12 A Yes, sir.

13 Q Okay. So, Investigator Owens, I think going back to
14 that evening you had a chance to speak with Miss Steele,
15 is that right?

16 A That is correct.

17 Q Okay. And it was your understanding based upon your
18 investigation that she left and came back to that
19 residence, correct?

20 A Yeah, it was my understanding that she had left prior
21 to the shooting and had come back after the shooting was
22 over with.

23 Q All right. And you had a chance to speak with her at
24 the residence, right?

25 A That's correct.

1 Q And during your interview with her, you didn't notice
2 any kind of bruises, cuts, scrapes, abrasions anything
3 like that, did you?

4 A No, I didn't.

5 Q And based upon your interview with her, it was allege
6 that she was hit with a pool stick, was it?

7 A I don't recall. I heard the earlier testimonies. I
8 don't recall her saying that she was hit with a pool
9 stick. I don't recall that.

10 Q Okay. And we cut to the chase because you been in
11 here the whole time. She said when you interviewed her
12 she was pushed, right?

13 A Yeah, I remember -- and there may be somethings that
14 aren't actually in this portion of it. I do remember her
15 telling me that she had been pushed down. I do remember
16 her telling me that he had -- said Mason had put a gun to
17 his head and threaten suicide. And I do remember her
18 saying that the reason when she called her grandmother to
19 come and pick her up, that she had actually walked outside
20 to get away from the garage and the residence because she
21 said that Mason threatened to kill her grandma. Those are
22 the three things that I remember.

23 Q Okay. And about Mason threatening to kill her
24 grandma, that's not mentioned in your report?

25 A No, it's not mentioned in my report.

1 Q Right. And just so we're sure, you didn't seek any
2 other warrants other than the charge for which we're here
3 today?

4 A No, sir, I didn't seek any other warrants.

5 Q Okay. And in your report you did speak with Emerson
6 Yarborough, is that correct?

7 A That is correct.

8 Q Okay. And Emerson Yarborough didn't say anything
9 about Mason exclaiming that anything to the effect of how
10 do you like me now, dad, or whatever he said during the
11 forensic interview, that part wasn't stated to you that
12 evening, was it?

13 A No, I don't recall him making a statement of any
14 verbal replies that happened after the shooting. I also
15 like I said I also -- like I said, I also I don't recall
16 asking him specifically if there was anything said after
17 that.

18 Q All right. And just so we're clear, you weren't
19 utilizing an audio recording, were you?

20 A No, sir, we -- of course, things have changed now.
21 This was prior to us having body cameras. So in order to
22 record any type of interviews that you do, we had a small
23 digital voice recorder. This was actually my first night
24 on call. I did check to see if it was working it was not.
25 So I was unable to utilize that voice recorder that night.

1 I tried to rely at least on the -- when I attempted to
2 interview Mason, I wanted to make sure he was in the
3 backseat of the patrol car because I knew the in-car
4 camera would pick up what he was saying to me.

5 Q Right.

6 A As far as Emerson or Melia or Lynn, who I did speak
7 with Lynn briefly as well. I do not have any audio
8 recordings of those interactions.

9 Q Okay. And I think in your report it doesn't say that
10 Emerson ever said that he saw the shooting. It says that
11 he stated that he heard a loud bang and realized that
12 Mason shot Chris. And then remembers running away, is
13 that correct?

14 A To that point, I would say that I didn't ask him to
15 clarify the earlier statements he gave, led me to believe
16 that he was in view of what was happening. But when he
17 said that he heard a bang, I didn't ask him to clarify if
18 he was outside the room or not.

19 Q All right. So it was pretty much an open-ended
20 question to Emerson what happened. You weren't asking him
21 individual questions?

22 A Yeah, just very basic because as I said, you know,
23 he's like a 12-year-old kid. I didn't want to traumatize
24 him any more than I had too. I knew that the Care House
25 would do a more formal interview where he would feel

1 little more comfortable.

2 Q And I think, I guess, you didn't feel it necessary to
3 deal with any more recorded interviews with any of the
4 other individuals after this, did you?

5 A No, sir, I didn't.

6 MR. SWILLEY: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. SWILLEY: Nothing further, your Honor.

9 THE COURT: Any redirect?

10 MR. WHITE: Just briefly, Judge.

11 REDIRECT EXAMINATION

12 BY MR. WHITE:

13 Q Mr. Owens, just a few more questions and I'll get you
14 down. Now, Mr. Swilley asked you about you talking to
15 Emerson. Emerson did tell you that Mason retrieved an SKS
16 riffle from the other room and pointed it directly at
17 Chris, did he not?

18 A He did.

19 Q He did tell you that three of them were all in very
20 close proximity to each other, did he not?

21 A He did.

22 Q He did tell you that he did not see Chris make any
23 attempt to grab the firearm and the two were not arguing
24 before Mason pointed a gun, did he not?

25 A That's correct.

1 MR. WHITE: Thank you.

2 THE COURT: Any recross?

3 MR. SWILLEY: No recross, your Honor.

4 THE COURT: Sir, you may step down. Thank you.

5 (WHEREUPON, the witness leaves the witness
6 stand.)

7 THE COURT: Call your next witness please.

8 MR. WHITE: At this the State would call
9 Dr. Thomas Beaver.

10 THE CLERK: Sir, if you will please place your
11 left hand on the Bible and raise your right hand. Do you
12 swear or affirm the testimony you give in this case to be
13 the truth, the whole truth, and nothing but the truth so
14 help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full
17 name for the record.

18 THE WITNESS: My name is Thomas Richard Beaver
19 B-E-A-V-E-R.

20 WHEREUPON,

21 Dr. Thomas Beaver,
22 after first having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. WHITE:

25 Q Dr. Beaver, thank you for being with us. If you

1 could, tell the jury where are you employed?

2 A I'm employed by MUSC. I work at the Medical
3 University of South Carolina as a clinical associate
4 professor.

5 Q And how long have you been employed in that role?

6 A Since June of 2018.

7 Q And back in 2020 how were you employed with the
8 Medical University of South Carolina?

9 A Yes, so I have really two roles there. My one role
10 is to teach medical students and teach part of a pathology
11 course. And I also teach residence and we have fellow in
12 forensic pathology, so I have that teaching
13 responsibility. And then the other half of the job is to
14 do autopsies for the coroners in the state of South
15 Carolina.

16 Q And you do that in your role as a forensic
17 pathologist?

18 A Yes, sir.

19 Q How does one become a forensic pathologist?

20 A It is a very long and difficult road. It starts in
21 college, and I have an under graduate degree from the
22 University of California and then it's medical school.
23 And I have a medical degree from St. George University
24 School of Medicine. And then it is a residency training
25 program. In my case, the American Board of Pathology felt

1 that it should be five years, so I did five years
2 residency training program at the University of Colorado.
3 And then you have to do -- all those things are
4 prerequisites and each one each step is the prerequisite
5 for the next step. And the final step is a fellowship in
6 forensic pathology and I did that at the Denver County
7 coroner's office. And then that's followed by board
8 examinations given by the American Board of Pathology. So
9 I have taken the certified examinations given by the
10 American Board of Pathology and anatomic pathology,
11 clinical pathology and forensic pathology passing all of
12 those exams on the first attempt.

13 Q And since that time how long have you been a forensic
14 pathologist?

15 A So I completed the whole process in 1993, and I
16 was -- and I started working immediately as a forensic
17 pathologist. My first practice was in California. And I
18 was part of a private pathology group that also performed
19 autopsies for the coroners in the central valley of
20 California.

21 Q And how long have you been employed as a forensic
22 pathologist with MUSC?

23 A Since June of 2018, so about maybe four years.

24 Q And in your time thereabout roughly how many
25 autopsies do you think you conduct a month?

1 A So it varies. We have enough forensic pathologist
2 that I only have one week a month on the autopsy service.
3 And then usually one weekend a month. So I will just do
4 basically one fourth of the autopsies. And in that week
5 though, I will do every day five days of the week I will
6 do four cases every day.

7 Q A lot of autopsies come through your office?

8 A Yes, sir, it's actually the lowest workload I have
9 had in my career, so I'm glad.

10 Q And in that time about how many times do you think
11 you testified as an expert in forensic pathology?

12 A It would be hundreds of times. I mean, I was in
13 court last week, and the week before in York County. So I
14 spend a lot of time in court.

15 MR. WHITE: Judge, at this time I move
16 Dr. Beaver as an expert in the field of forensic
17 pathology.

18 THE COURT: Any objection?

19 MR. SWILLEY: No objection as to his
20 qualifications.

21 THE COURT: All right. Ladies and gentlemen, I
22 previously gave you an instruction as it relates to expert
23 testimony, that instruction remains the same as it relates
24 to this particular witness. He's being qualified as an
25 expert in the field of forensic pathology to give opinion

1 testimony in that area, that does not mean as I told you
2 before that does not mean that you must accept the
3 opinion, but it is evidence for you to use in any way that
4 you see fit and give it the weight and credibility that
5 you deem appropriate. You may continue, sir.

6 MR. WHITE: Thank you, Judge.

7 BY MR. WHITE:

8 Q Now, Dr. Beaver, in this particular case, did you
9 perform an autopsy on the victim in this case Chris
10 Yarborough?

11 A Yes, sir, I did.

12 Q On what date was that autopsy done?

13 A It was the 31st of October.

14 Q And just generally when you conducting an autopsy
15 what are you doing? What's your procedure as you begin an
16 autopsy?

17 A So it starts with an external examination, and we
18 photograph every step of the way and I make notes as well.
19 And so the first part is to look at how the body is
20 submitted to us, how it arrives clothes, no clothes,
21 personal effects. Then the body as it is we take off the
22 clothing. We gather some evidence like head hair and nail
23 clippings things like that. And then the external exam
24 starts with head to toe. I go head to toe. And I look at
25 the body trying to get a general picture of the body, so I

1 make notes on the length of the hair and the eye color and
2 things like that. And then I go back and start at the
3 head and move to the foot again. This time scars and
4 identifying marks. I look for tattoos or scars that would
5 help identify the body. In this day of DNA, then that's
6 kind of a naturalistic thing, but use to be that sometimes
7 we use that for identification. Third time start at the
8 head move to the foot, this time looking for evidence of
9 therapy was any -- did the paramedics do anything, was
10 there any attempts to resuscitate, was there any medical
11 devices in place. So then I started at the head and moved
12 to the foot again. This final time and this time I'm
13 looking for evidence of injury. And I'm trying to find
14 injuries that might tell me how this person dies because
15 that's ultimately what I want to do because I want to make
16 cause of death. I want to find the cause of death. So
17 then after that fourth time through, then we take x-rays.
18 So we x-ray the parts of the body that would -- where we
19 see the injuries where we got some data now. We've looked
20 that this body fairly, so now we got some data. We can
21 focus the x-rays and take an x-ray of the part of the body
22 that's of interest to us. After that, then we proceed to
23 the internal examination. So here we have standard
24 incisions that we make. And they are designed to be
25 hidden so that people can have a funeral and an open

1 casket. So you could go stand next to the body in a
2 funeral with an open casket stand right next to them and
3 you would not be able to tell an autopsy was performed.
4 So we make an incision on the chest and the abdomen and
5 that incision is hidden by clothes at the funeral if there
6 is one. And that allows us to access the chest and
7 abdomen. All the organs are removed sequentially and the
8 dissection takes place in a very systematic way. Once the
9 organs are out, we weigh them. We examine them, biopsy
10 them, and we retain some of that tissue. Once the chest
11 and abdomen are finish, then we turn our attention to the
12 head. We make an incision on the back of the head,
13 reflect the scalp forward. We use a bone saw to take off
14 the skull, and then we can examine the brain. When it's
15 removed, we biopsy. And then that pretty much completes
16 the exam. We use the autopsy to gather material for
17 toxicology and for any other kind of chemical analysis we
18 would want to do. So we'll gather blood. We gather the
19 bile from the gallbladder. We'll gather stomach contents.
20 We'll gather urine. So it's really our opportunity to
21 gather specimens if we need to test later on if something
22 comes up for testing purposes.

23 Q And during your autopsy when you conducting this
24 autopsy, you also take photographs?

25 A Yes, sir, we take photographs every step of the way.

1 Q And did you do that in particular case?

2 A Yes, sir.

3 Q And those photographs would they assist you in
4 explaining to the jury the injuries that were sustained in
5 particular case?

6 A Yes, sir, yes.

7 Q I'm going to show you if I could what's been marked
8 as State's Exhibit 83 excuse me -- 76 through 83 if you
9 could tell me if you recognize these photographs?

10 A Yes, sir, I recognize these photographs.

11 Q Are those the photographs that you took during your
12 autopsy?

13 A Yes, sir.

14 MR. WHITE: Judge, I'd move State's Exhibit 76
15 through 83 into evidence.

16 THE COURT: Any objection?

17 MR. SWILLEY: No objection.

18 THE COURT: All right, without objection 76
19 through 83 is admitted.

20 (WHEREUPON, State's Exhibits Nos. 76-83 were
21 admitted into evidence.)

22 BY MR. WHITE:

23 Q I'm going to walk you through these, Dr. Beaver. I
24 do want to warn the jury that these are extremely graphic,
25 but I'm going to walk you through them and just tell us

1 what occurred on this individual Mr. Chris Yarborough?

2 A Yes, sir.

3 Q If it's all right with you, I might jump around a
4 little bit and start first with the hand would that be
5 okay with you Dr. Beaver?

6 A Yes, sir, that's fine.

7 Q I want to show you first State's Exhibit 81.
8 Dr. Beaver, we've been having a little technical
9 difficulty with that screen, so tell me if you can see it
10 State's Exhibit 81?

11 A I see it fine.

12 Q What are we looking at here, Dr. Beaver?

13 A So this photograph that we're taking of the hand and
14 so one of the first things I noticed about this case was
15 that there's soot. There's a black sooty material on the
16 skin. And whenever I see soot on the skin, I know that
17 that means that the -- that surface of the skin where that
18 soot is deposited is near the muzzle of the gun. And so
19 now I'm trying to fit together the pieces to figure out
20 what -- where exactly the muzzle was in relation to the
21 hand and how the body might be positioned to sustain the
22 wounds that occurred. So here we're looking at the right
23 hand. And I have opened up the hand a little bit so you
24 can see the thumb and the index finger and the middle
25 finger and the ring finger. You can't really see the

1 little finger in this case just the index, ring and
2 middle. So you can see that there -- index finger is
3 disrupted. There's damage to the inside of the index
4 finger. And there is this soot sooty material on the
5 thumb and on the index finger and a little bit towards the
6 base of the fingers. And you can see that basically it
7 involves just that little area. The rest of the palm of
8 hand is spared and the other fingers are spared as well.

9 Q Now, show you State's Exhibit 77. I'm jumping around
10 a little bit?

11 A Yeah, so this photograph is taken very early on
12 because like I said we take photos every step of the very.
13 This is taken very early on and you can tell because he
14 still has his clothes on. And there's even a leaf
15 underneath his arm that came in with him. And there's
16 blood on the hand that we haven't cleaned off so we can
17 look at the wound. So this is also that same hand and you
18 can see the index finger. You can see the blood. And you
19 can see this little defect over the knuckle of the index
20 finger and it kind of goes down towards the middle of the
21 hand.

22 Q I'm going to show you State's Exhibit 78.

23 A Okay. This one again I take a number of different
24 angles because photographs are two dimensional
25 representations of three dimensions, so I try to get it

1 from different angles to give a more accurate depiction
2 and this is later in the autopsy. You can see where we
3 cleaned it up a little bit and we taken his clothes
4 already. And so you can see here that that there is kind
5 of a defect a hole through the knuckle of the finger of
6 the index finger and you can see all the soot along a
7 middle of the index finger towards the middle finger. And
8 so there's some extensive damage fractioning of the bone.

9 Q Thank you, Dr. Beaver. There's two more pictures of
10 the hand and I'll ask you some questions about the hand
11 State's Exhibit 8?

12 A So this another photo of the hand trying to look like
13 straight down towards the finger. And we see there's --
14 we cleaned it up a little bit and you can kind of see the
15 pathway through the finger from the palms aspect out the
16 back aspect. And the middle finger really has some blood
17 on it, but it doesn't really have any kind of damage.
18 This is really most of the damage is to the index finger
19 with a little bit of tearing to the skin at the base of
20 the finger.

21 Q And the last one this gives me kind of side angle
22 that same finger that you referred to State's Exhibit 79?

23 A Yes, I think overall this is probably the best of the
24 set of photos to show the wound through the finger. So
25 here in one of the previous ones I think two back we saw

1 the hole on the knuckle, on the knuckle side back of the
2 hand side. And here we can kind of see that actual path
3 as goes it from the palm of the finger through the back of
4 the finger. And then, of course, we got the soot on the
5 palm or side of this. So I think that's an important
6 thing to note is we're not seeing any soot on the back of
7 the hand. The soot is all on the palm side of the hand.
8 So that's helping me to say which direction the bullet
9 went when it went through the finger.

10 Q And that was going to be my next question. In your
11 expert opinion, is it a bullet that created this injury?

12 A Yes, sir.

13 Q Now, the defense argued in their opening that the
14 injury is sustained when the hand is grasping the barrel
15 of the gun and it's caused by the gas expelling from the
16 tip. I think, you know, I would probably refer to it as
17 burn marks, but are you familiar with thermal marks?

18 A Yes, sir. So when I do this autopsy at this time, I
19 don't have any information. I don't know what the weapon
20 was. I don't know what the ammunition was. I don't
21 really know anything. All I know they send it to me and
22 the coroner tells me this is a gunshot wound to the head
23 and there's some soot on the hand. So I don't have any
24 information. So I'm trying to piece this together to
25 figure out what happened. I don't know if there were two

1 people shooting at him, three people. I don't know. I
2 don't know how many shots were fired and so I'm trying to
3 think that through. And trying to figure out because
4 they're going to ask me how many shots were fired. And so
5 I'm trying to have -- piece this through. And so at this
6 point when I see the soot there, my first thought is, hey,
7 he's grabbed the barrel of the gun. That's the first
8 thought anyone would have seeing that kind of an injury to
9 the hand and the soot. But I don't really see the rest of
10 what you need to have that. You need to have more soot on
11 the palm of the hand, more soot on the other fingers, more
12 injuries to the palm of the hand, little tears in the skin
13 as that expanding gas tears the skin. So I don't really
14 see any other injuries, it's very localized to this
15 finger. And the middle finger is almost uninvolved
16 completely. And then the last two fingers there's
17 nothing. And there's nothing on the palm of the hand. So
18 to say that he grabbed the barrel or was holding the
19 barrel, it just doesn't fit. It's a good thought to have
20 initially, but when you look at this and try to figure it
21 out, that's not really something that would -- the
22 evidence just doesn't fit with that.

23 Q So in your expert opinion, a bullet striking the hand
24 and the hand being close to the barrel is what occurred in
25 this injury?

1 A Yes, sir.

2 Q Now, I'm going to show you photographs of the injury
3 of the head, but before I do, I'm going to show you
4 State's Exhibit 85. And you tell me if you recognize that
5 particular item?

6 A Yes, sir, I do.

7 Q What is that?

8 A It's a diagram that I use to teach medical students
9 and residence and our fellow forensic pathology about
10 graze type gunshot wounds.

11 MR. WHITE: Judge, I move State's Exhibit 85
12 into evidence.

13 THE COURT: Any objection?

14 MR. SWILLEY: No objection.

15 THE COURT: Without objection so admitted.

16 (WHEREUPON, State's Exhibit No. 85 was admitted
17 into evidence.)

18 BY MR. WHITE:

19 Q I'm going show you State's Exhibit 88.

20 A Yes, sir.

21 Q Are you familiar with this particular item?

22 A Yes, sir, I draw this myself.

23 MR. WHITE: I move State's Exhibit 88 into
24 evidence.

25 THE COURT: Any objection?

1 MR. SWILLEY: No objection.

2 THE COURT: So admitted.

3 (WHEREUPON, State's Exhibit No. 88 was admitted
4 into evidence.)

5 BY MR. WHITE:

6 Q Dr. Beaver, I'm first going to show you State's
7 Exhibit 85 and to be clear the injury to the head we're
8 dealing with a graze wound, is that correct?

9 A It's not classical, but as we will see, I'm sure we
10 will look at that diagram, but it is a tangential wound,
11 yes.

12 Q If you could just explain to us this diagram State's
13 Exhibit 85?

14 A So when a bullet grazes across the skin where there's
15 no distinct entry and exit point, it has a characteristic
16 appearance. It looks a certain way. So at one end of the
17 wound, there's going to be some little bit of abrasion
18 where the bullet first touches the skin starts to kind of
19 skid along the skin. Now, the skin is pliable and
20 flexible, so as the bullet pushed the skin, it kind of
21 rolls it up and then it tears it. So the first thing to
22 understand about bullets of any type is they are not
23 cutting instruments they don't cut. They tear their way
24 through the skin and tissue. So here the bullet is
25 traveling through the skin and it's tearing as it goes.

1 And so what the characteristic features of the wound that
2 look like this allows us to make the direction of fire.
3 So when I look at this wound and we don't know which
4 direction the bullet was going, we can just look at the
5 tags of skin and those little triangles of skin point to
6 the muzzle of the gun. So that's what we use to help us
7 when we see a graze wound and we don't know which way the
8 bullet came from. We can find it out by looking at the
9 way the wound is -- the skin tears where they point. Now,
10 the other thing about it is you can tell which end is
11 which by looking at the opposite end where it kind of
12 opens out. In this diagram, it's called the distal
13 corner. Distal means far away in medical terms. But the
14 point is is that this wound kinds of opens out at the end
15 where the skin tears and just the bullet really isn't
16 contacting the skin any, but there's so much pressure
17 built up in the skin, that it just tears a part. And I
18 think that's one of the really good features for telling
19 the direction of a grazed wound. At one end the skin will
20 just be torn and it sort of ends at a tear.

21 Q And is that what you found in this particular wound?
22 And I'm going to show you State's Exhibit 88 if you could
23 tell us a little bit about your diagram?

24 A Yes, so here we're looking at a schematic drawing.
25 And it's a drawing of the right side of the head. And I

1 have drawn in the gunshot wound and so this wound, the
2 bullet first makes contact sort of behind and slightly
3 below the right ear. And it's traveled towards the front.
4 And you can see that for the most part it's not a
5 classical wound. And the reason it isn't because of the
6 skull. And I'll talk about that in a second. But at the
7 very other end of it, it kind of tears out and it ends in
8 a tear like the rest -- like what we see in a classical
9 graze type wound. Now, the reason this one isn't classic
10 when this bullet -- this bullet isn't just going through
11 the skin, it's also hitting the skull because the skull is
12 curved kind of out and so when the bullet hits, it hit the
13 skin and the skull. And then it starts to graze. When it
14 hits the skull, it has a lot of energy. It fractures the
15 skull. It fractures the bones of the skull and it pushes
16 those bones outward and that tears the skin open even
17 more. So that's why we're not seeing those classical
18 triangles pointing like we would like. We do see some
19 triangles, but -- and they do point towards the back of
20 the head, but it's not a -- because of the plates of bone
21 that are being displaced and forced outward.

22 Q Now, based on that and your expert opinion, are you
23 testifying, Dr. Beaver, that the wound path is from the
24 back of the ear forward?

25 A Yes, sir.

1 Q And is it with a slight upward trajectory?

2 A Slight upward. If the body -- if we place the body
3 in an anatomic position, so that means the person is
4 standing up, facing forward and that's then we would have
5 the floor as the -- as down up and the ceiling is up. And
6 then, yes, we would have upper trajectory. But the body
7 can be in various different positions and the head can
8 certainly move. So the bullet might actually be coming
9 downward if the head was tilted and you can get the same
10 thing.

11 Q And I'm going to show you photographs of the head
12 State's Exhibit 76 first, Dr. Beaver?

13 A This is a very early on in the autopsy probably the
14 -- it's very early. We haven't even taken off the
15 clothes. You can see the clothes that he's wearing on the
16 right and this is important. And then you can see the
17 wound. And you can see a lot of blood spatter, so it's
18 very early. You can see extensive tissue damage, lots of
19 skull fractures. You can see displace bone everywhere.
20 It's a pretty devastating injury.

21 Q And then State's Exhibit 82 I believe is after the
22 body's been cleaned up?

23 A Yes, so here we've had a chance to clean things up a
24 little bit. His clothing is removed and we're looking at
25 the wound. And I think if you just layed a ruler in the

1 wound, you could kind of get an idea for the path of the
2 wound. And it is coming from behind the ear. It's torn
3 the ear. You can even see the little tags right where his
4 beard ends and you can see the tags kind of pointing
5 towards where the muzzle of the gun might be. As well as
6 this very large tear right in the gray hairline on the
7 left side. And then as I said it ends in a tear at the
8 very far end right above the eye. So this wound is going
9 from back to front with initial -- I think the initial
10 point of contact with the bullet is behind and slightly
11 below the right ear.

12 Q And in speaking of the right ear and I don't think
13 it's photographed in either one of these photographs, but
14 there's injury to the right ear that further submitted
15 your belief that it occurred in the back, is that correct?

16 A Correct. I think that there's actually a hole in the
17 ear. It's not a characteristic entrance or exit wound,
18 but it does look like a hole. And it looks like the
19 bullet might have passed through that part of the ear.

20 Q And I'm going to -- same exhibit 82 tilt it this way,
21 so then we can see -- and you see characteristics of a
22 graze wound diagram that you point out earlier?

23 A Yes, sir.

24 THE COURT: And what exhibit you just showed him
25 is what?

1 MR. WHITE: Yes, sir, Judge, my apologies that's
2 State's Exhibit 85 that I just showed Dr. Beaver.

3 THE COURT: Thank you.

4 BY MR. WHITE:

5 Q So kind of overlapping it now that's State's Exhibit
6 85. You can see that the distal corner of the skin tags
7 the proximal corner in the direction of travel occurring
8 from left to right on his head, is that correct?

9 A Yes, I think it's not classic, but it's close, very
10 close.

11 Q Last photograph just to clarify and I want to talk to
12 you about State's Exhibit 83. Could you tell me what that
13 injury is or if you have an opinion?

14 A Yes, so when I see this at first I think that it
15 might be powder stippling. And so on my diagram for the
16 autopsy I call that pumptake (sic) cutaneous defects. And
17 then I think in the autopsy report I thought they might be
18 powder stippling, so I said they have the appearance of
19 that. I don't think it's powder stippling now. I'm
20 giving the opinion now that this is not powder stippling.

21 Q What is powder stippling?

22 A So the things that come out of the muzzle of the gun
23 besides the bullet, we use those things to try to estimate
24 the range of fire. The first thing that comes out is
25 smoke and that's the black sooty material we saw on the

1 hand. That smoke gets deposited on anything in front of
2 the gun. Behind the smoke are called the unburn powder
3 granules. So the shell is filled with powder and the
4 powder is like sand and those powder granules burn as they
5 burn they are converted into gas and that's what forces
6 the bullet out, but they don't all burn. And so some of
7 them come out of the muzzle of the gun unburned or even on
8 fire burning basically. And those little grains of sand
9 hit the skin. And if they do kit the skin, they'll make a
10 mark. And that mark be called powder stippling and some
11 people call it powder tattooing. So when you have the
12 powder granule on the little skin, they leave a mark and
13 that's what this kind looks like. But I don't think it is
14 for a couple reasons. The first reason is he's wearing
15 clothes. So those powder granules that you saw the shirt
16 in the first one we put up and he has a heavy shirt on.
17 And if it hit that shirt, it would just stop there. It's
18 not going to mark the skin. These are very small tiny
19 like grains of sand. They're not very heavy. They are
20 not even like a rock. A grain of sand would be heavier.
21 They are just nitrocellulose, but they're not going to
22 make a mark if there's clothing in the way. And so they
23 don't -- they're not for that reason. And I think that
24 they also are a little bit too large for powder granules.
25 And I just don't think that it's -- they just don't look

1 quite right.

2 Q Dr. Beaver, and obviously I know you weren't there
3 when this incident happened, correct?

4 A Correct.

5 Q And you can't say that you know exactly what
6 happened, but can you testify that certain aspects of this
7 would be consistent with your findings?

8 A Yes.

9 Q Now, you mentioned earlier you don't know how many
10 bullets were fired, correct, you weren't there?

11 A Correct. Initially, I thought that there were two
12 shots. One that went through his hand and missed. And
13 then the second one to go through the back of his head
14 when he turned around to run because I had no other
15 information. So that was my initial thought. I told
16 them, well, I think there may have been two shots because
17 I can't really line the hand shot up with the shot through
18 the head. And so I think that there was two because
19 somehow you have to get that powder on the hand and the
20 bullet through the finger. And then line that up with the
21 head if you're only going to say one shot.

22 Q If it was one shot if we're going with a hypothetical
23 and it was one bullet, would it be consistent with Chris
24 Yarborough seeing the individual coming turning like this
25 and turning down away from the barrel?

1 MR. SWILLEY: Objection calls for speculation.

2 THE COURT: Overruled. I'll let him answer if
3 he knows the answer to the question.

4 A I would say that you've lined up the points that have
5 to be lined up in that hypothetical. So you've put the
6 hand and the wound through the head and the appropriate
7 path. And if you line up those points, then I would agree
8 with the hypothetical.

9 Q Okay. If you could, could you step down from the
10 stand and if I get in that position if you could walk us
11 through in that hypothetical pathway that the bullet would
12 have taken and how it would have progressed through the
13 body? If that's all right with your Honor. If you'll
14 stand here and I'll demonstrate the hypothetical you say
15 is consistent with your findings.

16 A So here the bullet goes through the finger and the
17 muzzle of the gun is maybe right here. So it deposit soot
18 on the hand. And then the bullet would go through
19 straight like this and then through like this. And that's
20 one of the problems with hypothetical is that you have to
21 make sure that it goes through this finger but doesn't hit
22 the arm or the shoulder because otherwise we would have
23 more wounds. So it has to go through the finger and it
24 has to go through right through there.

25 Q Let me ask you this before you sit down, Dr. Beaver.

1 Now, in your expert opinion, you been doing this a long
2 time. It's your belief that the back of the head that
3 bullet enters or skins starting at the back of the head,
4 is that right?

5 A Correct, yes.

6 Q So in all scenarios it is consistent with the head
7 being turned away from the barrel regardless of where the
8 position is of the hand?

9 A Right. There's a couple other points that I should
10 make. Can I sit down?

11 Q You can, but before you do, I'm going to ask you more
12 question and then we'll jump around a little bit.

13 Dr. Beaver, you know, that's your expert opinion and you
14 been doing it a long time, but I want to offer a
15 hypothetical. We saw that the graze wound diagram matches
16 up with that direction of travel the jury saw that. But
17 if in a hypothetical circumstance if the injury would have
18 occurred to the front of the head, it would been with a
19 downward trajectory, is that correct?

20 A Correct. It would have to go down because the -- it
21 would have to go from the eye to below the ear.

22 Q And so we're roughly the same height, is that right?

23 A Yes.

24 Q So if you have a riffle pointing about right here in
25 order to achieve that trajectory, the victim of that shot

1 would have to be down, is that right?

2 A Right, some way to make it go like this and go like
3 that.

4 Q Okay, very good. Thank you, Dr. Beaver. You can
5 have a seat. I do want to jump back to what you were
6 saying and feel free to explain your point?

7 A So when I was thinking through this I was thinking --
8 I was pretty sure I was confident that the bullet comes
9 from back to front. And I would say like you've proposed
10 a hypothetical what if it was face on and the bullet was
11 coming straight. And I think we have no stippling or soot
12 on the face. Even if this arm was fully out and this
13 distance maybe two feet, the stippling from the riffle is
14 going to hit the face. And we would see stippling marks
15 all over the face. So if the bullet is in front, if the
16 gun is in front and the one shot is going through the
17 finger, then it has to leave stippling marks and other
18 soot on the face. It would also leave more soot on the
19 palm of the hand. So I think that there would be
20 stippling to see. There would be findings on the front on
21 the face. The face other than the tear, the big tearing
22 the face is fine. There's no entrance wound. There's no
23 stippling. There's nothing to indicate that the bullet is
24 coming from front.

25 Q Okay. And, again, that's just a hypothetical. In

1 your expert opinion based on years and years of doing this
2 and under all scenarios that could be proposed, it's your
3 opinion that when that shot is fired the head when we
4 speak in terms of the head shot, the headed is turn away
5 from the barrel, is that right?

6 A Yes, the barrel of the gun is behind the head.

7 Q Okay. Now, you reduced your findings to writing, Dr.
8 Beaver?

9 A Yes, sir, I did.

10 Q I'm going to show you State's Exhibit 87. If you can
11 tell me if you recognize that particular item?

12 A Yes, this is the report.

13 Q Thank you, Dr. Beaver.

14 MR. WHITE: Judge, at this time I move State's
15 Exhibit 87 into evidence.

16 MR. SWILLEY: No objection.

17 THE COURT: Without objection so admitted. Can
18 I see that?

19 MR. WHITE: Yes, sir.

20 THE COURT: Thank you.

21 (WHEREUPON, State's Exhibit No. 87 was admitted
22 into evidence.)

23 BY MR. WHITE:

24 Q Dr. Beaver, in your expert opinion, what was the
25 cause and manner of death of Chris Yarborough?

1 A Yeah, so I made the cause of death gunshot wound to
2 the head and the manner of death is homicide.

3 MR. WHITE: Beg the Court's indulgence one
4 moment. Thank you, Dr. Beaver, that's all I have for you.
5 Please answer any questions the defense may have.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. SWILLEY:

9 Q Good afternoon.

10 A Good afternoon.

11 Q Now, Dr. Beaver, I think you testified earlier under
12 direct from Mr. White that you -- you don't rely on
13 anything else when you get the body other than the
14 coroner's report, that is correct?

15 A That is correct.

16 Q And in this case you took several photographs of the
17 body and all these photographs were taken by you or your
18 staff, is that right?

19 A Yes, most of them taken by me. There may be a couple
20 that my staff took because I had to hold the hand open.

21 Q Because you had to do what now?

22 A I think there was one photograph we saw where I'm
23 actually holding the hand and the staff was taking the
24 picture.

25 Q Right. And you testified earlier about the

1 trajectory of the bullet in this case. During your
2 autopsy, you didn't go back and re-approximate the edge of
3 the wound, did you?

4 A Oh, yeah, I did that turn the head side ways and
5 looked to re-approximate the wound. I was looking for an
6 entrance wound and there isn't any. We have pictures of
7 the back of the head as well.

8 Q You didn't mention anything about re-approximating
9 the wound in your report, did you?

10 A No, I just described the wound.

11 Q Okay. And going back to this report, you got
12 provided an autopsy report for the autopsy that you do, is
13 that correct?

14 A Yes, sir.

15 Q All right. And that autopsy report's got to be
16 accurate, correct?

17 A Reasonably, I'm a human being and we do make
18 mistakes.

19 Q You intended that it be accurate then, correct?

20 A Yes.

21 Q Okay. It's got to be precise to a certain degree,
22 correct?

23 A I -- define precise -- I'm not sure exactly what you
24 mean by that.

25 Q You would pay attention to details, is that right?

1 A Yes, I try to be attentive to details, yes.

2 Q And your report's got to be complete, is that
3 correct?

4 A I'm not sure what you mean by complete.

5 Q You don't want it to be incomplete, do you?

6 A I want it to have -- my objective is to determine the
7 cause and manner of death and I want it to have the
8 important details for determining the cause and manner of
9 death.

10 Q All right. And it's important that you outline
11 everything that you do to come to the determinations that
12 you make in the report, is that right?

13 A I'm not sure I understand the question.

14 Q So you talked about -- you said you re-approximated
15 the wound, but you don't mention that in this report,
16 right?

17 A That's correct.

18 Q Okay. And you also didn't test for gunshot residue
19 on either end of the wound, is that correct?

20 A That is correct.

21 Q Okay. And I think you testified that there were
22 no -- there's no stippling or powder burns to the front of
23 the head, is that correct?

24 A That is correct.

25 Q And you didn't see any to the back of the head

1 either, did you?

2 A That's correct, yes.

3 Q Okay. And you would agree that these type graze
4 wounds or tangential wounds as you would say it could be
5 very difficult to determine -- difficult to determine the
6 entry and exit wound, is that right?

7 A There is -- if there is an entry and exit, we look
8 for that and I look for that in this case, but sometimes
9 you can't identify the entry wound or an exit wound
10 because the skin is torn and the destruction to the tissue
11 is such you just don't see a definitive hole.

12 Q And you would agree that typically that an entry
13 wound would have, you know, jagged over stretch
14 lacerations on the side of the wound, correct?

15 A An injury wound?

16 Q Entry wound?

17 A I'm not sure I'm following you with that.

18 Q Okay. I'll move on. You would agree in this case
19 that the right ear was not pushed to the back of the head,
20 is that correct?

21 A I'm not sure it wasn't -- it was almost completely
22 destroyed. I don't know what -- I don't know whether I
23 would say it was pushed one way or the other. There was a
24 lot of tissue destruction, and so I don't know how to
25 answer that. I am sorry I just don't know how to answer

1 it.

2 Q Sure. And based upon your report, your report really
3 doesn't make any specific noticeable findings to either
4 end of this wound, is that correct?

5 A Correct. Well, I do believe I indicated a direction
6 of travel, but that's about it.

7 Q You don't talk about how you came to that conclusion
8 in the report you would agree with that?

9 A Correct.

10 Q Okay. And I think Dr. Beavers -- I keep saying
11 Beavers I'm sorry Beaver. You would agree that you don't
12 know anything about the firearm that actually caused this
13 injury, do you?

14 A The only thing I can tell is -- and I could tell this
15 at the time of the autopsy. This is a riffle and not a
16 pistol.

17 Q Right. But as far as the specifics or particulars of
18 the particular riffle, you don't have any of that
19 information, do you?

20 A I don't have any of that. To this day, I don't
21 really know.

22 Q Right. You have no idea what's sitting in that box
23 right there is the riffle that caused the injury, do you?

24 A Since, the box is sitting here I'm going to infer
25 that that's the weapon in question.

1 Q Sure. Going back to that hand wound, you said you
2 noticed black soot on the index finger around the middle
3 finger and on the palm side of that numb, right?

4 A Yes.

5 Q And you don't notice any black soot on the palm of
6 the hand, is that correct?

7 A Yes.

8 Q All right. And you don't notice any stippling on the
9 front of that hand, correct?

10 A Correct.

11 Q And in fact it be true to say I don't think you found
12 any stippling anywhere during your autopsy, correct?

13 A I will agree with that, yes.

14 Q Okay. Would it be true to say that you characterize
15 that wound to the hand as a contact wound?

16 A It's hard to make -- to say that that's an exact
17 contact wound because the finger is small and the bullet
18 relative to the size of the bullet. So we don't get to
19 see the usual gas expansion that happens with a contact
20 wound. It is close and it may be a contact wound, but it
21 would be -- I would be -- I think caution should be used
22 in trying to over interpret that. So for the range of
23 fire for the hand, all I would say is that it's close
24 enough to deposit soot and I didn't see any stippling. So
25 it is a close range wound and it could be contact. It's

1 hard to say for sure and I would caution not to over
2 interpret that.

3 Q Would it be true to say then that you don't know if
4 it's a contact wound or not?

5 A It would be true to say that I'm not going to over
6 interpret that.

7 Q And I think you characterize this as a graze wound,
8 is that right?

9 A I think that's the best characterization. It's
10 not -- as I said, it's not classical, but it has most of
11 the features of a graze wound, so I will say tangential.
12 And, again, the skull is what's complicating matters here,
13 but it does impact the skull and does extensive damage.
14 There's a lot force in this bullet.

15 Q And so when it's a graze wound, you would define this
16 as a wound that happened or a bullet wound that happened
17 at an angle, right? That is to say entered the head at an
18 angle, correct?

19 A I guess so. I'm not sure if the angle is really the
20 thing. It's more almost parallel to the surface that it's
21 impacting.

22 Q Okay. And you agree your report also does not
23 mention any specific locations of any dental restoration
24 or fragments or fillings, correct?

25 A No, it does not.

1 Q And you don't recall where those -- any particular
2 place in the skull those fillings were found, do you?

3 A Yes, he does have fillings. And we took radiographs
4 to try to look for fragments of the bullet and you can see
5 the fillings in the radiograph.

6 Q But you don't mention where those fillings were
7 found, do you?

8 A No, you can look at the x-ray if you like.

9 Q And you would acknowledge that if you tested gunshot
10 anywhere on the side of head that could help you determine
11 an entry and exit wound, is that correct?

12 A I don't -- I don't know that.

13 Q Okay. I think you said you define this as a
14 tangential wound, right?

15 A I think that's the best way to describe it, yes.

16 Q And it would be a deep tangential wound, is that
17 correct?

18 A Yes.

19 MR. SWILLEY: Beg the Court's indulgence.

20 (WHEREUPON, a pause in the proceedings.)

21 BY MR. SWILLEY:

22 Q And, Dr. Beaver, going back to what we saw about the
23 examples that Mr. White showed you about how you believe
24 that the wound could have come in. I think you stated
25 that it would be -- I mean, there's endless scenarios, I

1 guess, according to you how the bullet could have come
2 into the finger and the head, correct?

3 A I don't know if it's endless, but there are many
4 ways. As long as you line up those points and have the
5 direction of travel of bullets consistent, I think there
6 are a number positions you can place the body in to arrive
7 at that -- at lining up the points. You have to line up
8 the points basically.

9 Q And, I think, if a bullet strikes the hand this
10 direction, right, you're typically going to have stippling
11 on the palm, right?

12 A I would expect stippling on the palm, but it depends
13 on how far the muzzle is from the hand. If the muzzle is
14 close, a couple of inches, two three inches, it would
15 produce stippling on the palm.

16 Q Right. And it would produce black soot around the
17 area where the muzzle is, right?

18 A Correct.

19 Q Okay. And, again, that would probably -- it would
20 depend on what kind of riffle is being used as well?

21 A Yes, sir.

22 Q Okay. As far as the location of the teeth, I mean,
23 you don't know anywhere in the autopsy report where the
24 teeth had been pushed too, do you?

25 A No, I'm not really -- I'm not a dentist. And so I

1 generally not that interested in the teeth unless there's
2 some -- unless somehow it's involved in the cause of
3 death.

4 Q Okay. So if the teeth were blown -- if the teeth
5 were blown to the front of the head or outside that could
6 indicate that that would be the exit wound, correct?

7 A His -- there wasn't that much -- the wound didn't
8 involve the jaw or mouth directly. And it's only through
9 the force that the bullet exerted throughout the whole
10 entire head that they are disrupted. So it could be very
11 misleading to look at just the teeth because the forces
12 are going throughout the entire head. And they're
13 displacing even large piece of bone. And those going all
14 different directions. It's kind of like a pool ball. If
15 you shoot a pool ball and you hit the collection of balls,
16 you might have one that goes completely to the side, but
17 that doesn't tell you how the initial pool ball came to
18 hit the stack if you see what I am saying. So where the
19 teeth went, it's not because they were directly hit by the
20 bullet, it's because they were moved by the forces that
21 are expanding through the head as the bullet hits the
22 head.

23 Q And that has something to do with the angle in which
24 you were hit most of the time, is that correct?

25 A I don't think that's true. I think that if the

1 bullet hits the tooth directly or hits a structure
2 directly, it will in part that motion. But if it's a
3 force that the bullets exerting on a structure like a rack
4 of pool balls, they can go in any direction.

5 Q Okay. And going back I think you talked about the
6 shoulder injury or the, I guess, the superficial shoulder
7 injury that we saw in the State's Exhibit. You would
8 initially believe that to be stippling, correct?

9 A Yes, I thought it has the appearance of stippling,
10 but as I said, I don't believe it's stippling. My opinion
11 is it's not.

12 Q Right. And today that was an incorrect finding,
13 correct?

14 A It's a finding that I wanted to entertain. I wanted
15 to introduce the idea that is this stippling more than
16 saying that it is. So it's not stippling. I don't think
17 so. He has clothes on. I don't think it would go through
18 the clothes.

19 Q Right. You had Mr. Yarborough's clothes at the time
20 of the autopsy, correct?

21 A Yes, sir, I did.

22 Q Okay. And you noticed at the time of autopsy there
23 no powder burns to the shoulder, right?

24 A Correct, I wouldn't expect to see those unless the
25 muzzle of the gun was very close to the clothing.

1 Q What I'm asking you is at the time you made your
2 report, you had already had the clothes in your
3 possession, right?

4 A They were on him, yes.

5 Q Right. And you would have been able to see there's
6 no burn marks on the clothes to cause stippling on the
7 shoulder, correct?

8 A I think we're confusing. I think we're a little
9 confused about this. The stippling is caused by unburn
10 powder granules. They are microscopic. You can barely
11 see them with the naked eye even with an magnifying glass
12 it's hard to see them. And when they hit the fibers of
13 this clothe, they go into the clothe and you cannot see
14 them with the naked eye. When they are examined by a
15 forensic examiner's at SLED, those people will use
16 dissection microscope 20 or 30 magnification power and
17 they will try to find granules, those powder granules
18 through like by pulling apart the fibers of the clothes.
19 So for me to see them at the autopsy with the naked eye is
20 not something that happens. Now, if we're talking about
21 soot, yes, we can see soot sometimes. Sometimes there's
22 so much blood on clothing is of such a color that you
23 can't distinguish the soot. If it's a white shirt, yes,
24 we can see the soot easily, but sometimes you don't. In
25 this case, I have a photograph very close and I didn't see

1 anything. And you can see it in the photograph.

2 Q And it be true to say you had no idea what caused
3 those marks on the shoulder, correct?

4 A That is correct I have no opinion as to those. I am
5 not sure how those got there.

6 MR. SWILLEY: Thank you, Dr. Beaver.

7 THE COURT: Any redirect?

8 MR. WHITE: Just briefly, Judge.

9 REDIRECT EXAMINATION

10 BY MR. WHITE:

11 Q Dr. Beaver, from a GSR gunshot residue, are you aware
12 that collection of gunshot residue is something that's
13 reserved for law enforcement, is that right?

14 A It is reserve for law enforcement, and they typically
15 do it at the scene. I have been chief medical examiner in
16 other places. And I have collected lots of gunshot
17 residue. And I have testified to it many many times. And
18 it is in my experience very situational. Sometimes you
19 swab areas where you just know there's going to be gunshot
20 residue and you get nothing. And there are other times
21 where you swab things and you get some residue. And so it
22 depends upon -- also, I don't do the exam myself. I have
23 to give it to SLED and have a forensic scientist do it.
24 Now, the only method that is available to me and I have
25 collect this in some cases is for scanning electron

1 microscopy, that means that I have little button with an
2 adhesive and I dab that on the skin and it picks up
3 microscopic pieces of powder that haven't been burned yet.
4 And then they put that button under a scanning electron
5 microscope. And somebody sits and goes up and down the
6 grid and looks for characteristic pattern or the shape of
7 a unburn powder granule. And they're usually like a disk
8 almost. And it is super labor intensive and so SLED want
9 do it. And the other method is for swabs where you take a
10 swab and that method is called atomic absorption. And you
11 subject the swab to a flame and then that you read the
12 spectrum off that flame. And the spectrum looks for three
13 metals barium, antimony and lead. And those three things
14 are ubiquitous in the soil and around just in every day
15 life. So you have to find the proportions. And so if you
16 find barium, antimony and lead in the right proportions,
17 then you can say there's gunshot residue here. And
18 that -- SLED's not offering that method to us. So I would
19 have to find some place that would do that. I know that
20 if gunshot is going to be collected, the best time to
21 collect is at the scene as soon as after the event is
22 possible.

23 Q You just answered all my questions. I had some
24 follow up, but you answered every single one of them.
25 Dr. Beaver, going back to the hand, you described that as

1 a through and through gunshot wound to the hand, is that
2 correct?

3 A Yes, it goes -- it's not exactly because the finger
4 is small relative to the size of the bullet, it's not
5 exactly an in hole and out hole. There is disruption of
6 the tissues of the finger fractioning of the bone. But
7 there is enough of a path that I could follow that I
8 think -- I best describe it as through and through. We
9 could call it a graze wound. Somebody said, hey, I think
10 this is a graze wound. I have no objection to that.
11 Contact wound that's harder because with contact and
12 expansion of gas, you expect to see a lot of tissue damage
13 and a lot of tearing. So I think if there was any
14 contact, we would see tears in the skin that would go down
15 into the palm of the hand because -- so the bullet comes
16 out of the muzzle of the gun first. Then comes this hot
17 ball of gas. If the muzzle was right up against the skin,
18 that's what we call contact. And it makes a seal so that
19 the bullet goes and then the gases go in behind it. And
20 they're expanding and they just tear open the skin. And I
21 don't think we're seeing enough of that type of damage in
22 the finger to call in contact.

23 Q So in your opinion, you believe the hand was in front
24 of the barrel of the gun and that it was not in contact
25 with the barrel?

1 A Yes.

2 Q Last question now. I know we saw pictures and I just
3 want to ask you this generally when you doing an autopsy
4 do you notice things obviously. You're down with the
5 body. You're observing it with eyes from head to toe, is
6 that right?

7 A Yes.

8 Q And is that the best time to observe the body is when
9 it's right in front of you on your table?

10 A Yes, that's the best.

11 Q And some things that are captured in the photographs,
12 you know, photographs aren't always completely, you know,
13 indicative of what you can see with the naked eye, is that
14 right?

15 MR. SWILLEY: Objection to leading.

16 THE COURT: I'll allow it go ahead.

17 A So what I think about the photographs and about the
18 report is that I don't intend them to stand alone. I
19 intend them to help me explain the situation. I intend
20 them to remind me of things that I might have forgotten
21 between the time I do the autopsy and the time that I have
22 to talk about it. So they're not -- I have no intention
23 of making them stand alone documents.

24 Q And so you were present at the autopsy and you
25 yourself conducted this autopsy along with your staff, is

1 that right?

2 A Yes, sir.

3 Q I want to ask you kind of a very self explanatory
4 question, but a Dr. Thomas D. Owens present there with you
5 at the autopsy?

6 A No, sir.

7 MR. WHITE: Beg the Court's indulgence. That's
8 all I have for you, Dr. Beaver. Thank you so much.

9 MR. SWILLEY: Briefly, your Honor.

10 RECROSS-EXAMINATION

11 Q Just so we're clear, Dr. Beaver, you have taken GSR
12 off of a wound, right, I think you did testify to that,
13 correct?

14 A Usually, I take the GSR from the hands, so I'll do
15 the back of the hand and the palm of the hand. And I done
16 that at MUSC at the request of law enforcement when they
17 didn't get it at the scene and they want me to do it.

18 Q My question was to you ---

19 A But I have not done it from the wound.

20 Q So you've never done from the wound you yourself?

21 A I am not going to go with never. I probably have,
22 but I don't recall ever -- it never helping me in any way.

23 Q Okay. So it would be your testimony that you've
24 never gotten gunshot residue off of any head wound or any
25 other wound other than the hand, is that correct?

1 A You're asking me for the 30 years of memory here. I
2 don't recall a case where I took gunshot residue from a
3 wound and had a positive finding that I didn't already see
4 with my naked eye. In other words, I saw powder or
5 stippling and then I got residue. And then it was
6 positive. I think that I have done that. But there's
7 never been a time where I've not seen anything on the skin
8 taken the residue and it's been positive.

9 Q Okay.

10 MR. SWILLEY: Beg the Court's indulgence one
11 moment. No further questions, your Honor.

12 THE COURT: Doctor, you may step down. Thank
13 you, sir.

14 (WHEREUPON, the witness leaves the witness
15 stand.)

16 MR. WHITE: I would ask that Dr. Beaver be
17 released from his subpoena.

18 THE COURT: Any objection?

19 MR. SWILLEY: No objection.

20 THE COURT: Sir, you are released from your
21 subpoena. You free to go, have a nice afternoon. Can the
22 lawyers approach a minute please?

23 (WHEREUPON, a bench conference was held in the
24 presence of the jury, but out of the hearing of the
25 jury.)

1 marked.

2 MR. WHITE: Yes, sir, Judge.

3 THE COURT: All right, bring me the jury please.

4 (WHEREUPON, the judge came into open court.)

5 THE COURT: All right. We have all the jurors
6 back in the courtroom now. We are ready to proceed with
7 the trial of the case. Before I sent you all out, the
8 State rested its case. At this point in time the Court
9 will recognize defense counsel, Mr. Swilley.

10 MR. SWILLEY: Thank you, you Honor. The
11 defendant will call Dr. Thomas D. Owens.

12 THE COURT: Who is it?

13 MR. SWILLEY: Dr. Thomas Owens.

14 THE COURT: Sir, if you'll come on up please.

15 THE CLERK: You'll please step up to the stand
16 and place your left hand on the Bible and raise your right
17 hand. Do you swear or affirm the testimony you give in
18 this case to be the truth, the whole truth, and nothing
19 but the truth so help you God?

20 THE WITNESS: I do.

21 THE CLERK: Please be seated and state your full
22 name for the record.

23 THE WITNESS: Thomas Darrel Owens.

24 WHEREUPON,

25 Dr. Thomas Owens,

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SWILLEY:

4 Q Good morning, Dr. Owens.

5 A Good morning.

6 Q Dr. Owens, can you tell me what -- what is your
7 education?

8 A Well, basically I have an under graduate degree in
9 biology premed from UNC Charlotte followed by four years
10 of medical school at UNC Chapel Hill School of Medicine.
11 Then year and a half of internal medicine training that
12 was done in Baptist Hospital in Winston-Salem, North
13 Carolina followed up with that of four years of training
14 in anatomical and clinical pathology. And then a year of
15 specialized training in forensic pathology.

16 Q And subsequent to after your education, tell me
17 what's your work history?

18 A Basically right after graduating from the fellowship
19 year, I went to Charlotte to the Charlotte, North Carolina
20 to the Mecklenburg County Medical Examiner's Office that
21 was in July of 2004. I been there ever since, spent ten
22 years as a staff pathologist, a forensic pathologist. And
23 in 2014, I became the chief medical examiner and
24 department director for that office.

25 Q And where are you currently employed?

1 A At the Mecklenburg County Medical Examiner's office
2 in Charlotte, North Carolina.

3 Q Dr. Owens, have you ever testified as an expert
4 before in court?

5 A I have.

6 Q Okay. And how many times have you testified and
7 qualified as an expert witness?

8 A Well, over 200 times.

9 Q And what was the subject matter for which you were
10 qualified as an expert?

11 A Typically, it's some version of forensic pathology or
12 cause and manner of death.

13 Q Okay.

14 MR. SWILLEY: Your Honor, at this time I would
15 offer Dr. Owens as an expert in the subject matter of
16 forensic pathology.

17 THE COURT: Mr. White.

18 MR. WHITE: No objection, Judge.

19 THE COURT: All right. Ladies and gentlemen,
20 this Dr. Thomas is being qualified as an expert as a
21 forensic pathologist to give expert testimony here. I
22 previously gave you a charge as it relates to expert
23 testimony, that charge remains the same as it relates to
24 this witness as well, okay. Mr. Swilley.

25 MR. SWILLEY: Thank you, your Honor.

1 BY MR. WHITE:

2 Q Dr. Owens, did you have a chance to -- well, first of
3 all, let me ask you have you performed autopsies before?

4 A Yes, sir.

5 Q Approximately, how many autopsies have you performed
6 in your career?

7 A It's around \$4,000.

8 Q Okay. And I'm going to go ahead and ask you have
9 you -- when you make -- tell me about what happens when
10 you produce an autopsy report? What kind of information
11 does that report have to have and tell me the significance
12 of that?

13 A Well, based on the autopsy report is like any other
14 kind of medical record. And as a medical doctor, you want
15 to know who your patient is, why they're coming in to see
16 you. So some history something about the circumstances,
17 something about the person. You know whether it's
18 medical conditions or injury that they might have received
19 or any kind of drugs or alcohol or stuff they might have
20 been, you know, involved. But you take all that
21 information and the first thing you do is look at the
22 person. You know, do an external examination, look at the
23 outside of them. You know, measure them, weight, height,
24 look for scars and tattoos. You know, all those kinds of
25 things get a description, see if there's any injuries on

1 the outside of the body, diagram those, photograph those,
2 do x-rays all those kind of things. Basically, the
3 autopsy is like one of the final, you know, sort of
4 examinations you can do. And once you've done all these
5 sort of outside stuff, then you make an incision from the
6 shoulders down to the chest down, the middle of the body
7 look inside the organs, look around again for disease or
8 injuries. You also do the same thing open up the head
9 looking for any signs of disease or any injury. You want
10 document the findings and document the sort of reasoning
11 behind that in the report so that it can be clearly
12 understood by somebody reading it and by somebody who
13 might be reviewing it, you know, months or years later for
14 potentially like going to court. That's all put together
15 in like I said a report with all that information. Again,
16 maybe some photos and other stuff to basically arrive at
17 what kill the person and not only what did it, but how it
18 happened in terms of was it a natural thing, was it, you
19 know, homicide or suicide or an accident.

20 Q Dr. Owens, and you mention the findings and reasoning
21 behind the findings. And as far as the documentation of
22 what you did and the finding reasoning. How important is
23 it to document everything you did as it pertains to the
24 autopsy?

25 A Well, I mean there are standard processes that you

1 always document. There are -- any time you have a
2 positive finding like you see something you want
3 definitely say this is what I see and this is why I'm
4 saying this is what it is. Some people will go into along
5 list of negatives like I didn't see this, I didn't see
6 this. I didn't see this. And sometimes that's very
7 important. And so, you know, the next person coming along
8 if they go, well, you didn't say whether you saw this or
9 not. And that will be an important thing if you saw this
10 piece there that can change my opinion, you know, but I
11 don't know if you even looked for it. So it is important
12 to include all to either say yeah or nay about all the
13 things that are important to document something specific
14 especially for like injuries and stuff.

15 Q Dr. Owens, when you do an autopsy to determine those
16 things, what kind of information, what kind of documents
17 do you typically rely on when you perform that autopsy for
18 those findings?

19 A Well, for us to start off with whatever the call was
20 that came into our office about the body, so whatever an
21 investigator wrote down which usually is something that
22 comes from either talking to the police or maybe a doctor
23 at the hospital if they died at the hospital, but you're
24 definitely going to want to get especially if there's
25 something -- the injury you want to get a report from the

1 police. We have investigators, so we send them out to the
2 seen when we can, so they get firsthand information in a
3 report. But, again, you want to have the history of why
4 this person is dead and why they are coming in, what
5 you're looking for to start with that. And then medical
6 records or anything like that can just tell you who the
7 person is.

8 Q I mean, do you want to have as much as possible when
9 you're trying to make your findings to decide how and when
10 somebody died and particular to that? I mean, as far as
11 anything you can get from any other documents. Do you
12 want to have as much as possible?

13 A Yes. And you don't always get right like the day you
14 do the autopsy, but it usually takes a couple of months to
15 finalize that report. So during that time, you start
16 saying I didn't get to see x-rays or I didn't get that
17 medical record or maybe I didn't get witness statement.
18 But, you know, there were witnesses from the police
19 report, so you want to get that information so that by
20 time you do the final version, you have it as accurate as
21 possible, not everything that you know at the end is going
22 to be available up front when you're first doing the
23 autopsy, but you want at least something to get you going
24 when you start, so you know what you're dealing with.

25 Q And, Dr. Owens, when you do an autopsy with a gunshot

1 wound, would you want to know -- I guess, you wouldn't
2 want to start with -- true to say you don't want to start
3 doing the autopsy without any additional information as
4 far as what kind of firearm was used, photographs of the
5 scene or any kind of potential narratives that may be out
6 there?

7 A That's always important to have. You definitely
8 going to have some of those things because especially if
9 the body's been moved or touched, clothing might have been
10 removed, you know, if they did CPR or something. The
11 body's not in the same position as it was when it was
12 found. You know, they might have been transported to a
13 hospital, so any number of things. You know, if the
14 person was wearing a big coat or a hat or something and
15 that's going to change, you know, what you see on the
16 body. And you don't have that information then you might
17 make the wrong call.

18 Q Okay. And you conduct autopsies true to say numerous
19 autopsies with gunshot wounds, is that correct?

20 A Yes.

21 Q Where the gunshot wound is the cause of death,
22 correct?

23 A Yes.

24 Q Dr. Owens, when it comes to determining, I guess, the
25 nature and the particulars or the way in which a gun -- a

1 gunshot wound occurred including the path of trajectory.

2 What are some of the things that you do to try to figure
3 that out in an autopsy?

4 A Well, the first thing is you're doing an overall, you
5 know, per view of the body. You're certainly starting off
6 with whatever history is provided. If they say, you know,
7 this is somebody that was at ex-location, you know, they
8 think was shot multiple times and, you know, you might be
9 looking for multiple bullet holes or, you know, they were
10 involved in a car wreck or any number of things could have
11 happened after they were shot. So you want some
12 information about, you know, that kind thing, so you can
13 figure out are the injuries related to just a gunshot or
14 something else. And then you sort of start off with for
15 gunshots specifically you're trying to figure out where
16 the bullet went in, so an entrance. And if the bullet
17 still inside the body or if there's an exit. So those are
18 the first things. And then when you can identify like
19 what you think is the entrance wound, it'll have certain
20 characteristics, you know, it would be like attempting
21 like a circle or an oval. And when a bullet hits the
22 body, the skin puts up a fight. And so the skin will get
23 scrapped or abraded like, you know, scrap your knee. The
24 bullet will scrap the skin as it dents inward before it
25 punches through. So you look for what's called an

1 abrasion ring or if it's at an angle, you might have like
2 an abrasion where the bullet kind of slid against the skin
3 before it punched through. You know, when you fire a gun
4 or a gun's fired and the bullet comes out, the actual
5 projectile, the bullet itself is just that piece of lead
6 that might have a cooper jacket on it, but behind it is
7 all that gun powder. All the stuff that exploded that
8 push it out the end. So it's always got this gun smoke
9 and powder and particles are coming out that end of the
10 gun. Now, it's kind of like if you got a can of paint or
11 hair spray. If you get real close, you spray you get a
12 glob. And that will be the soot, the burnt black gray
13 powder comes out the end. It only travels a couple
14 inches. So if you're real close when the gun's fired,
15 that's that black gray soot stuff will end up like a glob
16 right there. If it's more than a couple inches away, that
17 kind of starts to blow away in the wind. But the little
18 burning particles still fly out and they hit the skin.
19 And they create something called stippling or tattooing
20 gun powder tattooing and that can go, you know, depends on
21 how close you are the exact weapon from a few inches up to
22 as much as three feet. Again, if there's clothing in the
23 way or jacketing or hats and things like, that they can
24 block some of that you want look at those look or know
25 that they were there. But that's what you're looking for

1 around that entrance wound to kind of give you an idea,
2 that's an entrance. This is how close it might have been,
3 and then I don't see or I do see something on the body
4 that helps me with that. Then the direction is going to
5 be well is there an exit or is there a bullet on the other
6 end of where this injury wound is. And what did it go
7 through, what did it hit. So you're looking at all that.
8 And if you don't have, you know, a clear indication of
9 what an entrance or exit is you don't have soot, you don't
10 have stippling, you may not be able to tell the direction.
11 But those are the big things you're typically looking for.
12 And, of course, did the wound actually hit anything that
13 would kill somebody as it went from point A and to point
14 B.

15 Q Dr. Owens, tell me about -- what is re-approximating
16 the edge of the wound or re-approximating the wound mean?

17 A Well, typically for just a straight on shot, you'll
18 have a hole for the entrance and kind of the hole for the
19 exit. And there's not a whole lot to do, but if the gun
20 is like contact or it's high powered like a riffle the
21 tissue can tear and rip like split bust open. And so when
22 you get it, it just looks like a mess and stuff busted
23 open. What you want to do is clean it up and put the
24 edges back together like try to put it all back together
25 they way it would have been before they were shot as close

1 as you can. And then you examine the edges and you look
2 for, again, the soot, the abrasions any kind of particular
3 pattern to the way the tissue might be torn or ripped.

4 Q When you re-approximate the wound to make those
5 determinations, that you would document in an autopsy
6 report?

7 A Yes.

8 Q And have you ever -- seen -- well, is there ever been
9 a scenario where you had to re-approximate the edge of the
10 wound and it wasn't mentioned -- have ever seen excuse
11 me -- has there ever been a situation you approximate a
12 wound that didn't note that in the autopsy report?

13 A No, because that would be critical to understanding,
14 again, the basis for a determination like of a direction.
15 You can do it in a statement such as, you know,
16 re-approximation of the wound edges reveals this abrasion
17 or this direction of tissue and tearing blah, blah and or,
18 you know, taking a photograph of something. You probably
19 got photographs of it torn apart, be nice to have a
20 photograph of what it looks like if you put it back
21 together because that's pretty important information for a
22 wound that's very destruction.

23 Q And when you do re-approximate the wound at an
24 autopsy as you described, are there always photographs
25 taken of the re-approximation?

1 A Yes.

2 Q Okay. Dr. Owens, when you're trying to determine is
3 there anything else you do that's important to know when
4 you try to determine a gunshot wound, I guess, trajectory
5 or anything else about the gunshot wound, do you have
6 mentioned?

7 A Well, I mean, again, you're looking at how many holes
8 are they and do some of them look like an entrance or some
9 of them look like an exit they have those again
10 characteristics of abrasions the shape, the soot, the
11 stippling. As far as the body, itself if it's not what we
12 call a straight on shot, you know, if it's at an angle and
13 it tears are rips the tissue, then you can have what's
14 called a graze or tangential wound or it comes in kind of
15 flat and shallow and that rips and tears the tissue crease
16 like a furrow or it can actually split it and tear it
17 apart. So that be a case where you want to do
18 re-approximation of the edges. And you look for what they
19 call skin tags and the lacerations and see kind of which
20 direction they're pointing along with again is there soot,
21 is there abrasions, is there any of that. Possibility of
22 looking for wounds somewhere else on the body often hands
23 and arms and stuff can be like an intermediate part can
24 go through one thing like a hand or an arm and then go
25 through the body just see if any of that lines up or if

1 there's separate shots. And other than looking at the
2 body that's all you can really tell from the autopsy.

3 Q And, Doctor, I want to segue into have you been able
4 to examine the autopsy report and all the autopsy photos
5 and all other photos of the scene and all other evidence
6 in this particular case?

7 A As far as I know, I have. There was the autopsy
8 report, a number of autopsy photos, quite a number of
9 scene photos, and then also quite a number of scene photos
10 that were labeled as being from the coroner. And so
11 that's, again, where you get into beyond the autopsy
12 itself what you see when you look at the body putting that
13 piece of the puzzle, that wound is a piece to a puzzle,
14 okay. You might try to orient it in one direction, but
15 until you compare it to the puzzle itself, you might have
16 it flipped around backwards or upside down. So you have
17 to know how it fits into the rest of the puzzle, which
18 will be the scene. And the only way to know that is you
19 either got to be there at the scene or you got to look at
20 all photos and the diagrams and the documents and see how
21 those pieces fit together. So is there a video are there
22 witnesses, is there diagrams or reports that were drawn or
23 photographs that were taken any of that stuff from the
24 scene helps to put all the pieces together to come to a
25 proper answer.

1 Q And, Dr. Beavers excuse me not Dr. Beavers.

2 Dr. Owens, have you had a chance to review the final
3 autopsy report of Christopher Yarborough?

4 A Yes, is it Christopher?

5 Q Donald Christopher Yarborough.

6 A Donald Christopher, yeah, I have.

7 Q Okay. That's the same as State's Exhibit 87,
8 correct, same document?

9 A Yes, sir.

10 Q Thank you. And, Dr. Owens, as far as the -- I guess,
11 I'm asking you what seems to be out of place or odd about
12 this autopsy report as it relates to findings of the
13 trajectory of the bullet wound to the head?

14 A The diagnosis indicates a gunshot wound to the head
15 and says that it is graze type defect. I would not say
16 that's completely inaccurate because it is a type of a
17 graze. It's a deep graze, a tangential wound. The
18 determination of within the body of the report there are
19 descriptions about things that were and weren't seen.
20 What I did find interesting is there were a number of
21 photos, but I did not see a statement in the autopsy report
22 or photograph that looks at or says anything about the
23 wound being re-approximated to get an idea of the
24 direction. And, again, I think that's a very important
25 piece of information to have to help back some things up

1 because what is described is the fact that there was no
2 abrasion. You couldn't really see a true entrance hole
3 and there's no real exit hole. It's big a torn blow out
4 kind of wound on the right side of the head that involves
5 right next to the right eye and goes back to the ear and
6 the tissue is pretty torn up, which is what you'd expect
7 from a high power riffle round especially to the their
8 head because those are usually pretty destructive. So
9 there was no signs of which was the front and the back
10 based on a finding an entrance or exit. There's is no
11 soot deposited on either end, no stippling deposited on
12 either end front or the back. So, again, that doesn't
13 help us either. He makes the comment in the report of
14 this quote this wound has graze type features end quote.
15 That's the only description we have. And it says
16 photographs are obtained and there more photos of the
17 wound to the side of the head, but nothing with the
18 indicating about re-approximating the edges and how that
19 information was used to determine what he called quote the
20 apparent path of the wound is back to front end quotes.
21 That was pretty much the biggest thing that I thought was
22 missing.

23 Q And I'm going to hand you what's marked State's
24 Exhibit 85 a diagram of a grazed wound and mention
25 something about an abrasion realm. Based upon the autopsy

1 report and the findings and the photographs and everything
2 else that you've seen is there any evidence of abrasion or
3 realm or anything indicating an entry wound?

4 A No.

5 Q Okay. And also that diagram has a marking for a
6 proximal corner. Was there anything that you saw that
7 would mark or show a proximal corner?

8 A No.

9 Q Okay. And it also mentions a distal wound or distal
10 corner. Was there anything based upon what you saw in the
11 photographs and the autopsy report and anything else all
12 the other evidence that you were able to show the proximal
13 corner?

14 A Neither proximal or a corner distal corner.

15 Q Okay. Dr. Owens, I want to go back -- you also had a
16 chance to review -- I'm going to hand you some photographs
17 that have been marked defense exhibit three through 26.
18 Is correct you've seen all those photographs, correct?

19 A Yes, sir.

20 Q All right. Dr. Owens, you seen those photos. I want
21 to kind of move into the wounds involved with the deceased
22 Mr. Yarborough's hand. Tell me what you notice as
23 significant about that hand wound?

24 A Well, the first thing is on the right hand the wound
25 involves mainly the inside the palm side of the thumb and

1 the pointer finger, the first finger in that there is a
2 decent amount pretty significant amount of black gray soot
3 that's present on those fingers. It's very distinctive
4 around the ends of those fingers. Looking at the other
5 fingers, you don't really see that and it's different than
6 say just dirt or grease on somebody's hands. It is
7 definitely a powder black gray consistent with the soot
8 from a wound from a gun. And along with that on the --
9 what we would call the medial side. So the side of the
10 first finger that's away from the thumb. So the one where
11 it's next to the middle finger, that side of that first
12 finger is torn and ripped. There's tissue been torn out
13 in like a groove the bone's damaged. And it's kind of at
14 an angle. It's not going straight front to back. It's
15 going sort of from the tip back up toward the knuckle
16 there on that side. So that is consistent with some type
17 of force tearing or ripping through the tissue and we have
18 soot and powder on those fingers.

19 Q Dr. Owens, let me ask you, you can hand me those
20 photographs please, sir. And you had chance to -- you
21 viewed photographs of the weapon in this matter, is that
22 correct?

23 A Yes.

24 Q Okay. And, I guess, in viewing this all the evidence
25 that you seen including the evidence of the photographs

1 and the description of the hand wound, I guess, what is
2 that wound indicative of as far as how it would have
3 occurred as it relates to the powder placement and the
4 injury?

5 A In order for that black gray powder to deposited on
6 the thumb and the first finger, they had to be in contact
7 with the tip of a gun either right at the muzzle or in
8 this case looking at this particular weapon, there's some
9 gas exhaust ports near the tip. So if the fingers were
10 kind of wrapped around or right up against the tip of the
11 weapon. And, you know, we see photos which are still
12 images and pretty much things aren't steel. It's not like
13 they're frozen in time when this is happening things are
14 moving. Somebody can be grabbing. Somebody can be
15 pulling turning and twisting so things move. So we're
16 just seeing a snapshot in that picture. Like if you saw
17 me half way out this chair, you just have a picture of me
18 half way out the chair. You don't know if I'm standing up
19 or sitting down unless you can see the before and after
20 parts of that. So the same thing with this just, we don't
21 know exactly how the hand was positioned, but it had to be
22 in contact with the end of the weapon and either the
23 bullet coming out the tip, scrapped and tore and ripped
24 the side of that first right finger or the pressure if the
25 hand was on the right place for those exhaust ports may

1 have torn and ripped the finger or some combination of the
2 two. There's like a gas block sight type thing on the
3 end, but there's not like a little sharp edge or something
4 that I think would have just grabbed and torn the finger.
5 It be from the bullet or maybe the pressure from the port
6 on the end of the gun.

7 Q Okay. Dr. Owens, typically when you see a contact
8 wound with a bullet to a hand, would have more -- would it
9 be more damaging than the photo of the hand wound in this
10 case?

11 THE COURT: What number is that?

12 MR. SWILLEY: Defense Exhibit Number 6.

13 THE COURT: Thank you.

14 A Well, again, if it's just barely hitting the edge of
15 the finger if the hands are kind of spread out, then we're
16 only hitting the edge of that one finger, that may be all
17 the damage that it did. I mean, there's a bone under
18 there, so, you know, that is going to be damaged is sort
19 of which make some tissue tear as the bullet goes by. So
20 I have seen it with handguns certainly like this with
21 riffles. It's either way because right on the edge of the
22 finger can do this. You know, and a millimeter over they
23 would have blown the whole finger off, so that's the kind
24 of power we're talking about. It's not unusual for it to
25 look like this, but typically they are a little worse than

1 this on the finger.

2 Q And, you know, if this was an open hand, if this
3 wound occurred with open hand, what would be present is
4 not present with this hand wound?

5 A You mean like the palm opening and facing?

6 Q Or the back hand or if it were through the back hand.
7 If the wound had happened with an open hand or with a hand
8 not around the barrel or what would be present?

9 A Well, I mean, if it's close enough like I have my
10 hand here like standing up like trying to block something,
11 then you're going to go -- the hole is going to go more
12 straight forward through the finger, through the hand and
13 the soot and possibly in stippling the little powder
14 particles are going to be spread all over the palm of the
15 hand.

16 Q Okay. Now, Dr. Owens, and anything else that you
17 find that would be consistent with about the hand injury
18 to the hand this would be a contact wound with a hand on
19 the barrel?

20 A I mean, again, the wound is torn and you have the
21 soot. The edges of where the wound is torn, you know,
22 they're slightly abraded, but the tissue is so damaged and
23 torn that you can't really say, oh, look that's clearly a
24 an abrasion ring or something or an abrasion collar around
25 the entrance wound. So nothing other than, you know, what

1 we just described, I mean, that's pretty definite that the
2 hand -- those fingers were in contact with the end of the
3 weapon.

4 Q And if you don't mind handing those back to me, Dr.
5 Owens. I'm going to hand you what's been marked as
6 Defendant's Exhibit 14, 15, 17, and 18. You seen these
7 photographs before, correct?

8 A Yes.

9 Q Okay. And do you believe those are photographs of
10 the scene?

11 A Yes.

12 Q Okay. What is -- as far as those blood patterns and
13 as far as the trajectory and to try to determine entry and
14 exit wound, what's significant about those photographs?

15 MR. WHITE: Judge, I don't know what we're
16 looking at.

17 MR. SWILLEY: I'm sorry. I'll put those on the
18 Elmo. I'm sorry.

19 THE COURT: Let me ask this question too are the
20 photographs already admitted into evidence is that -- they
21 hadn't been moved into evidence.

22 MR. WHITE: I don't even know what we're looking
23 at here, Judge.

24 MR. SWILLEY: Judge, these are the photographs
25 that we stipulate. I go ahead and move them all into

1 evidence at this time.

2 THE COURT: All right, any objection?

3 MR. WHITE: No, sir, Judge.

4 THE COURT: All right.

5 MR. WHITE: I do want to see what we're looking
6 at here.

7 THE COURT: All right, so Defendant's Exhibits 3
8 through 26 I believe it was -- is that right?

9 COURT REPORTER: Yes, sir.

10 THE COURT: All right, three through 26 are
11 admitted into evidence without objection.

12 MR. SWILLEY: Thank you, Judge.

13 THE COURT: Go ahead, Mr. Swilley, I'm sorry.

14 (WHEREUPON, Defendant's Exhibits Nos. 3-27 were
15 admitted into evidence.)

16 BY MR. SWILLEY:

17 Q Mr. Owens, you've reviewed all the or several, I
18 guess, dozens of photographs of the scene, is that
19 correct?

20 A Yes, sir.

21 Q Okay. I'm going to show you what's been marked as
22 Defendant's Exhibit 14. Is that thing working over that
23 screen?

24 A Yes.

25 Q Okay. What do you notice about this particular

1 photograph?

2 A This is one of the photographs from the scene and you
3 can see on the left sort of corner there, we're looking
4 downward at an angle so that's a door that leads into the
5 next room. And as we move over to the center and right
6 side, there's a tall cabinet. And then far all the way
7 over to the right there's like a four-drawer filing
8 cabinet that's kind of like a grayish green color at least
9 in my picture here. And if you look on the cabinet,
10 you'll see there's like a knife, a big blade that's down
11 through the handles. But if you look on the cabinet,
12 you'll start to see there are drops of blood that are
13 running down the cabinet. And as we go from sort of the
14 left edge of that cabinet over to the right, they increase
15 in their heighth on the cabinet as to where the spot
16 starts and it runs down. And you see the cabinet sticks
17 out a little bit past other cabinet and there's a little
18 bit of blood on the edge.

19 THE COURT: Hold on a minute.

20 MR. WHITE: Judge, may we approach for just a
21 minute.

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury, but out of the hearing of the
24 jury on the record.)

25 MR. WHITE: Judge, I don't think his expertise

1 in forensic pathology qualifies him as an expert in crime
2 scene reconstruction which is what they're trying to do
3 there. In his questioning, he mentioned blood spatter and
4 trajectory. And they are attempting to qualify him or get
5 him to testify to his expertise as a forensic pathologist
6 to reconstruct the crime scene. I think that's
7 inappropriate.

8 MR. SWILLEY: I'm not trying to get him to
9 reconstruct the crime scene. It's just about the
10 trajectory of the bullet as far as what's significant
11 about the photos where the location of the blood will be
12 indicative of where the wound is.

13 MR. WHITE: He can do that by analyzing and
14 showing the body, but as far as reconstructing the crime
15 scene and how blood would have ---

16 THE COURT: He's not qualified to testify as to
17 blood spatter.

18 MR. SWILLEY: Certainly not. I'm not trying to
19 do that just the location of the blood.

20 THE COURT: All right.

21 MR. WHITE: I mean, that's where this is going.

22 THE COURT: Stay away from that.

23 MR. SWILLEY: Yes, sir.

24 (WHEREUPON, a bench conference was held in the
25 presence of the jury, but out of the hearing of the

1 jury on the record has ended.)

2 BY MR. SWILLEY:

3 Q Dr. Owens, I'm sorry I interrupt you. I'm going to
4 show you what has been marked as Defendant's Exhibit
5 Number 15 and that depicts Mr. Yarborough's body at rest,
6 is that correct?

7 A Yes, his body is off to the right side of the screen.

8 Q Okay. Now, and Mr. Yarborough appears to be face up,
9 correct?

10 A Yes, he's lying on his back.

11 Q Okay. And if someone is struck with a bullet, I
12 guess, to the -- I guess, in the place in which, I guess,
13 you know, its two wounds that we know of that the bullet
14 -- or, I guess, the trajectory of where the bullet pass
15 through. Tell me what's indicative about the location of
16 the blood as far as it pertains to where he may be able to
17 determine where the wound or where the bullet entered into
18 the head?

19 A Well, certainly, again, with a gunshot wound to the
20 head especially from a riffle, it's got to be very
21 destruction force. As the tissue splits and tears, you're
22 going to have two affects. There's the inward deflection,
23 so it fractures the skull and the bone pieces can go into
24 the brain and tear the brain. And then the tissue the
25 skin and blood and stuff around the skull are blown

1 outward, but they're also pushed backwards from where the
2 impact point was.

3 Q Okay. And if someone were facing -- I guess, if
4 someone were facing that door in Defendant's Exhibit 14
5 and if trying to see I -- trying to make sure I put my
6 question correctly. If someone were turned away from that
7 door or back to that door was struck on the right side
8 under the ear, would there be blood, I guess, to the right
9 side of where that person is if they were facing away from
10 that door if the entry wound was under the ear?

11 MR. WHITE: Judge, may we approach?

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury, but out of the hearing of the
14 jury on the record.)

15 MR. WHITE: I think this the same thing. I know
16 Mr. Swilley trying to avoid it, but ---

17 THE COURT: I don't think he's qualified to
18 testify to that.

19 MR. SWILLEY: Okay.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury on the recorded has ended.)

23 THE COURT: Rephrase your question please.

24 BY MR. SWILLEY:

25 Q Dr. Owens, I guess, moving forward to what you be

1 able to see and, you know, with hand a wound and all the
2 other photographs you been able look at not just at the
3 autopsy photographs, but all the other photographs of the
4 scene. Tell me why you believe that it's unlikely that
5 the entry wound came in is the wound that's under the ear
6 behind the ear? Tell me why you would believe to be
7 unlikely?

8 A Well, basically, we're left with nothing from the
9 autopsy can clearly define the direction of that wound.
10 The destructive nature of the tangential wound to the
11 head, the tearing of the tissue does not allow you to use
12 with any real certainty the lacerations and the skin tags
13 of a true graze wound to determine directionality. It's
14 helpful when it's a true graze wound, but when you have
15 that much destruction of the tissue, its indeterminate.
16 You cannot tell if it went from front to back just looking
17 at the body. So you have to consider the position of the
18 body in the scene at the time the shot occurred and where
19 the blood and the tissue went as the bullet pass through
20 the body or through the head in this case.

21 Q And bringing to the effect the hand wound, tell me
22 why -- due to the location the wound on the hand why it's
23 unlikely that the entry wound was under the ear that we
24 mentioned?

25 A I have tried to figure out how to contort my hand

1 backwards over my shoulder behind my head grabbing the end
2 of a weapon to, again, get the soot and the stippling on
3 the finger and yet there is no other wounds on the body
4 around the back of the head or the shoulder or even the
5 forearm. If your hand is bent back over where soot and
6 stippling would also have positive, so there's just no
7 other indication that it seems kind of contorted to reach
8 back over your shoulder and grab a riffle barrel. I just
9 don't see how that really makes sense.

10 Q And, I guess, what about -- what about those hand
11 photographs the photographs of the hand wound would
12 suggest that the hand is on the barrel rather than away
13 from the barrel?

14 A Because the soot and the injury to the tip of the
15 finger indicate that he was in contact with the barrel at
16 the time that the gun was fired.

17 Q All right. And there is nothing on the palm or the
18 remainder of the hand or the other side of the thumb that
19 would indicate that the hand was away from the barrel not
20 in contact with the barrel, is that correct?

21 A Correct.

22 Q Okay. Dr. Owens, some of the other things, I guess,
23 when you try determine directionality as you mentioned.
24 As far as any kind of -- if there were any kind of teeth
25 or dental fillings anywhere would that be, I guess,

1 relevant to directionality?

2 A Yes, if the projectile strikes those items just like
3 with a bone it's going to push it typically forward and
4 maybe off to the side left or the right as the projectile
5 passes by.

6 Q And that's what usually happens when a bullet enters
7 in that fashion?

8 A Yes.

9 Q Okay. Could it cause the teeth to kind of scatter
10 all over the head?

11 A Yes.

12 Q It could do that as well?

13 A Yes.

14 Q Okay. But in a wound such as this with a location
15 of the teeth be relevant to determine directionality?

16 A Pretty much except for possibly the upper back teeth
17 on the right side because that could put it close to where
18 the path of the bullet is going in sort of like the right
19 temporal area and comes across and right at just below the
20 ear. And then the just the shock wave of fracturing the
21 tissue could impact the bone in the teeth in that area.

22 Q Is there anything else that we haven't mentioned
23 about this autopsy report which is out of the ordinary or
24 inconsistent with the findings of the directionality of
25 the bullet in the head?

1 A No, sir.

2 Q Okay.

3 MR. WHITE: Beg the Court's indulgence. Thank
4 you, Dr. Owens. Please answer any questions that the
5 Solicitor may have.

6 THE COURT: Mr. White.

7 MR. WHITE: Thank you, Judge.

8 CROSS-EXAMINATION

9 BY MR. WHITE:

10 Q Hey, good morning, Dr. Owens.

11 A Good morning.

12 Q Thanks for being here with us. I just got a few
13 questions for you. I won't keep you up there long. How
14 you liking Florence so far pretty good?

15 A Oh, yeah.

16 Q Dr. Owens, Dr. Beaver testified yesterday. You don't
17 have anything to refute that he is also an expert in this
18 field, do you?

19 A No, not to my knowledge.

20 Q Okay. I think he testified that's got over 30 years
21 of experience in forensic pathology. So you would expect
22 that he has knowledge in the field, that he's an expert in
23 the field, is that right?

24 A Yes, he should and should have, I guess, his board
25 certifications and all that stuff, yes.

1 Q Right. And are you aware that he testified yesterday
2 that he did in fact re-approximate the wound?

3 A I was told that this morning that he did testify that
4 he re-approximated the wound.

5 Q Okay. So the defense attorney told you that?

6 A Yes, because I asked him if he was ever able to find
7 out if there was anything done since it's not documented
8 or photographed.

9 Q Right. But it's important to document your findings
10 and that's what you're saying, you know, it's really
11 important to document everything that you can?

12 A Yes.

13 Q So somebody can review it later, is that right?

14 A Yes.

15 Q Can I take a look at your report? No, your report.

16 A Well, this is his report.

17 Q The report that you did?

18 A Oh, what do you mean the report that I did.

19 Q The report you did for this case? Did you not do a
20 report for this case?

21 A I don't know if I did a report for this case. I
22 don't have one with me.

23 Q Oh, so you didn't document your findings?

24 A I just took notes and talk to the attorney.

25 Q Okay. You didn't submit documents or your findings

1 to the defense attorney?

2 A I don't recall having produced any type of an actual
3 written record, sir.

4 Q Okay. They ask you not to?

5 A I don't remember him ever asking. We just talked
6 about showing up to testify.

7 Q But it is important to document findings, right?

8 A Yes.

9 Q Okay. Now, you would agree and I think you testified
10 that photographs although good are secondary to actually
11 being there at autopsy, is that right?

12 A Yes.

13 Q And your firsthand look at the body is -- and I think
14 you told Mr. Swilley most importantly, that's the crux of
15 this thing is sitting there with the individual on the
16 table so you can review and look at the body because
17 sometimes photographs they don't accurately depict what
18 you can see on that table, is that right?

19 A Well, I mean, there two dimensional copies of
20 something that you can look at, you know, in real life.
21 So, obviously, looking at it in real life can sometimes
22 produce, you know, a better impression of what you're
23 looking at. Sometimes the photos can capture the
24 necessary information if photos are taken.

25 Q Right. And it's all to kind of assist each other as

1 you are kind of formulating your opinion, but, again, you
2 would agree that the most important is when you're present
3 for the autopsy, is that right?

4 A Well, I mean, yes, if possible there are going to be
5 certain things that are going to be very difficult to get
6 an accurate photograph of or even describe, you know, a
7 picture can be a worth thousand words. And sometimes you
8 know if you get a photograph of something that's very
9 clear and demonstrates it or you've seen it in person
10 that's great, but nobody else knows if you're -- what you
11 saw and what you said is, you know, a hundred percent
12 accurate if there's nothing to compare it with as far as
13 something objective like a photo or a diagram.

14 Q Right. I agree with you. So, you know, Dr. Beaver
15 with 30 years experience his first hand knowledge in his
16 account of that and he went back over his autopsy
17 yesterday on the stand, that would be the most important
18 part of the autopsy?

19 MR. SWILLEY: Objection, your Honor, pitting
20 witness testimony.

21 THE COURT: Overruled.

22 A I'm sorry repeat.

23 Q Dr. Beaver getting on the witness stand and
24 recounting for this jury, ladies and gentlemen of the
25 jury, each and every step of his autopsy from his

1 firsthand knowledge be more important from another expert
2 just looking at photographs?

3 A It depends on whether or not from his first-hand
4 information if he properly recorded and documented all the
5 information that is important in making the determination
6 of any particular subject like direction of fire or
7 something like that.

8 Q Okay. You testified that even just looking at the
9 pictures, right, that you can't clearly determine the path
10 of the wound to the head in this case?

11 A No, just the destructive nature of the wound inside
12 of the head, it's indeterminate. And there's nothing
13 recorded or photographed that would let me be able to make
14 any other determination.

15 Q But, again, I know it's repetitive I'm so sorry, but
16 he would have been in a better position to determine that
17 because he was actually seeing the body as it lay there.
18 And you admit photographs don't always depict what's
19 actually there present in the autopsy report, is that
20 right?

21 A It's possible like I said I don't know. He's seen it
22 firsthand, usually seeing something firsthand can be
23 better than the photographs.

24 Q Yes, sir.

25 A But whether or not, again, he's making an accurate

1 determination based on just interpreting the autopsy in a
2 vacuum without consideration of the circumstances of the
3 scene, that's where I think the fall is. Certainly,
4 looking at the body he would have better visual of the
5 exact characteristics of that wound, than what I would
6 have just from still photographs.

7 Q Right. But you weren't at the autopsy?

8 A No.

9 Q And you weren't at the crime scene?

10 A No.

11 Q And you didn't speak to investigators in this case?

12 A No.

13 Q You know, from one expert to another, did you call
14 Dr. Beaver and talk to him about his findings?

15 A No, I didn't.

16 Q Okay. Did you talk to the defendant in this case?

17 A The defendant?

18 Q Yes, sir.

19 A No.

20 Q Okay. So you really didn't talk to anybody, but the
21 defense attorneys?

22 A Yeah.

23 Q Did they tell you their theory of the case?

24 A Not until after I had looked at everything.

25 Q Okay. At that point did they cut you a check to come

1 down here?

2 A Well, I haven't been paid. They will eventually, I
3 guess. The administration office of the courts will pay
4 me for my time.

5 Q I got you, I got you. I understand completely.

6 MR. WHITE: Beg the Court's indulgence for just
7 one second.

8 THE COURT: Dr. Owens, I think I called you Dr.
9 Thomas earlier and I apologize for that.

10 THE WITNESS: Oh, that's okay. She came out and
11 said Dr. Thomas.

12 BY MR. WHITE:

13 Q And nothing in your findings you couldn't testify to
14 what was in the defendant's heart, could you?

15 A I'm sorry.

16 Q At the time that he picked up the gun and put it in
17 his hands, you couldn't tell us, tell jury what was in
18 this man's mind, could you?

19 MR. SWILLEY: Objection calls for speculation.

20 THE COURT: He can answer. Overruled, I'll
21 allow him to answer the question.

22 A I have no idea. I don't know the defendant. I don't
23 know what he was thinking when he did it or was involved
24 in this action.

25 Q Yes, sir. And I promise you I'm not trying to be

1 smart with you. I'm just trying to make a point that I
2 can elaborate on. You don't know whether or not when he
3 had that finger on the trigger whether he pulled
4 accidentally or intentionally?

5 MR. SWILLEY: Same objection speculation.

6 THE COURT: Overruled.

7 A That would go to a whole lot more analysis than just
8 the wound, yes, psychiatric, and all kinds of other stuff,
9 so, no, I have no idea.

10 MR. WHITE: Yes, sir. I understand and I
11 appreciate your testimony. Thank for being here. If you
12 need any tips about Florence, you just let me know. Thank
13 you, sir.

14 THE COURT: Mr. Swilley.

15 MR. SWILLEY: Briefly, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. SWILLEY:

18 Q As far as a written report of your findings, when you
19 testify as an expert, you don't typically produce a
20 report, do you on your own accord?

21 A No, I mean, if I am asked for written report to
22 outline very specific stuff whether that's mediation,
23 pretrial, whatever settles, plea deals all that stuff,
24 then that's typically when I do them. Every once in a
25 while somebody will ask for a report to actually bring to

1 court. So like, you know, like with my copy of the
2 report, I highlighted some stuff and then I made some
3 notes on a piece paper. And we had some conversations and
4 then I'm here to testify as my documentation.

5 Q Right. And as far as, it's not difficult to get a
6 photograph a re-approximation of a wound, is it?

7 A No. I mean, do it all the time with piecing things
8 together even -- I'm not saying you should have done it,
9 but even things like, you know, if somebody shot through
10 the hand or the arm we'll line them up and how it might
11 have been positioned, then they put a rod through it and
12 show, how, oh, that makes perfect sense that if the hand
13 is up here, then the injury wounds in the chest and the
14 exit wound is in the lower back, that's the exact same
15 shot or I can't make it line up. So this must be a
16 separate wound. So it must have been shot twice, you
17 know, like once through the arm or the hand, and another
18 time through the body because I can't do it without
19 contorting myself in some weird shape. So but, yeah, we
20 will do that try to put rods or re-approximate wounds
21 especially destructive head wounds. We often have to do
22 that just to identify the person.

23 Q All right. And just Mr. White brought up the fact he
24 hadn't talked to anyone other than me. You've had a
25 chance to view the incident report, witness statement in

1 the case, haven't you?

2 A Yes, I have.

3 Q All right. And I think you mention when you do the
4 autopsy report or when you conduct the autopsy, you're in
5 a better position to see what goes on. Will it be true to
6 say that's only if you do what you're suppose to do, right
7 or do what's necessary?

8 A Yeah, you have to perform the proper tasks and you
9 have to recognize them and document them to make it clear
10 that you did the proper tasks and the right way as another
11 expert would do.

12 MR. SWILLEY: Thank you, Dr. Owens.

13 THE COURT: Mr. White, anything else?

14 MR. WHITE: Beg the Court's indulgence once
15 second I am sorry. Nothing further, Judge. Thank you,
16 sir.

17 THE COURT: Doctor, you may step down. Thank
18 you.

19 MR. SWILLEY: Your Honor, he's not under
20 subpoena, but I think Dr. Owens is going to go back to
21 Charlotte.

22 MR. WHITE: No objection. Hope, you have a safe
23 trip.

24 THE COURT: Sir, you're free to go. Have a nice
25 day. Thank you.

1 (WHEREUPON, the witness leaves the witness
2 stand.)

3 THE COURT: Call your next witness please.

4 MR. JOYNER: The defense would call Scott
5 Ballard.

6 MR. WHITE: Judge, may we approach?

7 (WHEREUPON, a bench conference was held in the
8 presence of the jury, but out of the hearing of the
9 jury and on the record.)

10 THE COURT: Scott who?

11 MR. JOYNER: Scott Ballard he's a firearms
12 expert.

13 MR. WHITE: And I didn't see anything in his CV
14 that would qualify him as such. He look like a glorified
15 body guard to me.

16 THE COURT: He can see if he can qualify him as
17 such.

18 MR. WHITE: Yes, sir, sounds good.

19 THE COURT: All right.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury has ended on the record.)

23 THE CLERK: Sir, if you'll please step up to the
24 stand, place your left hand on Bible and raise your right
25 hand. Do you swear or affirm the testimony you give in

1 this case to be the truth, the whole truth, and nothing
2 but the truth so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seat and state your full
5 name for the record.

6 THE WITNESS: My full name is Scott Allen
7 Ballard.

8 WHEREUPON,

9 Scott Ballard,
10 after first having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JOYNER:

13 Q Mr. Ballard, how old are you?

14 A I'm 58.

15 Q And tell us where you grew up?

16 A Biloxi, Mississippi and then California.

17 Q And did you attend college?

18 A I attend college, yes, UCLA Southern California.

19 Q And what degrees do you have there?

20 A I earned a PH.D is my highest degree in criminal
21 psychology.

22 Q Have you ever served in the military?

23 A Yes, I have.

24 Q And in what capacity?

25 A I started out in NRTC when I was at UCLA that I did

1 six years active additional six year or four years
2 actually of reserve and then four years inactive reserve.

3 Q And what year did you leave the military?

4 A I left active duty in 1992.

5 Q Since 1992 what have you done as a professional?

6 A Well, after the military, I move into -- I did get
7 call back a couple of times when I was in the military,
8 but I had moved to our family owned business which was a
9 private security company where we -- basically, we
10 recruited trained and installed protective security
11 details. Did security analysis, taught use of force,
12 train people in shooting and did basically all of the
13 management of all that for people who needed private
14 security professionals. I worked my way up through the
15 company to the point where I'm actually the final owner
16 now, but I worked my way up through. I started out as a
17 driver and worked my way up through. And I was the chief
18 of training as well as the -- one of the investigators for
19 all after actions. So anything that involved use of
20 force, we would have to do our own internal investigations
21 to make sure people were in compliance.

22 Q I see. Thank you. Have you ever been employed by
23 any firearms manufacturer?

24 A Yes, after I retired, you know, from full time, I
25 became an instructor at Six-Hour Academy for the Six-Hour

1 Corporation. Their firearms manufacturer in Newington,
2 New Hampshire.

3 Q Okay. And would you describe your roles that you
4 held with Six-Hour?

5 A Primary role I was the senior instructor. I was also
6 a master armer. A master armer is somebody who can train
7 other armers to each other classes. And also means that I
8 am qualified and certified on all of the firearms that
9 they make. So makes me a master armer. I can work on and
10 train everything as well as train just regular students.

11 Q And you are in a fact a master armer?

12 A I am in fact a master armer. I also worked for the
13 international sales group through academy where I was sent
14 to other countries to do transition training, armers
15 training use of force training.

16 Q Okay. Would you describe your time in Colombia and
17 Peru and as it relates to that?

18 A Colombia and Peru started out as transition training,
19 but we learned very quickly in Colombia was that they
20 didn't have standards that fell in line with anything of
21 modern -- what would be the modern technique. So what we
22 ended up doing was is working with the Colombia National
23 police at their international school for the use of force.
24 And we created their knew standards for use of force
25 working with them. So we had a hand in writing the use of

1 force there. We did the same thing in Peru, but what we
2 ended up doing there was more less just giving them the
3 guidelines and the information that we had shared with
4 Colombia. And they went ahead and adopted their own
5 specific use of force guidelines.

6 Q Okay. And how long did you work for Six Hour?

7 A So eight years.

8 Q Now, as far as I think you mention something about
9 designing training programs for them?

10 A Yes.

11 Q Would you please describe that?

12 A So as a senior instructor, I would write classes. I
13 would write -- we try to keep everything current and new.
14 It's a business. So we try to come up with new ideas. We
15 spent a lot of time and a few others and myself we spent a
16 lot of time developing the force on force program at the
17 Six Hour Academy and that's the same force on force
18 program that we use across the board whether it would be
19 in Colombia or whether it would be in Mexico or here in
20 the United States with law enforcement and civilians.

21 Q Okay. Now, during your time in -- as a private
22 protection security agent in the military, have you had to
23 put your training into real life use?

24 A Yes, I have.

25 Q And have those real life experiences given you a in

1 sight into arms conflict?

2 A It gives me tremendous insight along with my formal
3 education. The criminal psychology background combined
4 with actual real life application. We're able to see how
5 much was strictly book work and how much was real. And we
6 been able use that constantly evaluating real life
7 scenarios to be able to develop and further them. My
8 personal experience gave me tremendous amount of insight
9 as to how people act and how they're going to react when
10 they're put into those stressors.

11 Q You mentioned earlier you have been an instructor for
12 sometime?

13 A Uh-huh.

14 Q And you mentioned force on force?

15 A Yes.

16 Q Describe what that means please?

17 A Force on force is scenario based training based off
18 of real world experiences. So we read a lot of after
19 action reports, a lot shooting reports. We watch a lot of
20 videos seeing how things unfolded and where the point were
21 where things started to go side ways for example and why
22 was it a shooting not just was it a shooting and who shot
23 whom. It's more of a how can we create situations to
24 avoid this, to avoid any type of damage or just having to
25 flat out use deadly force. So what we use is those

1 scenarios to build with our students and we put them in an
2 actual environment, a training environment. So it maybe a
3 room. It may be a hall way. It may be an empty school.
4 And it could be in shot house, but we give them a device
5 called a marking cartridge. And what it is is a
6 Simunitions pistol. And Simunitions is a company that
7 makes these pistols. They do not fire. They're not
8 capable of even being loaded with live ammunition. So we
9 use those and they fire a -- they have several colors of
10 marking cartridges that are essentially plastic cartridge
11 and it fires. And it's 400 feet per second. So it does
12 have a learning curve. You can't duck these when they're
13 coming at you. You know, with other devices, you can duck
14 and you can see them flying at you. You could duck. But
15 in this case, we try to use the most realistic device.
16 They're still required to where safety equipment. And
17 they know that there's an artificiality to it. So the
18 instructors will stress the students to try to get them
19 beyond that. And there's many times in these scenarios we
20 will tell the students exactly what's going to happen.
21 And it will happen exactly that same. And the students
22 when will act inappropriately. And that's just because --
23 the chemical cocktail with regards to self preservation
24 instinct. This person is -- they're going to go back to
25 making some bad mistakes. Now, once we put them through

1 these scenarios, they see the mistakes. They get some
2 negative feedback, you know, from being hit. And they
3 leave a mark, but they have that negative feedback. Now,
4 we can take that, turn that into a positive and get them
5 to not make the same mistakes again. It's about as
6 realistic as we can get without going to live fire. You
7 know, so there are live fire situations, but they're
8 generally not ever force on force unless it's armed
9 conflict. So live fire is in shoot house, and it's a
10 building a structure any number of things that's built
11 specifically to contain live rounds. But it doesn't give
12 you the dynamic environment that force on force using
13 marking cartridges simulation or Simunitions does because
14 if I'm in a shoot house, you're a two dimensional paper
15 target. If I'm in a live situation, you're a three
16 dimensional moving real world target, right. We hate to
17 say real world, but live actual environment target because
18 even training is real world.

19 Q Now, so you instruct in many different ways. Is it
20 accurate to say that your instruction is based on what we
21 may call consensus best practices?

22 A Most professional instructors across the country, we
23 all belong to a certain number of organizations and we
24 come together regularly. So for example, IALEFI it's the
25 International Associate of Law Enforcement Firearms

1 Instructors. We have annual meetings. We have training
2 seminars. There's online things that we can do. And
3 these are constant evaluations of things that have been
4 happening within the last few months. You know, it's not
5 something that we're looking from, you know, the 1985
6 Miami shootout for example. We're in this and this is
7 stuff that's been happening within this year. And we
8 start to talk about it. And this is where we start to do
9 assessments. We start to look at things. You know, when
10 we start to see tremendous trend with regards to -- say
11 for example an intentional discharge injuries while
12 holstering or, you know, gas escaping injuries things like
13 that. We start to evaluate what's going on with that is
14 that the weapon, is that the technique that they're
15 applying. Is it something to do specifically with a
16 certain type of individual. Maybe somebody with an
17 extremely small hand or a much larger hand. Then we would
18 be looking at that to try to stop these things from
19 happening again. We created these industry guidelines and
20 best practices that are shared at these seminars and
21 things like that. So we operate primarily under the --
22 it's a trust organization. We don't scold each other. We
23 don't force people to do anything, but we all try to
24 operate off of that same base of we're trying to do the
25 right thing. And it's a constant evolving situation. And

1 by evolving I mean if we consider for example Columbine,
2 right, from ten years ago. Nobody had ever heard of it
3 before, right. And so they had to start constantly
4 evolving. So what do they with regards to the schools,
5 right. They took the schools and they ---

6 MR. WHITE: Judge, may we approach just one
7 moment.

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held in the
10 presence of the jury, but out of the hearing of the
11 jury on the record.)

12 MR. WHITE: I'm confused about his opinion on
13 the Columbine shooting, it has to do with his
14 qualifications as an expert. I mean, he's offering his
15 opinion. I mean, I don't know what's going on here.

16 MR. JOYNER: Judge, he was just going to
17 describe how his training is current because it is
18 constantly evolving, but I can just move on from that.

19 THE COURT: Do that.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury on the record has ended.)

23 BY MR. JOYNER:

24 Q Mr. Ballard, during your career, you -- your report
25 and analysis is an important thing?

1 A Uh-huh.

2 Q And how many would you say that you have reviewed
3 over your decades long career?

4 A Well, over a thousand. I mean, it's over -- just
5 with regards to the corporation alone, I was doing it for
6 24 years.

7 Q Okay. And in addition to that, you have trained both
8 military police and private citizens?

9 A Yes, all three.

10 Q Okay. And during this decades long career, is it
11 accurate to say that you've engaged in study and analyzed
12 hundreds excuse me -- I heard you earlier say thousands of
13 shootings and their results in injuries?

14 A Well, thousands of after action reports regard use of
15 force, the number that involved actual shootings and the
16 results probably may be half of those would be actual
17 firearm usage. Remember use of force covers a very broad
18 rang. It's as much as just somebody yelling.

19 Q I see, I see. And as it relates to those shooting
20 injuries, how many gas release injuries do you have
21 personal experience with?

22 A I've experienced on the ranges of instructor six of
23 them.

24 Q Okay. Now, as it relates to the gas release injuries
25 that you have either consulted on or studied in

1 educational environments, how many of those?

2 A It's just a little over a 100.

3 MR. JOYNER: Judge, at this time I would move to
4 have Mr. Ballard entered as an expert in ballistics,
5 firearms and shooting incidents?

6 MR. WHITE: And, Judge, we're definitely going
7 to have a matter of law regarding this expert.

8 THE COURT: I have to ask you to step to the
9 jury room. Do not discuss. I'll bring you back out here
10 as soon as I can.

11 (WHEREUPON, the jury retire to the jury room.)

12 THE COURT: Mr. White.

13 MR. WHITE: Judge, you know, respectfully
14 Mr. Ballard, I heard nothing in his description of what he
15 is accomplish over the last years that would qualify him
16 as an expert in the field ballistics. You know, in my
17 view, he is just reviewing case files and submitting them
18 back to a corporation and offering his opinion. They're
19 trying to sneak Mr. Ballard in to offer an ultimate
20 conclusion of law that this was in fact an accident based
21 on his reviews of similar cases. I mean, that's exactly
22 what's going on here. He has no formal training, no
23 specialize knowledge in ballistics.

24 I mean, you heard James Green who is an actual
25 expert. And he doesn't even come close to the expertise

1 that was offered in qualifying Mr. Green as an expert in
2 ballistics. They are trying to sneak Mr. Ballard in here
3 to argue and to get him to elicit testimony that he
4 believes that this was an accident. And ultimately that
5 is a conclusion of law that respectfully with Mr. Ballard
6 he is not qualified to make. Even if you could qualify
7 him as an expert in that field, he still wouldn't be able
8 to reach that conclusion. And based on what he's saying
9 there from the witness stand, I mean, looks like he's
10 going to draw on and just do exactly that. I respect his
11 CV. I respect his resume, but respectfully, he is not
12 qualified as an expert in those fields. And he should not
13 be allowed to testify to such. And it does appear that
14 he's attempting to reconstruct the crime scene as well. I
15 didn't hear anything about an investigation or specialize
16 training in investigation or crime scene reconstruction,
17 but that's exactly what they're attempting to do here,
18 Judge.

19 THE COURT: Mr. Joyner.

20 MR. JOYNER: Judge, to be competent to testify
21 as an expert witness must have required by reason of study
22 or experience or both such knowledge and skill, and the
23 profession or science. And he is better qualified than
24 the jury to form an opinion on the particular subject of
25 his testimony. Judge, he has instituted firearms training

1 programs for two foreign countries. He's worked as a
2 master armer for Six Hour for multiple years. His entire
3 career has been in training and use of force and in
4 firearms. He is actually an instructor to other people
5 who become instructors and who become armers. He is more
6 than qualified as an expert in the function of firearms,
7 which would include the bullets that go in them. And the
8 function of the bullet, the firearms and shooting
9 incidents, Judge. I mean, that's what his expertise is in
10 shooting incidents. It is in use of force. And he's also
11 qualified that he's seen personally and studied and
12 examined over a 100 injuries relating specifically to gas
13 release injuries. And that, Judge, qualifies him to have
14 a skill and a knowledge that is better than that of the
15 jury. And that's what Nelson v. Taylor 347 SC 210
16 requires.

17 MR. WHITE: Judge, if they want Mr. Ballard to
18 testify to, you know, the process by which he trains
19 people how to shoot, that's fine. If they want to qualify
20 him as an expert and that he knows different types of guns
21 and the bullets that go in them, that's fine. But when it
22 comes to how people react in certain situations, how --
23 whether or not this is going to be an accident or if this
24 is intentional, the affect that bullets or gas that is
25 disburse from firearms, the affect that it might have on

1 the body, he is grossly inadequate on that topic. And he
2 would suggest that he is a farce. But, again, no
3 disrespect to Mr. Ballard I apologize. It does sound like
4 he knows guns. I will concede that. And he knows how to
5 train people in firearms. I'm sure he knows a lot about
6 firearm safety, but the affect that firearms have on the
7 body and what is in the mind of this defendant at the time
8 this happen by reconstructing the crime scene is being a
9 psychologist on the stand is wildy inappropriate in this
10 trial.

11 MR. JOYNER: Judge, we don't intend to
12 reconstruct the crime scene. We simply intend to allow
13 him to demonstrate how firearms work and ---

14 THE COURT: This what I'm going to do, all
15 right. I don't mean to cut you off. First of all, I'm
16 going to stand down for a minute. Mr. Ballard, I'm going
17 to let you stand down too because I'm going to take a
18 short break. Don't discuss your testimony with anyone.
19 When I come back, we're going to proffer his testimony.
20 I'm going to hear exactly what you intend to bring out in
21 this case witness. I don't know at this juncture -- well,
22 I'll leave it at that right now, but I'm going to have his
23 testimony proffered. And I'll make a decision based upon
24 that, okay.

25 MR. WHITE: Yes, sir. Thank you, Judge.

1 (WHEREUPON, a break was taken.)

2 THE COURT: Let me ask this and I'm just looking
3 at the time as we approach lunch kind of get a gauge on
4 how long this may take. I don't know how long the
5 proffered testimony may take whether or not I need to go
6 ahead and cut the jury loose for lunch. I don't want them
7 sitting back there for just the fun of it. And then bring
8 them back out here 20 or 30 minutes and cut them loose for
9 lunch if that makes sense.

10 MR. WHITE: It would be my suggestion that we
11 cut the jury loose. I don't want them waiting back there
12 too long.

13 MR. JOYNER: That's fine.

14 THE COURT: Can you give me some kind of ideas
15 to how long you all think this may take as far as ---

16 MR. JOYNER: Twenty minutes maybe.

17 THE COURT: What time you want me to have them
18 come back 1:30? Should that be sufficient?

19 MR. JOYNER: Maybe two o'clock.

20 THE COURT: All right. Bring me the jury back
21 please.

22 (WHEREUPON, the jury came into open court.)

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, this is going to take a little bit longer than I
25 anticipated when I sent you back to the jury room. So

1 what I'm going to do -- one of my things, I don't like to
2 make a jury sit back in the jury room and wait unless it's
3 absolutely necessary. I realize we're approaching the
4 lunchtime. And so what I'm going to do is I'm going to
5 let you go ahead and go to lunch. I'm going to let you go
6 ahead and go to lunch while we continue working up here
7 and work through whatever I need to work through. I'm
8 going to ask you to be back at two o'clock, be back at two
9 o'clock. Do not discuss the case. Don't do any
10 independent investigation as I've told you from the
11 outset. You're to decide this case based solely upon the
12 evidence and testimony presented in this courtroom and
13 nowhere else. You all have a nice lunch. I'll see you
14 back at two o'clock, okay.

15 (WHEREUPON, the jury was excused for a lunch
16 break.)

17 THE COURT: All right, Mr. Joyner.

18 DIRECT EXAMINATION IN-CAMERA

19 BY MR. JOYNER:

20 Q I retain you in this case?

21 A Yes.

22 Q And did I send you a large amount of material?

23 A You sent me all of the discovery I believe pictures,
24 police reports, autopsy reports, site photos, photos of
25 the firearm involved.

1 Q Okay. And have you had an opportunity to study that
2 material?

3 A I reviewed it all, yes.

4 Q Are you familiar with the firearm used in this
5 incident?

6 A Yes, it's a modified SKS carbine.

7 Q Okay. Can you please describe how it operates?

8 A It's a short semiautomatic firearm. What it does is
9 bleed gases from the gases produced during the firing
10 stage to bleed through a port called a gas port in the
11 barrel and it pushes the bolt backward, which causes the
12 action to open and ejection to occur. And then the rest
13 of the gases and the projectile go out front of the gun.
14 So each trigger presses only one shot, it's not an AKS,
15 it's SKS, which is a carbine.

16 Q Could you describe the differences between an SKS and
17 a AK-47?

18 A So an actual AK-47 not the civilian variance that we
19 see is a select fire military grade weapon that is legal
20 for ownership in the United States, but only with a
21 certain amount of ATF paperwork and only if it was
22 imported before 1968 I believe. So there's very few of
23 them out there. Most of the time when people refer to an
24 AK, it's a certain pattern, but the AK itself is a box fed
25 30 round magazine, right, where the SKS is an internal

1 magazine unless it's been modified. And that box fed
2 magazine allows for select fired capabilities.

3 Q I see. And as it relates to the SKS, how are they
4 different?

5 A Well, the SKS in its original form was design for
6 lesser quality troops, lower quality troops, lesser train
7 troops. And it was a response to and need for a simpler
8 weapon. It feeds from a stripper clip into an internal
9 box magazine. There's no detachable magazine on an
10 unmodified SKS riffle. It also came out it was designed
11 about 1950. I'm sorry 1945. It didn't really hit get
12 into production big swing until about 1949 and even then
13 it was considered obsolete because the AK-47 was
14 considered the better weapon.

15 Q I see. So you're obviously familiar with the way
16 that the SKS works?

17 A Yes.

18 Q Okay. Is it possible that if a person grabbed and
19 pulled on the end of the barrel that it could cause the
20 gun to discharge?

21 A It's possible, yes, if somebodies finger was on the
22 trigger we're just talking about opposing forces. So if
23 somebody's holding something and then it gets yanked,
24 there's going to be opposing backward force.

25 Q Okay. Now, you viewed the wound to Chris

1 Yarborough's right hand in this case?

2 A Yes, sir.

3 Q And in your experience is the wound to his hand
4 consistent with the one of those that would be received if
5 the hand was on or near the muzzle of the firearm when it
6 was discharge?

7 A Yes.

8 Q Okay. Now, I want to ask you a question. What is
9 chamber pressure?

10 A Chamber pressure is the measurement, it's semi rated
11 it's a standard. But it's the amount of pressure that a
12 chamber can withhold and that gives us the amount of
13 propellant that can be inside of the cartridge case. That
14 chamber pressure is what seals and presses the case
15 against the chamber, right. And then those are the gasses
16 that are being produced from the byproduct of the burning
17 propellant. And those gases are what pushed that forward.
18 The higher chamber pressure, the larger and higher
19 velocity of a projectile that you can fire.

20 Q You mentioned SAAMI earlier what is that?

21 A It's the Sporting Arms Ammunition Manufactures
22 Institute. It's the definitive source when we come to
23 what is -- when we want to say define what a bolt. SAMMI
24 gives us an exact definition of it. It's been accepted as
25 a legal -- your description it's the industry standard

1 that manufactures, trainers, designers, ammunition
2 companies even people who make accessories, they all
3 looked to them for the standards. And when we say that
4 it's 45,000 PSI for example, it's 45,000 because that's
5 what SAMMI lists it as their specs. Could the chamber
6 withstand more pressure, yes. Can the chamber extend less
7 pressure, yes. But we can't guarantee it meaning we would
8 be SAAMI and the instructors firearms people. We don't
9 guarantee that it's going to be better than 45,000, that's
10 just taking risks that can are unnecessary.

11 Q I see now so what is the chamber pressure for this
12 SKS?

13 A It's rated as 45,000 PSI.

14 Q Okay.

15 A Because the cartridges is rated at 45,000 PSI.

16 Q I see. So can those pressures as they escape the
17 muzzle can they cause injuries?

18 A Yes.

19 Q Okay. In your experience, have you ever seen them
20 cause injuries?

21 A Not from an SKS, but I've seen it from other firearms
22 including (inaudible).

23 Q How many times have you had the opportunity to review
24 and consult on cases where it was a gas pressure escape
25 that caused an injury?

1 A As in actual testifying.

2 Q No, no, no ---

3 A Just reviewing and consulting?

4 Q Yes.

5 A Well, for sure the six that I witness. And then
6 maybe another dozen where I was just, you know, sharing
7 information back and forth.

8 Q Okay. I see. I want to show you some photos. This
9 is Defendant's Exhibit 11 and 6, 8, 9, 10, 27. Have you
10 had an opportunity to review those photos prior to today?

11 A Yes.

12 Q Okay. Were very those helpful in allowing you to
13 determine an opinion about the injury?

14 A Yeah, they're very helpful. They gave me kind of
15 combine with some other photos of the firearm itself. It
16 gave me a feel for what exactly what was going on.

17 MR. JOYNER: Judge, may I pull the gun out and
18 let him examine the gun?

19 THE COURT: Put some gloves on if you're going
20 to take it out of there.

21 MR. JOYNER: Yes, sir.

22 BY MR. JOYNER:

23 Q Mr. Ballard, if you'd like to stand up and maybe --
24 these three cuts at the end of the barrel would you please
25 describe what those are?

1 A So these are gas ports.

2 THE COURT: I need you all speak up for my court
3 reporter please.

4 A These are gas ports and what these ports do is they
5 then gases that are escaping through the barrel upward and
6 that's for rapid fire keeps the muzzle down. That's why
7 there's nothing here on the bottom of the side. So
8 basically this gun rises or this caliber rises regardless
9 of the platform. A lot when you're shooting it because
10 it's a simple gun Army type of a firearm. They put
11 different devices on the front. This one is actually an
12 after market, but it provides the same affect is that it
13 is three ports expelling gas up. So the gas comes up and
14 fans out and it pushes downward. So the rest gas would be
15 escape through the muzzle.

16 Q Okay. If a hand was grasping the muzzle in this way
17 is it -- would that potentially create an injury
18 consistent with those that Chris Yarborough suffered?

19 A Well, yes, because what you would see would be the
20 burning that charring as well as the disintegration of
21 soft tissue. And that's because we are talking about the
22 45,000 PSI is back here in chamber, but certain amount of
23 it comes up through here and bleeds through this gas block
24 and that's what pushes the rest up here. The rest of it
25 goes forward. So even up here, you're still probably in

1 the range of 30 to 32,000 PSI. Now, that's more than
2 enough to disintegrate tissue and to cause those types of
3 burnings especially if the hand over that. So if you want
4 to hold that are for example. So you hold it like that,
5 so if the hand were to come over the top, right, to try to
6 grab that, okay. So any time a piece of material would be
7 over that, any type of a hand grabbing it here for example
8 any of that. So say for example if it was here and I came
9 across with my right hand, I'd be covering these ports.
10 And then because if you look at the photo, there's a
11 tremendous amount scorching on the under side. So we know
12 that the thumb was involved in the grasp. Because if the
13 thumb was away, you would see it, but the thumb is only
14 scorched about the top two thirds. And then the rest of
15 it's clean underneath. If the hand were in the defensive,
16 you would have seen a lot more scoring here.

17 Q Right.

18 A The scoring stays all up in here is primarily by
19 this -- the joint between the primary. So what is
20 happening is is that took the brunt of all of these
21 escaping gases.

22 Q I see. And you seen many defensive wounds your
23 career?

24 A I've seen defensive wounds hands up things like that.
25 You will get stippling on the palm. You will see

1 stippling on the forearms. You'll see stippling on the
2 person. So if we're at this range -- this bothers me, but
3 if we're at this range and I put my hand out like that all
4 right or any similar orientation, all right, you're going
5 to see all of that burn, that burns all contained here
6 because that burn is all being contained here. All right,
7 so all of that gas escapes upward and that creates that
8 soft tissue damage.

9 Q I see. I see. Thank you. Now, I notice you
10 mentioned something about a push versus grab. Could you
11 describe the difference?

12 A When push somebody, we push open palm generally or
13 push with our fist. This was a grab because the thumb
14 came up underneath and that's where you getting that
15 scarring, you know, that soot to that burn under the thumb
16 because it came around. And it was up by the muzzle when
17 that happen. If it had been a push, like if I was trying
18 to shove it away even if my hand was on top trying to
19 shove it away, it's still -- you're not going to get the
20 same amount of damage. Those gasses were controlled on
21 the escape. They were being impeded by the hand based on
22 what I'm looking at with regards to the pictures and the
23 scoring, the scorch on the thumb.

24 Q Okay. And finally I like to ask you a few questions
25 about posttraumatic instances such as a shooting being

1 present at a shooting. Are you familiar with the best
2 practices following a traumatic event like a shooting?

3 A You talking about for involved shooting with regards
4 to the recuperative process?

5 Q Yes.

6 A Okay. So in the recuperative process even in law
7 enforcement very few agencies don't -- very few agencies
8 compel a statement immediately follow a shooting. In the
9 civilian world, we teach, we train, we advise don't make
10 statements until you had a couple of days of quality sleep
11 because you need the regenerative and recuperative sleep
12 in order to be able to consolidate and get your thoughts
13 to work.

14 Q Okay. So as it relates to your training with law
15 enforcement or law enforcement compelled if they're in a
16 shooting to gave a statement immediately?

17 A I haven't run across an agency in my experience where
18 they been compelled to give statements. Now, many of them
19 do, but that's generally against the advice of counsel and
20 it's almost always against the advice of their
21 supervisors.

22 Q And why would we not want a statement from them
23 immediately?

24 A Well, because again they haven't had a chance to
25 reconcile what's going on, taking a human life is not a

1 natural act. And when you do it and you're having normal
2 conscious and your brain works in a normal functioning
3 manner, you experience a trauma regardless of what your
4 employment is. And, you know, people want to try to
5 rationalize it. And then the brain will take the time to
6 feel in the gaps. So if I'm asking you right after you've
7 been through a traumatic incident, what happened I'm sorry
8 you're not going to be coherent, but you're going to make
9 statements that may not be accurate or may not be
10 consistent with either evidence or with witness
11 statements. And that's just because you're trying to fill
12 in and make reason and logic out of something that's, you
13 know, considered traumatic and unnatural act. Humans --
14 our drive is about self preservation and procreation
15 perpetuation of the species. And that is we lawfully we
16 take -- you know, the taking of the human life so
17 seriously.

18 Q I see. So if a trained police officer needs that
19 maybe two to three -- those two to three sleep cycles
20 would an untrained person likewise need that?

21 A Yes, absolutely at minimum a trained police officer
22 at least who has been trained and has had a chance to
23 think about hopefully before they put on their badge they
24 thought about I may have to do this today or I may have to
25 do this as part of my job. And they've reconciled a

1 certain amount of it. The average citizen doesn't do
2 that. There's a lot of people who carry guns who've never
3 reconciled it, that's where we see what's called a moment
4 of hesitation. And we see that in force on force training
5 people will just -- they'll take the gun out like it's a
6 magic -- but they won't point it at the. And the bad guy
7 in the scenarios will give them an opportunity to try to
8 get them to think it through and actually act. They want
9 go straight in, but eventually you just see that
10 hesitation. We hope with law enforcement that they been
11 trained out of that situation. Civilians don't --
12 generally don't think about it. And those are the ones
13 who've gone through training. Untrained, civilians it's
14 very rare unless you got military experience. And when I
15 say military experience, I'm talking combat arms military
16 experience. It's not likely that they've ever had to
17 really think all that through.

18 Q So that rest in those sleep cycles would be just as
19 important for a civilian as it would be for a law
20 enforcement officer?

21 A We're talking about human beings regardless of their
22 employment. So it's just as important for any human being
23 law enforcement, you know, an attorney any number of
24 things. A person who works in a retail shop. They would
25 all be -- we're talking about very similar actions are

1 exactly the same, but very similar in what their needs
2 would be with regards from recovering from stress.

3 MR. JOYNER: Okay. Thank you. Just one moment.

4 (WHEREUPON, a pause in the proceedings.)

5 MR. JOYNER: Judge, that's -- we're completed
6 with our proffer.

7 MR. WHITE: Judge, I don't feel the need to
8 cross him. I'm ready to argue now. I mean, just as I
9 suspected, they're attempting to have him testify as a
10 forensic pathologist who had information at two different
11 actual forensic pathologist came into this courtroom and
12 could not testify to. We heard very specific medical
13 terms, Judge, talking about burn wounds, wounds to the
14 hands. He testified in length about the affect the gun
15 would have on the body. And, oh, by the way, he is basing
16 it on the review of six case files, that did not involve a
17 gun like this. He has never reviewed actual autopsies.
18 He never gone and conducted an autopsy. So that way he
19 doesn't have any background in forensic pathology or any
20 medical background nursing or anything that would make him
21 qualified say what they could not get their forensic
22 pathologist to say. That's the first part of his second.

23 Second half of his testimony is about the
24 psychology. And I didn't hear -- I mean, he, Mr. Joyner,
25 layed out his qualifications. I didn't hear anything

1 forensic pathology or psychology. I think that what he's
2 trying to testify to -- what he believes a person who had
3 just shot someone how they would act is not relevant here.
4 And he doesn't have the qualifications to offer his
5 opinion on this matter. And that's a good point. Mr.
6 Tucker brings up a good point you've already ruled that
7 his statement was knowingly, freely, voluntarily given.
8 And I think the defense conceded that point if I'm not
9 mistaken. And now they're trying to basically back door
10 saying that, no, it wasn't freely and voluntary given.
11 They're trying to accomplish everything they could not
12 with one witness who has no qualification in the subject
13 matter in which they wish to elicit.

14 MR. JOYNER: Judge, as it relates to Mason's
15 statement, that's not why we're offering that information.
16 His brother had approximately two hours of sleep and 12
17 hours later gave a statement. And Mr. Ballard works in
18 law enforcement. He works military. He has a PH.D in
19 psychology. And he understood these processes, that's his
20 job, that his profession. And he should certainly be able
21 to testify to that. He's a master armer. He understands
22 chamber pressures, understands gas pressures. He
23 certainly should be able to testify to anything about
24 firearm. And he has been personally involved in six
25 incidents, but he has evaluated and studied through the

1 course of his training and professionalism over 100 gas
2 induced injuries from firearms. And I believe that makes
3 him certainly qualified to discuss it.

4 MR. WHITE: Judge, just additionally not only is
5 he not qualified to make those assessments and those
6 opinions, it doesn't pass 404. Judge, this is highly
7 prejudicial and it's not probative to determination we're
8 here to set out. It's going to confuse the issue. And
9 the jury is not going to know what to make of this
10 testimony, but, again, I go back to he's not qualified to
11 render these opinions.

12 THE COURT: All right.

13 MR. JOYNER: Judge, if I may briefly add,
14 Dr. Owens testified earlier that the hand wound was either
15 cause by significant gas pressure or a projectile. He is
16 an expert in firearms and he can testify about chamber
17 pressure and the gas pressure to additionally corroborate
18 Dr. Owens testimony.

19 MR. WHITE: And he can testify about pressure,
20 but not it's affect on the body.

21 THE COURT: I'm sorry.

22 MR. WHITE: He can testify about pressure, but
23 not it's affect on the body. He's going to testify to
24 something that their own pathologist could not. He said
25 it could have been one or the other. Now, they're

1 offering this gentlemen to come and say it's definitively
2 this. He's going to say definitively it's something that
3 two forensic pathologist experts in the field with
4 combined over 60 years of experience could not say they're
5 offering Mr. Ballard to say it without any medical
6 knowledge or background in this topic whatsoever.

7 THE COURT: All right. I'm going to stand down
8 for lunch. I'm going to review the notes I've taken. As
9 far as it relates to Mr. Ballard's testimony, we will
10 reconvene at 1:30, at one 1:30. Mr. Ballard, you can step
11 down for lunch. Do not discuss your testimony at all.
12 We'll reconvene at 1:30.

13 MR. TUCKER: Thank you, your Honor.

14 MR. WHITE: Thank you, Judge.

15 (WHEREUPON, a lunch break was taken.)

16 THE COURT: Okay. All right, before we broke
17 for lunch, defense counsel had Mr. Ballard on the stand in
18 the presence of the jury moved to have Mr. Ballard
19 qualified as an expert in the field of ballistics,
20 firearms and shooting incidents. At that juncture, the
21 State interjected, requested the matter be taken up,
22 matter of law be taken up outside the presence of the jury
23 sent the jury out. After short discussion decided to
24 bring the jury back in and release them for lunch, had
25 defense counsel at that time proffer the testimony of

1 Mr. Ballard for the Court to make a more informed decision
2 as to what its decision might be pertaining to his
3 testimony.

4 Let me ask you this, Mr. White, as I said
5 before, defense counsel moved to have Mr. Ballard
6 qualified as an expert in the area of three separate
7 categories one being ballistics. What's the State's --
8 kind of got more of a broader sense of testimony, but want
9 to narrow it down here as to each one of these each
10 objection, if any, as it relates to what defense counsel
11 is trying to qualify Mr. Ballard as. I want to hear from
12 you as it relates to ballistics first if any objections
13 at all.

14 MR. WHITE: Judge, I don't know that he really
15 went down a rabbit hole in terms of ballistics.

16 THE COURT: Do what?

17 MR. WHITE: I don't know that he went too far
18 into the field of ballistics when we proffered his
19 testimony. I mean, he went into firearms operation and
20 that sort of thing. I don't think he's qualified or
21 testified to ballistics. I don't think that he has any
22 generalize-specialize knowledge or education in the field
23 of ballistics. Again, I think based on his CV and going
24 over his qualifications, education, he can testify to, you
25 know, generally firearms and how they're used and that

1 sort of thing.

2 THE COURT: Well, let me ask you this,
3 ballistics and granted I don't think the definition of
4 ballistics would be one that would change over the course
5 of time. And I say that to say I'm looking at Black's Law
6 Dictionary Sixth Addition, which is probably 26 at this
7 point. This is just an old Black's Law Dictionary I had
8 in my office. And it defines ballistics as the science of
9 gun examination frequently used in criminal cases, special
10 cases of homicide to determine the firing capacity of
11 weapons number one. It's fire ability two and whether a
12 given bullet was fired from a particular gun three. What
13 having said that. What says the State?

14 MR. WHITE: I would say he has no scientific
15 expertise, education, training in that field at all. Just
16 because you're around firearms, doesn't mean you been
17 trained in science of behind expulsion of projectiles and
18 the comparison between, you know, the bullets that are
19 fired through the weapon and the gases and everything that
20 comes out of the firearm. He doesn't have a science
21 background to testify in any of that.

22 THE COURT: All right, Mr. Joyner.

23 MR. JOYNER: Judge, I think that there's certain
24 things that are so close to marry that been difficult to
25 distinguish. Firearm ballistic understanding of the

1 firearm is necessary for the firearm to function in the
2 first place. In fact, if it doesn't, you don't have
3 ballistic involvement in this gun, the action doesn't
4 cycle. Gases are created. And spent shell casing doesn't
5 inject. I mean, the ballistic action goes directly to the
6 function of the firearm and that's why I say it should be
7 included along with his knowledge of firearms in general.

8 THE COURT: All right, let's move on the next as
9 it relates to firearms, Mr. White. Any objection to his
10 testimony as it relates to the operation so to speak of
11 firearms?

12 MR. WHITE: You know, it's tough because, I
13 mean, he's obviously knowledgeable, Judge, but at the same
14 time his background is only as an armer which would make
15 him qualified as an expert. It's only at Six Hour. So he
16 didn't elicit any testimony that he has specific knowledge
17 about any other types of handguns, but if he wants ---

18 THE COURT: Let me ask you this, and maybe I'm
19 showing my ignorance here, okay. I been around firearms
20 all my life. I own multiple firearms myself, but in the
21 grand scheme of things, firearms in general operate the
22 same fashion, shape et cetra.

23 MR. WHITE: I agree.

24 THE COURT: True or not true?

25 MR. WHITE: That's true, Judge.

1 THE COURT: Okay. So anything from defense
2 counsel on that issue?

3 MR. JOYNER: Judge, he describe it in great
4 detail on how an SKS works and in fact how it
5 differentiating from an AK-47. So I think he's more than
6 qualified to opine about the function of that gun.

7 MR. WHITE: And honestly, Judge, I have no
8 objection to him testifying about how a gun, that gun, any
9 gun operates generally. And, you know, the differences in
10 similarities between an AK-47 and an SKS. I think it's
11 cumulative. I think the expert has already testified to
12 it.

13 THE COURT: I'll allow him to be qualified as an
14 expert in firearms. I think he has sufficient knowledge,
15 education, experience and training to give testimony as it
16 relates that particular issue of -- as far as pertains to
17 expertise on that -- on what defense counsel is asking to
18 be qualified as, okay. Will grant that ---

19 MR. WHITE: Yes, sir.

20 THE COURT: --- at this juncture. I'll come
21 back to ballistics in just a minute.

22 MR. WHITE: Yes, sir.

23 THE COURT: Finally, shooting incident let me
24 hear from you, Mr. White.

25 MR. WHITE: He has reviewed a small number of

1 cases, Judge. He rambled on so much, I think he was
2 saying in a very control environment on a range that I
3 believe that's what he was testifying to. He has no
4 investigative background. He has not been trained in
5 investigations. He has no specialize training in crime
6 scene reconstruction anything of that nature. He has been
7 employed by a corporation. And he's been assigned
8 reviewing cases and giving his opinion on those very
9 contained cases. He has -- after accident reports Mr.
10 Tucker was reminding me. He hasn't been involved at all
11 in generating reports. He has no law enforcement
12 background whatsoever. Judge, and what they're trying to
13 do is get him to elicit testimony, that's ultimately
14 dancing around a legal conclusion. And I believe for that
15 reason and I don't even know that the testimony that was
16 elicited goes to that particular qualification. They were
17 dealing with childhood psychology trauma. They're not
18 even trying to qualify him as an expert in that.

19 THE COURT: Well, the testimony that I heard as
20 it relates to the shooting incident was this that the
21 grabbing of the -- the muzzle of the firearm, the pulling
22 on the muzzle of the firearm if such occurred with an
23 individual's finger on the trigger, then each pulling
24 against the other would result in the firing of the
25 weapon, fair enough.

1 MR. WHITE: If that's what's it's going to be
2 limited to, I don't have any objection to that.

3 THE COURT: Well, that's the testimony I heard
4 as it related to a shooting incident. All right,
5 Mr. Joyner.

6 MR. JOYNER: Yes, sir, that's correct.

7 THE COURT: Is that a fair assessment by the
8 Court?

9 MR. JOYNER: Yes, sir. Well, and, again, Judge,
10 just slightly in addition to that, he's trained the entire
11 nation institute training protocols for the nation of
12 Colombia and the nation of Peru.

13 THE COURT: I understand that.

14 MR. JOYNER: And I know that's a foreign country
15 and that's not here in America, but he has worked with
16 every variety of military, law enforcement and citizens
17 and as part of that is he clearly deals with people with
18 post-incident trauma. And what -- he is very well aware
19 especially through his PH.D in psychology about what is
20 proper protocols for post incident victim.

21 THE COURT: We hadn't even gotten to that bridge
22 yet.

23 MR. JOYNER: I'm sorry.

24 THE COURT: I'm dealing with the shooting
25 incident not the post-shooting incident.

1 MR. JOYNER: Yes, your Honor you are correct. I
2 apologize. I just didn't want us to get off track there,
3 okay. I apologize.

4 THE COURT: All right. Now, as it relates to
5 the shooting incident, I'll certainly allow him to testify
6 as to what I said a minute ago about the grab, the pull,
7 that's pretty much common sense and common knowledge that
8 that would result in a firearm expelling a projectile if
9 the finger was on the trigger at the time that the barrel
10 or the muzzle of the weapon pulled. That's a fair
11 assessment. I think that's as I said common sense, common
12 knowledge don't believe necessarily that necessitates or
13 requires someone being qualified as an expert to give that
14 opinion, okay.

15 Now, going back to the ballistics issue, I'm not
16 qualifying him as an expert in the field of ballistics. I
17 do not believe that he is -- there is sufficient evidence,
18 testimony within the record that would warrant him being
19 qualified as an expert in that particular area. However,
20 I've allowed you to proffer that testimony. And I wanted
21 to do that because if I'm wrong on any of this, appellate
22 court's clear there needs to be proffered testimony into
23 the record to protect your client's interest and that's
24 one of the reasons why I allowed that as well. I wanted
25 to hear it before I just completely denied or granted the

1 State's request on that. So I allowed you to do that
2 because I wanted it in the record to make sure that his
3 rights are protected on that right issue if I'm wrong on
4 it, okay.

5 MR. JOYNER: Yes, your Honor.

6 THE COURT: So I will qualify him as an expert
7 in the field of firearms only not ballistics or shooting
8 incident. I've told you what I would allow him to testify
9 as to about the grab and the pull and that kind of thing.

10 Now, as it relates to his testimony as to the
11 particular injury on the victim's hand his index finger,
12 thumb. Do not believe that he's qualified to give an
13 opinion on that neither pathologist could give a
14 definitive opinion on that. And I do not believe that he
15 is qualified by virtue of education, experience, knowledge
16 et cetra to give an opinion that this particular firearm,
17 that if the defendant had grabbed the muzzle of this
18 weapon, that it would have in turn in fact cause the very
19 injury that's on his finger, thumb and possibly middle
20 finger don't think he can do that, okay.

21 MR. JOYNER: Yes, sir.

22 THE COURT: Okay. Furthermore, as it relates to
23 any testimony from him as it relates to the psychology of
24 post-incident interviews, et cetera. Again, the Court
25 does not believe that that's proper testimony to be

1 elicited from this witness. The statement by the
2 defendant -- the State is correct from the standpoint of
3 the defendant giving a freely, voluntarily, knowingly and
4 intelligently statement after having been Mirandized by
5 law enforcement not necessarily saying that that kind of
6 testimony -- maybe, it could be admissible in certain
7 circumstances. I don't think he's qualified based upon
8 what I've heard here today to give that kind of testimony,
9 all right. Again, you've proffered that information that
10 testimony is in the record. And, again, I've allowed you
11 to do that to protect your client's interest on that as
12 well, okay. And I understand and I think you brought this
13 up before we broke for lunch, that you weren't necessarily
14 eliciting that testimony so much as it relates to your
15 client but to his brother.

16 MR. JOYNER: That's correct.

17 THE COURT: Okay. But, again, I still don't
18 think based upon what I've heard here today that if he's
19 qualified based upon knowledge, experience, training, et
20 cetera. I understand he's got a Ph.D. UCLA in psychology,
21 but that in and of itself I don't think warrants
22 qualifying him as an expert at this juncture to give that
23 opinion testimony as it relates to that. But, again,
24 your -- any concerns you have about that that information
25 is -- or that testimony is proffered into the record for

1 your client, okay.

2 MR. JOYNER: Yes, your Honor.

3 THE COURT: Anything further?

4 MR. WHITE: No, sir, Judge.

5 THE COURT: We got about ten minutes. I'll
6 allow you time -- I will allow you to talk to Mr. Ballard
7 about what my ruling is and what my limitations on his
8 testimony will be. I told him not to talk about his
9 testimony, but I'll allow you based on my rulings here to
10 speak with him and let him know what my rulings are, so we
11 don't rule a foul of that once this jury comes back in
12 here, okay. Anything else?

13 MR. WHITE: No, sir.

14 THE COURT: All right. We'll stand down until
15 we get all the jurors. I asked them to be back here at
16 two o'clock. We'll stand down until two o'clock and we'll
17 resume as promptly at that time as possible, okay. For
18 planning purposes, let me ask you Mr. Joyner, Mr. Swilley,
19 I know Mr. Ballard's testifying. How many other witnesses
20 do you intend to possibly intend on calling?

21 MR. SWILLEY: Just one, your Honor, I guess,
22 contingent upon the State ---

23 THE COURT: Is that Mr. Neal?

24 MR. SWILLEY: Right -- no. Lynn Yarborough and
25 then if we need Chris Neal.

1 MR. WHITE: We will stipulate to the jail calls
2 coming in.

3 THE COURT: Have you had a chance to review
4 those?

5 MR. WHITE: Yes, sir, and we're good with
6 everything, that's in those jail calls. I don't know how
7 you -- if you just -- if we're stipulating to them, I
8 don't know when they're going to play those, but I would
9 ask that the date, you know, that these are played be
10 included somehow to the jury.

11 MR. JOYNER: Yes.

12 THE COURT: All right. What I will tell the
13 jury is the State is stipulating to the admissibility of
14 this particular phone call which was made on such and such
15 date fair enough?

16 MR. WHITE: Yes, sir.

17 MR. SWILLEY: It's written on the disk, Judge,
18 the date and time.

19 THE COURT: Okay. All right. You want to go
20 ahead and have that marked, Mr. Swilley, if you hadn't
21 done so.

22 MR. SWILLEY: Yes, sir.

23 MR. JOYNER: And, Judge, just for the record,
24 you don't need me to go back through Mr. Ballard's
25 qualifications I can just pick up where I left off?

1 THE COURT: Well, when the jury comes back in or
2 before the jury exit the courtroom, you moved to have him
3 qualified as an expert in ballistics, firearms, and
4 shooting incidents.

5 MR. JOYNER: And I'll just restate it as
6 firearms.

7 THE COURT: Well, no, what I'll do is when the
8 jury comes back in, I'll say based upon your prior request
9 the Court qualify him in certain areas. The Court does
10 find him qualified as an expert in firearms. You may
11 proceed.

12 MR. JOYNER: Okay, thank you.

13 THE COURT: Fair enough?

14 MR. JOYNER: Yes, sir. Yes, sir.

15 THE COURT: All right, anything else?

16 MR. TUCKER: No, your Honor.

17 MR. JOYNER: No, your Honor.

18 THE COURT: We'll stand down for a few minutes.

19 (WHEREUPON, a break was taken.)

20 THE COURT: All right, Mr. Ballard, you had a
21 nice lunch?

22 THE WITNESS: Yes, sir, Judge.

23 THE COURT: All right. Before we broke, I told
24 you not to discuss your testimony. After I came back at
25 1:30 and came here and made my rulings, what I was going

1 to allow. I did tell Mr. Joyner that he could come back
2 out and talk to you about what my rulings were, okay. So
3 I did -- I don't want you to think you ran a foul of that
4 because I told him to come talk to you.

5 THE WITNESS: No, sir. Thank you.

6 THE COURT: Anything before I bring the jury
7 back out from the State?

8 MR. WHITE: No, sir, Judge.

9 THE COURT: Mr. Joyner.

10 MR. JOYNER: No, your Honor.

11 THE COURT: All right, bring me the jury please,
12 sir.

13 (WHEREUPON, the jury came back into the open
14 courtroom.)

15 THE COURT: All right. We have all the jurors
16 back in the courtroom. Prior to us breaking for lunch,
17 the defense counsel moved to have Mr. Ballard qualified as
18 an expert. The Court will qualify Mr. Ballard as an
19 expert in the area of firearms. You may continue,
20 Mr. Joyner.

21 MR. JOYNER: Judge, I would just ask you please
22 note my objection.

23 THE COURT: So noted for the record.

24 DIRECT EXAMINATION CONTINUED

25

1 BY MR. JOYNER:

2 Q Mr. Ballard, I retained you in this case?

3 A Yes.

4 Q And I sent you a good bit of materials?

5 A As far as I know you sent me all the discovery, so
6 DNA reports, pictures, seen picture, pictures of firearms.

7 Q Okay. And you are familiar with the firearm that was
8 involved in this case?

9 A Yes, I am.

10 Q Okay. And would you please describe what kind it is?

11 A It's a SKS semi-automatic riffle that designation is
12 a carbine, but it fires a single round per trigger pull.
13 And it has an internal ten round magazine when it's in a
14 unmodified condition.

15 Q Okay. Would you please describe the difference
16 between an SKS and an AK-47?

17 A An AK-47 is a firearm that's design for use in combat
18 type situations and battle situations, so it's select
19 fire. It's capable of full automatic fire and it's spin
20 from a 30 round external detachable box magazine. Then
21 truly the only similarities are they fire the same
22 cartridge.

23 Q I see. Now, what happens to the round after it's
24 fired the shell casing, how it is ejected?

25 A Well, the gas pressure is pushed in, the bolt back

1 and that causes the bolt to pull the casing out of the
2 chamber. And it hits the ejector which pushes it out to
3 the right. Somewhere generally with these types of
4 riffles between two o'clock and about five o'clock
5 position from where the person is holding it.

6 Q I see. Now, let me ask you this question is it
7 possible that if a person was holding the gun like this
8 and another person grabbed the end of it and they were
9 struggling from each end that the gun could discharge?

10 A It is possible.

11 Q Would you describe how?

12 A Well, you have opposing forces, so it takes on this
13 firearm approximately five and a half, six pounds of
14 pressure figurative pressure to operate that trigger. So
15 if that finger's anywhere near or on the trigger and then
16 the front end is pulled forward, then one hand is going to
17 be pulled backwards. The other half is going to be
18 pulling forward, that's opposing forces that's going to
19 cause that trigger to actually.

20 Q I see. Now, a question I like ask you as it relates
21 specifically to this firearm. What is chamber pressure?

22 A Chamber pressure is the rating that's widely accepted
23 by industry standard as being the maximum amount of
24 pressure that the chamber can contain. And those chamber
25 pressures are produced by the propellant burning inside of

1 the case, the cartridge case.

2 Q Okay. And how do we determine what the chamber
3 pressure is a forgiven firearm?

4 A We refer to -- if lesser scientist doing it in the
5 lab, we rely on the lab people themselves and that's from
6 place call Sporting Arms and Ammunition Manufacturer
7 Institute and as we refer to it as SAAMI. And they are
8 the end all when it comes to American use American
9 firearms. A lot of international use as well they relied
10 upon it for all definition of terms as well as all
11 technical data to include cartridges, overall dimensions
12 of cartridges, bullets weight and especially chamber
13 pressures.

14 Q Okay. And what, again, is the chamber pressure for
15 this particular firearm?

16 A This one here is rated at 45,000 PSI.

17 Q Okay. I want to present with you with the gun for a
18 moment please if you would just glove up. One of the
19 questions I have there's three cuts in the end of the
20 barrel. What are those cuts?

21 A So these cuts here are gas ports. This is not an
22 original factory port. This is something that was added
23 when you talking about modified. It doesn't affect
24 performance at all other than it vents gases upward. And
25 what that allows the muzzle to do is stay downward when

1 you're firing multiple shots in rapid succession. So the
2 gases go upward and they push the muzzle downward. It's
3 an equal and opposite reaction type of thing.

4 Q I see. And as it relates to the ejection pattern, if
5 the gun is pointing in an given direction point it in a
6 direction here. By ejection pattern earlier you said
7 could be from two o'clock to five o'clock?

8 A So, yes, when we refer to the weapon when we talk
9 about top, bottom, left, right, front, back, it's always
10 as if it were being held to be fired. So this is the top.
11 It's still the top. This is always going to be the right
12 side. So regardless of orientation of the riffle itself,
13 it's always ejecting out to the right. And it's going to
14 eject some place between about two o'clock and about five
15 o'clock. And that's because it depends on how fast the
16 case clears, how much gas spent through, how fast the bolt
17 is cycling and whether or not there was any hang ups.
18 Some ammo gets hand up a little bit and slows the action
19 down just a little bit, not something we can perceive by
20 eye. But it is something that does happen. So sometimes
21 you see that dirty guns. Sometimes there's ejection
22 patterns start to move around a little bit.

23 Q I see. And so is it fair to say there's a lot of
24 factors that go into the precise direction that the round
25 would eject?

1 A Yeah, the casing through the ejection of the pattern
2 on the casing, yeah, there's a lot of factors that go into
3 that.

4 Q But in general it's going to be somewhere to the
5 right?

6 A That's why we say somewhere between two and five
7 o'clock which is the right side of the gun as it's being
8 fired. But where is going to be based off of -- you know,
9 it could just be a difference in the amount of propellant
10 loaded inside of that particular cartridge.

11 Q I see.

12 A Which would have been a reduced gas pressure, so a
13 lower around. So that's why we give this -- it's very
14 hard to specify specifically. It's not an exact science.

15 Q I see. How significant if the -- is the pressure of
16 the gases escaping from those port?

17 A Well, we're talking about some 45,000 PSI in the
18 chamber, so you're going to have some gas escape right
19 here through the gas block. It goes through the gas tube
20 and it's what pushes the bolt to the rear?

21 Q I see?

22 A All right, the rest of those gasses are going to be
23 going forward out the muzzle. And in this case, they're
24 also going to be going up. And you're going to get
25 compression because it's going through a smaller opening

1 they're going to speed up. But without having the lab and
2 the test and all that, we know that we're going to lose
3 maybe at best a third of that 45,000 PSI. So you're
4 talking up here would be somewhere around the 30,000 PSI.

5 Q Okay. Thank you.

6 MR. JOYNER: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (WHEREUPON, a pause in the proceedings.)

9 BY MR. JOYNER:

10 Q Just one more question. You said PSI several times.
11 And just to be clear, what exactly is PSI?

12 A It's pounds per square inch. It's only air pressure.
13 It's generally like with your tires.

14 Q I see.

15 A Your tires are measured by pounds per square inch of
16 air pressure or gas pressure because oxygen -- it's a gas.
17 So it's the same thing compressed air has a pressure. In
18 this case, we're talking about compressed gasses. And
19 they're the byproduct of the burn from the propellant
20 inside of the chamber. It's the cartridge case inside the
21 chamber.

22 Q I see. It's 45,000 pounds ---

23 A Per square inch.

24 Q --- per square inch?

25 A Yes.

1 MR. JOYNER: Thank you. No further questions,
2 Judge.

3 MR. WHITE: Just real brief, Judge.

4 CROSS-EXAMINATION

5 BY MR. WHITE:

6 Q Good afternoon, Mr. Ballard, how are you?

7 A I'm good thanks.

8 Q I just got a couple of quick questions for you and
9 I'll get you out of here so you can go back to New
10 Hampshire?

11 A Yes, sir.

12 Q Did you test fire that weapon?

13 A No, I wasn't given the opportunity.

14 Q Okay. Other than seeing photographs, you haven't
15 seen that weapon until today, is that right?

16 A That's the first time I seen it.

17 Q And on the incident date October 29th, October 30th,
18 202, you weren't at the incident location?

19 A No, I was not.

20 MR. WHITE: Thank you, Mr. Ballard.

21 THE COURT: Any redirect?

22 MR. JOYNER: No, your Honor.

23 THE COURT: Mr. Ballard, you may step down, sir.
24 Thank you.

25 (WHEREUPON, the witness leaves the witness

1 stand.)

2 THE COURT: Is Mr. Ballard under subpoena?

3 MR. SWILLEY: He's not, Judge.

4 THE COURT: All right, call your next witness
5 please.

6 MR. JOYNER: Judge, the defense would call Lynn
7 Yarborough.

8 THE COURT: Okay.

9 THE CLERK: Ma'am, if you'll come up front. If
10 you'll please step up to the stand and place your left
11 hand on the Bible and raise your right hand. Do you swear
12 or affirm the testimony you give in this case to be the
13 truth, the whole truth, and nothing but the truth so help
14 you God?

15 THE WITNESS: I do.

16 THE CLERK: Please be seated and state your full
17 name for the record.

18 THE WITNESS: My name is Lynn Hudson Yarborough.
19 WHEREUPON,

20 Lynn Yarborough,

21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. JOYNER:

24 Q Ms. Yarborough, how old are you?

25 A Fifty.

1 Q And do you have any children?

2 A I do.

3 Q Who are they?

4 A Two sons Mason Christopher Yarborough and Johnny
5 Emerson Yarborough.

6 Q Now, you been married in the past?

7 A Yes.

8 Q Who were you married to?

9 A Chris Yarborough.

10 Q Approximately how long?

11 A Little over 15 years.

12 Q And you two divorced?

13 A In 2013.

14 Q Okay. And why did you two divorce?

15 A Our marriage started having problems when one day out
16 of the blue I received a text message from a coworker and
17 ---

18 MR. WHITE: Judge, may we approach?

19 THE COURT: Yes.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury.)

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, I'm sorry we have to take up a matter of law.
25 We have to ask you to step to your jury room and not

1 discuss the case. I'll get you back out here as quick as
2 I can.

3 (WHEREUPON, the jury retire to the jury room.)

4 THE COURT: Go ahead.

5 MR. JOYNER: I would prefer the witness not to
6 hear because I don't want to -- because I think we might
7 want to proffer anything.

8 (WHEREUPON, a bench conference was held on the
9 record started on the record.)

10 MR. JOYNER: Judge, instead of going into
11 specific instances, I could just basically ask her like
12 reputation is her son afraid of his father rather than
13 going into specific instances.

14 MR. WHITE: It's going to force me to say based
15 on what. I think we're still in the same realm.

16 THE COURT: Well, let's proffer some testimony.
17 Again, if I rule against you here, I want a record for
18 your client protection.

19 MR. JOYNER: Yes, I understand.

20 (WHEREUPON, a bench conference on the record has
21 ended.)

22 THE COURT: All right, for the record, the jury
23 is out of the courtroom right now. I've instructed the
24 lawyers I want some testimony proffered here.

25 DIRECT EXAMINATION IN-CAMERA

1 BY MR. JOYNER:

2 Q Lynn, did Mason ever witness Chris be violent?

3 A Yes.

4 Q Was Mason ever the subject of Chris' violence?

5 A Yes.

6 THE COURT: I need you to speak up please.

7 A Yes.

8 THE COURT: Thank you.

9 BY MR. JOYNER:

10 Q Do you remember a specific incident related to a belt
11 buckle?

12 A I do.

13 MR. WHITE: Judge, I'm sorry I can't hear Mr.
14 Joyner either.

15 BY MR. JOYNER:

16 Q Do you remember an incident, a specific incident
17 related to a belt buckle?

18 A I do. Mason was young. He got in trouble. His dad
19 come home. He was going to spank him for whatever he got
20 in trouble with. Chris told him to go to the bedroom. He
21 shut the door. He was demanding Mason to lay on the bed.
22 And Mason was refusing begging him not to -- not to spank
23 him. And I could tell Chris was getting madder and madder
24 with Mason not wanting to comply. And he just started
25 swinging. I could tell it was a belt. He just started

1 swinging a belt. He swang, swang. I could hear Mason
2 screaming. I finally went down the hall and I slung the
3 bedroom door open and I told him that was enough. He
4 stopped. And I got Mason and come brought him out. And
5 he had strips on him. He had a belt buckle from the belt
6 on his back a mark.

7 Q Do you remember an incident relating to a chair and
8 being choked?

9 A I do.

10 Q Would you please describe that?

11 A Yes. We -- it had been year since problems started
12 with our marriage. And Chris came home his usual go in
13 the shop drink a few beers. Me and boys in the house
14 cooking supper, get stuff ready. He come in and wanted to
15 talk. I told him could we wait until after the boys went
16 to bed. He demanded no, made me go outside to the pool
17 sit in a chair like a lounge chair that rocked. He told
18 me tell me the full story again how that was a year later.
19 He wanted to tell the story of what happened with the text
20 messages. I tried to tell him everything once again that
21 I could remember. It still wasn't good enough. He kept
22 getting madder and madder. Emerson was at the back door
23 with his hands on both the glass beg for me and crying.
24 And I asked him -- I beg Chris please let me go to him.
25 And he wouldn't. He told me i dare you to move, so I

1 didn't. Mason -- Chris come over to me. At some point he
2 straddle me in the chair. And he started choking me and
3 had push backwards. And Mason come out and said, dad,
4 please get off my mama, leave my mama alone. And he told
5 him if he didn't get back in. He would beat his ass. And
6 the only thing was when Chris was choking me, his thumb
7 went into my mouth and I bit it. And that's what he let
8 go of. Let me go then. And when he step back, he kick my
9 chair over and scrape the side my face, my arm and busted
10 my toe on the cement.

11 Q Do you remember an incident relating to a glass food
12 plate?

13 A Yes.

14 Q Would you please describe that?

15 A Once again Chris came home from work in the shop. Me
16 and the boys had dinner. He never rarely sat down inside
17 with us for dinner. We can see him from the glass doors
18 walking around in the shop drinking beer watching his TV
19 like always. So when we finished, I clean up the dishes
20 always fix his plate put it in the microwave. And he come
21 in and he started. The boys were in the house. And I
22 went -- he said something to me I cannot recall what it
23 was. And I turned around and said something back as I was
24 going out the back door to smoke. And when I said it, he
25 picked up the plate of food that he had just heated and he

1 threw it. And he hit me in the back of the head. And I
2 had mash potatoes, gravy all that just poured down my
3 back. And when I turned around and looked, Mason was
4 standing there with Emerson in hand with a little bag and
5 said, mommy, please let's go. And I got a coat on and I
6 left and went to my mom's.

7 Q Remote control incident do you remember that would
8 you please describe it?

9 A I do. I do. Another night come in after being in
10 his shop drinking. I was on the couch. I had fell asleep
11 woke up. He wanted to be intimate. I told him I said,
12 Chris, I'm so tired. I wasn't in the mood. He started
13 walking down the hall. He had a remote in his hand. And
14 when I said that, he turned around and he threw the remote
15 and it caught me in my back. And I had the remote mark on
16 my back.

17 Q Do you remember a specific incident with a cell
18 phone?

19 A I do.

20 Q Okay.

21 A It was a night everything -- I had received a text
22 message from the coworker. He come in late. Later that
23 night, he had been drinking, mad me get the laptop, wanted
24 me to pull up our Verizon account and show him every time
25 I had received a text message or call from this one person

1 which it had only been that day. I told him I said I
2 can't find it. He said better find it. You better find
3 it what I need as he stood there with a pistol to my
4 temple, my head.

5 Q Was Mason present?

6 A He was.

7 Q And how did he respond to this?

8 A He knew. It upset him.

9 Q Since those times has there been other incidents as
10 well?

11 A It wasn't long after that -- it was long after that
12 -- I left in 2012 -- 2011 I finally left, but up until
13 that point, it was a lot of -- wasn't as much physical any
14 more. It was more less mental and verbal. He never let
15 me live it down. What happened even I though told him the
16 truth of what had really never, that I had never had an
17 affair on him and I never would. I never had any
18 intentions to.

19 Q Did he ever -- and these incidents were in the
20 presence of Mason he was present?

21 A Yes.

22 Q Okay. Did you ever witness since that time, since
23 your divorce incident of violence toward Mason from Chris?

24 A I never -- I can't recall witnessing any, but when
25 there was incidents, Mason would tell me, you know.

1 Q And how was he afraid of his father? Was he not
2 afraid?

3 A He was afraid to a certain point, yes.

4 Q Okay.

5 MR. JOYNER: Judge, that's all we would proffer
6 at this time as it pertains to the prior specific
7 instances.

8 THE COURT: All right. Mr. White, anything?

9 CROSS-EXAMINATION IN-CAMERA

10 BY MR. WHITE:

11 Q Ms. Yarborough, this was all ten years prior to the
12 incident, is that right?

13 A It was actually 2010 and 2011.

14 Q So nine or more years on at least a few of these.
15 Some Emerson would have only been two or three years old,
16 is that right?

17 A Back then Emerson was three or four.

18 Q Okay. And did you call law enforcement on him?

19 A I did not. I was scared to.

20 MR. WHITE: Thank you, Judge.

21 THE COURT: Anything else, Mr. Joyner?

22 MR. JOYNER: No, your Honor.

23 MR. WHITE: Judge, I mean, it's unbelievable. I
24 can't imagine a scenario where this is permitted.

25 THE COURT: Well, let me ask you, have you

1 looked at Rule 405?

2 MR. WHITE: Yes, sir.

3 THE COURT: And under what part of Rule 405 is
4 there a limitation on the time? I understand the other
5 rule -- other rules as far as prior criminal conduct
6 typical ten-year period of time. Under Rule 405, that
7 rule doesn't specify time.

8 MR. WHITE: Yes, sir, I would ask how this is
9 relevant to a murder that takes place ten years at minimum
10 after these alleged incidents. I think most of which
11 didn't even involve the defendant. I mean, they were not
12 acts of violence on the defendant at all.

13 THE COURT: All right. Let me ask you,
14 Mr. Joyner, pursuant to Rule 405 and I understand this is
15 a case I'm citing here. State v. McCray the State's
16 arguing that most of these incidents are directed at the
17 witness here not the defendant does not the law require
18 that they have to be more so closely in time to the
19 incident for which someone is charged when they're not
20 directed at in this case your client.

21 MR. JOYNER: Judge, I think the unique
22 distinction there is if you look at a case where you have
23 two individuals who engage in some kind of mutual combat
24 or something along those lines, of course, that recently
25 is important. However, I think the distinction in this

1 case is this was a long term mode of conduct. And, Judge,
2 if his mother had been removed, the threats would have
3 still made his actions criminal. It still would have been
4 a domestic violence. And he and his brother being present
5 for those things would still make them victims. They were
6 still terrorized by this conduct, but they were directly
7 witnessed it happened. And this long term fear over his
8 whole life was in grain deeply and that's why he picked up
9 the gun. It's an essential element of the case.

10 THE COURT: When you at side bar over here which
11 was not on the record a minute ago when Mr. White stood up
12 and said that he like to approach over at side bar a
13 minute ago, you referenced the case of State v. Day.

14 MR. JOYNER: Yes, Your Honor.

15 THE COURT: State v. Day being cited at 341 SC
16 410. And I'm looking at State vs. Young, which is an
17 unpublished opinion, but it cites State v. Day. Again,
18 just for the record, State v. Young is an unpublished
19 opinion. And that unpublished opinion number 2021-UP-299
20 is a 2021 case. And while I understand and recognize this
21 unpublished opinion, it does cite State v. Day which you
22 referenced at side bar a minute ago and State v. Day.
23 Within State v. Young says evidence of other specific
24 instances of violence by the victim are not admissible
25 unless they were directed against the defendant or were so

1 closely connected at the point of time or occasion with
2 the homicide to produce reasonable apprehension of great
3 bodily harm. That's citing State v. Day which, you know,
4 brought to my attention over here at side bar. Anything
5 in response?

6 MR. JOYNER: Judge, again, specifically from
7 State v. Day, it said that Day's theory was that Day had a
8 history of violence against him and others and had a
9 tendency to violently over react a history of violence
10 against him. And he was allowed to speak on those things.
11 And from a violence perspective beating with a belt buckle
12 is violence, putting a gun to your mother's head in your
13 presence while you see it, that -- we all know every
14 prosecutor that's criminal domestic violence and he is a
15 victim because the threat was offered up to him too. All
16 of these cases he was threatened and those threats were
17 offered up against him. And, Judge, going back 405(b)
18 this is an essential element of the defense. And so it's
19 specific instances allowed because that's why -- even in a
20 statement he said I was afraid of my dad. I was scared of
21 him. And, of course, any one of these incidents could
22 create fear, but it was the lifetime of these instances
23 created that deep ingrain fear. It would only come from a
24 familial environment.

25 MR. WHITE: Perhaps, I'm missing something, but

1 I thought the defense was accident. I'm little confused.
2 This is so removed. I can't imagine how this is relative
3 to determination of whether or not he accidentally shot
4 his father or whether or not it was intentional.

5 MR. JOYNER: Judge, we need to justify from
6 defense perspective why it was reasonable for him to pick
7 up the gun. Now, he didn't intentionally pull the
8 trigger, but we get to show why it was reasonable for him
9 to pick up the gun. When he picked it put up because he
10 was afraid of what his father was going to do.

11 MR. WHITE: Well, then that is not a defense,
12 that's accident. It's not an essential element.

13 THE COURT: All right, here is my ruling. All
14 right. As it relates to acts directed at the defendant,
15 I'll allow that. Those acts which were wherein
16 Ms. Yarborough testified directed at her, I will not allow
17 that. It has been proffered though, that's my ruling.
18 All right.

19 MR. WHITE: Thank you, Judge.

20 THE COURT: Anything else before I bring the
21 jury back out?

22 MR. JOYNER: No, your Honor.

23 THE COURT: Bring me the jury please.

24 (WHEREUPON, the jury came into open court.)

25 THE COURT: We have all the jurors back in

1 courtroom. Mr. Joyner, you may continue, sir.

2 MR. JOYNER: Thank you, your Honor.

3 BY MR. JOYNER:

4 Q Lynn, was there ever times where you personally
5 witnessed Chris being violent with Mason?

6 A The time with the belt.

7 Q Could you describe that?

8 A He had got in trouble. And Chris come home. He was
9 going to spank him for what he had done. He told Mason to
10 go in the bedroom and he would go in there spank him. He
11 went in and shut the door. And he was demanding Mason to
12 get on the bed. So he could give him his spanking. And
13 Mason was begging him not to, begging him not making him
14 lay down, begging him not to hit him. And I could tell
15 Chris was get madder and madder. When he started
16 swinging, he kept swinging the belt, swinging the belt and
17 I could hear the hits. And finally, he hit him so many
18 times, I ran -- I push the bedroom door open. I said
19 that's enough. And Mason come out crying. He had welts
20 on him and had the belt buckle on his back from where it
21 had, I guess, slipped out his hand and hit him in his
22 back.

23 Q Okay. Now, was Chris a drinker?

24 A Yes.

25 Q Describe that for me? Was it significant?

1 A Every day when he come home from work, that's what he
2 would do go to the shop and drink beer.

3 Q Now, again, you two got divorced you and Chris?

4 A We did.

5 Q Okay. And where did Mason go when he turned 18?

6 A He moved in with his dad.

7 Q Okay. And at the time that this accident occurred
8 where did Mason reside?

9 A In the office of the shop.

10 Q Okay. And where did his father?

11 A In the house.

12 Q Okay. And approximately how far away is that?

13 A I would say about 100 feet.

14 Q Okay. Now, the day the accident occurred, did you
15 have any communication with Chris that day?

16 A I did.

17 Q Okay. Describe that communication for us?

18 A I had text him to see if he will pick Emerson up
19 after he picked Corbin up. He didn't respond. It took a
20 long time finally. I can't remember word for word, but I
21 told him -- he had call Emerson and Emerson thought his
22 dad was like right there to get him and he wasn't ready to
23 go yet. So text Chris and I said are you in Johnsonville
24 something to that effect. And I said he's not ready to
25 go, so I will bring him when I get home if that is okay.

1 And he told me he said ---

2 MR. WHITE: Objection to hearsay, Judge.

3 THE COURT: I'll allow her to answer this. Go
4 ahead.

5 A He said in the text message that -- well, fuck me.
6 I'm working. And I text back that it wasn't -- I told him
7 for God sake it wasn't a crime -- it wasn't cheating for
8 him to text me about his children or about his child. And
9 I told him I F'ing work too. And he said, well, F me
10 figure it out yourself. And my last words were I always
11 do ass hole.

12 Q Okay. It was fair to say he was in a foul mood that
13 day?

14 A Yes.

15 Q Lynn, I'm showing you what's been marked as Defense
16 Exhibit 29 and 30. Do you recognize those?

17 A I do.

18 Q And would you please describe them?

19 A Yes, they're text message between me and him that
20 same day.

21 Q Is that the message you just described?

22 A Yes.

23 Q Okay. Is that a fair and accurate depiction?

24 A Yes.

25 Q Okay.

1 MR. JOYNER: Judge, I would move that they be
2 entered into evidence at this time.

3 MR. WHITE: No objection, Judge.

4 THE COURT: Without objection admitted.

5 (WHEREUPON, Defendant's Exhibits Nos. 29-30 were
6 admitted into evidence.)

7 BY MR. JOYNER:

8 Q Then later that night did you get a call from one of
9 your boys?

10 A Yes.

11 Q And who called you?

12 A I was asleep, I had already gone to bed. And I think
13 they -- Emerson called my mom and she come and woke me up
14 and said your boys are trying get you. And so I talk to
15 Emerson. He told me Bubba was wanting to come home, want
16 me to come pick him up. And I told him what was going on.
17 And he told me that him and Melia -- he had stood up for
18 him to Melia and she didn't like it. And she was leaving.
19 And he didn't want to stay there by himself. So would I
20 come pick him up. And I told him I would. I had to get
21 dress and I will be on.

22 Q Okay. And did you receive any more calls?

23 A We kept talking and while we were talking ---

24 Q Let me ask you this, at some time later did Emerson
25 call you?

1 A Yes.

2 Q And what did he say?

3 MR. WHITE: I'm going to object to hearsay,
4 Judge.

5 THE COURT: Sustained.

6 MR. JOYNER: Judge, she's has already testified.

7 THE COURT: Sustained.

8 BY MR. JOYNER:

9 Q What was the -- describe Emerson's emotional state
10 when he called you at that time?

11 A He was good. He said Bubba was calm.

12 Q You can't say what he said.

13 A Oh.

14 Q If you would just describe?

15 A He was calm.

16 THE COURT: Is that a yes?

17 A Yes.

18 THE COURT: Thank you. Make sure the record is
19 clear on that.

20 A Yes.

21 THE COURT: Okay, thank you.

22 BY MR. JOYNER:

23 Q Did you pick on any cues that there was anything
24 wrong when he called you?

25 A Not at that time, no.

1 Q After the incident occurred, did you have an
2 opportunity to speak to Mason?

3 A Yes.

4 Q And did he say?

5 A He called me and he said, mama, I accidentally shot
6 dad. What do I do, what do I do. Mom, what do I do. And
7 I said call 9-1-1, call 9-1-1.

8 Q Okay. And describe his emotional state?

9 A Very frantic, very upset crying saying I didn't mean
10 to, mama. It was an accident. He grabbed the gun. And I
11 just said call 9-1-1, call 9-1-1.

12 Q Okay. Would it be fair to say he was hysterical?

13 A Yes, very hysterical.

14 Q Okay. Now, that night you had an opportunity to be
15 questioned by Investigator Owens?

16 A Uh-huh.

17 THE COURT: Is that a yes?

18 A Yes, I'm sorry. Yes.

19 Q What did he say to you?

20 A I can't remember every -- I remember like my name, my
21 relationship, where I resided maybe, but one thing that
22 always stood out in my mind that he said to me. He said
23 this is not murder.

24 MR. WHITE: Judge, objection. I move to strike
25 that, that's hearsay and unbelievable.

1 THE COURT: Objection sustained.

2 BY MR. JOYNER:

3 Q Describe how Mason felt about his father?

4 A He loved his father, but he never felt good enough
5 for his father. He never felt like he ever done anything
6 right in his father's eyes.

7 Q Would you say that -- would be accurate to say that
8 Mason wanted to emulate his father to some extent?

9 A He did in a lot of ways.

10 Q Can you describe some of those ways?

11 A He was into the electrical business, which his dad
12 was an electrician. Army, Mason always wanted to be in
13 the Army. Chris had been in the Guard. Mason joined the
14 Army.

15 Q Now, did you have an opportunity see Melia that night
16 after the accident?

17 A Yes.

18 Q Okay. Describe her appearance?

19 A She was -- she seem fine.

20 Q Did you notice any injuries to her?

21 A I did not.

22 Q Now, this incident happened October 30th of 2020?

23 A Yes.

24 Q Mason had a court hearing six weeks to two months
25 later, is that correct?

- 1 A Yes.
- 2 Q Would have been that December?
- 3 A Yes.
- 4 Q Okay. Who attended that hearing with you?
- 5 A Me, Emerson, Susan Powell, which was Melia's granny
6 and Melia.
- 7 Q Okay. And why did they attend that hearing?
- 8 A Granny spoke on behalf of Mason.
- 9 Q Okay. And why did Melia attend?
- 10 A She wanted to be there in case he got bonded.
- 11 Q Is it fair to say she was there in support of Mason?
- 12 A I would say, yes.
- 13 Q Who did she ride with to this hearing?
- 14 A They rode with me and Emerson in my car.
- 15 Q Okay. And, again, this hearing was in December?
- 16 A I was shortly right after, yes.
- 17 Q Okay. Now, there were some calls entered in earlier
18 some jail calls where Mason called you from the jail?
- 19 A Uh-huh, yes.
- 20 Q It is very important that we discuss those. In
21 those, Mason mentioned something about you skipped town
22 and going to the beach during this trial?
- 23 A Yes.
- 24 Q He said if Mr. White subpoena's you don't obey the
25 subpoena?

1 A Yes.

2 Q What's your response to that?

3 A I been here every day this week in court. I had no
4 intentions of leaving to go anywhere.

5 Q Okay. He told you to have heart to heart with
6 Emerson?

7 A Yes.

8 Q Okay. Describe the conversations that you had had
9 with Emerson?

10 A Me and Emerson never really discussed any of the
11 incident that happened. He don't -- he didn't like to. I
12 don't like to. The only thing I've told him from the
13 beginning whether it be a good thing or a bad thing always
14 tell the truth no matter what.

15 Q Okay.

16 MR. JOYNER: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 BY MR. JOYNER:

19 Q Lynn, based on your knowledge, has anyone -- have you
20 or anyone in your family done anything to attempt to get
21 Emerson to change his sorry?

22 A No, sir.

23 Q And have you completely told the 100 percent truth
24 today?

25 A Yes, sir, I have.

1 MR. JOYNER: No further questions, Judge.

2 THE COURT: Mr. White, cross-examination.

3 CROSS-EXAMINATION

4 BY MR. WHITE:

5 Q Ms. Lynn, what's the hundred percent truth? Mr.
6 Joyner said a hundred truth. What's like 98 percent
7 truth?

8 A A hundred percent truth is everything that happened.

9 Q So it's either truth or it's not the truth, right?

10 A Yes.

11 Q Okay. So there's really percentage on the truth, is
12 there?

13 A The truth is the truth.

14 Q Okay. But if you told like 98 percent of it would
15 Mr. Joyner be okay with that?

16 A I'm not understanding what you want me to say.

17 Q Well, let me ask it this way, you love Mason
18 Yarborough?

19 A I do.

20 Q Would you say anything to get him to come home with
21 you?

22 A No, I would not if he's in the wrong, he's in the
23 wrong. If he's in the right, he's in the right.

24 Q Okay. Now, you weren't there that night, were you?

25 A I was not.

1 Q All right. And you would agree -- have you had a
2 chance to listen to that jail call? The one between you
3 and Mason?

4 A Yes, I have.

5 Q And that's you on that jail call, isn't it?

6 A Yes.

7 Q And that's Mason on that jail call, is that right?

8 A Yes.

9 Q And he's telling you -- and I apologize for my
10 language. He says Emerson's statement fucks me, isn't
11 that right?

12 A Yes.

13 Q And he says that you got to have a heart to heart
14 with him, isn't that right?

15 A I guess, it was something to that extent. I can't
16 word for word.

17 Q And in fact you say on that statement, I don't want
18 to talk about that on the phones. I don't trust the
19 phones?

20 A Did not want to talk about anything over the phones.

21 Q But he was adamant that he needed you to talk to
22 Emerson, isn't that right?

23 A I heard him.

24 Q Okay.

25 A But I didn't do it.

1 Q All right. But he told you over and over, didn't he?

2 A Yeah.

3 Q Several instances he said you got to talk to him
4 about that statement, isn't that right?

5 A I don't know if it was several instances. No, I
6 can't recall.

7 Q Do you remember at the end of that jail call you
8 telling him -- he says case tell Emerson I live him. Do
9 you remember that?

10 A He usually said that every time.

11 Q Do you remember on this specific one?

12 A I don't.

13 Q Do you remember that you said he can hear you?

14 A Yeah, he was on speaker. He was on speaker. At that
15 time my phone's ear piece did not work. And I had to have
16 all my calls on speaker.

17 Q So let me get this right. While you and the
18 defendant in this case are discussing tampering with a
19 witness, the witness is on speakerphone ---

20 MR. JOYNER: Objection.

21 THE COURT: Hold on.

22 A I can't ---

23 THE COURT: Hold, hold, hold, hold. Let him
24 finish his question. And then if you got an objection,
25 make your objection. And if he objects, let me rule

1 before you answer, Ms. Yarborough.

2 THE WITNESS: Yes, sir.

3 THE COURT: All right, restate your question
4 please, Mr. White.

5 MR. WHITE: Thank you, Judge.

6 BY MR. WHITE:

7 Q During this time, you were on the phone with the
8 defendant in this case, is that right?

9 A Yes.

10 Q And together the two of you are discussing changing
11 Emerson's testimony, is that right?

12 A Normally, when we discuss things, the only time
13 Emerson would come into conversation was at the end. I
14 cannot say that Emerson was sitting there then. Most of
15 the time Emerson was in his room on his game.

16 Q All right. but it was on speaker phone?

17 A Yeah, I had too at that time my ear piece was messed
18 up.

19 Q Okay. So you're on speaker phone with this man right
20 over here?

21 A Yes.

22 Q And you're discussing tampering with the statement of
23 your younger son ---

24 MR. JOYNER: Objection.

25 THE COURT: Hold on minute. Hold up. It's an

1 objection. What's the grounds for your objection.

2 MR. JOYNER: Judge, there's no facts in evidence
3 of tampering.

4 THE COURT: Rephrase your question, Mr. White.

5 MR. WHITE: Yes, sir.

6 BY MR. WHITE:

7 Q Are you discussing with Mr. Yarborough changing
8 little Emerson's statement?

9 A I listen to him.

10 Q Okay. In a couple instances, you said, okay, I got
11 it, right?

12 A Does not mean I did it though.

13 Q Okay. But and he said I just want to make sure you
14 got? You said, oh, I got it?

15 A I mean, I understood what he was saying, but I did
16 not go through with that.

17 Q Okay. And I understand that.

18 A Yeah, I didn't.

19 Q I get that, but what I'm saying is while you were
20 discussing that you were on speakerphone. And the person
21 that was being discussed was in earshot of what you were
22 talking about?

23 A If he was in his bedroom, no, he could not hear it.

24 Q But at the end of the call you said -- I mean, it's
25 either yes or no. At the end of that call, you said

1 Emerson can hear you, is that right?

2 A When he said tell Emerson I love you. He must have
3 been. He just have walked in the room. I can't guarantee
4 you.

5 Q So he might heard some of it not all of it?

6 A I don't know.

7 Q I think that's kind of like that percentage of truth
8 you and Mr. Joyner was talking about?

9 A I'm just saying I don't remember if he was -- I
10 had -- I mean, we talked a lot. I can't recall every time
11 Emerson was in the room or not.

12 Q Okay. And you told Mr. Joyner that back when Mason
13 was a little boy he got spanking with a belt, is that
14 right?

15 A I did.

16 Q And that was like ten years or more prior to this
17 incident, is that right?

18 A He was probably about nine or ten somewhere in there.

19 Q Okay. Well, when this happened, he was a 21-year-old
20 adult, wasn't he?

21 A Yes.

22 Q Okay. He was a grown man?

23 A Yes.

24 Q Grown man choosing to live with Chris Yarborough?

25 A Say that again?

1 Q Was he choosing to live -- where was he living?

2 A He choose to move to his dad's when he was 18.

3 Q Okay. And for three years that's where he was
4 living, right?

5 A Yes.

6 Q Okay, and not living with you?

7 A No.

8 Q Okay. And the youngest kids he had custody of them,
9 right?

10 A No, I had custody.

11 Q You shared custody, right?

12 A He had them every other weekend.

13 Q Well, that means he has custody, right?

14 A Shared custody, yes.

15 Q All right.

16 MR. WHITE: Beg the Court's indulgence just one
17 moment.

18 BY MR. WHITE:

19 Q So, again, you weren't there when this all happened?

20 A I was not.

21 Q So you can't say whether Mason Yarborough
22 accidentally pulled the trigger when he did it with hatred
23 in his heart?

24 A I cannot say.

25 MR. WHITE: Nothing further.

1 MR. JOYNER: No, your Honor.

2 THE COURT: Ma'am, you stay down. Thank you.

3 (WHEREUPON, the witness leaves the witness
4 stand.)

5 THE COURT: Mr. Swilley, Mr. Joyner.

6 MR. SWILLEY: Your Honor, we don't have any
7 other witnesses at this time. We have the matter to
8 publish. I don't know if the Court wants to go ahead and
9 do that.

10 THE COURT: Where is that?

11 MR. SWILLEY: It's up by the court reporter.

12 THE COURT: You have it on your computer or do
13 you need a disk?

14 MR. SWILLEY: I think we would need the disk.

15 (WHEREUPON, Defendant's Exhibit No. 28 was
16 admitted into evidence.)

17 THE COURT: Okay. All right, ladies and
18 gentlemen, defense counsel intends to play what's been
19 marked as Defendant Exhibit Number 28 at this time which
20 is jail call, which occurred on November the 2nd of 2020.
21 The State has stipulated to the admission of that jail
22 call. Therefore, I will hand this to you, Mr. Swilley,
23 for you to play this to the jury. Any exception or
24 objection to anything I've said to the jury as it relates
25 to that particular exhibit, Mr. White?

1 MR. WHITE: Not at all.

2 THE COURT: Mr. Swilley.

3 MR. SWILLEY: No, your Honor. Beg the Court's
4 indulgence.

5 THE COURT: Yes, sir.

6 (WHEREUPON, a pause in the proceedings.)

7 MR. SWILLEY: Your Honor, may we approach a
8 moment?

9 THE COURT: Yes.

10 (WHEREUPON, a bench conference was held in the
11 presence of the jury, but out of the hearing of the
12 jury.)

13 THE COURT: Is it coming up, Mr. Joyner?

14 MR. JOYNER: Judge, my computer it's a little
15 bit too new. I don't have a disk drive on it. If we
16 want -- if you would just beg the Court's indulgence for
17 five minutes, I can download these files to my computer
18 and just play the file directly from my computer. I think
19 it be the easiest thing. I hate to delay waist the jury's
20 time.

21 THE COURT: All right. I'm going to let you
22 step to the jury room just a minute. Do not discuss the
23 case. I'll get you back out here in just a minute, okay.

24 (WHEREUPON, the jury retired to the jury room.)

25 THE COURT: We'll stand down as you all try to

1 figure it out.

2 MR. SWILLEY: All right.

3 (WHEREUPON, a break was taken.)

4 THE COURT: All right, you about ready to go?

5 MR. SWILLEY: Yes, sir.

6 MR. JOYNER: Judge, I downloaded two files on my
7 computer.

8 THE COURT: All right, anything from the State
9 before I bring the jury out?

10 MR. WHITE: No, sir, Judge.

11 THE COURT: Anything from defense counsel?

12 MR. SWILLEY: No, your Honor.

13 THE COURT: Bring me the jury please, sir.

14 (WHEREUPON, the jury came into open court.)

15 THE COURT: All right. Mr. Foreman, ladies and
16 gentlemen of the jury, we have all the jurors back in the
17 courtroom, ready to proceed at this time. I recognize
18 defense counsel, Mr. Joyner.

19 (WHEREUPON, Defendant's Exhibit 28 played for
20 the jury.)

21 MR. SWILLEY: Your Honor, that concludes both
22 calls.

23 THE COURT: All right.

24 MR. SWILLEY: Beg the Court's indulgence one
25 moment. That will conclude our case, your Honor.

1 THE COURT: The defense rest?

2 MR. SWILLEY: Yes, that's correct, your Honor.

3 THE COURT: Can the lawyers approach one moment
4 please.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury, but out of the hearing of the
7 jury.)

8 THE COURT: All right. Ladies and gentlemen,
9 the defense at this time has rested its case, all right.
10 So what that means is you have heard all the testimony
11 that you're going to hear in this case. There's matters
12 of law that I need take up with the lawyers here this
13 afternoon. So what I'm going to do is I'm going to excuse
14 you. I'm going to let you go home for the balance of the
15 day. I'm going to ask you to be back here tomorrow
16 morning at 9:30, be back here tomorrow morning at 9:30.
17 That which remains in the case are closing arguments by
18 counsel and my charge on the law to you. And the case be
19 given to you all to deliberate and rate reach a verdict,
20 okay. Do not discuss the case. Do not do any independent
21 investigation. As I've told you from the outset, you're
22 to decide this case based solely upon the evidence and
23 testimony presented in this courtroom. You all have a
24 nice evening. I'll see you back tomorrow morning at 9:30.
25 Thank you.

1 (WHEREUPON, the jury is excused for the day.)

2 THE COURT: All right. Anything from the State
3 before we break for the day?

4 MR. WHITE: No, sir, Judge.

5 THE COURT: Defense counsel.

6 MR. SWILLEY: No, your Honor.

7 THE COURT: If you all have any request to
8 charge, you all need to get them to me so I can take a
9 look at it. Bear with me just a second here. Well, let
10 me say this too, I'm assuming in light of defense counsel
11 resting its case at this point that all prior motions and
12 objections are renewed at this time by defense counsel?

13 MR. SWILLEY: Yes, that's correct, your Honor.
14 We make a motion for -- renew our motion for directed
15 verdict of not guilty.

16 THE COURT: All right. For the record, I'll
17 note that all prior motions as well objections made by the
18 parties that's noted for the record. The Court's rulings
19 as to those remain the same as it relates to defendant's
20 renewed motion for a direct verdict. As stated
21 previously, I believe that there is sufficient direct or
22 substantial circumstantial evidence reasonably tending to
23 prove the guilt of the accused for which a jury could
24 return a verdict of guilty in this case. Therefore, the
25 Court respectfully denies the renewal of that motion for

1 directed verdict, but it is so noted for the record. Now,
2 as it relates to request to charge let's just talk about
3 this for just a minute. I'm assuming -- well, let me hear
4 from the State before I assume anything and then I'll hear
5 from defense counsel.

6 MR. WHITE: Judge, the way I see it it's murder
7 or accident. I don't see any evidence and I heard no
8 testimony that would support a charge for any
9 lessor-included. I think that we -- this case boils down
10 to murder or accident.

11 MR. SWILLEY: Your Honor, there's copious
12 evidence or there's copious cases that substantiate, you
13 know, negligent handling of a loaded gun. The negligent
14 handling of a loaded gun would support a charge of
15 involuntary manslaughter your Honor. And I can provide
16 the Court with the case law on that. There's several --
17 there's copious amounts of testimony this was an accident,
18 that's unintentional based on the statements tendered in
19 on Mr. Yarborough to Investigator Owens. There was jail
20 calls we just listen to where there was copious amounts of
21 assertions that it was -- you know, there was not
22 voluntary. Your Honor, involuntary manslaughter, you
23 know, defines criminal negligence with regard to the crime
24 of voluntary manslaughter.

25 Criminal negligence is defined as the reckless

1 disregard for the safety of others. First charge the
2 crime of voluntary manslaughter maybe convicted upon the
3 showing of criminal negligence as define in this section.
4 According to the evidence that we have before us your
5 Honor, the Defendant Mr. Yarborough, picked up a handgun
6 had it. And after consuming some alcohol, had it and that
7 there was a struggle by the deceased who grabbed the
8 firearm. That in and of itself I think would justify a
9 charge on involuntary manslaughter. I can give more
10 cogent argument tomorrow morning when I review the case
11 law. Again, I can send it to the Court, but I think there
12 is evidence in the record which the jury could find that
13 there was criminal negligence and that this is involuntary
14 manslaughter.

15 MR. WHITE: Judge, unfortunately the murder was
16 not committed with the pistol. It was committed with a
17 SKS. And the only testimony that came in as to that SKS
18 and the handling of that SKS came from Emerson Yarborough
19 and his statement at the forensic interview and nothing
20 came in to refute it. His statement quite simply that
21 Mason Yarborough grabbed the gun. He aimed it at his dad,
22 shot him in his head, and then he stood over his lifeless
23 body and said how you like that dad.

24 And there was a statement made to Investigator
25 Owens the night of and Emerson Yarborough said that Mason

1 or Chris Yarborough did not reach for the gun. He did not
2 grab the gun. He did not touch the gun. In fact, he
3 said -- he told Investigator Owens that it came out that
4 he -- there was no argument at all prior to him firing the
5 gun. So there's no -- there's no as to the SKS, there's
6 no evidence whatsoever that that gun was handled in a
7 negligent manner. And that's what's needed to support an
8 involuntary manslaughter charge.

9 And the safety was off. It was locked and
10 loaded. And the way Emerson describes it is important too
11 in that forensic interview. You can see him demonstrate
12 how it happened for Meg. He said he racks it. It cocked
13 it back. He picked up and he shot. What about that is
14 negligent handling of that firearm. I see nothing. And,
15 again, there was nothing at all to refute that. In the
16 defense's opening statement, Judge, they said that this
17 was an accident, that the gun was reached for
18 simultaneously. The victim was punching him at the same
19 time. There was no evidence of that during this trial
20 whatsoever. Again, the only evidence that comes in about
21 the handling of the firearm is from Emerson Yarborough and
22 there's nothing at all to refute it.

23 MR. SWILLEY: Your Honor, the 9-1-1 call would
24 certainly refute that. I'm quoting here from State vs.
25 Thomas Junior Casey. It's 409 SC 2nd 391 states evidence

1 of a struggle between a defendant and a victim over a
2 weapon is sufficient for submission of an involuntary
3 manslaughter instruction to the jury. That references
4 State v. Patrick 289 SC 301 1986. Principle is no less
5 applicable where the defendant in struggling with a third
6 person over a gun shoots the victim as well. So even if
7 he was struggling with the third person shot and an
8 innocent bystander would have been shot, that would
9 substantiate an involuntary manslaughter. It's pretty
10 clear cut your Honor.

11 Evidence of a struggle between a defendant and
12 the victim over a weapon is sufficient for submission of
13 an involuntary manslaughter to the jury. And we heard
14 Mr. Mason Yarborough statement that as he grabbed the gun,
15 the gun was accidentally discharged and it was
16 unintentional. And we heard that almost -- I think maybe
17 even more than 20 times in the jail calls we just heard
18 and as well as in the 9-1-1 calls. I heard the 9-1-1 the
19 State played of Mr. Yarborough. So, I mean, I think
20 there's copious amounts of testimony within the record
21 that says -- justified the involuntary manslaughter
22 charge.

23 MR. WHITE: Judge, maybe we were sitting through
24 two different trials. There has been no evidence that no
25 discussion that there was an actual struggle for the gun.

1 In Mason Yarborough's statement, he says he reached out
2 for the gun. I haven't heard anything at all other than
3 their assertion, which is not evidence that there was an
4 struggle over this gun. I haven't heard anything, so
5 respectfully.

6 THE COURT: All right. I'll take a look at it
7 and I'll let you all know. Do you have anything you want
8 me to look at as far as case law et cetra how about get
9 that to me.

10 MR. WHITE: Yes, sir.

11 MR. SWILLEY: Thank you, your Honor.

12 THE COURT: Thank you.

13 (WHEREUPON, the proceedings were concluded for
14 the day to be reconvened on April 21, 2023.)

15 THE COURT: You all approach just a minute.
16 Here's the -- which was not in that charge.

17 (WHEREUPON, a pause in the proceedings.)

18 THE COURT: All right. I have given the lawyers
19 and spoke to the lawyers at side bar real briefly here,
20 but gave the lawyers an opportunity to review my proposed
21 jury charge in this matter. Yesterday, before we broke
22 defense counsel asked that the Court charge an addition I
23 believe to the murder as well accident. The defense ask
24 for a charge of involuntary manslaughter. I asked defense
25 counsel to forward me the case law that they wish for me

1 to review prior to making a decision on this with which
2 Mr. Swilley did send me some cases overnight and I did
3 look at those cases.

4 In addition, I did my own research as it relates
5 to this matter. Let me ask you this, Mr. Swilley,
6 Mr. Joyner, I'm not sure who wishes to speak, but
7 involuntary manslaughter is defined as the unintentional
8 killing of another without malice, but while engaged in an
9 unlawful activity not amounting to a felony and not
10 naturally tending to cause death or great bodily harm or,
11 or the intentional killing of another without malice while
12 in engaged in a lawful activity with reckless disregard
13 for the safety of others.

14 So there's certainly two avenues under which a
15 defendant may believe or a defense counsel in this case
16 believes that there's sufficient evidence in the record to
17 warrant an involuntary manslaughter charge. Now, I read
18 out into the record under which two categories such charge
19 would be warranted. Having done so, which of those two
20 situations do you believe that there is sufficient
21 evidence in the record to warrant an involuntary
22 manslaughter charge?

23 MR. SWILLEY: Your Honor, I think it be both.
24 First of all, if the jury were to find that Mr. Yarborough
25 was lawful in willing that riffle in fear of his life

1 based on everything we've heard about the prior, I guess,
2 issues between the two and that the -- that would
3 naturally -- that he was lawful in doing that. And then
4 handling that weapon did so negligently when it was
5 attempted to be apprehended by the deceased. I think that
6 the jury could certainly defer from the evidence that we
7 had that he was criminally negligent. Also, if he's doing
8 something unlawful that would kind of -- and I'm kind of
9 paraphrasing here unlawful that would be not tending to
10 the cause of death in of itself by handling a weapon
11 perhaps they could find it's unlawful manner due to the
12 fact that he's consumed alcohol and that maybe he wasn't
13 justified in picking up that weapon in the manner in which
14 he did.

15 And then a person charged with the crime of
16 involuntary manslaughter maybe convicted upon a showing of
17 criminal negligence as defined in this section. If he's
18 handling it in a negligent, careless manner when
19 Mr. Yarborough attempted to grab it, I think they could
20 also find that's involuntary manslaughter as well. It's
21 the reckless disregard for the safety of others your
22 Honor.

23 In addition, those four cases that I sent you, I
24 did find also an older case that being State vs. Barnette,
25 that's 63 SC 2nd Supreme Court 1951. State's where the

1 instrument involved is not inherently dangerous, more than
2 ordinary negligence is needed to support a conviction for
3 involuntary manslaughter, but simple negligence causing
4 the death of another is sufficient if the instrumentality
5 is of such character that its negligent use under the
6 surrounding circumstances is necessarily dangerous to
7 human life. And I think certainly that instrumentality in
8 this situation would be that riffle. And if he's
9 ordinarily negligent with that riffle and his mishandling
10 of it, I think that would support a charge of involuntary
11 manslaughter.

12 Your Honor, I just want to briefly quote State
13 vs. Casey evidence of a struggle between a defendant and a
14 victim over a weapon is sufficient for submission of an
15 involuntary manslaughter instruction to the jury. And
16 that's Casey vs. State which quotes State vs. Patrick.
17 Also, your Honor, State vs. White talked about getting the
18 like most favorable to the State. There is evidence that
19 that pistol which killed the deceased was in the hands of
20 the appellant immediately prior to being discharged and
21 that the pistol was being handled in a negligent or
22 careless manner.

23 In that case, the appellant testified that he
24 not pointed the pistol at the deceased and that the
25 deceased hit the pistol where his hands holding the pistol

1 resulted in the pistol being fired. Your Honor, in this
2 case according to Mr. Yarborough's statement, he did pick
3 up the pistol and that he did not intend to pull the
4 trigger. And that when the gun was grabbed that the
5 trigger ended up getting pulled. I think that would
6 certainly amount to the struggle.

7 In the 9-1-1 call, Mr. Yarborough's I think is
8 quoted as saying my dad attacked me. He was angry. He
9 grabbed the gun and it went off. And that's in the first
10 9-1-1 call the State made. I think that a jury based on
11 the facts that they hear and they decide, they can decide
12 that they believe all the witness as the Court will
13 instruct. None of what a witness says or some of what a
14 witness says and disregard the others. And I think that a
15 combination therewith could find both instances with
16 Mr. Yarborough. That he was right in picking up that gun
17 and that he was negligent in handling it. And that he was
18 wrong in picking up that gun and didn't intend to kill he
19 deceased and the struggle ensued and that the deceased
20 died because of the struggle. I think there's copious
21 amounts of facts in evidence that the jury could find both
22 of those situations to be the case.

23 THE COURT: All right. Thank you. Anything in
24 response, Mr. White?

25 MR. WHITE: Judge, you know, under the law

1 defendant's bald assertion that he meant no harm to the
2 victim was not -- is not singularly depositive of whether
3 or not he was entitled to an instruction on involuntary
4 manslaughter. Judge, here, I mean, it is uncontroverted
5 in both Emerson and the defendant's own statement that
6 prior to any altercation, prior to any allegation that he
7 reached for the gun, that the gun is directly pointed at
8 him. That is in both statements. Emerson goes further in
9 telling Investigator Owens that he did not -- the decedent
10 did not reach for the gun. He did not grab the gun.
11 There was no argument prior to the gun being discharged
12 whatsoever.

13 And under the law, Judge, when you quoted
14 involuntary manslaughter is the unintentional killing of
15 another with malice while engaged in either the commission
16 of some unlawful act not amounting to a felony and not
17 naturally intending to cause death or great bodily harm.
18 He fails on that because in the State of South Carolina
19 pointing a loaded firearm, safety off, finger on the
20 trigger, it is pointing and presenting and is a felony
21 under the law.

22 He also fails on prong two to doing of a lawful
23 act or reckless disregard for the safety of others. He
24 was not doing a lawful act. Judge, there is nothing in
25 the record other than him being spanked when he was

1 roughly eight or nine years old that would have put him in
2 fear of his dad at that point. There's no evidence that
3 his dad was armed. And it was approaching him in an
4 unlawful way. So, Judge, he fails on both and I believe
5 that involuntary manslaughter would be a miss character of
6 justice to submit it to the jury.

7 THE COURT: All right. Let me say these cases
8 that were forwarded to me by defense counsel State vs.
9 White, which is 253 SC 475, which is a 1969 case, Casey v.
10 State, which is 305 SC 445, that is a 1991 case, Tisdale
11 v. State 378 SC 122, which is a 2008 case as well as State
12 vs. Meckler 379 SC 12, which is 2008. Each one of those
13 cases are cases from out of our state Supreme Court go
14 through these cases specifically in the State vs. White
15 case, the pertinent issue in that case was whether or not
16 the proposition relating to the negligent handling of a
17 firearm would warrant a charge of involuntary manslaughter
18 of which the Court said it would. There no underlying
19 facts set forth in that case as to what specifically --
20 hold on a second here. Well, let me restate that in
21 essence is what the proposition in that particular case
22 was.

23 In Casey vs. State in looking at the facts of
24 that case, Casey shot and killed the victim. There was
25 evidence of a struggle between a defendant and the victim

1 or the case states that evidence of struggle is sufficient
2 for submission of involuntary manslaughter. In Tisdale
3 vs. State getting in little bit more of the grass so to
4 speak and the facts of a case. In that particular case,
5 the victim was yelling and calling petitioner a profane
6 name. Victim then punched petitioner in the face, victim
7 pulled a gun and shot at petitioner. Petitioner and
8 victim fought over the gun and one or two shots were
9 fired. And the case before the Court right now, there's
10 no evidence that the victim in this case was yelling or
11 punched the defendant, was no evidence that the victim in
12 the case before me was in possession of a firearm, knife
13 or any other weapon. In Tisdale, the firearm went off
14 while it was in the victim's hand. And in Tisdale, the
15 defendant or petitioner testified that he never had the
16 gun in his hand.

17 In State vs. Meckler, Meckler was convicted of
18 murder. And in that particular case, the Supreme Court
19 found the trial court did err in not charging involuntary
20 manslaughter. But the facts in the Meckler case was that
21 the victim had a knife after Meckler observed the knife,
22 Meckler stepped into the inside of her house and grabbed a
23 shotgun. That the victim in the Meckler case continued to
24 stand in the yard near the steps with a knife and
25 threatened to come up on the porch. Meckler testified

1 that she pulled the hammer back on the shotgun, positioned
2 it at her hip. That when she cocked the gun, the victim
3 leaned and the gun fired, but that she did not remember
4 pulling the trigger. But defense counsel alleges or
5 states that the victim grabbed the gun. There was nothing
6 in the evidence record of a struggle over the gun.

7 The Court also looked at the case of State vs.
8 Smith 391 SC 408, that is the case for which I read the
9 law as it pertains to involuntary manslaughter from
10 earlier. In that particular case, Smith had entered a
11 mobile home or a trailer to sell crack cocaine to the
12 victim. Smith brandished the firearm, used it to pistol
13 whip the victim. According to Smith, he pistol whipped
14 the victim because the victim was approaching him in a
15 quote real serious demeanor close quote.

16 The victim in the Smith case was unarmed. The
17 door to the victim's trailer was unlocked and there's no
18 evidence that Smith was unable to retreat from the
19 dangerous situation that he created. In the case before
20 me as I stated previously, the decedent was unarmed. The
21 incident occurred within a shed behind the decedent's
22 house for which there was no testimony that the defendant
23 was unable to retreat. There was further testimony that
24 the situation created resulting in the decedent's death
25 was a dangerous situation created by the defendant.

1 In the Smith case, it directly addresses
2 subsection two of involuntary manslaughter, which defense
3 counsel's argued here today, which is the unintentional
4 killing of another without malice while engaged in an
5 unlawful activity with reckless disregard for the safety
6 of others. The Court in Smith said that there was no
7 evidence to suggest that Smith was without fault in
8 bringing on the difficulty. As in the case before me,
9 there is no evidence in the record that Defendant
10 Yarborough was without fault in bringing on the
11 difficulty.

12 The Court further stated that Smith there was no
13 evidence of Smith believed or actually was in eminent
14 danger of losing his life or sustaining serious bodily
15 injury or there's evidence in the record that
16 Mr. Yarborough, the defendant, was scared. There's no
17 evidence in the record that he believed or actually was in
18 eminent danger of losing his life or sustaining serious
19 bodily injury or that he had no other probable means of
20 avoiding the danger other than drawing the loaded weapon.

21 The Court also viewed the case of State v.
22 Warden 381 SC 209. And in that case, the State Supreme
23 Court found that the trial court did not err in refusing
24 or denying defendant's request for a charge of involuntary
25 manslaughter. The Court believe this court believes that

1 the Warden case is eerily similar to the case before this
2 Court that's been tried this week. In the Warden case,
3 the victim was shot and killed by Warden. And in that
4 case, Warden had retrieved a gun from inside the car,
5 began walking in the street swinging the gun. Warden
6 swung the gun like he was pointing to shoot in the air and
7 the gun fired fatally hitting the victim.

8 The Supreme Court in the Warden case, in its
9 conclusion on the involuntary manslaughter charge said
10 even assuming Warden did not intentionally fire the gun at
11 Shaw, by pointing the gun and waiving it in the air Warden
12 committed an unlawful act that would naturally tend to
13 cause death or great bodily harm. According to the Court
14 held the trial court properly denied defendant's request
15 for an involuntary manslaughter charge.

16 Now, defense counsel has argued that both one
17 and two of involuntary manslaughter. One being the
18 unintentional killing of another without malice, but while
19 engaged in an unlawful activity not amounting to a felony
20 and not naturally tending to cause death or great bodily
21 harm. Defense counsel argues that that proposition that
22 there's evidence in the record of that proposition as well
23 as two the unintentional killing of another without malice
24 while engaged lawful activity with reckless disregard for
25 the safety of others.

1 This court has addressed that which pertains to
2 subsection two of involuntary manslaughter. In looking at
3 subsection one of involuntary manslaughter in restating
4 the elements under subsection one, it's clear that there
5 was a killing of another. There's evidence that it was
6 unintentional based upon what the defendant has said in
7 his statement as well his 9-1-1 call excuse me -- in
8 defendant's statement as well as his two telephone calls
9 that were introduced into evidence by defense counsel of
10 his phone call to his mother of which was his mom, Emerson
11 Yarborough as well as Melia Steele were part of that --
12 those discussions of that telephone call where the
13 defendant said over and over and over about it being an
14 accident. In looking further at the element of
15 manslaughter and involuntary manslaughter, while engaged
16 in an unlawful activity not amounting to a felony.

17 As the Court stated in Warden, the pointing of
18 the gun and waiving it in the air pursuant to Warden was
19 unlawful act. Pointing and presenting a firearm pursuant
20 to section 16-23-40 of the South Carolina code of laws
21 which defines pointing and presenting a firearm that
22 statute specifically says that it is a felony of which
23 carries a sentence of up to five years. So in this case,
24 the defendant was engaged in an unlawful activity. And
25 that unlawful activity was in fact a felony as previously

1 stated by the Court pursuant 16-23-410.

2 Therefore, based upon this Court's review of all
3 of the cases stated on the record herein as well the
4 applicable statutory law of 16-23-410, this court does not
5 believe that the defendant would be entitled to a charge
6 of involuntary manslaughter. Defense counsel's objection
7 is so noted for the record, but I want to make it
8 abundantly clear for any appellate issues as to what this
9 Court's reasoning is in making that decision, okay. All
10 right. Anything before I bring the jury out from the
11 State?

12 MR. WHITE: No, sir, Judge.

13 THE COURT: Defense counsel.

14 MR. SWILLEY: Your Honor, is the jury
15 instructions I think they are now that the Court subject
16 to my objection has decided not to charge involuntary
17 manslaughter. I think in your jury charge on page 14 it
18 talks about the certain, I guess, requisite criminal
19 intent, criminal negligence, recklessness et cetera. I
20 think if the Court's not going to charge involuntary
21 manslaughter certainly, again, subject to my objection, I
22 think that anything reference in any other criminal
23 purpose other than malice should be expunged from the jury
24 instructions.

25 MR. WHITE: And, Judge, it's a standard charge,

1 and I think it is one of the recklessness is one of the
2 four inferences of malice. I ask that it remain.

3 THE COURT: All right. I'm going to leave that
4 in there. I mean, that's standard intent charge, typical
5 charge in any criminal -- in most criminal cases not all
6 of them, but your objection to that is noted.

7 MR. SWILLEY: Thank you.

8 THE COURT: All right. Let me ask this question
9 before I bring the jury out, how long does the State
10 intend in light of the defense putting into the record in
11 this case -- the State will open in full followed by
12 defense counsel. The State will be entitled to rebuttal
13 only. How long does the State intend in closing argument?

14 MR. WHITE: I'm hoping to be brief, Judge. I
15 say brief. I hope don't last any longer than 30 or 45
16 minutes. I wouldn't need any longer than that.

17 THE COURT: All right. Defense counsel.

18 MR. SWILLEY: Judge, I don't think I've ever
19 given a closing longer than 30 minutes.

20 THE COURT: All right. Well, my charge will
21 probably last about, I guess, 20 minutes or thereabouts,
22 okay. So we're talking at least an hour and a half close
23 to two hours charge, arguments. So this what I'm going to
24 do, I know the jury's been back there since 9:30. I'm
25 going to take a short break to allow any and everybody

1 that needs to go to the restroom to do so. I will say
2 this that once arguments and charge on the law begin, you
3 will not be allowed to exit the courtroom, come in and out
4 of the courtroom. I want the jury's full intention on
5 what the Court is conveying to them as to the law
6 applicable to this case, has their full attention as to
7 what the attorneys are arguing in their closing arguments,
8 all right. So we'll stand down for just a few minutes and
9 then we'll resume. Let me ask this question, any
10 objection to the Court giving the charge on the law prior
11 to arguments?

12 MR. WHITE: None on behalf of the State.

13 MR. SWILLEY: No, your Honor.

14 THE COURT: I think I've said this before when I
15 first got on the bench, I use to always give my charge
16 afterward, but over the years, I've kind of changed that
17 up a little bit where I like for the jury to hear from the
18 lawyers last as oppose to me. Now, I'll give them a few
19 conclusory remarks when you all conclude your arguments,
20 but I like to have them aware of what the law is before
21 you all make your arguments. Also let me ask this
22 question any exception for objection to me sending a copy
23 of the charge back to the jury room from the State.

24 MR. WHITE: No, sir, Judge.

25 THE COURT: Defense counsel.

1 MR. SWILLEY: No, your Honor.

2 THE COURT: All right, very well. We'll stand
3 down for a few minutes, then we'll get the jury out here
4 and we'll move forward.

5 (WHEREUPON, a break was taken.)

6 THE COURT: All right, anything from the State
7 before I bring the jury back out?

8 MR. WHITE: Just briefly, I know this is an
9 emotionally charged case. Ms. Lynn Yarborough has not
10 stopped sobbing since you left the bench. Judge, I know
11 yesterday during the jails she was sobbing kind of
12 uncontrollably. I have no faith in her ability to control
13 her emotions during this closing argument.

14 THE COURT: Well, I will tell everyone in here
15 -- and I realize this is a very emotionally charged case
16 as most that are tried in here are. And you do need to
17 keep your emotions in check. Don't want anything that
18 would distract from the charge that I give this jury from
19 the lawyers that are making their arguments or any
20 perceived perception. While it would not be intentional,
21 I don't think of any way trying to influence the jury in
22 their decision based upon evidence in the record in this
23 Court's charge on the law, all right. I'll say that.

24 MR. WHITE: Yes, sir, Judge.

25 THE COURT: And if the Court believes that that

1 is getting somewhat out of hand some in respects, then you
2 will be escorted out the courtroom. All right, anything
3 further?

4 MR. WHITE: No, sir, Judge.

5 THE COURT: Defense counsel.

6 MR. SWILLEY: No, your Honor.

7 THE COURT: Bring me the jury please.

8 (WHEREUPON, the jury came into open court.)

9 THE COURT: Mr. Foreman, ladies and gentlemen of
10 the jury, first of all, I want to thank you for your
11 patience. You all can blame me, I'll put it that, okay.
12 I'll say I made every effort to try to get you in here
13 quicker. It's on me. I was here well before 8:30 this
14 morning working trying to get this stuff squared away. So
15 I apologize for you all having to sit back there. I
16 appreciate your patience, okay. Now, when we broke
17 yesterday, I told you that you heard all the evidence in
18 this case. And the only thing that remained was arguments
19 of counsel and my charge on the law to you. Now, what I'm
20 getting ready to do is I'm going to give you the charge on
21 the law in this case, okay. I'm going to do that first.
22 Once I give you the charge on the law in this case, the
23 order of which things will take place is the State will
24 have an opportunity to make their closing argument
25 followed by defense counsel. And under our rules of

1 procedure and law, then the State will have an opportunity
2 to make a -- what's called a rebuttal argument, okay.
3 Once that is concluded, then I will give you some
4 conclusory remarks. And then the case will be given to
5 you all to begin your deliberation, okay.

6 All right. Please listen very carefully. All
7 right. Ladies and gentlemen, it's now my duty as a trial
8 judge under the constitution of this state to charge and
9 instruct you on the law applicable to this case. It is
10 your duty as jurors to accept and apply the law as I will
11 state it to you. Furthermore, it is your exclusive duty
12 to decide all the issues of fact in this case and to
13 determine the affect, value and weight of the evidence.
14 Both the State and the defendant have a right to expect
15 that you will carefully consider and evaluate the evidence
16 and apply the law of this case to it, so that in the end
17 both the State of South Carolina and the defendant will
18 receive a fair and impartial trial.

19 I want you to understand that when I use the
20 word defendant, I refer to Mr. Mason Christopher
21 Yarborough. Furthermore, it is important to understand
22 that the State of South Carolina has charged the defendant
23 with the offense of known as murder. Now, to this charge,
24 the defendant has entered a plea of not guilty. This plea
25 of not guilty places the burden of proof on the State to

1 prove the guilt of the defendant to you, the jury, beyond
2 a reasonable doubt.

3 Now, I remind you, ladies and gentlemen, that
4 the fact that the defendant was arrested, charge, and
5 indicted in this case is not evidence in this case and
6 cannot be considered by you as evidence of guilt in this
7 case. Nor does it create any presumption or inference of
8 guilt. An indictment, ladies and gentlemen, is simply the
9 formal written instrument which contains the charge made
10 against the defendant. It is the formal document by which
11 this case is brought into this court.

12 Now, during the trial ladies and gentlemen, you
13 and I have had separate duties to perform. As the trial
14 judge, it is my responsibility to preside over this trial
15 and also have the duty to rule upon the admissibility of
16 the evidence offered during the course or process of this
17 trial. In that regard, you are to consider only, only the
18 competent evidence before you and you are to disregard
19 from your mind any testimony ordered stricken from the
20 record of the case during the progress of the trial if
21 there was any. And you, ladies and gentlemen, are to
22 consider only, only the testimony which has been presented
23 from the witness stand together with any exhibits admitted
24 into the record of the case and any stipulations of
25 counsel made into the record if there were any.

1 Furthermore, I have the additional duty to
2 charge you on the applicable law of this case. In that
3 regard, I am the sole and exclusive judge of the law in
4 this case. It is your duty to accept and apply the law as
5 I state it to you. If you have any preconceived ideas as
6 to what the law is or what the law ought to be and it
7 does not agree with what I tell you the law is, you are
8 obligated under your oath to abandon these preconceptions
9 because you are sworn to accept the law precisely as I
10 state it to you.

11 Now, in this trial, as I've told you, you are
12 the exclusive judge, you're the sole and exclusive judge
13 of the facts. And I am the judge of the law. Do not, do
14 not infer that I have any opinion about the facts in this
15 case from anything that I have said during the course of
16 the trial in ruling upon the admissibility of evidence or
17 otherwise or from anything that I say during the course of
18 this charge you to. In this regard, the law simply does
19 not, does not permit me to have an opinion about the
20 facts. As jurors, it is your duty alone to determine the
21 effect, value and weight of the evidence presented during
22 the course of this trial.

23 Now, in determining what the facts in this case
24 are, you must judge the credibility which simply means the
25 believability of the witnesses and the value of weight to

1 be given to their testimony. You alone must decide the
2 force and effect of the testimony. Now, in making this
3 decision, there many things that you should and may take
4 into consideration such as the appearance and manner of
5 the witness on the stand. A characteristic often referred
6 to as the demeanor of the witness. Was the witness
7 forthright or hesitant. Was the witness testimony
8 consistent or did it contain discrepancies. What was the
9 ability of the witness to know the facts about which he or
10 she testified. Did the witness have a cause or reason to
11 be bias prejudice in favor of the testimony that he or she
12 gave. Was the testimony of the witness corroborated or
13 make stronger by other testimony and evidence or was it
14 made weaker or impeached by such other testimony and
15 evidence.

16 As jurors, please understand that you have the
17 right to believe a small portion of a witnesses testimony
18 and discard the larger portion or vice versa. You may
19 believe all of witnesses testimony or none. You may
20 believe the testimony of a single witness against that of
21 many witnesses or the other way around. In exercising
22 your mental processes in attempting to decide the verdict,
23 the law simply requires that you exercise your good
24 judgment, your common sense, your sense of logic and
25 reason and your experiences in life. You then apply these

1 attributes to the evidence and apply the law as I state it
2 to you in thus arrive at a verdict.

3 Now, ladies and gentlemen, it's vital to
4 understand that the defendant is presumed under the law to
5 be innocent of this charge. The defendant has no
6 obligation to prove his innocence. It is a fundamental
7 rule of our law that a defendant irrespective of the
8 seriousness of the charge against him is always presumed
9 innocent of the crimes for which he is charged unless and
10 until his guilt has been proven by evidence that satisfies
11 you, the jury, beyond a reasonable doubt.

12 Now, the presumption of innocence, ladies and
13 gentlemen, is not a mere legal theory or a legal phrase.
14 The presumption of innocence is very important and you
15 need to understand that this presumption accompanies the
16 defendant from the time of his arrest and appearance in
17 this court and continues with the defendant even after you
18 retire to the jury room to deliberate. In other words,
19 the defendant receives the benefit of the presumption of
20 innocence until the very end of this trial when you, the
21 jury, would deliberate upon the evidence and decide
22 whether the State has proven his guilt beyond a reasonable
23 doubt.

24 Now, ladies and gentlemen, what is a reasonable
25 doubt in the law. A reasonable doubt is the kind of doubt

1 that would cause a reasonable person to hesitate to act.
2 Proof beyond a reasonable doubt is proof that leaves you
3 firmly convinced of the defendant's guilt. Now, there
4 very few things in this world that we know with absolutely
5 certainty. So even in criminal cases the law does not
6 require proof that overcomes every possible doubt.
7 However, if based on your consideration of the evidence
8 you are firmly convinced that the defendant is guilty of
9 the crime charged, you must find him guilty. If on the
10 hand, you think there is a real possibility that he is not
11 guilty, you must give him the benefit of the doubt and
12 find him not guilty.

13 Please understand, ladies and gentlemen, that
14 reasonable doubt may arise from evidence which has been
15 presented in the case or from the lack of evidence in the
16 case. It is your responsibility to determine whether or
17 not reasonable doubt exist as to the guilt of this
18 defendant. I charge you that the defendant is entitled to
19 every reasonable doubt arising in the whole case. If upon
20 any issues of fact essential to conviction in a verdict of
21 guilty, you have a reasonable doubt as to how that issue
22 should be resolved. It would be your duty to resolve that
23 reasonable doubt in favor of the defendant.

24 Thus in summary, it is important to understand
25 that a defendant is not required to prove his innocence.

1 Instead, the State is required by law to prove every
2 essential element of the offense charged against the
3 defendant by evidence which satisfies you of his guilt
4 beyond a reasonable doubt. Only then, ladies and
5 gentlemen, can you convict the defendant and find him
6 guilty.

7 Now, there's two types of evidence, ladies and
8 gentlemen, which are generally presented during a trial
9 direct evidence and circumstantial evidence. Direct
10 evidence is the testimony of a person who claims to have
11 actual knowledge of a fact such as an eyewitness. It is
12 evidence which immediately establishes the main fact to be
13 proved. Circumstantial evidence is proof of chain of
14 facts and circumstances indicating the existence of a
15 fact. It is evidence which immediately establishes
16 collateral facts from which the main fact maybe inferred.
17 Circumstantial evidence is based on inference and not on
18 personal knowledge or observation.

19 The law makes absolutely no distinction to the
20 weight or value to be given to either direct or
21 circumstantial evidence. Nor is a greater degree of
22 certainty required of circumstantial evidence than of
23 direct evidence. You, ladies and gentlemen, should weigh
24 all of the evidence in this case. If after weighing all
25 the evidence you are not convinced of the defendant guilt

1 of the defendant beyond a reasonable doubt, you must find
2 the defendant not guilty.

3 Now, during course of the trial, ladies and
4 gentlemen, you heard the testimony of individuals that
5 were qualified as expert witnesses. And I previously gave
6 you a charge on that as far as their testimony is
7 concerned. And I will tell you again that ordinarily the
8 rules of evidence do not permit witnesses to testify to
9 opinions or conclusions. However, there is an exception
10 to this rule for those witnesses that we call expert
11 witnesses. One who by education and experience has become
12 an expert in some sort science, profession or calling may
13 state an opinion as to relevant and material matter in
14 which the witness claims to have been an expert. And may
15 also state the reasons for the opinion.

16 You, ladies and gentlemen, should consider any
17 expert opinion received in evidence in this case and like
18 any other evidence give it the weight that you think it
19 deserves. If you decide that the opinion of an expert is
20 not based on sufficient education and experience or if you
21 conclude that the reasons given in support of the opinion
22 are not sound or that the opinion is outweighed by other
23 evidence, you may disregard the opinion entirely. An
24 expert witnesses testimony is to be given no greater
25 weight than that of other witnesses simply because the

1 witness is an expert. Furthermore, you are not required
2 to accept an expert's opinion even though if it is not
3 contradicted.

4 Now, in this case, ladies and gentlemen, a
5 statement which was allege to have been made by the
6 defendant has been admitted into evidence in this case.
7 Now, while the Court has determine that the statement is
8 admissible, I instruct you that you make the ultimate
9 decision of whether or not the defendant made the
10 statement. If the defendant did make the statement, you
11 must determine whether the statement was made by the
12 defendant voluntarily and of his own free will. This
13 means that the statement was not caused by pressure,
14 force, fear, threats, coercion or intimidation or by hope
15 or a promise of leniency or a reward of any kind.

16 In determining whether the statement was
17 voluntary, you should consider both the characteristics of
18 the defendant and the details of the questioning. Some of
19 the factors that you must consider are the age of the
20 defendant, the defendant's education or lack of education,
21 the defendant's mental ability or capacity, the
22 defendant's IQ or intelligence, the defendant's background
23 and environment, the place and length of detention and the
24 nature of the questioning.

25 The State has the burden of proving beyond a

1 reasonable doubt that the allege statement was voluntary.
2 If you determine it was, you may give the statement any
3 further consideration that you deem proper. You must
4 decide what weight, if any, should be given to the allege
5 statement. If you determine the allege statement was not
6 the free and voluntary statement of the defendant, you
7 should not consider the statement at all.

8 Now, ladies and gentlemen, I instruct you and I
9 emphasize to you that the fact that the defendant chose
10 not to testify in this case is not a factor to be
11 considered by you in any way in your deliberation and in
12 your consideration on the question of the guilt or
13 innocence of the defendant. It must not be considered by
14 you in any manner whatsoever. A defendant has the
15 constitutional right to remain silent. And the assertion
16 of this right must not be considered by you in your
17 deliberations. I repeat under your oath you are to draw
18 no conclusion whatsoever from the fact that the defendant
19 in this case chose not to testify.

20 The fact that this defendant chose not to
21 testify should not even be discussed in the jury room.
22 The burden of proof as I've stated to you is on the State.
23 The defendant is not required to prove his innocence. The
24 burden of proof remains on the State to prove guilt beyond
25 a reasonable doubt.

1 Now, ladies and gentlemen, in order to establish
2 criminal liability criminal intent is required. For
3 example, the mental state required to be proven by the
4 State for a particular crime might be purpose, intent,
5 knowledge, recklessness or criminal negligence. Criminal
6 intent must be proven by the State beyond a reasonable
7 doubt. Criminal intent is always a matter that must be
8 determined by the jury from the circumstances surrounding
9 the situation. There is no way, ladies and gentlemen, to
10 prove intent to a mathematical certainty. There is no way
11 that medical science can dissect a person's brain and
12 determine what the person had in mind. So the law says
13 that criminal intent may be inferred from the
14 circumstances shown to have existed. This how you make a
15 determination of whether or not the element requiring
16 intent was present.

17 It is not necessary, ladies and gentlemen, to
18 establish intent by direct and positive evidence, but
19 intent may be establish by inference in the same way as
20 any other fact by taking into consideration the acts of
21 the parties and all the facts and circumstances of the
22 case. Criminal intent is a mental state a conscious
23 wrongdoing. It is up to you to determine what the
24 defendant intended to do based on the circumstances shown
25 to have existed. Criminal intent can arise from action or

1 a failure to act. It may arise from negligence,
2 recklessness or an indifference to duty or to consequences
3 that is considered by the law to be the equivalent of
4 criminal intent.

5 All right. Ladies and gentlemen, the defendant
6 in this case as I told you before is charged with the
7 offense of murder. The State must prove beyond a
8 reasonable doubt that the defendant killed another person
9 with malice aforethought. Malice is hatred, ill will or
10 hostility towards another person. It is the intentional
11 doing of a wrongful act without just cause or excuse and
12 with an intent to inflict an injury or under circumstances
13 that the law will infer an evil intent.

14 Malice aforethought does not require that malice
15 exist for a particular time before the act is committed,
16 but malice must exist in the mind of the defendant just
17 before and at the time the act is committed. Therefore,
18 there must be a combination of the previous evil intent
19 and the act. Malice aforethought may be expressed or
20 inferred. These terms express and inferred do not mean
21 different kinds of malice, but merely the manner in which
22 malice may be shown to exist, that is either by direct
23 evidence or by inference from the facts and circumstances
24 which are proved.

25 Express malice is shown when a person speaks

1 words, words which express hatred or ill will for another
2 or when the person prepared beforehand to do the act which
3 was later accomplished. For example, lying in wait for
4 a person or any other acts of preparation going to show
5 that the deed was within the defendant's mind would be
6 express malice. Malice may be inferred from conduct
7 showing a total disregard for human life.

8 Now, defendant in this case has raised the
9 defense of accident. The burden is on the State to prove
10 beyond a reasonable doubt that the killing was not
11 accidental. Harm cause to another including death cannot
12 entail criminal responsibility for the defendant if the
13 harm was accidentally inflicted without intent to harm and
14 without recklessness or negligence where the death of a
15 human being is the result of accident or misadventure in
16 the true meaning of the term no criminal responsibility
17 attaches to the act of the slayer.

18 A homicide will be excusable on the grounds of
19 accident when the killing was unintentional the defendant
20 was acting lawfully and due care was exercised in the
21 handling of the weapon. A homicide is not excusable on
22 the ground of accident unless it appears that the
23 defendant was acting lawfully.

24 Now, ladies and gentlemen, I have given you
25 charge on the law applicable to this case at this stage.

1 As I told you before, once I gave you the charge on the
2 law, then the State would proceed with their close
3 argument followed by defense counsel and the State under
4 our rules of procedure would then be allowed to make a
5 rebuttal argument. The arguments of counsel and I will
6 remind you the arguments of counsel is not evidence in
7 this case. As I've told you from the outset, the evidence
8 in the case comes from the sworn testimony of witnesses
9 and by our exhibits introduced during the course of the
10 trial. At this time, I will now recognize the State for
11 closing arguments.

12 MR. WHITE: Who you calling, who you calling.
13 I'll kill you and I'll kill granny. I don't want to live.
14 I show you what's up. I'll show what's up. Stay out of
15 my business bitch, stay out my business. I don't want to
16 hurt anyone. I don't want to hurt anybody. Don't come in
17 here. You better not come in here. I'll show you. Bang.
18 How you like that dad. Does that seem like an accident to
19 you. Me either. Me either.

20 Ladies and gentlemen, October 29th in into
21 October 30th of 2020, the victim in this case, Chris
22 Yarborough, loved by many 49-year-old father of three was
23 asleep in his home, in his bed with his youngest son. And
24 while laid sleeping, his eldest was in the garage flying
25 into a murderous rage and it was no accident when he

1 grabbed that gun. It was no accident when he racked it
2 back. It was no accident when he flipped off the safety.
3 It was no accident when he put his finger on that trigger.
4 It was no accident when he pointed it at the head of his
5 father. And it was no accident when me pulled that
6 trigger leaving his dad lying in a pool of his own blood.
7 No, it was no accident.

8 Ladies and gentlemen, when Chris Yarborough got
9 up out of that bed to go check on Emerson and to check on
10 Mason, he had no idea that the executioners hand was
11 already on the lever. He was walking his head straight
12 into a guillotine. So let's call this what it is. And
13 let's call him what he is a cold-blooded murderer. Murder
14 is defined as the willful felonious killing of a human
15 being with malice aforethought, that malice being either
16 express malice or implied malice, ladies and gentlemen.
17 Hatred ill will, wrongful intent to injure another person.

18 Malice does not necessarily mean ill will toward
19 the individual injured, but signifies rather a depraved or
20 wicked spirit intent on doing wrong. Who does that fit.
21 Fits him to a tee. Malice may be conceived at the very
22 moment the act occurs. Malice was conceived when he
23 started pulling those guns out. Malice was conceived when
24 he started threatening to kill people. But malice can
25 happen like that.

1 Two types of malice express or implied when you
2 have two here, ladies and gentlemen. You don't always get
3 that on every case, but you have two here. Express malice
4 a deliberate intention to unlawfully take the life of
5 another. You better not come in here. I'll show you.
6 And as he stands over his dead body, how do you like that
7 dad, that's express malice. Implied malice when
8 circumstances demonstrate a wanton or reckless disregard
9 for human life waiving that pistol, telling he's gone kill
10 people, saying he's gone kill himself, grabbing that
11 assault riffle, racking it, taking the safety off, putting
12 his finger on the trigger, that's implied malice. And
13 after he stands over his father's dead body and says how
14 you like me now dad as his little brother watches in
15 horror. He has the nerve to call 9-1-1 and say this.

16 (WHEREUPON, 9-1-1 call played for the jury.)

17 MR. WHITE: There's a problem with that
18 statement. He knows it. And the next day when
19 Investigator Owens tries to interview him, he realizes
20 what he said there is not going to hold water because he
21 says I was protecting my brother. He knows his brother
22 ain't going to go along with that. And don't forget
23 Emerson Yarborough told Investigator Owens the night that
24 this happened that Chris Yarborough did not reach for the
25 gun. He did not attempt to grab the gun. He did not grab

1 the gun.

2 Little Emerson says there was no argument
3 whatsoever prior to the defendant shooting him in the
4 head. He says the same thing on the forensic interview.
5 In fact, he says the last words out his father's mouth
6 were woe, woe, woe, woe. After he said simply, what's
7 going on out here. And if you have any doubt, listen to
8 his mother on the 9-1-1 call.

9 (WHEREUPON, 9-1-1 call played for the jury.)

10 MR. WHITE: Little Emerson is not afraid of
11 Chris Yarborough. He's afraid of Mason Yarborough. So
12 much so that he runs inside the house, grabs his dog and
13 this is a 13-year-old boy grabs his dog, grabs his younger
14 brother and huddles up in the bed, and calls his mama and
15 says don't come down here. Mason might hurt you too. The
16 next day Mason Yarborough gives a statement.

17 (WHEREUPON, defendant statement played for the
18 jury.)

19 MR. WHITE: Now, in the defense's opening
20 statement, they said they were gone show that Chris comes
21 forward at Mason who was just standing there minding his
22 business holding the assault riffle, that he grabs the
23 barrel of the gun and at the same time punches him in the
24 face. Ladies and gentlemen, where do we hear that. I
25 listen. I didn't hear it the whole trial. And if you

1 listen in his statement, you never hear a word of it not a
2 word. In his own statement, the defendant's own statement
3 he says he had the gun. He was pointing it at Chris and
4 he said he simply reached his arm out. Ladies and
5 gentlemen, he was -- he saw it coming. You know, they say
6 the worse thing a person can go through is to lose a
7 child. I think if Chris Yarborough was standing here
8 right now he'll tell you a close second is looking into
9 the eyes of your eldest son knowing he's about to kill
10 you.

11 (WHEREUPON, defendant's statement played for the
12 jury.)

13 MR. WHITE: So familiar with guns, he gets
14 pretty much the exact same gun -- I mean, the defense
15 wants to argue it's different. I mean, you can look at it
16 I mean, it's the same type of gun, gets it tattooed on his
17 forearm. He knows firearms. He knows all about them.

18 (WHEREUPON, defendant's statement played for the
19 jury.)

20 MR. WHITE: And they try to discredit Melia's
21 testimony. And, you know, Emerson was a young kid, so was
22 Melia. And they want to play those jail calls for a
23 reason yesterday. They want to say she couldn't have been
24 telling the truth on that stand because she was still
25 accepting calls from Mason. Well, you know, I can't

1 imagine what an 18 or 19-year-old kid is going through
2 when their boyfriend does something like that. But the
3 only problem with discrediting Melia is that their own
4 client backs up her story. He says it happen. I got
5 angry. I showed my A-S-S. I grabbed the pistol, put it
6 in my mouth.

7 (WHEREUPON, defendant's statement played for the
8 jury.)

9 MR. WHITE: And here you hit on the heart of
10 Mason Yarborough. He puts his gun in his mouth in front
11 of his 13-year-old brother and his girlfriend and
12 threatens to kill himself. You know what he says I
13 retracted that action, that's Mason Yarborough.
14 Consequences don't apply to him. He can waive a pistol
15 around. He put it in his mouth and he threaten to kill
16 people as long as he says I was tired. I retract that
17 action. That he thinks all is going to be forgiven. And
18 he thinks if he kills his dad in cold-blooded murder, he
19 gets his attorneys to say it was all an accident.

20 MR. SWILLEY: Objection, your Honor, State's
21 argument appeals to the personal bias -- jury's passion
22 prejudices proper suggestions insinuations.

23 THE COURT: Can you all approach a minute
24 please?

25

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury, but out of the hearing of the
3 jury but on the record.)

4 THE COURT: What's your objection again?

5 MR. SWILLEY: Judge, I think he's trying to
6 appeal to the passions, impress the jury and trying to get
7 -- trying to point the finger at counsel.

8 THE COURT: Well, you all have said it's an
9 accident, that's what the arguments have been. That's
10 what the evidence is in the record right or wrong?

11 MR. SWILLEY: I think he was trying to point the
12 finger. I think he was leaning towards the issue with
13 Emerson. I think that's where the argument was going.

14 THE COURT: All right, I'm going to sustain.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury, but out of the hearing of the
17 jury has ended on the record.)

18 MR. WHITE: He wants you to think it's an
19 accident.

20 (WHEREUPON, defendant's statement is played for
21 the jury.)

22 MR. WHITE: It shouldn't have happened even he
23 admits it.

24 (WHEREUPON, defendant's statement played for the
25 jury.)

1 MR. WHITE: And, ladies and gentlemen, the
2 argument that's as much as you ever get in this case.
3 Emerson says dad says Chris Yarborough said what's going
4 on in here. Mason says all he said was all right that's
5 enough of this S-H-I-T, that's it. There is no evidence
6 of any other words exchanged, any other argument, so at
7 worse, at worse all this man says is that's enough of this
8 S-H-I-T. And I'll be honest with you as a dad and knowing
9 I have a dad, that will be about the least that my dad
10 would say to me if he knew I was outside with my younger
11 brother waving a pistol threatening to kill myself, but
12 that's the most that Chris Yarborough says. That's it,
13 that's all it took to have his head blown off.

14 (WHEREUPON, defendant statement being played for
15 the jury.)

16 MR. WHITE: Where does he say he touched the
17 gun, where does that evidence come in. There's none.
18 None.

19 (WHEREUPON, defendant statement played for the
20 jury.)

21 MR. WHITE: I mean, this is his opportunity to
22 tell it, right. I mean, wouldn't you tell it all right
23 there. But in that interview, there is no evidence during
24 his own statement, no evidence that Chris Yarborough touch
25 that gun. That he grabbed it. That defense theory he

1 grabbed it, hit him. Now, how would that wound have
2 occurred on the side of the head.

3 (WHEREUPON, defendant's statement played for the
4 jury.)

5 MR. WHITE: Took the safety off, pointed it at
6 his dad, but didn't shoot him, didn't shoot him.

7 (WHEREUPON, defendant's statement played for the
8 jury.)

9 MR. WHITE: Okay. So that's completely
10 different from what he's saying, all right. Their theory
11 is that he pulled the gun and his finger was on the
12 trigger, so it went off. Well, he's saying here, no, he
13 didn't have his finger on the trigger. He just flipped
14 the safety and it just went off. Well, you heard from an
15 expert in the field Jamie Green from SLED. He testified.
16 I mean, that man is an expert in firearms. So much so
17 when Charleston, South Carolina had one of the worse
18 tragedies in the church shooting down there in Charleston
19 who did they call in. They call Jamie Green. And what
20 did he tell you. I handle that firearm. I fired this
21 firearm. There was nothing wrong with this firearm.

22 (WHEREUPON, defendant statement played for the
23 jury.)

24 MR. WHITE: You know, even though he got up
25 there and he said, you know, Mr. White tried to threaten

1 me and I think you all can see through that. I still feel
2 so bad for that kid, things he's been through, things he
3 seen what he's had to deal with, but that statement is
4 proof that he was up there, you know. Mr. Joyner said is
5 that a hundred percent truth. I mean, he's probably
6 telling a little bit less than hundred percent truth I
7 think. Because he said, he wasn't in there. He didn't
8 see nothing. He didn't know nothing. Well, the
9 defendant's own statement said he was right there beside
10 him when it happened.

11 (WHEREUPON, defendant statement played for the
12 jury.)

13 MR. WHITE: The night of or the day after
14 Investigator Owens charges Mason Yarborough with murder.
15 Yet, Lynn Yarborough gets on that stand and she says that
16 same day Investigator Owens told her, oh, this isn't
17 murder. And I objected and the Judge ordered it stricken
18 from the record and you are not to consider it. But I'm
19 here to tell you why would he charge him with murder if he
20 didn't think it was murder. Those jail calls show it all,
21 ladies and gentlemen. They're huge. All right. And I'll
22 admit I don't know what Ms. Lynn's going through. I can't
23 imagine. I don't know what Emerson Yarborough's going
24 through. I can't imagine. They're in impossible
25 positions, but I know how it sounds.

1 (WHEREUPON, jail phone call played for the
2 jury.)

3 MR. WHITE: I want make to sure y'all caught
4 that. It's hard to catch on the first time around when
5 you first hear it. Not only is Mason want his mom to
6 influence pressure his little brother. They're talking
7 about Melia can you reach out to her people see what side
8 they're on. There no sides to the truth. Truth is what
9 the truth is.

10 (WHEREUPON, jail phone call played for the
11 jury.)

12 MR. WHITE: I wanted her to get it. Do y'all.
13 Do y'all get it.

14 (WHEREUPON, jail phone call played for the
15 jury.)

16 MR. WHITE: I find this part of the call so
17 interesting. He's on the call Mason Yarborough describes
18 to his mother the injury that was sustained. He said you
19 put two and two together. Her first initial reaction is,
20 yeah, he put his hand up and that's exactly what happened.

21 (WHEREUPON, jail phone call played for the
22 jury.)

23 MR. WHITE: Pretty much been honest, pretty
24 much.

25 (WHEREUPON, jail phone call played for the

1 jury.)

2 MR. WHITE: He hears you. And what she say on
3 the stand. She admitted that during that time her phone
4 was always on speakerphone. She's in the house with a
5 14-year-old kid, 15-year-old kid. They're discussing the
6 case. Mason's talking about how he needs Emerson to
7 change his testimony and exactly what he needs him to say.
8 And the whole time it's on speakerphone and Emerson is
9 right there.

10 Now, I can't prove that he heard it. I can't
11 prove that they discussed it, but I can tell you he got on
12 the stand right here and he said exactly what he wanted
13 him to say didn't he. I don't remember nothing. I didn't
14 see nothing. I don't know nothing. I just gave that
15 statement because I was mad and I was angry at my brother.
16 It was all lies. That's exactly what Mason Yarborough
17 wanted him to say. And what did he do. He got up there
18 and he said it verbatim.

19 Again, I don't want you to hold it against that
20 kid. I don't, but I want you take to into consideration.
21 And I want you to listen to his words when Meg Temple, a
22 forensic interviewer, executive director of the Care House
23 specializes in these types of interviews, conducted an
24 interview with him few hours after this occurred, hear his
25 words. His words are what happened in this case.

1 (WHEREUPON, forensic interview played for the
2 jury.)

3 MR. WHITE: Now, a few things, a couple things.
4 Number one does this look like a boy who's lying. I think
5 you know the answer to that. Second thing this the first
6 time hearing from Emerson about some allege abuse. I want
7 you to keep in mind who this boy was with just prior to
8 this interview. She's seated right over there. She's
9 the mother of the defendant, all right. And the only
10 thing that she could point to as far as this allegation of
11 abuse, you know, Chris sees red. He just sees red. The
12 only thing she could say was he was little, nine, he got a
13 spanking with a belt. Now, ladies and gentlemen, don't go
14 home and say that Solicitor Ryan White said we can beat
15 our kids with a belt, that's not what I'm saying, all
16 right. But what I am saying is it does not justify murder
17 12 years later. It's insane.

18 (WHEREUPON, forensic interview played for the
19 jury.)

20 MR. WHITE: Got into a bigger argument.

21 (WHEREUPON, forensic interview played for the
22 jury.)

23 MR. WHITE: Again, this is the problem with them
24 trying to discredit Melia's testimony. It's corroborated.
25 Young Emerson says the same thing. And they want to say,

1 well, you didn't have a bruise on you. Well, sometimes
2 bruises take awhile to show up, both Emerson and Melia say
3 he hit her on parts of her body that would have been
4 covered up with clothes when she came back to law
5 enforcement. So they can try to discredit her all they
6 want to. Emerson Yarborough says it happened.

7 (WHEREUPON, forensic interview played for the
8 jury.)

9 MR. WHITE: Didn't trust him. Melia's statement
10 is completely corroborated by this kid. Everything she
11 says happened. He corroborates it happened. There's no
12 reason to doubt her whatsoever.

13 (WHEREUPON, forensic interview played for the
14 jury)

15 MR. WHITE: I watched it and it wasn't pleasing.
16 The last thing that Chris Yarborough said on this earth
17 while starrng into the eyes of his eldest son with a gun
18 pointed at his head was woe, woe, woe. And he wants you
19 to think it was an accident.

20 (WHEREUPON, forensic interview played for the
21 jury.)

22 MR. WHITE: He wasn't right. He certainly
23 wasn't just killed Chris Yarborough in front of Emerson
24 Yarborough. Emerson runs away from him, goes inside, gets
25 his younger brother. Mason Yarborough comes inside, finds

1 him and the first thing he tells him is don't worry about
2 it. I can't fathom. Don't worry about it. He's all
3 right don't worry about it. And that's his attitude about
4 everything in life. Don't pay attention to my actions.
5 Don't worry about it.

6 (WHEREUPON, forensic interview played for the
7 jury.)

8 MR. WHITE: And that's why I say there's two
9 victims in this case. That kid did not want to leave that
10 room. A life sentence has already handed down in this
11 case. Emerson Yarborough will never be the same. But the
12 victim in this one is Chris Yarborough, who died starring
13 in the eyes of his eldest son who had malice in his heart.
14 When he saw it coming, he knew it was coming. He could
15 see it in his eyes. He turned. And you heard it from
16 Dr. Beaver been doing this for 30 years pathologist. He's
17 the pathologist who actually conducted the autopsy. He
18 said it was consistent. He described this hand wound as a
19 through and through meaning the bullet went through the
20 fingers. They want you to believe that the hand was
21 wrapped around the gun, but what did he say. There were
22 no thermal marks meaning there were no burn marks. If
23 wrapped around the gun he's seen burn marks. They try to
24 get him to say it could have been a contact wound. He
25 says, no, I don't think so. But it had been pressed

1 against the barrel, you'd seen patterns indicative of
2 that. No, he said I believe it was three inches away from
3 the barrel making it a through and through, passing
4 through, striking Chris in the back of the head, graze
5 wound. And you say that graze wound pattern it matches
6 up. It matches up exactly, grazing him in the back of the
7 head blowing out the front.

8 And they called a pathologist he did not refute
9 Dr. Beaver at all. What did he say he said I can't tell
10 if it entered the front or enter the back, but he did say
11 the best person to know is the person actually conducting
12 the autopsy. Person present at the scene because he said
13 photographs are not as good.

14 And what else did he say. He said it could be
15 consistent with through and throw gunshot wound to the
16 head. So what Dr. Beaver said is accurate. And it lines
17 up with Mason's story said he put the hand forward. You
18 can even see it in the screen put the hand forward. It
19 lines up with Emerson's statement. And it lines up with
20 the physical evidence.

21 They called a firearm expert. And they made a
22 big deal about the trajectory, that it kicks back from two
23 to five, right. But if they get into an argument in that
24 game room and then Mason walks out like he describes. And
25 Emerson describes into the garage, got the gun, he says

1 don't you come into the garage. And when he walks out of
2 that door, out of the game room standing right -- almost
3 right where he fell, he tells him I'll show you and he
4 approaches him. He sees him coming and he shoots him and
5 that shell casing would land exactly where it landed.

6 Now, shell casings do wild things. You heard
7 Jamie Green say he's had casings where it ends up, you
8 know, hundreds of yards away. Depends on what it hits or
9 somebody kicks it. It's concrete. It could bounce things
10 like that. But that shell casing he's firing towards him.
11 That shell casing would land exactly where it fell. And I
12 appreciate them calling those folks. They strengthen the
13 State's case significantly.

14 Ladies and gentlemen, this is an overwhelming
15 case of guilt of Mason Yarborough for the murder of his
16 father. I said before and I'll say it again and I'll
17 leave it with you. One of the worse things on earth is to
18 lose a child, but I guarantee you if Chris Yarborough was
19 standing right here where I am now, he'd tell you a close
20 second is starring in the eyes of your eldest son knowing
21 he was about to kill him. I want you to go back there in
22 just a few minutes. And I want you to speak for Chris,
23 speak for his family and find Mason Yarborough guilty of
24 murder. Thank you.

25 THE COURT: Before I recognize the defense

1 counsel for closing arguments, everybody on the jury,
2 okay. Anyone need a break? Mr. Swilley.

3 MR. SWILLEY: Ladies and gentlemen, I don't
4 think I can talk for an hour and five minutes even with
5 playing a bunch of video clips and audio clips if I tried.
6 So I'll try to be as brief as I can to get through all the
7 points that I can. You know every time I get up and do
8 one of these things I always try to come up with some kind
9 of analogy how it related to real life and something I
10 could try to tie in to make points that I try to make. I
11 swear it gets harder and harder every time or I get more
12 experience I have it's like less I can kind of draw on.

13 But I was thinking on the way to court this
14 morning I started thinking way back. And when I was in
15 the ninth grade back in 1998, I was on the J.V. football
16 team and we had this really old school coach and he was
17 hard to play for. And he was one of those guys give you
18 about a shot glass full of water in about maybe 30 seconds
19 of drinking it. It's not as hot as Florence up there in
20 early fall, but it gets pretty hot. And what he would
21 also do a lot of times is he would get one of those
22 camcorders and he have his wife camcord or record our
23 games. And, you know, if in the middle game or something
24 if you missed a block or a tackle or you did something
25 wrong and you try to make an excuse for it, he would

1 always say, well, the big eye in the sky don't lie. And
2 he be talking about that camera and we're going to look at
3 the camera and see, you know, what actually happened.

4 We don't have a camera in this case. We don't
5 have video footage of what happened. What we do have is
6 we do have hard forensic evidence. So what he would mean
7 anybody can do anything at any time. But you got to look
8 at the hard evidence. The hard stuff that machine in that
9 case to determine actually what really happened. I'm not
10 going to sit up here and I'm not going to stump around and
11 try to invoke your emotions in this case even though it is
12 a very serious case and certainly it's a lot of emotion
13 that's gone into from some of the people who you seen.
14 But I want to do that. What I want you all to do is to
15 think. I want you to use your brain and employ your
16 logic and think about this case. And look at it in terms
17 of what the hard evidence that we have, it doesn't match
18 up to what the State says happened. It just doesn't.

19 I want to talk to you at first, but I want to go
20 through some of the witnesses, okay. Look, I know I think
21 the first real substitutive witness we had was Melia. All
22 right. I'm almost 40 years old. I don't take any joy --
23 first of all, I want to tell you this in getting people to
24 be upset and making people cry. I don't like it. That's
25 not why I got in this profession, okay. But what happened

1 when she got up on that stand, I don't know what's
2 happened from the time that her and Mason broke up until
3 now. I don't know if she wants attention. I don't know
4 if she wants -- if she's trying to be some kind of a
5 victim, but everything she said up there as far as what he
6 did to her was pretty much false. I'm not telling you
7 that they didn't get into an argument. I'm not telling
8 you that maybe it didn't get physical, but Mason didn't
9 hurt her.

10 And one of the reasons that we played those jail
11 calls from November the 2nd was to show you that her
12 conduct right then did not match that of someone who had
13 been viciously assaulted like she testified to. It
14 doesn't show that, but you don't sit on the phone and tell
15 somebody I love you. I love you talk about getting
16 married and talk about turning off your utilities when you
17 been violently assaulted, choked out, punched had a gun
18 put to your head, all that stuff. And the State try to
19 say that Emerson's forensic interview -- we'll get to that
20 soon and her testimony matched up. It doesn't match up.
21 At no time at all did Emerson say anything about a gun
22 being put to her head, about her being choked, about her
23 whatever else she said about threatening to kill her
24 grandmother nothing like that. What he did was that they
25 got into an argument.

1 I think he did say that he hit her, that it got
2 physical. That he put his hands on her and got angry when
3 he was trying to take her phone. I am not making any
4 excuses for that type of conduct, right. But what you
5 will notice is when she left, she came back to the house.
6 If he really been in that kind of a rage to hurt her and
7 that wasn't the way she said, she wouldn't have come back.
8 In fact, she would have called 9-1-1 if she called
9 anybody. She certainly would have called 9-1-1 before she
10 called Chris Yarborough.

11 Let's not forget, ladies and gentlemen, that
12 text message from Melia to Chris Yarborough said something
13 to the tune -- and it's in evidence. It says something to
14 the tune if he hit me with a pool stick, which we didn't
15 hear Emerson say at all at any time who was the other
16 person there. And also Emerson said not to call you
17 because you would only make it worse. What was the last
18 thing she said in that text message save my clothes, pull
19 that box of clothes out of there, put it in your room
20 because it is all I got.

21 I'm not here to point the finger at people,
22 that's not what I do. I'm not here to try to, I guess, if
23 you want to call it cast dispersions on people, but all
24 that's got to be brought out to see what is really going
25 on.

1 Listen, Mason Yarborough picked up that weapon
2 right here. Mason Yarborough pick up this weapon, ladies
3 and gentlemen, because he's scared of his father. I'm not
4 telling you that's a good reason, but I am telling you
5 that's the reason and that's not the State's reason. He
6 didn't pick up that riffle because he wanted to hurt his
7 father. He picked up that riffle because he's scared of
8 his father and didn't want him to come in.

9 Ladies and gentlemen, the State has to prove
10 beyond a reasonable doubt that Mason Yarborough had malice
11 aforethought and killed with his father with malice, with
12 hate, with ill will, with hatred in his heart and that's
13 not the case. That didn't happen, ladies and gentlemen.
14 When Chris Yarborough picked up this riffle or when Mason
15 Yarborough picked up this riffle and had him hold it
16 because of his fear, Chris Yarborough was on the property
17 that he owns regardless of the fact that Mason stayed in
18 that place and that was his residence.

19 Chris Yarborough who was angry already, we
20 establish that got into an argument with his ex-wife about
21 having the custody of his kid that day. He was angry all
22 ready. He had a couple drinks, although he wasn't drunk
23 either according to the autopsy report. And he's mad that
24 somebody called him, woke him up out of a dead sleep on a
25 week night and he had to go down and deal with the son or

1 deal with whatever situation that he was told that was
2 going on. He wasn't happy about that and he was angry.
3 And Chris Yarborough was going to be dang if he's going to
4 let somebody -- his younger son hold a gun or point a gun
5 at him.

6 And when Chris Yarborough who was standing in
7 the doorway of that room, didn't take too long to grab
8 that firearm and pulled aside. And it's not a coincidence
9 that that finger injury right here when he jerked it, you
10 look at it, all right. When he jerked that thing when
11 your hand rolls like that, it's not a coincidence that the
12 inside of that finger is right over those gas ports that
13 produce 35,000 pounds of pressure per square inch that
14 cause that finger injury. And when he pull that firearm
15 away, it went right across his face. And when he pulled
16 that firearm, it went right across his face.

17 If you'll notice in the doorway and the pictures
18 will show, he stumbled backwards a few feet and landed
19 right where his shoulder went across the car lift. That
20 stuff with Dr. Beaver had talked about there's a line that
21 runs next to his shoulder in those photographs, ladies and
22 gentlemen. And the stuff that Dr. Beaver initially
23 thought was -- that he initially thought was stippling
24 next to it that line, that line was from that lift when he
25 fell backwards on to his back after the gun had

1 accidentally discharged into his face. That's where
2 that's from.

3 And going back to Dr. Beaver. We want to talk
4 about the physical evidence, okay. Dr. Beaver told you
5 when he got the body he doesn't know anything about the
6 case. He knows nothing about -- at first he said I
7 thought there was two gun wounds because the -- there's a
8 hand injury and then there was the injury to the head.
9 But Dr. Beaver also didn't know about was he didn't know
10 about that firearm. He didn't know about the gas port.
11 And he didn't know anything about what it look like or
12 anything about the crime scene or about the lay out of the
13 garage or anything else. He didn't know. He had nothing
14 else to look at. And he also didn't take into
15 consideration that once -- when that firearm fires, it is
16 almost anatomically impossible for that to pass through
17 the inside of the finger and then go through this part.
18 It's almost anatomically impossible. I don't even think I
19 can contort my arm that way. I'm getting cramped doing it
20 right now.

21 It is not likely didn't happen. And you look
22 and you look no further than the evidence on the
23 photographs. There's soot here. There's soot on the
24 inside here and there's soot on half of the thumb. The
25 part of the thumb that was exposed when the hand was

1 around the barrel. That's what that's from. There's no
2 soot. There's no nothing on the other part of the hand
3 that would be present had this been an open hand wound.
4 Your Dr. Owens talked about that. There is nothing to
5 indicate that this is anything other than a contact wound.
6 That the wound was on -- that the hand was on the barrel
7 of the riffle and it happened because it was being jerked,
8 that's not malice. No malice, no murder.

9 So I want to go back to that 9-1-1 call. And
10 the State's already played all these snippets for you.
11 And I just want y'all to know all this stuff is in
12 evidence. If you want to hear it, you can hear it. You
13 just got to ask. If you want to look at these
14 photographs, they're going to be back there with you, but
15 all this stuff you want to hear in its entirety, you can
16 hear it, okay.

17 And what you need to understand is that when
18 Mason Yarborough called 9-1-1 what did he say. He said my
19 dad he's really angry. He's frantic. Mason is frantic.
20 He mentions his little brother. He didn't say I tried to
21 protect my little brother. He says he's frantic. My dad
22 is really angry, my little brother -- he grabbed the gun,
23 it went off. That's not what a cold-blooded murderer
24 sounds like. And a cold-blooded murderer as the State
25 describes doesn't go over to the body, okay, after he says

1 how do you like me now dad and get blood all over his
2 hands. And then gets blood all over the wall -- all over
3 the door and all over the futon all over anything else.
4 That's not what a cold-blooded murder does. It's not.
5 The physical evidence doesn't line up to their narrative.

6 I want to talk about something else and I'm kind
7 of going out of order. But I will tell you this I want to
8 talk little bit about Emerson, okay. You all watch that
9 forensic interview he gave just hours after the incident.
10 And this is a little boy. This is a 12-year-old boy who
11 doesn't understand what is going on and he blames his
12 brother for what he did, okay. I'm going to segue into
13 that jail call in a minute, but this kid comes in and all
14 the stuff he's saying doesn't make any sense. It doesn't
15 match the physical evidence. He doesn't say anything
16 about the hand wound. He said I'm sure he never grabbed
17 for the gun. He didn't see it. He didn't see it. He
18 knows that Mason was holding the gun and he knows his
19 father was shot and he blames his brother. He blamed his
20 brother. That's what happened because he's a child.

21 And, ladies and gentlemen, the purpose of a
22 trial is for you to view the evidence and the testimony.
23 When you get up in here, when you stand here, no matter
24 who you are, no matter how old you are, you got to put
25 your hand here, you got to swear to tell the truth. And,

1 ladies and gentlemen, those videos -- that video that you
2 saw that's not sworn testimony. That's the testimony of a
3 child who's angry, who's not telling the truth. And who
4 told you under oath that he wasn't telling the truth.
5 That's the sworn testimony.

6 I want to talk to you about something else. The
7 State gets up and says, well, he said exactly what he
8 wanted him to say on the jail calls, but that's the only
9 thing that makes sense. That's the only thing that could
10 make sense because what Emerson says doesn't match the
11 physical evidence. You bear with me a moment. You look
12 here. You look here and you look here. There is no soot
13 on the side of the thumb. Soot is only on the inside
14 within around the barrel. That is when the gas port when
15 Chris Yarborough pulled the barrel and the finger roll and
16 the pressure did that. And as that happened, gun goes
17 forward, trigger goes back. And you don't have to be an
18 expert to know that. And the bullet entered his head.

19 I am not telling you this isn't a tragedy. What
20 I'm telling you it's not murder. It is not malice. No
21 malice no murder. I am not sitting here telling you that
22 Mason acted okay with Melia and that he was justified in
23 getting upset as he got. Let's look at the facts as we
24 know.

25 Mason as you heard testify too loved his father.

1 He was scared of his father. As Mr. Joyner said in his
2 opening, it's a flawed relationship and they're too lawed
3 people. I am not going to sit here and tell you that he
4 acted like the perfect son, the perfect person that night,
5 but he chose to live at that house, ladies and gentlemen.
6 He chose to live at [REDACTED] Lake City Highway with his
7 father. He chose that. And the relationship was flawed.
8 But he didn't hate his father.

9 Why, why would Mason want to hurt his father.
10 Why would he want his father dead. Why would -- what does
11 he have to gain, think about that. Nothing. He has
12 nothing to gain from that. Now, he was wrong in picking
13 up the riffle because he was scared and probably wasn't
14 the right thing to do, but he didn't want to harm his dad.
15 He didn't have that intent. He didn't have the malice.
16 It wasn't there.

17 When you go back to that jail call, and the
18 State's played a bunch of snippets of that jail call when
19 he's talking to his mother. Let me tell you something
20 right now since the State brought it up, there is no
21 evidence whatsoever that anyone has influence that young
22 man to say what he said on that witness stand. None
23 whatsoever. And if it had been, I wouldn't be here.
24 Everything points to that young man. And when you listen
25 to Mason, he didn't say get Emerson to change his story.

1 He didn't say Emerson told the truth. I need to get him
2 to lie. He doesn't say that. He said talk to Emerson
3 figure out why he said this crazy stuff. I can't wrap my
4 head around it. That's the part you didn't hear is on
5 that call. It doesn't make sense. I can't wrap my head
6 around it. Why did he say all this crazy stuff because
7 it's not what happened. It's not what happened, it's
8 misleading.

9 Another thing about Emerson too I want to talk
10 to you about. If he really believed -- actually believe
11 now what he told that forensic interviewer or what he said
12 at that time or said to Investigator Owens, why would he
13 not want his father killed or punish. Ladies and
14 gentlemen, blood maybe thicker than water, but blood ain't
15 thicker than blood. That was Emerson's father too. That
16 was his father. And there is no reason why want anybody
17 to not be punished for killing his own father. There's no
18 reason whatsoever. There's nothing in the evidence that
19 would suggest anyone has any undue influence over him
20 whatsoever. What Mason's talking about on those calls
21 is -- been pretty much truthfully the whole time. I
22 didn't -- he grabbed the riffle and it was an accident.
23 It was an accident. In those two calls, he said it was an
24 accident. It was an accident. It was an accident. There
25 wasn't an accident that hand wound wouldn't be there. It

1 just wouldn't.

2 I mean think about this. The likelihood -- I
3 can't hold it up, but the likelihood of a shot coming in.
4 First of all, there's no soot or anything else on the
5 palm. So this didn't happen, but there's no way to come
6 in through the hand on the inside of the hand as it did
7 and only leaves soot on these two fingers that were at the
8 close end of the barrel. And then come up under the ear
9 as he's looking away and not hit any other part of the
10 body. It didn't happen that way. If you want to go back
11 and listen to those calls -- and I want to get back to
12 when he said, you know, talking about his mom. I don't
13 want y'all to come to court. You don't have to -- I want
14 y'all to take a vacation that was ignorant and that was
15 wrong, but who would want their family involved in this.
16 Particularly, when Emerson said something that it wasn't
17 true. Who would want this for their family. Who would
18 want them to be around. I'm not telling you what he said
19 was right or what he said wasn't ignorant, which it was,
20 but it doesn't make him guilty, doesn't mean there was
21 malice, ladies and gentlemen. It's not there. You know,
22 and at the end of that call, I think about this how much
23 of what the State's tried to show as far as that call is
24 concern has tried to make Mason Yarborough look bad, but
25 it's really not making him look guilty because he doesn't

1 say anything that would show that there was any malice in
2 his father's death never not one time, all right.

3 I want to talk to you a little bit about the
4 investigation as well about Investigator Owens'
5 investigation. And I'll say this Investigator Owens he's
6 a clean cop. He's honest because if he wasn't you
7 wouldn't hear from me, but he's a clean cop. And what he
8 did as he goes out and he talks to people. He didn't
9 realize that the case is a little bit more complicated
10 than it is, than he thought, but he comes out and he
11 interviews people only takes one recording of Mason
12 Yarborough. And doesn't have to lie to him doesn't have
13 to intimidate him as he said on the stand. Doesn't have
14 to threaten him. Doesn't have to get aggressive. He
15 let's him talk and what does he say. You all seen the
16 whole video already I don't have to show you, but what
17 does he say during that video towards the end at 30
18 minutes and about 42 seconds. I appreciate you being
19 honest, that's what he said.

20 Going back to the physical evidence after Mason
21 checked on his father there's some blood on the futon.
22 There's blood on the cabinet. Now, look here Chris.
23 Chris is facing when he walks in that door he's facing
24 Mason. And as he gets struck in the head, blood comes out
25 the right. The State wants you to believe that he was

1 shot in the back right here as he is turning and then he
2 comes down and falls on his back. But if that were the
3 case, there be blood on the other side. There wouldn't be
4 blood comes out on the cabinet because look a few feet
5 away is where he falls and comes to rest. It's blood on
6 the door. There's the blood would have been Chris
7 right -- where Mr. Chris Yarborough came to rest all come
8 out the right where backed up after he's hit in the face
9 and falls back on his back and comes to rest right after
10 he grabbed that gun tried to pull it away.

11 Now, ladies and gentlemen, you heard
12 Investigator Owens say what's the first and second rule of
13 gun safety. You don't point a gun at something you don't
14 intend to shoot and that's not the law, but Chris
15 Yarborough knew the best rule of gun safety is to get out
16 of the way or get that gun out from the front of you if
17 it's being pointed at you or maybe point at you by
18 somebody else, that's what he did. And unfortunately
19 that's what happened when he grabbed it. If the gun went
20 forward and the trigger goes backwards, and the gun
21 discharged. Again, here's the finger wound. All that
22 soot is around the finger, the index finger, bottom of the
23 thumb, there you have it again.

24 Going back to Dr. Beaver and, again, like I told
25 you, I don't like to point the finger at people, but I was

1 thinking about this earlier too. So Dr. Beaver doesn't
2 know anything about the case. Doesn't know anything about
3 the weapon. Doesn't know anything about the scene. He
4 just gets the body, right. He testified he approximated
5 the wound. You remember Dr. Owens said there is no
6 evidence he re-approximated that wound to determine
7 trajectory of the bullet. I had a friend that recently
8 passed away was actually Mr. Yarborough's lawyer before he
9 was deceased. And he always use to say good enough
10 government, good enough for government work. What the
11 means, hey, good enough to be the bear minimum. And
12 that's what happened because Dr. Beaver didn't know case,
13 he didn't know the importance of determining the
14 directionality of that shot. And that's why he didn't
15 figure it out.

16 It's good enough for government work, just
17 another one of my 30,000 bodies that I go through. He
18 didn't spend the necessary time to figure that out because
19 he didn't know the importance of it.

20 Ladies and gentlemen, look at these bullets.
21 One of these bullets and it have the shell casings on.
22 These things are about as long as my pinky finger. If one
23 those things had actually hit a finger, it would have done
24 way more damage than it did, way more damage than it
25 received. And Chris Yarborough who was in no mood and

1 I'll agree to this was in no mood for any nonsense walked
2 a hundred feet, angry and irritated all the way down to
3 where Mason was about a hundred paces. How do we know he
4 was angry -- and I'll tell you this. I don't think
5 anybody would argue nothing's going to put you in a worse
6 mood than having to deal with your ex-wife. Last thing,
7 he said to Lynn was F you figure it out.

8 Ladies and gentlemen, you heard -- and, again,
9 I'm not telling you it was the best reason or perfect
10 reason for Mason to pick up a gun when his father came in,
11 but his fear was justified. You heard through the
12 evidence, through the video my dad always comes at me with
13 an open pocket knife. I never know, I just never know.
14 You heard Lynn talk about not -- spanking that he got and
15 that was the only thing that she was -- was able to
16 testify about. He got beat with a belt buckle back then,
17 that's not a regular spanking. He had every reason to be
18 afraid of his father, that fear was there. It was fear
19 not malice why he picked up the gun.

20 Maybe, you don't think that's the right reason
21 or that's a good reason, but it's the reason. It's not
22 malice. He did not want his father dead. He just wanted
23 him to go away. And, again, it's two flawed people and it
24 was a flawed relationship.

25 Now, you heard and you can hear him again those

1 first two jail calls. That is not somebody who harmed his
2 father with malice in his heart. That is somebody who
3 while he made a mistake perhaps, did not kill anyone
4 intentionally and did not have malice when his father
5 passed away.

6 Ladies and gentlemen, there's one person I
7 really hadn't talked about yet who knew Mason Yarborough
8 better than anybody. And that person knew, he knew Mason
9 Yarborough wasn't going to intentionally shoot him and
10 that was Chris Yarborough. And that's why Chris
11 Yarborough grabbed the barrel of that gun and pulled it
12 away because he knew his son. He knew Mason wasn't going
13 to shoot him, but he wanted to get that gun out of Mason's
14 hands and that's how this tragedy happened. He knew
15 better than anybody. The fact his son would not kill him.
16 He knew his son loved him. He knew it was a flawed
17 relationship, but he knew his son wasn't going to shoot
18 him. But he wanted to get it out of his hands.

19 Ladies and gentlemen, all the evidence is in.
20 Evidence you can consider. Take your time if you want to
21 look at it go ahead and look at it. Never once, did you
22 see really any inkling of malice from Mason Yarborough.
23 The State tries to make him look bad, but they don't make
24 him look malicious. That testimony or that statement not
25 testimony that statement testimony you heard from Emerson

1 while we objected to it came into evidence and you can
2 consider it. But it's not testimony from this stand.
3 There's no testimony from this witness stand that would
4 show that Mason Yarborough had malice on October the 30th
5 of 2020. It's not there. I don't need to go back there
6 and play all this stuff for you and show you all the stuff
7 and stump around to get that point across I hope. But
8 there's a reason why Emerson Yarborough didn't say what he
9 said on that video and it's because what he said on that
10 video was not true.

11 And you have to understand all this happen so
12 fast too. No one's really talked about that. This type
13 of thing doesn't happen in slow motion right. It happens
14 very, very quickly. And there's no way that Emerson could
15 have seen what happened. All he knew at the time and he
16 was hurt he was upset was that Mason happened at some
17 point picked up a gun and that his father was shot, that's
18 all he knew and he made up the rest. And he didn't make
19 that up. He didn't continue that false narrative when he
20 got up on that witness stand. It's a good thing he
21 didn't. That's why you have sworn testimony. That's why
22 you have trials. Because anybody can say anything to
23 anyone in a closed room, but once you get out in public,
24 once you have the opportunity to cross-examine somebody,
25 that's when you really get what it is. That's when you

1 really get to see what happened. That's why we have the
2 trial process.

3 Because, again, I think about social media
4 today, how many people can get behind a computer, get
5 behind the phone and say certain things, if they were in
6 here in public, in front of a jury would they say it, most
7 wouldn't. I think all of you all can agree with that. So
8 don't be fooled by that. Look at what we have, look at
9 the hard evidence, and that shows you that there's no
10 malice.

11 And, again, we don't have to prove anything.
12 But we have the right to show you through our experts how
13 this happened to do some insight, but it's the State they
14 are the ones that have to prove this and they can't prove
15 it because there's no malice. Beyond a reasonable doubt
16 is the highest the burden. That's a higher burden it
17 takes to take your kids away from you to terminate your
18 parental rights. That's a higher burden than that. And
19 they don't get there because that's not what happened.
20 This is a horrific diaster, but it's not murder. It's
21 not.

22 This, ladies and gentlemen, is not a murder.
23 And I know I hadn't stood up here and sit up here and talk
24 to you all as long as Mr. White did. Like I told you, I
25 couldn't do that if I tried. But this is going to be the

1 last time either myself or Mr. Joyner will get to have any
2 participation in this. So we're pretty much done after
3 you get to hear the rebuttal from the State, but I'm
4 asking you this I been in charge of Mason's case for a
5 long time. And after I'm done, like I said, all that
6 transfers to y'all, use your brains, use logic. You will
7 see that this is not murder. It's not. Thank you.

8 THE COURT: Mr. Swilley, grab your stuff off the
9 podium.

10 MR. WHITE: Mr. Swilley, talked about
11 terminating parental rights. Let's you know a good about
12 bit that because Mason Yarborough sure terminated Chris
13 Yarborough's parental rights put a bullet in the back of
14 his head. He can never spend time with his kids again.
15 Respectfully to Mr. Swilley, I think we were watching two
16 different trials. He mentioned, you know, that story
17 about playing football and the big eye in the sky.

18 Well, he must be familiar with the term eye
19 witness. You don't always have one in these cases. You
20 got one here. Emerson Yarborough gave a statement to
21 Investigator Owens. He gave a statement to a specially
22 trained forensic interviewer and he gave the whole
23 statement. He wants to talk about Melia. Why would she
24 come back to that house if she was abused. She was coming
25 back to tell law enforcement her story. Why didn't she

1 call 9-1-1 was when she came back she knew the cops were
2 there. He said don't go down there, Chris will only make
3 it worse. It wasn't that Chris was only going to make it
4 worse. It was that anybody was going make it worse. He
5 was in such a state that anybody was gone set him off.

6 And let me tell you something, ladies and
7 gentlemen, there's malice by the truck loads in this case.
8 And Chris Yarborough died, but of any of them could have
9 gotten it. Anybody could have gotten it. He was in such
10 a way, Melia's lucky to be a live. Emerson's is lucky to
11 be alive. Now, he wants to talk a lot about the evidence,
12 the physical evidence.

13 Well, let me tell you something, ladies and
14 gentlemen, he's no expert. He's not an expert in forensic
15 pathology. He's not an expert in blood. He's not an
16 expert in anything that came before you, but you know who
17 is an expert Dr. Beaver. And their expert who didn't
18 refute what Dr. Beaver said. And he said that this is
19 consistent and I saw a few of you laugh when he got that
20 dowel out and he said I'm going to show you. He stood
21 right over here. He said I'm going to show you this is
22 impossible. And guess what he did. He did it. Did you
23 see if from this angle. It lined up perfectly. He put
24 that dowel between his fingers. And the dowel right here
25 in the jaw. And I know you caught it. I saw a few of you

1 laugh. I was laughing to. And they say -- want to make
2 this big deal about Emerson couldn't have seen it.

3 He didn't see it. He couldn't have seen it.
4 Please don't believe that he saw it. Don't please, please
5 don't believe he saw it because if he saw it, then it is
6 murder and they know it. But guess what Mason admitted
7 that he saw it in his own statement he says Emerson was
8 standing right there. And what did Emerson say he said I
9 saw it and it wasn't pleasing and then started to choke up
10 a 13-year-old kid.

11 It's shameful. I mean shameful. Does that seem
12 like a boy lying to you. He said you can only consider
13 what's coming from the witness stand, that's not true.
14 That's not true. That video is in evidence. That's why
15 it was played for you. Did that boy seem like he was
16 lying. That boy he didn't seem like he was upset, angry
17 at his brother. Seem like he didn't want to leave that
18 room with that puppy dog and that lady who was being
19 professionally nice to him.

20 You know, I can keep going. Everything that he
21 said I can refute and show you that is nonsense, but you
22 know it to be true. You know it. You know it. You can
23 see it. And I can it in your eyes that you can see it.
24 Now, please on behalf of the family find him guilty of it.
25 Thank you.

1 THE COURT: All right, ladies and gentlemen, you
2 now heard the closing arguments of counsel. I have a few
3 more remarks before you begin your deliberations. I want
4 you to clearly understand, ladies and gentlemen, that
5 you're not partisans or advocates for the State of South
6 Carolina or the defendant. It is your duty by your joint
7 deliberations to determine the facts in this case giving
8 to the defendant the benefit of every reasonable doubt on
9 each and every issue. Then to the facts which you
10 determine to be true you should take and apply the law
11 which has been given to you by this Court and thus arrive
12 at a verdict. When you have accomplish these
13 responsibilities, you will have satisfied your oath as
14 jurors. And you will have discharged your duty to this
15 court.

16 Now, once you retire to your jury room, the
17 bailiff will give the verdict form to you, Mr. Foreman.
18 When you, the jury, arrive at a verdict as to the offense
19 charged in this case, you, Mr. Foreman, will select the
20 verdict as to that offense on the verdict form. If the
21 State has failed to prove the guilt of the defendant
22 beyond a reasonable doubt, your verdict will be not
23 guilty. Likewise, if the State has proven the guilt of
24 the defendant beyond a reasonable doubt, your verdict will
25 be guilty.

1 Now, once a decision has been made, you,
2 Mr. Foreman, will check whichever choice is the verdict of
3 the jury as to the offense charged. The verdict, ladies
4 and gentlemen, that you render in this case must be the
5 verdict of each and every juror. It must be your
6 unanimous verdict. All 12 of you must agree on the
7 verdict which you authorize the foreman to write for the
8 jury.

9 Now, ladies and gentlemen, I want you to further
10 understand that the order in which the choice of verdict
11 appear on the verdict form are not suggestive of any
12 verdict on part of the Court. The verdict in this case is
13 to be determined by you, the jury, not to the Court.
14 Furthermore, please understand that even though I will
15 give the verdict form to the foreman, it is not his
16 verdict alone. It is the verdict of all 12 of you. And I
17 emphasize again it must be unanimous.

18 Now, I'm also going to give you all a copy of
19 these instructions in written form. During your
20 deliberations, you may refer to the instructions to guide
21 your decision making. I will tell you that you must
22 consider the instructions as a whole and not follow some
23 and ignore others. Please, Mr. Foreman, if you would
24 return these instructions to the Court at the time the
25 verdict is rendered.

1 Now, I'm going to ask you all to step to the
2 jury room, but do not, do not begin your deliberations
3 until you are instructed to do so. The law requires that
4 I consult with the attorneys to make sure that I've not
5 left anything out of these instructions. After I have
6 consulted with the attorneys, the bailiff will bring in a
7 copy of these instructions along with the items of
8 evidence and the verdict form. You will then be
9 instructed to begin your deliberation.

10 Now, should you have any questions during your
11 deliberations, you, Mr. Foreman, will reduce such question
12 to writing, knock on the door, let my bailiff know that
13 you have a question. He will in turn give it to me. And
14 after consulting with the attorneys, I will answer it how
15 the Court deems appropriate. Now, once you all have
16 reached a verdict in this case, a unanimous verdict, and
17 you have filled out the verdict form, signed and dated the
18 verdict form, knock on the door let the bailiff know that
19 you all have reached a unanimous verdict and we'll get you
20 back into the courtroom as quickly possible. Can the
21 lawyers approach just a minute please?

22 (WHEREUPON, a bench conference was held in the
23 presence of the jury, but out of the hearing of the
24 jury.)

25 THE COURT: Now, ladies and gentlemen, I told

1 you I was going to send the items of evidence back to the
2 jury room with you along with these instructions and the
3 verdict form. What I'm going to do as it relates to the
4 firearm and the firearm only. The firearm will remain in
5 the courtroom here. If for some reason any of you all
6 wish to see the firearm or view the firearm in more
7 detail, let my bailiff know and we'll bring you back into
8 the courtroom. And you'll be able to view the firearm
9 here in the courtroom, okay. At this time please step to
10 the jury room, but do not, do not begin deliberations
11 until you are instructed to do so.

12 (WHEREUPON, the jury retire to the jury room.)

13 THE COURT: All right, any exception to the
14 charge by the State?

15 MR. WHITE: No, sir, Judge.

16 THE COURT: Defense counsel.

17 MR. SWILLEY: Same previous ---

18 THE COURT: Other than what was previously
19 stated?

20 MR. SWILLEY: Nothing other than that.

21 THE COURT: All right, very well. If you all
22 will come up here and look at these items of evidence
23 please make sure you go through these items of evidence.

24 (WHEREUPON, a pause in the proceedings.)

25 THE COURT: All right, any objection from the

1 State to me releasing the alternates in the hall?

2 MR. WHITE: None from the State, Judge.

3 MR. SWILLEY: No, your Honor.

4 THE COURT: All right. I am going send the CD's
5 back there just kind of as a reminder if they want to see
6 one, they'll have to just let us know or hear one. All
7 right, anything else?

8 MR. WHITE: No, sir, Judge.

9 MR. SWILLEY: No, Your Honor.

10 THE COURT: We'll stand down.

11 (WHEREUPON, the jury began deliberations at 1:08
12 p.m.)

13 (WHEREUPON, the alternates were excused.)

14 (WHEREUPON, Court's Exhibit No. 2 was marked for
15 the record.)

16 THE COURT: All right, we have all the attorneys
17 back in the courtroom as well as the defendant now.

18 Received a note from the jury that they wanted to view the
19 firearm. Before I sent the jury out to begin their

20 deliberations, I told them if they wish to see the

21 firearm, we can bring them back here in the courtroom. I

22 noticed during the course of the trial every time the

23 firearm has been handled everybody's put gloves on. And

24 typically that's done to preserve any kind of evidentiary

25 matters such as fingerprint, DNA, I guess for purposes of

1 reanalyzing pursuant to an appeal or what have you. In
2 this particular case, there's no dispute as to the
3 defendant being in possession of it, the defendant
4 handling it, shot being fired while in the defendant's
5 hand. Is there any necessity that you all could think of
6 that I may not be thinking of as to them wanting to put
7 gloves on from the State?

8 MR. WHITE: No, sir, Judge.

9 MR. JOYNER: No, your Honor.

10 MR. SWILLEY: No, your Honor.

11 THE COURT: Okay. All right, anything before I
12 bring the jury out?

13 MR. WHITE: No, sir, Judge.

14 MR. SWILLEY: It is not.

15 THE COURT: Bring me the jury please. And that
16 note that they sent out it was not signed by the foreman,
17 but it was given to me. And I've given it to my court
18 reporter, Ms. Keshia, and she's marked it as a Court's
19 Exhibit, okay. Can the lawyers approach a minute please?

20 (WHEREUPON, a bench conference was held.)

21 (WHEREUPON, the jury came into open court at
22 1:44 p.m.)

23 THE COURT: Counting to make sure I had all my
24 jurors, all right. Mr. Foreman, I received a note that
25 you all wanted to view the firearm.

1 JURY FOREMAN: Yes, sir.

2 THE COURT: Is that something that you all want
3 to touch and hold?

4 JURY FOREMAN: We have one juror that would like
5 to.

6 THE COURT: Okay. I would ask that you put
7 gloves on whoever wishes to touch the firearm to put these
8 gloves on before doing so, okay.

9 (WHEREUPON, a pause in the proceedings.)

10 JUROR: Is it all right -- I don't want to touch
11 it but stand up there?

12 THE COURT: Yes, sir.

13 (WHEREUPON, a pause in the proceedings.)

14 JUROR: Is it all right if I showed the rest of
15 the jury?

16 THE COURT: If you so desire.

17 (WHEREUPON, a pause in the proceedings.)

18 THE COURT: All right, I would ask that you all
19 return to the jury room and continue deliberations.

20 (WHEREUPON, the jury retire to the jury room to
21 continue deliberations at 1:49 p.m.)

22 THE COURT: All right, anything from the State?

23 MR. WHITE: No, sir, Judge.

24 THE COURT: Defense counsel.

25 MR. SWILLEY: No, your Honor.

1 THE COURT: We'll stand at ease.

2 (WHEREUPON, court is at ease.)

3 THE COURT: Jury sent out a note they want to
4 see the interview with the defendant -- of the defendant
5 by Lieutenant Owens. Do you have that or is it captain?
6 Do you have that on your ---

7 MR. WHITE: Yes, sir, Judge, I can cue that up.

8 THE COURT: Do what?

9 MR. WHITE: I can cue that up.

10 THE COURT: This will be marked as Court's
11 Exhibit Number 2 -- 3.

12 (WHEREUPON, Court's Exhibit No. 3 was marked for
13 the record.)

14 THE COURT: All right, anything else from the
15 State before I bring the jury back out?

16 MR. WHITE: No, sir.

17 THE COURT: Defense counsel.

18 MR. SWILLEY: No, your Honor.

19 THE COURT: All right, bring me the jury please.

20 (WHEREUPON, the jury came into open court at
21 2:20 p.m.)

22 THE COURT: All right. Mr. Foreman, ladies and
23 gentlemen of the jury, I received your note that you wish
24 to view the interview of the Defendant Mr. Yarborough with
25 Investigator Owens. It is my understanding the State has

1 cued it up and ready to play. Mr. White, would you play
2 that please.

3 MR. WHITE: Yes, sir, Judge.

4 (WHEREUPON, video of defendant's statement
5 played for the jury.)

6 MR. WHITE: Judge, I didn't know if they were
7 indicating that maybe where they wanted to stop.

8 JURY FOREMAN: That's fine with us.

9 THE COURT: Okay. You all with can return to
10 the jury room and continue deliberations.

11 (WHEREUPON, the jury retire to the jury room to
12 continue deliberations at 2:44 p.m.)

13 THE COURT: All right, anything from the State
14 before we stand down?

15 MR. WHITE: No, sir, Judge.

16 THE COURT: Defense counsel.

17 MR. SWILLEY: No, sir, your Honor.

18 (WHEREUPON, court at ease.)

19 THE COURT: All right. It's my understanding
20 the jury has reached a verdict. Anything from the State
21 before I bring the jury in?

22 MR. WHITE: No, sir, Judge.

23 THE COURT: Defense counsel.

24 MR. SWILLEY: No, your Honor.

25 THE COURT: I will remind everyone in the

1 courtroom I know that this is a very highly emotionally
2 charged case for everyone. I would remind everyone to
3 keep your emotions in check regardless of what the verdict
4 is. Failure to do so could result in you being held in
5 contempt of court, which includes a possible incarceration
6 and or a fine. If you do not believe that you can keep
7 your emotions in check, now is your time to exit the
8 courtroom, all right. All right, bring me the jury
9 please, sir.

10 (WHEREUPON, the jury came into open court at
11 5:20 with a verdict.)

12 THE COURT: All right. We have all the jurors
13 back in the courtroom. Mr. Foreman, ladies and gentlemen
14 of the jury, have you all reached an unanimous verdict?

15 JURY FOREMAN: Yes, we have.

16 THE COURT: All right, madam clerk. You may
17 publish the verdict.

18 THE CLERK: State of South Carolina County of
19 Florence in the Court of General Sessions Twelfth Judicial
20 Circuit indictment number 2021-GS-21-2662, State of South
21 Carolina vs. Mason C. Yarborough: As to the charge of
22 murder, we, the jury, unanimously find beyond a reasonable
23 doubt that the Defendant Mason Yarborough guilty, dated
24 April 21st 2023 sign Robert Gibbs, foreperson. Members of
25 the jury, if this is your verdict please raise your right

1 hand?

2 THE COURT: All right, let the record reflect
3 that each of the 12 jurors have raised their right hand in
4 indicating that this is their verdict, all right.
5 Anything from the State at this point?

6 MR. WHITE: No, sir, Judge.

7 THE COURT: Defense counsel.

8 MR. SWILLEY: Request to poll the jury your
9 Honor.

10 THE COURT: All right, madam clerk.

11 THE CLERK: I'm going to call each one of your
12 names. When I call your name, if you will please stand,
13 I'm going to ask you two questions and I need you to
14 respond to each question. 151 Gary Self. Was this your
15 verdict then in the jury room?

16 JUROR: Yes.

17 THE COURT: Is it still your verdict now?

18 JUROR: Yes.

19 THE COURT: Thank you. 84 Emily Lawrimore is
20 this your verdict then?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict now?

23 JUROR: Yes.

24 THE CLERK: Thank you. Fifty-eight Norecer
25 Harley is this your verdict then?

1 JUROR: Yes.

2 THE CLERK: Was it still your verdict now?

3 JUROR: Yes.

4 THE CLERK: Sixty-one Michael Hearne was this
5 your verdict then?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict now?

8 JUROR: Yes.

9 THE CLERK: 140 Melissa Reed was this your
10 verdict then?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict now?

13 JUROR: Yes.

14 THE CLERK: 150 Ronald Scott was this your
15 verdict then?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict now?

18 JUROR: Yes.

19 THE CLERK: Ninety-nine Sabrina McClam was this
20 your verdict then?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict now?

23 JUROR: Yes.

24 THE CLERK: Sixty-four Danny Hicks was this your
25 verdict then?

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict now?

3 JUROR: Yes.

4 THE COURT: Thirty-four Patricia Devaughan was
5 this your verdict then?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict now?

8 JUROR: Yes.

9 THE CLERK: Forty-eight Robert Gibbs was this
10 your verdict then?

11 JUROR: Yes, ma'am.

12 THE CLERK: Is it still your verdict now?

13 JUROR: Yes, ma'am.

14 THE COURT: Forty-five Edwin Fountain was this
15 your verdict then?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict now?

18 JUROR: Yes.

19 THE CLERK: Eighty Ashley King was this your
20 verdict then?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict now?

23 JUROR: Yes.

24 THE CLERK: That's everyone, Judge.

25 THE COURT: All right, anything further at this

1 time?

2 MR. SWILLEY: No, your Honor.

3 THE COURT: All right. Ladies and gentlemen of
4 the jury, I want to thank you for your service this week
5 as jurors. I know that jury service never comes at a
6 convenient time. However, our system cannot, cannot
7 function without individuals such as yourselves willing to
8 serve. And I want to thank you for your service this
9 week.

10 And during trial of this case, ladies and
11 gentlemen, I've told you not to talk about this case.
12 When I release you here today, you can talk about it as
13 much as you want to or as little as you want to. But no
14 one and I emphasize no one can make you talk about this
15 case if you do not want to talk about the case, all right.
16 If anyone tries to talk to you about the case and you tell
17 them you do not wish to talk about this case and they do
18 not respect your wishes, you let the clerk's office here
19 know and we'll make sure that's taken care of, okay.

20 Now, what we will do now is we will move
21 straight into sentencing. You all are welcome to stay for
22 sentencing or you are free to go if you wish to go. It's
23 my understanding also if you need a work excuse -- madam
24 clerk over here can provide you with a work excuse for
25 your employer. It's my understanding also that you all

1 forth with the State about collateral matters. We don't
2 agree with those and certainly we're asking the Court not
3 to take any of that into consideration as well. And I've
4 advised Mr. Yarborough due to any issues with an appeal or
5 anything that may happen not to address the Court at least
6 anything substitutive. And I would ask the Court to take
7 all of that into consideration in fashioning a sentence
8 for Mr. Yarborough on the lower end of the sentencing
9 spectrum.

10 THE COURT: All right. Anybody from his family
11 wish to say anything, Mr. Swilley.

12 MR. SWILLEY: I don't believe so, your Honor.

13 THE COURT: How much time has he ---

14 MR. SWILLEY: Your Honor, he's served 566 days
15 of incarceration in the detention center and 369 days on
16 house arrest. We ask he be given credit for a total of
17 935 days.

18 THE COURT: You know, I been doing this job now
19 for a little over 13 years. I've seen a lot. In 13
20 years, I don't know that I've seen a situation where a
21 child has killed his parent. I have children. And those
22 of you in this courtroom that have children know that
23 parenting can be one of the toughest jobs you have.

24 One of the things that I've tried to instill
25 within each of my kids is that one choice can change the

1 course of not only your life, but the lives of many
2 people. I always tell them as they've grown up before
3 they leave my house to go anywhere be smart. This case is
4 a tragedy on so many fronts. And it has split the family
5 of Chris Yarborough from Mason Yarborough, his mom, can't
6 imagine what Emerson Yarborough deals with day in and day
7 out. Something he'll live with the rest of his life.

8 Majority of what ends up in this courtroom and
9 courtrooms throughout this state and country revolve
10 around in some way shape or form either drugs, alcohol or
11 anger, uncontrolled anger. And once again, this
12 particular case falls into one of those categories.

13 Mr. Swilley, Mr. Joyner, I say that both of you
14 did an excellent job for your client with what you had to
15 work with. You did an excellent job, that's what you're
16 called to do.

17 Sentence on 2021-GS-21-02662 defendant's hereby
18 committed to the state department of corrections for the
19 balance of his natural life, given credit for 935 days.
20 That will conclude this matter. Mr. Swilley, Mr. Joyner,
21 I will give you all ten days to file any posttrial
22 motions, okay, pursuant to the rules.

23 MR. SWILLEY: Yes, sir.

24 THE COURT: Thank you.

25 MR. TUCKER: Thank you, your Honor.

1 MR. WHITE: Thank you, Judge.

2 THE COURT: Ladies and gentlemen, I would ask
3 that you to step to the jury room for just a minute and
4 then I'll release you, okay.

5 (WHEREUPON, the remainder of the jury panel went
6 into the jury room and was released from there.)

7 (WHEREUPON, Court's Exhibit No. 4 was marked for
8 the record.)

9 END OF REQUESTED TRANSCRIPT

10

11

12

13

14

15

16

17

18

19

20

21

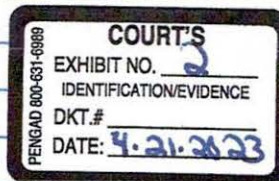
22

23

24

25

WE would like to
look At Weapon



WITNESSES

Christopher A Owens Florence County Sheriff

DOCKET NO. 2021-GS-21-02662

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2021

THE STATE

vs.

MASON CHRISTOPHER YARBOROUGH

Ryan White

ARREST WARRANT NUMBER

2020A2110200695

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 11/23/21

VERDICT

Foreperson of Petit Jury

Date:

FILED
2021 NOV 23 PM 4:3
DOMINIC P. JAMES
CLERK
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
MURDER

At a Court of General Sessions, convened on NOVEMBER 23, 2021 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE – MURDER

CDR: 0116 16-03-0010,0020

That Mason Christopher Yarborough did in Florence County, on or about October 30, 2020, willfully, feloniously, and intentionally kill the victim, Donald Yarborough (Deceased), with malice aforethought, either express or implied, by means of gunshot, and the victim did die as a proximate result thereof on or about October 30, 2020 in Florence County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

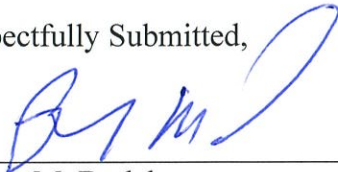


E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

Jan 16 2025

SC Court of Appeals

This 16th day of January, 2025.

RECEIVED

Jan 16 2025

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

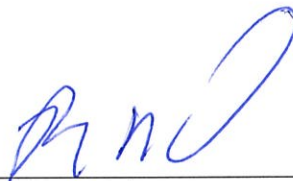
MASON YARBOROUGH,

APPELLANT

APPELLATE CASE NO. 2023-000694

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon J. Anthony Mabry, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 16th day of January, 2025.



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT