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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable Clifton Newman, Circuit Court Judge

JOHNNY LEE IRBY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-001262

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY 2012-GS-08-2100
2012-GS-08-2101

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -vs-)
) July 11, 2014
 JOHNNY LEE IRBY,)
) Moncks Corner, South Carolina
 Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Anne R. Williams, Assistant Solicitor
Attorney for the State

Chad Shelton, Deputy Public Defender
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (July 11, 2014.)

2 THE COURT: Okay. What's first?

3 MS. WILLIAMS: Your Honor, this is the case
4 of State versus Johnny Irby. The cases are murder and
5 CSC first. It's defense counsel's motion for
6 continuance.

7 THE COURT: Okay.

8 MS. WILLIAMS: I'm sorry. My mistake. It's
9 murder and attempted murder.

10 THE COURT: Okay. And, as I recall,
11 something about jail phone calls?

12 MS. WILLIAMS: That is correct, Your Honor.

13 This case is two years old. Defendant was
14 arrested back in 2012. On June 18 of this year, we met
15 with the witness that told us about some telephone calls
16 that she had exchanged with the defendant. We then did a
17 subpoena for roughly 45 phone calls, or what I thought
18 was going to be a subpoena for about 45 phone calls.

19 We then identified three phone calls that we
20 were going to use for the trial, and I gave those phone
21 calls, the dates and times of the phone calls, to defense
22 counsel.

23 Unbeknownst to me there, was a mistake on the
24 subpoena, and my investigator got two years' worth of
25 phone call. The subpoena read up until the date of the

1 subpoena, which was June 14 of 2014.

2 So he received from the jail 1,000 phone
3 calls, which we just passed along to defense counsel. I
4 received an e-mail from defense counsel saying he was
5 going to ask for a continuance, and I was a little
6 confused since we were only going to use three phone
7 calls, and he had only gotten, to my knowledge, 45.

8 Mr. Shelton's contention is that he now has
9 to listen to 1,000 phone calls. Our position is if
10 that's the case, he's always had to listen to 1,000 phone
11 calls because those tapes are available to him by
12 subpoena, just like they're available to us.

13 In addition to that, there is nothing he
14 could use on the phone calls because they are hearsay and
15 presumably in there --

16 THE COURT: 1,000 phone calls? Is this like
17 every phone call that's been taped at the jail or is this
18 just --

19 MS. WILLIAMS: Just his defendant, and it's
20 just his defendant's PIN number because the subpoena just
21 asks for the phone calls that identifies that defendant's
22 PIN. So some of those phone calls are probably other
23 defendants. I don't know because we haven't listened to
24 all 45, and some of those are where he has given his PIN
25 numbers to other defendants, but these are phone calls

1 made by his own client. They're not someone else's
2 calls.

3 THE COURT: Okay.

4 MS. WILLIAMS: I know Mr. Shelton thinks that
5 in addition to whatever information his client is giving
6 other people on the phone calls there could be some
7 secondary information that he could gain from the 1,000
8 calls, but presumably his client would be aware of that.

9 So, Your Honor, there are a lot of witnesses
10 in this case that live in Florida. It's been difficult
11 to coordinate those, and we've given you some case law.
12 I would be happy to argue that at the appropriate time,
13 but that is the reason we would ask to you deny the
14 continuance motion.

15 THE COURT: What would you like to say?

16 MR. SHELTON: Your Honor, Ms. Williams and I
17 did get together and come up with this date due to the
18 witnesses being out of state, and I have some family
19 members that are also out of state for my client, so we
20 had come to this date.

21 I get in the office on July 1, and I'm given
22 1,000 phone calls that I had no idea, up until July 1st,
23 that the State was planning on using any jail phone calls
24 whatsoever. I had no notice of that until July 1st, and
25 then on July 7th is when Ms. Williams provided me with

1 the three phone calls that I guess she would plan to use
2 in trial.

3 So there is, obviously, evidentiary material
4 on those phone calls. I take the position that I, as
5 representative of my client, need to look through all
6 evidence provided by State. If I would have subpoenaed
7 the phone calls, yes, I would agree, if I had subpoenaed
8 at this late in time, I would agree that wouldn't be the
9 basis, but I didn't subpoena them. The State did.

10 THE COURT: You could have, though. Has your
11 client given you any indication there is anything
12 exculpatory as a result of any phone call he's made at
13 the jail? And, if so, how would you get it in?

14 MR. SHELTON: Well, Your Honor, I don't know
15 what's there because I haven't had a chance to look
16 through it.

17 THE COURT: Your client knows it's there.
18 They're his phone calls.

19 MR. SHELTON: Well, I think --

20 THE COURT: And presumably he would say, Hey,
21 you know, somebody else did it or they did it or
22 something that would benefit him which, presumably, he
23 would relay to you.

24 MR. SHELTON: There is a witness in this case
25 that is his brother that -- he does make a lot of phone

1 calls to his brother. So he is on the tape with his
2 brother. That could be impeachment on cross-examination
3 of his brother. Depends on what is said in these phone
4 call.

5 THE COURT: Why didn't you go subpoena it?

6 MR. SHELTON: I didn't -- I mean, I didn't
7 feel that I needed to subpoena these phone calls because
8 I wasn't planning on -- I didn't think there was going to
9 be any evidence whatsoever on the phone calls, but
10 apparently there is evidence from the phone calls, and so
11 I would like to go through those, just to determine if
12 there is evidence.

13 THE COURT: You're just throwing stuff up
14 against the wall about a brother's phone call, make phone
15 call to his brother. How does that help you?

16 MR. SHELTON: They're talking about the case.

17 THE COURT: Okay. And your client could have
18 told me that.

19 MR. SHELTON: Yes.

20 THE COURT: Okay. You could have
21 subpoenaed -- everybody knows that the jail tapes all the
22 phone calls, and you can get them, every case, if you
23 want to.

24 MR. SHELTON: Right.

25 THE COURT: So they just inadvertently got

1 900 of them because they made an error in their subpoena,
2 but they got it, so they passed it on, but they've
3 identified to you just several that they intend to use,
4 but anything else that's there was always there and was
5 always available to you.

6 MR. SHELTON: But now it's there as provided
7 by the State, so now there is the phone calls that are
8 there, and I think I owe it as a duty to represent my
9 client to go through all the evidence that's provided by
10 the State, and -- I don't know what's there.

11 THE COURT: Well, if you have a duty to
12 listen to all of those phone calls, then presumably you
13 had a duty to subpoena them in the first place, and I
14 don't think that's the law.

15 MR. SHELTON: No. If I felt there was
16 evidentiary issues, then yes, sir, obviously I would have
17 subpoenaed them. I didn't know there was evidentiary
18 issues. The State subpoenaed these, and they've
19 determined that there is evidence on there.

20 THE COURT: That's inculpatory.

21 MR. SHELTON: Yes, Your Honor.

22 THE COURT: And I suppose if they have any
23 evidence that there was something exculpatory, they would
24 not only have to provide it to you, but identify that to
25 you. It sounds to me like they just said, Here, we've

1 got it because we got it as a result of a subpoena, and
2 we don't want to have to deal with the issue down the
3 road of, oh, you hid this.

4 Do you have the basis for something in those
5 phone calls, i.e., your client has told you there is
6 something in some phone calls he made that would be
7 helpful, then that's a whole different thing.

8 MR. SHELTON: Essentially providing these
9 1,000 phone calls three weeks prior to trial is hiding
10 the evidence. It could be there, so I just don't have a
11 chance to go through it, so I don't know -- I don't know
12 if there is evidence there that would be helpful to my
13 client.

14 THE COURT: Well, I say that if you have a
15 duty to listen to every one of them, then you had a duty
16 to subpoena every one of them, and so the fact that you
17 got them this late in the ball game is not prejudicial to
18 you because it's something you could have had all along
19 if you wanted it.

20 MR. SHELTON: But it goes to -- I mean, it
21 goes to what's -- this whole proceeding. I mean, if he
22 is found guilty and then would go through a future
23 proceeding and I get questioned on not going through
24 State's discovery and there is something found in
25 there --

1 THE COURT: If, and that's a big if, then you
2 got a whole different ball game. Right now we're talking
3 about hypothetical, and presumably your client could
4 alert you if he thinks that there's something on any
5 phone call that he had that you might need to know about.

6 He knows all the phone calls that he made.
7 We're talking about a hypothetical thing. You could -- I
8 could give you a year's continuance. You could listen to
9 all of them and then you just wasted a year.

10 MR. SHELTON: I'm not asking for a year. I'm
11 asking for a month. I'm asking for August 26th.

12 THE COURT: I think it's an absurd example
13 for an absurd request.

14 MR. SHELTON: Absolutely, Your Honor. I
15 mean, I'm not asking for that. I'm asking for a month to
16 be able to go through the phone calls.

17 My client has memory issues. He had memory
18 issues at the beginning. That's one of the tapes that
19 the solicitor had pointed out in the three that she gave
20 me, so I think there is memory issues going on with some
21 of these phone calls too, so I don't know how much my
22 client actually remembers.

23 And there is a witness that we've been trying
24 to get ahold of for the last three weeks that I talked
25 with my client the other day and he did talk with this

1 witness over the phone. So now that we have -- I asked
2 him if there was anything on these phone calls that would
3 be beneficial to us, and that was a witness that he had
4 talked to that was there that night and we don't -- he
5 doesn't remember what he talked to him about.

6 So he could have talked to him about -- I
7 know it's all hypotheticals, but I had to listen to this.
8 I don't know what's on there.

9 THE COURT: All right. Well, your motion is
10 denied. Be ready for trial the 21st. Thank you.

11 - - -

12 (Whereupon, the proceedings were concluded.)

13 - - -

14

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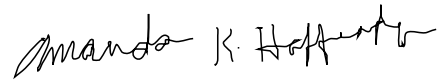
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Berkeley County, South Carolina, on the 11th of July 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 20, 2014



Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BERKELEY	)	Case No(s) : 2012GS0802100,
	)	2012GS0802101
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Johnny Lee Irby,	)	
	)	
Defendant.	)	
_____	)	

July 21, 2014
Berkeley, South Carolina

B E F O R E:

HONORABLE ROGER M. YOUNG, SR., Judge.

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

ANNE MILLER WILLIAMS, Esquire
MATT OZMENT, Esquire
Attorneys for the Plaintiff

CHAD D. SHELTON, Esquire
DAVID P. SCHWACKE, Esquire
Attorneys for the Defendant

Recorded by: Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

Transcribed by: Teresa B. Johnson, CVR-M
Circuit Court Reporter

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DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 21st day of July, 2014 at approximately 11:18 a.m.)

THE COURT: Now, the case that we are going to begin with is the case of the state of South Carolina versus Johnny Lee Irby. I-R-B-Y is how Mr. Irby spells that. Mr. Irby has been charged by the State of South Carolina with Murder and Attempted Murder.

I am going to read you these indictments for the purpose of giving you some names and some specifics about dates when it occurred. Indictments are brought by the Grand Jury. They are not evidence. They raise no presumption of guilt. They are not to be considered by you as evidence of guilt. They are simply the formal documents that put the defendant on notice of what he is charged and is required to stand trial for and it gives this court jurisdiction to hear the case. Again, the fact that he got arrested, indicted for this crime is not to be considered by you as evidence of guilt. This, again, is just simply to put him on notice so he can know what he is required to stand trial for.

1 This goes back all the way to England.
2 Believe it or not, this is the 800th
3 anniversary of the signing of the Magna Carta.
4 Those of you that might think back, if you have
5 a little history bent to you, you know we have
6 the Norman conquest.

7 We actually started with kings back in
8 England. Well, kings tended to act a little
9 poorly from time to time. Back then
10 especially, they let their power go to their
11 head. They tended to just pick citizens up off
12 the street, charge them with crimes if they
13 looked at them the wrong way or got under their
14 skin. They would throw them in jail often
15 without even knowing what they got charged with
16 and their trials would be pretty much just a
17 ministerial thing.

18 You got bought before a judge and told what
19 you got charged with. Somebody might say
20 something as far as evidence and then you got
21 convicted. Unfortunately, for them, almost
22 everything back in those days carried the death
23 penalty as the penalty for cases. It was a lot
24 of abuse that went on.

25 So, if you might recall, King John was not

1 one of the better behaved kings. He would --
2 basically got so out of hand, all of his
3 knights and noblemen, they all rebelled against
4 him and forced him to sign what was -- a
5 document known as the Magna Carta.

6 The Magna Carta is the basis for a lot of
7 the rights that we now have as the -- in the
8 United States Constitution. It is still
9 considered, to the extent that they have one,
10 the Constitution of Great Britain. All of
11 their rights and forms of government derive
12 from the Magna Carta. But it was 800 years ago
13 this year that the Magna Carta came about.

14 Well, one of the things that was in there
15 was this right to have a Grand Jury review a
16 case and put somebody on notice as to what they
17 were being charged with. So, this is not any
18 sort -- what we are going to draw a jury for is
19 what we call a petit jury. A petit jury will
20 actually decide guilt or innocence. This jury
21 just meets to review the evidence. It's like a
22 buffer between the king and the state and the
23 courts so that somebody is basically given the
24 right to know what it is that they have to
25 stand trial for.

1 I got handed a note that somebody needed to
2 use the restroom. So, this process will take
3 us about another 30 minutes or so. Why don't
4 we just go ahead right now and take a little
5 10-minute bathroom break so that anybody who
6 needs to can use the restroom. Then, we will
7 come back and go into the actual drawing of the
8 jury part. So see you back in 10 minutes.

9 **(WHEREUPON, a short recess is taken.)**

10 **THE COURT:** Be seated. Thank you. All
11 right. So anyway, I was just giving you a
12 history lesson, the point being, indictments
13 aren't evidence. The fact that he has got, Mr.
14 Irby was charged with these crimes are not to
15 be considered by you as evidence of guilt of a
16 crime.

17 Indictment 2012-GS-08-2100 is the
18 indictment for Murder. It alleges that Johnny
19 Lee Irby did in Berkeley County on or about
20 August 16, 2012 with malice aforethought kill
21 and murder Telly Irby by means of a gun. Telly
22 Irby did die in Berkeley County as a proximate
23 result thereof on August 16, 2012 in violation
24 of Section 16-3-10 of the South Carolina Code
25 of Laws as amended. Mr. Irby has pled not

1 guilty to that charge.

2 Indictment 2012-GS-08-2101 is for Attempted
3 Murder. It alleges that Johnny Lee Irby did in
4 Berkeley County, South Carolina, on or about
5 August 16, 2012 willfully, feloniously, and
6 intentionally attempt to kill another person,
7 Michelle Wiggins, with malice aforethought
8 either expressed or implied by means of a gun
9 in violation of Section 16-3-29 of the South
10 Carolina Code of Laws as amended. Again, Mr.
11 Irby pled not guilty to that as well.

12 It then becomes incumbent upon the State to
13 give Mr. Irby a trial and attempt to convince
14 12 jurors that he is guilty of this charge
15 beyond a reasonable doubt. Again, Mr. Irby
16 does not have to prove his innocence. The
17 State has to prove his guilt. I will mention
18 that to you on more than one occasion
19 throughout this trial.

20 Again, that is an important constitutional
21 right that we all have. Mr. Irby is included
22 in that group as South Carolina residents and
23 United States residents. That is not just some
24 theoretical right that they teach you in law
25 school. That is the law. That is the law that

1 you, as jurors, will be duty-bound to apply.

2 Now, I'm going to introduce you to some of
3 the lawyers that are involved as well as Mr.
4 Irby. The purpose again is to determine if you
5 know any of these folks such that it would
6 affect your ability to be fair and impartial.
7 The State of South Carolina prosecutes their
8 cases through our prosecutors in this state are
9 known as solicitors. We divide the state up
10 into 16 judicial circuits. We live in the
11 ninth judicial circuit. Charleston and
12 Berkeley County comprise the ninth judicial
13 circuit.

14 Scarlett Wilson is the Solicitor for the
15 ninth judicial circuit. She has designated two
16 people from her office, Anne Miller and Matt
17 Ozment who will stand before you now to
18 prosecute this case on behalf of the State of
19 South Carolina. Is there any member of the
20 jury panel who is related by blood or marriage
21 or acquainted in any way with either Ms.
22 Scarlett Wilson, Ms. Miller or Mr. Ozment? If
23 so, would you please stand. (No response.)

24 Okay. I find none. You may be seated.

25 Now, Mr. Johnny Lee Irby, would you stand

1 and face the jury panel?

2 This is Mr. Irby here, the gentleman in the
3 middle. He is on -- he is represented by the
4 two gentlemen on his either side, Mr. Chad
5 Shelton and Mr. David Schwacke. Is there any
6 member of the jury panel who is related by
7 blood or marriage or acquainted in any way with
8 either Mr. Johnny Lee Irby, or Mr. Shelton or
9 Mr. Schwacke or perhaps been represented by
10 either Mr. Schwacke or Mr. Shelton before? If
11 so, would you please stand.

12 Yes, sir. Your name and number?

13 **THE JUROR:** Daniel Moses, number 114.

14 **THE COURT:** Okay. Who do you know?

15 **THE JUROR:** Mr. Shelton.

16 **THE COURT:** How do you know him?

17 **THE JUROR:** I used to work with his
18 wife.

19 **THE COURT:** Okay. Do you think the fact
20 that he is representing Mr. Irby, would that
21 affect your ability to be fair and impartial in
22 this case, either for or against his client or
23 for or against the state?

24 **THE JUROR:** I don't believe so.

25 **THE COURT:** Okay. Thank you.

1 Yes, ma'am, your name and number.

2 **THE JUROR:** Rose Brown, number 20.

3 **THE COURT:** Okay. Who do you know?

4 **THE JUROR:** Mr. Irby.

5 **THE COURT:** How do you know him?

6 **THE JUROR:** We have common friends and
7 we also are in the same neighborhood.

8 **THE COURT:** Do you think that would
9 affect your ability to be fair and impartial in
10 this case either for or against him or for or
11 against the state?

12 **THE JUROR:** I would prefer not to, sir.

13 **THE COURT:** You think that would, you
14 wouldn't be able to be impartial in other words
15 because you know him and are neighbors with
16 him?

17 **THE JUROR:** Yes, sir.

18 **THE COURT:** Okay. All right. Thank you.
19 You may be seated.

20 Anyone else? (No response.)

21 All right. I am going to call out the
22 names of some people. Let me ask you this, is
23 there anybody who knows anything about this? I
24 told you this occurred allegedly on or about
25 August 16th of 2012. It is in the Haynesville

1 Road area of Moncks Corner. Is there anybody,
2 other than the lady who stood up, that knows
3 anything at all about this case? If so, please
4 stand. (No response.)

5 Okay. I find none.

6 I'm going to call out the names of some
7 people who may be called as witnesses in this
8 case. I will ask if you are related by blood
9 or marriage or if you are acquainted with them
10 in any way, would you please stand when I call
11 the name out. The first is Patrol Officer
12 Michael Auclair of Moncks Corner police. I
13 hope to have pronounced that correctly. It is
14 spelled A-U-C-L-A-I-R.

15 (No response.)

16 Okay. I find none. Sergeant Rick Crouse,
17 Moncks Corner.

18 Yes, sir. Your name and number.

19 **THE JUROR:** Charles Harris, Juror 70.

20 **THE COURT:** 70? You know Sergeant
21 Crouse?

22 **THE JUROR:** I do. I work with him. I
23 was a police officer in Moncks Corner.

24 **THE COURT:** Do you think that would
25 affect your ability to be fair and impartial if

1 he is called as a witness?

2 **THE JUROR:** I believe it would.

3 **THE COURT:** Okay. I will excuse you
4 then. Thank you. You can just be seated.

5 Officer Belmont Lewis with Moncks Corner
6 Police Department. (No response.)

7 I find none. Sergeant Brad Norvell, Moncks
8 Corner Police. (No response.)

9 I find none. Officer Gary Mason, Moncks
10 Corner Police. (No response.)

11 I find none. Officer Shauna Winder, Moncks
12 Corner Police. (No response.)

13 I find none. Officer Jamie Taylor, Moncks
14 Corner Police. (No response.)

15 I find none. Corporal Scarborough, Moncks
16 Corner Police. I don't know if Scarborough is
17 male or female or what.

18 **MS. WILLIAMS:** He is male, Your Honor.

19 **THE COURT:** Male. Anyone know a male
20 officer named Scarborough from Moncks Corner
21 police? (No response.)

22 Elijah Haynes. (No response.)

23 I find none. Lisa Baker, Moncks Corner
24 Police. Deputy Mae Austero with Berkeley
25 County Sheriff's Office, A-U-S-T-E-R-O.

1 (No response.)

2 I find none. Deputy Justin Riley, Berkeley
3 County Sheriff's. (No response.)

4 I find none. Sergeant Steve Cline,
5 Berkeley County Sheriff. (No response.)

6 I find none. Robbie Cline, Berkeley County
7 Sheriff. (No response.)

8 I find none. Corporal Amanda Simmons, MUSC
9 Police. (No response.)

10 I find none. Wilbur Robinson.

11 (No response.)

12 I find none. Michelle Wiggins.

13 (No response.)

14 I find none. Dr. Samir Fakhry at MUSC.
15 F-A-K-H-R-Y. (No response.)

16 I find none. Diamond [REDACTED]. Diamond --
17 I guess the first name is Diamond -- [REDACTED].

18 (No response.)

19 I find none. Destiny [REDACTED].

20 (No response.)

21 I find none. Deanna [REDACTED].

22 (No response.)

23 I find none. Amanda Webb with SLED, South
24 Carolina Law Enforcement. (No response.)

25 I find none. James Green with SLED.

1 (No response.)

2 I find none. Ila Simmons with SLED.

3 (No response.)

4 Gaile Heath with SLED. (No response.)

5 I find none. Dr. Nicholas Batalis with
6 MUSC, B-A-T-A-L-I-S. (No response.)

7 I find none. Lieutenant Michael Roach.
8 (No response.)

9 I find none. Katie Schuler, Berkeley
10 County Sheriff. (No response.)

11 I find none. Antoinette Irby.
12 (No response.)

13 I find none. Shenita Johnson.
14 (No response.)

15 I find none. All right. Is there any
16 member of the jury panel either you or an
17 immediate family member or close personal
18 friend now or in the past ever been employed by
19 either the Ninth Circuit Solicitor's office,
20 either branch, Charleston branch or Berkeley
21 branch, or any law enforcement agency? Either
22 you, an immediate family member or close
23 personal friend has worked for any law
24 enforcement agency in South Carolina or any
25 state for that matter? If so, would you please

1 stand.

2 **THE JUROR:** Shirley Moorman, Juror 113.
3 My son-in-law works for North Charleston SWAT
4 team.

5 **THE COURT:** Say that again.

6 **THE JUROR:** North Charleston SWAT team,
7 my son-in-law.

8 **THE COURT:** Your cousin works for them?

9 **THE CLERK:** Son-in-law.

10 **THE COURT:** Your son-in-law? All right.
11 Do you think that would affect your ability to
12 be fair and impartial in this case either for
13 or against the state or for or against the
14 defense?

15 **THE JUROR:** No, sir.

16 **THE COURT:** Okay. Thank you. You can
17 sit down.

18 Yes, your name and number?

19 **THE JUROR:** Number 67, Denise Haight.
20 My father-in-law is a retired officer from New
21 York.

22 **THE COURT:** All right. Do you think that
23 would affect your ability to be fair and
24 impartial in this case either for or against
25 the state or for or against the defense?

1 **THE JUROR:** No, I don't.

2 **THE COURT:** All right. Yeah.

3 **THE JUROR:** Amber Gallant, number 57.

4 **THE COURT:** Okay.

5 **THE JUROR:** My father is a retired
6 lieutenant at the Charleston County Detention
7 Center.

8 **THE COURT:** Do you think that would
9 affect your ability to be fair and impartial in
10 this case either for or against the state or
11 for or against the defendant?

12 **THE JUROR:** No.

13 **THE COURT:** All right. Thank you. Yes,
14 your name and number.

15 **THE JUROR:** Jean Hardee. My brother-in-
16 law works for the Berkeley County Sheriff
17 Department.

18 **THE COURT:** What was your number again?

19 **THE JUROR:** Sir?

20 **THE COURT:** Your number.

21 **THE JUROR:** 69.

22 **THE COURT:** All right. Do you think that
23 would affect your ability to be fair and
24 impartial in this case either for or against
25 the state or for or against the defendant?

1 **THE JUROR:** No.

2 **THE COURT:** All right. Thank you.
3 Anyone else?

4 **THE JUROR:** I have a question, Your
5 Honor.

6 **THE COURT:** Yes.

7 **THE JUROR:** Does military police count?

8 **THE COURT:** That would count.

9 **THE JUROR:** Okay. I am juror 121,
10 Colleen Osborne. My husband used to be.

11 **THE COURT:** Would that affect your
12 ability to be fair and impartial in this case?

13 **THE JUROR:** Not at all.

14 **THE COURT:** Okay. Thank you. All right,
15 a couple of names also, Johnny Coaxum. Anybody
16 related by blood or marriage or acquainted
17 anyway with Johnny Coaxum, C-O-A-X-U-M?

18 Okay. You can set down.

19 Gene Irby or Caroline Smith.

20 (No response.)

21 All right. Any member of the jury panel,
22 either you or an immediate family member or a
23 close personal friend ever been accused of a
24 violent crime whether or not it led to an
25 arrest? If you have and you want to talk about

1 it more privately, you can come up front.

2 Yes, ma'am.

3 **THE JUROR:** Juror number 8, Christine
4 Bollow. (Inaudible) is serving a prison term.

5 **THE COURT:** Would that affect your
6 ability to be fair and impartial in this case
7 for or against the state or for or against the
8 defendant?

9 **THE JUROR:** No, sir.

10 **THE COURT:** All right. Thank you.

11 Was there someone else? Yes.

12 **THE JUROR:** Number 129.

13 **THE COURT:** Okay.

14 **THE JUROR:** A family member was a victim
15 of home invasion.

16 **THE COURT:** Okay. Would that affect your
17 ability to be a fair and impartial juror in
18 this case either for or against the state or
19 for or against the defendant?

20 **THE JUROR:** I don't think so.

21 **THE COURT:** All right. Thank you.

22 Any member of the jury panel, either you or
23 one of your immediate family members ever had
24 any criminal charges brought by either
25 Charleston Solicitor's Office or Berkeley

1 Solicitor's Office and you haven't already
2 brought it up? (No response.)

3 All right. I find none. Is there any
4 member of the jury panel either you or one of
5 your immediate family members ever basically
6 been prosecuted by the solicitor's office,
7 either the Charleston's branch or the Berkeley
8 branch?

9 Yes, your name and juror number again.

10 **THE JUROR:** 69.

11 **THE COURT:** Okay. All right. Would that
12 affect your ability to be fair and impartial in
13 this case either for or against the state or
14 for or against the defense?

15 **THE JUROR:** No.

16 **THE COURT:** Okay. Thank you. Was there
17 anyone else? (No response.)

18 Any member of the jury panel either you or
19 one of your immediate family members or a close
20 personal friend attend the Berkeley Church of
21 Christ?

22 Your name and number please.

23 **THE JUROR:** Number 86, Maranda Kinloch.

24 **THE COURT:** Okay. Who attends the
25 church?

1 **THE JUROR:** My parents.

2 **THE COURT:** Okay. I don't know exactly
3 what the connection is to that church with this
4 case. But do you think that would in any way
5 affect your ability to be fair and impartial in
6 this case either for or against the state or
7 for or against the defense?

8 **THE JUROR:** No, sir.

9 **THE COURT:** All right. Thank you.
10 Any member of the jury panel, either you or an
11 immediate family member, ever been a member
12 either now or in the past of any group that
13 supports law enforcement such as Mothers
14 Against Drunk Driving, Students Against Drunk
15 Driving, Citizens Against Violence, People
16 Against Rape, or the Sheriff's Association, any
17 groups like that?

18 Yes, your name and number.

19 **THE JUROR:** Renee Martin, 100. I am
20 part of the Mothers Against Drunk Driving.

21 **THE COURT:** Okay. Would that affect your
22 ability to be fair and impartial in this case
23 for or against the state or for or against the
24 defense?

25 **THE JUROR:** Not at all.

1 **THE COURT:** Thank you. Anyone else?

2 (No response.)

3 Any member of the jury panel, either you or
4 an immediate family member ever been the victim
5 of any kind of serious crime, whether or not it
6 got reported or not? Okay.

7 **THE JUROR:** (Inaudible.)

8 **THE COURT:** You think that would affect
9 your ability to be fair and impartial in his
10 case?

11 **THE JUROR:** No, it wouldn't.

12 **THE COURT:** Okay. Yes, your name and
13 number.

14 **THE JUROR:** 56, Carol Frierson.

15 **THE COURT:** Okay.

16 **THE JUROR:** I was a victim of domestic
17 violence.

18 **THE COURT:** Okay. Would that affect your
19 ability to be fair and impartial in this case
20 either for or against the state or for or
21 against the defense?

22 **THE JUROR:** No, sir.

23 **THE COURT:** All right. Thank you.
24 Your name and number.

25 **THE JUROR:** Rosemary Spann, 153.

1 **THE COURT:** Okay. What would you like to
2 tell me?

3 **THE JUROR:** (Inaudible.)

4 **THE COURT:** I need you to come up a
5 little bit closer. I can't hear anything you
6 are saying.

7 While she is coming up, yes, your name and
8 number.

9 **THE JUROR:** Jane Hann, 68. I was held
10 hostage in a bank robbery.

11 **THE COURT:** When was that?

12 **THE JUROR:** 1975. That was a long time
13 ago.

14 **THE COURT:** Would that affect your
15 ability to be fair and impartial in this case
16 either for or against the state or for or
17 against the defense?

18 **THE JUROR:** No.

19 **THE COURT:** Okay. Thank you.
20 Yes, your name and number.

21 **THE JUROR:** Anthony Timmons, 169.
22 (Inaudible.)

23 **THE COURT:** I'm sorry. I didn't catch
24 the last part.

25 **THE JUROR:** (Inaudible.)

1 **THE COURT:** All right. Would that affect
2 your ability to be fair and impartial in this
3 case either for or against the state or for or
4 against the defense?

5 **THE JUROR:** No, sir.

6 **THE COURT:** All right. Yes, ma'am, you
7 are 153.

8 **THE BAILIFF:** 153. I'm sorry. Rosemary
9 Spann.

10 **THE COURT:** All right. What do you want
11 to tell me?

12 **THE JUROR:** My brother was involved in a
13 murder case but it won't affect my ability
14 here.

15 **THE COURT:** Okay. All right. Thank you.
16 Yes, your name and number.

17 **THE JUROR:** Number is 109, Patricia
18 Miller. I have been in two robberies.

19 **THE COURT:** Do you think that would
20 affect your ability to be fair and impartial in
21 this case for or against the state or for or
22 against the defense?

23 **THE JUROR:** No, sir.

24 **THE COURT:** Thank you. Anyone else?

25 (No response.)

1 Anyone ever been a witness, victim or
2 participant in a criminal offense involving a
3 family member? (No response.)

4 I find none. Uh, any member of the jury
5 panel ever been a witness to a criminal offense
6 whether or not it got reported and you did not
7 already respond to an earlier question? (No
8 response.)

9 Any member of the jury panel know of any
10 reason why they don't think that they could be
11 a fair and impartial juror in this case? For
12 any reason. Whether or not it is something
13 that I brought up or something that you might
14 have, you know that I just have not thought
15 about.

16 I will give you some examples of things
17 that people sometimes have said this is why I
18 don't think I can be fair and impartial. For
19 instance, they might have some religious or
20 philosophical reasons. Some people, for
21 instance, quote Bible verses sometimes that say
22 you should not sit in judgment of people. Some
23 people have memberships in groups that say we
24 feel like the country is not on the right tract
25 and if they ever get on a jury, the members of

1 that group have already basically placed as to
2 what the outcome should be, either
3 automatically convicted or automatically
4 acquit, find them innocent.

5 You might, uh, you know, just have any kind
6 of reason whatsoever that you can have. I am
7 not going to try to talk you out of your
8 reasons. What I need to know is that when we
9 finish this process I've got 12 people and two
10 alternates that have no predetermined outcome
11 as to what this case will be. They believe
12 that they can sit and listen in judgment. They
13 will be able to take an oath and truthfully
14 state I will listen to the evidence that is
15 presented in this courtroom and I will obey the
16 law that you tell me, Judge, that is the law
17 that applies to this case whether or not I
18 agree with the law or not. They can take that
19 oath so that the state is entitled to that and
20 Mr. Irby is entitled to that.

21 If you have some reason that you think that
22 in all fairness you can't be a fair and
23 impartial juror, whether it is something that I
24 covered or not, I need you to come forward and
25 we can talk about it privately. I won't

1 require you to stand up. Again, I'm not going
2 to try to talk you out of it. I just need to
3 know why you don't think you can be a fair and
4 impartial juror in all honesty for either of
5 these two sides. That applies to anyone. And
6 you want to come talk to me, please stand. All
7 right. You want to come up?

8 Ma'am, I'm going to strike you because of
9 an earlier question. You don't have to come
10 up. You are number 20? Yeah. Okay. All
11 right.

12 Your name and number?

13 **THE JUROR:** Stephen Rose. 141.

14 **(WHEREUPON,** a bench conference is held off the
15 record.)

16 **THE COURT:** All right. Anyone else?

17 (No response.)

18 **(WHEREUPON,** a bench conference is held off the
19 record.)

20 **THE COURT:** Could I see juror number 161
21 and number 86 for just a moment? Please come
22 up.

23 **(WHEREUPON,** a bench conference is held off the
24 record.)

25 **THE COURT:** Okay. The last thing is when

1 introduced you to Ms. Williams, I said Anne
2 Miller. It's Anne Miller-Williams. For some
3 reason, probably just due to age progression, I
4 skipped that. It is Ms. Williams. But if that
5 changes anybody's answer, if you know her now
6 and you are enlightened because it is Anne
7 Miller-Williams, would you please stand?

8 (No response.)

9 Okay. All right. Here is what we do now.
10 When we draw a jury in state court, we do it a
11 little bit different. If you ever been on a
12 civil court hearing, we draw the names, give
13 the lawyers a few minutes to study it.

14 We don't do that in General Sessions Court
15 on criminal charges. The clerk has a computer
16 program now. We used to have to draw names out
17 of a -- draw numbers out of a device. What we
18 do now is to have a computer program that is
19 compiling right now. Then it will spit out
20 some names.

21 If your name gets called, I need you to
22 come forward, come between these two desks,
23 stand in front of that little chair right there
24 and just turn around and face the back. The
25 State will have the opportunity to say either

1 present the juror or excuse the juror. If the
2 state says you are okay, the defense will have
3 the opportunity to do the same thing. If both
4 sides are you are okay, you on the jury. So go
5 ahead and bring your stuff up because you might
6 just go on to the jury box. If either of two
7 sides excuse you, just go back to your seat.
8 We go through this process until we get 12
9 jurors and we're going to draw two alternates.
10 So, we will begin when the clerk tells me
11 she has got her list ready. Again, the state
12 gets five, the defense gets 10.
13 All right. Whenever you are ready.
14 **THE CLERK:** Juror 75, Donna Hutson.
15 Please come forward.
16 What says the state?
17 **MS. WILLIAMS:** Please present the juror.
18 **THE CLERK:** What says the defendant?
19 **MR. SHELTON:** Please seat Ms. Hutson.
20 **THE CLERK:** Seat the juror.
21 Juror 15, Russell Brooks.
22 What says the state?
23 **MS. WILLIAMS:** Please present the juror.
24 **THE CLERK:** What says the defendant?
25 **MR. SHELTON:** Please seat Mr. Brooks.

1 **THE CLERK:** Seat the juror.
2 Juror 63, Henry James Greene.
3 What says the state?
4 **MS. WILLIAMS:** Please excuse the juror.
5 **THE CLERK:** Excuse the juror.
6 Juror 128, Greg Peralta.
7 What says the state?
8 **MS. WILLIAMS:** Please present the juror.
9 **THE CLERK:** What says the defendant?
10 **MR. SHELTON:** Please seat Mr. Peralta.
11 **THE CLERK:** Seat the juror.
12 Juror 172, Jeffery Tuttle.
13 What says the state?
14 **MS. WILLIAMS:** Court's indulgence one
15 moment. (Pause.)
16 Please present the juror.
17 **THE CLERK:** What says the defendant?
18 **MR. SHELTON:** Please seat Mr. Tuttle.
19 **THE CLERK:** Seat the juror.
20 Juror 31, Julia Cook.
21 What says the state?
22 **MS. WILLIAMS:** Please present the juror.
23 **THE CLERK:** What says the defendant?
24 **MR. SHELTON:** Please excuse Ms. Cook.
25 **THE CLERK:** Excuse the juror.

1 Juror 38, Charlie Daniels.
2 What says the state?
3 **MS. WILLIAMS:** Please present the juror.
4 **THE CLERK:** What says the defendant?
5 **MR. SHELTON:** Please seat Mr. Daniels.
6 **THE CLERK:** Seat the juror.
7 Juror 42, Mary Ann Dingle.
8 What says the state?
9 **MS. WILLIAMS:** Please excuse the juror.
10 **THE CLERK:** Excuse the juror.
11 Juror 168, Shaquile Thompson.
12 What says the state?
13 **MS. WILLIAMS:** Please present the juror.
14 **THE CLERK:** What says the defendant?
15 **MR. SHELTON:** Please seat Mr. Thompson.
16 **THE CLERK:** Seat the juror.
17 Juror 114, Daniel Moses.
18 What says the state?
19 **MS. WILLIAMS:** Court's indulgence.
20 (Pause.)
21 Please excuse the juror.
22 **THE CLERK:** Excuse the juror.
23 Juror 9, Angelo Boone Jr.
24 What says the state?
25 **MS. WILLIAMS:** Please present the juror.

1 **THE CLERK:** What says the defendant?

2 **MR. SHELTON:** Please seat Mr. Boone.

3 **THE CLERK:** Seat the juror.

4 Juror 111, Deborah Mishoe.

5 What says the state?

6 **MS. WILLIAMS:** Court's indulgence.

7 (Pause.)

8 Please present the juror.

9 **THE CLERK:** What says the defendant?

10 **MR. SHELTON:** Please seat Ms. Mishoe.

11 **THE CLERK:** Seat the juror.

12 Juror 109, Patricia Miller.

13 What says the state?

14 **MS. WILLIAMS:** Please present the juror.

15 **THE CLERK:** What says the defendant?

16 **MR. SHELTON:** Please excuse Ms. Miller.

17 **THE CLERK:** Excuse the juror.

18 Juror 12, Antoinette Breau.

19 What says the state?

20 **MS. WILLIAMS:** Please present the juror.

21 **THE CLERK:** What says the defendant?

22 **MR. SHELTON:** Please excuse Ms. Breau.

23 **THE CLERK:** Excuse the juror.

24 Juror 97, Robert Lukasik.

25 What says the state?

1 **MS. WILLIAMS:** Please present the juror.
2 **THE CLERK:** What says the defendant?
3 **MR. SHELTON:** Please seat Mr. Lukasik.
4 **THE CLERK:** Seat the juror.
5 Juror 134, Rachel Punteney.
6 What says the state?
7 **MS. WILLIAMS:** Please present the juror.
8 **THE CLERK:** What says the defendant?
9 **MR. SHELTON:** Please seat Ms. Punteney.
10 **THE CLERK:** Seat the juror.
11 Juror 185, Donald Wolfe, Jr.
12 What says the state?
13 **MS. WILLIAMS:** Please excuse the juror.
14 **THE CLERK:** Excuse the juror.
15 Juror 54, Georgie Ford.
16 What says the state?
17 **MS. WILLIAMS:** Court's indulgence.
18 Please present the juror.
19 **THE CLERK:** What says the defendant?
20 **MR. SHELTON:** Please excuse Ms. Ford.
21 **THE CLERK:** Excuse the juror.
22 Juror 86, Maranda Kinloch.
23 What says the state?
24 **MS. WILLIAMS:** Please excuse the juror.
25 **THE CLERK:** Excuse the juror.

1 State has five strikes.
2 Juror 26, Toni Caruso.
3 Any challenge for cause from the State?
4 **MS. WILLIAMS:** No challenge from the
5 State.
6 **THE CLERK:** What says the defendant?
7 **MR. SHELTON:** Please excuse Ms. Caruso.
8 **THE CLERK:** Excuse the juror.
9 Juror 2, Theresa Adams.
10 Any challenge for cause from the State?
11 **MS. WILLIAMS:** No challenge from the
12 State.
13 **THE CLERK:** What says the defendant?
14 **MR. SHELTON:** Please seat Ms. Adams.
15 **THE CLERK:** Seat the juror.
16 Juror 135, Ronald Rabor.
17 Any challenge for cause from the State?
18 **MS. WILLIAMS:** No challenge from the
19 State.
20 **THE CLERK:** What says the defendant?
21 **MR. SHELTON:** Please excuse Mr. Rabor.
22 **THE CLERK:** Excuse the juror.
23 Juror 89, Vincent Lampkin.
24 Any challenge for cause from the State?
25 **MS. WILLIAMS:** No challenge from the

1 State.

2 **THE CLERK:** What says the defendant?

3 **MR. SHELTON:** Beg the Court's indulgence.

4 (Pause.)

5 Please seat Mr. Lampkin.

6 **THE COURT:** Okay. Let's draw two
7 alternates. One strike for the State. Two for
8 the defense.

9 **THE CLERK:** Seat the juror.

10 Juror 47, Wayne Evans.

11 What says the state?

12 **MS. WILLIAMS:** Please present the juror.

13 **THE CLERK:** What says the defendant?

14 **MR. SHELTON:** Please seat Mr. Evans.

15 **THE CLERK:** Seat the juror.

16 Juror 131, Gheshanna Porcher.

17 What says the state?

18 **MS. WILLIAMS:** Please present the juror.

19 **THE CLERK:** What says the defendant?

20 **MR. SHELTON:** Please seat Ms. Porcher.

21 **THE CLERK:** Seat the juror.

22 **THE COURT:** All right. Is there anything
23 from the state?

24 **MS. WILLIAMS:** No, Your Honor.

25 **THE COURT:** From the defense?

1 **MR. SHELTON:** Nothing from the defense,
2 Your Honor.

3 **THE COURT:** All right. Folks, you are
4 our jury now. I am going to send you back to
5 the jury room so that you can see where you
6 will report to tomorrow morning. You won't
7 have to come back. After you see where the
8 jury room is, they will tell you how to get
9 back and forth up to there. You are free to go
10 for the rest of the day. You don't have to
11 call after 6 o'clock or anything. I just want
12 you to report back tomorrow morning at 9:15 in
13 the jury room. We're going to get started
14 hopefully right at 9:30.

15 Now, while you are picked and you don't
16 know anything really about the case other than
17 a minimal amount, I don't want you to talk
18 about the case with anyone including other
19 members of the jury panel. Obviously, the
20 first thing that somebody will ask you when you
21 get home, your family or friends are going to
22 say, well, did you get picked for a jury. You
23 can say yes, I did. It is a murder case and
24 that is all the judge said I can talk to you
25 about until it is over with.

1 That is easy enough said now. You really
2 don't know anything about it. But people get
3 vested in these cases. So, once they get on,
4 nowadays, people want to go on the Internet.
5 They want to start looking up things on Google
6 and newspapers and go on online and see what
7 they can find out. You are going to take an
8 oath tomorrow morning that says I promise I
9 will make my decision based on what I learned
10 in this courtroom and nothing else. That is
11 what we need you to do.

12 When this case is over with, you can do
13 whatever you want. You can talk to whoever you
14 want about it. You can go anywhere you want.
15 You can look up everything you want. You can
16 write on social media whatever you want after
17 the trial is over with.

18 These days, I have to give this
19 instruction. Please don't post anything on
20 social media during the trial. People post
21 things on Facebook, Tweeter -- twitter. My son
22 keeps reminding me you tweet on Twitter. You
23 don't twit on tweeter. But anyway, we just
24 need you to abide by our rules for the next
25 several days.

1 The basic reasoning is because it is just a
2 matter of simple fairness. Again, I told you,
3 your oath would be that you promise that you
4 will base your decision on what you hear in
5 this courtroom, not what you find out about it
6 or, most importantly, what other people tell
7 you they think about it. That is not fair to
8 the State. It is not fair to Mr. Irby. All
9 right.

10 It is going to be hard enough to make a
11 decision based on what you do and what you hear
12 and what 11 other people think about. You sure
13 don't need somebody trying to tell you what
14 their two cents worth is. Trust me, people --
15 they can't help themselves. They want to tell
16 you what it is.

17 I don't know if anything ever got written
18 about this case in the newspaper prior to
19 today, but you don't need to go try find out.
20 I don't know if there has been a reporter here
21 today or if there will be any press coverage.
22 If you read the newspaper and tomorrow morning
23 you wake up and there is something about the
24 case, please don't read it. Put it aside.
25 Don't look it up. Don't read it. Again, there

1 will be plenty of time afterwards to talk or
2 read or do whatever you want after the trial is
3 over with. Like I said, we will probably be
4 done with it by Thursday afternoon, Thursday
5 evening at the latest. So please respect that.
6 I hope that you will enjoy this process.

7 Tomorrow morning, again, if you would, be
8 back in the jury room by 9:15. You can spend a
9 few minutes getting to know each other. In
10 fact, I usually let the jury pick their
11 foreperson. Anybody that wants to be can be
12 the foreperson. If y'all can't come up with
13 one, I will pick somebody. It is always
14 interesting to see who the jury picks as their
15 jury foreperson. You don't get any extra pear
16 or anything like that so don't think it is that
17 big of a deal.

18 But if you would, just go with these folks
19 right now. They will show you where to report
20 to tomorrow. Once y'all have been shown the
21 where the jury room is, you are free to go for
22 the rest of the day. Just report back tomorrow
23 morning at 9:15. Thank you for your patience.

24 **(WHEREUPON,** the jury exits at approximately
25 12:30 p.m.)

1 **THE COURT:** Okay. Now, the rest of
2 y'all, you are probably finished for the rest
3 of the week. But again, I don't want you to
4 completely check out on us. Call the telephone
5 number after 6 o'clock tonight. It will
6 probably just say call back tomorrow night
7 after 6 o'clock. Until you get a message that
8 either says you don't have to come back for the
9 rest of the week or it might say report back
10 tomorrow, you never know, I just need you to
11 keep calling the phone number. You don't have
12 to come back here every day unless the message
13 tells you.

14 Please don't call the telephone number
15 until after 6 o'clock. They sometimes don't
16 change it right up until 5:59. If it is busy,
17 just keep trying because there are a lot of
18 you. But I may not see you again.

19 I want to thank you for coming, showing up,
20 participating in the process. I wish you had
21 gotten the chance to serve. I think most
22 people do enjoy it once they have gone into it
23 or gotten picked on a jury. Perhaps another
24 day. Most importantly, thank you for showing
25 up and participating. Thank you for your

1 patience with us this morning. You are free to
2 go for the rest of the day.

3 **(WHEREUPON, the jury panel exits at**
4 approximately 12:32 p.m.)

5 **THE COURT:** On your motion in limine, did
6 you have anything about -- did you have any
7 concerns or were you trying to bring in any of
8 the two things that they had mentioned in their
9 motion, simple possession or CDV? Did you get
10 that?

11 **MR. SHELTON:** Not the simple possession,
12 Your Honor.

13 **THE COURT:** What is that?

14 **MR. SHELTON:** Not the simple possession.

15 **THE COURT:** Were you going to try to
16 bring in the CDV?

17 **MR. SHELTON:** My client knows about it.

18 **THE COURT:** It doesn't necessarily matter
19 if he knows about it. What is the relevance to
20 the case?

21 **MR. SHELTON:** Your Honor, it goes to my
22 client's state of mind as to whether this was a
23 violent person and he could anticipate being --

24 **THE COURT:** Is he claiming self-defense?

25 **MR. SHELTON:** Yes, Your Honor.

1 **THE COURT:** Okay.

2 **MR. SHELTON:** Did you put them on notice
3 then?

4 **MS. WILLIAMS:** You want the argument now,
5 Your Honor?

6 **THE COURT:** Yeah.

7 **MS. WILLIAMS:** Your Honor, the law
8 regarding bringing in specific instances of
9 conduct of the victim is pretty clear in South
10 Carolina. It is basically evidence of other
11 specific acts of violence on the part of the
12 deceased is not admissible unless directed
13 against the defendant which, clearly in this
14 case, it is not or directed at others or so
15 closely connected in point of time or location
16 of the homicide as a reasonably to indicate
17 state of mind of the deceased at the time of
18 the homicide.

19 Now, that law, that rule of law has been
20 established over and over again. I think
21 originally it was in State v. Amburgey -- and I
22 think I'm probably butchering that name but
23 also State v. Brown which is 321 S.C. 184.
24 That is cited in our motion.

25 The only two exceptions that I could find

1 that the courts of South Carolina have allowed
2 are not relevant to the facts in this case.
3 One case was State the Mekler 368 S.C. 1. In
4 that case, the defendant shot the husband of
5 her friend. Her claim was defense of others.
6 They allowed her to get into the fact where
7 they found error that they were not allowed to
8 get into the fact that the person that she shot
9 had beat up the very person she was defending.
10 Obviously, that was the connection. It was
11 also just a few months prior.

12 The other exception is State v. Day which
13 is a very unusual set of facts. In that case,
14 again, the person that shot the decedent knew
15 about an instance where the decedent had
16 reacted violently in a situation where the
17 facts were almost identical to the fact at
18 hand. It is a very, very long set of facts.
19 Basically in Day, the person that got hired by
20 the defendant to shoot his girlfriend. He
21 betrayed him by not shooting her.

22 For some reason, the defendant and the
23 girlfriend that he was supposed to shoot go
24 back and confront the defendant. They think he
25 sees the girlfriend. She is hiding in a car.

1 They knew about an incident a few months prior
2 were someone else had betrayed him and he put a
3 gun to that person's head.

4 In this case, we are dealing with a 2008
5 CDV. It was in a completely separate state.
6 Had nothing to do with the defendant. It was
7 Telly Irby's -- the mother of his children. I
8 don't know if the defendant knew about it then.
9 Clearly, he knows about it now. There is
10 absolutely no connection to this case. There
11 is no reason why --

12 **THE COURT:** I don't know anything about
13 the facts of this case. Why don't you clue me
14 in there?

15 **MS. WILLIAMS:** The facts of this case are
16 as follows, Your Honor. Telly Irby and his
17 girlfriend were living with a defendant. They
18 all lived in a house in Moncks Corner. He was
19 helping them get on their feet until they could
20 move out. So it was Telly Irby, his
21 girlfriend, Michelle Wiggins, and her three
22 children.

23 At some point on August 16, Mr. Irby comes
24 home. He has been drinking, the victims have
25 been drinking and they had a verbal

1 altercation. He says, y'all need to get out of
2 my house. At that point, Telly Irby, the
3 victim says we are not going to get out of your
4 house right now.

5 Mr. Irby then goes into his home, goes back
6 into his back bedroom and he tells the three
7 children to get out of the house. While he is
8 in the back bedroom, he goes under his bed,
9 gets a gun that is in a box. He gets the gun
10 and the magazine and he comes back out on the
11 porch. He puts the magazine in the gun.

12 Mr. Irby, his son, the decedent is walking
13 up to the porch and sees the three girls coming
14 out and says why are y'all leaving the house.
15 They say granddad, or whatever they call him,
16 Mr. Johnny told us to get out of the house.
17 Then the victim sees the gun. He says what are
18 you going to shoot me.

19 Mr. Irby points the gun at him. Telly Irby,
20 the victim, tries to take the gun away from
21 him. They struggle for the gun. He shoots
22 Telly Irby. He shoots twice, once hitting him.
23 He dies almost instantly.

24 He then sees the girlfriend, Michelle
25 Wiggins, who is a few feet away. She says you

1 just shot your son. He takes the gun, he
2 shoots her in the chest. She runs next-door
3 with the three children who are all right
4 around this porch within proximity, and within
5 a few feet proximity. She survives. She is
6 going to be a witness in the case. That is the
7 basic facts of the case. That is why it is
8 murder and attempted murder.

9 **MR. SHELTON:** From our perspective, as
10 far as the facts in the case, there is a
11 witness that is saying that Telly Irby, the
12 son, did hit and shove Mr. Johnny Irby, Your
13 Honor, prior to going into the house. There is
14 also a fight and a tussle over the gun.

15 There are many witness statements from --
16 that placed the victim as a much bigger in
17 size, stronger than Mr. Irby. There are some
18 factual issues as far as self-defense and
19 reasonable apprehension of fear that will go to
20 his reasonable apprehension of fear. Mr. Irby,
21 Johnny Irby knows about some prior violences --
22 violence that Telly Irby has committed. He
23 actually mentioned some of those in the police
24 report and to the statements to the police.

25 We believe that that CDV incident would go

1 to his reasonable apprehension of fear. It is
2 shown that Telly Irby committed a criminal
3 domestic violence against a person that is very
4 close, not related to him, but very close to
5 him. There was an argument that got heated.
6 Telly continued with the confrontation. That
7 would be, as far as our take on the facts of
8 the case, Your Honor.

9 **THE COURT:** You are saying he is going to
10 argue self-defense. What is the self-defense
11 for the attempted murder?

12 **MR. SHELTON:** Your Honor, the self-
13 defense on the attempted murder, there is also
14 witness statements that are saying that
15 Michelle ran up on the porch and grabbed at the
16 gun. There is a witness statement that is
17 saying that she also went after the gun. As
18 far as -- this all happen really quick. Close
19 in time as Telly, Your Honor. I am talking
20 about the CDV. Michelle came very close after
21 Telly.

22 **MS. WILLIAMS:** One other thing, Your
23 Honor, that he just reminded me of, we would
24 ask to -- I don't know about these other acts
25 of violence that Mr. Shelton is referring to.

1 I think he is referring to Mr. Irby, in his
2 confession, says that there was an incident
3 years ago where Telly Irby twisted his mother's
4 arm. We would consider that to be another
5 incident. Mrs. Irby denied that that has ever
6 happened. We're happy to proffer what she has
7 say about that in a hearing outside the
8 presence of the jury. The only one that is
9 ever said that is Mr. Irby.

10 In fact, Mr. Irby has committed many acts
11 of domestic violence in the home. If anyone
12 was afraid of anyone, I think it was Telly.
13 Our position is the victim was afraid of the
14 defendant. That is why Mrs. Irby left the home
15 because of the defendant's CDV. He also has a
16 conviction for criminal domestic violence.

17 Again, if you look at the law in South
18 Carolina, this event in a separate state with a
19 separate person just does not fall under
20 something that they should be allowed to get
21 into because it is so prejudicial and it is not
22 connected to this crime.

23 **THE COURT:** Is she planning on testifying
24 that he knew about this conviction?

25 **MR. SHELTON:** Your Honor, we --

1 obviously, we don't know right now at this
2 point in time whether he would testify he knew
3 about the incident, Your Honor.

4 **THE COURT:** I guess it is not going to be
5 an issue unless and until he testifies and says
6 he knows, knew about it and that somehow played
7 into his thinking about that. You know, I will
8 tell you, don't mention it until and unless he
9 testifies. I will listen to the testimony and
10 see how it develops and make a final decision
11 on it at that point. Is there anything else we
12 need to take up?

13 **MS. WILLIAMS:** The only other thing, Your
14 Honor, is we would just ask the court to take
15 judicial notice of when the sun set on that
16 day. There is a lot of confusion with the
17 pictures of whether it was dark or light. I
18 know that Mr. Schwacke has done some research
19 too. We come up with something from the
20 farmers almanac. May I approach?

21 **THE COURT:** You can't come up with
22 something a little more authoritative than the
23 farmers almanac?

24 **MS. WILLIAMS:** I think Mr. Schwacke might
25 have something that is a little bit more. But

1 really that is the authority.

2 **THE COURT:** Maybe Google, the National
3 Weather Service...

4 **MS. WILLIAMS:** The other thing about that
5 is -- I don't remember, I've never had a court
6 take judicial notice. But I guess the jury is
7 the finder of fact. I don't know how that
8 works. But you can take judicial notice.

9 **THE COURT:** Just tell them that it is not
10 a disputed fact and is to be treated as an
11 undisputed fact. What day -- what are we
12 looking at? Thursday, August 16, 2012?

13 **MS. WILLIAMS:** Yes, Your Honor.

14 **THE COURT:** This is the farmers almanac
15 on the Internet

16 **MS. WILLIAMS:** And I think that Mr.
17 Schwacke has another source.

18 **THE COURT:** It says the same thing?

19 **MR. SHELTON:** They have slightly
20 different times. They are only off by about a
21 minute.

22 **THE COURT:** One of the things about
23 judicial notice is it is undisputed. Can we
24 come up with something like the National
25 Weather Service or --

1 **MS. WILLIAMS:** We will look.

2 **MR. SCHWACKE:** This is from Weather
3 Underground. It is historical data. I guess I
4 have a question as to what time they wish to
5 show because you were provided actual sunset.
6 Then you get civil twilight, nautical twilight,
7 astronomical twilight. I don't know if they
8 are planning to just use the actual sunset
9 time.

10 **MS. WILLIAMS:** We want to use sunset and
11 when it got dark. I am sure we can come up
12 with another source and get with Mr. Schwacke
13 and come to some agreement. If anything, it
14 should be undisputed. Someone on the Internet
15 knows when it got dark that day two years ago.
16 What does your data show on darkness?

17 **MR. OZMENT:** The problem with that is we
18 had a little conversation before, Your Honor,
19 but it is my understanding that that is civil
20 twilight. They are claiming it is astronomical
21 twilight.

22 **THE COURT:** I don't know what that means.

23 **MR. OZMENT:** Someone would have to be
24 here to explain those.

25 **THE COURT:** Unless you guys can come up

1 with some definition of what it is and then I
2 could read that in to them. If you are going
3 to have them say something that sounds very
4 hypertechnical like astronomical twilight, I am
5 not sure what that means.

6 **MS. WILLIAMS:** We will look into it and
7 see if there is a definition and get with
8 defense counsel.

9 **THE COURT:** Okay. Anything else?

10 **MS. WILLIAMS:** The only other thing, Your
11 Honor, there are some stipulations that I just
12 want to make sure we are on board with on the
13 record. Mr. Shelton has agreed to stipulate to
14 the chain for DNA, DSR and, uh, the firearm and
15 the bullets that are coming in. Also, the DNA
16 analyst will testify, DSR analyst will testify
17 as well as the firearm expert. The DNA analyst
18 will also testify to the presumptive test that
19 are done by the people that log in the evidence
20 and do a swab for blood -- other than that, I
21 don't think there is any other stipulations --
22 so that we will not call to testify all those
23 people that logged in the evidence and carried
24 it all the way through. We will call the
25 person that did the presumptive swab.

1 Mr. Shelton also agrees that the defendant
2 wrote two letters. I will have those marked as
3 court's exhibits and give copies to the court
4 for this afternoon. There are two letters that
5 he wrote to his daughter from the jail that we
6 had analyzed. The expert was prepared to
7 testify it was his handwriting. He is going to
8 agree that his client did indeed write those
9 letters.

10 **THE COURT:** All right.

11 **MS. WILLIAMS:** I will have those marked.

12 **THE COURT:** Anything else?

13 **MR. SHELTON:** There are three phone calls
14 from the jail that Ms. Williams asked me if we
15 would agree. She does have witnesses
16 available. We're thinking about that and may
17 be able to agree that it was Mr. Irby that was
18 on those phone calls which brings back, I would
19 like to renew the continuous motion that we
20 filed that we heard, I believe it was July 11th
21 -- July 11 down in Charleston. Just renew that
22 for purposes of the record, Your Honor.

23 **THE COURT:** Well, I deny it for the same
24 reason that I denied it back then. Anything
25 else?

1 **MS. WILLIAMS:** Nothing from the state,
2 Your Honor.

3 **THE COURT:** All right. Let's be here by
4 9:15 so we can be started at 9:30 in the
5 morning.

6 **MR. OZMENT:** There is a Jackson v. Deno.
7 I'm sorry, Judge.

8 **THE COURT:** Pardon?

9 **MR. OZMENT:** There is a Jackson v. Deno
10 hearing.

11 **THE COURT:** All right.

12 **MR. OZMENT:** As far as his statements to
13 the police.

14 **THE COURT:** Well, I know I am doing some
15 pleas this afternoon. I don't know how many.
16 Whether or not we take it up this afternoon,
17 how long would it take?

18 **MS. WILLIAMS:** I think it would be
19 relatively brief. It is just one, maybe two
20 witnesses. I think we can do it this afternoon
21 before the please, Your Honor.

22 **THE COURT:** Okay. Be back here at 2
23 o'clock then.

24 **MS. WILLIAMS:** Thank you, Your Honor.

25 **(WHEREUPON, a lunch recess is taken.)**

1 **THE COURT:** Okay. We have got -- Mr.
2 Irby is back. You have got a couple of
3 witnesses you want to put up on the Jackson v.
4 Deno and just let me listen to the tape or
5 watch the video?

6 **MR. OZMENT:** Yes, Your Honor. There
7 actually are two statements the state would
8 seek to enter in this case. The first
9 statement is very, very brief and not recorded.
10 For that statement, the State would call
11 Officer Auclair to the stand.

12 **THE COURT:** Okay.

13 **MICHAEL AUCLAIR**

14 having first been duly sworn, testifies as follows:

15 **THE CLERK:** Please be seated. State your
16 full name. Spell your last name please.

17 **THE WITNESS:** Michael Auclair. Last
18 name is A-U-C-L-A-I-R.

19 **DIRECT EXAMINATION**

20 **BY MR. OZMENT:**

21 **Q** How are you today, Officer Auclair?

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

23 **Q** Good. What do you do for a living?

24 **A** I am a detective with the Moncks Corner
25 City Police.

1 **Q** What were you doing back in August 2012?

2 **A** I was on road patrol at the time.

3 **Q** Did you have an opportunity to respond to a
4 call on August the 16th, 2012 at [REDACTED] Haynesville
5 Road?

6 **A** Yes, sir.

7 **Q** About what time of day was that?

8 **A** A little after 8:00, I believe around 8:15.

9 **Q** All right. What was the nature of that
10 call?

11 **A** The call went out as shots fired.

12 **Q** When you arrived at the scene, was there
13 any other law enforcement at the scene at that time?

14 **A** Both myself and Officer Lewis arrived at
15 about the same time.

16 **Q** Okay.

17 **A** I don't believe there was.

18 **Q** Tell me what happened when you arrived at
19 the scene.

20 **A** When I arrived, I was the first car to pull
21 in. There was a man standing on the side of the road
22 who kept pointing to a house. He said it is the
23 house over there next to the apartments. I pulled
24 up. When I got out of the car, I hit the trunk
25 release on the car. I went to the back of my car,

1 went to retrieve a ballistics vest. As I went to put
2 it on, I heard a man say to me you are not going to
3 need that. I ain't going to shoot nobody else.

4 Q All right. When you heard this man say
5 that, had you noticed that man prior to this time?

6 A No, sir. I did not. I was under the
7 assumption -- where I parked the car, I was under the
8 assumption it was the house next door to it.

9 Q All right. Could you see the speaker when
10 he said that to you?

11 A As soon as he said that, I looked up. That
12 is when I saw him sitting in the chair.

13 Q All right. Do you see him in the courtroom
14 here today?

15 A Yes, sir.

16 Q Who would that be?

17 A That gentleman over there with the straight
18 tie.

19 Q All right. What did you respond when this
20 individual said the statement you just stated?

21 A I asked him who he had shot. He said I
22 shot my son. I said is he all right. That's when he
23 kind of goes, he's dead.

24 Q Did he say anything beyond that?

25 A I asked him where the gun was. That is

1 when he pointed to a few feet in front of him. I
2 said okay. At that point, I told him get away from
3 the gun. He said I'm not going to move that -- I'm
4 not going to move.

5 At that point, I unlocked my holster. I
6 had one lock undone on my holster. I unlocked the
7 second lock. I walked up cautiously and put myself
8 between Mr. Irby and the gun. I told him at that
9 point to stand up. He stood up. I said put your
10 hands behind your back, which he did. He was very
11 calm the whole time. Once I put him in handcuffs and
12 double locked them, as I walked back to the car,
13 Officer Lewis was coming around from the apartments.
14 I met her at the car with Mr. Irby.

15 Q Did you put him in the back of the car?

16 A I can't honestly remember if I am the one
17 that put him in the back of the car or if Officer
18 Lewis was.

19 Q All right. But you were standing right
20 there?

21 A I was there.

22 Q Did you have any more conversation with Mr.
23 Irby at that time?

24 A No, sir.

25 Q Okay. When you first arrived, was he under

1 any sort of arrest or detention or custody or
2 anything like that when you pulled up?

3 **A** He was being detained at that time.

4 **Q** Prior to that when he made a few statements
5 to you, was he in any sort of detention or custody or
6 anything like that?

7 **A** No, sir.

8 **Q** Uh, who spoke first? Him or you?

9 **A** He did.

10 **Q** All right. I think you mentioned how your
11 gun was. Was your gun out at any point during your
12 conversation with him?

13 **A** No, sir.

14 **Q** Taser out?

15 **A** No, sir. I don't -- I didn't carry a Taser
16 at that time. I never actually removed my gun from
17 the holster until I went to clear the house.

18 **Q** All right.

19 **MR. OZMENT:** No further questions for
20 this witness, Your Honor.

21 **CROSS-EXAMINATION**

22 **BY MR. SHELTON:**

23 **Q** Officer Auclair, you were -- you and
24 Officer Lewis were first on the scene?

25 **A** Yes, sir. I believe so. I believe we were

1 the first two cars.

2 Q Mr. Johnny Irby, that person in the middle
3 that you pointed out, that is Johnny Irby?

4 A Yeah.

5 Q Who you learned that that was?

6 A Pardon?

7 Q He had asked who you learned that that was,
8 Mr. Johnny Irby. He didn't resist in any way?

9 A No, sir.

10 Q Didn't try to run?

11 A No, sir.

12 Q Did -- did you ever give him his Miranda
13 rights at any point in time?

14 A I can't honestly remember. I cannot swear
15 to it.

16 Q At some point in time, you took him to the
17 jail?

18 A No, sir. I took him to the station.

19 Q To the station, to Moncks Corner police
20 station?

21 A Sergeant Crouse arrived on the scene and
22 told me to take him to the station.

23 Q Do you remember if you gave him Miranda
24 rights at any time then?

25 A I would have given him Miranda rights. I

1 just can't remember when I did it.

2 Q That would have been your normal --

3 A That is my normal procedure to give Miranda
4 rights. I read it from my Miranda rights card that I
5 carry in my wallet. I just can't remember when.

6 Q Okay. Did he make any statements or
7 anything in the car on the way?

8 A No, sir. Nor did I talk to him.

9 Q Okay. Any other statements that he made to
10 you that night?

11 A No, sir.

12 Q What time did Norvell come to -- arrive on
13 the scene?

14 A I can't remember the time that he arrived.
15 I believe it was shortly after Sergeant Crouse but I
16 am not sure about that.

17 Q Were you the one that was calling Sergeant
18 Crouse and Norvell and Roach?

19 A Both I and Officer Lewis --

20 Q Okay.

21 A -- attempted to call.

22 Q So at some point in time, Norvell and
23 Crouse --

24 A Sergeant Norvell returned my call.

25 Q Okay. He ended up coming out to the scene.

1 Did he go back to Moncks Corner Police Department?

2 **A** I believe he did. Once I transported him
3 back to the station, I did not see Sergeant Novell.
4 He asked me at the scene what had happened.

5 **Q** Okay.

6 **A** But I did not see him after that, sir.

7 **Q** Did you see Lieutenant Roach at any point
8 in time?

9 **A** Only when I came in the station.
10 Lieutenant Roach was in his office.

11 **Q** Uh, so you didn't observe anything between
12 Lieutenant Roach and Mr. Irby?

13 **A** No, sir.

14 **Q** Okay. No further questions.

15 **MR. OZMENT:** Your Honor, this would
16 conclude any evidence the State would put in
17 with the first statement. Certainly, the
18 State's position would be that Mr. Irby was not
19 yet in custody and Miranda wasn't required.
20 They were, in fact, volunteer statements by Mr.
21 Irby alerting this officer as to what had
22 happened.

23 **THE COURT:** Okay.

24 **MR. OZMENT:** All right, moving on to the
25 second.

1 We are done with you, Officer.

2 **THE WITNESS:** Pardon?

3 **MR. OZMENT:** We're done with you,
4 Officer.

5 Moving on to the second statement, Your
6 Honor, the State would call Lieutenant Mike
7 Roach to the stand.

8 **MICHAEL ROACH**

9 having first been duly sworn, testifies as follows:

10 **THE CLERK:** Please be seated. State your
11 full name. Spell your last name for the record.

12 **THE WITNESS:** Michael Anthony Roach.
13 R-O-A-C-H.

14 **DIRECT EXAMINATION**

15 **BY MR. OZMENT:**

16 **Q** How are you today, Lieutenant Roach?

17 **A** I am well. Thank you.

18 **Q** Good. What do you do for a living?

19 **A** Currently, I am assigned to the
20 investigations unit as a supervisor with the Moncks
21 Corner Police Department.

22 **Q** What were you doing back on August 16,
23 2012?

24 **A** I was in that same position. I know that I
25 had several missed calls on my cell phone and was

1 notified that they had a shooting.

2 Q All right. Did you have a chance to speak
3 with Mr. Johnny Irby regarding that shooting?

4 A I did.

5 Q Where was that?

6 A That was at the Moncks Corner Police
7 Department.

8 Q How was he transported there?

9 A Officer Auclair had transported him there.
10 That was my understanding.

11 Q Was he in custody at that time?

12 A My understanding, he was, yes.

13 Q Was he handcuffed?

14 A I believe he was.

15 Q Was he free to leave?

16 A No.

17 Q How long have you been at the Moncks Corner
18 Police Department when you began speaking?

19 A I don't know the exact time but I am
20 estimating at least an hour and 45 minutes. The call
21 went out shortly after an MI report. I believe I got
22 there and started the interview with him. I would
23 have to look on the Miranda sheet. I think it was
24 21:00 or 20:55.

25 Q If I showed you that Miranda sheet, would

1 that help?

2 **A** Yes.

3 **MR. OZMENT:** Your Honor, may I approach?

4 **BY MR. OZMENT:**

5 **Q** Lieutenant Roach, I am handing you what has
6 been pre-marked as State's Exhibit 70 for
7 identification purposes. Do you see a time on that
8 sheet?

9 **A** I do.

10 **Q** What does that time indicate?

11 **A** 21:55.

12 **Q** Would that be the time you executed that?

13 **A** Yes.

14 **Q** We'll come back to that piece of paper.
15 Where did you speak -- I know in the police station,
16 but where in the police station did you speak to him?

17 **A** Mr. Irby was being held in the squad room.
18 My office is just before you get to the squad room.
19 I came in to hear.

20 **Q** Okay. Did you speak to him in your office
21 or the squad room?

22 **A** In my office.

23 **Q** In your office? Did he have a chair to sit
24 in?

25 **A** Yes.

1 **Q** At any point when you were speaking with
2 him, did you threaten him or pressure him or anything
3 like that?

4 **A** No, sir.

5 **Q** Have your duty weapon drawn?

6 **A** No.

7 **Q** Taser, nightstick, anything like that?

8 **A** The only thing I carry when I am in
9 plainclothes, unless I am (Inaudible.)

10 **Q** Did you promise them anything if he gave
11 you a statement?

12 **A** No, sir.

13 **Q** Any sort of plea deal for leniency or
14 anything like that?

15 **A** No.

16 **Q** All right. I already handed you State's
17 Exhibit 70. Did you go over his Miranda rights with
18 him?

19 **A** Generally, my practice is to read each one
20 and have them initial -- have the person to initial.
21 We go through each one. There is a waiver. They
22 initial and sign.

23 **Q** Do you verbally go over them with them?

24 **A** Yes.

25 **Q** Do you also give them a chance to read that

1 form?

2 **A** Yes.

3 **Q** On State's Exhibit 70, I did see where he
4 initialed and signed. Was that Mr. Irby that made
5 those marks on the form?

6 **A** That's correct.

7 **Q** Did you witness him do that?

8 **A** I did.

9 **Q** At any point when you were going over
10 Miranda, did he stop and not want to talk or answer a
11 question or anything like that?

12 **A** There was a point where he had to use the
13 bathroom. I basically followed him, escorted him to
14 the bathroom. There was never any point that he
15 asked -- there was a point where he said I'm done,
16 but he continued talking.

17 **Q** Okay. At any point, did he ask for an
18 attorney or anything like that?

19 **A** No, sir.

20 **Q** All right. Did Mr. Irby seem intoxicated
21 to you when you were speaking with him?

22 **A** No.

23 **Q** Did he seem to understand all of your
24 questions?

25 **A** Yes.

1 **Q** Did you sign the Miranda form?

2 **A** I did.

3 **MR. OZMENT:** Your Honor, at this point,
4 the State would move State's Exhibit 70 into
5 evidence the purpose of this hearing only.

6 **MR. SHELTON:** No objection.

7 **THE COURT:** Okay.

8 **(WHEREUPON,** State Exhibit Number 70 is admitted
9 into the record.)

10 **BY MR. OZMENT:**

11 **Q** Did you record the statement you took from
12 Mr. Irby?

13 **A** I did.

14 **Q** Tell me, did your recording device
15 accurately record the entire statement?

16 **A** No. As we were going through the
17 interview, I noticed the battery case was loose. The
18 first several minutes it didn't record. I noted that
19 in my report.

20 **Q** All right. Was the Miranda rights, that
21 portion of it, was it recorded or was it not
22 recorded?

23 **A** It was not recorded. I did not go back and
24 redo it.

25 **Q** Okay.

1 **MR. OZMENT:** May I approach, Your Honor?

2 **THE COURT:** Uh-huh.

3 **BY MR. OZMENT:**

4 **Q** Lieutenant Roach, I am handing you what has
5 been premarked as State's Exhibit number 71. Can you
6 identify what that is?

7 **A** This is a copy of the interview which has
8 my initials on it.

9 **Q** Why does it have your initials on it?

10 **A** I verify that this is a copy from the
11 digital recording.

12 **Q** All right. Does it accurately represent
13 the statement that Mr. Irby gave and any comments you
14 made to him?

15 **A** Yes.

16 **MR. OZMENT:** Your Honor, at this point,
17 the State would move State's Exhibit 71 into
18 evidence for purpose of this hearing only.

19 **MR. SHELTON:** No objection.

20 **THE COURT:** It may be admitted.

21 **(WHEREUPON, State Exhibit Number 71 is admitted**
22 **into the record.)**

23 **BY MR. OZMENT:**

24 **Q** Lieutenant Roach, after you got done taking
25 his statement, did you ask Mr. Irby if he had been

1 mistreated in any way or anything like that?

2 **A** I did.

3 **Q** What was his response to those questions?

4 **A** He had not been. I asked if he wanted
5 something to drink. He said someone promised him
6 some water. I made sure we got him a bottle of
7 water.

8 **Q** All right. Again, after the interview, did
9 you give him any sort of promise or tell him how much
10 you appreciated an offer of any kind of leniency or
11 anything like that?

12 **A** The only thing I told Mr. Irby is I
13 appreciated his frankness.

14 **MR. OZMENT:** All right. No further
15 questions at this time, Your Honor.

16 **CROSS-EXAMINATION**

17 **BY MR. SHELTON:**

18 **Q** At some point in time, did you become aware
19 prior to talking with Mr. Irby that he has been given
20 his Miranda rights?

21 **A** My understanding is Officer Auclair read
22 him his Miranda rights either briefly at the scene or
23 in the back of the patrol car. That is what I was
24 told.

25 **Q** You didn't actually observe?

1 **A** No, sir. I noted it in my report that he
2 had already done what would be standard. I did a
3 written Miranda warning on top of that.

4 **Q** In your discussions with Mr. Irby, I think
5 you just testified that you did not believe him to be
6 intoxicated?

7 **A** That is correct.

8 **Q** He did admit to having a couple of drinks.

9 **A** He said he had a nice drink that day. I
10 believe that was the only reference that I actually
11 remember without listening to it again. I was within
12 two and a half feet of him. I did not smell any odor
13 of alcohol. His speech was not slurred, any of that.

14 **Q** He wasn't tumbling or falling over
15 anything?

16 **A** No, sir. If he had been, the interview
17 would have never taken place.

18 **Q** Okay. You recorded everything that was on
19 the recorder?

20 **A** Right.

21 **Q** At some point in time, you stopped the
22 recorder when he had to go use the restroom?

23 **A** Actually, it is running. I am stand
24 outside the door when he was using the restroom.

25 **Q** At the very end, he had said that someone

1 told him about getting a drink and he offered him a
2 drink?

3 **A** Yes, sir.

4 **Q** Okay. And you felt that Johnny Irby was
5 being honest with you?

6 **A** I believe he was giving me an account of
7 the story as he believed it.

8 **Q** As to what he believed occurred?

9 **A** Yes.

10 **Q** Okay. He told you that Telly was big and
11 strong?

12 **A** True.

13 **MR. SHELTON:** No further questions.

14 **MR. OZMENT:** Nothing further of this
15 witness, Your Honor.

16 **THE COURT:** All right. You can step
17 down.

18 **MR. OZMENT:** Lastly, the State would call
19 Brad Norvell to the stand.

20 **BRAD NORVELL**

21 having first been duly sworn, testifies as follows:

22 **THE CLERK:** Please be seated. State your
23 full name. Spell your last name for the record.

24 **THE WITNESS:** My name is Bradley Edward
25 Norvell. Last name N-O-R-V-E-L-L.

DIRECT EXAMINATION

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BY MR. OZMENT:

Q What do you do for a living, Mr. Norvell?

A I am the Investigation Sergeant for Moncks Corner Police Department currently.

Q All right. What were you doing back in August 2012?

A August 2012, I was the Patrol Sergeant For the Moncks Corner Police Department.

Q Were you at the Moncks Corner Police Department late that evening August the 16th?

A Not to start off.

Q Did you end up at the Moncks Corner Police Department that evening?

A Yes, sir.

Q Did you have a chance to have interact with Mr. Johnny Irby that evening?

A Yes.

Q How did you come into contact with Mr. Irby?

A I was contacted by Officer Auclair at approximately 8:23 on my cell phone. I responded to a shooting at [REDACTED] Haynesville. After responding to that location and making sure that the patrol officers had the scene secured in the second location

1 where the second victim had gone to for help, making
2 sure those areas were secure. I went to the police
3 station where I performed gunshot residue kit on Mr.
4 Irby, Johnny Irby.

5 Q All right. Did you see Mr. Irby speak with
6 Lieutenant Mike Roach?

7 A Yes.

8 Q Were you a party to that conversation?

9 A I wasn't involved in the interview.

10 Q All right. Did you see Lieutenant Roach
11 mirandized Mr. Irby?

12 A Yes.

13 Q Where were you when you observed this?

14 A I just finished the gunshot residue kit on
15 Mr. Irby. Like Lieutenant Roach said previously, the
16 squad room is right next to Lieutenant Roach's
17 office.

18 Q All right. Did you hear him go through his
19 Miranda rights?

20 A Yes. I happened to be in the area of the
21 office when Lieutenant Roach was going over the
22 Miranda interview form with Mr. Irby.

23 Q Do you recognize State's Exhibit 70?

24 A I recognize it as Lieutenant Roach's
25 writing.

1 **Q** All right. What is State's Exhibit 70?

2 **A** It is an Advice of Miranda Rights.

3 **Q** While Lieutenant Roach was going through
4 Mr. Irby's rights previously, did you hear him
5 threaten Mr. Irby, coerce him, push him into doing
6 anything or anything of that sort?

7 **A** No, sir.

8 **Q** Did you hear him make any promises as far
9 as leniency or anything of that nature?

10 **A** No, sir.

11 **Q** At any time, did you hear Mr. Irby want to
12 stop talking to Lieutenant Roach or terminate the
13 interview?

14 **A** No, sir.

15 **MR. OZMENT:** No further questions, Your
16 Honor.

17 **CROSS-EXAMINATION**

18 **BY MR. SHELTON:**

19 **Q** Is it Lieutenant?

20 **A** No, Sergeant.

21 **Q** Sergeant. Sergeant Norvell, you also
22 witnessed Officer Auclair give Mr. Irby his Miranda
23 rights?

24 **A** I did.

25 **Q** And, when Mr. Irby -- when you did the

1 gunshot residue test on Mr. Irby, he also gave some
2 statements to you?

3 **A** He did make statements.

4 **Q** That was after Miranda had been given to
5 him that you observed Officer Auclair give Miranda.
6 You went and did the gunshot residue and he provided
7 statements to you?

8 **A** That is correct.

9 **Q** Is that correct?

10 **A** Correct.

11 **Q** That's when he said that he felt bad about
12 shooting his son?

13 **A** That's correct.

14 **Q** They had been arguing?

15 **A** Yes, sir.

16 **Q** He started talking about his son's size and
17 strength resulting in the shooting?

18 **A** He mentioned that in the context of the
19 fact that he was a high school football player.

20 **Q** All right. Okay. When you said that you
21 recognized Lieutenant Roach's handwriting on State's
22 70, is it the top that you are talking about?

23 **A** The bottom left corner.

24 **Q** You recognize his signature?

25 **A** Yes, sir.

1 **Q** You recognize his handwriting at the top?
2 You recognize Lieutenant Roach's signature?

3 **A** I recognize his handwriting at the top
4 also.

5 **Q** Okay. No further questions.

6 **MR. OZMENT:** Nothing further from the
7 State in this matter, Your Honor.

8 **THE COURT:** Okay. You have anything?

9 **MR. SHELTON:** No, Your Honor.

10 **THE COURT:** All right. You can come
11 down.

12 **THE WITNESS:** Thank you.

13 **THE COURT:** All right. I guess you want
14 me to take those and look at them this evening?

15 **MR. OZMENT:** Yes, sir, Your Honor. And
16 that way, we won't take up the Court's time now
17 and listen to it.

18 **THE COURT:** All right. I will look at
19 them and let you know in the morning. Let me
20 have them so you don't wander off.

21 Okay. Is that it for you guys today then?

22 **MR. SHELTON:** Yes, sir. Okay. See you
23 in the morning at 9:15.

24 **(WHEREUPON, the proceedings conclude at**
25 approximately 2:26 p.m.)

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF BERKELEY 2012-GS-08-2100
 2012-GS-08-2101

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) July 22-24, 2014
JOHNNY LEE IRBY,)
) Moncks Corner, South Carolina
)
) Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge and a jury.

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

Anne R. Williams, Assistant Solicitor
Matt Ozment, Assistant Solicitor
Attorneys for the State

David Schwacke, Deputy Public Defender
Chad Shelton, Deputy Public Defender
Attorneys for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Elijah Haynes	34 463	47 464	56 --	59 --
4	Wilbur Robinson	65	67	--	--
5	Samir Fakhry	70	81	--	--
6	Michael Auclair	88	95	--	--
7	Justin Riley	101	--	--	--
8	Richard Crouse	103	116	124	124
9	Bradley Norvell	125 460	138 462	-- --	-- --
10	Ila Simmons	146	152	155	155
11	James Green	156	162	--	--
12	Amanda Webb	164	170	175	176
13	Michelle Wiggins	177	193	216	--
14	Nicholas Batalis	230	244	--	--
15	Chris Scarborough	252	260	--	--
16	Destiny [REDACTED]	264	271	--	--
17	Diamond [REDACTED]	273	282	286	288
18	Deanna [REDACTED]	289	294	--	--
19	Michael Roach	296	312	316	318
20	Antoinette Irby	329	--	--	--
21	Eugene Irby	343	353	366	--
22	Johnny Lee Irby	369	415	452	455
23	Carolyn Haynes Smith	465	--	--	--
24	Johnny Coaxum	468	469	--	--
25					

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	State's 1	Photograph	42	42
4	State's 2	Photograph	42	42
5	State's 3	Photograph	42	42
6	State's 4	Photograph	42	42
7	State's 5	Photograph	42	42
8	State's 6	Photograph	42	42
9	State's 7	Photograph	106	106
10	State's 8	Photograph	106	106
11	State's 9	Photograph	106	106
12	State's 10	Photograph	106	106
13	State's 11	Photograph	106	106
14	State's 12	Photograph	106	106
15	State's 13	Photograph	106	106
16	State's 14	Photograph	106	106
17	State's 15	Photograph	106	106
18	State's 16	Photograph	106	106
19	State's 17	Photograph	106	106
20	State's 18	Photograph	106	106
21	State's 19	Photograph	106	106
22	State's 20	Photograph	106	106
23	State's 21	Photograph	106	106
24	State's 22	Photograph	106	106
25	State's 23	Photograph	106	106

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	State's 24	Photograph	106	106
4	State's 25	Photograph	134	134
5	State's 26	Photograph	134	134
6	State's 27	Photograph	135	135
7	State's 28	Photograph	134	134
8	State's 29	Photograph	134	134
9	State's 30	Photograph	134	134
10	State's 31	Photograph	134	134
11	State's 32	Photograph	134	134
12	State's 33	Photograph	134	134
13	State's 34	Photograph	134	134
14	State's 35	Photograph	134	134
15	State's 36	Photograph	134	134
16	State's 37	Photograph	134	134
17	State's 38	Photograph	134	134
18	State's 39	Photograph	134	134
19	State's 40	Photograph	75	75
20	State's 41	Photograph	75	75
21	State's 42	Photograph	238	238
22	State's 43	Photograph	238	238
23	State's 44	Photograph	--	--
24	State's 45	Photograph	--	--
25	State's 46	Letter 1	437	437

1	E X H I B I T S			
2	NO.	DESCRIPTION	ID.	EV.
3	State's 47	Letter 2	--	--
4	State's 48	Gun	116	116
5	State's 49	Magazine	116	116
6	State's 50	Fired projectile from victim's body	238	238
7	State's 51	Envelope with fired projectile from victim's body	--	--
9	State's 52	Five shell casings	114	114
10	State's 53	Unfired bullet found at scene	114	114
12	State's 54	Envelope with all bullets signed by Crouse	112	112
14	State's 55	911 Tape	67	67
15	State's 56	Unfired bullets	116	116
16	State's 57	GSR kit Defendant	130	130
17	State's 58	GSR kit Michelle Wiggins	152	152
19	State's 59	Telly Irby's shirt	255	255
20	State's 60	Michelle Wiggins's dress	257	257
21	State's 61	Defendant's clothing	135	135
23	State's 62	Jail call disk	--	--
24	State's 63	Jail call disk	328	328
25	State's 64	Jail call disk	328	328

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
State's 65	Buccal swab from defendant	170	170
State's 66	Blood sample from victim Irby	170	170
State's 67	DNA cutting from Wiggins's panties	170	170
State's 68	Five DNA swabs from clothes	170	170
State's 69	Defendant's White Hat	136	136
State's 70	Miranda form	306	306
State's 71	Confession tape used in 7/21/14 Jackson v. Denno hearing	309	309
Defendant's 1	CD of 911 tape	467	467
Court's 1	Stipulation	328	--
Court's 2	Stipulation	328	--
Court's 3	Jury Charge	545	--

*** State's Exhibit Nos. 27, 44, 45, 27, 51 and 62 were not admitted into evidence

1 (July 22, 2014.)

2 THE COURT: All of the witnesses are to be
3 sequestered except for allowing the decedent's mother in,
4 Michelle Williams, and also Antoinette Irby.

5 Okay. Let the record reflect the defendant
6 is in the courtroom. Bring the jury in.

7 MR. OZMENT: Your Honor, we need a ruling on
8 the Jackson versus Denno hearing.

9 THE COURT: You want to make an argument?

10 MR. SHELTON: No argument on behalf of the
11 defendant.

12 MR. OZMENT: I think it speaks for itself,
13 Your Honor. The first statement, he was not in custody.
14 The second statement, I don't think there is any that
15 evidence it was not voluntarily, freely given.

16 THE COURT: Any argument?

17 Well, I find that both of his statements were
18 freely and voluntarily made. The first statement was not
19 a custodial interrogation and it was voluntary; second
20 statement, he was in custody, but it's clear he was free
21 of arrest, knew what he was doing, and they forced him to
22 make it and didn't appear to be intoxicated, and knew
23 what he was doing, knew what he was saying when he made
24 the statement, so the motions are denied.

25 MR. OZMENT: Your Honor, on that line of

1 thought, during Mr. Shelton's questioning of Officer
2 Norvell yesterday he was asking some questions about
3 statements he made to Officer Norvell.

4 The State does not intend to go into that at
5 all. We're bringing those statements up, so we would
6 ask -- I guess now a verbal motion in limine because I
7 didn't anticipate those statements coming up that the
8 defense not be allowed to go into them either, barring
9 some unforeseen circumstance.

10 They're his client's statement. It would be
11 hearsay for them to go into it, and they're just
12 self-serving.

13 THE COURT: I don't recollect what that
14 statements are that you're referring to about to an
15 Officer Norvell.

16 MR. OZMENT: Norvell was the last officer to
17 testify yesterday, and on Mr. Shelton's cross, he went
18 into some statements about the size of the victim that
19 the defendant had mentioned to Officer Norvell.

20 They were brief statements. Officer Norvell,
21 I think, was doing the GSR kit.

22 MR. SHELTON: They're the same statements he
23 made to Roach and to Claire, Your Honor. He shot his
24 son. He feels bad for it. He shot his son. He's
25 talking about what occurred. It's the same statements

1 that they're trying to get in through the other
2 witnesses, so I think they're relevant. They're not
3 hearsay as far as there is an exception in his statements
4 against interest and he's making those statements, Your
5 Honor.

6 THE COURT: Why would you not want them in?
7 I'm missing it.

8 MR. OZMENT: And I think Officer Norvell we
9 could put him back up and talk about it, but he's talking
10 about his son's football career and then he's talking
11 about the size of the son. They're just -- they're very
12 self-serving toward the self-defense type of argument as
13 to how big the victim was and that sort of thing.

14 We're happy with the statement that he gave
15 under Miranda that's recorded and we just weren't
16 planning on going into them for that reason.

17 THE COURT: Denied. You can go into it on
18 cross. You call him. You can go into it on cross, or he
19 can call them.

20 Anything else?

21 MR. OZMENT: Not from the State, Your Honor.

22 MR. SHELTON: Nothing.

23 THE COURT: Bring the jury in.

24 (In open court, jury present.)

25 THE COURT: All right. Mr. Peralta, you got

1 selected as the jury foreperson.

2 THE FOREPERSON: Yes, I did.

3 THE COURT: Congratulation. Before we begin,
4 let me get y'all to stand and raise your right hand so
5 the clerk can administer your oath.

6 (Jury duly sworn.)

7 THE COURT: All right. Well, folks, you got
8 a little bit of information on the case yesterday. This
9 is the State of South Carolina versus Johnny Lee Irby,
10 and Mr. Irby got indicted by the Berkeley County grand
11 jury on two charges. First charge was for murder; second
12 charge was for attempted murder.

13 I read the indictments out while we were
14 qualifying yesterday, but, basically, the murder
15 indictment boils down to alleging that Mr. Irby, on or
16 about August the 16th, 2012 with malice aforethought
17 murdered Telly Irby by means of a gun; same allegation
18 for attempted murder, same date, same place, attempted to
19 murder Michelle Wiggins.

20 Mr. Irby has denied these charges, and so it
21 is incumbent upon the State to provide Mr. Irby with a
22 jury trial, and the State must prove that he is guilty to
23 you folks beyond a reasonable doubt. He is not required
24 to prove that he is innocent of these charges. It is an
25 important constitutional right that he has and that you

1 have and that I have.

2 Every one of us who live in this state and
3 the United States has that, when a person is charged with
4 a crime in this country, they are not required to prove
5 they're innocent. The State, the government, must prove
6 that they are guilty of this charge, and so while he got
7 charged with these crimes, being charged with a crime
8 does not prove that you are guilty. It is not considered
9 evidence of guilt. It is simply an allegation. It puts
10 him on notice what he is to stand trial for, gives this
11 Court jurisdiction when a grand jury indicts, but other
12 than this, it is not to be considered evidence.

13 In fact, these are the only two pieces of
14 paper that are not evidence that will go back into the
15 jury room with you, and the only reason it does is so
16 that you can write the verdict on the jury room form, all
17 right? He is, again, in the eyes of the law, deemed to
18 be innocent of these charges, and the only thing that
19 Mr. Irby has to do is show up for trial, and he's done
20 that. All right?

21 So at this point, under the oath that you
22 just took, you must consider him to be innocent from the
23 time he got arrested, unless and until the State
24 convinces you beyond a reasonable doubt of sufficient
25 evidence to convince you of his guilt of those crimes.

1 Now, you're going to hear some phrases
2 throughout this trial, both from me and the lawyers. I
3 want to go over some of the things that we do, some of
4 the procedures that we follow, and then I'll turn it over
5 to the lawyers to begin presentation of the case.

6 One of the things that I said is that the
7 State has to prove his guilt beyond a reasonable doubt.
8 What does that mean?

9 Well, first of all, when we talk about
10 something like beyond a reasonable doubt, we're talking
11 about the burden of proof, and the burden of proof,
12 again, is on the State and the amount of proof that they
13 have to provide is what the law calls beyond a reasonable
14 doubt. Well, that sounds a little bit fuzzy. You might
15 agree, and the law has basically defined that concept to
16 mean that you, after you have heard all of the evidence,
17 have to be firmly convinced of his guilt, and if you
18 after you've heard all of the evidence are not firmly
19 convinced of his guilt, then you must find him not
20 guilty.

21 Now, the law doesn't require that the State
22 prove beyond any doubt whatsoever because there is very
23 few things in this life we know with absolute certainty,
24 but they only have to prove it beyond a reasonable doubt,
25 and so after you've heard all of the evidence and you

1 decide, if you're firmly convinced that he's guilty, then
2 you are required to find him guilty. If you are not
3 firmly convinced of his guilt, then you must find him not
4 guilty.

5 Now, because the State has this burden of
6 proof, they get to go first. Now, let me back up just a
7 second.

8 Sometimes people are visual learners. I know
9 I am. A lot of times I want to see something before I
10 understand it. Some people pick up concepts real easy
11 just by reading it or being told about it, and if you've
12 never served on a jury before, that whole beyond a
13 reasonable doubt business might sound a little bit fuzzy
14 to you. Maybe you served on a jury in a criminal case.

15 In a civil case, you have a lesser burden of
16 proof. In a civil case where somebody sues somebody for
17 something, they're usually asking for money. The burden
18 of proof in a civil case like that is a lot less than it
19 is in a criminal case.

20 In a civil case, the burden of proof is
21 called a preponderance of the evidence, or sometimes we
22 state it another way and say is whatever the party trying
23 to prove more likely true than not true or the greater
24 weight of the evidence.

25 And so, again, while I have explained to you

1 something that law says that is a correct charge on the
2 law, you might still be going -- that, I'm sure, might
3 still escape some of you because it's not an easy concept
4 to get your head around.

5 So if you're a visual learner, you might
6 imagine -- you know that set of scales that you might see
7 where somebody is holding out those scales with the
8 chains hanging down and plates -- the scales of justice,
9 if you will? At the beginning of the trial the scales
10 are even, all right? In a civil case where somebody has
11 to prove something by a preponderance or the greater
12 weight of the evidence, the party who brings the lawsuit,
13 or sues the defendant, has to just tip those scales, even
14 if it's just a tiny little bit, over 50 percent, then
15 they've met the burden of proof and they're entitled to a
16 verdict, all right? That's the law in a civil case.

17 That's not the law in a criminal case. The
18 law in a criminal case is the State has a much higher
19 burden when they accuse somebody of a crime, so you take
20 those same set of scales, and you say, well, beyond a
21 reasonable doubt, firmly convinced of guilt.

22 What does that mean? Well, imagine tipping
23 those scales has to be a lot more than just that little
24 tip in favor of the party in a civil case, so keep that
25 in mind. It's an important concept because it -- the

1 State of South Carolina has accused somebody of a crime,
2 and we want to be sure that to the extent that we can we
3 get it right. All right?

4 And so the State has the burden of proof, and
5 it's a heavy burden of proof, so I want to help you keep
6 that in mind.

7 So because they have the burden of proof,
8 they're going to go first, and they're going to present
9 their evidence to you first and they call witnesses
10 first. When a side calls a witness, part of our
11 procedure, we call that direct examination. So the State
12 will call the first witness up. The prosecutor will get
13 to ask questions first. That's called direct
14 examination.

15 Then the defense will have the opportunity to
16 ask questions if they want to. That's called
17 cross-examination. All right? So you have direct, then
18 we have cross, and then I usually let just one follow-up
19 round, so we have direct and cross and then redirect and
20 recross. Then we move on to the next one. All right?

21 So you're going to hear from the State.
22 They're going to call all of their witnesses first. They
23 get to put in whatever evidence that allow them to put in
24 first, and then -- because, again, they have the burden
25 of proof. Now, Mr. Irby, as I told you, has no burden of

1 proof. He doesn't have to do a thing except show up for
2 trial. He doesn't have to call any witnesses if he wants
3 to. He's not required to testify if he doesn't want to,
4 and I will tell you that it is another important
5 constitutional right that Mr. Irby is not required to get
6 up and testify.

7 He's not required to put up any witnesses,
8 and if he doesn't want to testify, then you are not to
9 hold that against him at all. You're not to put that
10 thought in your mind. You certainly aren't going to
11 discuss it in the jury room. It is improper for to you
12 discuss it if he decides he doesn't want to testify.

13 I don't know if he's going to testify or not.
14 He doesn't even have to tell me. He can wait until the
15 last minute to decide, if he wants to, and if he doesn't
16 want to put up any evidence or he doesn't testify, again,
17 they're not to hold that against him. Why? Because he
18 doesn't have to prove anything.

19 The burden is entirely on the State to prove
20 his guilt. He doesn't have to prove his innocence, and I
21 keep drumming that into your head because a lot of times
22 people come into trial and they think, Well, he must be
23 guilty of something because he got arrested.

24 Well, that is not the law, all right? And
25 I'm telling you that is not the law, and you just took an

1 oath. Remember, I asked you yesterday if anybody doesn't
2 think they could listen to what I say the law is, follow
3 that? Well, that's part of the charge, and if you don't
4 like it, nothing I can do about that, but you're duty
5 bound to follow that.

6 So he doesn't have to testify. He doesn't
7 have to prove his innocence, so that, again, is an
8 important constitutional right. He has it, but you have
9 it too and I have it, and we don't want to change that,
10 but this is what the law is, and you're required to
11 follow that.

12 Now, so everybody has got a role in this
13 courtroom. Some of the folks back there are witnesses,
14 but most of the people on this side of the bar right
15 there, what we call the last set of chairs there,
16 everybody has a role. Court reporter has got a role;
17 clerk has got a role; the lawyer's got a role; and I got
18 a role. Your role is as judges of facts.

19 What does that mean? I'm the judge of the
20 law in the eyes of the law, all right? You're the judges
21 of the facts, so we all have different duties that we
22 have in here.

23 Judges of the facts, you're going to hear
24 different things, all right? Some of them will be
25 inconsistent with what other people testify, perhaps,

1 and, if so, you have to resolve that. And even things
2 that you might hear that are uncontested, you, as the
3 jury, decide how much weight to give somebody's
4 testimony. If you think it's unbelievable, you don't
5 have to believe it. You can decide that, well, I believe
6 some of what that person said, but I don't believe
7 everything they said. Totally up to you, all right?

8 You decide how much weight to give a
9 witness's testimony. You decide how much weight to give
10 various pieces of evidence that come in. That's your
11 job. Nothing that anybody can do except you can make
12 those decisions.

13 On the other hand, my job is as the trial
14 judge is two-fold: First is to tell you what the law is.
15 Part of that I'm doing now, which is explaining some
16 procedures, and, you know, telling you about burden of
17 proofs and constitutional rights, but at the end of the
18 trial, I'm going to go into some depth talking to you
19 about what these charges are and what the elements of
20 those charges are that the State has to prove.

21 The State will probably, both parties
22 probably, will in their opening statements touch on
23 those, but at the end of the trial, I actually do give
24 you a formal charge. These are what the elements of
25 murder is, this is what the elements of attempted murder

1 is, and that's what you have to follow.

2 And you take that law, along with the facts
3 that you 12 folks decide, and then you apply the law to
4 the facts, and that's what you do to come up with a
5 verdict. All right?

6 Now, that's one role that I have. The other
7 role that I have is to preside over the trial, make sure
8 both sides get a fair trial. All right? The State of
9 South Carolina is entitled to a fair trial, just like
10 Mr. Irby is entitled to a fair trial, so my job, again,
11 is to make sure both sides get a fair trial.

12 We have -- I don't have a dog in this fight.
13 I'm just like you. We went through that little screening
14 process and asked you if you knew any of the witnesses,
15 knew any of the parties, knew anything about the case?

16 Well, we don't do that formally for the
17 judge. It's kind of like on the honor system. If I knew
18 these folks or had any relationship with them such that
19 it would affect my ability to be a fair and impartial
20 judge, well, I wouldn't be here. I would get another
21 judge in here and he would preside over it, but I don't
22 have an interest in the outcome other than to make sure
23 both sides have a fair trial, and I really don't know a
24 whole lot more about the case at this point than y'all
25 do.

1 It's not like we had a little mini-trial and
2 they told me everything that was going to happen. A lot
3 of it, as it unfolds, is the first time I'll hear it as
4 well.

5 So that's part of my job, and so I have to,
6 first of all, make sure we follow our rules of procedure.
7 In other words, procedure just means we are doing things
8 in the order that they're supposed to be done, and then
9 the other thing I do is rule on evidence, and evidence
10 comes in in several different ways. A lot of times it's
11 witnesses telling you what they hear, they touched, they
12 felt, they smelt. That's evidence.

13 Sometimes it's pictures. It might be pieces
14 of paper; it might be weapons. Those are all things of
15 evidence. But I have to make sure it's proper for you to
16 be able to hear what a witness says or, you know, let
17 that document in or let that article of evidence in, and
18 so sometimes -- and what we're trying to do when we do
19 that is make sure that you make your decision based on
20 what we call legally competent evidence.

21 In other words, that is something you're
22 supposed to be allowed to hear. Some evidence is deemed
23 to be unreliable, and so I'm not supposed to let you hear
24 certain types of evidence -- hearsay, for instance, which
25 is a whole other explanation for another day -- but it's

1 my job to know what it is and decide under some limited
2 circumstances you could hear it or not. All right?

3 But when a witness sometimes gets up to say
4 something, he might hear one of the lawyers go,
5 Objection.

6 That's kind of like our little code word,
7 putting you on notice you got to make a ruling, and I
8 have to decide. Is it proper for you to hear what that
9 person is about to tell you or not? All right?

10 And so I have to sometimes -- I can make that
11 ruling based on context of where we're at, and I can just
12 say sustained or overruled. Sometimes I might ask the
13 lawyer just to come over here on the side out of your
14 earshot, make a little brief argument to me, and I go,
15 Okay. I got it, and I'll either let it in or not.

16 Sometimes I have to say, Look, I got to hear
17 what this person has to say, and I have to send you back
18 out to the jury room so I can hear what they say first in
19 order to make a decision as to whether or not it's proper
20 for you to hear it.

21 Why do we go through that? Well, we only
22 want to do this trial one time. Nobody wants to do it
23 twice, and so the truth of the matter is if somebody
24 doesn't like the outcome of the lawsuit, if there is any
25 evidence in the record at all to back your verdict, an

1 appeal is upheld.

2 Where appeals get reversed, 99 percent of the
3 time if they do end up in reversal is because the judge
4 made a mistake, either charged you the law wrong or he
5 let you hear something that you weren't supposed to hear
6 or kept you from hearing something that you were supposed
7 to hear.

8 So that's why we just sometimes go, stop.
9 Let's take a break. Let me hear what they have to say.
10 We're not trying to keep anything from you. When the
11 lawyers say objection, they're just doing their job, so
12 don't hold it against them when they say objection. It's
13 just that is a point in time where I have to make a
14 ruling, and, again, my sole purpose in slowing it down --
15 because nobody wants to do this thing twice, so don't
16 hold it against them when somebody says that.

17 Now, procedurally what we do is in a minute
18 I'm going to let the lawyers make their opening
19 statements. Opening statements are -- I call it the
20 Reader's Digest condensed version of the case. They are
21 allowed to make a little brief five, maybe ten-minute
22 opening statement to give you an overview now of what
23 this case is about. It helps you follow the evidence
24 that you'll hear a little bit better.

25 The thing that is important for you to

1 remember about opening statements is the lawyers aren't
2 witnesses. What they say is not to be considered by you
3 as evidence. All right? If they were witnesses, they
4 wouldn't be allowed to be acting as lawyers. They would
5 be under oath and asked what they heard, they saw, they
6 touched, they felt, they smelt, that kind of thing, but
7 they aren't witnesses, so what they say is not to be
8 considered by you as evidence.

9 Evidence is, for instance, when a lawyer asks
10 a witness a question, the question isn't evidence. The
11 answer to the question is evidence. So keep that in
12 mind, all right? So that when you hear the lawyers in a
13 little bit and they start going, We believe the evidence
14 will show this and we believe the evidence will show
15 that, that's not evidence.

16 When you hear it on the witness stand or you
17 see that document or you see that photograph, that's
18 evidence. Lawyers talking about evidence isn't evidence.
19 So keep that in mind.

20 So we'll have opening statements. State has
21 the burden of proof, they go first. They have the
22 opportunity to give you that little opening statement.
23 The defendant will have a right to make an opening
24 statement if he wants to through his lawyers, and then we
25 move on to the presentation of the case.

1 The State calls the first witness, and then
2 we just go until we get finished with all the witnesses.
3 Once we get finished with all the witnesses, we come back
4 and the lawyers then get to make a closing argument,
5 which, again is just talking about the evidence that
6 you've now heard and attempting to persuade you to render
7 a verdict in their client's behalf.

8 I charge you on what the law is, and when you
9 go back, take the evidence that you've heard, the law
10 that I tell you, and then you come up with your verdict.

11 We anticipate now we'll be finished with this
12 case on Thursday. We will not get finished with this
13 case by Thursday if I continue to talk all morning long,
14 so I will now stop, and I'll let the lawyers make their
15 opening statement.

16 So please make an opening on behalf of the
17 State, Mr. Solicitor. Go ahead.

18 MR. OZMENT: May it please the Court:
19 Mr. Shelton, Mr. Schwacke: Good morning. Thank you for
20 coming back, as if y'all had any choice.

21 On August 16, 2012, summertime, about like
22 now, that evening, Mr. Johnny Irby had had enough.
23 You're going to hear he put his hands up. He had enough
24 that evening. That is the evening that he shot and
25 killed his son, Telly Irby with malice in his heart, and

1 he took the same gun and shot Michelle Wiggins, his son's
2 girlfriend and mother of three.

3 The State is going to put up several
4 eyewitnesss, and they're going to sit on that witness
5 stand and talk to you about what happened that night.
6 They're also going to talk to you about some of the
7 build-up and some of the back story as to how that night
8 happened and why that night happened.

9 There's going to be a little piece of
10 evidence, and it's not really going to matter that much
11 that the night this happened Mr. Irby put a pot of beans
12 on the stove to cook. As I go through this build-up and
13 tell you what we intend to prove, I want you to think of
14 that pot of beans getting hotter and hotter on the stove.

15 Telly Irby was living in Florida. That
16 summer he decided to come back to Moncks Corner where
17 he's from, big high school football player here, and kind
18 of start over. Get his life on the right track. He
19 planned to stay with his dad, Mr. Irby.

20 Well, Telly Irby had an estranged wife, has
21 kids. Mr. Irby heard Telly was coming, heard the kids
22 were coming. Mr. Irby thought, he's coming with his
23 kids. Going to start his life over, get his life right.

24 Mr. Irby had a surprise, you're going to
25 hear, when Telly came home. He didn't have his estranged

1 wife with him, he had his girlfriend with him. He didn't
2 have his kids with him, he had her three little girls
3 with him. That turned the stove on, the pot of beans.

4 You're also going to hear about Mr. Irby's
5 house. Mr. Irby lived right off Haynesville Road right
6 here. It's a two-bedroom house. Before Telly got there,
7 you're going to hear, Mr. Irby lived there and his
8 brother Gene lived there, two bedrooms. Two people it
9 fit. You're going to hear when Telly got there, it was
10 Mr. Irby, his brother Gene, there is Telly, there's
11 Michelle, and there is three little girls, squeezed into
12 that two-bedroom house this time of year, in the hot
13 summer. Now, that pot is starting to get that little
14 simmer sound under it.

15 You're going to hear in the next couple weeks
16 as they stayed there that Telly and his girlfriends were
17 having these feuds over Facebook. You're going to hear
18 Mr. Irby -- who has a quiet life with his brother and had
19 this house full of people and his son constantly arguing
20 with his girlfriend. Mr. Irby was tired of listening to
21 it.

22 Now that pot was starting to have a little
23 steam coming out of it. You're also going to hear it
24 that Mr. Irby went from feeding just him and his brother
25 to now he had to feed him and his brother, had to feed

1 Telly, his girlfriend, and three growing little girls.
2 You will hear how the refrigerator kept getting empty.
3 He would buy more bread, come home from getting more
4 groceries, eggs and bacon were gone again. Start to get
5 those little bubbles on the bottom coming up through
6 those beans.

7 You're going to hear Mr. Irby didn't approve
8 of some of Telly's lifestyle. He didn't approve of Telly
9 shacking up with a woman he wasn't married to. I'm not
10 saying he's a bad guy. He goes to church, but he didn't
11 approve with some of Telly's decisions. He didn't like
12 somebody shacking up in his house. He also didn't like
13 that Telly would have a drink in the front yard sometimes
14 and didn't like his neighbors seeing that.

15 That pot, the lid on the top is starting to
16 rattle a little bit as the steam is coming out around it.

17 You're going to hear that the night this
18 happened, after they had been there about two weeks all
19 squeezed in that house in the heat of summer, Mr. Irby
20 came in the yard, Telly, Michelle, Mr. Irby's brother
21 were sitting in the front yard having a drink.

22 Mr. Irby, you're going to hear, put his hands
23 up. He had enough. He couldn't take it anymore. That
24 pot is boiling now.

25 You're going to hear he went inside, those

1 three girls were in the den, watching a movie, his house.
2 He wanted quiet. Told them to get out in the yard. Pot
3 is now still boiling. You're going to hear he went back
4 to the back bedroom, got out a pistol, and you'll get to
5 see the pistol, came back out on the porch while Telly
6 was sitting in the yard until the girls come out and
7 said, What are y'all doing? Get back inside.

8 Telly had walked up to the house, told the
9 girls to go back inside, finish watching the movie, saw
10 his dad coming out the door holding that pistol.

11 You'll hear that Telly saw the pistol and
12 said, you know, Dad, why you got a pistol? Based on --
13 and Mr. Irby just kind of got frustrated with him. Telly
14 went for the pistol, so to protect himself, protect those
15 girls, protect his girlfriend, and you'll hear Mr. Irby,
16 after a short struggle, pulled away, shot that pistol.
17 Dropped Telly right there on the porch. That water is
18 coming out of that pot now.

19 You're going to hear that Michelle Wiggins
20 had run up. He turned to Michelle Wiggins, shot her.
21 Luckily, she didn't die, by the grace of, God but you're
22 going to hear from the doctor in the ER how close she
23 was. That pot is boiling over. Water's on the stove.
24 You can't put it back in.

25 Last thing I want to tell you before I sit

1 down is you're going to hear also in this case that
2 Mr. Irby did this in self-defense. Now, it's our job to
3 prove he didn't do it in self-defense. He did it with
4 malice in his heart. He had had enough. It built up, it
5 built up, it built up, and after a couple weeks, that
6 night was it. He snapped.

7 There are three things I want to ask you to
8 think about when you think about self-defense that we're
9 going to prove in this witness stand: First is that
10 every time you hear evidence of how he shot Telly and how
11 Telly had got the gun in self-defense, I want you to
12 think about Michelle, was shot right after Telly. She
13 had nothing to do with it. She was just standing there.
14 No question. She didn't get in some fight with Mr. Irby.
15 If it's self-defense, why would he have shot Michelle?

16 Secondly: Every time you hear evidence about
17 how big Telly was, how he's a football player, I want you
18 to think about how little Michelle is, because you'll get
19 to meet Michelle. I want you to think about how
20 defenseless she was when she was standing there getting
21 shot, and there is one last piece of evidence that you
22 hear when it comes up and it will be toward the end of
23 the State's case.

24 There will be a statement by Mr. Irby where
25 he says, Telly wasn't going after me. Telly was going

1 after the gun.

2 I thank you for your attention. We'll try to
3 keep this as interesting as we can, and by the end of
4 this trial, you will be convinced beyond a reasonable
5 doubt that the proper verdict in this case is guilty.

6 Thank you.

7 THE COURT: Mr. Shelton?

8 MR. SHELTON: Thank you, Your Honor. May it
9 please the Court:

10 You can't put us out. We're going to move
11 when we're good and ready.

12 Those are the words that Telly said to
13 Johnny. Control. He was losing it. Things were going
14 good. Things were going really well, you'll hear that.
15 You'll hear how Johnny helped him out. You'll hear about
16 how Johnny help set these kids up in school, how he
17 provided a place for them to stay for free, but he's
18 about to lose control.

19 Telly was about to lose control of his home,
20 of his place where he didn't have to pay, and so he
21 needed to take control. He needed to take control of the
22 one person that had what he needed, and that was a place
23 to stay for free.

24 He was trapped. He couldn't go anywhere
25 else. You'll hear testimony about this. He had to stray

1 there, and this person was putting him out, so he needed
2 to take control. You'll hear how he took control. He
3 attacked him. He hit him. He pushed him.

4 So what did Johnny do? Johnny's actions?
5 This is his home; 22 years in the Navy, working for the
6 Coast Guard. He worked for this home. He worked for
7 what he had, his property, that he lived on, his stuff,
8 and he allowed Telly to come stay with them.

9 He allowed the girls to come. He allowed
10 Michelle to come and stay with him. He was justified.
11 He was justified in his actions. That was his home.
12 This was his property.

13 He was attacked. He was confronted. He was
14 justified in every action that he took. I will attempt
15 to show you Johnny did not want this to happen. He had
16 no malicious heart. He was upset. He was devastated.
17 His son, that he raised, helped raise, his son, that he
18 allowed to come from Jacksonville to live with him was
19 now gone. He was devastated. He was in shock.

20 You'll hear he didn't even remember. He
21 didn't even remember that Michelle was shot, because he
22 was in shock about what just happened. He couldn't
23 believe about Telly coming to confront him, Telly
24 attacking him and coming on that porch, and you'll hear
25 evidence about how Telly fought for the gun, grabbed for

1 the gun, and Michelle's actions mirrored those of Telly.
2 She did the same thing.

3 We also intend to show you if Johnny wasn't
4 confronted, if he was left alone in his home to eat the
5 food that he wanted to eat, at that point in time, if he
6 was left alone for a half hour, hour to cool down, none
7 of this would have happened. If Telly wouldn't have
8 confronted him and attacked him, none of this would have
9 happened.

10 Johnny loved and he cared for Telly. He let
11 him come to his home. There is about a month before this
12 incident where he also let him come to his home alone
13 without Michelle. He talked to him. He guided him. He
14 got him back in the church. He got him going on the
15 right path. He was helping him. He loved and cared for
16 him. He didn't want this to happen.

17 Now, you're going to hear some eyewitness
18 testimony. There was Michelle, Michelle's girls, Jean
19 Irby, Johnny's brother, and a guy named Elijah Haynes
20 that was out there. You're going to hear them. They
21 were all there at the same incident, the same night, and
22 their testimony is going to be different.

23 Michelle gave two statements, you'll hear
24 that, one right after the incident, one six days later
25 and they're different, so how can that happen? Well,

1 perception, memory. Memory changes. Memory changes
2 based off what somebody learns about, what they talk
3 about with, and so you'll hear that. That's your job.
4 Your job is to look, listen to that evidence and see what
5 you believe, what the credibility is.

6 You'll also hear from Elijah and Green, the
7 girls; they were all there. There were some neighbors
8 that gave different testimony about shots fired, what
9 they heard. The one thing that doesn't change -- memory
10 can change; memory can fade -- is the physical evidence,
11 and you'll see the physical evidence. There is three
12 shots on the porch. You'll see that.

13 There is two more on the outside. You'll see
14 that. You'll hear that. You'll hear how that all came
15 about. That physical evidence doesn't change. The
16 statements may be different than what that physical
17 evidence shows, but that physical evidence doesn't
18 change.

19 I'm confident that when you hear all that
20 evidence, when you see the evidence, when you compare
21 that to the statements, to what everybody says, Johnny is
22 not guilty, and I'll ask you to find him not guilty of
23 both charges.

24 Thank you.

25 THE COURT: All right. Is the State ready to

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1 call your first witness?

2 MS. WILLIAMS: Yes, Your Honor. Elijah
3 Haynes.

4 ELIJAH HAYNES,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Good morning, Mr. Haynes.

10 A. Good morning.

11 Q. Where do you work?

12 A. I work at Berkeley Ford here in Moncks Corner.

13 Q. And how long have you lived in Moncks Corner?

14 A. Off and on, probably a couple -- two to three
15 years.

16 Q. And where do you live right now?

17 A. [REDACTED] Coaxum Avenue in Holly Hill, and I also have a
18 residence here as well.

19 Q. Is the residence here near Haynesville Road?

20 A. Correct.

21 Q. Do you know Johnny Irby?

22 A. Yes, very well.

23 Q. Would you consider him a friend?

24 A. Yes, I certainly will.

25 Q. And how long have you known Johnny?

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1 A. Maybe two to three years.

2 Q. Do y'all go to the same church?

3 A. Yes. We attend Berkeley Church of Christ.

4 Q. Did you ever go to his home?

5 A. Yes. I visited him on several occasions.

6 Q. How big is his home?

7 A. I guess it's about 1,400, 1,500 square foot.

8 Q. How many bedrooms does it have?

9 A. It has one full bed, and I guess you could call it
10 a makeshift bed, but it's still a bedroom, so two
11 bedrooms.

12 Q. And back in August of 2012, who was living there
13 before his son came back into town? Who was living in
14 that home?

15 A. The defendant, Mr. Irby, and his brother Gene
16 Irby.

17 Q. So two people, two bedrooms?

18 A. Correct.

19 Q. Did you often go over there and visit?

20 A. Yes. I visited him on several occasions.

21 Q. Do you remember when his son Telly Irby came into
22 town?

23 A. Yes, I do.

24 Q. And when was that?

25 A. Probably -- I would have to say maybe within

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1 two-and-a-half, maybe less than three years, since
2 when -- since he came.

3 Q. Okay. Do you remember if he came once or more
4 than once?

5 A. I saw him on two occasions.

6 Q. Okay. And the first time he came back, did he
7 come by himself or with other people?

8 A. Will you repeat?

9 Q. The first time he came, who was he with?

10 A. The first time he came alone.

11 Q. Okay. And at that time, did he attend church?

12 A. Yes. Johnny made sure that he attended church.

13 Q. Was there a time when he recommitted himself to
14 Christ?

15 A. Yes, he did, shortly did.

16 Q. At your church?

17 A. Yes, at our church.

18 Q. How did Johnny feel about that?

19 A. He was elated. He was overjoyed.

20 Q. And the second time he came, who was he with?

21 A. A friend of his, a young lady, female, rather. I
22 think she had three kids.

23 Q. And before Telly Irby's death, about how long, if
24 you know, did they live there?

25 A. I would figure, just guessing, I would probably

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1 say just a month, month and a half or so.

2 Q. During that time, did you go over to the home?

3 A. Yes. Like I said earlier, on several occasions.

4 Q. What kind of things would you do when you went
5 over?

6 A. John and I had a thing about fishing and bragging
7 rights. We would go fishing just a heck of a lot. We
8 would go attend church. We would also play cards too
9 along with Telly and his brother Gene and myself, the
10 four of us.

11 Q. Did you ever play with Michelle?

12 A. She never played. It was always just Johnny, his
13 brother, and myself.

14 Q. During that time were there times when everybody
15 was getting along?

16 A. Well, including myself, we got along quite well.

17 Q. Now, do you -- fast forward a little bit. Do you
18 remember the day of the murder?

19 A. Yes, I did. I do.

20 Q. And what time did you get to the house?

21 A. I left my office probably, maybe 6-ish, and I
22 would figure between 6:15 and 6:40.

23 Q. When you arrived at the home, who was there?

24 A. When I arrived, I stopped at the gate, and they
25 were -- Michelle -- they had a picnic table out, I guess

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1 you could call it a picnic table. Michelle sat there,
2 the deceased sat there, Telly, the defendant, Mr. Irby,
3 and also his brother Gene. The four of them were
4 seated -- well, Mr. Irby stood while the others were
5 seated.

6 Q. And what did you observe about the tone of the
7 conversation when Mr. Irby was there, standing?

8 A. Well, we call it short piece. Like I said, I
9 caught a short piece of it, and they were actually
10 talking. They weren't arguing, but they were just
11 discussing something, and I didn't get too close to them.

12 I walked on up to the table. By the time I got
13 there, Mr. Irby had basically said what he wanted to say,
14 and he left and he went into the house.

15 Q. What did he say?

16 A. He said something that -- How about y'all come on,
17 let's do this better, or something of that nature.

18 It wasn't quite those words, but it was something
19 of that nature. It wasn't a verbal argument or
20 chastising him or anything. He just made a point and he
21 exit stage left, and he left.

22 Q. Where did he go?

23 A. He went straight in his residence.

24 Q. And then what happened?

25 A. Probably maybe minutes, not necessarily no more

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1 than maybe a couple minutes, the kids came out, and, like
2 I said earlier, around the table sat Michelle, sat Gene,
3 and sat Telly.

4 When the kids came out, Telly made a statement
5 that, I told y'all not to come out here. I don't want
6 y'all out here.

7 I don't know why, and I did not ask why, so Telly
8 sort of ushered the kids back into the house, and after
9 ushering them back into the house, then the defendant,
10 Mr. Irby, came and made a statement in terms of -- it may
11 not have been these words, but the connotation is the
12 same. I really want to be in there alone. I don't want
13 to have the noise, or something of that nature.

14 So instead of the kids going in, the kids came
15 back out, and when the kids came back out, then the
16 decedent, Telly, Telly went inside and he got toward the
17 screen door, and they had a confrontation, not
18 necessarily physical, but sort of verbal, and the next
19 thing I heard was bam bam.

20 Q. Okay. And after you heard bam bam, could you see
21 in the screen porch?

22 A. The screen is sort of obscure where you couldn't
23 see directly. Like I said, I was ten to -- maybe ten
24 yards away, but I could not see directly in there because
25 of the way it's configured. I could not see it.

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1 Q. So did you see Telly get shot?

2 A. No. When he was shot -- because I was in the line
3 of fire, like I said, was probably ten to 12 feet away, I
4 exit stage left and I sort of dozed off.

5 Q. And then what happened?

6 A. After Telly got shot, like I said, I moved out of
7 the line of fire. I must have got like 30 yards away
8 from where they were. I noticed that when the gun -- the
9 second shot fired, Michelle got up and she -- I guess, I
10 can't say, but she ran to porch, but I heard Telly said
11 earlier about the gun.

12 And Michelle just ran to the porch. During that
13 time, I was like 30 feet away, and I was adjacent to the
14 screen. I could never see Michelle, nor could I see
15 Johnny or Telly, and when Michelle came back out, she was
16 holding her arm, like carrying it, and started ushering
17 the kids out of the house, safety-wise, but she actually
18 got out herself.

19 And I think the lady next door or somewhere over
20 there saw the kids and corral them and carried them to
21 her place.

22 Q. Where was Michelle when she got shot?

23 A. She was sitting at the table along with Gene,
24 along with Telly, and when she heard the shots, when she
25 heard the shots, she ran up saying, like, You shot my

ELIJAH HAYNES - DIRECT BY MS. WILLIAMS

1 boyfriend, or You shot my fiance, whatever the situation
2 was, but she was actually sitting at the table. She came
3 from the table to the porch.

4 Q. And when she got shot, was she on the porch or on
5 the steps?

6 A. When she got away from the table, she went toward
7 the screen. I don't know whether she was in the house or
8 in the confine of the screen, but she was in the
9 residence.

10 Q. Do you remember testifying you heard her say, No,
11 no, no?

12 A. Would you repeat that, please.

13 Q. When Michelle was -- or before she was shot, at
14 any point in time, did you hear her say anything?

15 A. The only thing I could hear echo was, You shot my
16 boyfriend.

17 That's all I could hear. I did not hear the no,
18 no, no portion of it.

19 Q. Okay.

20 MS. WILLIAMS: I'm going to show defense
21 counsel what's been marked as State's 1 through 6. May I
22 approach?

23 THE COURT: Yes.

24 BY MS. WILLIAMS:

25 Q. Mr. Haynes, if you could, just thumb through these

ELIJAH HAYNES - DIRECT BY MS. WILLIAMS

1 pictures and look at them, and I'm going to ask you a
2 question about them.

3 A. Okay.

4 Q. Do you recognize those?

5 A. Yes, I do.

6 Q. Do those accurately depict what the scene looked
7 like that day at Mr. Irby's house?

8 A. Very much.

9 Q. Okay.

10 MS. WILLIAMS: Your Honor, at this time State
11 would move State's Exhibits 1 through 6 into evidence.

12 MR. SHELTON: No objection, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit Nos. 1-6 were marked for
15 identification and admitted into evidence.)

16 MS. WILLIAMS: May we publish?

17 THE COURT: You may.

18 BY MS. WILLIAMS:

19 Q. At the time of the shooting, was it light or dark?

20 A. It was probably maybe 6:30 or 7:00. The
21 visibility was real good so --

22 Q. So regardless of the time, could you see?

23 A. Correct.

24 Q. If you would mind turning around, and I'm going to
25 give you a pointer and this little red thing, and you can

ELIJAH HAYNES - DIRECT BY MS. WILLIAMS

1 stay seated. Your chair will turn around, but this
2 little red thing here, you can point things out.

3 Now, this picture is when it was dark, and do you
4 see that yellow tape right there in the front?

5 A. I do.

6 Q. Was that there when you were there?

7 A. It came a long way, much, much later.

8 Q. So this picture was taken, would you say, later?

9 A. I would say -- I think I would say much later.

10 Q. Okay. So it's dark in this picture, but if you
11 could show the jury where the table was that you and --
12 that Gene and you -- that you described where you were
13 sitting.

14 A. Approximately here.

15 Q. Okay. And is that umbrella attached to the table?

16 A. Yes.

17 Q. And where is the screened in porch in this --

18 A. Off of here to here to here and to here and all
19 around the corners.

20 Q. Okay. And where were you standing?

21 A. Initially, when I first got there?

22 Q. Yes.

23 A. About right -- the table was here. I was about
24 right here.

25 Q. And when the shooting started, where were you?

ELIJAH HAYNES - DIRECT BY MS. WILLIAMS

1 A. When the shooting started, I was the same place,
2 right here.

3 Q. Okay. Did you ever move closer to the home?

4 A. No, I did not.

5 Q. And where did Gene go, Mr. Irby's brother, when
6 the shooting started?

7 A. When the shooting occurred, I think the second
8 shot -- this is going around the back portion of the
9 house right here, and he was sitting here. Gene went
10 that way, and Michelle, of course, went that way, and
11 myself, I went that way.

12 Q. Okay. So as Michelle walked toward the house or
13 ran toward the house, Gene went around the house?

14 A. Correct.

15 Q. Now, after -- you just testified Michelle was
16 holding her arm and got the kids and left?

17 A. She was sort of carrying it, correct.

18 Q. What happened after that?

19 A. After Michelle finally corralled the kids and got
20 the kids out, the defendant came out and he fired, bam,
21 bam, bam. He fired three shots in the air, and he slowly
22 brought the gun up, and, like I said, I was situated over
23 here.

24 I was probably 30 some odd yards there, and I just
25 kept yelling at him and yelling at him, and he got up and

ELIJAH HAYNES - DIRECT BY MS. WILLIAMS

1 all of a sudden he just dropped the gun, and the officers
2 were Johnny on the spot and they arrested him with no
3 altercations at all.

4 Q. When you say he slowly dropped the gun, could you
5 explain what he was doing with the gun after he held in
6 the air?

7 A. I don't want to sound ugly. I couldn't think for
8 him. The first thing I thought was I hope he didn't do
9 anything to harm himself, and he didn't so, that was
10 okay.

11 Q. Was he bringing it up to his head?

12 A. I don't know. He could have easily wanted to fire
13 again, but whatever, I couldn't really think for him in
14 that case.

15 Q. Did you say anything to him?

16 A. I just yelled. I yelled at him twice, I called
17 his name, and, like I said, I was maybe 30 yards, 25
18 yards away from him.

19 Q. All right. We're going to show you another
20 picture up on the board in a second. Now, what is that a
21 picture of?

22 A. That's the picture of the front entrance,
23 beginning with the scene left to right, and also the off
24 white door.

25 Q. Okay. And is that the door that was on there that

ELIJAH HAYNES - DIRECT BY MS. WILLIAMS

1 night?

2 A. That's the door.

3 Q. Okay. And can you show us State's 3. And this is
4 a picture of the same scene from a difference
5 perspective. Can you just point out what is in that
6 right corner there?

7 A. To my right or -- approximately somewhere in here?

8 Q. I'm actually looking at the table. Just show them
9 where the table is.

10 A. The table is still right here.

11 Q. Okay.

12 A. I don't recall this, but the table is still right
13 here.

14 Q. What don't you recall?

15 A. I don't recall this chair sitting -- it was
16 aftermath, must have been a while later, but I don't
17 recall the chair being there.

18 Q. And would you put up State's 6. And this is a
19 picture -- can you see that door is different than the
20 one that was on there that night?

21 A. It's not the same door.

22 Q. It's another door. But this gives us an idea.
23 Could you kind of point where the table is? This is a
24 picture taken when it was light, light at night.

25 A. The table would be approximately here.

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 Q. Okay. And lastly, Mr. Haynes, when you described
2 the defendant shooting into the air, had Michelle already
3 gone, or where was she?

4 A. She was not in the area anymore.

5 MS. WILLIAMS: Court's indulgence for a
6 moment. Thank you very much.

7 CROSS-EXAMINATION

8 BY MR. SHELTON:

9 Q. Mr. Haynes, how are you?

10 A. Just fine.

11 Q. I'm Chad. I think we talked on the phone, but
12 we've met in person.

13 A. Uh-huh.

14 Q. How long -- you said you had known Johnny for
15 about two or three years?

16 A. Yeah. I've known him quite a while.

17 Q. And how long -- how did you meet Johnny?

18 A. In fact, I met him through his brother Gene. I
19 met Gene first, and shortly after I met Johnny, but I
20 actually met Gene first, which is the brother.

21 Q. Go ahead. Sorry.

22 A. We got close, and we got close and close. He
23 persuaded me to change church, which I did. We fished
24 all the time. We played cards. Like I told your
25 colleague, we played cards all the time, and we just do

1 boy's things together and we enjoy it.

2 Q. And I think at some point in time you mentioned
3 that Telly had come to the house earlier.

4 A. Yes. This was -- I witnessed -- this was a tour.
5 The first time he came, he only stayed for a short while
6 and he left, and the last time he came, of course --

7 Q. And the second time?

8 A. The second time he came with his friend and her
9 children, or their children.

10 Q. Okay. And you had mentioned about Telly being
11 recommitted to Christ and Johnny being overjoyed. Can
12 you explain that?

13 A. Well, Telly sort of back slipped for a while and
14 got away from the church, and Telly was away from church.
15 I'm sure if he was staying in that home for one day or
16 100 days, Johnny is going to make sure he attended
17 church.

18 He was already a member of the Church of Christ,
19 and he got back into going to church and Johnny was
20 elated about it.

21 Q. I think you said he was overjoyed. Was there a
22 reaction? Did you see him react in any way?

23 A. Not necessarily jump up and do cartwheels. You
24 could tell through his voice and constantly that he made
25 mention of it. Just from knowing him, he was overjoyed.

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 Q. And he was proud of him?

2 A. Very much.

3 Q. Now, the night of this incident, your memory is it
4 happened about 6:00, 6:15?

5 A. I would say between 6:00 and 7:00, because I
6 didn't get off before 6:00.

7 Q. Was Johnny there the whole time?

8 A. I don't know what you mean when you say the whole
9 time.

10 Q. When you arrived, was Johnny already there?

11 A. Yes. They were all sitting outside, with the
12 exception of the defendant. Johnny was standing, and I'm
13 pretty sure, when I asked him what occasion they were
14 celebrating, they both had received jobs, and I guess
15 Johnny was actually staying.

16 But as far as the whole time, I think when I was
17 there, Johnny only stood out there maybe a couple of
18 minutes, and that's when he went into the residence.

19 Q. And this whole -- that whole -- from the time that
20 you arrived to the shots being fired, how long do you
21 think that was?

22 A. I would say I stood there for a couple -- two or
23 three minutes and spoke with the others that were sitting
24 out there. Johnny went in the house and stayed a couple
25 minutes, so that was about five minutes. Telly went up

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 and he went to the door, it consumed maybe about a
2 minute, minute and a half. I would say less than four
3 minutes.

4 Q. So you were there a total of four minutes prior to
5 this?

6 A. Prior to the shooting?

7 Q. Yes.

8 A. I would say between -- somewhere between four and
9 ten minutes or something, you know.

10 Q. Okay. And you had mentioned that there were, you
11 said, bam bam, when Telly went to the porch, so there
12 were two shots. Were those quick shots?

13 A. They were -- there were two shots. I don't know
14 how you characterize quick shots, but there were two
15 shots.

16 Q. Okay. And what -- but you didn't see what
17 happened on the porch?

18 A. No. Like I told your colleague, the porch was
19 obscured. If you look -- it's hard to see. I'm eight,
20 nine yards away, and I -- the screen is so obscured you
21 can't actual actually see within the screen, and, of
22 course, the door was there as well too.

23 So I'm pretty sure -- you know, nobody could
24 actually see, not with 100 percent clarity, that they saw
25 Telly shot with the bullets or even predict the speed and

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 time they were fired. I'm pretty sure that can't be
2 possible.

3 Q. And was there a light or anything on the porch?

4 A. No. Like I told your colleague, it was not really
5 dark. You know, it was light enough that you can
6 actually see, if you could see through the obscureness of
7 the screen.

8 Q. Okay. And when Telly was approaching the porch,
9 where was Johnny standing?

10 A. John was standing in the middle of his door.
11 Telly was on the porch when he made the remark about, I
12 don't want the kids out. Johnny stood in the frame
13 confinement of the door. He stood there, and, of course,
14 the screen was here where the microphone was, so he was
15 standing within his door.

16 Q. So the door is the door to the inside of the
17 house?

18 A. Correct, for the portion that I could see through
19 the obscureness of the screen.

20 Q. All right. And explain to me his size. Johnny,
21 he's gained a bunch of weight?

22 A. Simple.

23 Q. And Telly, was he significantly bigger than
24 Johnny?

25 A. Yes, yes. Telly was much larger than Johnny.

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 Telly was maybe 6'2" and a half, maybe 240, 250, high
2 school football player, good indeed, at that.

3 Q. Strong?

4 A. Very much.

5 Q. And Johnny, do you have any idea about how big he
6 was at the time?

7 A. I figure the defendant was probably maybe a buck
8 60, a buck 65, max.

9 Q. So Telly was quite a bit bigger and taller than
10 Johnny?

11 A. Yes. You're talking about Johnny being like 5'10.
12 Telly was like 6'3" or so.

13 Q. And you mentioned that there was some type of
14 confrontation on the porch.

15 A. My recollection is there was a bunch of verbal
16 confrontation.

17 Q. So you couldn't see what was happening on the
18 porch?

19 A. No. You could not see it.

20 Q. So at no point in time did you see Johnny point
21 the gun at Telly?

22 A. No, at no time -- I couldn't say that with 100
23 percent clarity. No, I did not see that.

24 Q. Okay. Then Michelle -- after the first two shots,
25 Michelle runs up to the screen porch?

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 A. Yes. After the second shot, just like any mother,
2 I guess, she thought the kids were in jeopardy, so she
3 actually ran up to the screen. When she ran up to the
4 screen, the only thing I heard her say is, Yo, you shot
5 my boyfriend.

6 And at the time she got there, that's when I saw
7 and went left.

8 Q. Did you hear another shot up on the porch?

9 A. Yes. I heard a third shot on the porch.

10 Q. Did you see what was happening at that point in
11 time?

12 A. No. The angle was worse than what I started with.
13 I was away from it then.

14 Q. And that is just one shot you heard on the porch?

15 A. Two for Telly and one for her, so that's three.

16 Q. And where were the kids at this point in time?

17 A. When Michelle ran up there, the kids were still
18 probably in the house when Michelle ran up there, because
19 the next thing I noticed is she came out with the kids.

20 Q. Okay.

21 A. Yeah.

22 Q. And then Michelle and the kids ran next door?

23 A. Yeah. There was a front door entrance for the
24 screen, and there was also a side. She just corralled me
25 and went to the side, and I think some lady from the

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 other side of the apartment complex saw the kids and
2 carried them over.

3 Q. And so -- but it wasn't till after Michelle and
4 the kids had left that Johnny came out and then fired two
5 shots in the air?

6 A. Correct. There wasn't nobody else around. He
7 just came out and fired the gun, like I said, a couple
8 times.

9 Q. And then that's when you believed he was putting
10 the gun to his head?

11 A. I don't know --

12 Q. Moving the gun up?

13 A. Whether he kept the gun out and when the officers
14 got there he just dropped the gun -- there was no
15 altercation, but as far as putting gun to his head, I
16 can't say that's 100 percent accurate.

17 Q. Did he sit down at any point in time?

18 A. No, he stood. Even when the officers came, he was
19 still standing, but, of course, he had already fired the
20 gun.

21 Q. So when the officer, arrived he was standing up?

22 A. He was standing approximately six, seven yards
23 away from the door, and he just stood.

24 Q. And he didn't attempt to run or anything like
25 that?

ELIJAH HAYNES - CROSS BY MR. SHELTON

1 A. No, no. They just apprehended him with no
2 altercations at all.

3 Q. Okay. And it's your testimony the visibility was
4 really good outside? Was it light outside?

5 A. I thought it was.

6 Q. Could you tell if Telly had been drinking?

7 A. Like I said, I didn't get near to Telly or
8 Michelle. Even when Mr. Irby walked back to his
9 residence, he walk normal, the same old crazy walk, did
10 the same things he always did. There was no weaving and
11 bobbing, and I didn't smell alcohol on his breath.

12 Q. Okay. You didn't provide any statements or
13 anything to the police the night of this incident,
14 correct?

15 A. No, I didn't.

16 Q. Were you approached at any point in time?

17 A. I was asked by one of the county officers, young
18 lady, and she said, I'll get back with you, and before
19 that -- I stayed there until -- probably the last thing I
20 did was, I think, I went and got the kids pizza, and it
21 was really, really, really late.

22 There were three other people there from the
23 television station, and they jumped on the television
24 station. Whatever they had, they were there, but they
25 weren't there, and she never came back with me.

ELIJAH HAYNES - REDIRECT BY MS. WILLIAMS

1 Q. No one asked you to write a statement or anything?

2 A. Never did.

3 MR. SHELTON: No further questions.

4 THE COURT: Redirect?

5 MS. WILLIAMS: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. How many shots while he was on the porch did he
9 fire?

10 A. One, two, three.

11 Q. How many shots did he fire when he left the porch?

12 A. One, two -- one, two -- I want to say three also.
13 I want to say six was the total, but it could easily have
14 been five.

15 Q. Three of which, after Michelle had left?

16 A. Correct.

17 Q. And Mr. Shelton asked you a little bit about Telly
18 and the church. Before this tension that night, what
19 other things were going on with Telly and the church and
20 the defendant and the tension?

21 A. Well, I don't know if tension is a good word --
22 well, I guess tension is a good word.

23 In our church, we live around a lot of other
24 elders, and Johnny's residence was sitting right near and
25 a lot of them passed all the time. And, like I said,

1 Johnny was a stickler about sitting outside and drinking.
2 It wasn't a good show for the public when we were trying
3 to get closer to God, and, you know, there were a couple
4 of conversations concerning that, but I don't know if
5 they were tensional conversation, but there were
6 conversations about that?

7 Q. Before that night?

8 A. Before that night.

9 Q. What about the situation with Telly and Michelle
10 living together and not being married? Was there an
11 incident that occurred the night before, two nights
12 before, regarding that that you're aware of?

13 A. I'm aware of somewhat. I think the elder of the
14 church sort of made mention of it, but as far as using
15 the word tension, it was just a conversation saying that
16 it didn't look good, so I don't know if tension -- I'm
17 pretty sure Johnny didn't have tension -- I don't know if
18 tension was there or not, but the conversation was
19 brought up, We need to straighten up and not do it this
20 way. The alcoholic beverages outside, we need to do that
21 as well.

22 Q. So who approached Johnny about the living together
23 and not being married and the drinking?

24 A. I want to think that one of the elders in the
25 church brought it up, but don't quote me there 100

ELIJAH HAYNES - REDIRECT BY MS. WILLIAMS

1 percent, but I'm pretty sure someone brought it up in the
2 church, whether it was the elder or whether it was just
3 an ordinary church member brought that up.

4 Q. Before that night?

5 A. Before that night.

6 Q. Would you put 6 up again?

7 If you could just turn around and look at that
8 picture, from the time Mr. Irby walked up to the porch to
9 the table did you have a clear view of him?

10 A. Yes, I did, all the way to the house.

11 Q. Did you have a clear view of Telly Irby during
12 that period of time?

13 A. Yes. I had a clear view of him as well.

14 Q. Did Telly Irby follow him?

15 A. No. Johnny was there first, and then after --
16 like I said earlier, as I stated, the kids came out, and
17 Telly didn't want the kids out, so Telly ordered the kids
18 to go back inside. When the kids went back inside, Telly
19 came back to the table and we sat down. I'm pretty sure
20 they were still talking. And then all of a sudden Telly
21 went -- that's where the defendant said that, I want the
22 kids outside. I need peace and quiet.

23 So the kids came out, and that's when Telly
24 proceeded up to the door.

25 Q. When the kids came out?

ELIJAH HAYNES - RECROSS BY MR. SHELTON

1 A. Correct.

2 Q. After the defendant had sent them out?

3 A. Correct.

4 Q. So when Mr. Irby walked back in the house, was
5 Telly Irby still seated at the table?

6 A. Yes. When he walked back in the house, Telly was
7 still sitting at the table.

8 Q. Was there any physical confrontation between Telly
9 Irby and Johnny Irby before he walked in the house that
10 you saw?

11 A. Before the defendant did --

12 Q. Before Johnny walked in the house, correct.

13 A. No. They were just verbalizing each other, no
14 physical confrontation, nothing physical at all.

15 Q. You didn't see Telly hit his dad? You didn't see
16 Johnny hit his son?

17 A. No. At no time I saw that.

18 Q. And he walked in the house, and Mr. Irby was still
19 seated at the table?

20 A. Telly was still seated at the table, and Mr. Irby
21 walked in the house.

22 MS. WILLIAMS: Thank you very much.

23 RECROSS-EXAMINATION

24 BY MR. SHELTON:

25 Q. The solicitor mentioned tension and whether there

ELIJAH HAYNES - RECROSS BY MR. SHELTON

1 was tension. Did Johnny talk about the kids being there
2 and being excited?

3 A. Johnny was a strange guy. Johnny was sort of
4 like -- a nice guy. You know, I'm pretty sure his
5 prison -- the stuff he's doing in prison now sort of
6 makes him a nice guy.

7 He's a good church brother to go to, and I never
8 heard him say anything about the kids. He accepted those
9 kids and thought those were his kids along with Telly.

10 Q. Did he talk about them starting school and
11 Michelle getting a couple jobs?

12 A. Yes. He was proud of Michelle, getting the two
13 jobs, and she also got the kids situated for school for
14 the coming year.

15 Q. Okay. Did he talk about how it was nice to have
16 somebody cooking dinner and life in the house?

17 A. The cooking part and the life part in the house --
18 he could cook. You know, he cleans himself, so no, we
19 didn't talk about that at all.

20 Q. Okay. Okay. When you mentioned Telly ordered the
21 kids back inside, you use the word order. Can you
22 explain that.

23 A. Well, when I use order, I'm just basically talking
24 about a tone of voice, like, Y'all go back inside. So
25 that's the tone of voice.

1 Q. So it came out in that tone that you just used?

2 A. Maybe a tad bit harsher, but yeah.

3 Q. So he was a little upset about them coming
4 outside?

5 A. Yes.

6 Q. Okay. Okay.

7 THE COURT: We'll take our morning break.
8 We'll take about ten or fifteen minutes to use the rest
9 room.

10 When you go back, don't talk about the case
11 with each other. Please don't talk about witness
12 demeanor or comment on the case at all in any way while
13 you're on these breaks. You can talk to each other about
14 anything else in the world, but not about the case as we
15 progress along.

16 All right? I'll see you back in 15 minutes.

17 (Recess taken.)

18 MS. WILLIAMS: We would ask you to review a
19 case. I am concerned about defense counsel asking about
20 self-serving statements from several witnesses, and it's
21 our position that gives the defendant an ability to get
22 his statement in that helps him --

23 THE COURT: Specifically what kind of
24 statements are we talking about?

25 MS. WILLIAMS: They're self-serving. They're

1 basically giving his side of the story about how he was
2 just defending himself and how he didn't commit murder of
3 two people, and our position, and I pulled the case,
4 State v. Terry is it doesn't fall within any exception
5 because the exception that Mr. Shelton brought up is if a
6 witness is unavailable and the other exception is a party
7 opponent, and he's not a party opponent.

8 THE COURT: Well, it's got to be against him
9 in order to come in as hearsay, so if it is self-serving,
10 it wouldn't come in.

11 MS. WILLIAMS: That's what we're asking him,
12 to not ask questions about self-serving statements, and
13 that's what he thinks he can get in, so that's why I
14 pulled State v. Terry, and I made a copy for Mr. Shelton.

15 THE COURT: Okay. That's the general rule,
16 but I'm sure that's probably what this says.

17 MS. WILLIAMS: There is no exception that a
18 self-serving statement -- if a client wants to testify
19 and be subject to cross-examination, then that's fine,
20 but if he asks the officer questions about self-serving
21 statements and then we object, it looks like we're trying
22 to hide something, so that's why we request asking him --
23 he knows it doesn't come in.

24 It's hearsay. It doesn't fall under any
25 exception. We are just asking that he not ask questions

1 about self-serving statements.

2 THE COURT: Well, if -- again, I don't
3 remember the specifics about what the particular officer
4 was talking about yet, but if you come in and ask an
5 officer about a statement, you call him up and ask him
6 about a statement, under the rule of completeness, he
7 gets to ask what he all he said.

8 MS. WILLIAMS: We absolutely agree, and under
9 Lieutenant Roach, the whole statement is going to come
10 in, but this is a different officer and all he did was
11 GSR. We're not going to ask him about any statement.

12 THE COURT: Okay. If Norvell, or whatever
13 his name is, is not testifying about a statement on
14 direct, then there is nothing to do -- there is no reason
15 to ask him about statements on cross. Under the rules of
16 completeness, if he brought it up -- if they brought it
17 up on direct, a statement that the defendant made to
18 them, then you would be entitled to bring in the rest of
19 the statement, but if he's just testifying about GSR,
20 then they didn't bring it in, so it would be self-serving
21 at that point.

22 MR. SHELTON: Would it be his present sense
23 impression about what just occurred?

24 THE COURT: I don't know, but I seriously
25 doubt it, based on the time frame. Present sense

1 impression is describing what you saw at the time, if
2 cited well, a little bit of time after that, but if
3 you're talking about a statement made hours later --

4 MS. WILLIAMS: Two hours later.

5 THE COURT: -- it's probably not going to
6 come in.

7 MR. SHELTON: But it was without questioning.
8 He just uttered it. He just talked about what had
9 occurred. It was without questioning from the officer.

10 THE COURT: Yeah, but, again, present sense
11 impression is when somebody is observing the event and
12 makes spontaneous statements about what is going on then,
13 not making spontaneous statements describing what
14 happened two or three hours later.

15 MR. SHELTON: Then I would change that to
16 excited utterance. He was still under the impression of
17 what occurred. He was still under -- they're doing the
18 gunshot residue, which involved him shooting the -- his
19 son, and so he was under that excitement of what had just
20 occurred. It was --

21 THE COURT: Well, there's a difference
22 between adrenaline and, you know, excited utterance. You
23 got one case that says, oh, 12 hours later a child made
24 it, and it's an excited utterance. That's what they
25 said.

WILBUR ROBINSON - DIRECT BY MS. WILLIAMS

1 I take a little bit more of a restrained view
2 on the time frame, especially when you're talking about
3 an adult, because at that time you've had time to start
4 thinking about a story to tell, and it's highly unlikely
5 that I'm going to allow it under excited utterance,
6 something that he said two hours later.

7 And that works both ways. I wouldn't let
8 them probably say, well, I'm again -- then you're talking
9 about a different rule. It's a statement against
10 interest, so -- but the answer to that is probably not,
11 but before you go there on a witness and you want to
12 revisit it because of something that he said during
13 direct, let's have a sidebar on it. Okay?

14 All right. State ready to call your next
15 witness?

16 MS. WILLIAMS: Yes, Your Honor. Wilbur
17 Robinson.

18 WILBUR ROBINSON,
19 having been first duly sworn,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Mr. Robinson, where do you live?

24 A. I live at [REDACTED] Haynesville Road, Apartment [REDACTED].

25 Q. And who is your next door neighbor, or was your

WILBUR ROBINSON - DIRECT BY MS. WILLIAMS

1 next door neighbor?

2 A. Mr. Johnny and Gene Irby.

3 Q. And is he a friend of yours?

4 A. Yes.

5 Q. Were you living there on August 16, 2012?

6 A. Yes.

7 Q. And on that date, did you call 911?

8 A. Yes.

9 MS. WILLIAMS: Your Honor, at this time I'm
10 going to show defense counsel what is marked as State's
11 55. May I approach?

12 THE COURT: You may.

13 BY MS. WILLIAMS:

14 Q. I ask you to look at that cassette and tell us
15 what that is.

16 A. That's a CD of the 911 call.

17 Q. How do you know that?

18 A. Because I initialed, listened to it and initialed.

19 Q. Is it the call that you made?

20 A. Yes.

21 Q. From beginning to end?

22 A. Yes.

23 MS. WILLIAMS: At this time, we would offer
24 State's 55 into evidence.

25 MR. SHELTON: No objection.

WILBUR ROBINSON - CROSS BY MR. SHELTON

1 THE COURT: Admitted. You can play it.

2 (State's Exhibit No. 55 was marked for
3 identification and admitted into evidence.)

4 MS. WILLIAMS: And we are offering track
5 five, which is the only call that Mr. Robinson is on.

6 MR. SHELTON: Your Honor, could we approach?

7 (Discussion held at sidebar.)

8 (Whereupon, the 911 call was played for the
9 jury.)

10 BY MS. WILLIAMS:

11 Q. Mr. Robinson, you describe on that tape seeing
12 your neighbor, and you heard him still shooting, and when
13 he was still shooting, was Michelle at your house?

14 A. Yes.

15 Q. And when you were describing his clothing, where
16 was the defendant standing?

17 A. He was standing in his front yard on his walkway.

18 Q. And when you had Ms. Wiggins in your home, could
19 you see -- could you see any wounds that you saw?

20 A. There was a blood spot on her chest.

21 MS. WILLIAMS: Thank you. No further
22 questions.

23 CROSS-EXAMINATION

24 BY MR. SHELTON:

25 Q. Mr. Robinson, do you know what time this was?

WILBUR ROBINSON - CROSS BY MR. SHELTON

1 A. Around 6:30, 7:00, somewhere around there.

2 Q. And it was light out?

3 A. Yes.

4 Q. Okay. So you were able to see. I think you wrote
5 a statement, correct?

6 A. Yes.

7 Q. And you went to the bathroom window?

8 A. Correct.

9 Q. And that's when you saw Mr. Johnny shooting in the
10 air?

11 A. No. That's when I saw the -- Ms. Wiggins and the
12 two girls.

13 Q. Okay. So did you actually see Mr. Johnny shooting
14 the gun in the air?

15 A. No. I never saw a gun, I just heard the shots.

16 Q. Okay. So you never saw a gun?

17 A. No.

18 Q. At some point in time after those two shots, did
19 you see Mr. Johnny sitting in the chair?

20 A. Yes.

21 Q. Okay. And he didn't resist or anything with
22 police?

23 A. No.

24 Q. Okay. Do you remember prior to making this
25 written statement talking to the police?

WILBUR ROBINSON - REDIRECT BY MS. WILLIAMS

1 A. No.

2 Q. Okay. You don't remember telling the police
3 officer there was five shots total?

4 A. I don't recall.

5 Q. Okay.

6 MR. SHELTON: No further questions.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MS. WILLIAMS:

10 Q. Mr. Robinson, do you remember in your statement
11 saying you heard two more shots and then saw Mr. Johnny
12 in the yard with a gun in his hand and then he shot the
13 gun and then threw the gun down?

14 A. No, I don't --

15 Q. Would it refresh your memory --

16 A. I don't remember seeing him with a gun in his
17 hand. I remember the two shots, and he was sitting in
18 the chair.

19 Q. Would it refresh your memory to look at your
20 statement?

21 A. Yes.

22 MS. WILLIAMS: May I approach, Your Honor?

23 THE COURT: You may.

24 THE WITNESS: Okay. This is when I came
25 outside. He was standing in the front yard, and he shot

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 twice, threw the gun, and sat down.

2 MS. WILLIAMS: Thank you.

3 THE COURT: Recross?

4 MR. SHELTON: No further questions.

5 THE COURT: You may step down. Thank you.

6 Next witness?

7 MS. WILLIAMS: State calls Samir Fakhry.

8 SAMIR FAKHRY,

9 having been first duly sworn,

10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Where do you work?

14 A. At the Medical University of South Carolina.

15 Q. And how long have you worked there?

16 A. Five years, seven months, and 23 days.

17 Q. Are you a licensed physician?

18 A. Yes, I am.

19 Q. And surgeon?

20 A. Yes, I am.

21 Q. Where are you licensed?

22 A. Currently in the State of South Carolina, State of
23 Virginia, and the State of North Carolina.

24 Q. And how long have you been licensed in your
25 profession?

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 A. Fully licensed is since 1988.

2 Q. Do you specialize in a particular branch of
3 medicine?

4 A. I was trained as a general surgeon, and my
5 specialty training is trauma and critical care.

6 Q. Are you currently practicing at MUSC within that
7 specialty?

8 A. Yes, ma'am.

9 Q. Are you faculty in addition to practicing
10 physician?

11 A. Yes, I am.

12 Q. And where have you been employed before?

13 A. Prior to coming to Charleston, I was at Fairfax
14 Hospital in northern Virginia, Washington, DC. Prior to
15 that, I was at UNC, and previously at George Washington
16 Hospital in District of Columbia.

17 Q. Could you tell the jury a little bit about your
18 educational background and training.

19 A. Sure. I attended medical school at the medical
20 university in Beirut, and then I trained in general
21 surgery, what's called surgical residency at UNC Chapel
22 Hill. For five years I did a fellowship in trauma and
23 surgical critical care at UNC Chapel Hill.

24 Q. Are you certified in special areas?

25 A. Surgical critical care and trauma would be the

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 subspecialty training.

2 Q. What is required for those certifications?

3 A. Experience in that area as well as at least one
4 year of fellowship training in surgical critical care
5 trauma.

6 MS. WILLIAMS: At this time, the State would
7 move Dr. Fakhry to be qualified as an expert in the field
8 of general surgery and trauma and surgical critical care.

9 THE COURT: Any objection, or do you wish to
10 voir dire?

11 MR. SHELTON: No objection, Your Honor.

12 THE COURT: Remember earlier I was telling
13 you about witnesses, and they, generally speaking, come
14 in and tell you what they saw, they touched, they felt,
15 they smelt, that sort of thing. We don't normally let
16 people come in and give us their opinion about evidence.
17 They just tell us what they observe.

18 The law says, though, that when somebody,
19 because of experience or training or education in a field
20 rises to the level of expertise in that field, we allow
21 them to come in and testify as an expert. As an expert,
22 they are allowed to tell us not only about their
23 observations; that is, what they saw, touch, felt, smelt,
24 that sort of thing, but they can then also give you their
25 opinion about that evidence and what the basis for their

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 opinion is.

2 This witness has now been qualified as an
3 expert in the field of general surgery and trauma
4 treatment, and he is able to give you his observations,
5 what he did, but he's also going to be able to give you
6 his opinion about certain aspects of his testimony and
7 give you the basis for that.

8 The fact that he's qualified as an expert
9 doesn't mean you are qualified to believe everything he
10 says or give great weight to it, greater than any other
11 witnesses or any other testimony or any other evidence
12 that you've hear or seen throughout the trial.

13 You decide how much weight to give to this
14 testimony based on all the evidence you hear throughout
15 the trial. All right? You may continue.

16 BY MS. WILLIAMS:

17 Q. Thank you, Your Honor.

18 Did you treat a patient in August of 2012 named
19 Michelle Wiggins?

20 A. Yes, I did.

21 Q. How old was she at the time, do you remember?

22 A. I don't remember exactly because when patients
23 arrive, typically, in our trauma unit, we can estimate
24 their ages, but we don't usually get correct information
25 until later, and I believe she was around 30, but I could

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 be off.

2 Q. Okay. And why was she there?

3 A. We received information that said she was shot in
4 the chest.

5 Q. And what symptoms did she exhibit?

6 A. She was obviously -- complaining of pain would be
7 primary symptom; being short of breath is also common.

8 Q. And at some point during your treatment, did you
9 identify an entrance wound for the gunshot?

10 A. We identified two wounds, one anteriorly, which is
11 the front, and one posteriorly, which is on the left side
12 of the chest. We assumed that the front one was the
13 entrance and the back one was the exit, but it's -- since
14 I wasn't there, I couldn't be 100 percent sure, but
15 judging from the size of the holes and the trajectory and
16 the patient's report, we, generally speaking, make an
17 assumption. One is entry and one is exit.

18 Q. And were tests and X-rays and other types of lab
19 work done on the patient?

20 A. Yes, ma'am, they were.

21 Q. And what did they indicate?

22 A. The X-ray showed that the patient had sustained a
23 penetrating wound that passed through the left side of
24 the chest and had injured the lung and created what's
25 called a pneumothorax, or hemopneumothorax, which means

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 the lung had been punctured and leaked air and blood into
2 the chest cavity.

3 Q. I'm going to show defense counsel what has
4 previously been marked State's 40 and 41. May I
5 approach?

6 If you could just look at these and tell us
7 if you recognize them.

8 A. These appear to be the X-rays of the patient that
9 we had taken before and after the X-rays were taken.

10 Q. And do those accurately reflect or depict the way
11 that they looked at that time when you examined her and
12 worked on her in August of 2012?

13 A. Yes, I believe they do.

14 MS. WILLIAMS: Your Honor, at this time we
15 would offer State's 40 and 41.

16 MR. SHELTON: No objection.

17 THE COURT: Admitted.

18 (State's Exhibit Nos. 40 and 41 were marked
19 for identification and admitted into evidence.)

20 BY MS. WILLIAMS:

21 Q. Can you publish 40, please? We're going to show
22 you one of those X-rays on the screen behind you, and
23 this is a pointer. If you could kind of explain what the
24 condition was that you just said, the thora --
25 thoracotomy?

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 A. Hemopneumothorax. Would you mind if I asked you
2 for the other picture first?

3 Q. Sure. 41.

4 A. Thank you. This is an X-ray image where the
5 patient is standing up facing us. This would be the
6 patient's right side and the left side. This is the
7 spine down the middle. The heart is located right there.
8 These are the patients ribs, and on an X-ray, the denser
9 the object, the more white it looks, so the bones look
10 whiter whereas air looks nearly black.

11 And so over here you see what a normal lung would
12 look like with the ribs, which are bones showing up as
13 whitish, and the lung, which is basically a million
14 little balloons that are inflated and hang together like
15 grapes. So you would look over here, you could see the
16 lung inside the rib cage.

17 Over on this side, however, you can tell that
18 there is a difference in the coloring, and that's because
19 there has been an injury and some bleeding, probably.
20 There is also air over here, which is all this black
21 material, which doesn't exist over on this side, and this
22 is air that has leaked out from the lung and is -- it's
23 hiding between the lung and the rib cage, but it's also
24 made its way outside of the rib cage, so this is -- the
25 technical term for that is subcutaneous emphysema, but it

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 means air in the tissues.

2 You can also see that there is something different
3 over here than there is here, and this is blood and
4 bruising of the lung where the bullet or the projectile
5 or whatever it may have been passed through.

6 Q. And when someone has a collapsed lung, what
7 actually happens to their lung?

8 A. Probably the easiest way to imagine that is if you
9 can imagine a glass jar as the rib cage. So the rib cage
10 is like a glass jar. If you put a balloon inside it,
11 that's the lung.

12 Normally, when we breathe, we inflate the balloon
13 inside the lung and deflate it and inflate it. When you
14 have an entry to the lung, which is really not one
15 balloon, but probably a million balloons, you create a
16 hole, and air leaks out between the balloon and the jar.

17 And in here, you can't really see it very well,
18 but there is air between the rib cage and the lung, and
19 that air is going to push the lung down, and if the air
20 has leaked sufficient amount, it will push the lung way
21 down and cause, you know, progressively more serious
22 problems.

23 In this case, much of the air has leaked out into
24 the tissues because there is a hole that's allowing air
25 to leak out from inside the jar out through the hole in

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 the jar, and it's lodging underneath the skin, so some of
2 the air has leaked out. Some of it is still sitting in
3 here, and it's pushing on the lung.

4 Q. And so what is the remedy for that, is that --
5 which you're saying a thoracostomy?

6 A. Yes. The technical term is thoracostomy. The
7 term that slips more easily off the tongue is a chest
8 tube, and if you show the other film, in this image --
9 once again, this is the patient's right side, which is
10 always marked. This is the patient's left side. The
11 heart is right there.

12 You can see the heart much more clearly right now,
13 and you can also see the lung field on the right which is
14 the normal one. It's now looking more -- the left side
15 is looking more like the right side, and the reason for
16 that is we have introduced this tube, which you see right
17 there between the ribs.

18 We make an incision in the skin and we pass a
19 tube. This tube will evacuate blood and air through the
20 hole of the tip and a hole right here, and this comes out
21 into a system that includes what's called a water seal,
22 which allows the air to bubble out and be suctioned out.

23 So what we're doing is removing the air that is
24 hiding between the lung and chest wall, or between the
25 balloon and the jar, and we're taking the blood out as

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 well.

2 The air in the skin, you'll see over here, will
3 stay there for several days, and gradually the body will
4 reabsorb that, but the main difference, you can see that
5 we've removed something because all of a sudden you can
6 see the edge of the heart more clearly.

7 The lung is much less clouded, and now you can see
8 the stomach. This is -- the diaphragm is this object
9 here, which is a muscle that separates the chest from the
10 abdomen, and under it is the stomach, which in this case
11 is full of air, so it's easy to see.

12 In the previous X-ray, you couldn't see that area
13 because there was blood and the air mixed in with it that
14 was keeping us from seeing this area. Once we put the
15 tube in, when you drain the air and the blood, things
16 start to look more normal.

17 And by evacuating the air, we allow the lung to
18 inflate and fill it -- thinking about a balloon, the air
19 inflates to fill the jar completely, and that allows the
20 lung to heal up and we will gradually then remove the
21 tube and that patient will have things back to a
22 situation where there is no longer air and blood trapped
23 in there and will slowly heal over a period of time.

24 Q. Besides the collapsed lung, what other injuries
25 did she suffer?

SAMIR FAKHRY - DIRECT BY MS. WILLIAMS

1 A. There is -- I don't know if you can see it. There
2 is probably some broken ribs. As the bullet passes
3 through, the projectile passes through, it usually
4 fractures some ribs on the way in. It injures the lung,
5 so there is a hole with bleeding and bruising in the lung
6 itself, and --

7 Q. And acute blood loss or anemia?

8 A. Right. So that means that when you lose blood --
9 what we do is we do a test. We measure how much blood
10 there is left in your system, and if we think you've lost
11 more than a small, insignificant amount, we call that
12 anemia, and that says you've bled a certain amount.

13 Q. And, Doctor, in your expert opinion, how close did
14 she come to this being a fatal injury if the bullet were
15 in a slightly different place?

16 A. So I would say all penetrating -- all gunshot
17 wounds or all high velocity wounds to the chest or
18 abdomen, they are serious wounds and carry a high rate of
19 mortality.

20 In this particular case, the wound was in this
21 area. You can see the heart is right there, so I would
22 say -- any time we talk about something, we call it the
23 box. The box is this area right there, which I'm
24 outlining, so the box includes all the large structures
25 in the chest that have a tendency to bleed a lot.

SAMIR FAKHRY - CROSS BY MR. SHELTON

1 The heart would, of course, be one of them; the
2 big blood vessels coming out of the heart and coming into
3 the heart, the big blood vessels that take blood to the
4 lung to get oxygen, all of these are in this box, so any
5 wound to the box is potentially fatal.

6 And, of course, the closer are you to the box, the
7 more dangerous it is, so the wound was just a few
8 centimeters away from the heart. So that -- again, like
9 all chest wounds, any time someone is shot in the chest
10 or abdomen, there is a very high possibility they will
11 die. It's just a matter of where the bullet ends up
12 going.

13 Q. So she got lucky?

14 A. Yes, ma'am. Well, considering that she was shot
15 in the chest, I wouldn't say that was lucky, but it could
16 have been substantially worse by just a small change in
17 the projectile's trajectory.

18 MS. WILLIAMS: Thank you, Doctor. No further
19 questions at this time.

20 THE COURT: Cross?

21 MR. SHELTON: Yes.

22 CROSS-EXAMINATION

23 BY MR. SHELTON:

24 Q. Doctor, you -- your specialty is trauma, did you
25 say?

SAMIR FAKHRY - CROSS BY MR. SHELTON

1 A. My subspecialty is trauma, yes.

2 Q. And so there's no forensic training or anything
3 that's associated with that.

4 A. If you state it as an absolute, I will disagree,
5 but no, I am not a forensic expert, but I think I have
6 seen and been exposed, as the judge mentioned, enough to
7 be able to talk semi-intelligently about it, but I have
8 not been formally trained or certified as an expert in
9 forensics.

10 Q. And in this instance, your main job was to help
11 Ms. Wiggins and to make sure that she gets whatever care
12 necessary?

13 A. You're correct.

14 Q. Okay. So there is no forensics or anything done
15 on your end, as far as Ms. Williams?

16 A. I'm sorry, if you mean by forensics that -- I
17 apologize. I don't understand what you mean by
18 forensics.

19 Q. So your expert opinion and what you did in this
20 case was to involve the trauma and making sure that the
21 bleeding stopped and that she would heal.

22 A. Yes, and it was -- may I clarify something that
23 would explain to you why I'm acting confused?

24 I'm trying to determine whether you want me to say
25 that I don't have an opinion about how dangerous this

SAMIR FAKHRY - CROSS BY MR. SHELTON

1 was. Part of my job is to determine whether the patient
2 needs to go to the operating room right away, and so part
3 of my decision-making has to include if this person
4 continues to bleed, and is this injury in a location that
5 can cause life-threatening bleeding, so that's probably
6 not what you mean by forensics.

7 In sort of my different way of thinking, perhaps I
8 think of it as related to that, so forgive me for making
9 this confusing.

10 Q. I'm sorry. I'm probably not asking the right
11 questions.

12 You said that there was some assumptions you make
13 as far as history, because she provides the history or
14 police provide history for you as to what occurred.

15 A. Absolutely correct.

16 Q. So you're not making any judgments, or you're not
17 making anything, as to what actually occurred?

18 A. Absolutely not. Absolutely correct. We typically
19 get stories that are not correct, and we don't rely
20 tremendously in our treatment decisions on the story. We
21 just know there was a shooting involved and we see
22 evidence of that.

23 There was serious injury sustained. We see
24 evidence of that, but as far as details, I wouldn't be
25 able to give you any firm information about any of that.

SAMIR FAKHRY - CROSS BY MR. SHELTON

1 Q. Okay. And part of your treatment of Ms. Wiggins,
2 there was some tests that were run, specifically blood
3 alcohol?

4 A. We -- every patient that comes in that has a level
5 one trauma observation gets a battery of tests that
6 include blood tests, X-rays, and some other things so
7 yes, she would have had that alcohol done.

8 Q. Do you remember what the blood alcohol was on Ms.
9 Wiggins?

10 A. Not exactly, but I'm sure if you have it I could
11 confirm it.

12 Q. Would it be helpful to see that?

13 A. Yes. We do over 2,200 patients a year, and I'm
14 not as young as I used to be.

15 Q. Absolutely.

16 A. Thank you. It's 20 milligrams per liter.

17 Q. So do you know what that means as far as what we
18 usually hear, blood alcohol level?

19 A. Right. So this would be a little over twice the
20 legal limit to drink, for example.

21 Q. And so that's what her blood alcohol level was
22 that --

23 A. I'm sorry this is 22 -- so this is -- yes, it is.
24 So that is the equivalent of .22, is what most people
25 call it.

SAMIR FAKHRY - CROSS BY MR. SHELTON

1 Q. There is also paperwork that is filled out, trauma
2 resuscitation sheet?

3 A. Yes, sir.

4 Q. Are you familiar with that?

5 A. Yes. That is how we take notes and write down
6 information as we accumulate it.

7 Q. Okay. Would it be helpful to see that if I'm
8 going to ask questions?

9 A. Yes.

10 Q. What time does it say that the call went out and
11 what time did she arrive?

12 A. So the documented time of call received was 2040.

13 Q. So that would be 8:40 in the evening?

14 A. Yeah.

15 Q. And she arrived at the --

16 A. 2110.

17 Q. I think it's the second page on that. Was there a
18 note about hands being bagged?

19 A. That's correct. Her hands were bagged at 2130.

20 Q. So that's about 20 minutes after she arrived?

21 A. Correct.

22 Q. Do you have any idea about what that's about?

23 A. Whenever anyone is involved in a situation that
24 may involve discharge of a weapon, once we get the
25 patients stabilized, we try to protect any evidence, and

SAMIR FAKHRY - CROSS BY MR. SHELTON

1 one of the pieces that could be useful is gun residue.

2 So we bag someone's hands with the idea that if
3 they've shot themselves or shot somebody else, there
4 would be gun residue on your hands, and you would like to
5 preserve that, and the most practical way of doing that
6 is to put a bag over their hands.

7 Q. And so it was about 20 minutes after she arrived
8 and was stable.

9 A. You're correct.

10 Q. Okay.

11 MR. SHELTON: No further questions.

12 THE COURT: Redirect?

13 MS. WILLIAMS: No, Your Honor. May he be
14 excused?

15 THE COURT: Do you have any need for him
16 again?

17 MR. SHELTON: No.

18 THE COURT: You're free to go. Thank you.

19 Do you have another witness you want to call
20 before we break for lunch, or would it be long? You got
21 a short one?

22 MS. WILLIAMS: May we approach?

23 THE COURT: Yeah.

24 (Discussion held at sidebar.)

25 THE COURT: We're going to break for lunch

1 right now. It's almost 12:00. If y'all would be back in
2 the jury room by 1:30, we'll begin at 1:30. You can go
3 to lunch anywhere you want with whoever you want, but
4 please don't talk to anybody about the case, including
5 other members of the jury panel.

6 If anyone does approach you about the case,
7 please report that to me when you get back. Again, as I
8 said yesterday, please don't try to go find out anything
9 about the case on the Internet. Don't go visiting the
10 crime scene. Please don't use social media and talk
11 about the case or your jury experience during it. You
12 can afterwards all you want, but during the trial, please
13 don't do any kind of social media, tweeting or whatever
14 or Facebook or anything like that.

15 All right? We'll see you back at 1:30.

16 Thank you.

17 (Recess taken.)

18 A F T E R N O O N S E S S I O N

19 THE COURT: Let the record reflect the
20 defendant is in the courtroom.

21 (In open court, jury present.)

22 THE COURT: Okay, folks. Welcome back. We
23 will resume with the State calling the next witness.

24 MR. OZMENT: The State would call Michael
25 Auclair to the stand.

MICHAEL AUCLAIR - DIRECT BY MR. OZMENT

1

2

MICHAEL AUCLAIR,

3

having been first duly sworn,

4

was examined and testified as follows:

5

DIRECT EXAMINATION

6

BY MR. OZMENT:

7

Q. How are you today, Officer Auclair?

8

A. Good. How about yourself?

9

Q. Good. What do you do for a living?

10

A. I'm a detective with the Moncks Corner city

11

police.

12

Q. How long have you been in law enforcement?

13

A. It will be three years this October.

14

Q. What were you doing back in August of 2012?

15

A. I was on road patrol with Moncks Corner city

16

police.

17

Q. Did you have a chance to respond to an address on

18

Haynesville Road on August 16th of 2012?

19

A. I believe that's the date, yes, sir. It was out

20

there for -- next to the apartments.

21

Q. Is that address in Berkeley County?

22

A. It's Berkeley County address, yes.

23

Q. About what time did you respond out to that

24

address?

25

A. I believe it was around quarter after 8:00.

MICHAEL AUCLAIR - DIRECT BY MR. OZMENT

1 Q. All right.

2 A. That's when the original call went out.

3 Q. Was it still light out?

4 A. It was getting dark.

5 Q. Okay.

6 A. It was past the dusk part.

7 Q. When you arrived on scene, tell me what you found.

8 A. When I originally arrived on scene, I was the
9 first car that arrived. I pulled up. As I pulled up,
10 there was a gentleman that was flagging us down, and he
11 said, you know, it's at the house down there.

12 So I pulled up, and my training -- I wanted to
13 keep my car back from the scene, or what I thought was
14 the scene. It turned out when I parked my car, I was
15 parking it right in front of the scene.

16 As I got out of the car, I hit the release on my
17 trunk and I went to the back, and I went to grab my
18 ballistics vest and put it on.

19 Q. And when you saw -- what is a ballistics vest?

20 A. It's a bulletproof vest.

21 Q. Why were you going to put that on?

22 A. Because the call was shots fired.

23 Q. All right. Continue.

24 A. As I put the -- as I went to put the vest on, just
25 as I went to grab the strap, I heard a voice say, You're

MICHAEL AUCLAIR - DIRECT BY MR. OZMENT

1 not going to need that. I'm not going to shoot anybody
2 else.

3 Q. Had you seen the speaker before you heard the
4 voice?

5 A. No, sir, I did not.

6 Q. When you pulled up and got out of the car, did you
7 say anything to anyone?

8 A. No, sir.

9 Q. Okay.

10 A. At that point -- I didn't know I was in front of
11 the actual crime scene at that point.

12 Q. After you heard someone say that, what was your
13 next move?

14 A. Well, I looked up, and that's when I saw a
15 gentleman setting in the chair, and I said, you know, I
16 says, Who got shot?

17 And he says, My son.

18 I says, Well, is he all right?

19 And that's when he had went, He's dead.

20 Q. Did you know who this individual was at that time?

21 A. No, sir, no, sir.

22 Q. Do you see that individual in the courtroom?

23 A. Uh-huh.

24 Q. Who is that?

25 A. Right there with the striped tie on.

MICHAEL AUCLAIR - DIRECT BY MR. OZMENT

1 Q. All right. After he said he had just shot his
2 son, what did you do next?

3 A. I asked him where the gun was, and he was sitting
4 in a chair, not facing the house, kind of off at an
5 angle.

6 He said, It's right there.

7 I said, Well, get away from it.

8 He said, I'm not going to move.

9 I says, All right.

10 I didn't pull my gun. I had it unbuckled. I
11 walked up to him, keeping myself between him and the gun,
12 so I said, Stand up.

13 He stood up. I said, Put your hands behind your
14 back. Put the handcuffs on him, double locked him, start
15 putting him in the car, and that is when Officer
16 Lewis came around the corner -- she had been at the
17 apartments. She came around from the apartments and met
18 me at the car.

19 Q. Did he give you any trouble or anything like that?

20 A. No, sir.

21 Q. You said he was sitting in a chair when you
22 approached?

23 A. Uh-huh.

24 Q. Can you describe kind of where the chair was at
25 the scene?

MICHAEL AUCLAIR - DIRECT BY MR. OZMENT

1 A. The sidewalk, it was on the sidewalk. If you --
2 say the house is behind me --

3 Q. Hold on. I'm going to put the house behind you.
4 I'll put on here what is State's Exhibit 3.

5 Is that the scene as you remembered it that night?

6 A. Uh-huh.

7 Q. Do you see the chair?

8 A. Yeah. It's right there.

9 Q. Is that how it was sitting when he was in it?

10 A. Yeah, pretty much, because there is a picnic table
11 over here and it's got a little -- I think it's like a
12 covered swing or whatever next to it.

13 Q. And is that exactly where the chair was when you
14 saw him as far as you remember?

15 A. I'm not going to say it's exactly, but yeah,
16 that's the position I remember it.

17 Q. Okay. I think we've gotten that you walked him to
18 the car. At that point was he put in the back of the
19 car?

20 A. Uh-huh.

21 Q. All right. Whose car was he put into?

22 A. Mine.

23 Q. After he was secured in the car, what did you do
24 next at the scene?

25 A. Me and May, which was -- she was the deputy with

MICHAEL AUCLAIR - DIRECT BY MR. OZMENT

1 Berkeley County, we went back into -- Thelma Lewis was at
2 the car. Me and May went back into the house to clear
3 the house.

4 Q. When you say clear the house, what do you mean by
5 that?

6 A. Check to make sure there was nobody else in
7 there --

8 Q. Okay.

9 A. -- that may have a gun. It's officer safety.

10 Q. Did you find anyone else?

11 A. No, sir.

12 Q. All right. Did you see the victim while you were
13 there?

14 A. Yes, sir.

15 Q. Where was he?

16 A. He was laying on the front porch, on the -- it's a
17 screened-in front porch.

18 Q. All right. Did you check him for any signs of
19 life or anything like that?

20 A. I did. I checked for a pulse as I went by.

21 Q. Did you find a pulse at that point?

22 A. No, sir.

23 Q. Did he appear to have any sign of life otherwise?

24 A. No, sir.

25 Q. How long were you in the residence when you

MICHAEL AUCLAIR - DIRECT BY MR. OZMENT

1 cleared it?

2 A. A guesstimate, maybe three, four minutes.

3 Q. All right. When you came back out, what was the
4 next stage in what you did?

5 A. When I came back out is when Sergeant Cline was
6 already there.

7 Q. Who is --

8 A. He's with Berkeley County sheriff. He was a
9 supervisor in Berkeley County. Something like this,
10 everybody comes.

11 When he got there, he just -- you know, Let's get
12 some tape. Let's tape it off. And I tried to call -- at
13 first I tried to call Sergeant Norvell. We tried to call
14 Lieutenant Roach and got everybody. A short time later
15 Sergeant Norvell called me back.

16 Q. And when you say Sergeant Cline said to get some
17 tape and stuff, what is that for?

18 A. You put tape around the crime scene, kind of a
19 barrier so nobody crosses the tape. It's just -- you
20 more or less rope off the crime scene.

21 Q. And then do you keep up with who goes in and out?

22 A. Yes, sir, on the crime scene log.

23 Q. What is it called again?

24 A. It's a crime scene log.

25 Q. Did you start one of those?

MICHAEL AUCLAIR - CROSS BY MR. SHELTON

1 A. I did.

2 Q. Okay.

3 A. I started writing it on a piece of paper and then
4 Thelma Lewis took over.

5 Q. Did you do anything else on the scene that
6 evening?

7 A. No. When Sergeant Crouse got there, he told me to
8 take Mr. Irby to the station, which I did, and we put him
9 in the squad room.

10 Q. What is the squad room?

11 A. The squad room is just a room where we all sit in
12 the station to do reports and stuff like that.

13 Q. Okay.

14 A. Once I did that, I did go back to the scene later
15 on, but they were pretty much -- they were cleaning up,
16 and it wasn't really nothing going on. I was talking to
17 Sergeant Crouse at the time when I went back.

18 Q. All right.

19 MR. OZMENT: No further questions at this
20 time, Your Honor.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MR. SHELTON:

24 Q. Officer, the person sitting in the chair that you
25 just pointed out, that's who you learned was Johnny Irby?

MICHAEL AUCLAIR - CROSS BY MR. SHELTON

1 A. That's correct.

2 Q. And Johnny didn't give you any trouble?

3 A. No, sir, not a bit.

4 Q. He didn't resist in any way?

5 A. No, sir.

6 Q. He didn't run?

7 A. No.

8 Q. And he told you where everything was?

9 A. Very cooperative.

10 Q. Very cooperative. Now, when you got to the porch
11 to clear the house, did you have to do something to get
12 into the house?

13 A. We had to step over the body.

14 Q. So the body was in the doorway?

15 A. Yes, sir.

16 Q. Okay.

17 A. I hasn't -- his head and shoulders were in the
18 doorway.

19 Q. Okay. Now, they're talking about the porch. This
20 is a pretty small porch.

21 A. Yes, sir, it was.

22 Q. So when you step up on the porch, estimate wise,
23 could you guess how much was in between when you step on
24 to the porch and the doorway?

25 A. When you go through the very first -- the front

MICHAEL AUCLAIR - CROSS BY MR. SHELTON

1 screen door -- maybe three foot, maybe a little more,
2 three foot, maybe a little more.

3 Q. Pretty short distance?

4 A. It wasn't very big, no.

5 Q. And there was a lot of stuff on the porch?

6 A. There was.

7 Q. There was some stuff off to the left, like a big
8 table maybe?

9 A. I can't honestly -- I know there was a lot of
10 stuff, but I can honestly remember what it was.

11 Q. There wasn't much extra room on that porch?

12 A. There wasn't a whole lot of room that I can
13 remember.

14 Q. And you actually had to step over Telly to get
15 into the house?

16 A. Yes, sir.

17 Q. Okay. Do you remember in what position he was
18 laying? Was he laying on his back, on his stomach?

19 A. He was kind of -- kind of on his side. I can't
20 even remember the exact position, no, but I remember it
21 was kind of on his right side a little bit.

22 Q. Okay.

23 A. Or to the right side.

24 Q. Did you have to move him in any way?

25 A. No, sir.

MICHAEL AUCLAIR - CROSS BY MR. SHELTON

1 Q. Okay. Prior to taking Johnny to the squad room,
2 do you remember giving him his rights, his Miranda
3 rights?

4 A. I don't honestly remember that.

5 Q. Okay.

6 A. I was told I did, but I don't remember.

7 Q. Okay.

8 A. A lot of chaos.

9 Q. There was a lot going on. Would that be your
10 normal course of business?

11 A. When I detained, somebody I did not read them
12 their Miranda. I did not read them their Miranda until
13 they're actually under arrest and in custody, and then I
14 read them Miranda from a Miranda card I carry in my
15 wallet.

16 Q. So you wouldn't know if that was out on the scene
17 or back in the squad room?

18 A. At the point that I got there, he was being
19 detained by me.

20 Q. Okay. So it would have been maybe later?

21 A. It -- I'm assuming it would be, yeah. I'm not
22 understanding your question.

23 Q. Did Norvell come on scene at some point in time?

24 A. Sergeant Norvell was on scene.

25 Q. Did you see Norvell back at the squad room?

MICHAEL AUCLAIR - CROSS BY MR. SHELTON

1 A. Yes, sir, I did.

2 Q. Okay. So you saw Norvell at both places with
3 Johnny?

4 A. When I got to the -- as he was coming into the
5 station, I was leaving.

6 Q. Okay. So you didn't see Norvell out at
7 Haynesville Road?

8 A. I did. I saw him at Haynesville Road, as he was
9 coming back in the station. I had already left the
10 station, or left the scene and went back to the station.
11 He stayed on scene for a few minutes.

12 Q. Okay. The squad room, how close is that to
13 Lieutenant Roach's office?

14 A. Maybe three foot away. When you walk out of the
15 lieutenant's office, you might get two steps and you're
16 in the squad room.

17 Q. And when you took him from the scene to the squad
18 room, about how long was he detained in your car? How
19 long was that whole process from when you arrived to you
20 took him to the squad room?

21 A. I don't remember.

22 Q. More than a half hour?

23 A. I really don't remember.

24 Q. Do you know what your unit number that would
25 correspond to your CAD report?

MICHAEL AUCLAIR - CROSS BY MR. SHELTON

1 A. 226. I was -- at the time I think I was kilo 26.

2 Q. Kilo 26.

3 A. Yes.

4 Q. And the cab report just based off is your police
5 record what is a CAB report?

6 A. When we call dispatch and talk to dispatch like --
7 they'll say we have someone in custody or we were doing a
8 traffic stop or something like that. They type it into
9 those CAD machines, and you'll just -- you'll get a
10 report if you need it, and it will say what time you
11 arrived on scene, what time you changed, like, called one
12 in custody or cleared the scene, which is 1008.

13 Q. And what time you left the scene and transported
14 people that were in custody?

15 A. Yes, sir.

16 Q. And you believe it was K26?

17 A. I believe so.

18 MR. SHELTON: No further questions.

19 THE COURT: Redirect?

20 MR. OZMENT: No redirect, Your Honor. We ask
21 that this witness be relieved at this point.

22 THE COURT: You can step down. Do you need
23 this officer anymore?

24 MR. SHELTON: No, Your Honor.

25 THE COURT: You're free to go. Thank you.

JUSTIN RILEY - DIRECT BY MR. OZMENT

1 Next witness?

2 MR. OZMENT: The State would call Deputy
3 Justin Riley to the stand.

4 JUSTIN RILEY,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. OZMENT:

9 Q. How are you today, Deputy Riley?

10 A. Doing fine, sir.

11 Q. What do you do for a living?

12 A. I'm a Berkeley County sheriff's deputy.

13 Q. How long have you been working in law enforcement?

14 A. In total about five years but on the road for
15 about three.

16 Q. What were you doing back in August of 2012?

17 A. I was working in the north end of the county.

18 Q. Okay. Were you -- did you get called to
19 Haynesville Road on August 16th of that year?

20 A. I did.

21 Q. Do you remember the nature of that call?

22 A. I do. It was a call to assist Moncks Corner with
23 a shooting.

24 Q. Okay. Was anyone on scene when you arrived?

25 A. Yes. Officer Auclair was on scene.

JUSTIN RILEY - DIRECT BY MR. OZMENT

1 Q. All right. Anyone else?

2 A. I don't believe so.

3 Q. Okay. When you got there and you got out of your
4 car, what did you do?

5 A. I arrived with Corporal Austero, another deputy of
6 mine at the time, and when we got there, we assisted
7 Officer Auclair with securing the scene. We helped him
8 tape off the crime scene.

9 I believe Corporal Austero cleared the residence
10 with a protective sweep. I stayed outside. There was a
11 firearm laying on the yard. I stayed with the firearm.

12 Q. Why did you stay with the firearm?

13 A. As part of securing the scene.

14 Q. Okay. Do you know who you turned that firearm
15 over to?

16 A. The investigator from Moncks Corner at the time.
17 I believe it was Sergeant Crouse.

18 Q. Okay. Other than what we just went through, did
19 you do anything else at the scene or in this case?

20 A. Not that I recall. I believe my only involvement
21 was with the firearm itself.

22 Q. All right.

23 MR. OZMENT: No further questions, Your
24 Honor.

25 MR. SHELTON: No questions.

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 THE COURT: You can step down. Thank you.

2 Next witness?

3 MR. OZMENT: Your Honor, the State would call
4 Rick Crouse to the stand.

5 THE COURT: Do you need this gentleman any
6 longer?

7 MR. OZMENT: The State does not, Your Honor.

8 THE COURT: You're free to go. Thank you.

9 RICHARD CROUSE,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. OZMENT:

14 Q. What do you do?

15 A. Right now I'm the traffic control supervisor for
16 Sanders Construction.

17 Q. Do you have any previous experience in law
18 enforcement?

19 A. I do. Worked nine years from the Moncks Corner
20 police department from 2005 to October of 2013.

21 Q. Were you working for Moncks Corner in August of
22 2012?

23 A. Yes, sir, I was.

24 Q. Did you have an occasion to respond to an address
25 on Haynesville Road on August 16th of that year?

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 A. Yes, sir, I did.

2 Q. How did you get called out to that scene?

3 A. I was called by Lieutenant Roach in reference to a
4 shooting.

5 Q. Okay. Do you recall about what time you arrived
6 at the scene?

7 A. Approximately 8:34 p.m.

8 Q. When you got there, what did you find?

9 A. When I arrived on the scene, I was briefed by
10 Sergeant Norvell, Officer Lewis, and Sergeant Cline with
11 the Berkeley County sheriff's office that there was a
12 shooting occurred on Haynesville, gave me basically a
13 brief synopsis of what happened, and then I just kind of
14 started getting my bearings on trying to decide what to
15 do where and where to start.

16 Q. And what was kind of your role at the crime scene?

17 A. I was sergeant in investigations. Before I got to
18 the scene, I wasn't sure really what I was going to do
19 when I got there, but when I got there, it was pretty
20 much established that I was going to do the crime scene.
21 I was going to process the scene to where the shooting
22 occurred.

23 Q. So did you delegate roles for certain people to
24 do?

25 A. Once I arrived on the scene, yes, sir, I did.

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 Q. Okay. Tell me I guess, what you delegated for who
2 to do?

3 A. Officer Auclair had the suspect in the back of his
4 patrol car, so I immediately identified I wanted to get
5 him away from the scene, so he took him back to the
6 police department to either meet with Detective Norvell
7 or Sergeant Roach.

8 Q. Okay.

9 A. So once he was clear with the scene, I started
10 observing the scene.

11 Q. Okay. When you say observing the scene, how do
12 you -- when you were going to process the crime scene,
13 tell me how that works. What do you do?

14 A. At that point, I just stepped back and looked at
15 the house. I looked at the surroundings just to kind of
16 get an idea where we were at. It was dark, so I just
17 take a step back, just kind of look at things, kind of
18 see what the layout of the house is, the neighbors, see
19 how many people are around and just kind of go from
20 there.

21 Q. Did you take photographs of all that?

22 A. I took several photographs, yes, sir.

23 MR. OZMENT: May I approach, Your Honor?

24 THE COURT: Uh-huh.

25 BY MR. OZMENT:

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 Q. Mr. Crouse, I'm handing you what has been
2 premarked State's Exhibit 7 through 24. I'm going to ask
3 you to thumb through all of those pages, and after that,
4 I'm going to ask you some questions about it.

5 A. Yes, sir.

6 Q. Did you get a chance to review those?

7 A. Yes, sir, I did.

8 Q. What are those?

9 A. Those are the photographs I took of the scene
10 there at Haynesville.

11 Q. And 7 through 24, all those are photographs you
12 took?

13 A. Correct.

14 Q. Do they accurately reflect the scene as you recall
15 it that night and obviously some the next day?

16 A. Yes, sir, they do.

17 MR. OZMENT: At this time the State would
18 move Exhibit 7 through 24 into evidence.

19 MR. SHELTON: No objection.

20 THE COURT: Admitted. You can publish.

21 (State's Exhibit Nos. 7-24 were marked for
22 identification and admitted into evidence.)

23 BY MR. OZMENT:

24 Q. I'm going to have you turn around, and take us
25 through the photographs.

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 A. This is the photo depicting the front entrance of
2 the residence.

3 Q. And, for the record, this is State's Exhibit 1.
4 Is this how it looked when you found it?

5 A. Yes, sir.

6 Q. Now, tell me kind of from here, what order did you
7 process the scene when you were standing here?

8 A. At first I just stood in front of it and got my
9 bearings, and then I had the officers that were there,
10 that arrived before me, kind of walk me through the crime
11 scene, just kind of so I would get an idea of what, you
12 know, what took place.

13 But as far as processing it, pretty much the
14 walkway in is the way it was processed.

15 Q. Was there anything on the walkway that you
16 noticed?

17 A. I did notice some blood spatter on the walkway,
18 sir.

19 Q. Can you go to State's Exhibit 17? I'm showing you
20 State's Exhibit 17. What is that?

21 A. That would be the blood spattering I saw on the
22 walkway.

23 Q. I'm going to ask now that we kind of go through
24 18, 19, and 20 and 21, just kind of in that order, and as
25 they change, maybe if you could identify what each one

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 is.

2 A. Yes, sir. That would be another picture of the
3 blood spatter.

4 Q. And that is 18, State's Exhibit 19.

5 A. That would be a picture of blood spatter on the
6 walkway, I believe, by a chair.

7 Q. Did you move that chair or was that already on the
8 walkway?

9 A. That was already there. I don't remember touching
10 the chair.

11 Q. And moving on to State's Exhibit 20.

12 A. I believe that's just a close-up of more -- at
13 least one blood spatter.

14 Q. And now State's Exhibit 21, the last picture of
15 concrete.

16 A. Correct, another picture depicting blood spatter.

17 Q. And so these are obviously several pictures of
18 blood on the concrete, and if I can go back to State's
19 Exhibit 1, did these form this sort of trail or line that
20 you could detect?

21 A. Well, basically formed a line coming out of the
22 gate.

23 Q. Okay. So they're all along that concrete --

24 A. Correct.

25 Q. -- walk that I see there?

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 A. Correct.

2 Q. Okay. After you press -- after you looked up the
3 walkway and noticed all this blood, where did you go next
4 on the crime scene?

5 A. The porch area.

6 Q. Did you see the victim laying on the porch?

7 A. Yes, sir, I did.

8 Q. I'm going to show you State's Exhibit 9, which is
9 in evidence. Does this represent how you remember the
10 victim being positioned?

11 A. Yes, it does.

12 Q. Had you touched the victim at all?

13 A. I had not.

14 Q. As you looked to the porch area, was anything else
15 found?

16 A. I believe we found some shell casings there on the
17 porch that some of the photos reflect.

18 Q. Okay. Were the -- did you find any -- you said
19 you found some shell casings. Did you find the unfired
20 rounds?

21 A. I fired one unfired round, I believe.

22 Q. All right. I'm going to ask that you look at
23 State's Exhibit 10 with me now. What does that show?

24 A. I believe that's a shell casing.

25 Q. Okay.

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 A. And the tip of that.

2 Q. And I see that yellow sign that has a number one
3 on it. What is that?

4 A. It's basically a photo. It helps emphasize the
5 photo and gives it a number if you want to reference it.

6 Q. Okay. I'm going to go to State's Exhibit 11.

7 Same question: What do I see there?

8 A. And that's a full round right there.

9 Q. And that's again on the porch?

10 A. Correct.

11 Q. All right. And the last one, I'm going to ask you
12 look at State's Exhibit 12.

13 A. That's another shell casing.

14 Q. And all three of those were found on the porch?

15 A. Yes.

16 Q. Were all of those collected?

17 A. They were.

18 Q. Were any shell casings found at the scene?

19 A. I believe after I went back to process crime scene
20 two after the victim's body was moved, we found two more,
21 I believe.

22 Q. Okay. Were any found in the yard?

23 A. There was one or two found in the yard. I have to
24 refer to my report.

25 Q. Is your report behind you there?

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 A. Yes, it is. One more shell casing on the porch
2 and two more in the yard, by the walkway.

3 Q. I'm going to show you State's Exhibit 13 and ask
4 you to identify that.

5 A. That would be a shell casing in the yard by the
6 walkway.

7 Q. And you had not moved it at this point?

8 A. No, sir.

9 Q. And move on to State's Exhibit 14. What is that?

10 A. That's another shell casing there in the yard.

11 Q. And a minute ago you mentioned you had one more in
12 the porch. I'm going to ask you to go to State's Exhibit
13 15. What do we have there?

14 A. Yes, sir, another shell casing.

15 Q. And so you're going to have to help me with some
16 math here, but how many total shell casings were found on
17 the porch?

18 A. I believe that there was a total of five shell
19 cases and two in the yard, three on the porch, and I
20 believe one live round.

21 Q. Okay.

22 MR. OZMENT: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MR. OZMENT:

25 Q. If you spin around for a second, we're going back

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 to the pictures. I hand you what's been premarked
2 State's Exhibit 54. Do you recognize anything on the
3 outside of that bag?

4 A. Yes. I recognize my handwriting.

5 Q. What have you identified as being in that bag?

6 A. Five shell casings, one round.

7 Q. Could you look in there and tell me those, if
8 they're still in there.

9 A. Yes, they are.

10 Q. Are those the shell casings in the round that we
11 just looked at pictures of it?

12 A. Yes.

13 MR. OZMENT: At this time the State would
14 move State's Exhibit 54 into evidence.

15 MR. SHELTON: No objection.

16 THE COURT: Admitted.

17 (State's Exhibit No. 54 was marked for
18 identification and admitted into evidence.)

19 BY MR. OZMENT:

20 Q. You mentioned a second ago a second crime scene.
21 What do you mean by that?

22 A. If you walk -- if you see the front of the house
23 and you walk and you're facing the house, you walk to the
24 right, there is an apartment complex that is basically
25 parallel to the side of the house.

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 Q. I'm going to show you State's Exhibit 23, and I
2 think that's basically the viewpoint you just described?

3 A. Yes, sir. That's what I'm describing.

4 Q. Is that the apartment house on the right, the
5 brick?

6 A. Yeah, where you see the brick here and the
7 vehicle.

8 Q. And you call it a second crime scene. Tell me why
9 you use that term.

10 A. Just because the second victim is -- what I mean,
11 ran over there and there was blood on the kitchen floor
12 so I just processed it.

13 Q. Did you find anything else over there?

14 A. I believe I took a couple photographs of that
15 scene. I want to say there was just blood on the floor.

16 Q. All right. Can I see State's Exhibit 22?

17 A. That's the photo of the kitchen area. I believe
18 that's where she was sitting when she came over for
19 assistance.

20 Q. All right. If I can go back to State's Exhibit 23
21 with you just for a second, to walk from the white house
22 to the brick apartments, what route do I have to go?

23 A. You have to come out of the gate and come around
24 to the -- I guess it would be their left and then enter.
25 There is a brick foyer right in front of where that

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 vehicle is parked, and there is a vehicle there.

2 Q. So I would have to walk out the gate I see there.

3 A. Correct.

4 Q. Okay.

5 MR. OZMENT: May I approach, Your Honor?

6 THE COURT: You may.

7 MR. OZMENT: I'm going to have to do one
8 housekeeping matter. Apparently this envelope was marked
9 separately. Your Honor, inside State's Exhibit 54 is
10 State's Exhibit 52 and 53, which were already identified.
11 I just didn't realize they were separate, so we would
12 move 52 and 53 into evidence as well.

13 THE COURT: Admitted.

14 (State's Exhibit No. 52 and 53 were marked
15 for identification and admitted into evidence.)

16 BY MR. OZMENT:

17 Q. When you were working on the second crime scene,
18 Michelle Williams, the other victim, was she still there?

19 A. No, sir, she was not.

20 Q. Okay. Did you collect any evidence at that crime
21 scene?

22 A. I believe I collected a jacket and flip flops that
23 belonged to this witness.

24 Q. Okay. After you finished with the second crime
25 scene, did you come back to the first crime scene for

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 anything?

2 A. I did.

3 Q. All right. At any point while you were there, did
4 you come into custody of the gun that was found there?

5 A. Yes, from Deputy Riley, from Berkeley County.

6 MR. OZMENT: May I approach, Your Honor?

7 THE COURT: You may.

8 BY MR. OZMENT:

9 Q. I'm going to hand you a box. In the box is
10 State's Exhibit 48, 49, and 56. I'm going to ask you
11 first to look at the box and then look at the contents in
12 it, and then I'll ask you some questions.

13 A. Yes, sir.

14 Q. Do you recognize what's in that box?

15 A. Yes, sir, I do.

16 Q. What is it?

17 A. That's the weapon that I received from Deputy
18 Riley.

19 Q. There are some other things in that box?

20 A. Yes, a magazine and two full rounds.

21 Q. Did they come from Deputy Riley?

22 A. Yes, sir.

23 MR. OZMENT: At this time, Your Honor, the
24 State would move State's Exhibits 48, 49, and 56 into
25 evidence.

RICHARD CROUSE - DIRECT BY MR. OZMENT

1 MR. SHELTON: No objection.

2 THE COURT: Admitted.

3 (State's Exhibit Nos. 48, 49 and 56 were
4 marked for identification and admitted into evidence.)

5 BY MR. OZMENT:

6 Q. What did you do with that gun after you received
7 control of it?

8 A. I placed in my vehicle.

9 Q. Did it eventually make its way back to the police
10 department?

11 A. It did. I believe I placed it into a locker that
12 next morning.

13 Q. Okay. Quickly turning back to the crime scene,
14 back on crime scene one, did you enter the residence at
15 all?

16 A. Yes, I did.

17 Q. Did you find anything of note?

18 A. I think I did just a quick cursory check.

19 Q. Did you do anything else while were you in there?

20 A. Turned off the burner on the stove.

21 MR. OZMENT: No further questions, Your
22 Honor.

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25 BY MR. SHELTON:

RICHARD CROUSE - CROSS BY MR. SHELTON

1 Q. Mr. Crouse, so when you arrived, Mr. Irby, his
2 body was kind of off to the side on his back?

3 A. He was on the porch as the picture depicted there.

4 Q. And there was some blood, it looked like, on the
5 porch?

6 A. There was blood, yes.

7 Q. And did it seem he maybe had been rolled over to
8 the side?

9 A. Honestly, I didn't think that he did, no.

10 Q. Okay. Was there any blood that was -- he had a
11 wound on his stomach, chest area?

12 A. Yes.

13 Q. And he had some blood on his chest, but there
14 wasn't any blood that was coming down from his chest, was
15 there?

16 A. From his chest to the porch?

17 Q. Yeah.

18 A. Not that I recall.

19 Q. So there was some blood that was on the --

20 A. There was blood on the porch, correct.

21 Q. And then he was off -- he was kind of on his back
22 on the side?

23 A. From what I remember, yes.

24 Q. And his head and shoulders were in the doorway?

25 A. Kind of in the doorway, yes.

RICHARD CROUSE - CROSS BY MR. SHELTON

1 Q. Now, when you first observed the scene, you came
2 across two shells on the porch and one live round?

3 A. When I first went up to the scene?

4 Q. Yes.

5 A. I observed on the porch floor two shell casings
6 and a live round from a nine millimeter handgun.

7 Q. And go to State's 10. So that's the shell casing?

8 A. It would be the shell casing, yes, sir.

9 Q. And in the top part of that picture, it looks like
10 there may be a chair?

11 A. I would say part of a chair, yes.

12 Q. Do you remember where?

13 A. No, sir, I don't.

14 Q. Where was that found on the porch?

15 A. Where the casing was found on the porch?

16 Q. Yes.

17 A. No -- I mean, just on the porch. I don't know
18 what vicinity it was, without getting, you know, a
19 broader view.

20 Q. And in the porch area we're talking about, it's
21 not very big, correct?

22 A. No. You walk up some steps, go in the door. You
23 hit the porch, and then you hit the house, so it's more
24 longer than it is wide, from what I remember.

25 Q. And so estimate wise, what would you think is from

RICHARD CROUSE - CROSS BY MR. SHELTON

1 the top of the stairs to the front of the door to the
2 house?

3 A. Without looking at a picture, I would have to say
4 maybe a few feet.

5 Q. Just a couple feet, three feet?

6 A. Yeah, something like that.

7 Q. And let's look at State's 12. That's another
8 shell casing?

9 A. Correct.

10 Q. Okay. And that's -- what's that on? What --

11 A. It's on a bucket. It's by the door. I think it
12 even depicts the victim on the side there, but it's by
13 the door area, I believe.

14 Q. And if you remember, was there stuff on the -- you
15 came out of the house, coming out of the house off to the
16 right of the door. Is there stuff over there?

17 A. I think if you're coming out of the house, like --
18 I think it was to the left.

19 Q. Okay.

20 A. There was stuff on the porch, correct.

21 Q. On both sides?

22 A. Yeah, yeah, there was.

23 Q. Do you remember a couch or something being out
24 there?

25 A. No, I don't recall a couch.

RICHARD CROUSE - CROSS BY MR. SHELTON

1 Q. And look at State's 8. Does that help a little
2 bit?

3 A. It does, yes, sir.

4 Q. And so when you come out of the doorway of the
5 house, this is a little couch off to the left?

6 A. To the left, yes.

7 Q. And that bucket is off to the left?

8 A. Correct.

9 Q. And that's where the shell casing was found.

10 A. Correct.

11 Q. Can you tell from that picture where the shell
12 casing is in State's 10?

13 A. I can't tell from this picture, no. I mean, it
14 was on the porch.

15 Q. Okay.

16 A. I'm not sure exactly where on the porch.

17 Q. Would State's 15 maybe help? Underneath the
18 couch, is there a little bit of rolling, maybe --

19 A. I see a little something underneath it, yeah, but
20 I don't know if that is the couch or not.

21 Q. So we're not quite sure --

22 A. I mean, it's on the porch there by the front, but
23 I'm not sure exactly where, and can you see a little bit
24 more in this State's Exhibit 15.

25 Q. And so the live round, State's 11, would that

RICHARD CROUSE - CROSS BY MR. SHELTON

1 being right there by the door?

2 A. I would say it's pretty close to the door, yeah.

3 Q. Does it look like the door in the picture?

4 A. I honestly can't tell if that's the door or not,
5 but if you look at -- it looks pretty close to the door.

6 Q. Okay. So when you first went up on the scene, you
7 found two shell casings and one live round, correct?

8 A. Correct.

9 Q. And then you got information that there were five
10 shots.

11 A. Correct.

12 Q. And that came from a neighbor.

13 A. I believe it did, yes.

14 Q. Okay. And so then you went back to look for any
15 shell casings?

16 A. Correct.

17 Q. And that's when you found the three other shell
18 casings?

19 A. Correct.

20 Q. And one was underneath Telly?

21 A. Correct.

22 Q. And then two were out in the yard?

23 A. Correct.

24 Q. Did you look out in the yard? You didn't see any
25 other shell casings?

RICHARD CROUSE - CROSS BY MR. SHELTON

1 A. I did not see any other shell casings.

2 Q. And when you looked on the porch, you didn't see
3 any other shell casings?

4 A. No, sir.

5 Q. That would indicate when you heard five shots,
6 somebody heard five shots --

7 A. Yeah, five shots. I was trying to account for how
8 many shots that were heard, you know.

9 Q. In and they matched up?

10 A. They matched up, correct.

11 Q. The evidence matched up to five shots. And you
12 had to turn off a burner, so there was a burner that was
13 on?

14 A. In the -- yeah, I believe in the kitchen area.
15 When I did a last walk through the house, I think there
16 was a burner on in the back, so I just turned it off.

17 Q. Was there any food or anything on the stove?

18 A. I don't remember if there was.

19 Q. Okay. And your master evidence log, you name all
20 the evidence that you collected, correct?

21 A. Master evidence log is all the evidence that was
22 collected, not just from me.

23 Q. But I think you mentioned that you collected from
24 the scene Michelle's flip flops?

25 A. The scene evidence is what I collected, yes.

RICHARD CROUSE - CROSS BY MR. SHELTON

1 Q. And so you collected her jacket and flip flops?

2 A. Correct.

3 Q. You're not sure -- do you have any idea what
4 happened to those items?

5 A. They should have been placed into evidence.

6 Q. Okay. Did you have anything to do with items
7 taken to SLED or not?

8 A. On honestly, I don't remember if I did or not on
9 this case.

10 Q. Do you know if it would have been your decision on
11 what goes to SLED and what SLED tested?

12 A. No, sir. It wouldn't have been mine.

13 Q. Whose decision would that have been?

14 A. That would have been the case manager, Lieutenant
15 Roach.

16 Q. Did you -- when you talked to Auclair to go take
17 the suspect to the station, did you make sure he didn't
18 touch his hand or clean anything?

19 A. I think at that point in time I said get him to
20 the station because I knew Lieutenant Roach and Sergeant
21 Austero was right behind him, so I think my actual
22 direction was just take him to the station for
23 questioning.

24 Q. Did you at any point in time bag Telly's hands?

25 A. No, I did not.

RICHARD CROUSE - RECROSS BY MR. SHELTON

1 Q. Did you -- you know how to take gunshot residue
2 tests?

3 A. I do.

4 Q. Did you take any gunshot residue test of Telly?

5 A. I did not.

6 Q. Okay.

7 MR. SHELTON: No further questions.

8 THE COURT: Redirect?

9 MR. OZMENT: Very briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. OZMENT:

12 Q. When he asked you about the porch being somewhat
13 messy, could there have been other shell casings on the
14 porch?

15 A. There could have, yes.

16 Q. What about in the yard?

17 A. There could have in the yard too.

18 MR. OZMENT: No further questions, Your
19 Honor.

20 THE COURT: Recross?

21 RECROSS-EXAMINATION

22 BY MR. SHELTON:

23 Q. But nothing was found?

24 A. Correct.

25 Q. And you looked?

BRAD NORVELL - DIRECT BY MR. OZMENT

1 A. I did.

2 THE COURT: You can step down.

3 THE WITNESS: Thank you, sir.

4 MR. OZMENT: May Mr. Crouse be released from
5 his subpoena?

6 THE COURT: Any objections?

7 MR. SHELTON: No objections.

8 THE COURT: You're free to go. Thank you.

9 MR. OZMENT: Your Honor, the State would call
10 Sergeant Brad Norvell to the stand.

11 BRADLEY NORVELL,
12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. OZMENT:

16 Q. What do you do for a living?

17 A. I'm currently the sergeant of investigations for
18 Moncks Corner police department.

19 Q. How long have you been in law enforcement?

20 A. Law enforcement altogether, about 15 years.

21 Q. All right. What were you doing back on August
22 16th of 2012?

23 A. At that time I was the patrol sergeant with Moncks
24 Corner police department.

25 Q. On that day did you respond to a call to

BRAD NORVELL - DIRECT BY MR. OZMENT

1 Haynesville Road?

2 A. Yes, I did.

3 Q. What was the nature of that call?

4 A. Officer Auclair, who was on duty at that time, he
5 called me to my residence on my cell phone. It was 8:23.
6 I just missed answering it, and I called him right back.
7 He said he had a homicide at [REDACTED] Haynesville Road, and he
8 said he had one dead body.

9 Q. Okay. Did you respond to --

10 A. Yes, sir, I responded immediately.

11 Q. When you got on the scene, what did you find?

12 A. When I got on scene, I met with -- there was a
13 number of county officers there. There was Officer
14 Auclair and another Officer Lewis with Moncks Corner, and
15 I spoke with Auclair and Sergeant Cline, just to get a
16 rundown on what had happened at that point.

17 While I'm talking to them, they stated that
18 they -- there was a shooting involving a father and son
19 and they had the father in custody and they also had the
20 weapon used at that time. They told me later also that
21 there was apparently another victim that had gone next
22 door for help and was already on their way to MUSC.

23 Q. Okay. Did you do anything at the crime scene?

24 A. At that time, I was the first supervisor there
25 with our department, so I made sure that the initial

BRAD NORVELL - DIRECT BY MR. OZMENT

1 crime scene at [REDACTED] Haynesville was being secured
2 properly, and I also advised the officers to make sure
3 that the location I believe at [REDACTED] Haynesville at the
4 apartments was secured properly, and they also informed
5 me that three children witnessed the female victim being
6 shot, and I made sure that they were secure and safe and
7 that someone was with them.

8 Q. Did you go to the second crime scene?

9 A. I did. After I went into the house to observe,
10 make sure everything was secure there, and then I did go
11 over shortly and talk to the neighbors who were giving
12 statements, I believe with Officer Lewis at the time.

13 Q. Did you find anything of note in the house?

14 A. I did see some spots on, I believe it was, the
15 kitchen floor where the victim, I think, was laying for a
16 short time. I could see some blood smears.

17 Q. Had the victim already -- was she there or was she
18 gone?

19 A. No, she was already gone.

20 Q. Okay. Did you take any evidence or anything like
21 that into custody at the crime scene?

22 A. No, sir.

23 Q. Where did you go after you left both crime scenes?

24 A. I waited until -- well, en route to the crime
25 scene, after I spoke to Officer Auclair, I had called all

BRAD NORVELL - DIRECT BY MR. OZMENT

1 the people in the chain of command, is what they call it,
2 and made sure people were heading the crime scene.

3 So I waited for Sergeant Crouse. He was the
4 investigating officer at that time, and he was the first
5 one there. After he got there, I turned the scene over
6 to him, and he and I had discussed Officer Auclair, I
7 believe, transporting Mr. Irby to the station and staying
8 with him so that I could go and perform a gunshot residue
9 kit on him.

10 Q. Why did you want to perform a gunshot residue kit?

11 A. A gunshot residue kit -- if I can try and explain
12 it in kind of layman's terms, when a firearm is
13 discharged, the combustion mixes with the primer and the
14 projectile, or bullet. When that happens, there is three
15 elements that are produced from that reaction: Lead,
16 barium, and antimony. It's pronounced two ways. I've
17 heard it pronounced three ways. Those three elements are
18 found nowhere else in our environment.

19 So when a firearm is discharged -- for example, if
20 you discharge a firearm, handgun, you're probably going
21 to get some of those three elements on your person,
22 either on your hands, or, more than likely, on your
23 clothes.

24 When we do the gunshot residue kit, those these
25 elements will usually stay on the human body for about 68

BRAD NORVELL - DIRECT BY MR. OZMENT

1 hours, so we usually do that any time there is a gunshot
2 victim, whether it be a homicide or suicide. We usually
3 do that to determine that that individual has fired a
4 firearm.

5 Q. And is that why you did it to Mr. Irby?

6 A. Yes, sir.

7 MR. OZMENT: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. OZMENT:

10 Q. Sergeant Norvell, I'm handing you what has been
11 premarked as State's Exhibit 57. Can you identify what
12 that is?

13 A. Yes, sir.

14 Q. Go ahead.

15 A. It's the gunshot residue kit that I performed on
16 Mr. Irby, Mr. Johnny Lee Irby.

17 Q. And as laymen -- actually, when you took that
18 gunshot residue kit, what did you do with it next?

19 A. I then secured it into evidence along with some
20 other items from Mr. Irby.

21 Q. And then who tests those?

22 A. We sent the kit off to be tested. Where exactly,
23 I'm not sure. I believe it's SLED.

24 Q. Okay.

25 MR. OZMENT: At this time, the State would

BRAD NORVELL - DIRECT BY MR. OZMENT

1 move State's Exhibit 57 into evidence.

2 MR. SHELTON: No objection.

3 THE COURT: Admitted.

4 (State's Exhibit No. 57 was marked for
5 identification and admitted into evidence.)

6 BY MR. OZMENT:

7 Q. When you take a gunshot residue test off of
8 someone, tell us what you actually do, kind of in
9 layman's terms?

10 A. Okay. A gunshot residue kid kit, anyone can do
11 this. You can do it. You just follow the instructions.
12 Basically, you put on a set of gloves. There is four in
13 this kit. I believe there was four -- they call them --
14 I forget what they call them now. They're like four
15 stubs, they call them stubs.

16 They're about the size of a 12 gauge shotgun
17 shell. What you do is you take the off top, and it has a
18 small rubber circle that you place on certain parts of
19 the individual's hands. Those little circles are
20 somewhat sticky and they will pick up those elements I
21 discussed earlier and place him on that circle.

22 Then you take the top and you put it back on, and
23 the four -- the four testers are labelled right back,
24 right palm, left back, left palm.

25 Q. Is that what you did with Mr. Irby?

BRAD NORVELL - DIRECT BY MR. OZMENT

1 A. Yes, sir.

2 Q. Was Lieutenant Roach at the police department when
3 you got there?

4 A. I can't remember if he was there when I arrived,
5 but he was there shortly after I arrived.

6 Q. Did he have any interaction with Mr. Early?

7 A. He did. Right after he performed gunshot residue
8 kit, I then -- I escorted Mr. Irby to Lieutenant Roach's
9 office and was there for a short while when he started
10 interviewing.

11 Q. And who was interviewing who, just so we know?

12 A. Lieutenant Roach was going to interview Mr. Irby.

13 Q. Did you observe Lieutenant Roach give Mr. Irby his
14 Miranda rights?

15 A. I did.

16 Q. Can you tell me how he did this?

17 A. There's a standard form we use at the police
18 department that has the person's name, date, where
19 they're being interviewed, and advises them of their
20 Miranda rights.

21 MR. OZMENT: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. OZMENT:

24 Q. Sergeant Norvell, I'm handing you State's Exhibit
25 70 which was premarked for identification. What is that

BRAD NORVELL - DIRECT BY MR. OZMENT

1 piece of paper in your hand?

2 A. It's the -- I'm sorry, the Miranda rights form
3 that the Moncks Corner police department has.

4 Q. Do you recognize Lieutenant Roach's handwriting on
5 that?

6 A. I do.

7 Q. Where do you recognize his handwriting?

8 A. At the top of the form and at the bottom where he
9 signed his name.

10 Q. Okay. I'm not going to talk about the form
11 anymore for now.

12 Do you recall if Lieutenant Roach went verbally
13 through the Miranda rights with Mr. Irby?

14 A. I wasn't there for the whole thing. I just
15 remember being in the doorway when he started going over
16 the form with him.

17 Q. Okay.

18 A. I can't say I was there through the whole thing.

19 Q. At any time did you hear Mr. Irby say he didn't
20 want to speak or ask for a lawyer or anything like that?

21 A. No, sir.

22 Q. Did you take any pictures of Mr. Irby while he was
23 at the station that day?

24 A. Yes, sir.

25 Q. Do you recall what he was wearing, just generally?

BRAD NORVELL - DIRECT BY MR. OZMENT

1 A. I believe it was a green short, some type of khaki
2 pants.

3 MR. OZMENT: All right. Your Honor, may I
4 approach?

5 THE COURT: You may.

6 BY MR. OZMENT:

7 Q. I'm going to hand you State's Exhibits 25 through
8 39 consecutively. I'll ask you to look through all of
9 those at once, and then I'm going to ask you a couple
10 questions.

11 A. Yes, sir.

12 Q. Do you recognize those photos?

13 A. Yes, sir.

14 Q. Did you take those photos?

15 A. Yes. I'm not sure about this one.

16 Q. Which one is that one?

17 A. Number 20.

18 Q. Okay.

19 A. I'm not sure if this was me or if this was taken
20 at the jail by someone else, or even being in the
21 background is different.

22 Q. With the exception of No. 27, you took the rest of
23 them?

24 A. Yes, sir.

25 Q. With the exception of No. 27, do they accurately

BRAD NORVELL - DIRECT BY MR. OZMENT

1 reflect as you recall that night?

2 A. Yes, sir.

3 MR. OZMENT: Okay. Your Honor, at this time,
4 the State would move 25 and 26 and 28 through 39 into
5 evidence.

6 MR. SHELTON: No objection.

7 THE COURT: Admitted.

8 (State's Exhibit Nos. 25, 26, and 28 through
9 39 were marked for identification and admitted into
10 evidence.)

11 BY MR. OZMENT:

12 Q. The clothes he was wearing that night, did you end
13 up taking them in as evidence as well?

14 A. We did. Lieutenant Roach and I, we asked one of
15 our officers to go to the detention center and get a
16 jumpsuit because we knew we were going to have to secure
17 Mr. Irby's clothing that he had on.

18 MR. OZMENT: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. OZMENT:

21 Q. I'm handing you what has been premarked as State's
22 Exhibit 61. I'm going to ask you to look in that white
23 bag and tell me if you recall --

24 A. You want me to open it?

25 Q. If you need to.

BRAD NORVELL - DIRECT BY MR. OZMENT

1 A. Okay.

2 Q. What is in that bag?

3 A. Clothing Mr. Irby had on.

4 Q. Are those the ones that you received from --

5 A. Yes, sir.

6 MR. OZMENT: At this time State would move
7 State's Exhibit 61 into evidence.

8 MR. SHELTON: No objection.

9 THE COURT: Admitted.

10 (State's Exhibit No. 61 was marked for
11 identification and admitted into evidence.)

12 BY MR. OZMENT:

13 Q. We can move it from this place so you at least
14 see.

15 A. That's fine.

16 Q. Do you recall receiving some property of
17 Mr. Irby's that had been in the back seat of Officer
18 Auclair's vehicle?

19 A. I don't.

20 Q. If I showed you an evidence stub with your name on
21 it, would that help remind you?

22 A. Sure, sure.

23 MR. OZMENT: May I approach, Your Honor?

24 THE COURT: You may.

25 BY MR. OZMENT:

BRAD NORVELL - DIRECT BY MR. OZMENT

1 Q. I'm handing you a bag. Do you see your name on
2 that?

3 A. Yes.

4 Q. Did you write on that bag?

5 A. This is Officer Auclair's writing. He gave it to
6 me, and then I secured it into evidence.

7 Q. Okay. How do you know he gave it to you?

8 A. Well, I remember securing items from Mr. Irby, and
9 I remember the fact that he went back out to his patrol
10 vehicle to secure items that have fallen in the back seat
11 of his patrol vehicle.

12 Q. And is that what's in that bag?

13 A. Yes, sir.

14 Q. And can you double-check?

15 A. Yes, sir.

16 Q. Do you see a hat in that bag?

17 A. Yes, sir.

18 Q. All right. Can you pull that hat out for me.
19 Does that have a red sticker on it?

20 A. Yeah.

21 MR. OZMENT: Your Honor, that hat is
22 premarked as State's Exhibit 69. The State would move
23 that into evidence at this time.

24 MR. SHELTON: No objection.

25 THE COURT: Admitted.

BRAD NORVELL - DIRECT BY MR. OZMENT

1 (State's Exhibit No. 69 was marked for
2 identification and admitted into evidence.)

3 BY MR. OZMENT:

4 Q. I'm almost done with y'all, Officer Norvell.

5 A. That's fine.

6 MR. OZMENT: Could I approach one last time,
7 Your Honor?

8 BY MR. OZMENT:

9 Q. Officer Norvell, I'm going to hand you what has
10 been premarked on the back as State's Exhibit 44 and 45.
11 Could you look at the front of those pictures and tell me
12 what they are.

13 A. It's the front of [REDACTED] Haynesville.

14 Q. Who took those photographs?

15 A. I believe these are the ones I took the other
16 night.

17 Q. When do you think you took those, about?

18 A. It was last Thursday, about 8:03.

19 Q. Why did you choose that time?

20 MR. SHELTON: Objection. May we approach?

21 (Discussion held at sidebar.)

22 THE COURT: Those last two are not admitted.
23 Make sure they come out.

24 MR. OZMENT: No further questions, Your
25 Honor.

BRAD NORVELL - CROSS BY MR. SHELTON

1 THE COURT: Cross?

2 MR. SHELTON: Yes.

3 CROSS-EXAMINATION

4 BY MR. SHELTON:

5 Q. When you arrived on scene, do you remember who was
6 all there as far as Moncks Corner police?

7 A. When I first arrived, it was Officer Auclair and
8 Officer Lewis.

9 Q. Okay. At some point in time, did you observe
10 Auclair give Johnny Irby his rights?

11 A. Yes.

12 Q. And that was out at the scene?

13 A. Yes.

14 Q. You mentioned that the television was on when you
15 went into the house?

16 A. Yes, sir.

17 Q. And there was something unusual about that?

18 A. When I first got there, I made entry into the
19 house to get an idea what the situation was so I could
20 advise my co-workers that they were going to be arriving
21 in back of me, and the television was on extremely loud.
22 I turned it off because it was -- it was hard to hear.

23 Q. Okay.

24 A. It was causing things to be more difficult.

25 Q. And then you went to the other crime scene, the

BRAD NORVELL - CROSS BY MR. SHELTON

1 second crime scene. Is that next door?

2 A. I did.

3 Q. And that's where you observed the spots, the blood
4 spots, on the kitchen floor?

5 A. That's correct.

6 Q. So that wasn't in Mr. Johnny Irby's home, that was
7 the next door neighbor's home?

8 A. Correct.

9 Q. That was just clarification. You then had Officer
10 Auclair take Mr. Irby, Johnny Irby, back to the squad
11 room or Moncks Corner police department?

12 A. Yes, sir. At that time Sergeant Crouse was on
13 scene, and he -- we had discussed what to do next, and we
14 decided that it would be best to take him to the squad
15 room.

16 Q. And you made it clear to Officer Auclair not to
17 wash Mr. Johnny Irby's hands or anything?

18 A. Correct, to stay with him to make sure he didn't
19 wash his hands.

20 Q. Okay. And that was for what reason?

21 A. It's usually -- it's a standard thing we do. He
22 knew we were going to have to do a gunshot residue kit so
23 that the elements that I described earlier aren't
24 disposed of.

25 Q. 'Cause those items can easily be wiped off,

BRAD NORVELL - CROSS BY MR. SHELTON

1 sweated off, or washed off?

2 A. That, I don't know.

3 Q. Okay. But that -- doing that gunshot residue
4 test, that is not difficult. You said anybody could do
5 it?

6 A. That's correct.

7 Q. Did you do the gunshot residue test on Telly?

8 A. No, sir.

9 Q. Did you suggest to Sergeant Crouse to do a gunshot
10 residue test on Telly?

11 A. No, sir.

12 Q. So as far as you know, there was no gunshot
13 residue test done on Telly?

14 A. I don't know if there was or not.

15 Q. Okay. Did you suggest to bag his hands or to
16 preserve that?

17 A. No, sir.

18 Q. Okay.

19 A. That -- my job at the time was patrol sergeant.

20 Q. Okay.

21 A. So I was trying to stick to my scope.

22 Q. All right. But you were asked to do the gunshot
23 residue test on Johnny?

24 A. Yes, sir.

25 Q. And you've been trained or you've done those

BRAD NORVELL - CROSS BY MR. SHELTON

1 before?

2 A. There's patrol officers on the street right now
3 that have -- a lot of times we'll have a patrol officer
4 do it. It's nothing that you really need to get trained
5 on.

6 Q. And those kits are widely available?

7 A. They are.

8 Q. Okay. Now, when you went back to the Moncks
9 Corner police department, you went to the squad room?

10 A. Yes, sir.

11 Q. Okay. And you performed a gunshot residue test.

12 A. Yes, sir.

13 Q. And then did you directly take Mr. Irby to
14 Lieutenant Roach's office?

15 A. Yes, sir.

16 Q. Was there any gap in time?

17 A. I don't believe so. Lieutenant Roach's office is
18 almost in the squad room.

19 Q. Okay. It's right there?

20 A. Right.

21 Q. And you didn't leave after you performed the
22 gunshot residue test and then come back and then take
23 him?

24 A. I don't believe so, no, sir.

25 Q. And you observed Lieutenant Roach provide Miranda

BRAD NORVELL - CROSS BY MR. SHELTON

1 rights?

2 A. Yes, sir.

3 Q. All right.

4 MR. SHELTON: Your Honor, could we approach?

5 (Discussion held at sidebar.)

6 THE COURT: We're going to take a ten-minute
7 rest room break now, so if you would go back to the jury
8 room, and we'll have you back in a few minutes. Don't
9 begin deliberations or discussions about the case.

10 (In open court, jury not present.)

11 THE COURT: What do you want to ask?

12 MR. SHELTON: There was a motion in limine
13 that we not talk about or not question Sergeant Norvell
14 about the statements that my client made to Sergeant
15 Norvell, the State saying those were self-serving
16 statements.

17 My argument -- but they wanted to use
18 Lieutenant Roach -- or they want to get into the
19 statements that my client made to Lieutenant Roach. My
20 argument is this is close in time, this is right after,
21 this is during, this is all one statement, and they're
22 wanting to pick and choose to use Roach -- the statements
23 he provided to Roach but not to Norvell, and they're all
24 right there, right from doing the gunshot residue, right
25 from the statements to Lieutenant Roach giving Miranda

BRAD NORVELL - CROSS BY MR. SHELTON

1 and more statements.

2 And so --

3 THE COURT: Were they taken two separate
4 times?

5 MR. SHELTON: It's my argument it's all one
6 statement, Your Honor.

7 THE COURT: How far apart in time were they
8 given? Were both officers in the same room?

9 MR. SHELTON: They both weren't in the same
10 room -- well, they were at one point in time. After the
11 statement that he talks with Norvell, Norvell then takes
12 him right to Roach's room, no break in time. That's what
13 Sergeant Norvell's testimony was, no break in time, took
14 him right next door, two feet away, to Lieutenant Roach's
15 office and observed him giving the Miranda and then Roach
16 started with his --

17 THE COURT: Tell me, what is it that he said
18 to Norvell that you want in?

19 MR. SHELTON: He said to Norvell, he shot his
20 son, feels bad about it. He then says that his son began
21 arguing, and it got to the point where Irby told his son
22 that he and his girlfriend were going to have to move
23 out.

24 Irby said his son said he ain't going nowhere
25 and he couldn't make him leave. Irby stated his son came

BRAD NORVELL - CROSS BY MR. SHELTON

1 at him on the porch and he alluded to his son's size and
2 strength and shooting him.

3 THE COURT: All right. What's the State's
4 position?

5 MR. OZMENT: Your Honor, these two
6 statements -- first, Norvell wasn't there to take a
7 statement. He wasn't recording it. He didn't Mirandize
8 him. That wasn't his purpose.

9 I think they asked Investigator Norvell -- he
10 will tell you he wasn't trying to ask questions.
11 Mr. Irby was just talking while he was doing the GSR.
12 Norvell then took him to a separate room to Lieutenant
13 Roach's office for the purpose now of taking a statement.
14 Norvell left before they even finished Miranda rights, as
15 he stated a minute ago, and they was done.

16 He wasn't trying to take a statement or
17 didn't ask questions or anything. At that point
18 Lieutenant Roach went through a Miranda form with him,
19 went over his rights, and then said, Do you want to give
20 a statement? Defendant said yes, and then they took a
21 formal statement.

22 To me, these are two separate statements.
23 The one from Norvell alone is not solicited. I don't see
24 how it gets out of hearsay, and that is self-serving.
25 It's a typical self-defense claim, that he came at me and

BRAD NORVELL - CROSS BY MR. SHELTON

1 I had no choice. He was so much bigger, I had to shoot
2 him.

3 If he wants to assert that, he can take the
4 stand and assert that, but just because he told Norvell
5 that, essentially unsolicited, before he was asked
6 questions in a formal statement, there were two
7 statements and this one, in my opinion, is inadmissible.

8 THE COURT: Well, it seems to me that under
9 State vs. Terry that he cannot elicit an exculpatory
10 statement from another witness.

11 He can testify. Of course, he had the
12 opportunity to go straight in that other room and say
13 whatever it is you say that he said to Roach.
14 Presumably, he didn't say the same thing just moments
15 later when he had the opportunity, but if you're saying
16 that he made an exculpatory statement to Norvell, then
17 under State versus Terry, that's not allowed. So denied.

18 All right? Are we ready to start back?
19 Defendant is in the courtroom. Bring the jury back in.

20 (In open court, jury present.)

21 BY MR. SHELTON:

22 Q. Did you take anything to SLED, gunshot residue
23 test?

24 A. No, sir.

25 Q. Any of the clothing or items that you take to

BRAD NORVELL - CROSS BY MR. SHELTON

1 SLED?

2 A. No, sir.

3 Q. Okay. Was it your decision on what got tested at
4 SLED as far as for DNA or anything?

5 A. No, sir.

6 Q. Whose decision would that have been?

7 A. Lieutenant Roach.

8 MR. SHELTON: No further questions.

9 THE COURT: Redirect?

10 MR. OZMENT: No redirect, Your Honor.

11 THE COURT: You can step down.

12 MR. OZMENT: We ask Sergeant Norvell be
13 released from his subpoena.

14 THE COURT: Do you need him for anything
15 else?

16 MR. SHELTON: No, sir.

17 THE COURT: You're free to go. Thank you.
18 Next witness?

19 MS. WILLIAMS: State calls Ila Simmons.

20 ILA SIMMONS,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. WILLIAMS:

25 Q. Ms. Simmons, where do you work?

ILA SIMMONS - DIRECT BY MS. WILLIAMS

1 A. I was employed South Carolina Law Enforcement
2 Division, also known as SLED.

3 Q. You don't work there anymore?

4 A. No, ma'am.

5 Q. How come?

6 A. I retired from there.

7 Q. And were you working there back in August of 2012?

8 A. Yes, ma'am.

9 Q. And did you analyze pieces of evidence from this
10 case?

11 A. I did.

12 Q. What did you analyze?

13 A. I analyzed two gunshot residue collection kits.

14 Q. What is your background in that department? What
15 exactly do you do, and what kind of educational
16 requirements are required in order to do that?

17 A. You have to have a bachelor of science degree in a
18 physical science, and I have a bachelor science degree in
19 chemistry. After coming to work at SLED, for first three
20 years, I worked with a Court qualified SLED certified
21 trace evidence examiner. I had to take written and
22 practical examinations and pass them with 100 percent
23 efficiency, and after completing that, SLED certified me
24 to analyze trace evidence.

25 Q. Have you been qualified before as an expert to

ILA SIMMONS - DIRECT BY MS. WILLIAMS

1 testify in the area of gunshot residue?

2 A. Yes, ma'am, over 250 times state, civil, and
3 federal courts.

4 MS. WILLIAMS: We would offer Ms. Simmons in
5 the area of gunshot residue.

6 MR. SHELTON: No objection.

7 THE COURT: All right, folks. The same
8 instructions I gave you earlier about expert witnesses
9 applies to this witness as well. She's now been
10 qualified as an expert in the field of gunshot residue.
11 You decide how much weight to give her testimony, based
12 on all of the evidence that you hear throughout the
13 trial.

14 All right? You may resume.

15 MS. WILLIAMS: Thank you, Your Honor.

16 BY MS. WILLIAMS:

17 Q. Now, we've already had sort of a short course in
18 gunshot residue from Officer Norvell, but just very
19 briefly, if you could explain what it is you're analyzing
20 when you're looking for gunshot residue.

21 A. Gunshot residue is a mixture of microscopic
22 chemicals that come out of a gun when it's discharged.
23 It can get on anything in close proximity to the gun,
24 including the person's hands that are holding the gun.

25 Q. If I'm shot in the chest and but I don't touch the

ILA SIMMONS - DIRECT BY MS. WILLIAMS

1 gun, could I have gunshot residue on me?

2 A. Yes, ma'am.

3 Q. Would you expect to have gunshot residue on me?

4 A. Yes. About 60 to 70 percent of the people who
5 sustained a gunshot wound will have gunshot residue on
6 their hands even though they haven't shot a gun.

7 Q. Or touched the gun?

8 A. Yes, ma'am.

9 Q. And in this case, you analyzed two kits; is that
10 correct?

11 A. Yes, ma'am.

12 Q. Let's talk about kit -- the kit that you -- I'm
13 sorry, the kit that you analyzed for Michelle Wiggins,
14 that is what number in your report?

15 A. That would be item number four.

16 Q. And tell us what you found in the gunshot residue
17 kit from Michelle Wiggins.

18 A. A gunshot residue kit has a sample from the right
19 palm, a sample from the back of the right hand, a sample
20 from the left palm, and a sample from the back of the
21 left hand.

22 And I found no gunshot residue on the palm of the
23 right hand. I found gunshot residue on the back of the
24 right hand, and I found no gunshot residue on the left
25 hand at all, neither the palm nor the back.

ILA SIMMONS - DIRECT BY MS. WILLIAMS

1 Q. And if Michelle Wiggins was shot in the chest from
2 a fairly close proximity, would that explain why she had
3 gunshot residue on the back of her right hand?

4 A. Yes, ma'am, it can.

5 Q. Does that mean she touched a gun?

6 A. No, ma'am.

7 Q. Does it mean she fired a gun?

8 A. No, ma'am.

9 Q. In fact, if she had fired a gun or touched a gun,
10 would you expect to find more gunshot residue on her
11 hands?

12 A. In fact, I would have expected to find gunshot
13 residue on the palm of the hand as well as on the back of
14 the hand, because if someone is holding a gun, the plume
15 of gunshot residue will get on the back of the hand as
16 well as the palm.

17 Q. So the fact that she had no gunshot residue on her
18 palms is an indication she didn't shoot a gun?

19 A. It's more consistent with her having not shot a
20 gun and getting gunshot residue transfer on her hand in
21 some way.

22 Q. Now, her clothes were not analyzed, or you didn't
23 analyze her clothing; is that correct?

24 A. No, ma'am. We do not analyze people's clothing
25 who have sustained a gunshot wound simply because of

ILA SIMMONS - DIRECT BY MS. WILLIAMS

1 shooting, and if you sustain a gunshot wound and the
2 bullet breaks downs, you can end up with gunshot residue
3 on your clothing. So we're trying to determine if
4 someone has discharged a weapon, not having sustained a
5 gunshot wound.

6 Q. But gunshot residue particles, would you expect
7 them to go on to clothing as well as skin?

8 A. Yes.

9 Q. And what about the kit from Johnny Lee Irby? How
10 was that identified in your report?

11 A. That would be item number two.

12 Q. And tell us about the results of that particular
13 gunshot residue kit.

14 A. Gunshot residue was found on both palms and on the
15 backs of both hands; right palm, right back, left palm,
16 left back.

17 Q. Is that consistent with him holding a gun with
18 both hands?

19 A. Yes, ma'am.

20 MS. WILLIAMS: Court's indulgence, please.

21 I'll show you what has been marked as State's
22 58. May I approach?

23 THE COURT: You may.

24 BY MS. WILLIAMS:

25 Q. Tell me if you recognize what this is.

ILA SIMMONS - CROSS BY MR. SHELTON

1 A. Yes, ma'am, I do.

2 Q. And what is that?

3 A. State's Exhibit 58 is the gunshot residue kit
4 collected from Michelle Wiggins. It's marked with my
5 initials, laboratory identification number, item number,
6 and the date that I opened it.

7 Q. And was that tampered with or compromised in any
8 way when you received this item?

9 A. No, ma'am. It was sealed with the investigator's
10 initials on it.

11 Q. Had it been compromised in any way, would you have
12 tested it?

13 A. No, ma'am.

14 MS. WILLIAMS: At this time, we offer State's
15 58 into evidence.

16 MR. SHELTON: No objection.

17 THE COURT: Admitted.

18 (State's Exhibit No. 58 was marked for
19 identification and admitted into evidence.)

20 MS. WILLIAMS: Thank you, Ms. Simmons. No
21 further questions.

22 THE COURT: Cross?

23 CROSS-EXAMINATION

24 BY MR. SHELTON:

25 Q. Ms. Simmons, did you analyze anything pertaining

ILA SIMMONS - CROSS BY MR. SHELTON

1 to Telly Irby?

2 A. No, sir, I did not.

3 Q. And I think the question the solicitor said was
4 that because there was no gunshot residue on the palms,
5 that means that she didn't fire a gun?

6 A. It's most consistent with somebody having not
7 fired a gun.

8 Q. But are there times when you'll test gunshot
9 residue on somebody's palms there is no gunshot residue,
10 and they fired a gun?

11 A. Yes. That can happen if the gunshot residue is
12 removed from the palm in some way.

13 Q. Yes. And it can easily be removed?

14 A. Yes, sir. It can be wiped off or washed off.

15 Q. What about time?

16 A. Over time, if someone is living, within six hours.
17 Gunshot residue can remain about six hours.

18 Q. Okay. Would sweat play -- come into play?

19 A. Yes, sir. That can remove gunshot residue.

20 Q. If someone was taken to the hospital, could that
21 come into play?

22 A. If the hand was wiped in some way, if the palm was
23 wiped in some way, yes, sir.

24 Q. So just because there is no gunshot residue on her
25 hands, that doesn't mean that she didn't touch the gun?

ILA SIMMONS - CROSS BY MR. SHELTON

1 A. No. I can't say that definitively. It's just
2 most consistent with her having gotten the gunshot
3 residue on her hand in a different way other than
4 touching a gun because if I were to pick up a gun, I
5 would pick it up like this, and I would expect it to be
6 just on the palm, but because it was on the back of the
7 palm is consistent with it getting on the back of the
8 hand in a different way.

9 Q. But that could also indicate the gunshot residue
10 was wiped off everywhere but the back of the hand?

11 A. That is a possibility.

12 Q. So there is no way to tell how close she was to a
13 gun from just the gunshot residue test?

14 A. Yes, sir.

15 Q. Okay. And the same way -- strike that.

16 And you can't tell how a gun is shot just from
17 somebody having gunshot residue on their hands?

18 A. No, sir.

19 Q. Okay.

20 A. If they have gunshot residue on the palms and
21 backs of both hands, you would assume both hands were in
22 the vicinity of a weapon.

23 Q. Vicinity of weapon when it went off?

24 A. Yes.

25 Q. Not necessarily that they shot the gun?

ILA SIMMONS - RECROSS BY MR. SHELTON

1 A. No. They would probably have to be within a few
2 feet of the weapon.

3 Q. Okay.

4 MR. SHELTON: No further questions.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. What does it mean when someone gets their hands
9 bagged?

10 A. When someone has sustained an injury at a crime
11 scene and they want to preserve evidence, the crime scene
12 technicians will come in and put paper bags over the
13 hands. This will prevent gunshot residue from being
14 removed in any way while they're undergoing medical
15 treatment or being transported.

16 Q. Were her hands bagged?

17 A. Yes, ma'am.

18 RECROSS-EXAMINATION

19 BY MR. SHELTON:

20 Q. You don't know when her hands were bagged.

21 A. No. All I know is that on the GSR information
22 form that I received, it mentioned that hands were bagged
23 at that time.

24 Q. But it could have been after she was scene at the
25 hospital?

JAMES GREEN - DIRECT BY MS. WILLIAMS

1 A. It may have been. I'm not certain.

2 MR. SHELTON: Okay.

3 MS. WILLIAMS: May she be released?

4 THE COURT: You're free to go. Thank you.

5 Next witness?

6 MS. WILLIAMS: State calls James Green.

7 JAMES GREEN,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Mr. Green, where do you work?

13 A. I'm employed by South Carolina Law Enforcement
14 Division, commonly referred to as SLED.

15 Q. What department do you work in?

16 A. I work in the firearms department in the forensic
17 services laboratory.

18 Q. What are your duties?

19 A. Part of the duties, I'm a firearms examiner. We
20 examine firearms and firearms related evidence, tool and
21 tool mark related evidence and try to determine common
22 origin.

23 Q. And what are your qualifications?

24 A. I have a bachelor of arts degree from Charleston
25 Southern University. I also have a master of science in

JAMES GREEN - DIRECT BY MS. WILLIAMS

1 criminal justice degree, also from Charleston Southern
2 University.

3 When I was hired at SLED, I began SLED
4 firearms and tool marks course of instruction, which is
5 approximately a three- to three-and-a-half year course of
6 instruction in an apprentice-type capacity. You start
7 off observing senior examiners working cases. There's
8 reading about the history of firearms examination
9 components, and as you progress through the training,
10 you're given oral and written tests to test the
11 competency.

12 As you progress even further, you start doing
13 microscopic work under the supervision of your training
14 officer and other examiners. At the end of that, I was
15 given fake cases to work on my own, and once I did that,
16 I successfully completed and started working cases.

17 Q. And have you testified as an expert before in
18 firearms identification?

19 A. Yes, ma'am.

20 Q. Approximately how many times?

21 A. Twenty-nine.

22 MS. WILLIAMS: Your Honor, at this time we
23 would move to qualify Mr. Green in the field of firearms
24 identification.

25 MR. SHELTON: No objection.

JAMES GREEN - DIRECT BY MS. WILLIAMS

1 THE COURT: All right, folks. Again, same
2 instructions about expert witnesses apply to this witness
3 as well. He's been qualified as an expert in firearms
4 identification. You decide how much weight to give his
5 testimony based on all of the evidence that you hear
6 throughout the trial.

7 MS. WILLIAMS: Thank you, Your Honor.

8 BY MS. WILLIAMS:

9 Q. In the course of your work at SLED, did you
10 examine pieces of evidence from this case?

11 A. Yes, ma'am.

12 Q. And what items of evidence did you examine?

13 A. I was -- let me get my notes real quick. It was a
14 pistol, a magazine, unfired cartridges and a fired
15 bullet.

16 Q. I'm going to show you what's been previously
17 marked as State's 48, 49, 56, and 54, if you could just
18 take your time and look at these pieces of evidence and
19 tell me if those were the items that you examined.

20 A. Ladies and gentlemen of the jury: If you see me
21 looking -- rotating the evidence around, whenever
22 evidence is submitted to SLED, particularly the firearms
23 department, we mark each item with a laboratory case
24 number, item number, and our initials. So if you see me
25 rotating evidence around, that's what I'm doing.

JAMES GREEN - DIRECT BY MS. WILLIAMS

1 State's Exhibit 48 is the SLED item number one
2 pistol that was submitted in this case. State's Exhibit
3 49 is the magazine that accompanied State's Exhibit 48
4 pistol. State's Exhibit 56 are the two unfired
5 cartridges that were submitted in this case.

6 Q. And I think there is also State's 54 maybe.

7 A. Yes, ma'am. Inside the bag with State's Exhibit
8 54 was Exhibits 52 and 53. I did not examine State's
9 Exhibits 52 and 53.

10 Q. Okay. Did you examine -- tell us what you did
11 with State's Exhibit 48, the pistol.

12 A. When firearms are submitted to SLED, when we first
13 open the box, we take pictures of the box, how it's
14 received, and then we look over the firearms to see if
15 there is any trace material, blood, hair fibers, anything
16 like that that may be of probative value. If there are,
17 we take samples of them. I did not see any in this case.

18 I physically or grossly examine the firearm to
19 make sure it's safe to fire, and then we'll take it and
20 fill out the departmental worksheets. We have a
21 two-story water tank in our department, about four feet
22 in diameter, and we'll shoot down into the water tank.
23 That's our chosen media. It does not add to or take away
24 any markings from fired bullets or fired cartridge
25 casings, and what we'll do is fire those, and we know

JAMES GREEN - DIRECT BY MS. WILLIAMS

1 they came from the gun because we fired them ourselves,
2 and we'll use those for microscopic comparisons from
3 items that were submitted.

4 Q. And did you also examine any cartridges that were
5 submitted with that gun that were taken from the scene?

6 A. The only thing that I had in 52 were two unfired
7 cartridges.

8 Q. What about item three?

9 A. Item three was one fired bullet.

10 Q. Okay. And do you have that?

11 A. No, ma'am.

12 Q. But you did get a submission of item three?

13 A. Yes, ma'am.

14 Q. Okay. And as an expert, do you ever come across a
15 situation where you are given an unfired cartridge that
16 was found at a scene?

17 A. Yes, ma'am.

18 Q. And can you explain different ways that that can
19 occur? How could a bullet be ejected from a gun?

20 A. If you have a -- the other pistol can slide
21 forward, which I can't do with the gun lock. You have a
22 loaded magazine. You load the magazine into the magazine
23 well. It will latch securely, and then it slides
24 forward. It pulls the slide back, and you let it go
25 forward, spring tension, and it loads the cartridge from

JAMES GREEN - DIRECT BY MS. WILLIAMS

1 the magazine.

2 I've seen my dad do this countless times. He
3 forgets that there's one in there, and he'll rack it
4 again, put another one in there, but when he does that,
5 the one that's already in the chamber is extracted from
6 the chamber and expelled from the firearm. So that will
7 be an unfired round on the ground, so that's one
8 explanation of how that can happen.

9 Another one is a jam. Sometimes a magazine
10 lips -- which are these right here, the feed lips -- will
11 get weak, and it will allow more than one cartridge to
12 come up at a time, and since there is only one chamber,
13 it's got to go somewhere, and it's just going to fall out
14 the side.

15 Q. So if you're being hasty with your time and you
16 already have a bullet in there and you don't realize it
17 and you try to jam the magazine and you rack the gun, it
18 will eject the one that is already in there?

19 A. Yes, ma'am.

20 Q. Or if you're just racking it too many times and
21 something gets jammed, it can eject one bullet?

22 A. Yes, ma'am. It will eject an unfired cartridge if
23 there's already one loaded in there.

24 MS. WILLIAMS: Court's indulgence for one
25 second.

JAMES GREEN - CROSS BY MR. SHELTON

1 I think we need to locate one -- thank you,
2 Mr. Green. We appreciate it. Please answer any
3 questions from the defense.

4 CROSS-EXAMINATION

5 BY MR. SHELTON:

6 Q. Mr. Green -- and you went over a little bit -- I
7 just have a couple questions about the slide. So that's
8 a gun that has a slide on top?

9 A. Yes, sir.

10 Q. And so it could be -- I think the solicitor asked
11 you if somebody was trying to rack it quickly, could it
12 also be if somebody grabbed the top of the gun and racked
13 it?

14 A. If I understand what you're saying correctly, it
15 would not matter who is racking the slide. As long as
16 the slide is racked and there is one in the chamber, it
17 will extract and eject that one from the chamber.

18 Q. All right. And is there any way to tell if there
19 was a jam or anything? Does it leave any marks on the
20 gun?

21 A. On the firearm?

22 Q. Yeah.

23 A. It may. You would see some possibly some trace
24 amounts of copper or brass from the cartridge. Cartridge
25 casing is usually brass or nickel-plated brass or

JAMES GREEN - CROSS BY MR. SHELTON

1 sometimes they're copper washed or copper alloy.

2 Sometimes you'll see that on there, but if it happens
3 repeatedly, you'll see a bunch of stuff on there. Some
4 guns are prone to jamming.

5 When I testified to this gun, I didn't see any of
6 that. It doesn't mean it may not have happened, but when
7 I had it, it was normal.

8 Q. What about the unfired cartridge, could there have
9 been some evidence on that that it was jammed?

10 A. On the two I received?

11 Q. Or -- yes.

12 A. On the two I looked at, there -- my report says
13 they're the correct caliber for use, which just means
14 that the properties for use in this pistol are a nine
15 millimeter Lugar pistol. I did not see any signs of
16 reloading or anything like that.

17 There were some mechanism marks on, which simply
18 can be put on the cartridges by the metal feed lips, if
19 you can usually load or unload a gun and find some
20 markings on there, but I did not see anything on State's
21 Exhibit 56 anything like that that would indicate a
22 malfunction or anything out of the ordinary on these
23 cartridges.

24 Q. Okay.

25 MR. SHELTON: No further questions.

AMANDA WEBB - DIRECT BY MS. WILLIAMS

1 MS. WILLIAMS: No further questions.

2 THE COURT: You can step down. You're free
3 to go if nobody needs you.

4 MR. SHELTON: No further questions.

5 THE COURT: Call your next witness.

6 MR. OZMENT: State calls Thelma Lewis to the
7 stand.

8 MS. WILLIAMS: Scratch that, Your Honor.
9 We're calling Amanda Webb.

10 AMANDA WEBB,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WILLIAMS:

15 Q. Ms. Webb, where do you work?

16 A. I work for SLED in the forensics DNA department.

17 Q. And how long have you worked there?

18 A. It's about six and a half years.

19 Q. And what do you do there?

20 A. I'm a DNA analyst. I work criminal cases
21 throughout the State of South Carolina. Anything that
22 has a DNA request, to try and identify an individual if
23 they've been at a crime scene. There's DNA analysis that
24 I perform, and I can also test for body fluids,
25 identifying body fluids, blood, semen or saliva.

AMANDA WEBB - DIRECT BY MS. WILLIAMS

1 Q. What is your educational background in order to be
2 able to do this kind of work?

3 A. I have a bachelor of science in forensic
4 chemistry, and I also have a master's of science in
5 forensic science.

6 Q. And have you been qualified as an expert in this
7 area in court before in the area of DNA?

8 A. Yes, I have.

9 Q. About how many times?

10 A. About 30.

11 MS. WILLIAMS: Your Honor, at this time we
12 would offer Ms. Webb as an expert in the field of DNA
13 analysis.

14 MR. SHELTON: No objection.

15 THE COURT: Okay, folks. She is an expert
16 now in DNA analysis, same instructions I've been giving
17 you about other experts. You decide how much weight to
18 give her testimony based on all the evidence you hear
19 throughout the trial.

20 Go ahead.

21 BY MS. WILLIAMS:

22 Q. In the course of your work as a forensic
23 scientist, did you process other items of evidence for
24 this case?

25 A. Yes, I did.

AMANDA WEBB - DIRECT BY MS. WILLIAMS

1 Q. Did you also prepare a report with all the results
2 of your testing?

3 A. Yes, I did.

4 Q. And what items of evidence did you receive for
5 this case?

6 A. I received a cutting from Johnny Irby's pants, a
7 cutting from Johnny Irby's shirt, swab from Johnny Irby's
8 right shoe, a swab from Johnny Irby's left shoe, a
9 cutting from a sock, and then also I received some known
10 standards from an individual.

11 And what known standards are is that is DNA
12 collected from a person so you know what their DNA
13 profile is, so if you develop a DNA profile from
14 evidence, you can compare it to that person's DNA to see
15 if they matched or could be excluded.

16 So I received buccal swabs from Johnny Irby.
17 Buccal swabs are the known standard of DNA. It's just a
18 Q-tip rubbed on the inside of the cheek. The cells on
19 the inside of the cheek are call buccal swabs, so that's
20 why it's called buccal swab; blood sample from Johnny
21 Irby, blood sample from Telly Irby, and then also I used
22 a cutting from panties from Michelle Wiggins as an
23 alternate known standard.

24 She wasn't available at the time, I believe, for
25 them to obtain a buccal swab or a blood sample, so as an

AMANDA WEBB - DIRECT BY MS. WILLIAMS

1 alternative, I was able to use her panties, her
2 underwear, because she was known to have been wearing
3 them, and so I expected to find her DNA on those -- on
4 that item.

5 Q. And did you develop a profile for each of these
6 items, one for Johnny Irby, one for Telly Irby, and one
7 you would expect to be Michelle Wiggins because they were
8 from her panties?

9 A. Yes, I did.

10 Q. And so with those profiles, what did you do with
11 those? What did you compare them to in this case, and
12 what were the results?

13 How about if we take it one item at a time.

14 A. Sure.

15 Q. Let's look at Mr. Irby's pants, the cutting from
16 his pants. What did you compare it to and what was the
17 results?

18 A. Sure. They were able to develop a DNA profile
19 from the pants, and that was compared to all of the known
20 standards from Johnny Irby, Telly Irby, and Michelle
21 Wiggins, and the DNA profile from the pants matched the
22 DNA profile of Telly Irby.

23 Q. And when we talk about the DNA that was found on
24 the pants, were you aware of a presumptive test that was
25 done to figure out what type of DNA that was?

AMANDA WEBB - DIRECT BY MS. WILLIAMS

1 A. Yes, I was. There was a presumptive test for
2 blood, and it was a positive test, and presumptive means
3 that it's a positive result for blood; however, there are
4 some other things that can give a positive result for
5 that test, like rust, horseradish, other vegetable type
6 materials.

7 So in order to confirm blood, other tests would
8 need to be performed; however, SLED policy is that we
9 don't normally do that confirmational blood test because
10 usually that presumptive test for blood positive is a
11 very good indication that blood is present, and also
12 combined with the circumstances, and I was able to
13 develop a full DNA profile.

14 A full DNA profile means that I test 16 different
15 locations of DNA, and I was able to develop information
16 at each of these 16 locations, and that also indicates to
17 me that it's blood because blood is a good source of DNA
18 and I can develop a full profile. I can get a lot of
19 information from blood, so it's also another indication
20 that blood was present.

21 Q. So on which items was Telly Irby's blood found?

22 A. That would be Johnny Irby's pants, Johnny Irby's
23 right shoe, Johnny Irby's left shoe, a sock, and that is
24 all the items that Telly Irby's blood was found on.

25 Q. And did you find DNA on Johnny Irby's shirt?

AMANDA WEBB - DIRECT BY MS. WILLIAMS

1 A. Yes, I did.

2 Q. And whose DNA was that?

3 A. It was a mixture of at least two people, and what
4 a mixture means is that there was one person's DNA found
5 on the item.

6 One of the person's DNA was Johnny Irby's, which
7 is not surprising. It was his shirt. I expect to find
8 people's DNA on their own clothing. You're wearing it
9 every day, and the other person -- it was a low amount of
10 DNA, but I was able to compare it to Michelle Wiggins and
11 Telly Irby, and they were excluded, so that means that it
12 wasn't their DNA that was present, it was somebody else's
13 DNA.

14 Q. I want to show you what's been marked as State's
15 65, 66, 67 and 68.

16 MS. WILLIAMS: May I approach, Your Honor?

17 THE COURT: You may.

18 BY MS. WILLIAMS:

19 Q. If you can look through those collectively and
20 recognize any markings and recognize those as any items
21 that you tested.

22 A. Yes. State's Exhibit 68 has item 11.1, which is
23 cutting from the pants; item 12.1, the cutting from the
24 shirt; item 13.1, the swab from the right shoe; item
25 13.2, the swab from the left shoe; and item 14.1, the

AMANDA WEBB - CROSS BY MR. SHELTON

1 cutting from the sock.

2 State's Exhibit 66 is my item nine, and that is a
3 blood standard from Telly Irby. State's Exhibit 65 is
4 item 5, the buccal swab from Johnny Irby, and State's
5 Exhibit 67 is item 10.1, the cutting from the panties,
6 the alternate known standard for Michelle Williams.

7 MS. WILLIAMS: Your Honor, at this time we
8 offer State's 65, 66, 67 and 68 into evidence.

9 THE COURT: Admitted.

10 (State's Exhibit Nos. 65, 66, 67 and 68 were
11 marked for identification and admitted into evidence.)

12 MS. WILLIAMS: No further questions.

13 CROSS-EXAMINATION

14 BY MR. SHELTON:

15 Q. Ms. Webb, let's back up a little bit here. So
16 what does it mean when you develop a profile?

17 A. Sure. It's essentially developing a set of
18 numbers. I develop a set of numbers from an evidence
19 sample, and then I develop a set of numbers from the
20 known standards, and it's essentially just comparing the
21 numbers to see if they match up.

22 It's sort of equatable to a postal address. So
23 let's say my work address is 4400 Broad River Road, so I
24 can look at those numbers and that location and compare
25 to another postal address to see if it would be the same

AMANDA WEBB - CROSS BY MR. SHELTON

1 or not, and that's essentially what I do, just look at
2 numbers to see if the same numbers are present or not.

3 Q. If you may explain -- how do we get those numbers?
4 Do you put those items in a machine and it runs those
5 numbers? How do we get that?

6 A. Sure. I cut out a small portion, I put it in a
7 vial, a tube, put some chemicals on it. The chemicals
8 open up the cells so I can get to the DNA, and then I
9 quantify the DNA to see how many results I have to work
10 with.

11 Then the DNA is processed in an instrument, and it
12 gives the results that I can use for comparison.

13 Q. And is that -- I think your testimony earlier was
14 that you got a full DNA profile, and that indicates what?

15 A. Yes. The full DNA profile with -- coupled with a
16 presumptive positive for blood gives me another good
17 indication that the DNA is probably coming from blood,
18 and, also, just the item, I would notice there was a
19 brown stain found on the item. It also gives a good clue
20 that it is more than likely blood.

21 Q. So when you had a cutting from Johnny Irby's
22 shirt, item 12 --

23 A. Yes.

24 Q. It's indicated blood, and then you develop a full
25 profile that matched Johnny Irby?

AMANDA WEBB - CROSS BY MR. SHELTON

1 A. Yes.

2 Q. Okay. So that would indicate it was Johnny Irby's
3 blood?

4 A. Yes. It would be a strong possibility, yes.

5 Q. Okay. So there was also a mixture, so there is
6 something else. There is also some kind of DNA on there?

7 A. Yes, that's correct.

8 Q. Could you tell if it was male, female?

9 A. I couldn't tell because it was a low amount, so I
10 really only got a partial bit of information.

11 For instance, if I go back to that postal address,
12 I used 4400 Broad River Road. It's a partial, so I might
13 have 4400, and that's it, you know, so I got limited
14 information, so I couldn't tell if it was male or female.

15 Q. But it excluded Michelle and Telly because the
16 numbers didn't match up to them?

17 A. Yes, that's correct. The few numbers that I had,
18 they were different than what Telly and Michelle have, so
19 I was able to exclude.

20 Q. Okay. Now, it's pretty important to make sure
21 everything is clean, make sure that you change gloves in
22 between handling evidence, that sort of thing, correct?

23 A. Yes, that's correct.

24 Q. And that's because these machines are pretty
25 sensitive?

AMANDA WEBB - CROSS BY MR. SHELTON

1 A. Yes, they're sensitive.

2 Q. And they can pick up some things that you might
3 not realize are there, as far as DNA?

4 A. Yes. We always have to be careful with how we
5 handle evidence and not to contaminate anything with
6 other pieces of evidence or even ourselves, working in
7 the lab.

8 Q. And you take notes if you did anything or notice
9 anybody, lab assistant, if they did anything, there is
10 notes taken, correct?

11 A. Yes, that's correct.

12 Q. So there is nothing as far as SLED is concerned
13 with cross contamination or anything, correct?

14 A. Yes, that's correct. And, in fact, what we have
15 on file at SLED is we have the DNA profile of everyone
16 that works in the lab, so I was able to compare it to
17 people who work in the DNA department and everyone who
18 has handled this item of evidence for analysis, and every
19 one else was excluded as well.

20 Q. But to some extent, your job is dependent on the
21 law enforcement agency that collected the evidence?

22 A. Yes, that's correct.

23 Q. So it's important that they follow the same
24 procedures?

25 A. Yes. When collecting for DNA analysis, they

AMANDA WEBB - CROSS BY MR. SHELTON

1 should also be aware of possible contamination.

2 Q. And cross contamination, and they should change
3 gloves between handling evidence and that sort of thing.

4 A. I would recommend it, yes.

5 Q. Are you aware of anything in this case as far as
6 how they handled the evidence?

7 A. I'm not certain. I don't receive any information
8 about that.

9 Q. Okay. Now, you're also somewhat dependent on the
10 law enforcement agency or the solicitor's office as to
11 what items to test.

12 A. Yes, that's correct. They make a -- they submit
13 what items they would like to be tested and make a
14 request as to what type of testing needs to be performed.

15 Q. Okay. And you can perform tests at all points in
16 time, prior to trial, so they could submit something
17 prior to trial and you could test it?

18 A. Yes, that's correct.

19 Q. And you mentioned what you tested. You never
20 tested the gun for DNA?

21 A. No, I did not.

22 Q. Okay. Did you test Michelle's shoes?

23 A. No, I did not.

24 Q. Michelle's dress?

25 A. No, I did not.

AMANDA WEBB - REDIRECT BY MS. WILLIAMS

1 Q. Okay.

2 MR. SHELTON: No further questions.

3 THE COURT: Redirect?

4 MS. WILLIAMS: Just a couple.

5 REDIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Just a couple. SLED is not the only DNA lab in
8 this area, is it?

9 A. No, it's not. There are some county labs and some
10 private labs as well.

11 Q. And the certification that SLED has, other labs
12 have too; is that correct?

13 A. Yes. Most of them do. There are some private
14 labs that don't, but yes, the county labs and SLED, we
15 all have the same standards and accreditations and
16 certification.

17 Q. Getting back to Mr. Irby's shirt, if Mr. Irby had
18 blood on his shirt and he was sweating, would you expect
19 to find his DNA on that shirt even if it wasn't his
20 blood?

21 A. Yes, I would. I would expect even just wearing it
22 for an extended amount of time, you transfer skin cells
23 on to the shirt. With blood, though, I would expect to
24 find more than a partial profile, so I would expect that
25 more DNA came from blood, if blood is present.

AMANDA WEBB - RECROSS BY MR. SHELTON

1 So I would expect the majority of the amount of
2 DNA to probably be from that blood, because what happens,
3 a lot of times is blood can sort of cover up and sort of
4 mask or overwhelm skin cells that might be on the shirt,
5 so I would say the majority of the DNA's probably from
6 the blood.

7 Q. When you process murder cases, are you aware of
8 SLED's policy in terms of how many pieces of evidence
9 we're allowed to submit?

10 A. Yes, I am. We, SLED, accept five items of
11 evidence for DNA and as many known standards as they
12 would like to submit, the reason being just because we
13 work cases all over the state, and, honestly, we're kind
14 of understaffed.

15 So we work the five best pieces of evidence, and
16 then if other things need to be worked, after we develop
17 the report for that first five pieces of evidence, then
18 we will accept other items as it is seen fit.

19 MS. WILLIAMS: Thank you, Ms. Webb.

20 RECROSS-EXAMINATION

21 BY MR. SHELTON:

22 Q. So even though you got a policy, you could have
23 accepted more.

24 A. Yes, that's correct.

25 MR. SHELTON: No further questions.

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 THE COURT: You can step down.

2 Next witness?

3 MS. WILLIAMS: Michelle Wiggins.

4 MICHELLE WIGGINS,

5 having been first duly sworn,

6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Michelle, where do you live now?

10 A. Jacksonville, Florida.

11 Q. And do you work?

12 A. Yes, ma'am.

13 Q. What where do you work?

14 A. McDonald's.

15 Q. And do you have any children?

16 A. Yes, ma'am.

17 Q. And what are their names and how old are they?

18 A. Diamond [REDACTED], Destiny [REDACTED], and Deanna

19 [REDACTED]. Diamond is 15; Destiny is 13; Deanna is 11.

20 Q. And who do you live with now?

21 A. My parents.

22 Q. And how long have you lived there?

23 A. On and off, two years.

24 Q. Where were you living back in August of 2012?

25 A. With Mr. Irby.

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 Q. Is that here in South Carolina?

2 A. Yes, ma'am.

3 Q. And who were you living with?

4 A. Mr. Irby, his brother Gene, and my three children
5 and Telly.

6 Q. And who is Telly?

7 A. My fiance.

8 Q. And how many people -- was that the extent of
9 people that lived in that house, those seven that you
10 just named?

11 A. Yes, ma'am.

12 Q. And how big was that house?

13 A. It was a two bedroom, one bath.

14 Q. How long had y'all lived there before Telly Irby's
15 death?

16 A. About two weeks.

17 Q. And during that two weeks, did you have
18 responsibilities and chores around the house?

19 A. No, sir -- no, ma'am. He just pretty much told us
20 to provide our own food and pretty much keep the kids,
21 you know, from tearing things up and clean up behind
22 ourselves.

23 Q. And did y'all ever help around the house?

24 A. Yes, ma'am, often, all the time.

25 Q. What kinds of things would you do?

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 A. Cleaned his house pretty much as well as possible
2 when I got there. It was -- I don't mean to be mean or
3 anything, but it was pretty filthy. I cleaned it up best
4 I could, kept the yard clean, mowed, did the hedges.
5 Pretty much situated things, cooked; I usually cooked
6 almost every night.

7 Q. And did Telly help with the yard work?

8 A. Yes, ma'am.

9 Q. How recently before his death had he done any yard
10 work?

11 A. The day before, I believe.

12 Q. And did you socialize with Mr. Irby and Gene and
13 their friends?

14 A. Yes, ma'am, we -- I loved him.

15 Q. And what kinds of things would you do?

16 A. We would sit around and talk a lot. He gave us
17 pretty good advice, as far as it came to our
18 relationship. We played cards almost every night, me,
19 him, and Gene and brother Elijah. I really didn't play
20 too much because I suck, but I sat with them and watched
21 them. My kids sat with them. They kind of chimed in
22 every now and then. They pretty much stayed out of the
23 way.

24 Q. What was the plan for you and Telly? Why did you
25 move there and how long had you planned to live there?

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 A. Our plan was to make a better life for ourselves
2 and our kids. It was a little tougher -- it is tougher
3 in Jacksonville, I believe, finding a job and everything.
4 I thought it might be tough here, but I was here maybe
5 three days and had a job already; get our own place, get
6 our vehicle situated, which we had one at the time, and
7 start going to church and get our kids into the church,
8 live right so our lives could be right.

9 Q. So you had found a job.

10 A. Yes, ma'am.

11 Q. Did you find one job --

12 A. I had one, and I was on my way to a second one.

13 Q. Okay. Where were those jobs?

14 A. Wal-Mart and I was trying to get a job at Zaxby's
15 across the street, part-time.

16 Q. And how about Telly?

17 A. The day he was killed, he got a job at Auto Zone.
18 He was supposed to go back the next day.

19 Q. Okay. And you mentioned church. What church were
20 y'all involved in?

21 A. The same church Mr. Irby attended.

22 Q. Do you remember the name of it?

23 A. I want to say Berkeley Church of Christ? I can't
24 remember.

25 Q. In the day leading up to Telly's murder, were

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 there any problems with the church?

2 A. The day before, Mr. Irby came home and he said
3 something to Telly about people in the church saying
4 something to him about us shacking up in his house and
5 that they thought it was wrong, and of course we agreed,
6 you know, shacking up was wrong. We wasn't married yet,
7 but Telly believed that there is a certain type of way
8 that it was supposed to be handled within the church.

9 I don't know too much about it, like he did,
10 because I believe he was raised up in the church and he
11 had a religious background, so he knew more than I did,
12 but he knew it was wrong the way they were going about
13 it. And he got aggravated about it, and he told Mr. Irby
14 that he wanted to do it the right way, and he wanted to
15 speak to the person that was talking to him at church
16 about it.

17 And Mr. Irby, he wasn't really with it at first,
18 but Elijah gave Telly the number to the man that -- I
19 believe it was an elder of the church, the man at the
20 church that had came to Mr. Irby and said something.

21 And he said, Okay. You know, I'm going to come to
22 the house, and we can situate it.

23 Well, the night before, the elder from the church
24 came, and we all sat in the front yard and we went over
25 the Bible, and the elder apologized because he realized

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 that he did go about it the wrong way. And I believe --
2 well, in my opinion, Mr. Irby was pretty angry about that
3 because I think we might have embarrassed him.

4 Q. Was that Johnny Coaxum?

5 A. The elder?

6 Q. The elder?

7 A. No, ma'am. I don't remember his name.

8 Q. Okay. So that was the night before the murder, or
9 somewhere around there?

10 A. That was the night before the murder.

11 Q. And so in addition to that, were there any other
12 things that were bothering -- or that Mr. Irby and Telly
13 and you were having problems about?

14 A. Yes, ma'am. Well, in my opinion, he's probably
15 aggravated with me and Telly kind of back and forth about
16 him having a Facebook. We had some issues in the past
17 about him speaking to other people on Facebook, and I
18 myself honestly had trust issues with him, so it kind
19 of -- it stirred something up with Telly, and I think it
20 made Mr. Irby pretty angry. He felt that I didn't trust
21 Telly and that kind of posed a problem between him and I.

22 Q. So the day of Telly's murder, what did you do that
23 day?

24 A. I went to work. I got off work, went and opened a
25 bank account. I was excited. Finally we could start

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 saving some money, and then we went to Auto Zone to get a
2 piece for the car, and then some way or another, the
3 manager happened to have a conversation with him, me and
4 Telly, and he asked him was he looking for a job.

5 And, lo and behold, Telly has been looking for a
6 job for I don't even know how long, and we were, like,
7 yes, finally.

8 He's, like, Well, I got job for you. I want you
9 to come back tomorrow.

10 So me and Telly were like, Oh, finally everything
11 has come together. We're involved in church. Kids are
12 enrolled in school. We're both going to be working.
13 Everything is going to be okay.

14 Q. So what did you do after you left the Auto Zone?

15 A. We went to get something to drink, and pretty
16 much, like, to celebrate that we both we're finally going
17 to do it. Everything is going to be all right.

18 Q. And where were you celebrating?

19 A. In the front yard.

20 Q. So who was there?

21 A. Me, Telly, Gene, sitting at the table.

22 Q. And what were you celebrating with? What were you
23 drinking?

24 A. I believe we were drinking Bacardi. I believe we
25 had like a fifth bottle of Bacardi, the small bottle,

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 probably about this big, and I made sure we were drinking
2 it out of cups because Mr. Irby didn't want us outside
3 drinking in front of the neighborhood or whatever, and he
4 didn't want everybody to know that we drank, and when I
5 say we, it wasn't just Telly and I and Gene, him also.

6 Q. Did Mr. Irby ever drink?

7 A. Every night.

8 Q. Could you please put up State's 6.

9 Michelle, if you turn around, there is going to be
10 a picture behind you. Do you recognize that? Okay. So
11 where were y'all sitting?

12 A. It's right here. Like, further out in the yard,
13 maybe about right here, there was a -- a round glass
14 table, and I was sitting in a fold-out chair, I believe,
15 and Telly and Gene were sitting on a bench, the kind of
16 bench that you would kind of decorate your yard with.

17 Q. Okay. And at some point in time, did Mr. Johnny
18 Irby come home?

19 A. Yes, ma'am.

20 Q. And tell me about that.

21 A. We were all sitting outside talking. Telly had
22 his phone on the table. I had my phone on the table.
23 Telly had music playing on his phone, and we were just
24 sitting there talking, and we were discussing school
25 supplies. We had found out my daughters didn't need

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 school supplies because in the school they were enrolled
2 in they provided them, so we were, like, Okay. The money
3 we're going to make, we're going to send it back to
4 Jacksonville for his three kids.

5 So as soon as we got done talking about that,
6 Mr. Irby pulled up, and he got out of his truck and he
7 started to walk toward the fence, and that would be on
8 the side of the house going long ways, and -- you could
9 tell that he had been drinking. Maybe he was drinking,
10 maybe he wasn't, but he was stumbling, and Gene turned
11 around and Telly turned around and looked at him. And
12 they said, Don't say anything, don't say anything, just
13 don't say anything at all.

14 It's okay. So I just sat there, and nobody is
15 saying anything, and he got into -- almost to the gate
16 right there, and he started yelling, This ain't going to
17 fly.

18 And I'm looking at Telly like, What is he talking
19 about, this ain't going to fly?

20 And he kept repeating it, kept repeating it. He
21 walked through the gate right there, and he walked up to
22 the table and he stood right in front of Telly, maybe two
23 feet in front of Telly, and he started saying, This ain't
24 going to fly. This ain't going to happen.

25 Telly's, like, What are you talking about?

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 He's, like, This ain't going to fly.

2 He got closer to Telly and he kept saying it, and
3 I guess Telly got aggravated because he was getting
4 louder and louder and louder with him.

5 And Telly stood up and said, What does this mean,
6 this ain't going to fly?

7 He was, like, You ain't going to be doing this.

8 He's, like, What do you mean, I ain't be doing
9 this?

10 He said, This ain't going to fly in my yard.

11 He said, You know what we going to talk about what
12 ain't going to fly? Let's talk about what you did to my
13 mama.

14 As soon as he said that, Mr. Irby turned around
15 and he said not one word, walked up the sidewalk and went
16 in the house.

17 Q. Okay. And when he went in the house, did y'all
18 remain at the table or did you go somewhere else?

19 A. We sat -- I sat -- Telly sat back down.

20 Q. All right. And what happened next?

21 A. Next thing I know, I'm looking -- we're kind of
22 talking amongst each other, probably about what just
23 happened, and he looked up, and he said, Y'all go back in
24 the house. He said, I thought I told y'all to go watch a
25 movie.

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 Q. When you say y'all who are you talking?

2 A. My daughters, my three daughters.

3 They said, Granddaddy say we need to come back
4 outside and be with our mama.

5 Telly said, No, he ain't going to do this.

6 So Telly got up and started walking toward the
7 front porch. Well, I already knew it was going to be an
8 argument or something because they figured he probably
9 went in there and got mad because of him, Telly, standing
10 up to him or whatever, so I got up and I walked behind
11 Telly as we walked up to the porch.

12 We get up to the porch, and Mr. Irby comes out the
13 door. All three of my daughters are still on the porch
14 at this time.

15 Telly said, Y'all go back in. Y'all go back in
16 the house.

17 So the girls go past Telly and try to go into the
18 house. Mr. Irby kind of moves over and stands in the
19 middle of the doorway, he says, No.

20 Telly say, Oh, come on now. Girls -- he said,
21 Girls, go in the house.

22 So the girls started to go back into the house.
23 He moved in the way again. So the girls kind of moved
24 back again. That's when he pulled the gun out from the
25 side of him. He had the gun in his right hand.

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 As soon as I seen that, I was like, oh, Lord,
2 Jesus, and the last thing Telly said, pardon me cussing,
3 he said, I know you ain't pulling that motherfucking
4 firearm out in front of these girls, and he went for the
5 gun.

6 As soon as he did that, I screamed. The girls
7 started screaming. They started wrestling over the gun.
8 They fell over, to my left, his right, there was tools or
9 some fishing poles or something. They started to fall
10 over all onto that, and then the gun went off, and I
11 screamed, and I just yelled run, told my kids to run.

12 If they ran or not, I can't remember, but I know I
13 yelled run. And I started -- no. I started saying, no,
14 no, no, no, no. They kind of gained their balance back
15 when they were face to face. I was standing maybe a foot
16 behind Telly, and then off to the right, and Telly -- and
17 Mr. Irby pulled out -- lifted the gun and he shot him.

18 Q. Can you show us what he did?

19 A. (Indicating.) And he shot Telly. It's like
20 somebody kicked his feet out from underneath him. I
21 looked down. His head was not even a foot away from my
22 toes. He didn't move. I just started screaming.

23 I looked up, and I say, Mr. Irby, I think you
24 killed your son. I said, screaming -- oh my God, oh my
25 God, put the gun down, and he lifted the gun and he

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 points it at me and he shoots me.

2 I stumble back, and I hit the screen door, and I
3 was on the top step. I didn't fall. I just stumbled
4 back a little bit. I started back down the steps, and I
5 started feeling the blood run down my chest, so I put my
6 hand on my chest. I remember watching on TV when you get
7 shot -- it was ER or something. I remember putting my
8 hand to keep from bleeding, so I put my hand on my chest
9 and I kept screaming at him, Mr. Irby, stop, I think you
10 killed him, I think you killed him.

11 So I'm backing up. He stepped over Telly's body
12 like it was just something laying there, and he followed
13 me down them steps, down the sidewalk, and he shot at me
14 again. And I remember looking down, I swear I remember
15 my dress moved, like he barely missed me, and I screamed,
16 and then I started -- the ringing in my ears stopped a
17 little bit and I could hear my kids screaming.

18 I remember hearing the screaming, and I looked
19 over and I see my babies hiding behind this little bench
20 that Telly and them were sitting on, and you could see
21 them, but they were trying to hide, and I kept yelling
22 run, run. So they started to run, and I stood there as
23 he was coming to me, after he shot me again, and they
24 started to go out of the gate, so I turned around and I
25 started running.

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 I ran around that fence to the apartments, and I
2 banged on the lady's door and she opened the door, and I
3 said, Please, let us in. He's trying to kill us.

4 And the lady is, like, Get your dog. Get your
5 dog. Our dog, Georgia -- our dog, Georgia, is dead. My
6 daughter had to pull her back, and she let us in. I went
7 to the kitchen, and I sat in this chair, and my babies
8 walked in, and they were just standing there, screaming
9 at the top of their lungs, and I just kept saying, It's
10 going to be okay. It's going to be okay, y'all.

11 Q. Michelle, in that picture, can you show the jury
12 where you ran from and where you ran to?

13 A. I ran from here, all the way out of here, all the
14 way over here, all the way through here, and there is an
15 opening right there. And I ran through there, and there
16 is a door back there, and we banged on that lady's door.

17 I collapsed on the kitchen floor, and my babies
18 were standing there, screaming, and I just told them to
19 come here and pray with me. I know it sounds corny,
20 maybe, like a movie, but it was like a movie.

21 I just kept saying, Lord, please help Telly.
22 Lord, please help us. Don't let me die like this, just
23 with my babies around here.

24 I remember they were shaking so bad, it seemed
25 like forever, and I remember everything went black for a

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 second, and I remember I heard screaming again. And I
2 don't know if my eyes were open or if they were closed,
3 but I looked over and my 13-year-old was sitting next to
4 me, and she looks at me, and she says, Mom, it's going to
5 be okay.

6 And she was holding the towel on my chest and
7 blood was just everywhere, and maybe -- I swear it took
8 forever for the ambulance to come.

9 Q. Can you put 6 up.

10 Where were you standing when you got shot, if you
11 can show us on this picture.

12 A. Right here (indicating).

13 Q. Okay. And so how was the door?

14 A. It was, like, just not closed all the way. It
15 was, like, on my butt.

16 Q. So you're in the doorway?

17 A. I was in the doorway.

18 Q. And after Telly was shot, you just described that
19 the tussling took place and the gun went off?

20 A. Yes, ma'am.

21 Q. Was Telly shot that time?

22 A. I don't think so because he kept going. He kept
23 fighting.

24 Q. Okay.

25 A. He was going to get that gun.

MICHELLE WIGGINS - DIRECT BY MS. WILLIAMS

1 Q. And the second shot, did it go off or did you see
2 Mr. Irby point the gun?

3 A. I saw Mr. Irby point the gun at him.

4 Q. How far away was Mr. Irby from you when you were
5 shot, if you remember?

6 A. From that doorway to right in front of the front
7 door, maybe -- I don't know. Maybe as far as I am from
8 the chair.

9 Q. And when Mr. Irby first came into the yard, did he
10 have a gun at that time?

11 A. When he came from the truck in the very beginning
12 of everything?

13 Q. Uh-huh.

14 A. No, ma'am.

15 Q. Where did he keep his gun?

16 A. In his room, under his bed, in a Styrofoam case.

17 Q. How do you know that?

18 A. Because Telly showed it to me a few days before.

19 Q. What treatment was necessary for your wounds?

20 A. I'm sorry. Can you --

21 Q. What kind of medical treatment did you go through?
22 How long were you in the hospital here?

23 A. I was in the hospital here for a week.

24 Q. And did you also have to seek treatment in
25 Florida?

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 A. Yes, ma'am.

2 Q. Have you talked to or seen Mr. Irby since this
3 event?

4 A. No, ma'am. This is the first time I've seen him
5 since he shot me.

6 MS. WILLIAMS: Court's indulgence.

7 Thank you, Michelle. Please answer any
8 questions defense counsel has.

9 Do you need to take a break?

10 THE WITNESS: (Shakes head.)

11 CROSS-EXAMINATION

12 BY MR. SHELTON:

13 Q. Michelle, how long were you and Telly together?

14 A. Six years.

15 Q. So that would have been 2006?

16 A. Six years from the day he was killed, but it was a
17 little on and off. We broke up a couple times.

18 Q. Okay. So if it happened in 2012, then six years
19 before would be 2006.

20 A. Okay.

21 Q. You said it was on and off. Was there a time that
22 Telly came to South Carolina right before this?

23 A. Yes, sir.

24 Q. This time?

25 A. That would be when we broke up.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. Okay. Do you know about when that was?

2 A. A couple months before he came.

3 Q. So about maybe --

4 A. Back to Jacksonville.

5 Q. So maybe around May or April?

6 A. Yes, sir, around that time.

7 Q. Okay. Do you know what Telly was going through at
8 that point in time?

9 A. Trying to get his life together, I suppose.

10 Q. Okay. Do you know what happened with Telly once
11 you guys broke up?

12 A. He came back to South Carolina, as far as I know,
13 after we broke up. I really didn't have too much contact
14 with him. I was trying to get my life together.

15 Q. Okay. Do you know what led to him coming to South
16 Carolina?

17 A. Us breaking up.

18 Q. Okay. Was he admitted to the hospital at any
19 point in time?

20 A. Not as far as I know.

21 Q. Okay. Now, you have a tattoo?

22 A. Yes, sir.

23 MS. WILLIAMS: Objection. Relevance.

24 THE COURT: What is the relevance?

25 MR. SHELTON: New relationship, Your Honor.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 MS. WILLIAMS: May we approach, Your Honor?

2 (Discussion held at sidebar.)

3 BY MR. SHELTON:

4 Q. Do you have a tattoo on your neck?

5 A. Yes, sir.

6 Q. What does that tattoo say?

7 A. His name.

8 Q. His last name?

9 A. His first name.

10 Q. His first name, Telly?

11 A. Yes, sir.

12 Q. And you had that prior to this incident?

13 A. Yes, sir.

14 Q. Okay.

15 A. Long before.

16 Q. Are you -- so why did you guys decide to come to
17 South Carolina?

18 A. We wanted a better life.

19 Q. Are you aware of a warrant that Telly had?

20 MS. WILLIAMS: Objection. Can we approach?

21 (Discussion held at sidebar.)

22 BY MR. SHELTON:

23 Q. Are you aware of a warrant that was active for
24 Telly?

25 A. No, sir.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. You talked about this Facebook. Was there an
2 agreement not to got on Facebook? Was that what it was?

3 A. Yes, sir.

4 Q. And did you discuss with Johnny about an issue
5 with that?

6 A. Yes, sir.

7 Q. Okay. What was it that you discussed with Johnny
8 about that?

9 A. I asked him, did he think I was wrong for checking
10 to see if he did have a Facebook or not.

11 Q. Okay. And that caused Telly to get upset a little
12 bit?

13 A. That caused Mr. Irby to get upset.

14 Q. I think your testimony was Telly got angry about
15 the Facebook.

16 A. Telly and me had an argument about it.

17 Q. Okay.

18 A. And I went to Mr. Irby, and I said, Was I wrong
19 for checking?

20 Q. And at this point in time, you said he sat down
21 and you had talked with Mr. --

22 A. Yes, sir.

23 Q. -- Mr. Johnny. And I think you said your kids
24 actually called him granddad?

25 A. He told them to call him that.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. Okay. Let's talk about school. Did he help with
2 that, start getting them enrolled in school? Did he help
3 provide --

4 A. Mr. Irby?

5 Q. Yes?

6 A. No, sir. Telly did.

7 Q. Did he provide an affidavit that they lived there
8 and had it notarized?

9 A. I can't recall if he did or not. I don't recall
10 that, though. He may have, but I don't recall that.

11 Q. What about school supplies? Y'all had just gone
12 out and got school supplies?

13 A. No, sir. Gene, his brother, actually went to the
14 thrift store and got three bookbags for my daughters.
15 The school went and told us that we didn't have to get
16 school supplies, that they provided them, so instead of
17 us having to spend money for that, we were going to send
18 money to Jacksonville for his three children there.

19 Q. Okay. But Johnny opened his house to you?

20 A. Yes, he did.

21 Q. He didn't have you pay rent?

22 A. No, sir, he didn't.

23 Q. Like you said, he was getting you involved in the
24 church?

25 A. Yes, sir. He wanted us to go. He was firm in

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 that.

2 Q. So the night of this incident, you guys were all
3 drinking out in the yard?

4 A. Yes, sir.

5 Q. Did you go to Ms. Mamie house to get some alcohol?

6 A. I knew Ms. Mamie was the bootleg lady, though,
7 yes, sir.

8 Q. So is that where Telly got the alcohol?

9 A. I believe that's where he did go. I can't tell
10 you for sure. I'm not positive.

11 Q. So this happened about 8:00? Does that sound
12 about right?

13 A. When we were drinking?

14 Q. When Mr. Irby came back, it was about 8 p.m.?

15 A. No, sir. It was a little earlier. It was a
16 little after -- maybe 7:00? It was still light outside.

17 Q. How long do you think you were out there that
18 night?

19 A. Maybe an hour and a half, maybe two hours.

20 Q. And the kids were inside?

21 A. Yes, sir.

22 Q. Did Elijah come back at some point in time?

23 A. Yes. When Mr. Irby and Telly were face to face in
24 the yard, he happened to walk up. Where he came from, I
25 couldn't tell you. It's like he just kind of appeared

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 out of nowhere. I remember he was at the end of the
2 fence where the gate opened up at. I don't recall him
3 saying anything or anything, I just remember a glimpse of
4 him being there.

5 Q. And you remember giving statements to police?

6 A. Yes, I do.

7 Q. And you gave a statement the night of while you
8 were at the hospital?

9 A. Yes, sir.

10 Q. And then about six days later to Lieutenant
11 Roach --

12 A. Yes, sir.

13 Q. -- at the hospital? So you remember giving both
14 those statements?

15 A. Yes, sir. The first one is immediately --
16 actually, I was just being wheeled into the ER, and I
17 remember a young lady came up to me and started asking me
18 questions. I was in excruciating pain, definitely,
19 definitely. It was a little hard for me to answer
20 questions.

21 Q. And at that point in time, you didn't realize
22 Telly had passed?

23 A. They didn't tell me. They kept saying he was
24 going to be okay.

25 Q. Do you remember saying that Telly said, You can't

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 put us out on the street like that?

2 A. I can't recall that. I can't recall that. I may
3 have, but I -- that sounds like something he would say,
4 but I can't recall that.

5 Q. So that sounds like something Telly would say?

6 A. Yes, sir.

7 Q. And, in fact, the argument was about Mr. Johnny
8 saying y'all need to start getting ready to move out?

9 A. When he came in that fence, no, sir. It was about
10 drinking.

11 Q. Okay. Did you put in your statement Johnny said,
12 By tomorrow y'all need to find somewhere else to live?

13 A. It's possible. I can't 100 percent recall it.

14 Q. Okay. So then that's -- would it be helpful to
15 see your statement, your written statement?

16 A. No, sir. I believe -- if it's in there, I did say
17 it.

18 Q. Okay. Do you remember putting in your statement
19 that when there was the confrontation, Roger offered to
20 go inside and talk to Johnny?

21 A. No. I don't remember that.

22 Q. Would that be helpful to see in your statement?

23 A. No, sir. I don't recall that, but if it's in my
24 statement, however, I must have said that, but I do
25 remember brother Elijah walking up, though.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. And he offered to talk to Johnny?

2 A. I don't recall that either.

3 Q. Okay.

4 A. But if it's in there, yeah.

5 Q. And that's the statement you gave to the police
6 the night of?

7 A. Yes.

8 Q. Is that true?

9 A. If it's in my statement, sir, yes, sir.

10 Q. You didn't write a statement with Lieutenant
11 Roach, correct?

12 A. No, sir. I don't believe I've ever been able to.
13 They had me on some pretty strong medication.

14 Q. But that was a recorded statement.

15 A. Yes, sir.

16 Q. He recorded it?

17 A. Yes, sir.

18 Q. Did you listen to the recording at all?

19 A. No, sir, I haven't.

20 Q. If it was also mentioned in your recording --

21 A. Okay.

22 Q. -- about Roger, Mr. Roger walked up and said he
23 could take care of it?

24 A. Okay.

25 Q. But you don't remember that happening?

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 A. No, sir. I don't want to say I recall that, and I
2 don't.

3 Q. Telly decided to confront Johnny?

4 A. No. I believe it was Mr. Irby decided to confront
5 Telly.

6 Q. Where was Mr. Irby standing?

7 A. I'm sorry?

8 Q. Where was Mr. Irby standing? Where was Johnny
9 standing?

10 A. When he walked up?

11 Q. After the argument in the yard --

12 A. Okay.

13 Q. -- you said Johnny went inside.

14 A. Yes, sir.

15 Q. So when he came back, where was he standing?

16 A. In the doorway.

17 Q. In the doorway to his home?

18 A. Yes, sir.

19 Q. The porch is in front?

20 A. Yes, sir.

21 Q. And so it was Telly's decision to go to Johnny?

22 A. Telly's decision to go on the porch and tell the
23 girls to go in the house because they didn't go back in
24 the house.

25 Q. And at that point in time he saw Johnny?

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 A. That's when Mr. Irby came out the door.

2 Q. And he confronted Johnny?

3 A. If that's how you would like to put it, I believe
4 Telly went up there to tell the girls to go in the house
5 and they couldn't go in the house because Mr. Irby was in
6 the way.

7 Q. Okay. He was standing there.

8 A. Intentionally in the way.

9 Q. Okay. But he was standing there.

10 A. Yes, sir.

11 Q. He was standing still.

12 A. Yes, sir.

13 Q. And Telly made the movements towards Johnny?

14 A. No, sir. The children went to go in the house,
15 and Mr. Irby moved over a little further so they couldn't
16 walk in.

17 Q. Okay.

18 A. Then as the children backed out, that's when he
19 brought the nine millimeter out from the right side of
20 him, and that's when Telly seen the gun.

21 Q. And he held it down to the side?

22 A. Yes, sir. He had it held down to the side, yes,
23 sir.

24 Q. And that's when Telly came at Johnny?

25 A. That's when he said he knew he wasn't going to

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 pull that firearm out in front of the girls.

2 Q. And he decided to --

3 A. -- take the gun from him.

4 Q. And he came at Johnny at that point in time?

5 A. Yes, sir.

6 Q. Because Johnny is still standing in the doorway?

7 A. Yes, sir.

8 Q. And Telly is outside on the porch?

9 A. Yes, sir.

10 Q. And he came up the steps of the porch?

11 A. Yes, sir.

12 Q. And came at Johnny?

13 A. Yes -- no, sir. He didn't come up the steps and
14 go right at Mr. Irby. It didn't happen that way.

15 Q. Now, Telly, he's taller than Johnny?

16 A. Slightly. Not much.

17 Q. Okay. But he's bigger than Johnny?

18 A. At the time he was yes, sir.

19 Q. Johnny has gained a little bit of weight?

20 A. Yes, sir, he has, a good bit.

21 Q. But on that day, on August 16th, Telly was bigger
22 than Johnny?

23 A. Yes, sir.

24 Q. He was taller than Johnny?

25 A. Yes, sir.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. It was Johnny's home?

2 A. Yes, sir, it was.

3 Q. Did you put some food on the stove?

4 A. No, sir. Mr. Irby did. He asked me to watch it
5 when he left.

6 Q. When he left?

7 A. Yes, sir.

8 Q. And you've been in the courtroom all day?

9 A. Yes, sir.

10 Q. You heard Roger testify?

11 A. Yes, sir.

12 Q. Elijah.

13 A. Yes, sir.

14 Q. Elijah is Roger?

15 A. Brother Elijah.

16 Q. He goes by Roger too?

17 A. I used to call him Roger.

18 Q. And he testified what Johnny said as far as peace
19 and quiet and being left alone?

20 A. Yes, sir. I hadn't -- yes, he did.

21 Q. And you never heard that?

22 A. I never heard Mr. Irby say that. Actually, he
23 seemed to enjoy having the girls around and me around.

24 Q. So he seemed to enjoy it?

25 A. Yes, sir. I used to make his dinner.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. And he was having a good time?

2 A. Seemed like it. He appreciated the things that I
3 did. Seemed like it.

4 Q. He told you that?

5 A. Yes, sir.

6 Q. Okay. And --

7 A. Said it had been a long time since he had a woman
8 in his house.

9 Q. And he was enjoying that?

10 A. Yes, sir. That's the way it seemed.

11 Q. You didn't see any animosity or anything before
12 that?

13 A. He would get a little agitated when he drank.

14 Q. Okay.

15 A. You would kind of tell the difference in him.

16 Q. Okay. But you didn't see Johnny drink at all?

17 A. Yes, sir, I did.

18 Q. That night?

19 A. That night? No, sir. I don't believe he did.

20 Q. On August 16th, you don't believe you saw Johnny
21 drink?

22 A. No, sir. I was at work during the day. I believe
23 he was working too.

24 Q. He was working earlier?

25 A. I believe so.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. Now, your recollection was that after Telly fell
2 to the ground, he fell face down?

3 A. Telly fell somewhat on his left side. His face
4 was facing the doorway.

5 Q. Okay. And it was -- was it inside the doorway?

6 A. No, sir. No, sir.

7 Q. Okay.

8 A. The way -- no, sir.

9 Q. You've seen some of the pictures?

10 A. Yes, sir, and that isn't the way I left him. That
11 wasn't the way he was when I left.

12 Q. He wasn't moved any closer to the doorway? He was
13 just turned to the right?

14 A. Telly was right in front of the screen door.

15 Q. Okay.

16 A. I was -- my feet were right next to his head.

17 Q. And that -- the screen porch, it's really small?

18 A. Yes, it was. He was between -- something in front
19 of the screen in front of him, and some type of, like --
20 like a swing, like a swing kind of couch looking deal,
21 right on the other side of the wall.

22 Q. Okay.

23 A. But he was facing the doorway.

24 Q. And that was right next to the door, inside the
25 house, this porch, the screen?

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 A. He was closer to the screen door than the front
2 door.

3 Q. Okay. But Telly is about six foot, maybe a little
4 bit more?

5 A. Yes, sir.

6 Q. And that porch is maybe three, four feet wide?

7 A. Right.

8 Q. Okay.

9 A. But he was still closer to the front door. He was
10 not laying like that when I came down on that porch.

11 Q. Okay.

12 A. His body was not like that.

13 Q. And so -- but he was right there -- your testimony
14 was that he fell close to your feet?

15 A. Right in front of me.

16 Q. Okay. So were you in front of him then?

17 A. No, sir. I was behind him.

18 Q. But he fell forward?

19 A. No, sir. It's like -- almost like how you kick
20 down a kickstand on a bike, it is kind of how he fell,
21 like that. He was facing the doorway, but his body fell
22 that way, like it knocked his feet out from underneath
23 him.

24 Q. Okay. So he fell left, and that's where you were?

25 A. I was right behind him.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. But he didn't go backwards?

2 A. No, sir. He went -- like, his feet got knocked
3 right out from facing me. Say I'm him and I'm facing
4 this way. As soon as Mr. Irby shot him, his whole body
5 went like that. His whole body went like that.

6 Q. So when his body went like that --

7 A. Yes, sir.

8 Q. -- you had to have been over there because he fell
9 at your feet?

10 A. No, sir; no, sir; no, sir; no, sir. He was in
11 front of me, but as all the scuffling went on, I kind of
12 moved out the way. When I moved, that's when Mr. Irby
13 lifted the gun.

14 Q. So were you at the right side or left side?

15 A. The right.

16 Q. The right side?

17 A. Closer to the right side, yes, sir.

18 Q. Because your testimony was they were scuffling to
19 the left side of the porch?

20 A. Yes, sir. My left, his right.

21 Q. And at some point in time, Johnny overpowered
22 Telly?

23 A. Seemed to be. I would kind of say so.

24 Q. Do you -- do you remember how that took place, how
25 he overpowered him?

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 A. I'm not sure. Mr. Irby might be kind of small,
2 but Mr. Irby was pretty strong.

3 Q. Are you aware of his health issues?

4 A. No, sir.

5 Q. Okay.

6 A. Didn't know him to have any at the time.

7 Q. He didn't tell you about the heart attack?

8 MS. WILLIAMS: Objection. She's already
9 testified.

10 THE COURT: Overruled.

11 THE WITNESS: No, sir. I never knew anything
12 about a heart attack.

13 BY MR. SHELTON:

14 Q. And where were your daughters at this point in
15 time?

16 A. Further on the right side of the porch.

17 Q. So a little bit past the couch?

18 A. They were almost directly in front of the couch.

19 Q. And that would have been, I guess, kind of behind
20 you?

21 A. No, no, no. They were to my right.

22 Q. Yeah, okay. And so Diamond saw what took place?

23 A. I couldn't tell you exactly.

24 Q. Okay.

25 A. I know for sure they saw me.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. And at no point in time did you try to grab the
2 gun?

3 A. No, sir.

4 Q. But you were near the doorway to the house?

5 A. No, I was -- I was almost on the first step when I
6 was shot.

7 Q. That's the first shot at you?

8 A. Yes, sir.

9 Q. Okay. Because --

10 A. That's the first shot that I got shot with.

11 Q. Okay. And that's you backing up.

12 A. That's me standing there, yelling at him, put the
13 gun down.

14 Q. So you had to have backed up at some point in time
15 from the porch to the stairs?

16 A. When he shot me, I went down a step.

17 Q. And you backed up?

18 A. Started backing up, yes, sir, because he started
19 coming toward me.

20 Q. Okay. But he had to, I think your testimony was,
21 take a step over Telly?

22 A. Yes, sir.

23 Q. So Telly was blocking his way?

24 A. Yes, sir.

25 Q. And then he shot at you again.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 A. Yes, sir.

2 Q. So that would be four shots.

3 A. Yes, sir. Had to have been four shots.

4 Q. Did you ever see the bullet get ejected from the
5 gun?

6 A. No, sir.

7 Q. Okay. And at that point in time, Johnny was --
8 before the shot, Johnny was on the porch?

9 A. I'm sorry. Would you repeat that?

10 Q. On the fourth shot, was Johnny on the porch?

11 A. No, sir. He was on the sidewalk in front of me.

12 Q. Okay. Did you hear any other shots that night?

13 A. No, sir. After the one he shot at me and missed,
14 my ears were ringing. All I could hear was, like, a
15 ringing noise and my kids screaming. That's all I could
16 hear.

17 Q. Do you remember your written statement as to the
18 shots that you said Johnny did that night?

19 A. No, I'm sorry. Could you repeat that again?

20 Q. This is a bad question. I'm sorry.

21 Your written statement, you talk about this whole
22 incident, correct?

23 A. Yes, sir.

24 Q. And you talk about the shots.

25 A. Yes, sir.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. Correct? Do you remember you saying that he
2 shot -- pulled the gun out and he shot you after he shot
3 Telly?

4 A. Yes, sir.

5 Q. And then you go to help Telly?

6 A. I screamed. All I can do to help Telly, all I
7 could do is tell Mr. Irby to stop, put it down. I think
8 he killed him.

9 Q. So you don't remember in your written statement
10 you saying that you were bending down to help Telly?

11 A. No, sir. I don't remember that. I don't recall
12 that.

13 Q. And that's when he shot you a second time?

14 A. No, sir. I don't recall that. I believe I -- I
15 know I was standing straight up when he shot me.

16 Q. Okay. But you don't remember putting that in your
17 written statement?

18 A. No, sir.

19 Q. But if it was in your written statement --

20 A. I must have said it.

21 Q. Okay. Is your written statement true?

22 A. To the best of my ability, sir.

23 Q. What about your statement you gave to Lieutenant
24 Roach, is that true?

25 A. Yes, sir, to the best of my ability.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. And today is true?

2 A. Yes, sir.

3 Q. But your written statement and today are
4 different.

5 A. That would be a possibility, sir. There's been a
6 lot that has happened.

7 Q. A lot has happened over the last two years?

8 A. At the time when it happened, it was a lot to deal
9 with. It was very traumatic, sir.

10 Q. And so -- there was a lot that happened between
11 your first statement and your second statement that you
12 gave to Lieutenant Roach?

13 A. Yes, sir.

14 Q. Because that's when you learned that Telly had
15 passed?

16 A. Yes, sir.

17 Q. Your statement to lieutenant Roach, you mentioned
18 Johnny shot Telly twice?

19 A. Right. The first time he was wrestling over the
20 gun, I assume he was shot once again because of how they
21 were wrestling, but obviously he missed, and the second
22 time when they were standing face to face.

23 Q. And you know that because you got information
24 there was really only one?

25 A. Yes, sir. Now I know there was only one.

MICHELLE WIGGINS - CROSS BY MR. SHELTON

1 Q. So that changed your perception of what occurred?

2 A. No, sir. He did it -- I know he didn't get shot
3 twice. I know the first one he was missed. The second
4 one he wasn't.

5 Q. But in your statement, you said he was shot twice?

6 A. Right.

7 Q. And today you're saying he was only shot once?

8 A. Right.

9 Q. So that is based off you getting new information?

10 A. Today, yes, sir.

11 Q. And you never tried to take the gun from Johnny?

12 A. No, sir.

13 Q. And the questions I asked you about your
14 statement, you admit to writing those in your statement.

15 A. Which questions?

16 Q. Well, all the questions I've asked you about your
17 statement. You admit to writing those?

18 A. If I wrote them, yes, sir.

19 Q. Well, would you like to review your statements?

20 A. No, sir, I wouldn't.

21 Q. Okay. So you admit you wrote those in your
22 statement?

23 A. Yes, sir.

24 Q. And you admit it's different today than in your
25 statement, written statement?

MICHELLE WIGGINS - REDIRECT BY MS. WILLIAMS

1 A. Yes, sir. There is a few things I can recollect.
2 It's been two years.

3 MR. SHELTON: No further questions.

4 THE COURT: Redirect?

5 REDIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Michelle --

8 A. Yes, ma'am.

9 Q. There is an awful lot of talk about your
10 statement, and because it's been characterized so many
11 times, I'm going to ask you to look at it.

12 MS. WILLIAMS: May I approach, Your Honor?

13 THE COURT: Sure.

14 BY MS. WILLIAMS:

15 Q. Mr. Shelton asked you if you wrote the statement.
16 Please read the first paragraph to yourself, and I'm
17 going to ask you a question. Just read it in your head.

18 A. Yes.

19 Q. So who wrote the statement?

20 A. Amber Simmons.

21 Q. So you even didn't even write this statement?

22 A. No, ma'am.

23 Q. Look at the bottom where the date is. Isn't that
24 the date you were shot?

25 A. Yes, ma'am.

MICHELLE WIGGINS - REDIRECT BY MS. WILLIAMS

1 Q. Did you have painkillers at the hospital?

2 A. Yes, ma'am.

3 Q. So at the time you were interviewed, this is when
4 you were being treated for your gunshot?

5 A. Yes, ma'am.

6 Q. Now, you agree that your statement today was
7 different than this statement, but if you read through
8 the questions and answers, it's exactly what you
9 testified to today.

10 If you look at page two of three, please,
11 Mr. Shelton asked you -- he took one line out of your
12 statement where it said how many times did he shoot
13 Telly, and you said just once.

14 Then read, what happened next? Don't you describe
15 him being shot again?

16 A. Yes, ma'am.

17 Q. So, actually, in your statement, you said he was
18 shot twice.

19 A. Yes, ma'am.

20 Q. Now, you don't remember everything in this
21 statement because it was two years ago; is that correct?

22 A. Yes, ma'am.

23 Q. And when you gave the statement, you were treated
24 for a gunshot wound and you were on painkillers?

25 A. Yes, ma'am.

MICHELLE WIGGINS - REDIRECT BY MS. WILLIAMS

1 Q. Take a minute and read through that statement and
2 tell us if it's pretty much what you testified to today.

3 A. Yes, ma'am.

4 Q. You don't remember every detail, but it's
5 essentially the same.

6 A. Yes, ma'am.

7 Q. Now, Mr. Shelton asked you if you saw Mr. Johnny
8 drinking that day.

9 A. Yes, ma'am.

10 Q. You didn't see him take a drink.

11 A. No, ma'am.

12 Q. Where was he coming from?

13 A. Miss Mamie's house.

14 Q. And Miss Mamie is the bootlegger?

15 A. Yes, sir.

16 Q. And what is his relationship to Mamie?

17 A. I believe his girlfriend, fiancée.

18 Q. So he's engaged to the bootlegger, coming from her
19 house. What other signs of alcohol or intoxication did
20 you see on Mr. Johnny when you observed him in the yard?

21 A. He was stumbling as soon as he got out of the
22 truck, and his words kind of were different than they
23 would be if he wasn't drinking.

24 Q. So you were drinking?

25 A. Yes, ma'am.

MICHELLE WIGGINS - REDIRECT BY MS. WILLIAMS

1 Q. Telly was drinking?

2 A. Yes, ma'am.

3 Q. Gene was drinking, and Johnny was drinking?

4 A. Yes, ma'am.

5 Q. And there was an argument in the yard?

6 A. Yes, ma'am.

7 Q. Did Telly put his hands on Mr. Irby before he went
8 in and got his gun?

9 A. No, ma'am.

10 Q. And when they were on the porch, were you asked
11 the same question about four or five times, did your
12 fiance, Telly, go for Mr. Johnny or was he trying to get
13 the gun?

14 A. He was trying to get the gun.

15 Q. Was he trying not to get shot?

16 A. I'm sure he wasn't trying to get shot.

17 Q. After the first shot, show us how Mr. Johnny was
18 holding the gun.

19 A. (Indicating.)

20 Q. Thank you.

21 THE COURT: Recross?

22 MR. SHELTON: No further questions.

23 THE COURT: All right. You can step down.

24 All right, folks. That's where we'll break
25 for today. I'm going to send you home, ask you to be

1 back in the jury room a little bit before 9:30. We'll
2 get started at 9:30 tomorrow morning.

3 Again, don't talk to anybody about the case
4 tonight, including your family members or other jurors.
5 Please don't try to go out and visit the scene or
6 anything like that. Again, please refrain from talking
7 to anybody about the case, and please refrain from
8 posting anything on any kind of social media, Facebook
9 that sort of thing.

10 If anybody does approach you about the case,
11 please report that back to me first thing in the morning.
12 All right? Thank you for your patience with us today,
13 and we'll see you back at 9:30.

14 (Jury recessed.)

15 (In open court, jury not present.)

16 THE COURT: Mr. Irby, you heard me tell the
17 jury several times now that you don't have to testify.
18 You don't have to call any witnesses. The burden is on
19 the State. I'm not going to ask you what your plans are
20 right now, but I do want to tell you that before much
21 longer, sounds like tomorrow afternoon, we're going to
22 have a discussion as to whether or not you want to
23 testify.

24 My purpose in telling you this now is that
25 you have a little bit more time to think about this. I'm

1 sure you want to discuss this with your lawyers. You
2 don't have to testify if you don't want to. If you want
3 to testify and tell the jury your side of story, you will
4 have every opportunity to. You will have to answer
5 questions truthfully that are put to you by your lawyer.
6 You will also be subject to cross-examination by the
7 prosecutor.

8 I don't know if you have any kind of criminal
9 record that they would use to impeach you with, but we'll
10 talk about that if there are any. But if you want to
11 testify, you will have to -- you will be subject to
12 cross-examination. If you don't want to testify, I will
13 instruct the jury that they are not to hold that against
14 you in any way while they are deliberating. They're not
15 to even consider it or talk about it in the jury room.

16 This is a right that you have as a United
17 States citizen, in the constitution of both the State and
18 federal government. You don't have to testify, but it is
19 a right that you have, and only you can exercise it and
20 only you can waive it, or give it up.

21 I encourage you to discuss this with your
22 lawyers, but ultimately when we have this discussion
23 again, you will have to tell me what your decision is,
24 whether you want to testify or whether you don't, and it
25 is up to you, and it is your decision and your decision

1 alone to think about that tonight, discuss it again with
2 your lawyers, and we will revisit this issue again
3 tomorrow. All right?

4 All right. Anything else we need to deal
5 with?

6 MS. WILLIAMS: Nothing from the State, Your
7 Honor.

8 MR. SHELTON: No, Your Honor.

9 MS. WILLIAMS: He has a CDV and two DUIs. I
10 don't think any of these would come in unless you put
11 them at issue.

12 THE COURT: All right. Well, we'll see y'all
13 tomorrow morning at 9:30.

14 (Recess taken.)

15 (July 23, 2014.)

16 (In open court, jury not present.)

17 MS. WILLIAMS: We would just renew our motion
18 in limine.

19 I know Mr. Shelton didn't do this on purpose,
20 but we would just respectfully ask if there is anything
21 else about the victim's character or convictions that
22 before he blurts it out that he approach because that's
23 the reason for a motion in limine. Once it's out, it's
24 difficult for us to fix, so we would just respectfully
25 ask, if he knows what the issues are, any individual

1 acts, bad acts by the victim, that he approach the bench
2 and not just blurt it out.

3 THE COURT: Mr. Shelton, I asked yesterday if
4 you had any further surprises in that line. Do you?

5 MR. SHELTON: Your Honor, other than what
6 we've already covered, there was a warrant, a factual
7 issue as far as a warrant, that was out for his arrest.
8 There was --

9 THE COURT: For what?

10 MR. SHELTON: For a Family Court bench
11 warrant, child support.

12 THE COURT: For child support?

13 MR. SHELTON: Yes, sir.

14 THE COURT: And what is your theory as to how
15 that relates to this case?

16 MR. SHELTON: He had nowhere else to go
17 because he couldn't go back to Florida. They had a
18 warrant for his arrest. They had his information from
19 Florida, so they would have been able to get him in
20 Florida, Your Honor, so he couldn't -- he had to stay at
21 this home, and he had nowhere else in South Carolina to
22 go, except for his father's house. And his father is
23 telling him to leave and so that led to the confrontation
24 and him wanting to take control of the situation and
25 control of my client.

1 MS. WILLIAMS: And, Your Honor, just from a
2 factual perspective. He used to live here. We don't
3 know he had nowhere else to go. That's really a tenuous
4 connection. You're getting inside the victim's head now
5 and assume because he has a warrant for child support
6 that he has nowhere else to go so therefore he's got to
7 beat up his dad.

8 And we would also ask on that line, since
9 he's already asked the witness he had a warrant, that
10 without opening any doors we can maybe have Lieutenant
11 Roach explain the different between a Family Court
12 warrant and a criminal warrant, because now --

13 THE COURT: It's either we open it the little
14 bit that it got open or not. Now the only way I can see
15 that it comes in is if your client testifies, because
16 otherwise, you know, right now there is nothing that --
17 they're not going to try to prove self-defense.

18 MR. SHELTON: Right.

19 THE COURT: And there is nothing right now
20 that I've heard gets you a self-defense charge. At best,
21 you might get accident, maybe involuntary manslaughter.
22 I suppose you could probably even maybe convince me of
23 voluntary manslaughter, but that's further on down the
24 road. But the only way that that issue about the
25 warrant, or the theory that you just proposed to me,

1 would be for self-defense.

2 MR. SHELTON: Yes, Your Honor.

3 THE COURT: And that would mean your client
4 has to testify, so if he plans to testify, then we'll
5 revisit the issue, but I can't -- it's not coming in
6 through anybody else.

7 MR. SHELTON: Yes, Your Honor, absolutely. I
8 don't know of anybody else that could testify to that,
9 other than my client and the actions of the victim and
10 the case and what led him to believe this, Your Honor, as
11 far as this warrant that was there.

12 There is also -- and it goes also to
13 Lieutenant Roach and his statements with Lieutenant
14 Roach. His statement specifically, Your Honor, the prior
15 acts of violence. Lieutenant Roach, he talks to
16 Lieutenant Roach about the incident that he knew about,
17 as far as with the mother.

18 THE COURT: Is this the one we dealt with
19 yesterday?

20 MR. SHELTON: The motion in limine, yes.

21 THE COURT: Okay. Well, again, if -- that's
22 exculpatory, and if you want to put in that exculpatory,
23 you can't do it through a third person on hearsay and
24 claim -- it's not hearsay, or it's hearsay, but you can't
25 claim unavailability. Your client has to testify, and I

1 think the law is pretty clear.

2 If he wants to try to get in an exculpatory
3 statement through a third party, it's hearsay to be
4 exculpatory because the only thing that hearsay says is
5 if it's against your client's interest, then it's not
6 hearsay. If it's exculpatory and it's not against your
7 client's interest, it is therefore hearsay.

8 And so then we have to look at is, is there a
9 hearsay exclusion rule and he would have to either
10 testify or, if he wants to claim he's unavailable because
11 he's exercising the Fifth, I think, again, we get back to
12 State versus Terry. They're not going to allow that.

13 I'm not going to revisit that issue of him
14 trying to get an exculpatory statement in through a third
15 party.

16 MR. SHELTON: It's based off the rule of
17 completeness, Your Honor. If the State wants to get in
18 information from Roach about the statements that he made
19 that are inculpatory, then we should be able to --

20 THE COURT: You got to play Roach's
21 statement. That confession, or whatever we're going to
22 hear, that statement gets played in, but if we're going
23 back to the statement that wasn't recorded with the other
24 guy, then I've already ruled. That's not coming in.

25 MR. SHELTON: I'm sorry, Your Honor. I'll

1 try not to confuse things. It's Roach, Lieutenant Roach.

2 THE COURT: Okay.

3 MR. SHELTON: If it deals with Lieutenant
4 Roach and the statement he provides to Lieutenant Roach
5 and Lieutenant Roach testifies to that on direct, then we
6 should be able to go into it on cross-examination as to
7 what he said, completely said about --

8 THE COURT: Completely said to Roach.

9 MR. SHELTON: Yes.

10 MS. WILLIAMS: And we're in agreement --

11 THE COURT: I have the impression that what
12 he said to Roach is being played, is it not?

13 MS. WILLIAMS: Once we put the issue in play,
14 obviously, we can get into it, and we'll probably get
15 into it too if it's on the recorded statement.

16 What I'm most concerned about, Your Honor,
17 just to be very specific, is -- and I can get you copies
18 of the Brown case and the Aberganey case.

19 THE COURT: I have them.

20 MS. WILLIAMS: That it would be so gratuitous
21 for them to get into an eight-year-old CDV, because for
22 self-defense, it's not what is in the mind of the
23 defendant. It's a reasonable person, so the fact that
24 the defendant may or may not have known -- of course he
25 knows now because he's gotten his Rule 5, but may or may

1 not have known that eight years ago.

2 Telly having an incident with his former
3 girlfriend and getting arrested for CDV is just not
4 connected to this case.

5 THE COURT: I agree. Those are not --

6 MS. WILLIAMS: I just want to make sure he's
7 not going to ask someone about the CDV, including the
8 defendant, because I don't think it's relevant, because
9 the defendant -- it doesn't matter if he knew about a
10 CDV. Self-defense is not what is in his head, and I
11 think that case deals specifically with self-defense.

12 So we would just ask that the remote
13 conviction for the victim --

14 THE COURT: Right now I'm going to deal with
15 Roach.

16 MS. WILLIAMS: Okay.

17 THE COURT: And he can't get in those
18 convictions through Roach.

19 MS. WILLIAMS: Okay.

20 THE COURT: And if you play Roach, you got to
21 play the entire Roach segment.

22 MS. WILLIAMS: We plan on it.

23 THE COURT: You can ask Roach about anything
24 else.

25 MR. SHELTON: I don't have any evidence he

1 knows about that Your Honor.

2 THE COURT: Okay.

3 MR. SHELTON: And, in fact, Ms. Wiggins was
4 actually a part of that CDV, whether she knew about it or
5 not, but I didn't ask her about it, because I didn't know
6 if she knew about it.

7 So I wasn't getting into it. I wasn't going
8 to get into the CDV conviction. The only time I believe
9 that that can come in is if my client testifies.

10 THE COURT: That's the only time we're even
11 going to have that discussion at this point, put it that
12 way.

13 MS. WILLIAMS: We would just preserve our
14 argument it wouldn't come in, even if he did testify, but
15 as long as we know that issue is not going to come up,
16 then we can table it. We're not arguing that if we put
17 those issues in play, we're going to play the whole tape.
18 We may have witnesses talk about those issues because
19 they're out there.

20 So I think we're in agreement on that, as
21 long as he doesn't consider getting CDV until the Court
22 has time to consider our argument there.

23 MR. SHELTON: I don't think there is anything
24 else, Your Honor.

25 THE COURT: Who are you calling first?

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 MS. WILLIAMS: We are calling the pathologist
2 first, Dr. Batalis. Would you like us to get him in
3 here?

4 THE COURT: All right. Bring the jury in.
5 (In open court, jury present.)

6 THE COURT: Okay. Welcome back. We're going
7 to resume now with the State calling their next witness.

8 MS. WILLIAMS: Thank you, Your Honor. The
9 State would call Dr. Batalis, Nicholas Batalis.

10 NICHOLAS BATALIS,
11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WILLIAMS:

15 Q. Dr. Batalis, where do you work?

16 A. I work at the Medical University of South
17 Carolina.

18 Q. And what do you do there?

19 A. I'm employed there as a forensic pathologist and
20 an associate professor in the college of medicine.

21 Q. And are you a licensed physician?

22 A. Yes, I am.

23 Q. In what states?

24 A. I'm licensed just here in South Carolina.

25 Q. And how long have you been licensed in your

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 profession?

2 A. I had a temporary license originally for two
3 years, and then for the last nine years I've had a full
4 and permanent medical license.

5 Q. What area of medicine do you practice in?

6 A. My specialty of medicine is forensic pathology.

7 Q. And are you at MUSC? Is that where you're
8 practicing pathology?

9 A. Yes, it is.

10 Q. Where can you receive your training?

11 A. So after graduating college at Butler University
12 and completed four years of medical at Indiana University
13 school of medicine, upon graduation from medical school,
14 I then came to Charleston at MUSC for four years of
15 training in general anatomic and clinical pathology.

16 Following that training, I completed a Board
17 examination, national Board examination, then went on to
18 do a one-year specialty fellowship training in forensic
19 pathology at the Dallas County medical examiner's office
20 at Dallas, Texas.

21 Q. And are you a member of any specialized medical or
22 scientific groups or associations?

23 A. Yes. I'm a member of a couple national forensic
24 organizations, including National Association of Medical
25 Examiners, several general pathology organizations, and

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 also local pathology organizations.

2 Q. Are you certified by the American Board of
3 Pathology?

4 A. Yes. I'm certified by the American Board of
5 Pathology, Anatomic Pathology, Clinical Pathology, and
6 Forensic Pathology.

7 Q. What do those certifications involve?

8 A. So to become certified in anatomic and clinical
9 pathology, you complete four years of general residency,
10 I did here, in training, and just for background,
11 anatomic pathology, for the most part, it involves
12 looking at tissues to make a diagnosis. So if a surgeon
13 takes out a tumor or a surgeon take a biopsy, they would
14 then provide it to the pathologist who would then look at
15 it and say whether it's benign tissue or cancer. Those
16 are kind of the hallmark of anatomic pathology. Clinical
17 pathology is really overseeing the clinical labs, so if
18 your physician orders some blood work, the pathologist
19 would be the ones that run the testing and help them
20 interpret those values.

21 So in order to become Board certified in those
22 specialties, you complete four years of training and then
23 a fairly rigorous examination. After passing the
24 examination, you're certified for forensic pathology.
25 You have to complete one year of training and then also

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 after that complete a further university examination and
2 then become certified.

3 Q. Thank you. Is part of your work performing and
4 participating in autopsies?

5 A. Yes. Well, kind of to describe general pathology,
6 a second ago, forensic pathology, subset of pathology,
7 that really focuses on really the medical/legal aspects
8 of medicine, which, for the most part, involves
9 performing autopsies to determine the cause and manner of
10 death.

11 Q. And about how many autopsies would you say have
12 performed or participated in your career?

13 A. Somewhere between 1,500 and 10,000 over last 11
14 years.

15 MS. WILLIAMS: At this time the State would
16 offer Dr. Batalis to be qualified in the field of
17 forensic pathology.

18 MR. SHELTON: No objection.

19 THE COURT: Folks, this witness is now
20 qualified as an expert in the field of forensic
21 pathology. Same instructions I gave you yesterday apply
22 to this witness as well. You decide how much weight to
23 give his testimony, based on all of the evidence that you
24 hear throughout the trial.

25 You may resume.

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 BY MS. WILLIAMS:

2 Q. Thank you, Your Honor.

3 Now, were you working in your present capacity
4 back in August of 2012?

5 A. Yes, I was.

6 Q. And did you perform the autopsy on Telly Irby?

7 A. Yes. I performed this autopsy on August 17th,
8 2012.

9 Q. And was it performed at MUSC?

10 A. Yes, it was.

11 Q. And based on that particular autopsy and, to a
12 reasonable degree of medical certainty, did you form an
13 opinion as to the cause of death?

14 A. Yes, I did. Cause of death was a gunshot wound to
15 the chest.

16 Q. What about manner of death?

17 A. The manner of death in this case was homicide.

18 Q. And aside from the gunshot injury to the chest,
19 were there other injuries to Telly Irby?

20 A. Aside from the gunshot wound, which was the major
21 injury, there were two other injuries on his body. He
22 also had a quarter inch laceration, or skin tear, on the
23 left cheek and then a few -- four or five small
24 abrasions, so about an eighth of an inch on the back side
25 of the left hand and knuckles. So this area were about

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 four or five small abrasions or scrapes on the back of
2 the left hand.

3 Q. And could you tell whether the abrasions or
4 scrapes were from this particular event or could they be
5 prior?

6 A. Like I say, they were within a few days. There is
7 nothing I could say that they happened immediately before
8 the death. We really can't be that accurate in
9 determining how old these injuries are, but it would be
10 safe to say that he incurred the injuries on the hand
11 within two or three days of the time he died.

12 Q. These were basically just little scratches?

13 A. Yes. Scratches or scrapes, yes.

14 Q. Besides alcohol, were there any drugs or any other
15 substances in Mr. Irby's body?

16 A. No. In the course of the autopsy, we submitted
17 samples of blood and also fluid from the eye to a
18 national laboratory that looks for several hundred
19 different illegal drugs and also medications, and the
20 only thing they were both positive for was alcohol.

21 Q. And were any items removed from Mr. Irby's body?

22 A. Yes. When we received the body, he was received
23 wearing his clothing, so it's part of the autopsy
24 process.

25 The first thing we do is photo the body, document

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 the clothing items, remove those, along with the
2 clothing. In the course of the autopsy, we recovered a
3 bullet and also some evidence, including fingernail
4 clippings, some scalp hair, samples of the decedent's
5 blood. These were all taken together and then
6 transferred to an officer after the completion of the
7 autopsy.

8 Q. I'm going to show you a couple of items,
9 Dr. Batalis.

10 MS. WILLIAMS: Your Honor, for the record,
11 the State is showing defense counsel what has been
12 previously marked as State's 50 -- I'm sorry -- 50, 43
13 and 42, 42, 43, and 50.

14 May I approach?

15 THE COURT: Uh-huh.

16 BY MS. WILLIAMS:

17 Q. Dr. Batalis, if you could just look at these three
18 items and tell us what they are. Take your time and take
19 a look at those.

20 A. So the first item I have here is what's marked as
21 State's Exhibit No. 50. This includes -- this exhibit is
22 the bullet that we recovered from the decedent's body
23 along with the envelope that I packaged it in, that we
24 packaged it in, before releasing it to the officer.

25 Q. And can you tell what officer it was released to

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 by that paperwork? I'm not sure if you can or not.

2 A. I can tell based on my report, it lists on this
3 envelope that it was transferred to Corporal Scarborough,
4 but that's not from my writing. In my report I had the
5 same individual listed.

6 Q. Thank you. And that's the bullet that you took
7 out of Telly Irby's body?

8 A. Yes, it is. State's Exhibit 42 is an X-ray we
9 took at the time before we started the autopsy to locate
10 the bullet within the decedent's body, so this is an
11 X-ray that shows the bullet located just right of center
12 in decedent's body.

13 And then State's Exhibit 43 is a photograph of the
14 bullet after we removed it from the body, which
15 corresponds to what we have here, State's Exhibit 50.

16 Q. And do State's Exhibits 42 and 43 accurately
17 depict the way those things looked when you examined
18 Mr. Irby and when you removed the bullet that day?

19 A. Yes, they do.

20 MS. WILLIAMS: At this time we would move
21 State's 42, 43, and 50 into evidence.

22 MR. SCHWACKE: Your Honor, I objection to
23 that at this time until the chain is established.

24 MS. WILLIAMS: Your Honor, may we approach?
25 (Discussion held at sidebar.)

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 THE COURT: All right. Overruled. They're
2 admitted.

3 (State's Exhibit Nos. 42, 43, and 50 were
4 marked for identification and admitted into evidence.)

5 BY MS. WILLIAMS:

6 Q. Could you please put State's 43 up. I think there
7 is going to be a picture that comes up behind you.

8 Could you just tell us what that is.

9 A. So what we have here is what is shown in State's
10 Exhibit 43, is the bullet that was recovered from the
11 body along with the envelope that it was placed in and
12 then the number here, which is the case number, unit case
13 number, assigned to this particular case, and a ruler to
14 show the scale of the bullet.

15 Q. And is there some damage to that projectile? I
16 don't know if it's visible there, but if you could just
17 describe from your memory what the damage is.

18 A. Sure. The bullet is a jacketed bullet, so you can
19 see on the outside here, there is a copper colored
20 medical coating to the bullet.

21 So it's in good shape, for the most part, but here
22 on the lower right-hand side of the bullet, the jacket
23 has been partially stripped away or deformed, which
24 happened in the course of the passing through the body.

25 Q. So what happens when it goes through the body that

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 damages a bullet?

2 A. So it depends on what the bullet strikes. If the
3 bullet actually just goes straight through soft tissue
4 and muscle, the bullet could be perfectly intact.

5 In this case, this bullet went through the
6 sternum, or the chest plate, and then also, after it
7 finished passing through the middle of the chest, it
8 passed through one of the vertebral bodies, part of the
9 spine.

10 So passing through those hardened pieces of bone,
11 part of the jacketing was sheared away from the bullet.

12 Q. Could you please put up State's 42? What major
13 arteries did this bullet hit?

14 A. So after going through the skin of the mid-chest,
15 the bullet went through the chest plate, then the sack
16 that surrounds the heart, and it didn't hit the heart
17 itself, but immediately above the heart, it went through
18 the aorta.

19 So the aorta is the major blood vessel that takes
20 blood from the heart and pumps it through the rest of
21 your body, so it went through basically the biggest blood
22 vessel in your body, and, after that, went through the
23 esophagus, which takes food from your mouth down to your
24 stomach before entering the spine.

25 Q. And if you could just explain to the jury what

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 this is?

2 A. This is an X-ray radiograph we took of the
3 decedent before we did the autopsy. So this would be the
4 left side of the body; the right side of the body. You
5 can see the spinal column down the middle, and then this
6 kind of cylindrical white object over here on the
7 left-hand side, which on the decedent would be on the
8 right side of his chest, you would be looking on his
9 right side, you can see there is a bullet here that is
10 embedded within the body.

11 Q. And so we can't see all the major organs there,
12 but could you show us like where they would be if that
13 was a picture of that --

14 A. Sure. You can see a faint outline. There's a
15 thin line here that is the right side of the heart. The
16 heart kind of goes down this way and up.

17 So, again, it's just maybe an inch or so above the
18 heart. And from the heart, then the aorta starts out and
19 goes up and curves down and around, like that. And so,
20 again, the bullet came through the mid-chest, went
21 through right around this area, which is where the aorta
22 would be before turning in here, basically filling up
23 this whole space here.

24 Where it's kind of grayish would be where the
25 right lung would be, and then over here would be where

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 the left lung .

2 Q. And were you able to determine some kind of
3 trajectory or direction that the bullet entered the body?

4 A. Sure. This bullet for the most part went from
5 front to back. It entered the middle of the chest, and
6 as you can see here, where it terminated was just about
7 an inch and a half right.

8 So the major direction was front to back. It went
9 a little bit to the right and just a little bit upward,
10 so the entrance was 16 inches below the top of the head,
11 but the bullet was found 15 inches below the top of the
12 head, so through the course of the body, the bullet
13 raised about one inch, but the major trajectory was front
14 to back.

15 Q. So pretty much straight on?

16 A. Yes.

17 Q. In your report, did you make an error on page
18 three and six originally with regard to the direction the
19 bullet was going?

20 A. Yes. When I was describing the pathway, I said it
21 went front to back, left to right, which is correct, but
22 then accidentally said that it had gone slightly
23 downward, instead of slightly upward, which was the case.

24 Q. What about range? Were you able to determine
25 range?

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 A. For this case, I was not able to determine range.
2 Specifically to determine a range for a forensic
3 pathologist, we look at the bullet -- when the bullet is
4 fired from the gun, of course the bullet comes out, but
5 then there's other material that comes out that helps us
6 tell how far away that gun may have been. You get
7 basically burnt up smoke, which we call soot. That will
8 travel about a foot or so from the barrel of a gun, and
9 also what comes out are unburned flakes of gunpowder
10 which then strike the skin and cause little stripes,
11 which are called stippling, and you can get those three
12 to four feet from where the gun was fired.

13 In this case, we did not see either of those
14 things, so that would be consistent with a gun that was
15 fired from more than four feet away, although I believe
16 he had a shirt on, and if that was the case, the shirt
17 could collect some of the soot, so if it -- that would
18 not be something we would be able to see on the body.

19 Q. If someone walked right into a gun, there would
20 still be stippling that you would find, even if there is
21 a barrier of a shirt?

22 A. Yeah. Typically, the soot may be deposited, which
23 is basically kind dirt. It may stay on the shirt, but
24 stippling, little flakes of gunpowder, will still go
25 through a single shirt, and we still call that scrape or

NICHOLAS BATALIS - DIRECT BY MS. WILLIAMS

1 stippling. Sort absence of that would suggest that it
2 was further than three to four feet away.

3 Q. And how much blood did Mr. Irby lose?

4 A. I can't testify as to how much blood he may have
5 lost at the scene or in the course of treatment, but at
6 the autopsy, we recovered two-and-a-half liters of blood
7 surrounding the right side of the chest.

8 So, basically, around the right lung there, were
9 two-and-a-half liters of blood and then 400 milliliters
10 of blood, so just short of a half milliliter of blood was
11 in the sack that surrounds the heart; so, all together,
12 just under three liters of blood that we collected from
13 the inside of the body.

14 Q. And is there some way to figure out how much blood
15 was left in and how much he had left in to figure out how
16 much he lost, or is that just a difficult calculation?

17 A. It's difficult because we don't know how much
18 blood he lost through the gunshot wound. Even though the
19 gunshot entered, we could still have blood spilling out
20 from that.

21 What we do know is that somebody his size would
22 have approximately six liters of blood in his body. So
23 we know at the autopsy we recovered half of his blood
24 volume, where it was not supposed to be, and losing
25 greater than 25 to 30 percent of your blood volume in a

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 short period of time can cause death, so he was well
2 beyond that.

3 Q. If the ambulance had gotten there sooner, in your
4 professional opinion, could he have been saved?

5 A. It would be highly unlikely. A gunshot wound
6 affecting the aorta, again a major blood vessel, it would
7 be something where you literally have several seconds to
8 a couple minutes to repair that damage because the
9 bleeding would be occurring and occurring so quickly.

10 So it would be very unlikely that he would have
11 been able to survive, even if an ambulance had arrived
12 almost immediately.

13 Q. So he died pretty quickly?

14 A. Yes.

15 Q. And he lost a lot of blood?

16 A. Yes.

17 Q. Is it consistent with that type of wound that he
18 might have dropped immediately after that shot?

19 A. He certainly could have.

20 MS. WILLIAMS: Thank you, Doctor. Please
21 answer any questions defense has.

22 CROSS-EXAMINATION

23 BY MR. SCHWACKE:

24 Q. Good morning. I want to go back to a few things
25 here.

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 You had indicated in your testimony in response to
2 Ms. Williams's questions about the quantity of blood, you
3 said someone of his size. Mr. Irby was a large man,
4 correct?

5 A. Yes, sir. He weighed 245 pounds, and with his
6 height, his body mass index, he would be considered a
7 large, or obese, individual.

8 Q. And then you indicated with regard to whether or
9 not the wound -- you classified that manner of death as
10 homicide.

11 A. Yes.

12 Q. That's not a term that assigns guilt to any
13 individual, it's just an indication that it was caused by
14 another individual; is that correct, death caused by the
15 hand of another individual?

16 A. Yes. And as a forensic pathologist, we can choose
17 between five manners of death. One is natural death,
18 which is ver self-explanatory; one is accident, which
19 would be a drug overdose, motor vehicle collision; a
20 suicide, which is when you take your own life; homicide,
21 which, as he references, was death at the hands of
22 another individual due to another's actions; or
23 undetermined, if we just can't tell what goes on.

24 So if an individual dies at the hands of another,
25 it's classified as a homicide, which is what I determined

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 in this case.

2 Q. Now, you had indicated the bullet as it entered
3 the body went in a specific or general direction.

4 A. Yes.

5 Q. I'm going to use this to help explain to the jury
6 a little bit, if we say the barrel of the gun is this
7 blue -- and obviously I can't impale myself on this, so
8 I'm going to have to hold it to my side.

9 It was basically straight on, and I guess the jury
10 gets a view of the side, and a little bit upward, which I
11 think I might have -- a little bit upward?

12 A. And then just a little bit towards the right, so
13 if you mark it towards me, just move it to the left,
14 there you go.

15 Q. Obviously, it's really coming in here and coming
16 out in the middle of the back.

17 A. Predominantly. It did not exit the body,
18 recovered from the muscle of the back, but predominantly
19 the front of that.

20 Q. So in terms of the location of the weapon causing
21 those injuries, it would have to be on this line,
22 essentially, that you've created running through the
23 victim's body?

24 A. Correct. The gun, the barrel of the gun, when it
25 was fired, would have to be somewhere in that line where

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 the blue tip of that -- essentially where the blue tip of
2 the rod would be.

3 I can't say the position of the body because I
4 don't know if both people were standing up, laying down,
5 upside down, but I just know the barrel of the gun would
6 be --

7 Q. The barrel can move in any direction that follows
8 that path?

9 A. Right, as long as the body would move accordingly.

10 Q. So you can't say anything about positioning of the
11 gun other than along that line?

12 A. Correct.

13 Q. And you can't say anything about the positioning
14 of Mr. Irby, except along that line as well.

15 A. Correct.

16 Q. Whether he was moving forward?

17 A. Right. I don't know his actions at the time. I
18 just know the pathway that the bullet traveled through
19 the body.

20 Q. Now, you indicated there was presence of
21 alcohol --

22 A. Yes, there was.

23 Q. -- on the toxicology, and does it have a
24 quantitative amount?

25 A. Yes, it does.

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 Q. What was that?

2 A. Again, we sent blood and then also eyeball fluid.
3 Both of them came back nearly the same amount, which was
4 0.76 percent for the blood and 0.073 percent for the
5 vitreous fluid, so just under 0.08, and the vitreous
6 fluid, that tells you -- that goes back an hour.

7 The blood value should tell you where the decedent
8 was -- his alcohol was right when he died. The vitreous
9 fluid tells you where he was an hour before he died, so
10 since the values were essentially the same, you would say
11 his blood alcohol -- the alcohol in his body essentially
12 stayed consistent for the last hour or two of his life.

13 Q. How does that translate to an amount that we would
14 understand?

15 A. It gets complicated doing calculations, but
16 typically a generalization would be one drink will raise
17 your blood alcohol by .02 to .03, so it would be safe to
18 say to get to a .076 that he had had a least three
19 beverages, which would be a 12-ounce beer a four-ounce
20 glass of wine, or a one-ounce shot of hard liquor.

21 Q. In describing the track of the bullet through
22 Mr. -- until it hits the vertebrae, it's essentially soft
23 tissue, soft wounds, that aren't heart, and a lot of --

24 A. No. Initially, the first thing it went through
25 after the skin is it went through the sternum of the

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 chest plate with the bony structure of the chest, so that
2 would have been a firm structure.

3 Then the aorta, the esophagus, the peri cardio
4 sack, once you get inside the chest, would be soft, and
5 then the vertebral body of the spine would be another
6 hard object.

7 Q. And Ms. Williams asked you essentially that type
8 of injury being suffered by an individual, they're going
9 to go down to the ground right away?

10 A. They could.

11 Q. So death would have been caused in minutes?

12 A. Based on the laceration or perforation of the
13 aorta, it's safe to say several seconds to no more than a
14 couple minutes.

15 Q. You've been with the medical university department
16 pathology for how long now?

17 A. I've been there as faculty for just over six
18 years.

19 Q. Are there times when y'all go to the scene of an
20 incident to assist in making determinations?

21 A. I have -- in years past, I think that had been
22 done, but basically, the ten years I've been there -- six
23 years as faculty and four as resident trainee, so in four
24 years, we have not gone to scenes in other jurisdictions
25 across the country. Sometimes pathologists do go to

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 scenes.

2 Q. You indicated when Mr. Irby's body arrived for the
3 autopsy it was clothed?

4 A. Yes, it was.

5 Q. Did you notice whether there was anything placed
6 on his hands, over his hands?

7 A. No. I do not believe so.

8 Q. What would that indicate to you, if you received a
9 body that had paper bags on their hands?

10 A. Sometimes in the course of a death investigation,
11 authorities, I don't know if it's the police or coroners
12 at the scene, will bag the hands. Sometimes -- most of
13 the times it's during violent deaths, which is supposed
14 shootings or stabbings, which can help to preserve
15 evidence.

16 In my experience it's definitely not done in all
17 the cases, it's -- I can't even really give it a rough
18 percentage of how often we see it.

19 Q. But you indicated, as a weapon is discharged,
20 there are the chemicals that eject, there is the soot
21 that ejects, and that's why you were asked whether you
22 could indicate a distance away.

23 So, clearly, a person who is involved in a
24 discharge of a weapon close by in proximity, you're aware
25 of the possibility of gunshot residue or firearm residue

NICHOLAS BATALIS - CROSS BY MR. SCHWACKE

1 appearing on their own body, their own hands?

2 A. Sure, and anybody that has handled or been around
3 a weapon that has been recently fired could get gunshot
4 residue on their hands.

5 Q. The shirt that was removed from Mr. Irby, I
6 believe it was black in color?

7 A. I'll check here. Yes, it was a black T-shirt.

8 Q. And that, along with the other items that were
9 removed from his body, those were in turn by your
10 assistance placed into bags and then turned over to law
11 enforcement?

12 A. Correct.

13 Q. And, again, that would have been a determination
14 for law enforcement to decide what they were going to
15 send beyond that for further testing.

16 A. Correct.

17 Q. You don't direct law enforcement to send things or
18 not to send things?

19 A. No. We don't do any laboratory testing of
20 clothing and that sort of stuff. Our jurisdiction is
21 essentially limited to the body.

22 Q. And, again, you indicated Mr. Irby's weight, Telly
23 Irby's weight, was 245 pounds?

24 A. Yes.

25 MR. SCHWACKE: One moment, Your Honor.

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 Thank you. That's all the questions I have.

2 THE COURT: Redirect?

3 MS. WILLIAMS: No redirect, Your Honor.

4 THE COURT: You can step down. Thank you.

5 THE WITNESS: Thank you, sir.

6 MS. WILLIAMS: May he be released, Your

7 Honor?

8 THE COURT: Do you need him for anything

9 else?

10 MR. SCHWACKE: No.

11 THE COURT: You're free to go. Thank you.

12 Next witness.

13 MR. OZMENT: Your Honor, the State calls
14 Corporal Chris Scarborough to the stand.

15 CHRIS SCARBOROUGH,

16 having been first duly sworn,

17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. OZMENT:

20 Q. How are you today, Corporal Scarborough?

21 A. Fine. Thank you, sir.

22 Q. What do you do for a living?

23 A. Police officer.

24 Q. Where are you a police officer?

25 A. Moncks Corner police department.

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 Q. How long have you been doing that?

2 A. I've been with Moncks Corner five-and-a-half
3 years. I've been doing it altogether 11.

4 Q. Where did you work before?

5 A. I worked three-and-a-half in Tennessee sheriff's
6 department and four-and-a-half at Cobb County, Georgia
7 sheriff's department.

8 Q. All right. Were you working back on August 16 of
9 2012?

10 A. I wasn't, working, I was off, but yeah, I was
11 employed with the police department.

12 Q. Okay. All right. Did you have some involvement
13 in the case we're here for today?

14 A. Yes, sir.

15 Q. Okay. How would you describe most of your
16 involvement with this case?

17 A. It was minor in nature. I didn't have any direct
18 involvement at the scene or anything like that, but just
19 helping out more than anything.

20 Q. Okay. Did you help transfer a lot of evidence in
21 this case?

22 A. Yes, sir.

23 Q. All right. I'm going to kind of go through some
24 of that with you. Did you ever go to MUSC?

25 A. Yes, sir.

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 Q. Do you recall what day that was?

2 A. I believe it was the 17th, August 17th.

3 Q. What caused you to go to MUSC?

4 A. There was -- they were conducting an autopsy, and
5 Lieutenant Roach asked me to go up there for that.

6 Q. Okay. Did you collect some evidence from MUSC
7 after the autopsy?

8 A. Yes, sir.

9 Q. Was that evidence from the autopsy or other
10 evidence that was at MUSC?

11 A. It was -- part of it was from the autopsy, the
12 clothes and stuff, and then I also collected other
13 evidence from the public safety.

14 Q. Okay. Let's start with maybe the autopsy evidence
15 then.

16 Did you collect some clothing that had belonged to
17 the victim?

18 A. Yes, sir.

19 Q. You might want to put on your glove.

20 MR. OZMENT: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. OZMENT:

23 Q. Mr. Scarborough, I'm going to hand you a bag. I'm
24 going to ask you to look in that bag and see if you
25 recognize what's in it.

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 A. Yes, sir.

2 Q. What is that?

3 A. That's the shirt that the decedent was wearing.

4 Q. Okay.

5 A. The victim was wearing.

6 Q. Is that the one that you collected from MUSC?

7 A. Yes, sir.

8 MR. OZMENT: Your Honor, at this time, the
9 State would move State's Exhibit 59 into evidence.

10 MR. SHELTON: No objection.

11 THE COURT: Admitted.

12 (State's Exhibit No. 59 was marked for
13 identification and admitted into evidence.)

14 BY MR. OZMENT:

15 Q. You can set it down if you would like to, and
16 we'll leave it in the bag for now.

17 You collected the shirt. What did you do when you
18 got to MUSC?

19 A. From MUSC, they had everything in bags. Once I
20 got back to the police department, I took it out and laid
21 it out and took photographs of it and hung it up because
22 it still had wet blood on it, so I put it on a hanger to
23 be hung up to dry.

24 Q. And where was it stored to dry?

25 A. In the evidence room at the Moncks Corner police

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 department.

2 Q. Did you put gloves on to do that?

3 A. Yes, sir.

4 Q. All right. Do you want to pull it out for me?

5 You can stand up if you need to. Is that the hanger you
6 put it on?

7 A. Yes, sir.

8 Q. If you could, flip it around for us. And then
9 after it dried, what happened to it after that?

10 A. I didn't have any more involvement with it after.

11 Q. The area that was drying, was it already secured
12 in an evidence area?

13 A. Yes, sir.

14 Q. Okay. All right. Thank you. You can put it back
15 in the bag for me.

16 Going back now to the time you were at MUSC, did
17 you collect any clothing from the other victim?

18 A. Yes, sir.

19 Q. What clothing was that, if you recall?

20 A. Again, it was all bagged up when I got it. When I
21 got back to the department, I took it out. There was a
22 dress.

23 Q. All right.

24 MR. OZMENT: May I approach, Your Honor?

25 THE COURT: You may.

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 BY MR. OZMENT:

2 Q. The same drill. I'm going to have you look
3 through that bag and tell me what's in it.

4 A. Yes, sir. I recognize it.

5 Q. What is in that bag?

6 A. That's the dress that I retrieved from the MUSC
7 public safety.

8 Q. All right.

9 MR. OZMENT: Your Honor, that's been
10 premarked as State's Exhibit 60. We would move State's
11 Exhibit 60 into evidence.

12 MR. SHELTON: No objection.

13 THE COURT: Admitted.

14 (State's Exhibit No. 60 was marked for
15 identification and admitted into evidence.)

16 BY MR. OZMENT:

17 Q. Do the same thing with the dress? After you
18 collected it at MUSC, where did you take it?

19 A. Took it to the Moncks Corner police department and
20 laid it out and took photographs of it, and because it
21 had wet blood on it, I hung it up -- put it on a hanger
22 to be hung up in the evidence room to dry.

23 Q. Did you wear gloves when you did that?

24 A. Yes, sir.

25 Q. Did you change your gloves?

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 A. I changed my gloves numerous times during the
2 course of that procedure.

3 Q. Okay. And if you wouldn't mind just taking it out
4 of there since you have gloves on, and then you can put
5 it back. So it's kind of a tube dress?

6 A. Yes.

7 Q. Okay. You can put it back if you like to.

8 MR. OZMENT: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. OZMENT:

11 Q. Corporal Scarborough, I'm going to hand you a bag
12 that has an envelope that has another envelope that has
13 been marked State's Exhibit 65. I want to you look at
14 the innermost envelope, and that's already in evidence,
15 but look at the innermost envelope and tell me what it
16 is, and you can pull it out if you want to.

17 A. Yes. I recognize it.

18 Q. What is that?

19 A. It's a buccal swab kit that I used to collect DNA
20 from Johnny Irby.

21 Q. Okay. And explain to me, how does a buccal swab
22 work? What do you do?

23 A. It's basically a cotton swab, and you take it and
24 swab the inside of their cheek and then put it in the kit
25 and send it off for DNA testing, the skin cells, and then

CHRIS SCARBOROUGH - DIRECT BY MR. OZMENT

1 test it for DNA.

2 Q. And just a swab, like a Q-tip?

3 A. Just like a Q-tip.

4 Q. Is it painful or anything like that?

5 A. No, sir.

6 Q. And after you collected it, what did you do with
7 it?

8 A. I put it all back in the kit and sealed it up and
9 then put it into evidence.

10 Q. Okay. You can put that down. Thank you.

11 MR. OZMENT: Beg the Court's indulgence.

12 BY MR. OZMENT:

13 Q. One final issue I want to discuss with you. Were
14 you present for an interview with Gene Irby?

15 A. Yes, sir, I was.

16 Q. Do you recall which day that was?

17 A. That was the 16th, the night of the 16th, August
18 16th.

19 Q. Okay. When you were present for that interview,
20 did you notice anything about his person or anything
21 about his manner that was of note?

22 A. I mean, he had been drinking. He seemed fairly
23 intoxicated, from my perspective.

24 Q. What keyed you into that?

25 A. Just a strong odor of alcohol from him, unsteady

CHRIS SCARBOROUGH - CROSS BY MR. SHELTON

1 on his feet, to some extent, and just -- the way he was
2 talking, it was hard to understand him at times, and
3 just -- he appeared to be intoxicated.

4 MR. OZMENT: All right. No further
5 questions, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. SHELTON:

8 Q. Mr. Scarborough, you took everything out of the
9 bags prior to sending it off to SLED.

10 A. Yes, sir.

11 Q. Was that your decision, or were you asked to do
12 that?

13 A. It was my decision. I don't recall if anyone
14 asked me to do it or not.

15 Q. Okay. After SLED tests items, they give them back
16 to the department, correct?

17 A. I presume so, yes, sir.

18 Q. Okay.

19 A. Usually, yes.

20 Q. Okay. But when I took the items out, you had
21 them -- held them up to dry, and I think you put them on
22 a table or something like that when you actually took the
23 picture?

24 A. No, sir. When I took the pictures, what I did, I
25 took a black trash bag and cut the seams down the side

CHRIS SCARBOROUGH - CROSS BY MR. SHELTON

1 that opened it up down to the floor, and that's what I
2 used to lay items out on. I used several different bags.
3 I used a different bag each time -- for each item.

4 Q. Okay. And that was just for background so they
5 would come through or --

6 A. For background. Several items were still wet, had
7 wet blood, or had blood on them anyways and used them to
8 keep that from getting on anything at my office and then
9 to help keep from getting stuff onto the clothes prior to
10 testing.

11 Q. Okay. And then you transferred those items back
12 into the same bag that they came into, or did you put
13 them in new bags?

14 A. The items I hung up -- I didn't put them back into
15 a bag. I gave them to the other evidence custodian, and
16 they were placed into the evidence room to dry.

17 Q. Okay. So you don't know if those bags that
18 they're in right now were the ones that you took them out
19 of or they're putting in or they're in the same bags?

20 A. They're not the bags that they initially came out
21 of. These are our evidence bags that we have at the
22 police department.

23 Q. Okay. And I think you said you were present when
24 there was an interview with Gene Irby.

25 A. Yes, sir.

CHRIS SCARBOROUGH - CROSS BY MR. SHELTON

1 Q. Okay. Were you called in to help out because --

2 A. Yes, sir. I was called in due to the incident. I
3 was in investigations at the time, and I was called out
4 for -- I was instructed to go to the police department,
5 to assist with interviews, witness interviews.

6 Q. Okay.

7 A. Anything that they needed to --

8 Q. And I think that was an Officer Shier that was
9 also -- Corporal Shier?

10 A. Yes, sir.

11 Q. Okay. What about -- did you ever take any
12 pictures of Michelle's sandals?

13 A. I don't recall, no, sir.

14 Q. Okay. Did you receive the items from the scene?

15 A. No, sir. I didn't go to the scene that night, the
16 incident scene.

17 Q. Well, when you took the photographs of the things
18 that came back from MUSC public safety --

19 A. Yes, sir.

20 Q. -- and you took photographs of stuff that came
21 back from the autopsy --

22 A. Yes, sir.

23 Q. -- did you receive any items or take any
24 photographs of items that were found on the scene?

25 A. No, sir, I did not.

CHRIS SCARBOROUGH - CROSS BY MR. SHELTON

1 Q. Okay. The shirt that was labelled -- that
2 belonged to Telly Irby had a gunshot? It looked like a
3 hole in the shirt?

4 A. I believe so. I don't recall.

5 Q. Did you notice any holes or anything in the dress?

6 A. I did recognize -- or notice holes in the dress,
7 yes, the day that I brought it back and was taking
8 photographs of it.

9 Q. And where was that? Would it help to look at it?

10 A. It would be to just --

11 Q. Feel free.

12 A. Could I get another pair of gloves?

13 Q. Yes, absolutely.

14 A. There is one hole in the front, I guess in the
15 front top, right there.

16 Q. Okay. And there wasn't any other holes that you
17 saw?

18 A. I didn't recognize any other holes.

19 Q. Okay.

20 MR. SHELTON: No further questions.

21 THE COURT: Redirect?

22 MR. OZMENT: None, Your Honor.

23 THE COURT: All right. Step down.

24 MR. OZMENT: Your Honor, may Corporal
25 Scarborough be released from his subpoena?

DESTINY [REDACTED] - DIRECT BY MS. WILLIAMS

1 MR. SHELTON: No objection.

2 THE COURT: You're free to go.

3 Call your next witness.

4 MS. WILLIAMS: Destiny [REDACTED].

5 DESTINY [REDACTED],

6 having been first duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 MS. WILLIAMS: Your Honor, may I approach? I
10 just want to move some of this.

11 THE COURT: Be sure to talk into that
12 microphone. You can move it a little closer to you.

13 There you go.

14 BY MS. WILLIAMS:

15 Q. Destiny, how old are you?

16 A. I am 13.

17 Q. And where do you go to school?

18 A. Jefferson Davis Middle School.

19 Q. Where is that?

20 A. It's -- I don't know the name.

21 Q. What state do you live in?

22 A. Jacksonville, Florida.

23 Q. And do you have any brothers or sisters?

24 A. I have stepbrothers and stepsisters.

25 Q. Who are your sisters?

DESTINY [REDACTED] - DIRECT BY MS. WILLIAMS

1 A. My sister's name is Deanna, and my older sister's
2 name is Diamond.

3 Q. And how old are they?

4 A. My older sister is 15, and my little sister is 11.

5 Q. And do you remember when you were living in South
6 Carolina?

7 A. Yes, ma'am.

8 Q. Do you remember about when that was?

9 A. I don't know.

10 Q. Do you remember what grade you were going into?

11 A. I was going into the sixth.

12 Q. Sixth grade. And where were y'all living?

13 A. We were living with Johnny, Telly's dad.

14 Q. And who was Telly to you?

15 A. He was my stepdad and I loved him.

16 Q. Who was your mom?

17 A. My mom is Michelle. I just love my mom to death.

18 Q. When you were living with Mr. Johnny, do you know
19 how long about -- do you remember how long you were
20 living there before Telly passed away?

21 A. I can't say.

22 Q. Did you all get registered for school?

23 A. Yes, ma'am.

24 Q. What did you do during the days before -- had
25 school started?

DESTINY [REDACTED] - DIRECT BY MS. WILLIAMS

1 A. It was about to start the next day, but all this
2 started happening.

3 Q. Okay. What did y'all do before you were going to
4 school, like during the summer? How did you occupy your
5 days?

6 A. We would play with the water hose and watch movies
7 and go to the library.

8 Q. Do you remember what you were doing the day Telly
9 died?

10 A. We were watching a movie, and we went to the
11 library before.

12 Q. Who did you go to the library with?

13 A. My stepdad.

14 Q. Is that Telly?

15 A. Yes, ma'am.

16 Q. And you said you were watching a movie. Do you
17 remember about what part of the day that was?

18 A. I really don't know what time it was. It was
19 dark, though.

20 Q. And at some point while you were watching a movie,
21 did you see Johnny?

22 A. When he walked in.

23 Q. What did you call him?

24 A. I called him grandpa, or -- I don't really know.

25 Q. And how old were you during that time in August?

DESTINY [REDACTED] - DIRECT BY MS. WILLIAMS

- 1 A. I was 12, turning 13.
- 2 Q. Okay. And when you saw Johnny, where were y'all?
- 3 What part of the house were you watching the movie?
- 4 A. We were in the living room, watching the movie.
- 5 Q. And kind of explain to me, is the living room --
- 6 how close is the living room to the front door?
- 7 A. I can't -- I don't know.
- 8 Q. Can you see the front door from the living room?
- 9 A. Yes, ma'am.
- 10 Q. And where are the bedrooms?
- 11 A. It's down a hallway.
- 12 Q. Is that where Mr. Johnny's bedroom is?
- 13 A. (Nods head.)
- 14 Q. What happened when Mr. Johnny came in that day?
- 15 A. He told us to go outside.
- 16 Q. How was he acting?
- 17 A. I don't know.
- 18 Q. You don't remember?
- 19 A. (Shakes head.)
- 20 Q. Was he happy?
- 21 A. I don't know. I wasn't looking at his face.
- 22 Q. What happened when you went back outside?
- 23 A. Telly came up and told us to go back inside.
- 24 Q. So what did you do?
- 25 A. We were trying to go outside, but that's when

DESTINY [REDACTED] - DIRECT BY MS. WILLIAMS

1 Johnny came up.

2 Q. Okay. And what happened next?

3 A. Then --

4 Q. Do you need to stop for a minute? Okay.

5 MS. WILLIAMS: Your Honor, could we take a
6 short break?

7 THE COURT: We'll take ten minutes, and,
8 again, don't begin discussing. Don't talk about the
9 case, and we'll have you back in about ten minutes.

10 (Recess taken.)

11 THE COURT: All right.

12 BY MS. WILLIAMS:

13 Q. Are you okay now?

14 A. Yes, ma'am.

15 Q. So after you and your sisters walked out of the
16 door, where did you go, outside the living room? Where
17 did you go next?

18 A. We walked on the porch.

19 Q. And then what happened?

20 A. And then Telly told us to go back inside.

21 Q. Where was Telly when he told you to go back
22 inside?

23 A. I believe he was on the steps.

24 Q. Okay. And where was Mr. Irby?

25 A. He was coming out the door.

DESTINY [REDACTED] - DIRECT BY MS. WILLIAMS

1 Q. Okay. And what happened next?

2 A. And he told us to go back outside.

3 Q. Okay. So what were you and your sisters doing?

4 A. We were confused, so we didn't know which way to
5 go.

6 Q. Okay. And what happened next?

7 A. And that's when they started wrestling over the
8 gun, and that's when he shot Telly. And then we were on
9 the steps and my sister Diamond froze, and that's when
10 mom came up there, and she said, you shot your son, you
11 shot your son.

12 So he looked at her, and he shot my mom, and then
13 that's when she told us all to start running, and then he
14 shot again. He missed, and we all started running to the
15 next door neighbor's house, and we knocked -- we banged
16 on the door.

17 She answered, and then she saw that mom was hurt,
18 so she went to call the cops, and that's when she sat mom
19 on a stool, and when she went to go do that, mom fell off
20 the stool, and we started praying, and that's when -- I
21 forgot people's name.

22 And then they told us to go out, and then these
23 two ladies started arguing, like who is going to take
24 who, and then that's when a different lady, dark skinned
25 lady, took us and that's when mom left and that's it.

DESTINY [REDACTED] - DIRECT BY MS. WILLIAMS

1 Q. Do you remember some police ladies taking
2 statements from y'all, or asking y'all what happened?

3 A. I don't remember.

4 Q. Okay. Now, when you say you ran, when you mom
5 told you to run, where did you run to? Where was this
6 house?

7 A. I don't know what street it was on, but it was on
8 the concrete toward the brick steps and stuff. Me and my
9 sister, like, we were acting like a retard. We hid
10 behind the wooden stool, and then that's when mom was,
11 like, What are you doing?

12 So we started running to the neighbor's house.

13 Q. What were you and your sister doing behind the
14 wooden stool?

15 A. We didn't know we were supposed to go.

16 Q. Okay. And did you actually see Telly get shot?

17 A. No, ma'am.

18 Q. Did you see your mama get shot?

19 A. Yes, ma'am.

20 Q. Can you put up State's Exhibit 6?

21 Now, Destiny, if you could just turn around, there
22 is a picture there --

23 MS. WILLIAMS: May I approach, Your Honor?

24 THE COURT: Uh-huh.

25 BY MS. WILLIAMS:

DESTINY [REDACTED] - CROSS BY MR. SHELTON

1 Q. This is a little -- if you push this red thing, it
2 will point, okay? Do you think you could point to where
3 your mom was standing when she was shot?

4 A. She was right there.

5 Q. So she was on the steps?

6 A. Yes, ma'am.

7 Q. And where were Telly and Johnny?

8 A. They were here.

9 Q. Okay. So they were inside?

10 A. Yes, ma'am.

11 Q. And was your mom inside or outside of the porch?

12 A. She was right here.

13 Q. Okay. All right.

14 MS. WILLIAMS: I don't have any more
15 questions for you, Destiny. Thank you very much.

16 THE COURT: Hold on. Do you want to ask any
17 questions?

18 MR. SHELTON: Yes, just briefly.

19 THE COURT: Mr. Shelton is going to ask you
20 some questions now.

21 CROSS-EXAMINATION

22 BY MR. SHELTON:

23 Q. How are you, Destiny?

24 A. Good.

25 Q. So you had known Telly for a little while?

DESTINY [REDACTED] - CROSS BY MR. SHELTON

1 A. For, like, six years. For a long time.

2 Q. Okay. Did he have any dogs or anything like that?

3 A. He had -- we had a dog. Her name was Georgia.

4 Q. And did the dog like you?

5 A. She liked everybody. She was friendly.

6 Q. Okay. And was she pretty defensive of Telly?

7 A. She would bark if, like -- well, like playing
8 around and stuff like that.

9 Q. Okay. But it was a friendly dog?

10 A. (Nods head.)

11 Q. And did it seem like Telly really liked the dog?

12 A. He loved her.

13 Q. All right. After -- and you don't remember
14 exactly how long you were at Mr. Johnny's house?

15 A. No, sir.

16 Q. Okay. Where were you guys staying? Where were
17 you sleeping?

18 A. We usually sleep in the living room, in the living
19 room.

20 Q. Okay. Did you have, like, sleeping bags or --

21 A. Yes, sir.

22 Q. -- had some -- did you have any, like -- do you
23 remember how you got the sleeping bags?

24 A. I think he bought them for us, Johnny.

25 Q. Mr. Johnny bought you guys some sleeping bags.

DIAMOND [REDACTED] - BY MS. WILLIAMS

1 Now, after all this, you said you don't remember -- or do
2 you remember police officers coming in, asking you guys
3 questions?

4 A. I don't remember.

5 Q. Okay. Do you know if Diamond was talking with
6 police officers?

7 A. No, sir.

8 Q. You don't know if she was or not?

9 A. (Shakes head.)

10 Q. And then your grandmother came?

11 A. My grandmother, at the police station she came and
12 picked us up.

13 Q. Okay.

14 MR. SHELTON: No further questions.

15 MS. WILLIAMS: Nothing further.

16 THE COURT: You can step down. Thank you.

17 Next witness.

18 MS. WILLIAMS: State calls Diamond [REDACTED].

19 DIAMOND [REDACTED],

20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. WILLIAMS:

24 Q. Diamond, how old are you?

25 A. 15.

1 Q. And where do you live?

2 A. I live in Jacksonville, Florida.

3 Q. Who do you live with?

4 A. My grandparents.

5 Q. And who else lives in that home?

6 A. Me, my sisters, and my mom.

7 Q. And who are your sisters?

8 A. Destiny [REDACTED] and Deanna [REDACTED].

9 Q. And how old are they?

10 A. Thirteen and eleven.

11 Q. And at some point in time, did you live in South
12 Carolina?

13 A. Yes, ma'am.

14 Q. Do you remember about how long ago that was?

15 A. Like, two years.

16 Q. Okay. How old were you when you lived here?

17 A. Fourteen, I think.

18 Q. Okay. It was August of 2012. How old would you
19 be then?

20 A. Thirteen.

21 Q. Okay. And who did you live with here in South
22 Carolina?

23 A. Mr. -- Johnny.

24 Q. Okay. That's all right. Who are you referring
25 to? Do you know his last name?

1 A. Irby.

2 Q. Okay. And how was he connected to you?

3 A. He was, like, a granddad.

4 Q. Okay. Who is Telly Irby? Who was Telly Irby to
5 you?

6 A. He was my stepdad.

7 Q. And Michelle Wiggins is your mom?

8 A. Yes, ma'am.

9 Q. And when you lived with Mr. Irby, had y'all
10 started school yet?

11 A. No, ma'am.

12 Q. Okay. And so what would you and your sisters do?

13 A. We would play school, write in our books, watch
14 movies, read books, play house with our dog, just fun
15 things.

16 Q. And the day that Telly was killed, do you remember
17 what you were doing that day?

18 A. Writing in my book.

19 Q. And what were your sisters doing?

20 A. They were playing school.

21 Q. Okay. And at some point did you see Mr. Irby,
22 Johnny?

23 A. No, ma'am.

24 Q. Not at all that day?

25 A. No, ma'am.

1 Q. The day that Telly was killed, you never saw
2 Mr. Johnny?

3 A. Not -- I don't think so.

4 Q. Where were y'all when Telly got killed?

5 A. We were outside. We were outside on the porch, in
6 front of the yard.

7 Q. Okay. How did you get outside -- why did you go
8 out on the porch? Where were you before?

9 A. We were on the porch, because they were going back
10 and forth saying Telly said that we had to go inside.
11 Mr. Irby told us to go outside, and so we were, like,
12 just going back and forth.

13 Q. Okay. So you might have been confused. Mr. Irby
14 was telling you to go outside. You saw him at some
15 point?

16 A. Yes, ma'am.

17 Q. When did you first see him? What were y'all
18 doing?

19 A. We were in the living room.

20 Q. Okay. What were you doing?

21 A. We were -- I was writing, and my sisters, were,
22 like, still playing school.

23 Q. And did you get a chance to look at Mr. Irby in
24 how was he acting?

25 A. He was, like, quiet. He was just walking really

1 fast.

2 Q. Okay. Do you remember telling any investigators
3 that he was dizzy?

4 A. Yes, ma'am. He looked like he was dizzy, like he
5 was kind of falling around a little bit.

6 Q. And where did he go? When you were in the living
7 room, where did he first go when you went into the house?

8 A. He was walking down the hallway. He told us to go
9 outside. He told my mom and he was walking around the
10 corner.

11 Q. And was he walking toward his bedroom or was he
12 going --

13 A. He was walking toward his bedroom.

14 Q. And do you remember telling investigators you saw
15 him kicking the door?

16 A. Yes, ma'am.

17 Q. Okay. Did he kick the door?

18 A. Yes, ma'am.

19 Q. What door did he kick?

20 A. The front door.

21 Q. And what room does that front door lead to?

22 A. The living room.

23 Q. And what does it lead to on the other side?

24 A. The other side, it leads to, I think, the kitchen,
25 probably.

1 Q. Does the front door lead to the porch?

2 A. The front, you walk in the gate, and then there's
3 the screen, and then you walk in. There's a porch, and
4 then there is the front door and there is the living
5 room.

6 Q. And that's where y'all were, the living room?

7 A. Yes, ma'am.

8 Q. So after Mr. Irby tells you to leave the house,
9 where do you go?

10 A. We went to -- we went outside on the porch.

11 Q. Okay. And then what happened?

12 A. He walked out right behind us, and then Telly saw
13 us, and he said, Y'all go inside. And --

14 Q. Where was Telly when he told you to go outside?

15 A. He was outside the porch. He was standing up,
16 actually.

17 Q. And then what happened?

18 A. And then we were on the porch, and that's when he
19 told us to go outside. Telly was standing up, and he
20 said, Y'all go back inside.

21 Mr. Irby told us to go out to our mom, and that's
22 when Telly said, Y'all go back inside. So they kept
23 going back and forth, and that's when Telly walked up.

24 Q. Okay.

25 A. He walked up to the porch, and he told us to go

1 inside. Telly saw the gun. He said, Are you going to
2 pull that firearm in front of these girls?

3 Q. Telly said that?

4 A. Yes, ma'am.

5 Q. And then what did Mr. Irby say?

6 A. He didn't say anything.

7 Q. Okay. Then what happened?

8 A. Then just in like an instance they just started
9 wrestling, and while they were wrestling, he knocked, I
10 think, a black clip with, like, bullets in it, I think,
11 and then they just started wrestling. And that's when
12 the first shot popped off, and we all ran off the porch.

13 We run, and that's when I looked up and that's
14 when a bang went off again, so at that point, I was
15 frightened. And mom -- my mom, she walks up, and she's,
16 like, on just three steps. She was, like, on the second
17 step, and she say, Oh, my God, you shot your son, you
18 shot your son.

19 And that's when he walked up and he just pulled
20 the trigger.

21 Q. Did you see your mom get shot?

22 A. Yes, ma'am.

23 Q. And do you remember how many shots were fired at
24 Telly?

25 A. Just one. Like, when he was shooting, he

1 misfired, and then the second time is when he killed him.

2 Q. Did you see how he was holding the gun for the
3 second shot for Telly?

4 A. It was like this (indicating).

5 Q. What did you do next?

6 A. Well, after my mom got shot, she backed up, and
7 she was backing up and holding her wound, and there was
8 blood just going down her dress.

9 She just told us to run, so we were running, and
10 that's when Mr. Irby was walking up behind us while we
11 were running. He shot once, missed, and he shot again
12 and he missed, and he ran out the gate and we ran behind
13 the door -- not the door, but the car, and then we
14 knocked on the neighbor's door and she let us in.

15 But before I went inside, I saw Mr. Irby. He
16 walked out the gate and looked back and forth to see if
17 anybody saw him, and that's when I went inside.

18 Q. Now, when your mama was on the steps, before she
19 got shot, did she each reach toward the gun or go toward
20 the gun at all?

21 A. Yes, ma'am.

22 Q. Okay. Tell me about that.

23 A. She tried to reach it to get the gun from him so
24 he wouldn't hurt anybody else.

25 Q. Did she ever -- was she successful? Did she touch

1 the gun?

2 A. No, ma'am.

3 Q. Okay. Could you put State's 6 up? There is going
4 to be a picture behind you.

5 May I approach, Your Honor?

6 This is a little pointer. I showed your sister,
7 the red thing, you can point to things on the picture.
8 If you could just show us where your mama was when she
9 got shot.

10 A. She was right here (indicating).

11 Q. Okay. And what direction did y'all run?

12 A. We run straight this way, and I ran from behind
13 the bench. I was running this way.

14 Q. Okay. Do you remember where you were when you
15 heard Mr. Irby still shooting?

16 A. I was behind my mom.

17 Q. And then you saw him come out the gate. Where
18 were you then?

19 A. I was behind the car on this side.

20 Q. Could you put up State's -- Court's indulgence for
21 just a minute -- State's 23. There is going to be
22 another picture that shows up behind you. Okay.

23 So show us where you ran to and where you were
24 when you saw Mr. Irby.

25 A. We ran, like, around the car like this, and we

DIAMOND [REDACTED] - CROSS BY MR. SHELTON

1 were in the front of the neighbor's door.

2 Q. And is that the gate you were talking about that
3 you saw him come out?

4 A. Yes, ma'am.

5 Q. What was he doing? Like, what was he doing with
6 his body, if you could just describe?

7 A. He was, like, moving back and forth like this to
8 see if anybody saw him.

9 MS. WILLIAMS: Court's indulgence.

10 Thank you, Diamond. Please answer any
11 questions defense may have.

12 THE COURT: Cross.

13 CROSS-EXAMINATION

14 BY MR. SHELTON:

15 Q. Diamond, do you remember talking with the police
16 that night?

17 A. Yes.

18 Q. They were taking notes about what you saw?

19 A. Yes, ma'am -- I mean, yes, sir.

20 Q. They were taking notes about what you said?

21 A. Yes, sir.

22 Q. Did they ever show you a statement?

23 A. No, sir.

24 Q. Okay. How long had you known Telly?

25 A. It was -- I was young at the time, so I didn't

1 really remember.

2 Q. Okay. But you considered him your stepfather?

3 A. Yes, sir.

4 Q. Okay. And you guys came to live with Johnny. Do
5 you know about how long you guys were living with Johnny?

6 A. At the time it was, like, two weeks, approximately
7 about two weeks.

8 Q. Okay. And where were you guys staying? Where
9 were you, the girls, sleeping?

10 A. The living room.

11 Q. Okay. And that's where Telly and Michelle were
12 also sleeping?

13 A. Yes.

14 Q. Okay. It's kind of a small place?

15 A. Yes, sir.

16 Q. All right. And were things going okay?

17 A. Yes, sir.

18 Q. Okay. You guys were about to start school?

19 A. Yes, sir.

20 Q. You had gotten your school supplies, your
21 backpacks?

22 A. Yes, sir.

23 Q. The day -- when this happened, where were you when
24 the shooting started?

25 A. We were on the porch.

1 Q. So you were on the porch. And then how many shots
2 were there initially?

3 A. There was one, like, misfired, and that's when we
4 all ran off the porch.

5 Q. Okay.

6 A. And that's when we heard another one, and that's
7 when my mom, she ran up on the steps, and that's when --

8 Q. Let me stop you real quick. Sorry. So the one
9 shot, you guys ran off the porch, and when you say you
10 guys, that's you and your two sisters?

11 A. My sisters.

12 Q. And so there was a second shot, and that's when
13 you saw Telly fall?

14 A. (Nods head.)

15 Q. Okay. Then your mom ran up to the porch?

16 A. Yes.

17 Q. Okay. So she wasn't -- do you know where she was
18 at the time of those first two shots?

19 A. She was in, like, in the yard.

20 Q. Is there a picnic table or like a glass table that
21 was out there?

22 A. Yes, sir.

23 Q. And so she was sitting at that table?

24 A. She was standing. She was actually standing.

25 Q. Okay. Do you remember if there was anybody else

1 out there?

2 A. Gene.

3 Q. Do you know if Elijah -- do you know Elijah?

4 A. I didn't really see Elijah.

5 Q. Okay. Do you know who that is, though?

6 A. Yes.

7 Q. Okay. And so Michelle then, your mom, comes up to
8 the porch, and at that point in time, you said that she
9 tries to go for the gun. Okay? Is that a yes?

10 A. Yes, sir.

11 Q. So -- and then that's when Mr. Johnny shoots at
12 Michelle?

13 A. Yes, sir.

14 Q. Did he hit her at that point in time, do you know?

15 A. No, sir.

16 Q. Okay. So how many more shots after that?

17 A. After he shot her, it was, like, two, but he
18 missed.

19 Q. Okay. And at that point in time, he was on the
20 porch?

21 A. He was, like, walking toward us, and we were
22 running.

23 Q. Okay. Do you remember any other shots that night?

24 A. No, sir.

25 Q. Okay. So it was maybe in one of those other two

DIAMOND [REDACTED] - REDIRECT BY MS. WILLIAMS

1 shots as he was coming towards you guys that your mom got
2 hit?

3 A. No. He hit mom the first time.

4 Q. Oh, the first time.

5 A. And then we were running, we are running, and
6 that's when he shot once. He missed and shot twice again
7 while we were running, and then he missed.

8 Q. Okay. When your mom was hit, where was Johnny?

9 A. He was, like, a few steps in front of her.

10 Q. On the porch?

11 A. (Nods head.)

12 Q. Okay. Was Telly bigger than Johnny?

13 A. Yes, he was taller.

14 Q. Okay. And Johnny has gained a little bit of
15 weight, do you remember?

16 A. (Nods head.)

17 Q. Okay.

18 MR. SHELTON: No further questions.

19 THE COURT: Go ahead.

20 MS. WILLIAMS: Just briefly.

21 REDIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Just for clarification, Diamond, you said during
24 our direct examination that your mom reached for the gun,
25 and then Mr. Shelton asked you if she tried to get the

1 gun. Did you ever see your mom and Johnny tussling over
2 the gun?

3 A. No, ma'am.

4 Q. Did your mom ever get anywhere near the gun with
5 her hand?

6 A. No, ma'am.

7 Q. And when she was shot, was Mr. Johnny -- how far
8 away was he from her, if you know?

9 A. Like, a few feet away. A few feet in front of
10 her.

11 MS. WILLIAMS: Thank you.

12 THE COURT: Recross?

13 MR. SHELTON: No further questions.

14 THE COURT: Let me ask you a question: When
15 you said that when Telly was wrestling with Mr. Irby that
16 the gun misfired the first time it went off, what do you
17 mean, it misfired?

18 THE WITNESS: Like this. It just pointed
19 down and shot.

20 THE COURT: So it went off, but it just
21 didn't hit anybody?

22 THE WITNESS: Yes.

23 THE COURT: It's not that it just went click
24 click click or anything like that, it just didn't hit
25 anybody; is that correct?

DIAMOND [REDACTED] - RECROSS BY MR. SHELTON

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right.

3 Anybody want to ask her based on what I just
4 asked her?

5 MS. WILLIAMS: I do.

6 MR. SHELTON: No, Your Honor.

7 BY MS. WILLIAMS:

8 Q. But just for clarification since the judge asked
9 you that question, the second shot, how was Johnny
10 holding the gun on the second shot?

11 A. He was like this (indicating).

12 Q. And in your statement, you said that Telly -- that
13 he was pointing --

14 THE COURT: Would you describe for the
15 record -- when you say like this, just say out loud
16 because the court reporter, she's got to take down what
17 you do, and there is no way to know what that means when
18 you aim something. So kind of describe it for us.

19 THE WITNESS: It was pointing straight up,
20 like this (indicating.)

21 MS. WILLIAMS: Thank you.

22 RECROSS EXAMINATION

23 BY MR. SHELTON:

24 Q. And you kind of had your arm to the side. Is that
25 about how Johnny was?

DEANNA [REDACTED] - DIRECT BY MS. WILLIAMS

1 A. (Shakes head.)

2 Q. You don't remember?

3 A. No, sir.

4 Q. Okay.

5 THE COURT: Okay. You can step down. Thank
6 you. All right.

7 You got any more witnesses?

8 MS. WILLIAMS: We do. State would call
9 Deanna [REDACTED].

10 DEANNA [REDACTED],

11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WILLIAMS:

15 Q. Deanna, where do you live now?

16 A. I live with my grandparents.

17 Q. Where is that?

18 A. On Collins and Vamere.

19 Q. What state is that in?

20 A. Florida.

21 Q. Who are your sisters?

22 A. Diamond [REDACTED] and Destiny [REDACTED].

23 Q. Who is your mama?

24 A. Michelle Wiggins.

25 Q. And who was your stepdad?

1 A. Telly Irby.

2 Q. And do you remember a time when you lived in South
3 Carolina? Was that a yes?

4 A. Yes, ma'am.

5 Q. How old were you then?

6 A. I believe ten.

7 Q. What grade were you going into?

8 A. I was going into fifth.

9 Q. Do you remember the day your stepdad was killed?

10 A. Yes, ma'am.

11 Q. And what kinds of things were you doing that day?

12 A. We were watching movies, and we went to the
13 library that day.

14 Q. Okay. Do you remember what movie you were
15 watching?

16 A. It was a movie called Star Struck. It was a
17 Disney movie.

18 Q. Where were you watching that movie?

19 A. In his living room.

20 Q. Who are you talking about?

21 A. Mr. Irby.

22 Q. Okay. Is that whose house you lived in?

23 A. Yes, ma'am.

24 Q. And at some point, while you were watching that
25 movie, did you see Mr. Irby?

1 A. Whenever he came in.

2 Q. Okay. And did you see -- can you describe what he
3 was doing or where he was going, if you remember?

4 A. He came in and told us to go outside, and he
5 started walking down the hall.

6 Q. Okay. And down the hall, is that toward his
7 bedroom?

8 A. Yes, ma'am.

9 Q. And then what did you do?

10 A. We went outside.

11 Q. And then what happened?

12 A. And Telly asked us why we were out there.

13 Q. And what did you say?

14 A. We told him Mr. Irby told us to come out there.

15 Q. And then what happened?

16 A. And then Mr. Irby walked out and told us -- and
17 then Telly told us to go inside. Mr. Irby walked out and
18 he said to stay outside.

19 Q. Where was Mr. Irby standing when he said that?

20 A. In front of me, my sisters.

21 Q. Okay. Did he have anything in his hands?

22 A. (Nods head.)

23 Q. What?

24 A. A gun and the thing you put inside it.

25 Q. And where was Telly when this exchange was going

1 on?

2 A. First he was sitting down, but then he got up and
3 started walking toward us.

4 Q. Okay. And what happened next?

5 A. Then Telly said something and started walking
6 toward the porch.

7 Q. And what did you do?

8 A. Me and my sister were just standing there.

9 Q. Okay. And at some point did you leave the porch?

10 A. Yes, ma'am.

11 Q. Why?

12 A. Then the first -- when he shot the first time.

13 Q. Okay. Did you see him shoot the first time?

14 A. (Shakes head.)

15 Q. No? Did you see Telly get shot?

16 A. No, ma'am.

17 Q. Okay. Where were you?

18 A. I was -- there was a table, or a bench by the
19 fence in the front of the yard.

20 Q. Okay. Is that where you had run?

21 A. Yes, ma'am.

22 Q. What were you doing there?

23 A. Just screaming and yelling and crying.

24 Q. Who were you there with?

25 A. My sister.

1 Q. What were y'all doing?

2 A. We were sitting there, just like covering our
3 heads and trying to stay together.

4 Q. Did you see your mother get shot?

5 A. (Shakes head.)

6 Q. Do you know where she was when you heard any more
7 gunshots?

8 A. She -- she wasn't by the table, so she was -- she
9 was probably on the -- going on the sidewalk toward the
10 porch.

11 Q. Okay. Did you see her on the porch or on the
12 steps or the sidewalk, or are you just making that
13 assumption?

14 A. I think that's where she was. I'm not totally
15 sure.

16 Q. Okay. I'm going to show you a picture to see if
17 it helps with your memory, but if you don't remember,
18 it's okay to say you don't remember. Could you put
19 State's 6?

20 Behind you, there is going to be a picture, and
21 there is a little thing right next to you with a red --
22 may I approach? Right here, if you could kind of show
23 us, it's like a pointer so you can kind of show us.

24 Does that picture refresh your memory at all as
25 far as seeing your mom when she was shot?

DEANNA [REDACTED] - CROSS BY MR. SHELTON

1 A. I think she was over here somewhere, right here.

2 Q. Why do you think that?

3 A. Because whenever I was behind there, my mom was
4 not at the table where she was before.

5 Q. Okay. And when your mom was shot, do you know
6 where Telly was?

7 A. He was still -- he was on the porch, laying on the
8 porch.

9 Q. How do you know that?

10 A. Because whenever we started walking away, I saw
11 him.

12 Q. And where did y'all run to?

13 A. We run to one of the neighbor's houses.

14 Q. Okay. And what happened next?

15 A. We knocked on the door, and she finally answered
16 and then she let us in.

17 Q. Okay.

18 MS. WILLIAMS: Thank you. Please answer any
19 questions defense has.

20 CROSS-EXAMINATION

21 BY MR. SHELTON:

22 Q. You didn't see anybody get shot though?

23 A. No, sir.

24 MR. SHELTON: No further questions.

25 MS. WILLIAMS: Nothing further.

1 THE COURT: You can step down. Thank you.

2 Next witness.

3 MS. WILLIAMS: Could we approach, Your Honor?

4 THE COURT: Uh-huh.

5 (Discussion held at sidebar.)

6 THE COURT: Okay, folks. Our next witness
7 will probably be a little bit lengthier, so rather than
8 break it up during the lunch, we'll just take an early
9 lunch, come back, and play that through. So let's go
10 ahead.

11 Let's see. It's 11:30 right now, if y'all
12 would be back in the jury room by 1:00. Again, you can
13 go to lunch with anybody you want to. Don't talk about
14 the case if you go to lunch with any of the other jurors.
15 Don't talk to any of the jurors about the case. You can
16 talk about whatever else you want to.

17 Please don't go by the site; please don't,
18 again, use any social media to comment on the case; and
19 if anybody does approach you about the case, report that
20 when you get back.

21 So we'll see y'all at 1:00. Thank you.

22 (Recess taken.)

23 A F T E R N O O N S E S S I O N

24 THE COURT: Everybody ready?

25 MR. SHELTON: Yes, thank you, Your Honor.

MICHAEL ROACH - DIRECT BY MR. OZMENT

1 THE COURT: Okay. Bring the jury in.

2 (In open court, jury present.)

3 THE COURT: All right. Welcome back, folks.
4 We're going to resume now with the State calling their
5 next witness.

6 MR. OZMENT: Thank you, Your Honor. The
7 State calls Lieutenant Michael Roach to the stand.

8 MICHAEL ROACH,
9 having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. OZMENT:

13 Q. How are you today, Lieutenant Roach?

14 A. Very well, thank you.

15 Q. What do you do for a living?

16 A. Currently assigned as a lieutenant over the
17 investigations unit with the Moncks Corner police
18 department.

19 Q. How long have you been in law enforcement?

20 A. August the 4th will make 25 years.

21 Q. Congratulations. What was your role back in
22 August of 2012?

23 A. I would have been over the investigations unit at
24 that time and the school resource officers.

25 Q. Same thing you're doing now?

1 A. Right. All except for three years of my career
2 has been in investigations.

3 Q. All right. Did you become involved in an incident
4 that happened on Haynesville Road on that day?

5 A. I did.

6 Q. How did you hear about that incident?

7 A. I noted that I had several missed calls on my cell
8 phone in the evening, and I ride my motorcycle on
9 Thursday nights. And I called to see what was going on,
10 and I was told that they had a homicide at the address.

11 Q. Okay. When you heard that, what did you do?

12 A. Got home, changed clothes, got my cruiser, came up
13 to -- initially went to the scene, briefly, and then to
14 the station.

15 Q. All right. Why didn't you stay at the scene very
16 long?

17 A. Sergeant Crouse was already processing the scene.
18 The other units had been called in to assist. They had
19 the scene under control. It's been just recently we've
20 had manpower where one person doesn't have to do
21 everything.

22 Q. Okay. And so would you be considered the case
23 officer or the lead investigator in this case?

24 A. Case officer, yes.

25 Q. Okay. Can you tell me, just briefly, what does

1 that mean?

2 A. Basically, you're directing people. You go over
3 here, work the crime scene, you interview these
4 witnesses, go to the autopsy -- those type of things,
5 directing people where to go and what to do and making
6 sure that it's done.

7 Q. Okay. You left the crime scene. What did you do
8 next?

9 A. I went to the station, and Mr. Irby was already at
10 the station.

11 Q. Okay. Did you -- at this point when you arrived
12 at the station, did you know the status of the victims?
13 Did you know kind what you were dealing with?

14 A. I was informed, of course, Mr. Telly was deceased
15 and the other victim was at the medical university, and
16 the way it was being related to me that it was doubtful
17 that she was going to survive.

18 So I contacted MUSC police and asked them to get
19 whatever information they could from her, fearing it
20 might turn out to be a dying declaration.

21 Q. To your knowledge, did they do that?

22 A. Yes, they did.

23 Q. Did they do any tests or anything else?

24 A. As in --

25 Q. Do you know if they performed a gunshot residue

1 test?

2 A. I believe other officers did that, and Officer
3 Simmons is actually the one that interviewed Ms. Wiggins.

4 Q. Who does she work for?

5 A. The medical university.

6 Q. Okay. Let's go back to -- you arrived at the
7 police department here in Moncks Corner. Where was
8 Mr. Irby when you arrived?

9 A. He was in the squad room.

10 Q. Okay. And we've had some of this already, but
11 what is the squad room? Describe it to me.

12 A. Squad room is where they come in and change
13 shifts. There's desktop computers in there, officers
14 that are working the road, and they come in and do their
15 reports, sync up their computers, just basically the
16 common area of the police department.

17 Q. All right. Was anyone -- who was with Mr. Irby at
18 that point?

19 A. Sergeant Norvell was there; Officer Auclair was
20 there; I'm sure there were other people in the station at
21 that time.

22 Q. All right. And what did you do when you arrived?

23 A. Well, of course, I come in, get in my office, and
24 eventually I'm going to end up interviewing Mr. Irby.

25 Q. All right. How long between the time you got to

1 the station did your interview start, ball park?

2 A. Ten, fifteen minutes, you know, open the office,
3 get a computer, you know, use the rest room so you're not
4 distracted type of thing, so at least ten minutes or so.

5 Q. When you walked in -- where did you conduct the
6 interview?

7 A. In my office.

8 Q. All right. And where is your office in
9 relation --

10 A. My office is right next to the squad room. If you
11 come into the police department and take a left, there is
12 one office on the right. This is one office on the left,
13 and two feet from my office -- we share a common wall in
14 the squad room.

15 Q. Did you walk him into your office?

16 A. I believe I had Sergeant Norvell bring him into my
17 office.

18 Q. And before we get into the interview, did you
19 notice anything about his clothing?

20 A. There were some bloodstains on his clothing, which
21 I instructed Sergeant Norvell to make sure we were going
22 to take his clothing and provide something else for him
23 to wear.

24 Q. All right. Let's see. His clothing is in
25 evidence, but I'm going to ask you to look at a few

1 pictures for me, first is State's Exhibit 25, and you've
2 been in here. You know it spins around?

3 A. Yes, spins around the opposite direction.

4 Q. And if you need the pointer, it's just by your
5 left hand. Do you recognize State's Exhibit 25?

6 A. That's the clothing he had on at the time, and
7 this is a picture of my office in the corner.

8 Q. All right. So this is the corner of your office
9 where this was taken?

10 A. Yes.

11 Q. Is this where the interview was taken?

12 A. That's correct.

13 Q. Was he sitting in that chair?

14 A. Sitting in that very chair.

15 Q. Okay. I'm going to ask you now to look at State's
16 Exhibits 30 and 31, this is State's Exhibit 30, and now,
17 if we can go to 31, which is just the next picture, and
18 then I'm going to ask you kind of a question about both
19 of them.

20 As the case officer in this, why would you be
21 interested in these pictures of the back and front of his
22 hand?

23 A. Gunshot residue possibilities, bloodstains, blood
24 spatter, trace evidence.

25 Q. Okay. And then I'm going to have you again look

1 at 32 and 33. Again, what does that appear to be?

2 A. That's the right palm of his hand and just taking
3 pictures of his hand.

4 Q. Okay. Did you notice any injuries on his hands?

5 A. I didn't note any.

6 Q. Okay. I'm going to ask you to look at State's
7 Exhibits 34 and 35, same thing. What does 34 appear to
8 be to you?

9 A. That's his left arm and forearm.

10 Q. All right. And then we go on to 35. What does
11 that appear to be?

12 A. That's, you know, his left forearm, the under
13 side.

14 Q. And, again, did you notice any injuries or
15 anything of note on that?

16 A. No.

17 Q. Last one, 36 and 37. What does 36 appear to be?

18 A. Inside -- underneath of his right forearm.

19 Q. And 37, what is 37?

20 A. Outside the top view of his forearm.

21 Q. Again, any injuries or anything you noted --

22 A. I didn't note any.

23 Q. Okay. Last two pictures I'm going to ask you to
24 see, State's Exhibit 38, what does this picture
25 depicting?

1 A. This would be of his lower leg. You can see that
2 there is either blood spatter or blood transfer, but
3 there is clearly blood visible on his pants leg.

4 Q. Okay. And then moving to State's Exhibit 39, what
5 does this show?

6 A. Clearly, that is bloodstains or transfer or blood
7 spatter.

8 Q. And these pictures, could you tell by looking at
9 the carpet, was that still in your office?

10 A. Yes. That cardboard box is right next to the
11 bookcase, in my office and that's the chair he was
12 sitting in.

13 Q. I notice on this I can see the blood better than
14 the last photograph we looked at. Can you tell, looking
15 at the blood, how it got there at all?

16 A. It could be from smearing. It could be from
17 transfer. It could be him falling on him as he was
18 shot --

19 MR. SHELTON: Objection, Your Honor.
20 Speculation.

21 THE COURT: Sustained.

22 BY MR. OZMENT:

23 Q. All right. And I'm done with that exhibit now.
24 You can spin back around.

25 After you looked over Mr. Irby's clothing, did you

MICHAEL ROACH - DIRECT BY MR. OZMENT

1 do anything else for him before you conducted the
2 interview?

3 A. I directed Sergeant Norvell to arrange to get him
4 other clothing to wear because we were going to secure
5 his clothing as evidence.

6 Q. Okay. And then at any time law enforcement
7 interviews someone, what is the next thing they do?

8 A. If they are in custody, I'm going to go through
9 Miranda.

10 Q. Was he in custody?

11 A. He was in custody. He was not free to leave.

12 Q. Not free to leave.

13 MR. OZMENT: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. OZMENT:

16 Q. I'm going to hand you State's Exhibit 70. I'm
17 going to ask you to look at it and tell me if you can
18 identify what it is.

19 A. This is the advise of Miranda warning. This is a
20 form we use at the police department.

21 Q. Do you see your handwriting on that?

22 A. That is my handwriting at the top and my
23 handwriting at the bottom.

24 Q. And who's handwriting is on that?

25 A. Mr. Irby's.

1 Q. Were you there when he signed and initialed the
2 form?

3 A. Yes. Generally, the way I do this is I have
4 another form that I'm reading from, and number one says,
5 you have the right to remain silent, have them initial
6 and go through the entire waiver.

7 Q. Okay. And so tell me what's on that form.

8 A. It has the five statements of the Miranda warning
9 and then a waiver of rights, each of which is initialed,
10 and then it is signed by Mr. Irby and then I witness it
11 and put the time on there.

12 Q. All right. And did you verbally explain what the
13 form said?

14 A. Yes.

15 Q. Did he have an opportunity to read the form?

16 A. Yes. He would be looking at the form and I would
17 be reading.

18 Q. Okay.

19 A. Each one.

20 MR. OZMENT: At this time State would move
21 State's Exhibit 70 into evidence.

22 MR. SHELTON: No objection.

23 THE COURT: Admitted.

24 (State's Exhibit No. 70 was marked for
25 identification and admitted into evidence.)

MICHAEL ROACH - DIRECT BY MR. OZMENT

1 BY MR. OZMENT:

2 Q. At the time you were going over this with him, did
3 you threaten him in any way? Did you pressure him,
4 coerce him, anything like that?

5 A. No.

6 Q. Did you have a weapon out or a Taser out or
7 anything like that?

8 A. I don't carry a Taser when I'm in plainclothes
9 unless I'm going to answer a call. I wear a weapon, but
10 it was never out, never in any kind of threatening manner
11 whatsoever.

12 Q. And to get him to talk to you, did you promise him
13 anything, make him some sort of deal, anything like that?

14 A. No, sir.

15 Q. Okay. Did he at any time when you were going
16 through the Miranda rights with him, did he ask any
17 questions anything like that?

18 A. No, sir. He never gave me any indication that he
19 didn't want to talk to me.

20 Q. Did he initial by each of the Miranda rights?

21 A. He did.

22 Q. And did he sign the waiver at the bottom of the
23 form?

24 A. He did.

25 Q. This may be a little -- I'm going to ask you to

1 read the five Miranda rights off that form for me.

2 A. You have the right to remain silent. Anything you
3 say can be used against you in court. You have the right
4 to talk to a lawyer for advice before we ask you any
5 questions and to have him or her be with you during
6 questioning.

7 If you can't afford a lawyer, one can be appointed
8 for you before any questioning if you wish. If you
9 decide to answer questions now without an attorney -- a
10 lawyer present, you still have the right to stop
11 answering at any time. You also have the right to stop
12 answering at any time until you talk to a lawyer.

13 That's the five statements that are there, and
14 then there is a waiver.

15 Q. And did he initial by each of those five
16 statements?

17 A. He did.

18 Q. All right. After he completed this form, did you
19 interview him?

20 A. Yes.

21 Q. At any point during the interview, did he go back
22 to the Miranda rights, claim any of those rights?

23 A. No.

24 Q. Did you record this interview?

25 A. I did.

1 Q. Have you listened to it since?

2 A. I have.

3 Q. Is there anything on the interview, the recording
4 of the interview, that is abnormal?

5 A. When I was going through the Miranda warning, all
6 of it was recorded, but as we're going into the
7 interview, I notice that the back plate on my recorder,
8 it had come loose, so the first several minutes of that
9 were not caught on the recorder.

10 Q. Okay. Did you fix the back plate?

11 A. I fixed the back plate.

12 Q. After that point was --

13 A. I just continued on. I did not go back. In my
14 mind, if you go back and try to do that, that looks
15 fishy. It is what happened. The digital recorder
16 batteries were loose, and I noted it in the report.

17 Q. And have you listened to that whole recording?

18 A. I have.

19 Q. Does it accurately represent y'all's conversation
20 at that time?

21 A. Yes.

22 Q. All right. If I can get you to look at the disk
23 right in front of you, I believe that's State's Exhibit
24 71. Do you see your initials on that disk?

25 A. I do. It has my initials and my call sign.

MICHAEL ROACH - DIRECT BY MR. OZMENT

1 Q. And what does that indicate?

2 A. This is a copy of the interview with Mr. Irby.

3 Q. Okay. Is that the actual copy you've listened to?

4 A. Yes.

5 MR. OZMENT: Your Honor, at this time the
6 State would enter Exhibit 71 into evidence.

7 MR. SHELTON: Your Honor, could we approach
8 real quick?

9 THE COURT: It's admitted.

10 MR. SHELTON: No objection.

11 (State's Exhibit No. 71 was marked for
12 identification and admitted into evidence.)

13 MR. OZMENT: Your Honor, at this time the
14 State would like to publish the interview.

15 THE COURT: You may.

16 (Whereupon, the CD was played to the jury.)

17 BY MR. OZMENT:

18 Q. Is that the conversation as you remember it?

19 A. Yes, sir.

20 Q. I'll ask you some questions about the other part
21 of the investigation, not the statement.

22 Did you instruct Corporal Scarborough to go to
23 MUSC and collect evidence?

24 A. I did.

25 Q. And did you tell him to process that evidence?

1 A. I told him to handle it, like, according to
2 protocols, yes.

3 Q. Also, when we were talking about some of that
4 evidence, do you know what the legal limit to drive is in
5 alcohol?

6 A. In this state it's 0.8.

7 Q. I'm going to ask you a couple more questions about
8 Mr. Irby, and when we showed you those pictures of his
9 hands and his arms and every different angle of them, I
10 had asked you about injury.

11 What about the rest of his body? Did you see any
12 injury on his face, on his head?

13 A. No, sir.

14 Q. Chest or back?

15 A. No, sir.

16 Q. Do you know if you looked at them?

17 A. I didn't, you know. I wasn't there when he took
18 off his clothes. He certainly didn't complain of any
19 other injuries. If he had, we would have photographed
20 that area and documented it.

21 Q. Okay. Did he need any kind of medical attention
22 or anything like that?

23 A. No, sir.

24 Q. Did you at any time actually have a chance to meet
25 with Michelle Wiggins?

MICHAEL ROACH - DIRECT BY MR. OZMENT

1 A. I met with her a couple days later at MUSC.

2 Q. What was her state when you interviewed her?

3 A. She was still in the hospital, still being treated
4 for her injuries.

5 Q. Okay. How long was that conversation?

6 A. Maybe 20, 30 minutes.

7 Q. Okay. Did you have any more conversations with
8 Mr. Irby after --

9 A. No. The only time I spoke with Mr. Irby was at
10 the interview.

11 Q. All right. What time did that interview take
12 place?

13 A. On the form, it's 2155, which would have been
14 almost two hours after the initial call.

15 Q. What is 2155?

16 A. It's 9:55, 5 minutes to 10:00.

17 Q. And do you recall what time that initial call was?

18 A. I think it was like 8:05. I checked the logs. I
19 think I arrived at the station at 2138, which would have
20 been shortly -- about quarter to.

21 Q. Okay.

22 MR. OZMENT: Beg the Court's indulgence one
23 minute.

24 No further questions, Your Honor.

25 THE COURT: Cross?

MICHAEL ROACH - CROSS BY MR. SHELTON

1 MR. SHELTON: Yes, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. SHELTON:

4 Q. That was one of the questions I was going to ask
5 you.

6 There is some confusion -- you've been in the
7 courtroom for the last two days.

8 A. Yes.

9 Q. So there was some confusion on the actual time,
10 and the call came out about 8:00 p.m.?

11 A. That's correct.

12 Q. Okay. And that's what the call log indicates --

13 A. Whatever the report says, I believe it's a few
14 minutes after 8:00 the call came in.

15 Q. And this interview occurred at 9:55?

16 A. Right.

17 Q. Okay. And you had a chance to observe Mr. Irby.

18 A. That's correct.

19 Q. And it's your opinion he was not under the
20 influence of alcohol?

21 A. No. I've never met Mr. Irby before. I don't know
22 the patterns of his speech, but it wasn't slurred. I
23 couldn't smell any alcohol. I was as close to him as two
24 feet.

25 Q. Okay. And you didn't notice him stumbling or when

1 he was brought to --

2 A. When I interviewed him, no. Mr. Irby, if I
3 thought he was under the influence, I would not have
4 interviewed him.

5 Q. All right. And -- let's see. I think you said as
6 a case agent, you kind of direct people --

7 A. That's correct.

8 Q. -- to other officers that are on scene? And you
9 had requested to take a statement from Michelle?

10 A. That's correct.

11 Q. And you requested that they bag her hands?

12 A. Either myself or Sergeant Norvell, yes, I agreed
13 with it.

14 Q. What about for Telly?

15 A. No.

16 Q. But that would have been your call?

17 A. There was no need to. Mr. Irby told me he walked
18 right into the gun, so -- what purpose is a GSR test on
19 his hands if, according to Mr. Irby, he walked right into
20 the gun?

21 Q. Right. But Michelle also said they were fighting
22 over the gun.

23 A. Mr. Irby admitted to shooting the gun.

24 Q. Right.

25 A. Admitted to shooting his son.

1 Q. Okay.

2 A. As the investigator, finding GSR on his hands or
3 not finding it doesn't change that.

4 Q. But you did want to have Michelle's hands?

5 A. That's correct.

6 Q. Okay. Now -- and we just listened to it in the
7 statement. Johnny talks about how big and strong Telly
8 is?

9 A. He made a couple comments about it, yes.

10 Q. And that he couldn't have wanted to fight?

11 A. That's not what he said. The big comment I
12 remember him saying is he could snap that frail person in
13 two.

14 Q. Right, he did say that. You don't remember him
15 saying, I know I couldn't fight him. I couldn't have won
16 that one?

17 A. I don't remember that part. It's very possible
18 it's on there. We could stop it. I do remember him
19 saying, I would either have to shoot him or kick him.

20 Those are the things that stood out in my mind
21 when I was interviewing him.

22 Q. He did mention that he was aware of a time that
23 Telly got in a fight with his mother, Telly's mom.

24 A. Yes.

25 Q. He mentioned that. He also said something about

1 getting -- Telly getting beat up.

2 A. Yes.

3 Q. After you took Michelle's statement, was there
4 anything substantial that was done in the case?

5 A. All the evidence was transported to SLED and
6 examined. There were no other interviews that I
7 conducted. It was forwarded on to the solicitor's
8 office.

9 Q. Okay. And there was nothing -- did you request
10 SLED to do anything or SLED kind of make their own
11 decisions or --

12 A. I mean, evidence gets -- when you take evidence up
13 there, you try to make the best part of the evidence that
14 you're going to find stuff. A lot of people don't
15 understand, you have over 240 agencies in the state
16 submitting evidence to SLED for trace analysis every day,
17 so you don't want to -- you may have 100 pieces of
18 evidence. You do have to pick the best ones.

19 Q. And that was your decision?

20 A. It's kind of a mutual decision, yes.

21 Q. Okay. The pictures that you saw that were shown
22 of his hands and his forearms, you didn't take those
23 pictures?

24 A. No. I believe Sergeant Norvell took those
25 pictures.

MICHAEL ROACH - REDIRECT BY MR. OZMENT

1 Q. Okay. Were you present when those pictures were
2 taken?

3 A. I was probably standing near -- I believe they
4 were taken in my office, so --

5 Q. But you -- you weren't there when -- never mind.
6 Scratch that.

7 MR. SHELTON: No further questions.

8 THE COURT: Redirect?

9 MR. OZMENT: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. OZMENT:

12 Q. Lieutenant Roach, do you have a copy of your
13 incident report?

14 A. I have the two pages that I wrote. I have the
15 whole report in --

16 Q. If you have the two pages that you wrote, he asked
17 you about the gunshot residue test on Michelle. I want
18 you to look kind of towards the top of the incident
19 report.

20 Tell me at what stage you asked for that gunshot
21 residue test to be taken? In other words, kind what have
22 you done so far in your investigation?

23 A. You're talking about my supplement on page nine
24 and ten?

25 Q. I believe so. I'll pull your supplemental while

1 you're -- I believe it's probably about the second
2 paragraph.

3 A. I asked -- MUSC police Corporal Simmons asked them
4 to contact the victim, obtain a possible statement, and
5 to conduct the GSR test.

6 Q. Okay. And so at the time you asked, looking up in
7 your statement, meaning things that happened prior, what
8 had you done before you asked for that GSR test?

9 A. I was just getting started, you know. I didn't --
10 all I know is Ms. Wiggins had been transported to the
11 hospital, may die, and I had one deceased person, so just
12 going through the things of possibilities.

13 Q. Had you taken any statements at that point?

14 A. No.

15 Q. Had you talked to Mr. Irby at that point?

16 A. No.

17 Q. So at that point, you didn't have a full picture
18 really of who did what or who had a gun or what?

19 A. I don't think people -- when you get called out
20 and you're going to the scene, you're on the phone, the
21 radio, and you're directing five and six, maybe as many
22 as ten people to do things at one time until it calms
23 down.

24 Q. And this was -- this was before you had Mr. Irby
25 explain to you what actually sort of happened there?

MICHAEL ROACH - RECROSS BY MR. SHELTON

1 A. That's correct.

2 MR. OZMENT: No further questions, Your
3 Honor.

4 RECROSS-EXAMINATION

5 BY MR. SHELTON:

6 Q. But that is also when you went out to the scene;
7 you hadn't talked to Mr. Irby at that point in time?

8 A. I was only at the scene briefly.

9 Q. But you went out to the scene?

10 A. I went to the scene first, maybe there four
11 minutes.

12 Q. And so at that point in time you didn't ask -- you
13 made it a point that Michelle's hands were bagged for
14 gunshot residue, but you didn't make it a point at the
15 time you went to the scene that Telly's hands were
16 bagged?

17 A. Sir, when I was on the phone with MUSC, I was told
18 that Michelle would not survive. I didn't know what her
19 condition was. They were telling me they were expecting
20 her to expire.

21 I made that decision. I was always calling on the
22 phone in my cruiser. I went to the scene briefly for a
23 few minutes. Again, I stand by my decision. There is no
24 evidentiary value in having Mr. -- his hands bagged. I
25 could have told him to bag them after I talked to

1 Mr. Irby.

2 Q. But when you asked that Michelle's hands be
3 bagged --

4 A. Sir, there is no but. I could have made a
5 decision to bag his hands after I talked to Mr. Irby.

6 Q. And you could have before then and you made that
7 decision?

8 A. I made the decision -- the investigation is
9 ongoing. We can sit here and argue all day long. I had
10 plenty of opportunity to tell them to bag Telly's hands
11 after I talked to Mr. Irby. Mr. Irby said he walked into
12 the gun. I made a decision not to have his hands tested.

13 Q. And you could have -- after you asked that
14 Michelle's hands be bagged, you could have, when you went
15 up to the scene, asked to have Telly's hands bagged?

16 A. I could have done it at any time in the
17 investigation.

18 Q. But could you have done that --

19 A. Sir, I'm not going to change my answer.

20 Q. Okay.

21 THE COURT: All right. You can step down.
22 Are you finished?

23 MR. SHELTON: No further questions.

24 THE COURT: Okay. You can step down. Thank
25 you.

1 MS. WILLIAMS: May we approach?

2 THE COURT: Uh-huh.

3 (Discussion held at sidebar.)

4 THE COURT: Okay. Folks, the next piece of
5 evidence that is going to come in is a letter that
6 Mr. Irby wrote, and the parties have stipulated that
7 Mr. Irby wrote the letter, so there is no question as to
8 whether or not he was the author of the letter. You are
9 to treat it as a proven fact that he has written a
10 letter. So the letter will now be read by the solicitor
11 as it is admitted into evidence.

12 MS. WILLIAMS: Thank you.

13 Anna: As I said in my last letter, I didn't
14 maliciously shoot anybody, be it Michelle or Telly. As
15 you remember how Telly came to be with me in the first
16 place is that something had gone down between the two of
17 them that got him jumped. He came up to me for about a
18 month or so, I think, and got a call from Net concerning
19 court and a job offer.

20 All this time he been putting apps all over
21 Charleston, and it's CHAS'N, he has talked and he has
22 made his mind up that it was time to move on, so tells
23 me, exclamation point. He goes back to J'ville,
24 supposedly to handle his business. About a week later I
25 get this e-mail about coming back. Could I send gas

1 money for a car to get back up here?

2 I told him to wait until Friday because I
3 didn't have it, so he called Gene and told him what he
4 wanted to do because Michelle wanted to come now.

5 I was not aware that Gene had done this until
6 Tuesday when I picked Gene up from work. He tells me
7 that Telly, Michelle, and the girls should be at the
8 house. We got home. What the F? You know that sit with
9 me after I had made my feelings known to Telly.

10 Upon arriving home and seeing the girls all
11 happy and smiling, group hug and all, I thought of their
12 situation. The past few years I couldn't -- A-L-O-R --
13 after a few months to help them get on their feet in
14 Charleston, South Carolina.

15 So it began with both finding jobs, but right
16 off the rip I told them not to bring that drama from
17 J'ville into my house. So all well and acceptable.
18 Michelle found a job. Michelle found two jobs, got the
19 girls signed up for school. We began getting school
20 supplies together. Then Telly went out and had
21 tentatively found a job.

22 I say this is going to be good. I could use
23 the help around the house. Telly and Michelle told me
24 both agreed to truth and trust thing that I talked to
25 them about, so they did away with their Facebook.

1 But with no money on hand to speak of, Telly
2 insist on taking Michelle to work and going, picking her
3 up. You're talking right up road. I question this, and
4 I got, She don't know her way around yet.

5 So I go, How hard is it to go a mile from the
6 home and back?

7 Now on the 23rd, that Thursday, about two
8 weeks or so later, Michelle come in and tell me that she
9 went on Face on a friend's phone to see if Telly reopened
10 his Facebook but the answer was no. So she told him she
11 had done so.

12 So now there's a fly in the soup. All along
13 we've been working together on various projects around
14 the house. I go out that evening to Miss Mamie's house.
15 I come back around 8 p.m. so now it's conference time
16 back in my room.

17 Kids are outside playing, so I bring up that
18 drama. I tell them that if that's the way it's going to
19 be, they would have to find someplace else sooner than
20 they thought. I'm trying to make light of it, and I say,
21 If you don't get it together, I'll shoot you myself, ha
22 ha.

23 To prove it, to prove I intended to, I showed
24 them that I really had a gun, down on the floor by my
25 bed. At the same time, I had thought I need to move it

1 since the girls usually watch TV back in my room as well.

2 So not thinking about the way I had the gun
3 laying in the box with the slide back and one in the
4 chamber, I turned around with the pistol, with the
5 intention of closing the slide. Evidently, my hand was
6 on the trigger, and, believe it or not, that gun went
7 off. I was not aware of it because I was taking the gun
8 out to the truck.

9 And then Telly came up behind. You going to
10 shoot me over that? I say yes. I turn to -- it's not
11 legible -- and Telly move in and grab the top of the gun
12 to make an attempt to take it from me, so I got the
13 handle and barrel, so we tussle and tussle for I can't --
14 for I don't know how long, but the hallway to the living
15 room, and then somehow the gun went off.

16 And if from nowhere, no I had the gun with
17 Telly laying on the floor. I go into the yard. I fire
18 the remaining rounds into the air and threw the gun on
19 the ground and fell to my knees, and that's the way the
20 story goes.

21 All I say is I'm sorry for what I done to
22 everyone around me from near and far. As I said before,
23 you know how fast that ripple go until it happens.
24 Sorry.

25 P.S.: Visitation is so screwed up, even

1 though I been trying, I haven't seen anyone I know other
2 than my pastor and the elder that goes by the name -- not
3 legible -- be approved with age and time to visit. So
4 it's -- so is it even worth the bother?

5 THE COURT: Okay. Folks, let's go ahead and
6 take about a ten-minute break, and we'll come back with
7 the remaining witnesses for the State.

8 Don't begin deliberations or discussions,
9 don't comment on witness demeanor, and we'll have you
10 back in about ten minutes. If anybody wants to take a
11 smoke break, they can take it downstairs, and we'll make
12 it a 15-minute break.

13 Okay? Back in ten minutes.

14 (Recess taken.)

15 (In open court, jury not present.)

16 MS. WILLIAMS: We actually subpoenaed a
17 person on the jail tape. That person wants to remain in
18 the courtroom his client. He said he would allow us to
19 authenticate it through someone who could recognize
20 Mr. Irby's voice and not challenge the fact we didn't
21 have the other person on the tape, so I just wanted to
22 make that clear, but we authenticate it.

23 MR. SHELTON: We would almost like the
24 letter. We would stipulate --

25 THE COURT: Stipulate to the authenticity and

1 admissibility?

2 MR. SHELTON: Once the person, that jail
3 person, I'm assuming, is going to come in, authenticate
4 the taping of it.

5 THE COURT: What are you stipulating to?

6 MR. SHELTON: That it's him on the tape.

7 THE COURT: Why not stipulate to
8 authenticity?

9 MR. SHELTON: We'll stipulate to it.

10 THE COURT: Is the person coming?

11 MS. WILLIAMS: As far as the jail tape, if he
12 stipulates, no, but I think there are some issues that
13 Mrs. Irby could testify about because now there is the
14 issue of the victim attacking her, so we're going to put
15 her up to discuss that, but we're not going to put her up
16 for the tape so her testimony will be significantly
17 shorter. So I have written a stipulation for the jail
18 tape.

19 THE COURT: Okay.

20 MR. SHELTON: As to the testimony, I guess,
21 of Ms. Annette Irby about the -- what my client perceived
22 as a reason for his reasonable apprehension of fear,
23 she's going to testify that incident never happened. I
24 just don't see the relevance in this case. It's going to
25 reasonable apprehension of fear. It's not going to the

1 truth of the matter, just what he feels and what he knew.

2 THE COURT: I have no idea what we're talking
3 about. What are we talking about?

4 MS. WILLIAMS: As a factual issue, Mr.
5 Shelton asked Mr. Roach -- in that tape, Mr. Irby says
6 his son attacked his mother, grabbed his mother's arm,
7 and he didn't try to break it, but he grabbed her arm and
8 hurt his mother.

9 That's a factual issue in the trial, and I
10 think we can put up the witness that actually was
11 supposed to have been attacked by Telly Irby because she
12 says that didn't happen. So it's just an impeachment of
13 the statement, and it's a relevant issue because it's in
14 trial. Mr. Shelton asked about it.

15 She's not going to speculate as to what
16 Mr. Irby thinks, she's just -- she was there and so, you
17 know, she's a fact witness for something that defense has
18 made an issue in the trial.

19 MR. SHELTON: She put that in issue. She
20 published that statement.

21 MS. WILLIAMS: But we weren't going to ask
22 about it until Mr. Shelton asked about it on
23 cross-examination, and that's when it became an issue,
24 and I also think, Your Honor, we can impeach his
25 statement.

1 THE COURT: All right. I think it can come
2 in under 404(a)2, second part of 404(a)2 as evidence of a
3 character trait of peacefulness of the victim offered by
4 the prosecution in a homicide case to rebut evidence that
5 a victim was the first aggressor.

6 So she said that the victim -- or he's
7 insinuating that by having attacked -- by Telly having
8 attacked his mother, he wants to use that evidence to
9 suggest Telly was first the aggressor for purposes of a
10 self-defense; therefore, the State should be allowed to
11 rebut that.

12 Okay? All right? Anything else?

13 MS. WILLIAMS: We will then just play the
14 jail tape when the jury first comes in, if you would
15 please read the stipulation, and we will call our last
16 witness.

17 THE COURT: And this is a tape of Mr. Irby to
18 whom?

19 MS. WILLIAMS: To his sister, Ms. Shenita
20 Jones -- Shenita Johnson. His sister, Mr. Irby's sister.

21 THE COURT: You got it cued up? Is it cued
22 up now?

23 MS. WILLIAMS: It is, Your Honor.

24 THE COURT: Okay. Bring the jury in.

25 (In open court, jury present.)

1 (Court's Exhibit Nos. 1 and 2 were marked for
2 identification and admitted into evidence.)

3 THE COURT: Okay, folks. The next piece of
4 evidence is a telephone call made from the jail to --
5 from the defendant, Mr. Irby, to his sister, Shenita
6 Johnson. The parties have stipulated that it is
7 Mr. Irby's voice on the telephone and it is to his sister
8 Shenita Johnson.

9 All right? So you may play it.

10 (Whereupon, the recording was played for the
11 jury.)

12 MS. WILLIAMS: May we approach?

13 (Discussion held at sidebar.)

14 THE COURT: Okay.

15 Okay. Operator error. We played the wrong
16 tape. It's to the same person. It's from Mr. Irby to
17 his sister. He made more than one phone call, and they
18 played the wrong one to you now. All right?

19 MS. WILLIAMS: And this would be Exhibit
20 Number 63 rather than 64.

21 THE COURT: All right.

22 (Whereupon, the recording was played for the
23 jury.)

24 (State's Exhibit Nos. 63 and 64 was marked
25 and admitted into evidence.)

ANTOINETTE IRBY - DIRECT BY MS. WILLIAMS

1 THE COURT: All right.

2 MS. WILLIAMS: State calls Antoinette Irby.

3 ANTOINETTE IRBY,

4 having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Ms. Irby, who was your son?

9 A. Telly.

10 Q. And who was your husband at one time?

11 A. Johnny.

12 Q. And you heard me read that letter in court. Who
13 was that letter written to? You are you familiar with
14 that letter?

15 A. Yes. It was written to our daughter, Anna.

16 Q. And did you at some point find out about the
17 letter?

18 A. Yes.

19 Q. And what did you do with it?

20 A. Well, after I read it -- after I read it, I sent
21 it -- I called and told someone here about it, and they
22 asked for a copy of it and I sent it to them.

23 Q. So you turned it in to someone?

24 A. Yes.

25 Q. Now, you've been sitting here all week, and you

1 have heard testimony about an incident where Telly
2 supposedly attacked you, where he grabbed your arm,
3 twisted your arm. Tell us anything you know about that.

4 A. Telly has never grabbed me.

5 Q. Has he ever put his hands on you?

6 A. Never.

7 Q. Have you ever known him to even threaten to put
8 his hands on you?

9 A. He wasn't that type of child.

10 Q. And you've also heard a lot of information about
11 his relationship with his dad, Mr. Irby. What is
12 Mr. Irby talking about in the tape when he talks about
13 the NFL career and his frustration with Telly?

14 A. Telly played football for Berkeley High and got a
15 letter of acceptance to Clemson, but because of his SAT
16 scores, they sent him to Mississippi to Juco College with
17 the intentions of finishing there and going on to
18 Clemson.

19 Well, the time that he graduated from Juco, my
20 mother passed away, and Telly came to me and told me he
21 just couldn't play football no more because his
22 grandmother wasn't here anymore.

23 Q. He just didn't want to play anymore?

24 A. He didn't want to play.

25 Q. Was that a source of frustration for Mr. Irby?

1 A. Yes.

2 Q. And in the tape, Mr. Irby talks about a lot of the
3 relationship between him and Telly, and you sort of get a
4 view of it during the time that they were at that house.
5 Did you have an opportunity to observe their relationship
6 as well?

7 A. Yes. They had a great relationship. After our
8 divorce, Telly came to me one day and said, Mama, Daddy
9 is in South Carolina all by his self. Can he come to
10 family functions, you know, like Christmas, Fourth of
11 Julys, any family functions because he was here by his
12 self.

13 And I told him yes, and over the years he had been
14 to Jacksonville for different holidays and things.

15 Q. So even after the divorce, he would come and see
16 you occasionally?

17 A. Yes.

18 Q. And you listened to both of the jail tapes that
19 were played.

20 A. Uh-huh.

21 Q. And you recognized your ex-husband's voice?

22 A. Yes.

23 Q. And what does he mean when he says he wasn't
24 trying him then, but he was going to try him.

25 Do you have any idea how he used those expressions

1 around you?

2 A. No.

3 Q. So you don't know?

4 A. No.

5 MS. WILLIAMS: No further questions. Thank
6 you, Mrs. Irby.

7 THE COURT: Cross?

8 MR. SHELTON: Beg the Court's indulgence. No
9 questions.

10 THE COURT: Okay. You can step down. Does
11 the State have any other witnesses?

12 MS. WILLIAMS: No, Your Honor. At this time
13 the State would rest.

14 THE COURT: Okay.

15 Folks, I'm going to send you back to the jury
16 room right now while we plan the rest of the trial.
17 You've heard the State's evidence, but we still have a
18 little bit more to go, so don't begin deliberations or
19 discussions about the case. It's still premature, and
20 I'll have you back in a few minutes.

21 (In open court, jury not present.)

22 THE COURT: All right. Any motions?

23 MR. SHELTON: Your Honor, at this time the
24 defense moves for a directed verdict motion specifically
25 as to the murder case, the self-defense claim, and we

1 feel the State hasn't reached their burden.

2 As far as self-defense on the murder charge,
3 there is evidence that a confrontation occurred in the
4 yard. With the evidence taken in the light most
5 favorable to the State, evidence of a confrontation in
6 the yard, Michelle testifies that Telly jumps up, gets in
7 Johnny's face, they're arguing; he goes into the house.
8 He lawfully gets his gun in his house. He can lawfully
9 have a gun.

10 He comes out and is being confronted again
11 while he is on the porch, while he is in the doorway to
12 his home. He's confronted again on the porch, and a
13 struggle over the gun ensues. Johnny is acting lawfully
14 in getting this gun. It's his home. He has a right to
15 have a gun on his property, and so we don't feel that the
16 State has met their burden as far as disproving the
17 self-defense claim and ask for a directed verdict on
18 that.

19 As to the attempted murder, we don't feel
20 that the State has met their burden on the malicious
21 intent part of the attempted murder, that specific
22 element, and we ask that you direct a verdict on the
23 attempted murder also.

24 MS. WILLIAMS: Your Honor, as you know, with
25 a directed verdict, the Court is not concerned with the

1 weight of the evidence, but the existence of evidence,
2 and there is evidence in the record of malice.

3 Mr. Irby has a verbal argument with his son
4 who is still sitting in the yard. He makes a decision to
5 go in the house, walk down the hall, go under his bed,
6 get a gun out of the box, get the clip. He says the gun
7 was loaded in the jail tape, walk all the way back out.

8 He gives several statements about the whole
9 area of the case that is involved with the gun, but
10 undisputed, he introduces a gun into this scene. He at
11 any time could have just locked the door to the house.
12 He could have called 911. He could have left.

13 There were so many other ways to handle this.
14 Once he introduced that weapon on to the scene,
15 everything changes.

16 He then has the gun. His son tries to take
17 the gun away from him. Even after the gun goes off and
18 his son and he have finished scuffling, there is evidence
19 from Diamond, there is evidence from Michelle, that he
20 raises the gun and shoots him.

21 In addition to that, he keeps shooting. He
22 shoots Michelle. Even after she's gone, he keeps
23 shooting, so I don't know what the explanation is for
24 that. I think not only -- him shooting Michelle not only
25 bears on the attempted murder case, but it also says

1 something about shooting Telly, because if Telly's is an
2 accident, how do you explain the next four shots?

3 So we would say malice is proved through
4 several witnesses who say that after the verbal
5 altercation, he makes a decision to go into the house, go
6 get his gun, get his ammunition, and walk all the way
7 back out with the gun and point it at his son. At that
8 point his son could either get shot or try to take the
9 gun away from him.

10 In addition to that, with regard to
11 self-defense, as the Court is aware, Mr. Shelton would
12 have to prove all four of the requirements for
13 self-defense, and I don't think that any of them are
14 proven. He has to prove the defendant is without fault
15 in bringing on the difficulty.

16 I'm not sure if Mr. Irby is -- if he had that
17 gun legally or not because he has a CDV conviction, but
18 even beyond that, he is not without fault in bringing on
19 the difficulty. He brings a weapon to the scene. He
20 would have had to believe he was in imminent danger of
21 losing his life or sustaining serious bodily injury.

22 In the jail tape, his sister says, Was he
23 attacking?

24 And he says, No, he wasn't attacking me, he
25 was trying to get the gun.

1 A reasonable prudent person of ordinary
2 firmness and courage would have entertained the same
3 belief, and, again, that goes to all of this evidence
4 that Mr. Shelton's been trying to get in about how he
5 knows that Telly is capable of a CDV.

6 This would be just an ordinary person, an
7 ordinary person, after having a verbal argument with his
8 son would go into the house, get a weapon, get the
9 ammunition and come back and point it at his son and that
10 he had no other probable means of avoiding the danger.

11 He had so many other ways of avoiding this
12 danger, Your Honor. The simplest way would have been to
13 go in that house and lock the door. Go in that house and
14 call 911. Leave. Walk next door.

15 Should he have had to? No, but it doesn't
16 mean you get to shoot people. You don't get to shoot
17 obnoxious people. You don't get to shoot people you're
18 living with that you've asked to leave and they don't.

19 We submit he has not proven all the four
20 components of self-defense and there is evidence of
21 malice for the murder and for the attempted murder.

22 THE COURT: Do you want to respond?

23 MR. SHELTON: Just briefly. On duty to
24 retrieve, this was on his own premises, and we take the
25 position he doesn't have to retreat on his own premises.

1 THE COURT: Well, as to the murder charge and
2 the element of malice, both on the murder and attempted
3 murder, while especially on the murder charge, with a
4 possibility of there being a struggle over the weapon,
5 State vs. Belcher says the Court can't charge the jury on
6 malice -- malice being inferred from the use of a deadly
7 weapon, but it specifically says the State can still
8 argue that.

9 And so the fact that you have a deadly weapon
10 in addition to this I think precludes an argument that
11 there is no evidence of malice. The State can argue in
12 this instance that use of a deadly weapon infers malice.
13 I just don't charge it.

14 In addition, you have the elements of time in
15 here where he goes back -- depending on which story
16 you're listening to and what evidence you believe, you
17 know, you got evidence that says he just went back there
18 by himself and got this.

19 In one of the stories that he gave, either in
20 a letter or a phone call there, he says his son was back
21 in the room with him and they were having an argument,
22 but the conflict in that evidence -- but from one version
23 of the story, he goes back, comes in, comes to the house,
24 tells everybody, throws the kids out, goes back to the
25 room. His son, Telly, never goes to the house until the

1 kids are thrown out and the father comes out with the
2 gun.

3 So there is malice aforethought in that
4 element as well. I also think that in the case of -- or
5 as to the element necessary to show self-defense, there
6 was absolutely no reason under any version of this
7 evidence for him to introduce a weapon into this
8 charge -- or into this scenario, so he brought the danger
9 element in there.

10 There is no evidence that the son -- even if
11 you believe a version of the evidence that says, I told
12 the son to get out, I think your argument was, well, he
13 needed to go get his gun, there was really nothing in
14 that scenario that was clear, certainly, that he was
15 treating them at that point as trespassers and that he
16 was defending his property from trespassers.

17 That is an argument that is almost bordering
18 on ludicrous, but it's certainly something that the
19 State, I think at this point, has got enough evidence in
20 there from which they can argue that they have disproved
21 self-defense, so denied as to murder and self-defense.

22 On attempted murder, you know, same thing as
23 far as the malice issue goes. In fact, it's even
24 stronger in this case because there is no evidence at all
25 that Michelle had anything to do with any struggle,

1 tussling, argument. She was simply running towards the
2 shooting out of pure instinct to protect her children, as
3 far as the evidence, shows uncontrovertedly. She wasn't
4 trying to attack him prior to the shooting started, so
5 denied on that as well.

6 So we're to that point then where we have to
7 decide or the defense has to decide if they are going to
8 present a defense. We talked yesterday about this, and,
9 Mr. Irby, you now have to decide if you are going to
10 present a defense. That would include calling witnesses
11 and it would also include deciding whether or not you
12 want to testify.

13 Have y'all talked about this, Mr. Shelton?

14 MR. SHELTON: We have, Your Honor, yes.

15 THE COURT: What have y'all decided?

16 MR. SHELTON: Your Honor, we might need a
17 little bit more time to discuss it.

18 THE COURT: Well, here is what I'm going to
19 do, because regardless, it's too late to go through a
20 charging argument.

21 I'll give you the night to decide, and I'll
22 make my decisions on the final charge, charges. If you
23 have any that you want to submit, how about get them to
24 me. We got some proposed?

25 MR. SHELTON: I do -- well, I have some case

1 law on accident and self-defense that I would like to
2 pass up.

3 THE COURT: Sure.

4 MR. SHELTON: And this is just what I'm
5 anticipating as far as evidence.

6 Obviously, the Court has not heard all
7 evidence. I do have a couple other witnesses, as far as
8 there is one other witness that is a factual -- that is a
9 fact witness that was present on the scene and might help
10 as far as our claim of self-defense, Your Honor, and I
11 think it would lead to --

12 THE COURT: So you're definitely going to
13 call one or two, or one?

14 MR. SHELTON: Well, I have, if Mr. Irby
15 decides to testify, six total, Your Honor.

16 THE COURT: What was the last?

17 MR. SHELTON: If Mr. Irby decides to testify,
18 six total, so it would be five if Mr. Irby decides not to
19 testify.

20 THE COURT: Okay.

21 MS. WILLIAMS: And, Your Honor, for the
22 State, we would just ask for a voluntary intoxication not
23 being a defense. That's the only one I thought of that
24 was different, and we also have some case law on accident
25 that we're happy to pass up to the Court. It's State v.

1 Wharton, it's a 2008 case 381 S.C. 209, and we would just
2 respectfully ask the Court what reasonable doubt
3 instruction that Your Honor uses?

4 THE COURT: I always use the firmly convinced
5 one.

6 MS. WILLIAMS: Thank you.

7 MR. SHELTON: Your Honor, I have --

8 MS. WILLIAMS: And we would also ask at this
9 point, and I think it's also premature, that if you are
10 going to charge self-defense that it be limited to just
11 the murder case unless something changes after defense
12 counsel's case.

13 THE COURT: Probably so. I haven't seen any
14 back yet that suggested self-defense was involved in the
15 attempted murder charge, but give me tonight. I'll think
16 of something.

17 MR. SHELTON: The only ones I'm requesting
18 are based on the online South Carolina judicial web site,
19 those jury instructions, so --

20 MS. WILLIAMS: This is the one on accident,
21 Your Honor. It talks about self-defense too, so we wrote
22 accident on there so you didn't think we were arguing
23 self-defense.

24 THE COURT: All right. Well, let's do this:
25 Let's bring them in. I'll tell them to come back

1 tomorrow morning at 9:30. Why don't we meet up about
2 9:15, just so you can lay out what your plan is at that
3 point. Okay?

4 Bring the jury in.

5 (In open court, jury present.)

6 THE COURT: Okay. Folks, we are going to
7 break for the day. You've heard all the State's
8 evidence.

9 Rather than start on the defense's case at
10 this point, we're going to just go ahead and break for
11 the day. I still think that will get you plenty of time
12 to get finished up tomorrow, so please, again, same
13 instructions I've been giving you.

14 Don't talk to anybody about the case tonight,
15 including other jury members. Please don't discuss it
16 with anyone. If you see anything in the paper, don't
17 read it, don't write anything social media, post anything
18 on Facebook, anything like that. Please don't visit the
19 crime scene, and just enjoy your evening.

20 If you would, report back to the jury room
21 tomorrow morning at 9:30, and we will resume then. All
22 right? Thank you for your patience today.

23 (Recess taken.)

24 (July 24, 2014.)

25 (In open court, jury not present.)

EUGENE IRBY - DIRECT BY MR. SHELTON

1 THE COURT: They're all here? Okay. Are you
2 ready with your first witness?

3 MR. SHELTON: Yes, Your Honor.

4 THE COURT: All right. Bring the jury in.

5 (In open court, jury present.)

6 THE COURT: Okay, folks. Welcome back. We
7 are now going to move to the next phase of the trial
8 where the defendant calls his first witness.

9 Mr. Shelton, whenever you're ready.

10 MR. SHELTON: Thank you, Your Honor. May it
11 please the Court: Defense calls Gene Irby.

12 EUGENE IRBY,

13 having been first duly sworn,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SHELTON:

17 Q. How are you doing, Gene?

18 A. All right.

19 Q. Gene, how are you related to Johnny?

20 A. He's my brother.

21 Q. Okay. And what do you do?

22 A. For a living?

23 Q. Yes, sir.

24 A. Well, right now -- I'm not out working right now,
25 but I worked -- floor manager for the Habitat For

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1 Humanity, Goose Creek.

2 Q. Okay. Gene, where do you live?

3 A. I live at [REDACTED] Haynesville Road, Moncks Corner.

4 Q. Do you still live there?

5 A. Yes, I do.

6 Q. And that's where this whole incident took place?

7 A. Yes.

8 Q. Okay. Gene, who did you live there with?

9 A. I lived there with my brother.

10 Q. For about how long did you and Johnny live
11 together?

12 A. I think it's been about three-and-a-half years.

13 Q. And was there -- at some point in time in 2012,
14 did Telly come and live with y'all?

15 A. Yes.

16 Q. Okay. Was he by himself or was he with somebody?

17 A. Well, he was by his self on the first occasion,
18 and on the second occasion, he brought back his fiancée
19 and kids.

20 Q. Okay. And was there -- tell us about that second
21 occasion. Was there a misunderstanding --

22 MS. WILLIAMS: Objection. Leading.

23 THE COURT: Overruled.

24 BY MR. SHELTON:

25 Q. Was there a misunderstanding as to the date he

1 came in?

2 A. The day he came in?

3 Q. The date, when he was supposed to come in?

4 A. To my recollection, that wasn't a mistake on the
5 date he came in, but my brother didn't know of him coming
6 in, you know. He know he was coming, but not with
7 Michelle and the kids.

8 Q. And did you help Telly and Michelle and the kids
9 come?

10 A. No. Well, Telly needed money to get back, and I
11 loaned him the money to get back, you know, to Moncks
12 Corner; yes, I helped him out.

13 Q. And so let's go to August 16th. Were you at the
14 house that night?

15 A. Yes, I was.

16 Q. Okay. And how long had you been at the house that
17 night? Were you working earlier in the day?

18 A. Yeah, I was working earlier the day of the
19 incident. I was -- had got off work that day, evening.

20 Q. Okay. Do you know about what time you got off
21 work?

22 A. Well, I got off about 3:30, but I made it to the
23 house about 5:00.

24 Q. Okay. And who was home about 5:00?

25 A. When I arrived at my house at 5:00, I saw Michelle

EUGENE IRBY - DIRECT BY MR. SHELTON

1 and Telly, and they was in the front yard.

2 Q. Okay. And what were they doing in the front yard?

3 A. At that time they was sitting down talking.

4 Q. Okay. At some point in time did everybody start
5 to drink?

6 A. Yes. It seemed like it was a happy occasion that
7 day, and we went and got drinks.

8 Q. Okay. Was Johnny there with you?

9 A. No, he was not.

10 Q. Okay. Do you remember when Johnny came home?

11 A. Yes, I remember.

12 Q. Okay. Do you know about what time?

13 A. Well, it was way after 5:00. It was somewhere
14 around about 6:00 or 7:00 when he arrived.

15 Q. Okay. And can you describe what happened when
16 Johnny came home.

17 A. Well, we were sitting down, and we were kind of in
18 a joyful mood that day. I think Telly and Michelle had
19 some jobs and things, and we were most likely celebrating
20 in the yard. And we were sitting in the yard, and Johnny
21 came in. And when he came through the gate, Telly got up
22 and told Johnny, he said, If you have anything, you know,
23 to say about Michelle and the kids, you come to me about
24 those issues. And --

25 Q. And let me stop you. At that point in time had

1 Johnny said anything to Telly?

2 A. If he did, if they had did, it was early that day,
3 but I wasn't there. I was -- I was at work probably that
4 day.

5 Q. Okay. So then what? What happened after that?

6 A. Johnny told Telly and Michelle, If you cannot do
7 what I say, you get up right now and just leave.

8 Q. Okay. And how did Telly react to him?

9 A. Telly told him he'll leave when he get ready to
10 leave.

11 Q. And how was his tone of voice?

12 A. In a kind of angry manner, like kind of like he
13 was mad, you know, like confused, you know, mad kind of
14 thing.

15 Q. So what did Johnny do after that?

16 A. Johnny walk toward the steps, and as he was
17 walking, he say, You're going to get out of my house.

18 And there was some more words said, but I can't
19 remember at this time, but going up the steps, Telly
20 shoved him, and he went on up the steps, and they were
21 still talking, but they were talking about going up the
22 step and going inside the screen.

23 I think I was on the outside -- I know I saw
24 Michelle, but I didn't know he hit Michelle or what, but
25 Johnny went on into the house and came back --

EUGENE IRBY - DIRECT BY MR. SHELTON

1 Q. Let me stop you real quick. This screen porch,
2 the door to that screen porch, can you describe the door
3 to that screen porch?

4 A. The door is made of screen, and you could see the
5 top -- you could see through the top, but at the bottom
6 is wood at the bottom of it.

7 Q. At the time?

8 A. Yeah, at the time. Right now I replaced the
9 screen door so there is another one up there right now.

10 Q. So it was solid on the bottom part of the door?

11 A. Yes.

12 Q. And was there a spring on that door?

13 A. No.

14 Q. Okay.

15 A. When you push it, it stays open, you know, until
16 you put a spring on it so if you close it you have to
17 close it with your hand.

18 Q. And so Telly shoves and pushes on Johnny.

19 A. Yes, sir.

20 Q. And Johnny goes into the house?

21 A. Yes.

22 Q. What happens next?

23 A. He comes out. He went and got his firearm.

24 Q. Okay. And at this point in time, where is Johnny?

25 A. The first time he shove him, it was going up the

EUGENE IRBY - DIRECT BY MR. SHELTON

1 steps, up on the porch, and the second time is on the
2 porch on into the house. That's when he got his firearm.

3 Q. So the first time that he shoved him, this is
4 before Johnny went and got his firearm?

5 THE COURT: Are you saying shove or shot?

6 THE WITNESS: Shoved.

7 THE COURT: You say the first time he shoved
8 him? You were saying he shoved him, not shot him?

9 THE WITNESS: Not shot him.

10 THE COURT: Okay. All right.

11 BY MR. SHELTON:

12 Q. So after Johnny gets the gun, do you see the gun?

13 A. Yes. I seen him when he came -- at that time I
14 had stood up, and -- I was sitting down. I stood up, so
15 I seen the gun when he came to the door with it.

16 Q. How was he holding the gun?

17 A. It was in his right hand and then he had it on --
18 I think he had it on his side, you know.

19 Q. In his side, you mean down maybe by his leg?

20 A. Yes.

21 Q. And so -- and Johnny, where was he standing at
22 that point in time?

23 A. By the door, the front door entrance.

24 Q. Inside the porch?

25 A. He was standing -- kind of like on -- about on the

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1 carpet in the living room, by the front door, and Telly
2 was standing on the porch. The screen door was open.

3 Q. Okay. And so were you able to see anything that
4 happened after that?

5 A. No. I think -- I seen when the gun came up, and
6 Telly -- I think I seen the first shot. He stepped
7 again, and I seen the second shot and I seen Telly fell.

8 Q. Okay. So when you saw the shots, did you see what
9 Telly was doing?

10 A. I couldn't see exactly what he was doing, but I
11 know he probably was going forward at Johnny, but that
12 didn't happen when the second shot was fired because
13 Telly fell. I think that was fatal.

14 Q. After the second shot?

15 A. Yes.

16 Q. Okay. Was he grabbing for the gun?

17 A. Maybe.

18 Q. Okay. And you were standing where at this time?

19 A. At that time, I was standing on the ground there,
20 on the grass.

21 Q. Okay. And where did you go after the shots?

22 A. Well, he shot, you know, I went around and tried
23 to go and call 911.

24 Q. Did you see Michelle run up to the porch?

25 A. When Michelle run up in that incident, you know, I

1 didn't too much see her when he shot her, but I know she
2 had been shot. I heard a shot, you know, and she had
3 been shot also.

4 Q. Did you see where Michelle was?

5 A. Michelle was out there with me. Now, coming back,
6 I had called 911, you know. Michelle had come down. The
7 kids also was in the house, and they had came out and
8 Michelle was shot also.

9 Q. Did you see where Michelle was when she was shot?

10 A. She was on the steps -- not the steps, but on the
11 sidewalk, she was going up the steps toward the gun when
12 she got shot.

13 Q. When she got shot?

14 A. Yeah.

15 Q. Or is that when you saw her last?

16 A. Yes.

17 Q. Okay.

18 THE COURT: That was a question with an or
19 and you answered yes. Which was it?

20 THE WITNESS: What was that question?

21 THE COURT: Was she going up the steps when
22 she got shot?

23 THE WITNESS: Yes.

24 THE COURT: Was she going up the steps when
25 she got shot or is that the last time you saw her?

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1 THE WITNESS: Yes, she was going up the
2 steps.

3 BY MR. SHELTON:

4 Q. When you saw her last or when she got shot?

5 A. When I saw her, she was going up the steps.

6 Q. And you didn't see -- did you see Johnny shoot
7 Michelle, or did you -- did you see Johnny shoot
8 Michelle?

9 A. No. No, I didn't.

10 Q. Okay. But you heard the shot?

11 A. I heard it.

12 Q. Did you see what Johnny did after that?

13 A. Well, at that instant Michelle had came back down
14 and he had came down. Johnny shot up in the air some
15 more. He shot -- he fired two times up in the air, and
16 me and -- we were standing out there. We was in kind of
17 a frantic shock, you know, when he fired up in the air.
18 Elijah went one way, and that's when I froze myself, you
19 know. The ambulance was already on its way, and I guess
20 the policemen was too.

21 Q. And you called 911?

22 A. Yes.

23 Q. Okay. Did -- how many total shots do you hear?

24 A. In the total I heard five. He shot Telly one
25 time, he shot Michelle once, and I think he fired up in

1 the air twice.

2 Q. Okay.

3 MR. SHELTON: No further questions.

4 CROSS-EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Good morning, Mr. Irby.

7 A. Good morning.

8 Q. Now, Mr. Irby, you and I have met before; is that
9 correct?

10 A. Yes.

11 Q. In fact, I went out to your home, didn't I?

12 A. Yes.

13 Q. And you showed me where you were standing when you
14 saw what was going on that day, didn't you?

15 A. Yes.

16 Q. Did you kind of walk us through it in the yard?

17 A. Yes.

18 Q. And during that day, you told me that you were
19 sitting at a table with Michelle and Telly; is that
20 correct?

21 A. Yes.

22 Q. And that when the shots were fired, you remained
23 at that table and then eventually ran in the back; is
24 that correct?

25 A. No.

1 Q. Okay. Tell me what the truth was.

2 A. What happened, we were sitting there at the table,
3 with Telly and Michelle, and we was sitting there until
4 Telly and Michelle went -- Telly and Johnny went toward
5 the house.

6 Q. And when Mr. Irby, your brother, came back out of
7 the house, wasn't Telly back at the table?

8 A. No.

9 Q. Until the girls came out?

10 A. No.

11 Q. So while Mr. Irby was going in the house to get
12 his firearm -- where does he keep his firearm?

13 A. He keep it in his bedroom.

14 Q. Okay. So how far is his bedroom from the porch?

15 A. His bedroom is in the back of the house.

16 Q. Okay. And so did Telly follow him to his bedroom?

17 A. No.

18 Q. So where did Telly go when Mr. Irby went back to
19 get his gun?

20 A. It was still on porch.

21 Q. Oh, he stayed on the porch the whole time?

22 A. He stayed on the porch, yes.

23 Q. Where were the girls if you know?

24 A. Everybody was in there watching TV.

25 Q. Okay. Do you know the girls were watching TV or

1 have you heard that from other people?

2 A. No, they were watching TV.

3 Q. How do you know?

4 A. Because that's what they always do, watch
5 television in the front room.

6 Q. And how much were you drinking that day?

7 A. Well, I hadn't drank -- I just had got off work,
8 so I hadn't drank anything but that beer we had went and
9 got from the store.

10 Q. So how much beer had you drink?

11 A. No, I didn't drink that much beer that day, just
12 one that Michelle went and got me.

13 Q. Just one beer?

14 A. Just one beer that day.

15 Q. Do you remember going down to the police station a
16 couple hours later and giving a statement?

17 A. Yes.

18 Q. How did you get there?

19 A. By the police.

20 Q. So they helped you in the car and you went down
21 there?

22 A. Yes.

23 Q. And so -- I just want to understand. You're at
24 the table.

25 A. Yes.

1 Q. And you're watching your brother and your nephew
2 walk to the house.

3 A. Yes.

4 Q. And so do you see this shove on -- in the yard on
5 the steps or on the porch?

6 A. It was on the steps.

7 Q. Okay.

8 A. And on the porch.

9 Q. Do you remember telling police and me and our
10 investigator that the shove happened on the porch?

11 A. Yes. It happened on the porch, once on the steps
12 and once on the porch.

13 Q. Well, you've never said it happened on the steps
14 before.

15 A. I say it happened twice, happened on the steps,
16 and when he went up on the porch, that's when he went up
17 to get his firearm when he shoved him on the porch.

18 Q. Do you remember giving a recorded statement about
19 seeing him shove him on the porch?

20 A. I gave a statement -- I probably -- I said he
21 shoved him. He didn't do it on the porch, but I know he
22 shoved him going up the steps.

23 Q. But this is the first time you're saying that on
24 the step. Didn't you tell us it was on the porch?

25 A. It was on the porch also.

1 Q. And you saw it on the porch?

2 A. Yes, I saw it. I saw the shove.

3 Q. And where were you?

4 A. At that time I was standing up, and I seen him
5 shove him going up on the porch.

6 Q. Okay. And you were standing up by where Michelle
7 was at that time?

8 A. It was by where we were sitting there, in the
9 front yard.

10 Q. So you were standing up by the table where you
11 were sitting.

12 A. Yes.

13 Q. Okay. And how much time lapsed between when this
14 shove happened and Mr. Irby coming back out with his gun?

15 A. Well, I would say it was probably -- it was pretty
16 fast. I'd say it was about a minute or so.

17 Q. One minute?

18 A. About one or so minute, you know.

19 Q. So he was able to get back to the bedroom get the
20 gun out of the box?

21 A. It was pretty fast because he was back. He was
22 back to the door.

23 Q. Where did he keep the gun, do you know?

24 A. He had showed me. I think he kept the gun in his
25 closet.

1 Q. Oh, in his closet? Was it kept in something?

2 A. No.

3 Q. Not in a box?

4 A. No.

5 Q. Did it have -- how were the bullets in it? Did
6 you ever see how the bullets go into the gun?

7 A. It had a clip in it.

8 Q. Did he keep the clip in the gun?

9 A. Yes, I think he did.

10 Q. Okay. Can you put up State's 6. Mr. Irby, I'm
11 going to show you a picture, and there is a little --

12 MS. WILLIAMS: May I approach, Your Honor?

13 BY MS. WILLIAMS:

14 Q. Here is a pointer, so if you want, you could,
15 like, turn around. It goes that way, and this little red
16 dot, you can kind of show where you were.

17 Is that a picture of the house you are living in?
18 You don't have to worry about the pointer if you don't
19 want to.

20 A. Yes.

21 Q. Okay. And where was the table that y'all were
22 sitting on?

23 A. Right there. That's where the table was.

24 Q. Like, in the bottom right where -- if you want to,
25 you can come back and speak into the speakers for your

1 answer.

2 A. Yes. That's the part where the table was.

3 Q. Okay. So where is this pointer? Do you have the
4 pointer in your hand?

5 A. Uh-huh.

6 Q. See this little red dot right here? Just show us
7 where the table was.

8 A. Right about there (indicating).

9 Q. And when you described -- okay. Thank you.

10 When you described where your brother was standing
11 with the gun, you said he was inside the porch in the
12 doorway to the house, right?

13 A. He was right the screen door. You got this --

14 THE COURT: I need you to speak up, please.

15 THE WITNESS: Right about there I seen him
16 with the firearm.

17 BY MS. WILLIAMS:

18 Q. That's not the same door, though, is it? You
19 described the door to Mr. Shelton. There is a piece of
20 wood that cuts off after half of that door, yes?

21 A. That's not the screen door, that is the old screen
22 door.

23 Q. Okay. And at what point -- show the direction you
24 ran when you went to call 911.

25 A. The direction I ran -- when I was standing by

1 here, I ran to the left of this house right here and
2 called 911.

3 Q. So back around the back of the house?

4 A. That's on the side, the side.

5 Q. The side. Okay. The same side of the house that
6 the table was on?

7 A. No. The table is where I told you, was right here
8 where I was standing here.

9 Q. Okay.

10 A. The table was there, right here.

11 Q. So you ran --

12 A. Right here is where the table is.

13 Q. So you ran the opposite direction?

14 A. Yeah.

15 Q. Toward the left?

16 A. Toward the left, toward the left.

17 Q. Did you say you saw Telly get shot?

18 A. I saw Telly get shot, yes.

19 Q. Now, was the light working on that porch? Weren't
20 you having to use candles on the porch?

21 A. Yes. The light was working at that time on the
22 front porch; yes, it was.

23 Q. Okay. And it was that day it was just about
24 twilight, right? Was it just getting dark when all this
25 happened?

1 A. Yes. It was getting dark at that time.

2 Q. Okay. Now, how many times have you talked to
3 Mr. Shelton about your testimony?

4 A. Well, I talked to Mr. Shelton maybe twice about
5 this.

6 Q. What about the investigator, his investigator,
7 Christy?

8 A. Yes, I talked to her also. Matter of fact, I
9 talked to some people about it. I don't know how many
10 times I told the same incident.

11 Q. Probably tired of telling it. How many times do
12 you think you talked to Christy, two, three?

13 A. Maybe two, three, but I talked to her also.

14 Q. Okay. When is the last time you talked to them?

15 A. I talked to her maybe in May.

16 Q. Okay.

17 A. Maybe in May.

18 Q. You didn't talk to her since May?

19 A. I talked to her -- some people, maybe Christy,
20 Shelton, but I talked to people about this case.

21 Q. A lot?

22 A. A lot.

23 Q. And you're your brother's sole connection to the
24 world now, aren't you? Like, you call him in the jail,
25 you help him get his stuff together, you're still living

EUGENE IRBY - CROSS BY MS. WILLIAMS

1 in his house, right?

2 A. Yes.

3 Q. And I know this has been hard on you, this whole
4 situation, has it?

5 A. Yes, it have.

6 Q. Now, are you saying today that you didn't tell the
7 police that the shots -- that you saw your nephew get
8 shot on the porch?

9 MR. SHELTON: Your Honor, could we have him
10 turn around?

11 BY MS. WILLIAMS:

12 Q. Mr. Irby, you can turn around. I'm so sorry.
13 Just turn around that other way.

14 I'm sorry to keep asking you the same question
15 over and over.

16 A. He was shot on the porch.

17 Q. And I know it's difficult to testify. I'm just
18 trying to get clarification. Take your time. I know
19 you've answered a lot of questions.

20 So did you tell the police not in the yard, I seen
21 him when he shoved and hit him on the porch. Did you
22 tell the police that?

23 A. He shoved him going up the steps and shove him
24 again going inside his front door.

25 Q. The front door that's within --

1 A. On the porch.

2 MS. WILLIAMS: Your Honor, could we approach
3 for a minute?

4 (Discussion held at sidebar.)

5 BY MS. WILLIAMS:

6 Q. Now, on August 16, 2012, you were interviewed by
7 Corporal Scarborough at the Moncks Corner police
8 department; is that true?

9 A. Interviewed by someone, but I can't remember no
10 names.

11 Q. Okay. And did you tell him at that time, not in
12 the yard, I seen him when he shoved him on the porch?

13 A. Maybe. Yes, I did.

14 Q. Okay.

15 A. But it was up on the steps and the porch. That's
16 probably why he went and got his firearm.

17 Q. So in the recorded statement you just said on the
18 porch, but now you remember it was --

19 A. Yes, there was the second shot.

20 Q. And you also gave a statement -- well, you didn't
21 give a statement, you signed a statement.

22 MS. WILLIAMS: Can I approach, Your Honor?

23 THE COURT: You may.

24 BY MS. WILLIAMS:

25 Q. That was a summary of the tape. Do you remember

1 that? Is that your signature?

2 A. Yes, that's my signature.

3 Q. But you didn't write this. Someone else wrote a
4 summary, and you just signed it; is that correct?

5 A. Yes, I did.

6 Q. Okay.

7 MS. WILLIAMS: Court's indulgence for just a
8 second.

9 BY MS. WILLIAMS:

10 Q. Do you remember Elijah Haynes being there?

11 A. Yes.

12 Q. And where was he positioned in the yard?

13 MS. WILLIAMS: Can you put that picture back
14 up?

15 THE WITNESS: When Elijah came in, he came
16 through the gate. He had just got off his job also, and
17 he was standing to the left of the sidewalk there, by the
18 table where we was.

19 BY MS. WILLIAMS:

20 Q. And had he been drinking?

21 A. No.

22 Q. And when the shots were fired, where was he? Was
23 he in that same spot you just described?

24 A. Yes. Probably was a little -- maybe a little
25 closer to the table so he could hear the conversation or

1 something. I can't remember where he was, but he might
2 have sat down, but, anyway, he was there by the table
3 when the incident occurred.

4 Q. Okay. He wasn't further up the sidewalk?

5 A. No.

6 Q. And at what point did Michelle leave the table?

7 A. Michelle left the table at the time Telly was
8 shot.

9 Q. And you didn't see her get shot?

10 A. At this time, I didn't see her get shot. I
11 probably -- I was calling 911 when Telly -- he shot
12 Telly.

13 Q. Do you remember telling police officers that when
14 they asked you did she put her hands on him, you said,
15 No. I don't know what she said to him, but he shot her
16 too?

17 A. Yes, he did shoot her also.

18 Q. Do you remember telling the police officers --

19 A. I don't know what was said. I can't tell you that
20 right now.

21 Q. Do you remember them asking you if she ever put
22 her hands on your brother?

23 A. If she did, it been some time ago, but I don't
24 think she never put her hands on him.

25 Q. Okay. But she said something.

EUGENE IRBY - REDIRECT BY MR. SHELTON

1 A. She said something.

2 Q. And then he shot her.

3 A. Yes. She got shot.

4 Q. Okay. Now, you only had one beer that day?

5 A. Only had --

6 Q. One beer?

7 A. One beer, at that time, only one beer. Now, I
8 drink more, but I only had one that day.

9 Q. What about your brother? Do you know if he had
10 been drinking?

11 A. At that time, I wasn't with him that day, and I
12 didn't know if he had been drinking or not.

13 Q. Where was he?

14 A. Where was what?

15 Q. If you know, your brother, beforehand.

16 A. Oh, I don't know where he was that time when that
17 had all happened, but I know he came home.

18 MS. WILLIAMS: Thank you, Mr. Irby.

19 THE COURT: Redirect?

20 MR. SHELTON: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. SHELTON:

23 Q. Mr. Irby, the solicitor showed you this statement
24 that was typed out and your signed.

25 A. Yes. That's my signature.

1 Q. Did you say -- read that sentence to yourself.
2 Read that sentence. So your signed statement has in it
3 that your nephew shoved as --

4 MS. WILLIAMS: Objection. Leading.

5 BY MR. SHELTON:

6 Q. Talk about what your signed statement has
7 regarding the shove and when it happened.

8 A. This is what happened. It is similar to what I
9 said just happened. This is the statement here.

10 Q. And for clarification --

11 A. It said my brother -- it's saying my nephew said
12 they would move out when they get good and ready, and he
13 was walking up the steps. He got shoved and --

14 Q. So that is in your typed statement that you
15 signed?

16 A. This is what I said on that day.

17 Q. Okay.

18 A. August 16th.

19 Q. And the solicitor asked you how quickly everything
20 went. How big is the house?

21 A. Well, the house, it has two bedrooms; it had a
22 dining room, a kitchen, and a living room.

23 Q. And the back bedroom, is that really far away?

24 A. Going into the front door, it's not that far away.

25 Q. Okay. And the solicitor asked you if you were the

EUGENE IRBY - REDIRECT BY MR. SHELTON

1 sole person connected to Johnny. He also has some
2 sisters? You guys have some sisters, correct?

3 A. Yes.

4 Q. Do you know if they talk?

5 A. If they talk?

6 Q. Are in communication?

7 A. Yes.

8 Q. Okay.

9 MR. SHELTON: Beg the Court's indulgence.

10 BY MR. SHELTON:

11 Q. How many times have you talked to the solicitor's
12 office?

13 A. How many have I talked to my sisters?

14 Q. To the solicitor's office.

15 A. The solicitor?

16 Q. The prosecutor.

17 A. I couldn't tell you, but I have talked with them.

18 Q. Do you know if it was more, about the same amount
19 of time as you talked to us?

20 A. Well, I remember talking to them, and I -- maybe
21 one or two. I couldn't give you times on that.

22 Q. How big is the porch?

23 A. Well, I would say it's a small porch. It's not
24 that big of a porch.

25 Q. Okay. Is there a lot of stuff on the porch?

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 A. Yes.

2 Q. Okay.

3 MR. SHELTON: No further questions.

4 MS. WILLIAMS: Nothing further, Your Honor.

5 THE COURT: You can step down. Thank you.

6 MR. SHELTON: Your Honor, at this time the
7 State calls Johnny Irby.

8 THE COURT: All right.

9 JOHNNY LEE IRBY,
10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SHELTON:

14 Q. How are you doing, Johnny?

15 A. I'm doing okay, I reckon.

16 Q. Johnny, could you tell the jury panel a little bit
17 about your work history and your background.

18 A. Work history, I served 22 years in the U.S. Navy.
19 I retired in '94, took a couple years to get lined up
20 with a job, and I worked for a contract that was either
21 at the weapons station, the Coast Guard, border parole
22 and so forth, but I have been with them about 12 years
23 after I got out of the military.

24 Q. And that's here in South Carolina?

25 A. Right here in South Carolina, yes.

JOHNNY LEE IRBY - DIRECT BY MR. SHELTON

1 Q. Where were you living?

2 A. [REDACTED] Haynesville Road.

3 Q. How long have you lived there?

4 A. I moved in that particular house in 1999, is when
5 I bought the house. Before that I moved other places
6 around Moncks Corner.

7 Q. Okay. And can you tell us a little bit about your
8 family.

9 A. What do you mean --

10 Q. Brothers, sisters?

11 A. Oh, okay. I got two sisters, both in Alabama. I
12 got -- well, my family, family, my kids and so forth and
13 so on, they've all moved from here after graduation back
14 in '98, '99 and went to Jacksonville, Florida, all right?
15 And for that whole period of time, I've been here alone
16 until I talked my brother into living with me, but there
17 was just the two of us living in that same house.

18 Q. And how many kids do you have?

19 A. I have three.

20 Q. Boys, girls?

21 A. Two boys and a girl.

22 Q. Okay. And Telly, was he oldest, youngest?

23 A. Telly was the oldest.

24 Q. Okay. And was Telly your biological son?

25 A. No, he wasn't. No, he hasn't.

1 Q. Okay. Tell us about that.

2 A. Well, I met his mother, and I guess I would say I
3 had a thing for her when I met her. And shortly after
4 that, I found she was with child, and I always had it in
5 my mind that the child hadn't done anything wrong, the
6 child can come in here, but I wanted to be with her, so
7 it didn't matter, the fact that she was, I guess, in the
8 process of getting a divorce or whatever, so we hung out
9 and we hooked up and did our thing.

10 I accepted Telly as my son. I raised him as my
11 son, and I treated him as my son. He's my son. I'm the
12 daddy that he knows.

13 Q. And that's from birth?

14 A. From birth, yeah.

15 Q. What -- as Telly was growing up, can you tell us a
16 little bit about Telly as he's growing up.

17 A. When Telly was growing up, that was one of the
18 most active running activity kids you want to see.
19 Everywhere he went, he wanted to run, and I guess I took
20 into just grooming him. I mean, I tried to talk him into
21 football, is what I was trying to do.

22 Baseball, he didn't seem too interested in
23 throwing baseball, but he sure didn't mind playing
24 football, and I try to get him to be a running back, I
25 guess, 'cause I give him the ball and tell him to run at

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1 me, he run at me and I knock him down. He get up, he run
2 at me again, I knock him down. And I think he come up
3 and decided he wanted to knock me down, so he became a
4 defensive football player, so --

5 Q. And where did he go to high school?

6 A. Berkeley High.

7 Q. And was he pretty good?

8 A. He was great. I mean, he was good. He held his
9 side of the field.

10 Q. And tell us about that. What happened with his
11 football?

12 A. Well, his football, I mean, throughout the time
13 that he was playing at Berkeley High, you know, like the
14 last year they played at Berkeley High they went all
15 state all the way, and it just -- I think it was more
16 play time for Telly than academics, and he didn't get his
17 academics right. The coach from Clemson had come to the
18 house to talk with us about him, and his academics
19 weren't right, so they actually pulled some strings some
20 kind of way and got him off to junior college and he was
21 supposed to go down and do what he did at junior college
22 and get his academics straight and come back and Clemson
23 waiting on him.

24 But he went to the junior college and he still
25 doesn't get his academics right, so he came back from

1 junior college and had to go to summer school and he
2 still didn't get his academics right, so he ended up, I
3 guess after that when he didn't pass summer school, he
4 decided he didn't want to play football anymore. It was
5 just too much academic structure or something, too much
6 static, so I guess he changed his mind he didn't want to
7 go no more, he didn't want to play no more. When it
8 stopped being, fun there is no point in doing that.

9 Q. Were you upset about that?

10 A. Kind of, sort of. The fact that he had the
11 ability to do it, he had the ability, he had the ability
12 and everything else to do it, so -- oh, God, that's a big
13 boy.

14 But anyway, I mean, I just know he could have been
15 anybody he wanted to be out on that football field.

16 Q. And you mentioned size. About how big was Telly?

17 A. Last time I see he was 6'3". He was over 275.
18 The last time I knew before he was up here, he was 275.

19 Q. Okay. How about you? What -- you know, how would
20 you describe yourself right now?

21 A. Right now, obese, right now, you know. All that
22 laying down and laying around I've been doing since I've
23 been locked up, but when I first come up here, I weighed
24 like 179 pounds. Two years ago, three years ago, I
25 weighed 179 pounds, and that's no serious exercising

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1 going on, no, no mobility all day and half the night,
2 stuff like that, so I gained a lot of weight.

3 Q. What about your health conditions? Do you have
4 any health conditions?

5 A. In 1999, I had a heart bypass, and since I've been
6 here in the jail, I had to go down to hospital they put
7 in a -- I call it a heart filter, filtering blood clots
8 lungs clog up, and they had to rush me down to the
9 hospital.

10 I spent like eight days down there since I been up
11 here, and I've been back and forth to the hospital a
12 couple times with various things that's going on, an
13 ulcer and they say I got a hernia on the rise right here,
14 on the top of my stomach.

15 But other than that, it don't take me much to get
16 short winded. I guess I have not carried this much
17 weight all my life. All my life I only weighed maybe
18 215. I got up to 215 and I dropped, but it just kept
19 going this time.

20 Q. Talk to me a little bit about your church and what
21 that meant to you and where you went.

22 A. Well, I'll start back in -- 1978 is when the
23 church that my wife was going to, and, of course, that's
24 the stipulation that had to be. I mean, we're supposed
25 to be married when you're in the house with another

1 woman, and I went to the church and I was convinced that
2 that was the church I needed to be at because I didn't
3 get it right away, nobody does, nobody will. You never
4 get perfect at it, but I went for it and went for it, and
5 I stopped going there, and I would go here, just testing
6 the waters, but nothing seemed to come back as well as
7 that church came back to me.

8 It come back to me that I could read about it.
9 Any time you can read about it, you know, you're reading
10 the truth. That is my opinion of what the Bible is. The
11 Bible to me is the word of God, and if I can read it and
12 if somebody stand up in front of me and tell me I can
13 read this, I know just what they're talking about.

14 So I decided to kind of leave it, my last
15 experiment, and I decided to go back to the church and
16 really commit to putting my shoulder to the wheel because
17 I realized that what I was thinking was just a phase,
18 that was what God had for me to do.

19 Q. When was that?

20 A. Toward the end of 2011 is when I really went down
21 to Berkeley Church of Christ. Before that I was going
22 Goose Creek Church of Christ, and I came closer to home
23 and I decided that it's time for me to go to work, and I
24 went to work there, and I been at it ever since, as far
25 as the Biblical standpoint of it, that this must be what

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1 I was supposed to do, just what I do.

2 I mean, I witness when I got a chance. I pass
3 tracts out when I get a chance, and I talk to all young
4 people when I get a chance to get them to understand that
5 that's the way, you know, and it works for me. It's been
6 working for a lot of people that I've met that have come
7 past me since I been up here, so --

8 Q. Let's move on to Telly, around 2012. Did -- was
9 there a time Telly came to live with you?

10 A. Yes. Telly had --

11 Q. Do you know about what date that was, around what
12 time that was?

13 A. What was that? May, early part of the year,
14 May -- maybe July, something like that, you know, end of
15 June, early part of July. I think he was here for the
16 4th, but he had some kind of altercation in Jacksonville.

17 Q. And who was here with him?

18 A. I mean, at first time he come up by himself.

19 Q. Okay.

20 A. And he was here about a month when he first got
21 here and he was doing his thing, you know.

22 Q. What led to him coming up to South Carolina?

23 A. He had an altercation with somebody down in
24 Jacksonville concerning some fellows that decided they
25 want to rough him up a little bit, and they rough him up

1 pretty good. And, of course, his mother suggested he
2 come here and get his head clear, and I agree, come up
3 and get away from it and maybe get his head cleared up.

4 Q. Did you actually have to go down to Jacksonville?

5 A. I didn't have to go get him, but I went to check
6 on him about a week or so before he came up here.

7 Q. And why is that?

8 A. Why is that?

9 Q. Why is that?

10 A. Just to see him, make sure he was all right, you
11 know, and I went down and checked on him. He was kind of
12 beat up, and listen to him talk about his frame of mine.
13 It would have been a good idea to get him out of the
14 surrounding area down there and get him up here, so he
15 came up.

16 Q. And what led to that frame of mind, do you know?

17 A. Well, like I say, he and Michelle had some kind of
18 difficulty and she had left him, and he went and found
19 out where she was and that's when the altercation
20 happened between the fellows, and after that he ended up
21 here.

22 Q. So you let Telly come and stay with you?

23 A. Oh, yes.

24 Q. Okay. What did you do? What happened? What was
25 going on during that time when he came to live you with?

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1 A. At the time Telly lived with me, we talked and we
2 talked and we went over what he had been going through
3 with his fiancée. When you're in and out and in and out,
4 coming and going from a relationship, you have to make
5 the better move and just move on. He had made that
6 decision that he would go ahead and get his life
7 straight.

8 Q. Was Telly in a lot of pain?

9 A. I mean, he had some things that he wanted to do
10 and it seemed like his situation, things that was going
11 on, he just couldn't seem to get it done. He was doing,
12 like, a moving and storage thing. Everybody he got with,
13 seemed like they lost the business, and that's something
14 he was very affectionate about, being able to, I guess,
15 lift things. He could do that well, he could organize
16 well, and that's what he was doing and that's what he was
17 doing in Jacksonville.

18 Q. How did you feel about Telly and the whole
19 situation at that point in time, as his father?

20 A. When you get him settled into a situation that I
21 say -- oh, he's not making enough money to do what he
22 wanted to do, and I guess that would frustrate the
23 average person, if you go looking and then you can't find
24 what you're looking for, right?

25 Q. So how did you feel about that? How did you feel

1 about --

2 A. Well, before he come up here, you know, if he
3 called me and asked me for something and I had it, I gave
4 it to him, and it just didn't seem to come across that he
5 had to go from here to here to here try to get himself in
6 a situation where he needed this little shove, this
7 little shove here in order to get things -- to make
8 things clear.

9 So I wanted to see him get to where he could
10 actually sign his own ticket, click it the way he wanted
11 to click it.

12 Q. So you were trying to help him?

13 A. Yeah. That's the one thing -- I brought him here.
14 I figured that he know enough people here -- I mean, he
15 started out going over to the -- when he first got here,
16 he went over to the high school, talking to the coaches
17 over there. Several of the guys he played with was back
18 over there coaching and stuff like this.

19 I figured maybe he could get something like that,
20 and he knew enough people that he went to school with,
21 Santee Cooper and places like that where he knew people,
22 family members work there, had worked there, retired from
23 there, and so maybe he could get a little -- what you
24 call it, I guess you might call it family nepotism here,
25 family help him out, get him standing up so he could go

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1 and take care of his kids because that's one of his
2 concerns, as to whether or not he was going to be able to
3 take care of his kids or whether they were going to stop
4 him taking care of his kids.

5 If he doesn't have a job, then they'll lock him up
6 and he still can't take care of his kids, and that was a
7 real big concern. He was hurting real bad about that.

8 Q. Was he working at all?

9 A. No, not here he wasn't. He was looking, like I
10 say. He had done the serious process of going to the
11 library, get a little stick or something, you go over
12 there, log onto the computer, see what is online and put
13 applications on, and I think he did on a regular basis
14 and I guess he filled his share of applications out, but
15 nobody here had responded as far as picking him up.

16 But, anyway, he was there, and it was sort of nice
17 to have him there because he was doing little things, you
18 know, that -- during the day he could do probably
19 wouldn't get a chance to do while I was at work, so he
20 had some things done already when I first got home. That
21 was good too.

22 Q. What about church?

23 A. Church, if you're in the house with me, when I
24 leave the house, the house is locked, everybody in the
25 house is going to church, all right? And Telly went to

1 church a few times, and I talked to him.

2 We talked to him, first got here, he him to read
3 the Bible again, you know, and I get a chuckle out of
4 this. When he called his mother one day and told her, he
5 said, I been to church, and his mother actually say, who
6 died?

7 Because that's how long it had been since he went
8 to church, so that was kind of good in itself right
9 there. That made me feel so good, the fact that he went,
10 so that day when he stood up and say he wanted to
11 recommit his life to Christ, that just --

12 Q. And that was during that first visit?

13 A. First visit, yeah. That made me -- excuse me.
14 That made me very happy, because I had often wondered
15 about him not going to church and whether I had failed
16 him due to the fact that I was supposed to raise him the
17 way he is supposed to be and get him to join this, and I
18 knew I had failed him in that respect because I wasn't
19 totally out there, what, since 1978, like I said, I was
20 in and out, in and out.

21 And I guess you could say it would happen to the
22 average person, but I was in and out of going. I mean, I
23 knew about it. I don't care who or when you asked me
24 about it, and I still -- that is what my thing was, that
25 this is where I was supposed to be. I knew that but keep

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1 backsliding, or falling backward, if you will. I did a
2 lot until it finally dawned on me that the talent that I
3 was using wasn't something that God had to throw down on
4 me with a lightning bolt, I already had it, and I just
5 had to get what I had to them, or back to the church.

6 Like I said, at the end of 2011, I really made
7 that serious commitment to really go ahead and do this,
8 so I did it.

9 Q. So in that first visit, did you guys have a lot of
10 conversations with him and Michelle?

11 A. No, not really, other than the fact over the years
12 I had talked to Telly. Way before he came up here, he
13 and I had a bunch of conversations about the fact that he
14 had his kids and she had her kids, and for him to not be
15 in the house with his kids, taking care of his kids, and
16 that was a situation that sort of bent me the wrong way,
17 in a sense, that he was in trouble.

18 The way he made it sound that he wasn't -- every
19 time he get a job and before he can get paid good on a
20 job, they had signed up to where I guess they knew he was
21 working. So if he was owing child support, he had to pay
22 up child support, right, so it got to the point, he said
23 every time he got a job, every time he got some money in,
24 they take it, and he say he doesn't have no money to live
25 on himself.

1 So he had made his mind up that he needed to get
2 something situated and get himself back into full-time
3 employment where he can really count on the fact that he
4 was making enough money to take care of his kids, right?

5 And he loves his kids. Like I say, you look at
6 the big boy you can see he's the spitting image. They
7 look just like them, but that was Telly.

8 Q. Did you become aware at some point in time that
9 him and Michelle were still communicating?

10 A. I kind of had a case happened what when he was up
11 here one time the phone company called me, right, and
12 they told me, they said, Mr. Irby, you have overextended
13 your texting limit.

14 I said, I don't text nobody, man. I might have
15 text two times in my life today, but, anyway, I figure
16 who it was, and what they did was fix that for me so they
17 actually signed me up for texting so that took that away,
18 but he had actually made my phone company call me on my
19 phone saying I was texting too much. I overstepped my
20 boundary, and I said, I don't text. I can't talk to you.

21 And that's just the way I was about the phone. I
22 haven't had a cell phone for about nine years. It took
23 me around nine years to get a cell phone. I had a house
24 phone; talk to me, talk to me when I get home.

25 Q. So what happened that first visit? How did it

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1 end?

2 A. Well, Telly tell me he got a call from his mother
3 that he had two letters in Jacksonville, one -- I think
4 he said DMV and then he had another letter. They
5 answered an application that he filled out, and he was
6 going down there to deal with that, all right?

7 So he left, went down there to deal with that, I
8 guess. And the next I heard that he would, like, text
9 me. Like I say, he text me. I look at it. I get around
10 to calling that, so I had to get down and get the number
11 that he called me from, figure out where it was on text,
12 so I called him.

13 And he said he wanted come back up here and would
14 I send him some money to come back up here. I told him
15 to wait till Friday. Now, I had money. I could have
16 sent it to him. I didn't want him to come back up here
17 Friday. Hopefully he would change his mind and not come
18 back up here.

19 Q. Why is that? What was --

20 A. I mean, I didn't know he had contacted Michelle
21 when he got down there, but I just told him just stay
22 down there, do what you got to do, you know, because I
23 had time to think about it. He told me things that -- he
24 told me the guys that jump him, he didn't fight them
25 back, and if he didn't fight them back, they -- I mean,

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1 he didn't go looking for them right away. There would
2 have been nothing for him to hook up with some fellows
3 that he knew down there, and it would have been nothing
4 for him to go looking out for these guys.

5 So he didn't do that, and I figured he was
6 probably over that part of it. So I told him just wait
7 till Friday, and, of course, he didn't want to do that.
8 So he went to -- it looked like he circumvented me and
9 went and talked to my brother, and my brother sent him
10 some money to come back up here.

11 And when I did answer the text that he put on
12 there, he said he and Michelle want to come now. That
13 struck me as kind of strange, I mean, suddenly, got to
14 go, so --

15 Q. Is it seemed like he was in a rush?

16 A. That's what it seem like to me. They wanted to
17 come now. So, anyway, I told him -- like I said, we took
18 a ride, and my brother sent him the money and he forgot
19 to tell me he sent him money, right?

20 And we go through Monday. I picked my brother up.
21 In the evening time he ride the bus to work. I got to go
22 earlier, but I pick him up in the afternoon and bring him
23 home, so Monday, Tuesday afternoon when I picked him up,
24 he tell me, he said, By the time we get to the house -- I
25 guess they called him and told him they were coming.

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1 And he hadn't called me and told me they was
2 coming, but he said by the time we get to the house,
3 Michelle and the girls going to be there.

4 And I went, like, spastic, like, When were you
5 going to tell me?

6 When was I going know they were coming back here,
7 all of them?

8 And when I got to the house -- oh, I looked at it
9 and say like this: Had it just been the two of them and
10 after the conversation he and I had about the two of them
11 just going their separate ways, but they had the girls
12 with them. And I walk in the house, and it's like a
13 group hug thing going on, you know what I mean? I got
14 one around my neck, one around my waist, and one on my
15 leg, and that was just something that -- I don't know,
16 just motivated me, you know, a happy thing, and I
17 didn't --

18 Q. Did it take away all that anger?

19 A. For me? It took -- a little bit of it went away
20 real easy because I love doing things that got a definite
21 end, and if they wouldn't have to go through what they
22 had been going through, that brought me flashbacks when I
23 was a kid, constantly moving. Every other month or so we
24 was going to another house. We was going to my aunty
25 house to stay because my dad hadn't paid the rent, and I

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1 thought about them being in a hotel room and supposed to
2 be going to school, and they come home from school and
3 then they got to pack up and go to another motel.

4 And, like I said, I sent them money a couple times
5 down there. I just thought this would be a whole lot
6 better than having to send them money down there right
7 here, and we would make the best of where they could
8 sleep at. And my brother and I had got sleeping bags,
9 and the living room had enough empty floor, no coffee
10 table in there. They could camp out right in there.

11 I mean, it's like nine pieces of furniture in
12 there, you got a sofa, love seat, chairs -- so there was
13 enough places to sleep in the living room that they could
14 sleep in, but it's like it would have been better than --

15 Q. You like to collect things?

16 A. Well, I'm a collector. I'm not a hoarder. I
17 don't think I'm a hoarder, but I collect tools. I can
18 use most of the tools that I collect, and I do a lot of
19 repairing. I do a lot of restorations and stuff like
20 that, you know, and that's how -- you could just about
21 tell that is something like that by the clutter that you
22 see in different places, you know.

23 Q. Did you use that stuff though?

24 A. What, the tools?

25 Q. Yes.

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1 A. Most of the tools that I got I either know what
2 they're for -- I mean, how many people got tools they
3 actually use more than once? That's tools. You got
4 somebody use it once and lay it down and never need it
5 for a long time, but when I need one, that's when you
6 don't have one, so I kind of sort of made it my business
7 to have one.

8 Not like the child has got his own, so if I ran
9 across something at the flea market or something like
10 this, I might not need it right then. I got a router at
11 home. I never used it yet, but I figured I better get me
12 a router because I saw things that I want to do that
13 require a router, so just tools that you get when they
14 come into play. When you need one, you got to borrow
15 one.

16 Q. So when Michelle and the kids and Telly showed up,
17 did they help around the house?

18 A. Oh, yeah. Michelle, she was -- she was a knocker
19 for -- what you say, cleanliness, and being as just two
20 old bachelor boys, you know, just hanging around, and
21 some things just didn't raise me the right way. I kept
22 the bathroom clean, my bathroom, which was back in my
23 room. I kept the floors vacuumed, kept the kitchen
24 basically clean and dishes washed and stuff like this.
25 It wasn't like the sink running over with dishes all the

1 time, but some things that just -- it didn't bother me.
2 Wasn't nobody living there but me and him, and he was
3 going to work all day, I was going to work all day, and
4 every once in a while you get one of those mad things
5 that you just want to do at night, just clean up and
6 stuff like that.

7 I cleaned my own carpets and stuff like this.
8 When I needed to paint, I paint when I felt like
9 painting. When I felt in the mood to get some painting
10 done, I'd get it done. I was in the preparation because
11 I had been having things -- I mean, I been one to turn
12 down the fact that when we had a meeting from the church,
13 I never let the brothers come to my house because I
14 wasn't that proud of it where I would invite people over
15 to eat, put it that way.

16 So we have our little zone meeting, I end up going
17 someplace out. I wanted to get my house situated so I
18 could have that happen at my house and hadn't got there
19 yet, though, but anyway.

20 Q. Did Michelle help with that?

21 A. She calls me to fix things because there was more
22 bodies there, right, things that I hadn't fixed that were
23 just barely hanging on. So when they got there, it needs
24 to be fixed because we got that many more bodies. You
25 talk about it -- like I say, you got four girls running

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1 around the house, and this one shower wasn't going to cut
2 it. So I would have -- some stuff need to be done in
3 that particular bathroom. We end up getting it done. We
4 got it done real quick.

5 Looking at the cooking situation, for instance,
6 when I first moved in that house, I took my stove out. I
7 didn't need a stove. Hot plate do just fine, hot plate,
8 microwave, you know, fry that, fry this, and so forth and
9 so on. That was the kind of things that I had in
10 kitchen. Just about anything you want to have cook I can
11 get it done, you know. I have pressure cookers and stuff
12 like that, though, so I could cook anything I wanted to
13 cook.

14 I mean, I could brown some bread, I could cook
15 some biscuits, I could make an omelet, I could do
16 anything I want around because I had something there to
17 do it with, but that was all good. But, like I say,
18 Michelle came in, and she basically cooked for her kids,
19 my kids, but I love cooking so much so a whole bunch of
20 time I did the cooking too.

21 But she was game to do that, and they would cook
22 and they would feed the kids, and Telly was game to kick
23 in, to cutting grass, trimming hedges and do what he
24 could. Like I say, he do that during the day. Sometime
25 I come home in the evening time and I have that in my

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1 mind. I'm on my feet most all day long sometime at work
2 because I'm a maintenance man and I'm going to and fro
3 around the building, making sure things are doing what
4 they're supposed to be doing.

5 I have two, three people working for me most of
6 the time and make sure they doing what they supposed to
7 be doing, so when I come home sometimes that's not my --
8 that's not my strong motivation. Then I got this friend
9 that always needs something done, so I try to give her
10 some of my time while it daylight and stuff like this.

11 THE COURT: Let's pause right here and take a
12 restroom break. We've been at it for a little while this
13 morning, and everybody can use the rest room.

14 Don't begin deliberations or discussions,
15 talk about witness demeanor or anything like that, and
16 we'll have you back in about ten minutes.

17 Thank you.

18 (In open court, jury not present.)

19 THE COURT: All right, Mr. Irby. If you need
20 the rest room, they can take you to the rest room.

21 I know a certain amount of background is
22 always necessary, but it might be helpful if we kind of
23 focussed in on his rambling answers and kind of got to
24 the point, okay? All right. Ten minutes.

25 (Recess taken.)

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1 THE COURT: You got everybody ready?

2 (In open court, jury present.)

3 THE COURT: All right. You may resume.

4 BY MR. SHELTON:

5 Q. Just a couple more background questions here.

6 When Michelle and Telly were with you, were they working?

7 A. Not at the time he come here. Michelle come here,
8 and almost instantly she found employment. As of yet,
9 Telly hadn't received any feedback on any of his
10 applications, so he was here. And when he get here, the
11 new auto place that was opening up on 52 that I think he
12 knew the guy that was going to be the manager or
13 something had given him an opportunity to go and be
14 employed there, all right?

15 So that was starting up. That was going to happen
16 by Christmas. You know, they would get in and out and be
17 gone.

18 Q. So at this point in time, were you charging them
19 rent?

20 A. No, no, no, no.

21 Q. Wanting them to pay anything?

22 A. No, no, just everything they were doing at the
23 house was sufficient. You know, I mean, things were --
24 had a washing machine, doing wash. We had a place to
25 cook, place to eat, and place like that, so when you got

1 to pay X amount of dollars for rent, X amount of dollars
2 on the light bill, stuff that would be required. We was
3 doing it -- we were surviving anyway on that. It didn't
4 increase that much.

5 I didn't get a chance to see a bill or two that
6 would tell me that things went up or things went down,
7 you know, so I didn't see that.

8 Q. What about -- did you do anything to help them try
9 to find a job when they were able to get on their feet --
10 or a place to live?

11 A. I had talked to several people that had mobile
12 homes. I had talked to Mr. Jimmy Chavis, and he had a
13 place he was working on up there in Moncks Corner, and he
14 said he just about had it done.

15 I'm pretty sure once he got it done, I could have
16 talked him into that one, and the lady, Williams, she had
17 a mobile home and she needed somebody to work it, to get
18 it renovated, like, and I was willing to actually go and
19 help her renovated just so I could get them -- it would
20 have been something he could have been working on and
21 working toward making himself someplace to be.

22 Q. I guess 'cause your place is pretty small?

23 A. Two bedroom is two bedroom, big bedroom, but two
24 bedroom. You talk about where are you putting the
25 separate thing for the boys and girls, you know, and to

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1 have young ladies, like they had women walking around the
2 house -- never been any women walking around the house
3 for that period of time, so that was new. That was new.

4 Q. Let's -- do you remember when Mr. Coaxum came and
5 talked to Telly?

6 A. Yes. That was the day before the incident.

7 Q. Okay. Can you tell us about that.

8 A. Over the early part -- the day prior to that
9 Wednesday, Mr. Coaxum and I had been walking around -- I
10 mean, riding around. We was going to help one of the
11 sisters at the church to get some things moved around,
12 get her things situated so we could bring her to church
13 and so forth, and the conversation came up about whether
14 or not Telly and Michelle were married.

15 And as far as I knew, they were not, and so I had
16 had mentioned -- I asked him how the church stood on
17 people, say, not being married in the church, living in
18 the same house and not being married. And, of course, I
19 brought this up to Telly and told him that Brother Coaxum
20 and I talked about it. He got bent out of shape right
21 then, and I think if he had a problem with it, I say I'll
22 tell you what: I'll call Brother Coaxum now.

23 And he say he two or three blocks down the road,
24 so he stop what he was doing, he came down, brought his
25 Bible and talking about it. So on that Wednesday now,

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1 there was no light in the porch, no light in the living
2 room, so we actually had a candle vigil in the front yard
3 at the same table, the table in the front yard.

4 So Brother Coaxum come around and explain to him
5 what the Bible said about, you know, marriage and
6 intermarriage relationships and so forth. So he come
7 around explaining to him, and when he mentioned that to
8 Telly, that couples should be married and so forth and so
9 on, well, Telly got bent out of shape and stormed away
10 from the table and said he was a man.

11 If you want to talk to me about that, you should
12 have talked to me. Brother Coaxum didn't talk to me, I
13 talked to Brother Coaxum. He just asked a question and I
14 told him what I felt and what it was actually about,
15 things I lean toward, things I didn't push. I could have
16 been that kind of person too, but I just didn't say
17 anything about it, you know.

18 Q. And that was -- that's comments that Telly made,
19 were these to you?

20 A. He was telling me that he was a man, and if
21 Brother Coaxum want to talk to him about something, he
22 should have talked to him and not me, right?

23 But, like I said, he been with me at my house. I
24 think it was -- it was a good question from the elder in
25 the church who is supposed to be guiding us, not supposed

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1 to be, but he does guide us. He was there to guide us
2 and to whether or not we listen, just that kind of
3 situation, I guess.

4 Q. So Facebook, there's been some testimony about
5 Facebook.

6 A. Yeah.

7 Q. And just for clarification, there was a rule about
8 not getting on Facebook?

9 A. Yes.

10 Q. Was that your rule?

11 A. No, no. They decided that this was a complication
12 between them, and they came up and they decided that they
13 would shut it down.

14 Q. Do you know anything about Facebook at this point
15 in time?

16 A. Like I said, I just got a cell phone nine years
17 ago, but I ain't know nothing about it, but you heard now
18 about it. It's a gossip section, or I call it a smut
19 magazine, really, because everything you want to know
20 about somebody is on Facebook, and people put their
21 business on it and other people can see their business,
22 if you sign up to be their friend. If you sign up with
23 me, then what I know, you know, or what I do, you do.

24 So they had agreed they wouldn't have it because I
25 think in Florida -- a lot of people here had found him on

1 Facebook and he was talking to somebody out there on
2 Facebook, I guess you do, this whatever you're doing,
3 what is that, texting?

4 Q. So how -- was this an argument between them two?

5 A. Well, when he come up, I told them -- they were
6 arguing about it all the time because she say that he was
7 talking to some other women. His ex on there used to
8 tell him the same thing, You're talking to some other
9 women.

10 So they decided to close it down before they come
11 up here, all right? And I told him, Don't bring the
12 drama here.

13 This is his territory. He really didn't need
14 Facebook to be here. He's here now. He don't have to
15 talk to them from way down there. But I told him, don't
16 come up arguing about that stuff. Don't come up with the
17 drama about who is seeing who, because you know where he
18 is, he's at home, and all the people he know, all the
19 women he might have known while he's here, he's back
20 home. They got to text him 250 miles away, he's right
21 here with them, so -- and wasn't nothing you could do.
22 She was at work or he was at work. He couldn't get with
23 them.

24 Q. And so was there an argument on Thursday about
25 Facebook?

1 A. I think it started that -- when did she tell me?
2 She come home from work that Thursday, right? And told
3 me that she had went on somebody else's phone, check to
4 see if he had put Facebook on, and, of course, she didn't
5 find that he had, but when he went to pick her up, she
6 told him that she had done so.

7 And he got bent out of shape with that, and there
8 went the truth and trust thing I talk to him about all
9 the time, but she maintained that she was doing the
10 truthful thing. She told him that she done this, but he
11 got bent out of shape about it because he don't trust
12 her. You got to check behind me and see if I done this.
13 I told you I wasn't going to do it, so I think that's
14 when he got bent out of shape. I got bent out of shape
15 because he got bent out of shape.

16 Q. And so this thing, the Thursday, that's the August
17 16th day?

18 A. True.

19 Q. So going to August 16th, is there some memory
20 issues as to what's actually happened? Are you foggy on
21 some of the things?

22 A. I'm foggy on quite a few things on that day,
23 whether it's a voluntary deletion of memory or what, just
24 things I just don't remember as to what transpired. But
25 I can remember, like I say, that evening I come home and

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1 had Telly and my brother --

2 Q. Let's get to that. You come home. Where are you
3 coming from?

4 A. I'm coming from the old Naval base, from work, and
5 I got off, I would say, about 3:30, 4:00, take me about
6 45 minutes to make it here to the house, and about that
7 time is when Gene got there, right after I got there, I'm
8 sure, because that's the day I didn't have to pick him
9 up.

10 Whatever time he was done was whatever time he
11 left, but he was there, and we needed to change a breaker
12 in the breaker box, okay? And, like I say, there was
13 times when it was just nice to have Telly there because
14 he could help me with that big breaker box.

15 Q. He'd just lifted up the breaker box?

16 A. Remove the screws, take the cover off, pull the
17 breaker, change the breakers, now we got lights on the
18 front porch, fans on, everything that was out because of
19 that breaker right there.

20 Q. Then where did you go after that?

21 A. When we got through doing that, I had promised my
22 friend around the way that I was going to come and
23 reposition her doghouse that was in the front yard, move
24 it to the back yard for her, and I left and went to do
25 that.

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1 Q. And who is that friend?

2 A. That is my friend Mamie.

3 Q. So you went to Miss Mamie's house?

4 A. Right.

5 Q. Did you have some drinks there?

6 A. As usual, a couple.

7 Q. Okay. And how much did you have?

8 A. Like I say, a couple drinks. A little bottle
9 means a couple drinks.

10 Q. What do you mean, a couple?

11 A. A half pint is two drinks.

12 Q. You didn't drink the whole half pint?

13 A. Not at one time, but one drink, two drinks, and
14 that's it.

15 Q. You mean sips or do you mean splashes?

16 A. Not all at one time. A pint is nothing.

17 Q. Okay. So you then -- was Ms. Mamie there?

18 A. No, no. She wasn't there that evening. That's
19 why I didn't linger because she had gone to a send up or
20 something that night, so she wasn't there.

21 I did what I went to do, move the doghouse, put it
22 where she wanted it at, and about that time, I was
23 supposed to bring Telly a bottle back because he couldn't
24 wait until I get back. So he come to Ms. Mamie's house
25 to get it, and he got it and went on back to the house

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1 because I watching TV a program that she and I usually
2 watch every day from 7:00 to 8:00, what that -- Steve
3 Harvey, Family Feud, whatever it is, and we watch it. I
4 watched both of those, and it was already 8:00, at which
5 time I proceed back to the house. So --

6 Q. So you went back to the house. What do you see?

7 A. As I'm passing the gate, turning the corner, I see
8 this gathering around the table, I guess Telly, Gene,
9 Michelle, they were sitting around the table. They were
10 drinking, and this conversation we just had the night
11 before, don't do that out here in the yard. You are
12 going to drink, go in the house and drink.

13 And that sort of just -- I don't know, that ticked
14 me off, and I walked in and I told him how I felt about
15 that.

16 He said, It's in cups.

17 I said, Who don't know what you're doing out here
18 in cups when the sun go down? You ain't drinking no Kool
19 Aid, so --

20 Q. Did Telly do something at that point in time?

21 A. I mean, I had mentioned to him that he wasn't
22 going to do what I told him to do he, had to get up out
23 of here, you know, and he stood up and that -- that tone
24 of voice he had the night before, you know, that -- when
25 he get ready to, you know -- I went up the steps --

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1 Q. Was it an angry tone of voice?

2 A. Saying what he had the night before, that he's a
3 man, he do what he want to do, so --

4 Q. And Telly and -- did you have -- did you know
5 about some prior violence that Telly had done?

6 A. His mother had told him -- his mother told me.

7 MR. OZMENT: Your Honor, objection.

8 THE COURT: What is your objection?

9 MR. OZMENT: Your Honor, specific acts of
10 violence on the part of victim are not admissible, and I
11 think it was also hearsay as to starting to say what
12 Mrs. Irby had said.

13 (Sidebar discussion held.)

14 BY MR. SHELTON:

15 Q. Johnny, did you know about the incident between
16 Telly and his mother?

17 A. Yes, I did.

18 Q. What do you know about that incident?

19 A. What she told me.

20 Q. Don't say who said or what she said, but what did
21 you know about the incident?

22 A. She told me the fact that he grabbed her wrist and
23 twisted it and hurt her arm.

24 Q. And so at this point in time, Telly is -- where is
25 Telly and where are you, in the yard?

1 A. At this time, I just -- like I say, when I got
2 through saying what I said at the table, I proceeded
3 toward the house. And I went up the steps and I went on
4 the porch, and I saw the girls sitting there watching TV.

5 I told them to go outside. They proceeded to do
6 so. They went outside, and about as fast as they got
7 outside, it looked like Telly told them to come back
8 inside.

9 Q. And at that point in time, how did you feel? Did
10 you feel intimidated?

11 A. I'm just wondering what is on his mind. He had
12 just listening at me and not listening at me. I just
13 told him, Take the kids outside and let them play. Get
14 them out of the house. I wanted everybody out of the
15 house.

16 And when they went back in the house, I sent them
17 out again, and he sent them back in again, that's when I
18 went to the back room.

19 Q. Were you intimidated at that point in time?

20 A. I just know he getting ready to do something he
21 wasn't supposed to be doing, you know, what he was going
22 to do to me, I didn't know what he was going to do.

23 Q. And so what did you do next?

24 A. Like I said, I went to my room and I got the
25 pistol from where I had moved off the floor under the

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1 nightstand, because, like I said, the girls had crawled
2 right up in the bed and they had found it. They found
3 the gun on the floor by the bed.

4 So they had found it, so I had moved it and put it
5 up off the floor. I got a big two foot by two foot
6 nightstand sitting by my bed there, and I put it on the
7 back side, like, double-tiered table. So I put it on the
8 bottom of that table, like next to the bed, and that's
9 where I got it from.

10 Q. Did you think that you would be able to fight
11 Telly?

12 A. I know I couldn't.

13 Q. You know you couldn't?

14 A. I knew I couldn't. I mean, I said I wouldn't have
15 a dog in that fight. I wouldn't have stood a chance if
16 he decided to get actually physical with me. I wouldn't
17 have stood a chance.

18 Q. And if he would have got physical with you, you
19 would have been hurt pretty good?

20 A. It depend on when he stop. If he started laying
21 hands on me, when he stop I could get away from him or
22 somebody could stop him from doing what he's doing, I
23 don't know.

24 Q. So you went and got the gun, and then what did you
25 do?

1 A. Like I said, I came back out and told the girls to
2 stay out of the house, and I guess he stood right there
3 in front of me, and last thing I truly remember is when
4 he come toward me and reach for the gun, you know.

5 Q. And when he came towards you, were you trying to
6 do something at that point in time?

7 A. I was about to step back into the house. If he
8 stayed where he was and not approach me, I would have
9 closed the door and go in my room. I could watch a movie
10 for a while, and I strongly believe that what I had
11 committed to do with the kids, we would have went on
12 there, you know.

13 Q. And so if he didn't come at you at that point in
14 time, what would have happened?

15 A. I don't think anything would have happened, I
16 really don't. I just think that it would have blow over,
17 had time enough to talk about it, get a chance to talk
18 about it, but whether or not he was, I don't know,
19 pushing the issue or not.

20 Q. You weren't going to kick him out of the house?

21 A. No, no, no, no. I mean, I told him to leave then,
22 but I'm pretty sure that at some time that night I would
23 have gone where they went, because I know for a fact,
24 like I say, she had probably just got a little check,
25 child support check, but that wouldn't have been enough

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1 money to do nothing.

2 And, like I say, we already got them logged in for
3 school, started buying school supplies and stuff like
4 this, you know. So I would have got them and told them,
5 Hey, look. I'm going to fix this now, but I've been on
6 the fast track to get them someplace else to be.

7 Q. Okay. So where we're at now is you're moving back
8 into the home, your home, and Telly does what at that
9 point?

10 A. I'm not sure whether or not he turned me back
11 around again to face him, and I had opened the screen
12 door to -- the inner screen door, I had opened that
13 screen door, and I stepped one foot, about that high. I
14 stepped my foot up there and he went for the gun, and I
15 say we struggled, right, for the gun, and some kind of
16 way it didn't take long, it went off, and --

17 Q. And did you ever pull the trigger?

18 A. I don't remember whether I pulled it or not, he
19 caused me to pull it or whatever. My hand was on the
20 trigger. It was by my side. When he pulled me around,
21 you respond with two hands to balance yourself or what
22 have you, right, and when I turned around, like I said,
23 the gun come up against him and it goes off.

24 So -- by then it seemed like we struggled for a
25 long time. It went so quick, but everything happened so

1 quick, so --

2 Q. Do you remember -- did you ever raise your hand?

3 A. No, no. I mean, I can't say that I raised it up
4 into a serious shooting stance.

5 Q. All right. What about the struggle for the gun?
6 Do you remember where he grabbed the gun?

7 A. Yeah. He put his hand across the top of the
8 slide.

9 Q. Okay. And what happened when he put his hand on
10 the top of the slide?

11 A. Like I said, I got the handle already. I got the
12 barrel stick out of that, and we struggled for it. And
13 whatever happened, I don't know whether or not I dropped
14 the slide or whatever, but, anyway, that's when the gun
15 went off and he went down.

16 Q. What do you remember after that?

17 A. Last thing I remember after standing up and
18 looking at him, I mean, everything -- I looked down there
19 and all I could think of was Oh, my God, and I walked off
20 the porch.

21 I walked to the left of the porch. I fired the
22 gun in the air, intending to empty the clip, I reckon,
23 but after I did that, I was bringing the gun down, and I
24 don't remember hearing nothing around me. Everything was
25 calmed down. I threw the gun on the ground in front of

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1 me, and I remember, nearly to my knees, and they said I
2 was sitting in that chair around the corner of house
3 there, where Gene was sitting all the time.

4 And I remember going down right there, and next
5 thing I remember is when the officer pulled up and he was
6 in his trunk. Peripheral I could see him in his trunk,
7 and I said, You ain't need that. I ain't going to shoot
8 no more.

9 So he came up, and the rest is history.

10 Q. Well, do you remember talking with the police?

11 A. After we got down to the police station, I do,
12 and --

13 Q. Was there someone there that did something to your
14 hands?

15 A. Oh, that's when they did that -- whatever that was
16 they rubbed on my hands, what they doing, taking
17 something wet, put it on my hands, and then wiped it off
18 and do something with it. I remember that part of it,
19 and --

20 Q. Do you remember if you talked to that officer?

21 A. Like I say, I was -- yes, I talked. I mean, I
22 just -- I mean, I'm in shock. What just happened? I
23 mean, I'm talking on here, I did this, I did this, I did
24 that, I did that, and so forth and so on, and just
25 history just started to repeat itself over and over and

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1 over again, you know.

2 And I just couldn't -- I hadn't really focussed on
3 what had happened, right, and I realized that I had been
4 in a tussle with my son, that the gun had gone off, and I
5 didn't realize he -- I didn't realize he died, you know,
6 I really didn't. I just didn't realize that, and I
7 guess -- I mean, what just happened, you know, is what
8 constantly going through my mind. What just happened?
9 You know?

10 And when it really come down to me truly finding
11 out what was happening, like I said, I talked about it,
12 talked about it, and --

13 Q. When you were talking with that officer, do you
14 remember talking to him about --

15 MR. OZMENT: Your Honor, I object to leading.

16 THE COURT: Overruled.

17 BY MR. SHELTON:

18 Q. Do you remember talking to him about size and
19 strength?

20 A. I remember saying that he's approaching me, and,
21 like I say, he's 250. I weighed 179. I didn't think he
22 had a problem snatching me, so I might have mentioned
23 something to that nature of his size. I remember talking
24 about his size in football and so on, but the fact, like
25 I say, he was 6'3" and weighed almost twice as much as I

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1 weighed, working on it, anyway, so yeah, I pretty much
2 stuck in that particular stage, that if he decided if he
3 was angry enough to come after me that we would have some
4 issues.

5 Q. And then do you remember talking with Lieutenant
6 Roach?

7 A. Yes, I do, when he first come in there.

8 Q. When you got the gun, did you want to shoot Telly?

9 A. Oh, no, no. The last thing on my mind, the last
10 thing in the world that would have crossed my mind that I
11 would ever, ever, ever have to hurt one of my kids like
12 that. I mean, the simple fact that he was my child --
13 and, like I say, he was in my place for me to help him.

14 I didn't like for him talking out at that point,
15 before he got there. When he leave the nest, I say he's
16 my child. He needs me right now. He needs me to help
17 him, and I truly was committed to get him what he needed,
18 to get him so he could take care of his kids.

19 I was more concerned of him taking care of his
20 kids than anybody else's kids, so I was going to help him
21 get to where he needed to be so he could make that
22 paycheck, and every time he get a paycheck, they take his
23 money. He would be making enough money so he don't have
24 to sweat that.

25 Of course, he could help me make money on certain

1 things I did, so that would be more money for him. That
2 would have been the last thing on my mind for me to ever,
3 ever have to harm one of my kids.

4 Q. What about Michelle?

5 A. Michelle, same thing. She sit back down with me
6 in the back room. We hold little chat sessions or stuff
7 like this. She even asked me one day, she said, You
8 don't like me, do you?

9 I said, I ain't got no problem with you. You and
10 Telly care about each other, but y'all still got to
11 maintain that truth and trust thing that I tell you about
12 all the time. You got to trust one another. If you
13 don't trust one another, how you expect you're going to
14 get along?

15 Q. There was a phone call with you and your sister,
16 and there was mention of a white girl. Did you have any
17 problems with Michelle being white?

18 A. If I think about the case you're talking about,
19 we're not talking about Michelle.

20 Q. Okay. But did you have a problem with Michelle
21 being white?

22 A. No. God loves us all, black, white, or whatever.
23 God loves us. We can love each other. We can be with
24 each other. I didn't have no problem with that. That's
25 his choice of female companionship, and that's his