

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to McCormick County

Honorable David P. Caraker, Jr, Circuit Court Judge

JOE ROSS WORLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000928

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF MCCORMICK)

State of South Carolina,)
)
)
 PLAINTIFF,)
)
 -VS-)
)
 Joe Ross Worley,)
)
)
 DEFENDANT.)

2010-GS-35-049, 050, 051, 052

TRANSCRIPT OF RECORD

BEFORE THE HONORABLE WILLIAM P. KEESLEY, JUDGE

MAY 31, JUNE 1, 2011

MCCORMICK, SOUTH CAROLINA

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1 Tuesday, May 31, 2011

2 (Partial Transcript of
3 Record. See Court Reporter's certification.)

4 THE COURT: Call your next witness,
5 please.

6 MR. GARRETT: Thank you, Your Honor. I
7 call Mr. Rushton to the stand.

8 THE COURT: All right, come around,
9 please.

10 (Whereupon, the witness was
11 sworn.)

12 MR. GARRETT: Thank you, Mr. Rushton.

13 COURT REPORTER: What's his first name,
14 please.

15 THE COURT: State your name for the
16 record.

17 MR. RUSHTON: My name is Robert E.
18 Rushton.

19 COURT REPORTER: Thank you.

20 ROBERT E. RUSHTON, having
21 first been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GARRETT:

24 Q Mr. Rushton, you made an oath when you
25 came onto the McCormick County Sheriff's Department,

Robert E. Rushton - Direct

7

1 did you not?

2 A I did.

3 Q I'd let to get you to review that oath.

4 (The witness reviews the
5 document presented to him.)

6 Q Is that your oath?

7 A The best that I can remember. It was
8 years ago.

9 Q How long ago was it when you took your
10 oath of office?

11 A I couldn't tell you exactly which year it
12 was.

13 Q Okay.

14 A It's been quite some time.

15 Q Help us understand a little bit about your
16 employment with the McCormick County Sheriff's
17 Department. When did you go to work for them?

18 A I couldn't tell you the exact year it was.

19 Q Okay. Have you been with them ten years,
20 five years, four years?

21 A I believe it was somewhere around six
22 years, and then I had to resign for about four years
23 before I came back.

24 Q So you worked for about six years, then
25 you resigned, and you were gone for four years?

Robert E. Rushton - Direct

8

1 A Yes, sir.

2 Q Officer Rushton, where were you gone
3 during those four years?

4 A Iraq.

5 Q All right. And what were you doing in
6 Iraq?

7 A I was an international police advisor.

8 Q And in Iraq, do you all have certain
9 protocols or procedures, or were you all teaching
10 the Iraqi police department how to be police
11 officers or --

12 A It depended on where we were stationed at
13 as to whether or not we were doing classroom
14 teaching or doing advising at stations.

15 Q All right. So you were there four years.
16 How many different stations, duty locations, did you
17 have?

18 A It would be hard to give an honest answer,
19 because at one station, at one location I was
20 assigned, I may have had as many as 12 police
21 stations.

22 Q All right. So a rather diverse group of
23 things you had to do in Iraq, I'm assuming?

24 A Very diverse.

25 Q All right. And when did you come back to

Robert E. Rushton - Direct

9

1 the county, to McCormick?

2 A I believe my rehire date was November the
3 first of 2009.

4 Q And this would be, what, 14 days prior to
5 this accidental shooting?

6 A Yes.

7 Q All right. And did you go through any
8 retraining or retesting or anything else before you
9 went back on the active force with the McCormick
10 County Sheriff's Department?

11 A I did. I had to catch up all the training
12 hours that I had missed for the previous four years.

13 Q Okay. And when did you catch those hours
14 up?

15 A Monday through Friday in the Sheriff's
16 Office.

17 Q All right. So you had spent the first two
18 weeks back on working in the Sheriff's Office with
19 training, retraining --

20 A Yes, sir.

21 Q -- getting prepared? All right. And when
22 did you give your new oath of office after having
23 resigned from the prior?

24 A I don't recall coming back over and giving
25 a new oath.

Robert E. Rushton - Direct

10

1 Q So prior to this hearing, you haven't
2 given an oath of office to act as a law enforcement
3 officer for the County of McCormick, State of South
4 Carolina, is that correct?

5 A My understanding is the first oath I took,
6 I took forever.

7 Q But you resigned, is that correct? You
8 resigned?

9 A I resigned my position at the Sheriff's
10 Office to go to Iraq.

11 Q All right. And what was your badge
12 number, the old number?

13 A 104.

14 Q What's your badge number when you come
15 back?

16 A 113.

17 Q So they changed your badge number, is that
18 correct?

19 A Actually, before I left to go to Iraq, but
20 my badge number changed numerous times over the
21 years.

22 Q All right. And so you can be gone for
23 four years, and what do you do, reapply? How do you
24 get back to work?

25 A I did fill out a new application and came

Robert E. Rushton - Direct

11

1 back.

2 Q Okay. So you were no longer employed.
3 You had terminated your services with the McCormick
4 County Police Department at the time, when you were
5 in Iraq?

6 A Yes, sir.

7 Q Not the Police Department, the Sheriff's
8 Department?

9 A Yes, sir.

10 Q And so you made the application. And at
11 some point in time, who told you that you would be a
12 deputy?

13 A When I came back?

14 Q Yes, sir. Do you remember that?

15 A I don't remember if it was Investigator
16 Collier or Sheriff Reid. I don't remember which one
17 it was.

18 Q So there was no actual sit-down where they
19 said, "Well, here's your badge, and here's your duty
20 weapon," and that kind of thing?

21 A I did come in to speak with the sheriff
22 prior to that, in the interview process.

23 Q Were you given a badge?

24 A Not that day.

25 Q Were you ever given a badge?

Robert E. Rushton - Direct

12

1 A Yes.

2 Q And when they handed you the badge, you
3 didn't take an oath of office?

4 A As I stated, I assumed that the first oath
5 of office I took was to protect the citizens of this
6 county, and it was still good.

7 Q But you didn't take an oath?

8 A No.

9 Q All right.

10 A Not that I recall.

11 Q Now, you say you caught up on your
12 training?

13 A Yes.

14 Q And who determined what training you
15 needed to get caught up?

16 A Investigator Collier was also the training
17 officer for the Sheriff's Office.

18 Q Okay.

19 A He had contacted the Academy, and they
20 informed me of what I needed.

21 Q All right. And so you had in-service
22 hours then --

23 A Yes.

24 Q -- for approximately two weeks?

25 A Yes.

Robert E. Rushton - Direct

13

1 Q Did you have any field training or field
2 experience?

3 A During that two weeks?

4 Q During the two-week time, yes.

5 A Other than firearms. That was the only
6 thing.

7 Q All right. So you had to requalify with
8 your firearm?

9 A Yes.

10 Q All right. And then what about vehicle
11 training? Did you do any vehicle training?

12 A No.

13 Q Other than the in-service training, do you
14 recall the courses that you actually took?

15 A As far as in the in-service training?

16 Q Well, the two weeks that you called your
17 retraining.

18 A You would have had the criminal domestic
19 violence updates that I had to go back through and
20 the legal updates. Exactly what each one pertained
21 to, I couldn't tell you exactly what every one of
22 them said.

23 Q Okay, domestic updates. And what else?

24 A Just the basic legal updates.

25 Q Legal updates -- law?

Robert E. Rushton - Direct

14

1 A Yes.

2 Q All right. So obviously if the law has
3 changed since you were last at the Academy or last
4 working during those four years, they had to update
5 you on that?

6 A Yes.

7 Q All right.

8 A Laws change all the time.

9 Q It makes sense. All right, now, how much
10 -- did they take you out and do any -- did you have
11 to go under some other officer or work in the field
12 for any period of time prior to that night? I'm
13 talking about patrolling.

14 A No.

15 Q Was that the first night back?

16 A Yes.

17 Q Is it different working out of Iraq than
18 in McCormick County as a police officer?

19 A As far as my job description?

20 Q No, just the environment.

21 A It's totally different.

22 Q Did you go through any type of
23 psychological discussions or training when you got
24 back to help you differentiate between your role as
25 Iraqi police officer vis-à-vis a McCormick Sheriff's

Robert E. Rushton - Direct

15

1 officer?

2 A I was never an Iraqi officer. I would
3 tour and advise and train in classrooms when
4 necessary. But as far as going out here and for
5 going out into Iraqi and patrolling the streets and
6 things as a policeman --

7 Q Right.

8 A -- I did not do that, but I was on
9 maneuvers with the military.

10 Q So the military -- the United States
11 military -- would sometimes have police advisors go
12 out with them into areas?

13 A Yes.

14 Q That would be areas where the Iraqis would
15 not have sufficient police to cover those?

16 A No, we were there -- if we went out with
17 them, we went with them to advise and critique the
18 Iraqi police. Then we would go back to the station
19 and tell them where we saw their problems.

20 Q To help train them?

21 A Yes.

22 Q So you trained them?

23 A Yes.

24 Q So you were a trainer?

25 A No, mentor and advise.

1 Q Mentor and advise. So you would not call
2 yourself a trainer of police officers?

3 A Not in that scenario. But in the
4 classrooms, where we did scenarios in the classroom,
5 it was a controlled environment. It's a lot
6 different.

7 Q A lot different, all right. Well, let's
8 talk about the procedure you employed.

9 MR. GARRETT: Judge, I'd like to mark
10 that, if I may. It's the oath of office.

11 THE COURT: Mark it before you enter it
12 into evidence.

13 MR. GARRETT: Okay. While we're doing
14 that, Judge, let me go ahead and mark this one, as
15 well.

16 THE COURT: I said mark it. Just mark it
17 for ID, I guess. I don't know exactly how this is
18 going to proceed.

19 MR. GARRETT: Okay.

20 COURT REPORTER: Defendant's One for
21 identification.

22 (Defendant's Exhibit Number
23 One A, Westlaw, oath, deputy sheriff, was marked for
24 identification purposes.)

25 THE COURT: Do you have another document?

Robert E. Rushton - Direct

17

1 MR. GARRETT: I do.

2 THE COURT: Let's mark that. Did you show
3 it to them?

4 MR. GARRETT: I did, Your Honor. They
5 have seen it.

6 THE COURT: Mark that, as well.

7 MR. GARRETT: Your Honor, at this time I'd
8 move to submit the oath of office into the record.

9 THE COURT: It's marked for
10 identification.

11 MR. GARRETT: I move at this time to
12 introduce it. It's an oath that he didn't take.
13 It's one that the law requires that he take.

14 THE COURT: Well, I'm a little bit
15 confused. If I mark it into evidence and the trial
16 proceeds, then --

17 MR. GARRETT: This is pre-trial, Judge, I
18 think. I'm not sure what part --

19 MR. MYERS: Can he it as a Court's exhibit
20 for the purpose of this?

21 THE COURT: I just told him to mark it for
22 ID. That way, it would be preserved for any review.
23 As I understand it -- and I may be wrong -- what I
24 saw in that case that was cited to me this morning,
25 if I were to rule against the defendant, it's

Robert E. Rushton - Direct

18

1 immediately appealed.

2 I don't want there to be any
3 confusion. As long as you all are verifying that
4 we're going to have separate exhibit numbers for the
5 pre-trial than we do for the trial --

6 MR. GARRETT: Yes, sir. We'll stipulate
7 that.

8 MR. MYERS: Yes, sir, we'll agree with
9 that.

10 MR. GARRETT: Okay. What's easier for
11 you?

12 COURT REPORTER: The date. I'll put the
13 dates on this one, and I'll just make it One A and
14 One B.

15 THE COURT: I'll do whatever she wants to
16 do. They're both in evidence for the purposes of
17 the pre-trial hearing.

18 COURT REPORTER: Okay, but I do need to
19 put the stickers on.

20 THE COURT: Yes, ma'am.

21 (Defendant's Exhibit Number
22 One A, Westlaw, oath, deputy sheriff; and
23 Defendant's Exhibit Two A, Gun, photos, four pages,
24 were marked for identification.)

25 COURT REPORTER: So we have Defendant's

Robert E. Rushton - Direct

19

1 One A and 2A from 5/31/11 that are in admitted for
2 identification purposes.

3 THE COURT: Thank you, ma'am.

4 EXAMINATION CONTINUED

5 BY MR. GARRETT:

6 Q Now, I'll just show you this -- this is
7 Two A -- and just ask you to review that to see if
8 you recognize that.

9 A Glock 23 40-caliber pistol. I can't
10 completely tell, but I believe it's the one I was
11 carrying the night of February 15.

12 Q All right. This is your duty weapon that
13 you had that evening?

14 A Yes.

15 Q And who provided this duty weapon for you?

16 A The McCormick County Sheriff's Office.

17 Q All right.

18 COURT REPORTER: Who?

19 MR. RUSHTON: McCormick County Sheriff's
20 Office.

21 Q All right. Did you have any more than one
22 weapon?

23 A No.

24 Q And would you agree that the weapon shows
25 the impact of the 30.06 bullet into the handle that

Robert E. Rushton - Direct

20

1 caused the damage to your wrist?

2 A Yes.

3 Q And the bullet entry -- the entry of the
4 bullet would be right there?

5 A Yes.

6 Q About where your middle finger would have
7 been?

8 A Yes.

9 Q Now, the car that you were driving that
10 night, who provided that car?

11 A McCormick County Sheriff's Office provided
12 it.

13 Q All right. And did you take any training
14 or any special training on how to respond to that
15 car to emergency and/or non-emergency circumstances?

16 A I have in the past.

17 Q All right. When you got back, did you
18 refresh on that issue?

19 A I do not recall.

20 Q So you think you may refreshed on that in
21 those two weeks?

22 A I do not recall.

23 Q All right. And you mentioned gun
24 training.

25 A Yes, sir.

Robert E. Rushton - Direct

21

1 Q And tell me about the county-issued
2 uniforms that are required to be issued.

3 A There is not one that's required to be
4 issued.

5 Q There's no required issue uniform for the
6 County of McCormick?

7 A Not that I'm aware of.

8 Q So McCormick County doesn't have uniform
9 that you as a deputy or as a law enforcement officer
10 are required to wear under the law?

11 A Not that are required -- I mean, not that
12 I know.

13 Q On the night in question, what were you
14 wearing?

15 A I was wearing a 5-11 polo tactical shirt.

16 Q A polo type shirt?

17 A Polo type shirt, similar to what I have
18 now. It was green in color with long sleeves.

19 Q Okay. Would it be drab, or would it be --

20 A It was more of a forest green.

21 Q Sir?

22 A More of a forest green.

23 Q Forest green, all right.

24 A And I was wearing a pair of khaki-colored
25 very similar to what I have on now --

1 Q Okay.

2 A -- 5-11 tactical pants.

3 Q Tactical pants?

4 A Yes.

5 Q What else?

6 A I had my duty belt with my holster, badge,
7 radio, cell phone, handcuffs attached to the belt.
8 I had my microphone on. The 5-11 shirts actually
9 have a place where I can put it, and my radio mike
10 was clipped on right in front of me.

11 Q Okay. I see you've got a badge right
12 there on this particular shirt. Did you have a
13 badge on the shirt that you got shot in that night?

14 A No, I didn't.

15 Q All right. The shirt that you had, did
16 you buy that shirt, or was it provided to you by the
17 McCormick County Sheriff's Department?

18 A I had purchased that shirt.

19 Q Personally?

20 A Yes.

21 Q So, again, you can just wear whatever you
22 want to wear?

23 A My uniforms had not come in at the time.

24 Q So you made a -- who made the procedural
25 decision at the Sheriff's Department to allow you to

Robert E. Rushton - Direct

23

1 go out that evening without the proper uniform?

2 A As I stated, the Sheriff's Department does
3 not have a set uniform.

4 Q Well, what were you waiting on that you
5 didn't have that you said you were waiting on?

6 A I had just said that my uniforms that had
7 been ordered had not come in.

8 Q All right. But what is the uniform?

9 A I don't know.

10 Q That would be the uniform, the shirt that
11 you have today?

12 A Yes.

13 Q Can I just advise the Court for the record
14 so the Court Reporter will note, would that be a
15 gray shirt?

16 A Yes.

17 Q And that shirt has a badge or emblem of a
18 sheriff's badge on it, is that correct?

19 A Yes.

20 Q In addition to that, I see you're wearing
21 a belt, and you have your badge on your belt on the
22 pants?

23 A Yes.

24 Q You've got tactical pants on?

25 A Yes, I do.

1 Q And what type of shoes are you wearing?

2 A 5-11 footwear. They're 5-11 boots, the
3 boots for law enforcement.

4 Q You've got law enforcement boots. And
5 what about a cap or a police officer's hat?

6 A I was not wearing any.

7 Q You don't wear any?

8 A I was not at that time.

9 Q Do you ever?

10 A I have one, but I'll wear it if it's
11 raining or something. But I was not wearing one
12 that night.

13 Q Is it part of the uniform?

14 A No.

15 Q What color is the hat you would normally
16 wear?

17 A It's black with the word "Sheriff" written
18 in white letters.

19 Q Why would you have a black hat with white
20 across there saying "Sheriff"?

21 A In case it's raining.

22 Q In case it's raining. You're not trying
23 to let people know that you are a sheriff?

24 A The badge speaks for itself, identifying
25 myself.

Robert E. Rushton - Direct

25

1 Q If the badge is enough, then you wouldn't
2 really need a Sheriff's Department hat, would you?

3 A I bought it because in inclement weather,
4 I wouldn't get as wet.

5 Q I've seen police officers on the road when
6 they've got an orange vest on or a vest on that says
7 "Sheriff's Department." Do y'all have any of those
8 vests in McCormick County?

9 A Yes, we do.

10 Q And do you have any other vests like that
11 that you can wear to identify yourself as a
12 sheriff's deputy?

13 A Some of our ballistic vests would have an
14 outer shell that may have "Sheriff" or "Sheriff's
15 Department" or "Police" or "Police Department"
16 written on them.

17 Q When would you wear a ballistic vest?

18 A It depends on the situation. Some
19 officers wear it the entire time they're on duty.
20 Some don't wear it at all.

21 Q What about you?

22 A I don't wear one.

23 Q Ever?

24 A When I was in Iraq.

25 Q You haven't worn one since you've been

1 home?

2 A Once.

3 Q And after this, you haven't worn one?

4 A I didn't have one in the previous
5 incident.

6 Q On that night, you didn't have one?

7 A No.

8 Q What other clothing -- you talked about
9 these vests, and you talked about the hat. What
10 other implements of clothing do you have or are
11 available to you to wear at the department?

12 A I'm not really sure. Maybe my jacket.

13 Q Tell me about your jacket.

14 A It's just a dark navy-blue jacket. The
15 outer shell has a badge on it for the emblem. But
16 once I take the outer shell off, there is black
17 fleece underneath it with nothing written on it.

18 Q Does it have a sheriff's badge on it?

19 A On the outer shell, but not the inner
20 shell.

21 Q The outer shell. And is it similar to the
22 badge you have on there?

23 A I believe so.

24 Q All right. Would you agree with me that
25 if you had a light-colored shirt on versus a dark-

Robert E. Rushton - Direct

27

1 colored shirt on, if you had the mike on you that
2 night, you could probably see that clearer?

3 A That particular night, the way the
4 floodlights in the yard lit up, there was no
5 mistaking me.

6 Q Let me ask you about that. Are you sure
7 that's a floodlight?

8 A It's a square light, and I've called it a
9 floodlight my entire life.

10 Q Okay. Is it possible that that is a
11 spotlight as opposed to a floodlight?

12 A Very possible.

13 Q Y'all have been down there to investigate.
14 Has anybody looked at up into that to see whether or
15 not it's in fact a 300-watt spotlight, not a 500-
16 watt floodlight?

17 A I personally did not.

18 Q All right. Nobody prohibited you from
19 doing that, though, is that correct?

20 A I wasn't about to climb up there. I was
21 in there to go into the residence. And the only way
22 to tell would be to go into the residence and come
23 all the way out and look at it.

24 Q All right, let's talk about your procedure
25 that you used that evening. Just walk me through

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1 it. Are you under somebody else's command that
2 night? Are you by yourself? Are you in your own
3 command? What's the deal?

4 A There was myself, Deputy Nick Moore,
5 Deputy Melissa McAllister. We all actually arrived
6 right about the same time.

7 Q Well, hold on before we get to there. I'm
8 just talking about I'm trying to find out, who was
9 the supervisor of that group?

10 A Emmanuel Crowder.

11 Q Emmanuel?

12 A Yes.

13 Q And what time had y'all started working
14 that evening?

15 A I came in at 6 p.m. that evening. Melissa
16 and Nick came in at 6 p.m. that evening.

17 Q Okay. What about Emmanuel?

18 A I believe he came in around 3 p.m.

19 Q And what time does Emmanuel get off?

20 A He got off about 3 a.m.

21 Q And what time do you get off normally on
22 that shift?

23 A It would have been 6 a.m.

24 Q So you work from six to six?

25 A Yes.

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1 Q All right. And Emmanuel works from three
2 to three?

3 A Three.

4 Q And then who supervises during the three
5 to six when Emmanuel is not there?

6 A There's not per se a supervisor on duty.

7 Q All right. But on this occasion, Emmanuel
8 was your supervisor?

9 A He was the supervisor of that shift, yes.

10 Q All right. Who called -- just kind of
11 walk me through it. Where were you at that evening?
12 Where had you been earlier that evening?

13 A I had been all over the county.

14 Q All right. So you were doing general
15 duty, general duty patrol?

16 A Yes.

17 Q Were you in your car by yourself, or were
18 you with someone else?

19 A I was by myself.

20 Q All right. And I'm assuming the other
21 two, Nick Moore and Melissa, were also?

22 A They were by themselves.

23 Q By their selves. What's your car number?

24 A Five twenty-four.

25 Q And is your call number the same thing as

1 your car number?

2 A No, it's not.

3 Q What's your call number?

4 A One thirteen.

5 Q And what's Melissa's call number?

6 A One twelve.

7 Q And what's Nick Moore's call number?

8 A I believe his is 107.

9 Q All right. Tell me, did you call from
10 dispatch at some point in time?

11 A Somewhere after 4 a.m., yes.

12 Q Okay. You got a call from dispatch. I'm
13 assuming y'all have some dispatch logs and what not?

14 A Yes, they call the radios, too.

15 Q Have you ever studied the dispatch logs
16 for that night?

17 A No, I have not.

18 Q Would it surprise you if I told you there
19 was an 18 or 19 minutes' period of time after y'all
20 got on the scene versus the time y'all contacted
21 Sheriff Reid here, who was on the place at that
22 time, that there appears to be nothing on the
23 dispatch log?

24 A I wouldn't know.

25 Q Do you have any idea why that would be?

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1 A I wouldn't know.

2 Q So somebody told you to go there, to the
3 location?

4 A Yes.

5 Q Who would it have been that told you to go
6 to the location?

7 A I believe it would have been Joyce
8 Fairfax, the dispatcher that works at night.

9 Q Okay. Did she call out the dispatch, and
10 is she responsible to assign jobs, or does she just
11 called it in and y'all decided who would go?

12 A Dispatchers may not know exactly where
13 each deputy is at in the county. Sometimes they
14 will give out just a general call, and which deputy
15 is closest will respond to it.

16 Q Is that what you did?

17 A I had no idea where the other two deputies
18 were at that night, so I just responded.

19 Q You didn't have anything particular to do
20 at the moment?

21 A There was nothing going on at 4 a.m.

22 Q All right. So you responded?

23 A Yes.

24 Q All right. And I'm assuming -- where were
25 you at when you got the call? Do you know about

1 where you were?

2 A On the four-lane of Number Eight.

3 Q All right. Did you turn around on the
4 four-lane to Plum Branch and cut on back?

5 A No, I was already headed in a north
6 direction. I turned onto Jefferson Street --

7 Q Okay.

8 A -- and turned onto Greenfield, and turned
9 to 378.

10 Q And that was your route?

11 A Yes.

12 Q And went on out to Little River?

13 A Yes.

14 Q All right. And I reviewed, I think you
15 got there a little ahead of everybody else?

16 A Actually, I was behind Melissa.

17 Q Is that a thing where maybe she didn't
18 call in? The report seems to suggest that she got
19 there I think a little after you, that you got there
20 first?

21 A She was in the road in front of me.

22 Q Yes, sir.

23 A And I caught up with her.

24 Q Uh-huh.

25 A And then Deputy Moore caught up with me.

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1 Q Now, why would it take three deputies to
2 go down there? Why were all three of y'all going
3 there?

4 A We weren't doing anything else, and that's
5 our job.

6 Q All right. So there was no urgency to the
7 point that you needed to send three. It was just
8 there wasn't a whole lot going on at --

9 A There was nothing else going on.

10 Q -- 4:00 in the morning?

11 A Yes.

12 Q All right. So y'all get a call to go down
13 to -- was it Presidential Drive?

14 A Yes.

15 Q All right. And how long have you known
16 Joe Worley here?

17 A Till that night, I don't think I've ever
18 seen him.

19 Q All right. And what about his mother, Ms.
20 Barbara Worley, did you know her?

21 A I don't believe I did.

22 Q Or the father?

23 A Don't believe I did.

24 Q And during how many years -- you're not
25 sure how many years you were here before you went to

1 Iraq?

2 A I want to say seven, but without checking
3 the record, I wouldn't be a hundred percent sure.

4 Q You don't recall any calls down there to
5 go check on Joe Worley or check on Mary Worley for
6 disturbances, domestic violence, or any of that kind
7 of stuff about him, do you?

8 A No, not particularly about him.

9 Q Are the people down there generally pretty
10 good people on that area down there? Do you know
11 Mr. Stevens? Do you know him?

12 A In Presidential Drive, in that area, I
13 don't think I've ever had a call in that area.

14 Q Okay.

15 A Other areas of that subdivision, I have
16 been on calls.

17 Q Okay. I believe the people that live
18 around there is Mr. Herbert Anderson. Do you know
19 the Andersons?

20 A I know of them.

21 Q Okay. And then Mr. Bill Stevens over at
22 the Capital Bank in Greenwood, any of his family?

23 A I know of them.

24 Q Okay. The Worleys and, of course, then
25 the Sheffields, is that correct?

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1 A Yes.

2 Q So when you got there, did you have any
3 reason to believe that based on history that that
4 would be a problem to go down there, there may be a
5 problem in going?

6 A That particular time of the year in
7 McCormick County, I really and truly thought it was
8 somebody shooting at the deer.

9 Q Okay. And you will agree with me that
10 there are deer poachers in that area. I've had the
11 pleasure of representing one of the neighbors up in
12 where it's not been developed.

13 A I would not say in that area.

14 Q Right.

15 A I'd say this entire county.

16 Q The entire county, poachers are bad?

17 A Yes.

18 Q With spotlight, they use the lights and
19 that kind of thing here?

20 A I've never caught one.

21 Q Okay.

22 A So I couldn't tell you what they were
23 doing.

24 Q Y'all have a pretty active DNR here, don't
25 you?

1 A Yes, we do.

2 Q Now, so that's what you kind of had in
3 mind, that's probably what it was, somebody had shot
4 at a deer?

5 A Yes.

6 Q Okay. It's not uncommon in that area for
7 somebody --

8 A I'm not saying in that area. I have not
9 ever responded in that area --

10 Q Okay.

11 A -- to a deer poaching, but it would not be
12 unlikely.

13 Q Because right around that bank, isn't
14 there some houses, and then it's probably about a
15 mile of undeveloped just land right there before you
16 get to the next development, right down that road?

17 A Probably.

18 Q Right there on the right as you're coming
19 down, before you get to the houses.

20 A Right next to the granite sign.

21 Q There are probably four or five lots in
22 there that are undeveloped?

23 A Yes.

24 Q Okay, all right. So after having got the
25 call, you got there or Melissa got there, you got

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1 there and then Nick Moore got there?

2 A We were all -- it's not like I got there
3 five minutes before Melissa got there. Minutes -- I
4 mean, we were there together. I could see her car,
5 and I could see his car in my rear-view mirror. We
6 were right there together.

7 Q I'm just saying y'all called in dispatch
8 within about six minutes of each other. But you
9 were there, so you got --

10 A I had no idea what time they called
11 dispatch.

12 Q All right. So you get there, and who's in
13 charge of the three of you?

14 A There was no supervisor over one of us.
15 I've been doing it long enough, Nick's been in law
16 enforcement long enough, we kind of know what we
17 need to do.

18 Q Okay. And are you the -- would you be the
19 senior officer there with experience, or who would
20 be the senior officer?

21 A I'm not sure how many years Nick would
22 have prior to coming to McCormick.

23 Q Do y'all have some type of chain of
24 command circumstance, practice, or procedure that in
25 these situations, if three officers arrive, who is

1 in charge and who is not?

2 A It's not a written rule. It's just a
3 courtesy thing. The first officer on the scene is
4 usually in charge of it.

5 Q All right. So if Melissa got there first,
6 would she be in charge?

7 A Yes.

8 Q Okay. Was Melissa in charge of this
9 situation?

10 A Melissa didn't get to the Worley residence
11 first. I did.

12 Q Okay. So you got to the Worley residence
13 first?

14 A I got to the property first.

15 Q Okay. And where did you pull your car?

16 A Behind a vehicle that was parked in the
17 yard.

18 Q Behind a vehicle parked in the yard, okay.
19 Where at?

20 A In the road.

21 Q In which direction was it pointing?

22 A Toward the lake.

23 Q Toward the lake. And what kind of car was
24 it that you parked in front of?

25 A Some type of SUV. I couldn't tell you

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1 exactly -- Ford or Toyota, I believe.

2 Q I've seen the photographs after that
3 evening, and I don't recall seeing an SUV out there
4 parked along the driveway or in the driveway of the
5 Worleys' residence. What color was this SUV?

6 A I couldn't tell you.

7 Q Isn't it true that one of you actually
8 pulled down into the Stevens' yard?

9 A Actually, there were two people pulled
10 into the Stevens' yard, and I was not one of them.

11 Q All right. So we had two cars that pulled
12 into the Stevens' yard?

13 A Yes.

14 Q Okay. And then where was your car at?

15 A In the Worleys' yard.

16 Q All right. And you say you parked behind
17 an SUV?

18 A Yes.

19 Q And you don't recall the color of the SUV?

20 A No, I do not.

21 Q All right. So you parked -- why did you
22 park behind -- in the Worleys' yard behind an SUV,
23 and the other folks went over to the Stevens'?

24 A Melissa was in front of me. We were
25 actually given the incorrect numerics, but we were

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1 given the Worleys' last name.

2 Q Okay.

3 A And I saw on a piece of wood, driftwood or
4 something, a piece of plank or wood or something, it
5 had "Worley" written on it.

6 Q I've got you.

7 A And I immediately turned into that
8 driveway.

9 Q She was ahead of you, so she went --

10 A She went past me.

11 Q I've got you. She drove past you. And
12 those driveways, as I understand it, maybe have a
13 little picket fence between the two?

14 A Further down, closer to the residence,
15 they do. But up toward the front, I think there
16 wasn't.

17 Q You don't recall there being a fence
18 between the two?

19 A No, not toward the front of the driveways.

20 Q All right. So you say two cars went over
21 there, and you went down there?

22 A Yes.

23 Q And then where did y'all meet up?

24 A Came around to the back of the residence
25 -- of the Worley residence.

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1 Q Okay.

2 A And I saw a figure in the -- later found
3 to be the Sheffield's residence. And I walked over
4 onto their property to talk to the complainant.

5 Q Did you tell that to the other two
6 officers, that you were going to walk over there and
7 talk with them?

8 A Yes.

9 Q All right. At that time, had y'all
10 decided to try to set up any type of perimeter or
11 anything like that on Mr. Worley's property -- or
12 anything, any kind of practice or procedure to avoid
13 a threat or anything like that?

14 A As I said earlier, I figured it was
15 somebody shooting at a deer. There was no need for
16 anything like that.

17 Q All right. You assumed that's what it
18 was?

19 A I believed it would be something simple
20 like that.

21 Q And if it were so simple as shooting at a
22 fox, that wouldn't shock you either, would it?

23 A No, it would not.

24 Q Okay. Y'all have got a good bit of rabid
25 foxes and raccoons and stuff like that found in

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1 McCormick County year after year, don't you?

2 A Not that I'm aware of.

3 Q Really?

4 A There may be one or two cases, but it's
5 not like an outbreak.

6 Q Have you read the actual reports?

7 A No.

8 Q Okay.

9 A But the ones that I've really looked at,
10 there's maybe one or two cases a year.

11 Q Now, after you headed over to the
12 Sheffields', is that correct?

13 A Yes.

14 Q Did you instruct the other two officers,
15 Nick Moore and Melissa, what to do, or not?

16 A No, I didn't.

17 Q Okay. And because you were there on the
18 Worley property first and although you were in
19 command, you didn't tell them what to do or not to
20 do?

21 A No.

22 Q All right. So who would -- they just did
23 what they wanted to do?

24 A We did what we knew needed to be done.

25 Q All right. And what was that?

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1 A I talked to the complaints. Deputy Moore
2 went to the residence. They knocked on the door.

3 Q Okay.

4 A And Deputy McAllister stood between the
5 two of us.

6 Q Okay. And there was no light on at the
7 time?

8 A When Deputy Moore went to the residence,
9 there was no light on in the front.

10 Q Okay. And while you were talking -- how
11 long would you say you were at the Sheffield's'
12 talking to the Sheffield's?

13 A No more than three minutes.

14 Q All right. And during that three minutes,
15 did you say Moore across the road was knocking on
16 the door and maybe ringing the bell, and maybe
17 announcing "Sheriff's Office"?

18 A He was definitely announcing "Sheriff's
19 Office."

20 Q Okay. And do you have any idea of the
21 acoustics inside of that house as to whether or not
22 if you're in that back bedroom, you could hear
23 somebody announce "Sheriff's Office"?

24 A I wouldn't have a clue. I've never in the
25 residence.

1 Q And nobody has done any type of acoustical
2 study or anything like that you're aware of?

3 A Not that I'm aware of.

4 Q All right. Now, after Mr. Moore knocked
5 on the door with Melissa between the two of you --
6 so she wasn't up there against the door. She was
7 kind of at the back of the residence, kind of
8 between the two of y'all?

9 A More of a line.

10 Q Okay. After that, what happened?

11 A A light came on in front of the residence
12 -- well, Deputy Moore was walking back toward us so
13 he got no response.

14 Q Okay.

15 A A light came on. I informed the
16 Sheffields that they needed to go back inside while
17 we talked with them.

18 Q Okay.

19 A As we were turning to walk toward the
20 front of the residence, the light went out.

21 Q Okay.

22 A We got to the front of the residence,
23 myself on one side of the door and Deputy Moore on
24 the other side. Deputy McAllister stood off to the
25 -- if you're looking at the lake, it would have been

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1 the right side of the porch. And we were knocking.

2 Q And when you say "We were knocking," now,
3 had all three of you gotten up to the corner of the
4 house at that time?

5 A Yes, I was on one side of the front side
6 of the front door. Deputy Moore was on the other
7 side of the front door. Deputy McAllister was
8 standing in the grass off to the right.

9 Q Okay.

10 A Myself and Deputy Moore were knocking and
11 ringing the door bell.

12 Q Okay. Then what happened?

13 A Somebody yelled, "Who is it?" We informed
14 them "the Sheriff's Department," and we heard "I
15 don't give a fuck." I heard the sliding glass door
16 opening.

17 Q Okay.

18 A I started walking backwards.

19 Q Okay.

20 A I saw your client, Mr. Worley, standing in
21 front of the two windows.

22 Q The door windows, you mean?

23 A No, the windows.

24 Q Windows, okay.

25 A Coming out the sliding glass door, he had

1 went to his right.

2 Q Okay.

3 A I saw, standing like this, the metal, wood
4 -- metal, wood -- immediately recognized it as a
5 weapon.

6 Q Okay.

7 A I yelled "Gun." I'm pulling my gun.
8 We're yelling "Sheriff's Department, drop the gun."
9 The lights come in, and I hit the ground face first.

10 Q All right, let me ask you about this, the
11 lights come in. Have you accounted for the flash of
12 the gun? Obviously, a 30.06 at night is going to
13 let out a pretty big light. Did you see the flash?

14 A Actually, I did not even hear it strike.

15 Q All right. So you didn't hear it or see
16 the flash?

17 A No.

18 Q All right. How far did you get your gun
19 up -- after you hollered "Gun -- Sheriff's
20 Department," how far did you get your gun up towards
21 Mr. Worley before you got hit?

22 A I couldn't tell you. It just happened so
23 fast right then.

24 Q If we look at that --

25 A It was probably at least in this area

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1 somewhere.

2 Q You would agree with me, just being a
3 person who owns guns, weapons, and firearms, that in
4 order for that bullet to hit you, that gun had to be
5 pointed at Mr. Worley?

6 A It would have been somewhere in this area.
7 As exactly if it was way up here or right here, I
8 couldn't tell you exactly.

9 Q Did you have it on his body?

10 A I couldn't see him.

11 Q Why did you pull your gun if you couldn't
12 see?

13 A Because he had a gun, we had already
14 identified ourselves as Sheriff's Department, and he
15 said he didn't give a fuck.

16 Q So why didn't you put up your hands and
17 say, "Whoa, whoa, whoa, wait a minute. Wait a
18 minute. Hey, calm down. Look, I see you've got a
19 gun"?

20 A That would be like bringing empty hands to
21 a gunfight.

22 Q Okay. So you considered it a gunfight?

23 A Once I saw the weapon.

24 Q Okay.

25 A And he had already said he didn't give a

1 fuck who we were.

2 Q Okay.

3 A It was time for me to go to my weapon.

4 Q All right. Let me ask you this question.

5 You'd agree that you made prior inconsistent
6 statements about what happened out there that night.
7 You'd agree with that, wouldn't you?

8 A No.

9 Q Well, you would agree that after your wife
10 did help give a statement about what happened after
11 that night on the 20th of November, you also brought
12 a lawsuit, and you made some claims in a lawsuit
13 about negligence on Mr. Worley's part.

14 And in addition to that, when you the
15 Solicitor's Office or Sheriff Reid had the Federal
16 ATF look at it, you gave a statement to them, too,
17 didn't you?

18 A I did speak with an ATF agent.

19 Q Well, the Solicitor's Office has provided
20 me, of course, a copy of that. And if we go back
21 through your statements, they're not consistent
22 about what happened. Is that because you were in
23 shock?

24 A At the time, I was actually shot?

25 Q Yes.

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1 A I knew exactly what was going on. I
2 realized that I had been hit, and I realized that I
3 needed to get out of the line of fire.

4 Q Where were you standing when you were hit?

5 A In front of the residence.

6 Q Where at in front of the residence?

7 A Somewhere in the -- after going back out,
8 it was a clean-out drain, I guess, for a septic tank
9 and a cross-tie.

10 Q Is that where you really believe you were?

11 A Yes.

12 Q Do you have any idea how a piece of your
13 gun butt or the gun that's broke off there was found
14 right in front of the flower bed?

15 A I don't know what flower bed. Which one
16 are you referring to?

17 Q If you're looking right out that sliding
18 glass door, there's a flower bed right out there in
19 front of it, 20 feet or so out.

20 A Where the rocks are at?

21 Q Uh-huh.

22 A I wouldn't doubt it was out there.

23 Q You wouldn't doubt that that's where you
24 got shot?

25 A I would doubt that. I wouldn't doubt that

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1 a piece of the gun flew that far away. He hit the
2 whole side of my gun.

3 Q Okay. But it blew the gun out. It blew
4 it into your hand, right?

5 A Not all of it.

6 Q I understand. Some of it or most of it
7 went into your hand, a lot of it, didn't it?

8 A I have no idea.

9 Q Did you look at the evidence that was
10 found at that big area, the eight-foot area of Bo
11 Willis Road that was picked up by one of the
12 officers out there that night?

13 A I've seen pieces of shrapnel and plastic
14 and the bullets out of my gun.

15 Q Plastic from your gun?

16 A Yes.

17 Q Okay. How did all those get deposited in
18 that area if you got shot over here in a different
19 location?

20 A I'm going to look at the areas. I think
21 you and I are talking about two different areas.

22 Q Well, you're talking about over at the
23 cross-tie, right?

24 A The cross-tie to where the clean-out
25 drains are.

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1 Q Okay. There's two, there's a clean-out
2 drain, there's a cross-tie in that drain, and then
3 there's the bushes in the little flower bed.

4 A I was standing in the area of the cross-
5 tie and clean-out drain.

6 Q Okay. After getting shot, did you turn
7 around? Did it spin you around?

8 A It knocked me flat on my face.

9 Q Okay. Did it spin you there?

10 A Yes.

11 Q You were on your face, so you were down
12 for a second or so?

13 A Yes.

14 Q All right. Do you agree with me that if
15 Mr. Worley had intended to kill you, he would have
16 killed you right there on the spot?

17 A No, I do not agree with that.

18 Q Why couldn't he have killed you right
19 there on the spot? Why couldn't he have killed you
20 if he's got an automatic loaded rifle, he's got
21 another one, and it's an automatic?

22 A He obviously didn't know the safety was
23 out on the gun.

24 Q Well, obviously, the safety was off when
25 he shot you. He didn't have to change the safety in

1 order to get another loaded, did he?

2 A And I was face-down on the ground. He may
3 have thought I was dead. I don't know what was
4 going through his mind.

5 Q All right. Then you got up. One report
6 says you said you were crawling, and another report
7 says you were running. Which was it?

8 A My report said I was crawling?

9 Q Yes, sir. Yes, sir, the one you gave to
10 the federal investigator. Do you recall that?

11 A Maybe like crawl back on my hands and
12 knees, but actually crawling off, no.

13 Q Okay.

14 A I yelled I had been hit, because I
15 realized I had been shot.

16 Q You had been hit, okay. You yelled that
17 "I've been hit."

18 A And Deputy Moore yelled to me to come to
19 him.

20 Q Okay. And where was Deputy Moore at that
21 time?

22 A Right at the -- he was almost up under the
23 opposite side.

24 Q Okay. And in order to come towards Moore,
25 you agree you had to also come towards Mr. Worley?

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1 A Yes.

2 Q So you came toward Mr. Worley again, and
3 he fired another shot, didn't he?

4 A There was a shot fired as I was running.
5 I don't know if he was shooting toward myself or one
6 of the other deputies.

7 Q You do agree you were running?

8 A Oh, I most definitely was running for my
9 life.

10 Q I understand. And the bullet, where did
11 the bullet hit, do you know?

12 A I have no idea.

13 Q It didn't hit you?

14 A No.

15 Q All right. And from where Joe was, how
16 could you see any other officers there?

17 A Deputy Moore saw him.

18 Q I understand Deputy Moore saw him. I
19 understand that's what Deputy Moore might say. But
20 did Deputy Moore have his gun on Joe?

21 A He had drawn his weapon, I do know that.

22 Q If he had his gun on Joe, wouldn't it be
23 procedure to shoot him if he shot you?

24 A Depends on if he had a fair shot. There
25 was a by-standing person. And if there were

1 bystanders in the background, he did not know what
2 was back there.

3 Q So it was okay for him to let you get
4 shot?

5 A I didn't say that. But I realize with my
6 job, that I may have to give my life to do the duty
7 of my job, and I will do it.

8 Q Okay.

9 A And other deputy says the same thing.

10 Q All right. Let me ask you this. Did you
11 have the right to go ahead and shoot Mr. Worley when
12 he didn't put his gun down?

13 A I did not see his weapon pointed in my
14 direction because the lights came on and blinded me.

15 Q Well, when you did see it, where was it?

16 A I did not see his weapon pointed toward me
17 because the lights came on and blinded me. But as
18 long as his weapon is not pointed toward myself or
19 anyone else, I could not have shot him.

20 Q Where did the lights come from?

21 A I couldn't say.

22 Q Well, I just want to make sure I
23 understand. There was one light on that was the
24 spotlight that was on the porch, right?

25 A And it came on.

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1 Q Did you see any other lights on in the
2 house when you stepped out to see Mr. Worley?

3 A No, I did not.

4 Q You identified him. You said he had
5 salt-and-pepper hair.

6 A I did not see any lights on inside the
7 residence.

8 Q But even without that, you identified him
9 as being a person with salt-and-pepper hair, a
10 person who had a long gun in his hand, a gun you
11 believed to be a shotgun.

12 A Yes, I did.

13 Q That's fine. But you said you saw the
14 butt, and you saw the base of the gun.

15 A It was not like this. It was more like
16 this.

17 Q Okay. This position, did you say?

18 A Right.

19 Q All right. And you clearly say in your
20 report it was not pointed at you.

21 A No, it wasn't when I saw it.

22 Q And it was not pointed at any of the other
23 officers.

24 A Not when I saw it.

25 Q All right. Now, how many seconds between

1 the time you say you saw it and you saw this light?

2 A There's no way to answer that.

3 Q Well, in your report, you said, "As I drew
4 my gun and as I was blinded by the light, I was
5 hit."

6 A Yes.

7 Q Well, isn't it true that when you aimed
8 your gun at Mr. Worley, the flash that you saw that
9 blinded you was the muzzle flash of that .06?

10 A If that had --

11 Q There was no light there.

12 A If that had been so, I would have seen the
13 gun pointed in my direction.

14 Q Where was the light? Who cut on a light
15 all of a sudden?

16 A I don't know, because I asked the other
17 ones if there was a motion sensor there.

18 Q There wasn't.

19 A I didn't know if I walked in front of the
20 motion sensor, maybe Deputy Moore, Deputy
21 McAllister, one us walked in front of a motion
22 sensor. I did not.

23 Q What light came on, then?

24 A The light on the corner. It's kind a --
25 like a bush there.

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1 Q It was already on.

2 A No, it wasn't.

3 Q Which one are you talking about now -- the
4 one facing the house around the back from the lake
5 to the house. The one that was on is the one on the
6 left. Are you saying now that the one on the right
7 came on?

8 A No, I'm saying the one that would have
9 been at the left top corner --

10 Q Yes, sir.

11 A -- was off, and then it came on.

12 Q I understand that.

13 A And that would be the only --

14 Q When you walked out there.

15 A No. I walked out because I heard a
16 sliding glass door.

17 Q Okay.

18 A And I walked backwards.

19 Q Okay.

20 A I saw him standing -- if you were facing
21 the lake, he would have been to the right side of
22 the sliding glass doors. I saw the gun. We were
23 yelling "Gun, Sheriff's Department, drop the gun."
24 I'm coming up with my gun. The light comes on and
25 blinds me -- or a light comes on and blinds me.

1 Q All right. But you don't know what light
2 blinded you?

3 A Whatever light was in that corner right
4 there. It was on his property.

5 Q It was already on, wasn't it?

6 A No.

7 Q Well, hold on. Are you trying to tell me,
8 sir, that you were able to see -- I mean, all the
9 other statements are that the light was on, and
10 that's why they came back down there to knock on the
11 door, the last time. The light had to be on.

12 A No, it didn't. It came on, and then it
13 immediately turned back off.

14 Q Okay.

15 A We go to the residence. We hear someone
16 yell from the upper level of the home, "Who is it?"
17 "Sheriff's Department, Sheriff's Office." And his
18 reply is, "I don't give a fuck."

19 Q Okay.

20 A I hear the sliding glass door open up.

21 Q Okay.

22 A I walk backwards. I see a man standing
23 there with a gun. I yelled, "Gun." Nick Moore and
24 I both are yelling, "Sheriff's Department, drop the
25 gun." A light comes on and blinds me. I get shot.

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1 Q You still haven't accounted for the muzzle
2 flash. When did you see the muzzle flash?

3 A I did not see a muzzle flash.

4 Q Well, you know there was one there.

5 A I didn't see the bullet, but I know it was
6 there.

7 Q Right, that's what I'm saying. You know
8 that there was a muzzle flash.

9 A I may have -- the light was too bright and
10 blinding me, and I didn't see it. I don't remember
11 seeing the muzzle flash. I do not remember hearing
12 the shot.

13 Q All right. I'm going to let you go
14 through it. You've got a copy of your statement.

15 Gentlemen, that's Bates stamped pages
16 28 to 272.

17 Beg the Court's indulgence, Your
18 Honor.

19 THE COURT: Yes, sir.

20 Q Officer Rushton, do you recognize that
21 document?

22 A Yes, this is one that my wife typed
23 shortly after I got out of the hospital.

24 Q Okay. And I believe that's the one dated
25 11/20/09?

1 A Yes.

2 Q And it was witnessed by Mr. Collier?

3 A Yes.

4 Q Okay. I'd like to go over this with you.

5 Let's start to the point where -- about six, seven,

6 or eight lines -- "I told Deputy McAllister."

7 A Okay.

8 Q Why don't you read each of those

9 sentences, and let's talk about each one of them at
10 a time.

11 A "I told Deputy McAllister I was going to

12 speak with the neighbors to see if they were the

13 complainants."

14 Q Did you do that?

15 A Yes.

16 Q All right, go ahead.

17 A "While speaking with the neighbors, they

18 informed me that they were the ones that called and

19 made the complaints."

20 Q Okay. You confirmed that with them, that

21 they had called in the complaint.

22 A "They informed me that suspect comes up on

23 Thursdays or Fridays, and he's always coming outside

24 in the early morning hours, yelling and discharging

25 what they believe to be a firearm."

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1 Q Okay. So was it a deer situation at that
2 point, or did you think --

3 A No.

4 Q So you thought he might be discharging a
5 firearm on the weekends. Okay, go ahead.

6 A "At this time, I noticed that lights came
7 on in front of the residence."

8 Q And whose residence are you speaking of
9 then?

10 A The Worleys.

11 Q And which light are you talking about?

12 A It would have been somewhere in the front
13 of the residence, facing the lake, because it's kind
14 of a weird setup, the house.

15 Q And from where you were at, at the
16 Sheffields, you could see that a light came on,
17 correct?

18 A A light.

19 Q Go ahead.

20 A Okay. "As I was walking back, the light
21 went off."

22 Q Okay.

23 A "I returned to the front right corner of
24 the house with Deputies McAllister and Moore."

25 Q Okay.

1 A "Deputy Moore rang the doorbell and I
2 announced, 'Sheriff's Department.'"

3 Q Go ahead. Is the light on at this time or
4 off?

5 A It's off.

6 Q Go ahead.

7 A "A few seconds later, I heard what sounded
8 like sliding glass doors open on the deck."

9 Q Go ahead.

10 A "As I was stepping back to see if anyone
11 was coming out of the residence, I saw a middle-aged
12 white male with salt-and-pepper hair and beard
13 standing on the balcony, holding what I thought was
14 a shotgun."

15 Q Okay.

16 A "I could clearly see the wooden stock and
17 wooden arm of a weapon. At this time, it was not
18 pointed at myself or the other deputies, but pointed
19 upward."

20 Q All right, stop right there. Did you have
21 a warrant for Mr. Worley?

22 A No.

23 Q Had a crime been committed in front of
24 you?

25 A No.

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1 Q Did Mr. Worley threaten to shoot you, or
2 did he threaten to shoot any of the members of your
3 team?

4 A No.

5 Q Did he threaten to shoot anybody in the
6 house?

7 A Not that I knew of.

8 Q In some of your reports, you said you
9 aimed your gun at him because he failed to obey your
10 authority and your orders.

11 A I never said that part.

12 Q You didn't? At a bond hearing for Mr.
13 Worley on Thursday, December 3, 2009, did you recall
14 saying "As we yelled at him to drop the gun and that
15 we were from the Sheriff's Department, his total
16 disregard for our authority and safety, as well as
17 his profanity laced responses, indicated that he had
18 no intention of complying with our lawful demands in
19 any way." Is that your statement?

20 A That's not saying he's doing it directly
21 toward me. He was doing it in general toward law
22 enforcement's authority.

23 Q Let me ask you this. Do you believe as a
24 law enforcement officer you have authority to tell a
25 man on his balcony at 4:00 in the morning, who you

1 say you identified yourself to, to order that he put
2 down his gun?

3 A Four o'clock in the morning?

4 Q Yes, sir -- 4:30 in the morning.

5 A Or 4:30, more or less. He knew we were
6 law enforcement officers. We identified ourselves,
7 and he let us know he didn't care.

8 Q Suppose he didn't? Suppose he did, let's
9 ask that? Suppose he did know you were law
10 enforcement. Do you have authority to make a man,
11 his house, order him to put his gun down at 4:30 in
12 the morning, even if you are law enforcement?

13 A If he wasn't breaking the law, he wouldn't
14 have a problem with it.

15 Q Okay. So that gave you the right to pull
16 that pistol and point it at him to kill him, is that
17 correct? Is that your position under the law?

18 A If he was pointing it or has a gun in my
19 presence --

20 Q Yes, sir.

21 A -- I can pull my gun out to protect
22 myself.

23 Q I've got no problem with you pulling your
24 gun out. I've got a problem with you pointing it
25 and aiming it at him. That's the problem I've got.

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1 A We already had a complaint at the
2 residence of discharging a weapon.

3 Q Okay.

4 A We had no idea if he had or had not
5 committed a crime.

6 Q Okay. Don't you think you ought to do
7 that before you threaten to kill by putting a loaded
8 Glock 40-caliber duty weapon and point it in his
9 face after telling him to drop his weapon?

10 A And he didn't drop the weapon. We didn't
11 know what he was doing.

12 Q Suppose he just decided he didn't want to
13 drop his weapon, he was in his house.

14 A Well, I'm not saying that he's --

15 Q I'm not going to stipulate that he heard
16 you. But let's suppose for a minute. I want to
17 know do you believe that you can tell a person to
18 put down their gun in their own house at 4:30 in the
19 morning.

20 If they don't drop their gun -- they're
21 not pointing it at you, they've just got it up in
22 the air like this -- have you got a right to make
23 them drop it?

24 A Anybody would try to.

25 Q You've got the right to make him drop it

1 if he didn't want to, though?

2 A I can't make him drop it.

3 Q Okay. But you're going to go ahead and
4 aim at his head and not even fire?

5 A And, yes, to protect myself.

6 Q Okay. And the entrance of that gun, the
7 bullet, is pretty clear that you had it aimed right
8 at him. You aren't going to aim it just in the air?

9 A It was in his general direction. But as I
10 stated, I don't know exactly where I had it.

11 Q Now, let me ask you this question. In
12 your lawsuit, you allege negligence?

13 A Right.

14 Q He made a mistake. You understand what
15 I'm talking about? You're suing him for negligence
16 that he made a mistake. Do you know the difference
17 between a mistake and an intentional act?

18 A It was intentional.

19 Q It was intentional, it wasn't a mistake.
20 Is that what you're telling me?

21 A We identified ourselves.

22 Q I'm asking you, was it a mistake? You
23 allege in your lawsuit -- let me let you read that
24 to me. In your lawsuit, paragraph 12 of your
25 complaint -- I'm sorry, paragraph 11. Would you

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1 review that for me? Would you read to us what
2 paragraph 11 says?

3 A "That while the plaintiff, Robert E.
4 Rushton, was investigating this reported
5 disturbance, the defendant, Joe Ross Worley,
6 suddenly and without prior warning fired two shots
7 at the plaintiff, Robert E. Rushton, with a 30.06
8 rifle, with one of the shots striking him and badly
9 injuring his right hand."

10 Q Okay. Is that the way it happened?

11 A He didn't warn me he was going to shoot
12 me.

13 Q Okay. And did you warn him that you were
14 going to aim the gun at him?

15 A I did not warn him.

16 Q Did you say, "If you don't put that gun
17 down, I'm going to shoot you"?

18 A No, I did not.

19 Q So y'all didn't really have a whole lot of
20 time to be talking. Once you said "Gun," according
21 to the other officers, shot, bam.

22 A Yes.

23 Q Shot. As soon as you said "Gun," he shot
24 you?

25 A I had a fraction of a second to get my gun

1 up.

2 Q Okay. You do agree that the heading for
3 the first cause of action is "negligence as to
4 defendant Joe Ross Worley," saying that it was
5 negligence.

6 A Yes.

7 Q Which means accidentally. So you're not
8 -- you don't agree with this complaint that he was
9 reacting, that he didn't recognize you as an
10 officer, thought you were something other than
11 officer. You got shot as a result of your not
12 having proper attire on to identify yourself with?

13 A I had my badge properly displayed.

14 Q All right. And you didn't have the badge
15 like you've got it right there now, up on your
16 shirt. It was down here on a belt, is that correct?

17 A Yes. But he could see my gun and see my
18 badge.

19 Q How do you know that?

20 A I was right in front of him.

21 Q Had you begun to turn around?

22 A And I stepped toward him with hands out.

23 Q Did you turn around?

24 A I'm sorry.

25 Q Did you turn around to shoot?

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1 A My gun?

2 Q Did you point? How do you shoot? Do you
3 shoot square, or do you shoot at angle?

4 A I step back with my right leg.

5 Q Your body too, like this?

6 A No, it would have been bladed.

7 Q Bladed, okay. If you're bladed, where is
8 your belt? Where is this? If you're bladed to him,
9 where is your badge?

10 A My badge would have been pointing toward
11 him, because I carried it the same place it is right
12 now.

13 Q Well, is that where it was on your --

14 A Yes, I've always carried my badge right
15 there.

16 Q Okay. Did you shoot him from this
17 direction, from the right, or did you shoot him from
18 the left?

19 A It would be my left that would have been
20 pointing toward him. I dropped my leg backwards,
21 and then I fired.

22 Q You shot this away -- to your left?

23 A I shot like this.

24 Q I notice you come up with both hands.

25 A Right.

1 Q Did you use both hands that night?

2 A I don't recall. I could have dropped my
3 flashlight. I could have shined my flashlight.

4 Q Well, there's a different police procedure
5 on that. Let me ask you while you're standing there
6 about that. Let's talk about that just a moment.
7 There are two ways to shoot when you've got a
8 flashlight, is that correct? There are several ways
9 it's been taught, but there's two ways you're
10 supposed to shoot with a flashlight?

11 A Yes, ever which is more comfortable.

12 Q Which is more comfortable with you? Show
13 me.

14 A I can shoot both ways.

15 Q Well, give me -- show the Court the ways
16 to shoot with a --

17 A The different ways?

18 Q Yes, the different ways.

19 A Pull your flashlight out to one side.

20 Q With the other arm?

21 A Yes.

22 Q With the other arm pointing towards the
23 subject?

24 A Yes.

25 Q Okay.

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1 A Or a lot of officers prefer to shoot like
2 this with the support from their left arm.

3 Q Okay. And it's possible that you dropped
4 the flashlight?

5 A I dropped it that night, but, I mean --

6 Q It was dropped somewhere, is that right?

7 A Yes.

8 Q Do you know whether you dropped it before
9 you were shot, or do you think you dropped it after
10 you were shot?

11 A I don't know.

12 Q Okay. Now, when you talked to the --
13 let's go ahead and let's finish up your statement
14 there. We want to get back to that. Talk to me a
15 little bit about your statement there.

16 A It gives a description of Mr. Worley.

17 Q Now, yes, you got the description. Read
18 that again. What did you say you saw?

19 A "I could clearly see the wooden stock and
20 wooden arm of a weapon."

21 Q Go ahead.

22 A "At this time, it was not pointed at
23 myself or the other deputies but went upward."

24 Q Okay.

25 A "I immediately yelled "Gun," letting the

1 other deputies know."

2 Q Okay.

3 A "Deputy Moore and myself ordered the
4 suspect to put the gun down, or we would shoot."

5 Q Okay.

6 A Right.

7 Q Okay.

8 A "As we continued to yell, 'Put the gun
9 down, Sheriff's Department,' I started to draw my
10 duty weapon."

11 Q Okay.

12 A "The suspect moved, and I was blinded by
13 the floodlights on the upper deck."

14 Q Let me ask you a question. Do you know
15 now that your people sent people out there -- and
16 you were out there as I understand -- an
17 electrician, to see where he would have had to have
18 been. He'd have to go inside the house to cut the
19 light on, wouldn't he?

20 A On the -- if he turned the lights on, yes,
21 but I didn't see him turn the lights on.

22 Q How could another light have come on?

23 A Someone else could have turned it on.

24 Q Someone else could have turned it on.

25 A There was a -- his mother was there.

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1 Q So now you're saying the mother turned the
2 light on?

3 A I don't know who turned the lights on.

4 Q Go ahead and read on.

5 A "As it happened, I heard a gunshot and was
6 hit in the right hand and was knocked to the
7 ground."

8 Q As what happened? You wrote that.

9 A As I got shot?

10 Q Pardon?

11 A As I got shot?

12 Q I don't know. I'm asking out --

13 A That's when I heard a gunshot. It's in
14 this here statement. I think I've already mentioned
15 that.

16 Q In that one, you're saying that you heard
17 it? Is it possible that you saw it -- saw the
18 flash?

19 A I have played this night over in my head
20 thousands of times.

21 Q Officer --

22 A I don't remember seeing the gunshot.

23 Q You don't remember seeing the gunshot?

24 A No, I didn't.

25 Q Go ahead, then.

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1 A "I yelled that I had been hit. Deputy
2 Moore started yelling at me to come to him. As I
3 was getting off the ground and started running
4 toward Deputy Moore, the suspect then discharged
5 another round."

6 Q Okay.

7 A "Deputy Moore led me to the back of the
8 residence, out of the line of fire. We then heard
9 something that we thought was the suspect coming out
10 of the residence. Deputy Moore then got me to the
11 patrol car as Deputy McAllister covered us."

12 Q All right, thank you. Did you have an
13 occasion to speak to a Bureau of Alcohol, Tobacco,
14 and Firearms agent, Shawn Stallo, on June 9, 2010?

15 A I believe that was his name.

16 Q Tell me how that interview occurred.

17 A I believe -- I'm not real sure if the
18 Solicitor's Office or Investigator Collier contacted
19 me. But I spoke to the agent here at the courthouse
20 about the incident.

21 Q About the incident?

22 A Yes.

23 Q And he's a federal officer?

24 A Yes.

25 Q You know the importance of giving a true

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1 and correct statement to him?

2 A Yes.

3 Q All right. And if we go back through and
4 we look at the statement that he says -- can we go
5 down to the narrative where it gets to the point
6 where it's talking about law, approaching the rear,
7 go in the residence.

8 A Okay.

9 Q Let's kind of go through that and talk
10 about the statement that you made there.

11 THE COURT: Before we get into this, let's
12 take a break, if you don't mind.

13 During the break, you cannot discuss
14 your testimony with anybody.

15 We'll be at ease for ten
16 minutes.

17 (Whereupon, court was in
18 recess, after which the following proceedings were
19 had.)

20 THE COURT: All right, are both sides
21 ready?

22 MR. GARRETT: Yes, sir.

23 THE COURT: You may continue.

24

25

1

2

3 Q Officer Rushton, we were reviewing the
4 statement made by Officer Stallo. We'll pick up
5 from there and talk about the section that goes
6 "While approaching."

7 A "While approaching the rear of the Worley
8 residence, Deputy Rushton could hear someone" --

9 THE COURT: Back up and talk into this
10 mike.

11 A "While approaching the rear of the Worley
12 residence, Deputy Rushton could hear someone walking
13 on the second-story deck above. Deputy Rushton" --

14 THE COURT: Hold on.

15 Q Let me ask you this. Did you tell Officer
16 Stallo that before you got to the back of the Worley
17 residence that you heard someone walking on the
18 second-story deck above before the door opened?

19 A I do not recall that. These are his
20 words, not mine.

21 Q I understand. But this is a statement he
22 said that in response to an interview, you
23 essentially stated the following. Is that correct?

24 A Essentially?

25 Q Yes.

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1 A But not word for word.

2 Q I understand. My question is, did you
3 tell Stallo under any circumstances that Mr. Worley
4 was already out on his deck when y'all got back to
5 his house?

6 A No --

7 Q Did that happen or not?

8 A No, I did not.

9 Q All right. So if Stallo put that down
10 there, that was a mistake?

11 A Yes, it was.

12 Q So that sentence is a mistake?

13 A Yes, it is.

14 Q All right, let's go on from there.

15 A "Deputy Rushton witnessed Worley walking
16 on the second-story deck with a long gun in his
17 hand. Deputy Rushton drew his firearm and yelled at
18 Worley that he was from the Sheriff's Department."

19 Q All right, stop. Here he says -- did you
20 tell Officer Stallo that you drew your gun and then
21 yelled at Worley that you were from the Sheriff's
22 Department?

23 A I do not recall saying that.

24 Q You were at this interview?

25 A Yes, I was. But as I said, these are his

1 words, not mine.

2 Q Okay.

3 A He was not in there dictating word for
4 word what I said.

5 Q All right. And then Worley responded --
6 after you say "Rushton drew his firearm and yelled
7 at Worley that he was from the Sheriff's Department,
8 Worley responded 'I don't give a fuck.' Deputy
9 Rushton became blinded by a floodlight shining from
10 the back of Worley's residence." Is that true?

11 A No, he yelled "I don't give a fuck" prior
12 to me ever seeing him. And the floodlights would
13 have been -- like I said, when you come in off the
14 driveway, that's actually the rear of the house. So
15 the floodlights would have been by his house, toward
16 the lake.

17 Q All right. And let's look at the next
18 paragraph. Go ahead.

19 A "Deputy Rushton was trying to observe
20 Worley and was suddenly shot in the hand, causing
21 him to drop his duty weapon."

22 Q Is that true?

23 A Yes.

24 Q Okay, go ahead.

25 A "Deputy Rushton fell to the ground and

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1 immediately heard a second shot but was not struck."

2 Q Go ahead.

3 A "Deputy Rushton then heard Worley yell,

4 'I'm going to get you, you son of a bitch.'"

5 Q Okay. I notice in your testimony in your
6 earlier statement, you didn't say anything about all
7 of that.

8 A About?

9 Q About this statement, "I'm going to get
10 you, you son of a bitch."

11 A I may have not said that.

12 Q Sir?

13 A I may have not said it in the statement.
14 That doesn't mean it's not true.

15 Q Did you tell Stallo that he made that
16 statement when you described these events that
17 happened, yes or no?

18 A I believe what was said was when we heard
19 him coming out of the residence, he yelled, "Where
20 you at, you son of a bitches?"

21 Q Okay, son of a bitches?

22 A Yes.

23 Q Where did you put that at? In which
24 statement did you put that? I've got all of your
25 statements. I've got your statement from the bond

1 hearing. I've got your lawsuit. I've got your
2 written statement made by your wife. I've got this
3 statement. I'm going to hand you those statements
4 that you made. Do you have any other statements?

5 A It may have been omitted from the
6 statement.

7 Q Okay. So you're wanting to add it today?

8 A I said it all along, except for it's
9 apparently not in the statement. And not
10 necessarily would it have been in a bond hearing
11 statement. My attorneys planned the lawsuit and
12 worded it for me.

13 Q Okay.

14 A And this statement is one that my wife did
15 type for me.

16 Q Is the same thing about the son of a
17 bitches in that?

18 A No, and it was omitted.

19 Q Okay.

20 A Not intentionally omitted.

21 Q Did you at any time prior to this hearing
22 today move to identify or tell the Solicitor's
23 Office or Sheriff Reid or Sperrier, the chief deputy
24 over there, "Hey, man, I left some stuff out of that
25 statement. You know, it was just five days after I

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1 got shot. I need to go ahead and finish it"?

2 A I have the one that's -- the Solicitor's
3 Office has a statement, but I did not realize it was
4 not in this statement.

5 Q All right. So there are some statements
6 out there that you informed the Solicitor's Office
7 about that have not been provided to the defense.
8 Is that what you're telling us?

9 A I have no idea what you were or were not
10 provided.

11 Q Well, I've given you the three -- the four
12 items that I have that are statements that were made
13 by you, in your name.

14 A And apparently at some point you were
15 informed --

16 Q What are you talking about?

17 A It says that.

18 Q Says what?

19 A Right here. So at some point, you did
20 know about it.

21 Q That's at a different time.

22 A But you're saying you weren't informed,
23 but you have this.

24 Q It doesn't say "son of a bitches." It
25 says "son of a bitch."

1 A As I just said, this is his words, not
2 mine.

3 Q Okay. So you told Officer Stallo that it
4 was "son of a bitches," plural, meaning that he was
5 going to get more than one person. Is that what
6 you're telling me?

7 A It could have been "son of a bitch." I
8 mean, I had just had my hand blown off.

9 Q Okay.

10 A I wasn't paying a whole lot of attention
11 to his words.

12 Q I understand. But you understand words
13 are important if you're under oath and you're making
14 bogus statements.

15 A It could have "bitch," or it could have
16 been "bitches."

17 Q All right.

18 A I'm really not sure.

19 Q All right.

20 MR. GARRETT: Can I mark this up as
21 evidence, his statements, for purposes of this --
22 I'd like to put them all in as one exhibit.

23 THE COURT: Show it to the Solicitor.

24 MR. MYERS: No objection.

25 THE COURT: Mark that into evidence,

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1 please.

2 COURT REPORTER: Defendant's Three A.

3 (Defendant's Exhibit Three
4 A, Statements of R. E. Rushton; complaint letter
5 3/1/11 to Clerk of Court; summons letter 6/10/10 to
6 Clerk of Court; answer filed 6/10/10, were marked
7 for identification.)

8 Q Officer Rushton, have you had an
9 opportunity to review the statements of the other
10 officers who were with you that evening?

11 A I have briefly looked at them.

12 Q When did you do that?

13 A It's been a while that I actually sat down
14 and read them.

15 Q Do you agree that there's a lot of
16 inconsistencies between what you said in your
17 statement and what the other officers who were there
18 say in their statement about what happened?

19 A Yes, I'll agree that some things are not
20 exactly the same.

21 Q Okay.

22 A But a different person's point of view,
23 you're not going to get the same results.

24 Q If Nick Moore in his statement to Stallo
25 basically says that when you pulled your gun, then

1 immediately there was a shot, and you fell - he says
2 you say you pulled your gun, said "Sheriff's
3 Office," and you fell. And there's not "Put the gun
4 down," nothing about a gun, nothing about "Put the
5 gun down." Do you have any idea why Nick Moore
6 would say something different about what happened
7 out there that night?

8 A He could have been focusing his attention
9 on something else. It's speculation. I can't --

10 Q Well, I mean, he's y'all's partner. He's
11 your partner with you that night, right?

12 A When I yelled "Gun," he could have been
13 focusing his attention on Mr. Worley at the time.

14 Q And if he says immediately a shot rang
15 out?

16 A You'd have to ask him.

17 Q I want to talk to you just a little about
18 procedures, if I can. Are all gun calls and shot
19 fired calls -- are they always regarded as high-risk
20 calls by police officers in your training?

21 A They should be, but they're not.

22 Q Was this?

23 A Initially, no.

24 Q Were you trained as an officer to avoid
25 placing yourself in unnecessary danger on such

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1 calls?

2 A You try not to place yourself in
3 unnecessary danger, but at times, you can't help it.

4 Q You try to make sure everyone at the
5 location knew that you were a police officer?

6 A There's no way that anyone there didn't
7 hear us, we yelled so loud.

8 Q All right. Were you trained that unless
9 shots were being fired first, seek information from
10 the caller if at all possible?

11 A I did.

12 Q What information did you gather from the
13 Shepherds?

14 A Shepherds?

15 Q I'm sorry, the Sheffields.

16 A With briefly speaking with them, that the
17 Worleys, Joe in particular, would come up on
18 Thursdays or Fridays. Apparently, he had done this
19 quite a few times, gone out in the early morning
20 hours, loud profanity, discharging the weapons.
21 They had spoke with Ms. Worley's mother in attempts
22 to get him to stop doing it, and they failed.

23 Q Okay. To your knowledge, did they ever
24 speak with Joe directly about this?

25 A I have no idea.

1 Q And then did they tell you that on
2 occasion back in September, they had notified law
3 enforcement about the problem, about Mr. Worley?

4 A They did mention something about they had
5 talked to a deputy before.

6 Q Okay. And do you have knowledge or did
7 you look into it to see whether or not the deputy
8 had actually talked with Mr. Worley?

9 A I don't believe he did.

10 Q Did you try to ask him, "Well, is the man
11 mentally unstable?" or some problem with mental or
12 drunk, just disorderly, or any of that stuff?

13 A No. Once we saw the lights come on at the
14 front of the residence --

15 Q Okay.

16 A -- they were asked to go back inside their
17 residence.

18 Q All right. Were you trying to maintain
19 cover and not to expose yourself while involved with
20 such calls approaching a house on a shots fired
21 situation?

22 A There is a difference between concealment
23 and cover.

24 Q Okay.

25 A And depending on the situation, different

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1 situations dictate your actions.

2 Q Have you been trained both to conceal
3 yourself and cover yourself under both scenarios?

4 A If possible.

5 Q If possible.

6 A At that particular time, it wasn't
7 possible.

8 Q Why was it not possible?

9 A There was nothing there to hide behind.

10 Q Okay. Why didn't you ask dispatch to
11 locate the Worleys by phone, call them, and ask Mr.
12 Worley to step out and say that the deputies on
13 scene would like to talk with him? Wouldn't that
14 have been a lot safer?

15 A Also, if he had intentions of harming
16 someone, we would make ourselves a target.

17 Q Do what?

18 A We had no idea, once we found out from the
19 Sheffields that he had discharged weapons and things
20 in the early morning hours or at night. I'm not
21 going to call somebody and say, "Yes, I'm outside.
22 Come shoot me."

23 Q Did you have any reason to believe that
24 Joe Worley had anything police officers to shoot a
25 police officer?

1 A I don't know.

2 Q I mean, do you have any evidence that he's
3 crazy or he's involved in some kind of militia, or
4 some kind of sovereignty group, or one of these
5 gangs or something that has a problem with law
6 enforcement?

7 A I have no proof that he doesn't, either.

8 Q Okay. So because you don't have any
9 proof, you assume that he is. Is that what you're
10 telling us?

11 A Not all the way.

12 Q So if there's anybody who doesn't do what
13 you say -- "Drop that gun" -- you have a right to
14 shoot them because you think they might be an
15 anti-police person?

16 A Not necessarily.

17 Q Well, what is necessarily? Necessarily
18 gives the right to shoot somebody on their own land.

19 A If he points the gun at me --

20 Q Okay.

21 A -- yes, I would have shot him.

22 Q He didn't do that, did he?

23 A Apparently, he did. I was shot.

24 Q Only after what?

25 A After I was blinded by the lights from his

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1 balcony.

2 Q After what? What else transpired?

3 A He yelled out he didn't give a fuck about
4 being the police.

5 Q What else transpired? You don't think
6 that gun pointed at him had anything to do with it?

7 A Honestly, I think he was going to shoot me
8 either way.

9 Q Well, where do you get that from?

10 A When we yelled "Sheriff's Department," he
11 yelled "I don't give a fuck."

12 Q All right. So then why in the world did
13 you go out there with somebody if you thought
14 somebody was going to shoot you anyway?

15 A I had no idea that he was going to yell "I
16 don't give a fuck" until I was there.

17 Q Well, you hadn't been exposed to him until
18 after he said "I don't give a fuck," right?

19 A Right that second or a few seconds, two or
20 three seconds.

21 Q All of this went done in about two
22 seconds, didn't it?

23 A It was pretty fast.

24 Q It was real fast, wasn't it? And you
25 yelled "Gun," and you pointed your gun at him. That

1 flash you saw was that .06 shoot?

2 A No.

3 Q Quickly. It wasn't any of this "Let's
4 discuss it," like there should have been. It was
5 just pulling the gun on him and pointing it at him,
6 and you got shot.

7 Q Like I told you, the floodlights blinded
8 me.

9 Q All right. So you didn't answer my
10 question about why didn't you just call down there
11 and talk with Ms. Worley or Joe Worley and check on
12 it and just say, "Look, the neighbors are
13 complaining about you shooting down there.
14 Probably, just a deer. Probably somebody down there
15 shooting. Look, you're waking up your neighbors.
16 Don't do that, Joe. Cut that stuff out. Don't be
17 doing that anymore."

18 A I have never done that on a shots fired
19 call, and I never would.

20 Q All right. Then, as an alternative,
21 couldn't you have put your patrol car well back from
22 the house, turned on your emergency lights,
23 spotlight, high beams, and asked Mr. Worley to step
24 out where you could see him? In other words, get in
25 your patrol car. You said you had this little mike

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1 on?

2 A Yes.

3 Q Did you have one in your car?

4 A Yes.

5 Q Why couldn't you have pulled the vehicle
6 on down around there, behind the vehicle, behind the
7 block of the vehicle, got on the mike and said, "Mr.
8 Worley" or "Joe Worley" or "Margaret Worley," "We're
9 the police. We're here. We need both of you to
10 come out. Just come out. I've got to talk to you"?

11 A That's one scenario.

12 Q You could have done that, couldn't you?

13 A That's one scenario, yes.

14 Q You could have done that, couldn't you?

15 A Yes.

16 Q You could have called them on the phone?

17 A Could have called the SWAT teams, too.

18 Q You could have.

19 A But that wasn't necessary, either.

20 Q But you didn't. As soon as he said "I
21 don't give a fuck," if he really said that -- if he
22 really said that -- then are you going to walk
23 yourself into harm's way -- if somebody just said
24 that?

25 A Yes, I did.

1 Q All right. And that's part of your
2 training?

3 A I don't recall ever being told to do that,
4 but I did do it.

5 Q Okay. Are you familiar with the terms
6 cover and contact?

7 A Cover, contact, concealment -- yes, I'm
8 very familiar with them.

9 Q Aren't you trained to keep cover behind
10 the engine block of the patrol car.

11 A There's no way possible to get in my
12 patrol car in front of that residence.

13 Q Well, once you heard somebody that sounded
14 like you say, say "What you want?" and you say,
15 "Police." And he says, "I don't give an 'f,'" you
16 know, you're trying to say on one hand it doesn't
17 sound like a bad situation. Why would you just
18 dally outside there and expose yourself to that? I
19 don't understand.

20 A Do you know how many times I've been
21 cussed out by suspects?

22 Q Okay. And so this homeowner was a suspect
23 that night?

24 A There were shots fired. The neighbors had
25 concerns about safety.

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1 Q Did you talk --

2 A I have no idea why he shot. It could have
3 very well have been at a fox.

4 Q Okay.

5 A I do not know.

6 Q I know, I know. And I wish somehow I
7 could fix it for all of us. Let me ask you about
8 Ms. Sheffield. Let me ask you about her. Were
9 there lights on, or did they come on when you and
10 the other officers drove up there?

11 A I don't know. When I got out of the car
12 and started walking toward the Worleys' residence, I
13 looked over. I saw lights, what I believed to be a
14 kitchen, and I saw movement.

15 Q All right. Weren't you trained to always
16 try to get the suspect to come to you rather than
17 you going to him, and isn't that the standard police
18 procedure to never put yourself in an exposed
19 position on a shots fired call?

20 A No, that's not true.

21 Q That's not true?

22 A No.

23 Q Well, how would you have done it
24 differently? How were you trained to do it?

25 A I have -- like I said, I've played this

1 over in my head thousands of times. What we did
2 that night, we did the correct way. I wouldn't
3 change a thing.

4 Q Okay.

5 A I got shot. That's just way it is.

6 Q Okay. You wouldn't do anything different?

7 A I can't help I got shot. We did what we
8 needed to do that night.

9 Q Now you've got a uniform that you didn't
10 have that night?

11 A Your uniform doesn't give you your
12 authority. Your badge does, which I had properly
13 displayed.

14 Q Okay. Do you know that active shooter --
15 is or isn't it true that Mr. Worley wasn't an active
16 shooter? Was he an active shooter?

17 A He fired some shots prior to us getting
18 there.

19 Q Do you know what time?

20 A No, I do not.

21 Q Okay. So obviously, if you took all that
22 time to ring the doorbell, he wasn't an active
23 shooter, was he?

24 A He could have been preparing.

25 Q Well, what are you trained -- that

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1 somebody that's got all the lights out, that had
2 left the scene or y'all were almost leaving the
3 scene until the light came on, that that person must
4 be inside planning to shoot a police officer?

5 A Jus thought he went back to bed or
6 something.

7 Q Pardon me?

8 A Kind of thought he probably went back to
9 bed.

10 Q Okay. I mean, in theory, you could have
11 just waited till the next morning and went down
12 there and saw him after it turned the light of day,
13 and knocked on the door and said, "Joe, what you
14 doing," right?

15 A Yes. But the Sheffields I'm sure would
16 have complained to the sheriff that we didn't
17 respond to their complaints.

18 Q Well, you did a good job --

19 MR. MYERS: Your Honor, I have not
20 objected but one time I believe on this witness.
21 But I think we've gone far afield about what the
22 statute requires. What the officers could or could
23 not have done is just not relevant.

24 MR. GARRETT: Your Honor, I'll show that
25 it is very relevant, if I may.

1 MR. MYERS: It's not relevant to the
2 statute.

3 MR. GARRETT: May I explain to the Court
4 how it is?

5 THE COURT: Yes, sir.

6 MR. GARRETT: Your Honor, under our
7 statute, it clearly provides that the officer has to
8 announce himself according to applicable law. Under
9 applicable law, if there's no practices and
10 procedures for the McCormick County Sheriff's
11 Department, those applicable law was to the general
12 law and to what he's trained at the Academy.

13 It's clear the procedure used this
14 night in question was not proper procedure. And our
15 next witness will demonstrate that. We believe that
16 the applicable law section requires that police
17 officers follow applicable law in order for them to
18 get the exemption.

19 Our legislature is smart. Our
20 legislature could have said very easily all a police
21 officer has got to do is say "Police officer,"
22 period, and that would be the end of it. Instead,
23 our legislature said, "No, the officer has to give
24 that information that he's a police officer under
25 applicable law."

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1 So we believe that based on other
2 jurisdictions -- Colorado, Georgia, Florida -- that
3 that other law means that they have to follow proper
4 procedure when they announce themselves.

5 MR. MYERS: I think -- I'm sorry.

6 THE COURT: Go ahead.

7 MR. MYERS: I think the applicable law is
8 knock and announce. And knocking and announce, this
9 officer said was done. And ringing and announcing,
10 which is analogous with knocking.

11 THE COURT: Since this is such an
12 unsettled situation in the law, I'm going to allow
13 you to ask questions. I've been struggling for the
14 last 30 minutes with a lot of the questions,
15 wondering what they had to do with anything that's
16 within my realm of inquiry.

17 MR. GARRETT: I'll connect it up, Judge,
18 very shortly when I put up my expert.

19 THE COURT: No, you're not going to
20 connect up the things I've been thinking about,
21 because you've been asking him questions like "Why
22 would so and so put down such and such?" You've
23 been asking him why other people did things.

24 I don't -- it sounds like a
25 deposition in large part, Mr. Garrett. But I'm

1 going to let you go ahead. Go ahead.

2 MR. GARRETT: Yes, sir.

3 EXAMINATION CONTINUED

4 BY MR. GARRETT:

5 Q Do you agree that an officer should make
6 every effort to make sure that the homeowner knows
7 that the officer is coming on their property?

8 A In certain circumstances.

9 Q I'm talking about this circumstance.

10 A I didn't want to be a target
11 unnecessarily. I never did. But how else could I
12 have done this other than -- I talked to the
13 Sheffields. Deputy Moore went directly to the
14 residence and started knocking and ringing the
15 doorbell. That was trying to make contact with the
16 residents.

17 Q So do you agree or not that you have to
18 make every effort to make sure that the property
19 owner on this property that you're on knows that
20 you're there?

21 A Which we were trying to do.

22 Q Okay. And is it especially important late
23 at night when people are asleep, weapons may be
24 present, especially in rural areas.

25 A Which we were trying to make contact.

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1 Q No, I'm talking about the deer situation.

2 A Right.

3 Q And do you have any idea why this man
4 would have shot a police officer that night?

5 A Some people don't like police.

6 Q Okay. So you think that's why he shot
7 you?

8 A No, I have no idea why he shot me.

9 Q All right. Are you familiar with the
10 terms fatal funnel, killing zone?

11 A Yes.

12 Q Do you know what they mean?

13 A Yes.

14 Q Okay. How about tombstone courage?

15 A Yes.

16 Q Are you familiar with those terms?

17 A Yes.

18 Q What do they mean?

19 A Fatal funnel?

20 Q Yes, sir.

21 A It's when you're pretty much in a funnel.

22 Pretty much, there's no way of surviving. Tombstone
23 courage, there's only heroes and dead heroes.

24 Q Okay, killing zone?

25 A Yes.

1 Q What about rushing a bad call. Do you
2 know what that is when you rush a bad call?

3 A Where I took my time when I went over to
4 the Sheffields to gather intel before going to the
5 residence?

6 Q No, I'm talking about running out there
7 after the first time he said "I don't give a fuck"
8 or whatever.

9 A I wasn't rushing that night.

10 Q Okay. At the time you were shot, isn't
11 it true that you had been walking around a darkened
12 house late at night, exposed with no cover, on a gun
13 case?

14 A The cover was at the side of the house.

15 Q Okay.

16 A And then I had my flashlight.

17 Q And you left the cover?

18 A To go out to the scene.

19 Q Isn't that a dangerous, unnecessary thing
20 to do, reckless?

21 A It depends on whose perspective you look
22 at it.

23 Q I'm looking at yours.

24 A He could have shot through the
25 floorboards, too.

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1 Q Sir?

2 A He could have shot straight through the
3 floor and hit us too, because we were directly under
4 him.

5 Q I understand. But he didn't do that, did
6 he?

7 A He could have.

8 Q I understand he could have, but he didn't,
9 did he? And had you not exposed yourself, he
10 wouldn't have gotten a shot on you?

11 A I don't know that.

12 THE COURT: All right. Explain to me how
13 that has anything to do with what I'm trying to
14 decide.

15 MR. GARRETT: All right, Your Honor, I
16 will. His procedure, Your Honor, as to him stepping
17 out recklessly is not proper police procedure. It's
18 our position that when he announced and he committed
19 to shoot my client or aim his gun at my client, my
20 client had every right to self-defense.

21 If you will look at the Castle
22 doctrine, our legislature has allowed under Castle
23 doctrine to incorporate any other defenses which the
24 defense may use, including self-defense, defense
25 habitation, and any other defense, Your Honor.

1 And this section is dealing with the
2 recklessness of him exposing himself to a situation
3 that he didn't need to, improper police procedure.

4 THE COURT: Go ahead.

5 Q You would acknowledge that you were
6 wearing a low visibility uniform, if at all?

7 A Those khaki pants were very visible.

8 Q Have you -- what happened to the pants and
9 the shirt that you had?

10 A I believe EMS cut my shirt off, and when I
11 was in the hospital, the nurses or who cut the pants
12 off me. I have no idea where they ended up.

13 Q This light that you were using, is it
14 standard issue?

15 A No, it is not.

16 Q All right. Who bought that light?

17 A The light was given to myself and a couple
18 of other international police advisors.

19 Q All right. And that's the one that --

20 A Yes.

21 Q -- was left at the house, was yours?

22 A It was issued by the U.S. Department of
23 State, international narcotics and law enforcement.

24 Q All right. And it's not one of those
25 larger mag lights?

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1 A No, it was not.

2 MR. GARRETT: Beg the Court's indulgence.

3 THE COURT: All right.

4 Q One other thing. Have you ever had a
5 certificate of reinstatement signed by a Circuit
6 Court Judge prior to your going to work that night?

7 A Not that I'm aware of.

8 Q Sir?

9 A Not that I am aware of.

10 Q You're sure you didn't take an oath of
11 office, and you're sure you didn't sign one of those
12 or have a Judge sign one of those certificates?

13 A Me personally have a Judge sign it? No, I
14 did not.

15 Q You've never seen one?

16 A No.

17 MR. GARRETT: Beg the Court's indulgence.

18 Q I believe that's a certificate of
19 appointment, I believe is the proper word --
20 certificate of appointment?

21 A I did not personally have anyone sign it.

22 Q Okay.

23 THE COURT: Questions for the witness?

24 MR. MYERS: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. MYERS:

2 Q Bobby, y'all got the call in the early
3 morning hours, after 3:00 a.m.?

4 A Yes.

5 Q Somebody's shooting in our neighborhood?

6 A Yes.

7 Q Firing a gun?

8 A Yes.

9 Q Between 3:30 and 4:00 in the morning?

10 A Yes.

11 Q You get out there at four or a little
12 after, is that right?

13 A Yes, sir.

14 Q You were out there with two other
15 officers?

16 A Yes, sir.

17 Q One officer, Nick Moore, rings the
18 doorbell, knocks on the door, and says "Sheriff's
19 Department," "Sheriff's Office," "Sheriff's
20 Department"?

21 A Yes, sir, he went to the door.

22 Q You ascertained who the complainants are
23 and went over to talk with them next door?

24 A Yes, sir.

25 Q Then y'all come back. I think you said

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1 the light came on and off when y'all were fixing to
2 leave?

3 A Yes.

4 Q You went back to the front door?

5 A Deputy Moore actually was walking away
6 from the door, coming toward Deputy McAllister and
7 myself when the lights came on and then immediately
8 went back off.

9 Q Again rang the doorbell, knocked, and said
10 "Sheriff's Department" or "Sheriff's Office," is
11 that right?

12 A Yes, sir, myself and Deputy Moore and
13 McAllister went back to the residence. I know that
14 I was announcing "Sheriff's Department" and Deputy
15 Moore was announcing "Sheriff's Office." I did not
16 hear what Deputy McAllister was saying.

17 Q Okay. And the defendant comes out on the
18 front porch, and y'all yell "Sheriff's Department"
19 again. He replies, "I don't give a blank."

20 A I don't know if he was on the front porch
21 or just had the door cracked, but he did yell that.
22 Yes, sir.

23 Q At any time, did you or any of the
24 deputies try to forcefully enter that residence?

25 A No, sir.

1 Q Did you forcefully go into the residence?

2 A No, sir.

3 Q At any time, did y'all try to forcibly
4 enter or enter the residence?

5 A No, sir.

6 Q I'm want to show you what's -- what is
7 that?

8 A My oath of county and state officers.

9 THE COURT: I didn't hear what he said,
10 I'm sorry.

11 A It's my oath for county and state
12 officers.

13 Q And you signed this?

14 A Yes, sir, obviously I did, because this is
15 my handwriting or my signature.

16 MR. MYERS: We offer this into evidence,
17 Your Honor.

18 THE COURT: Any objection?

19 MR. GARRETT: I'd like to see it. I don't
20 know what date it is. Your Honor, I'm going to
21 object to this because it does comply with the
22 statute.

23 I'd ask the Court to compare the
24 statute with the language on the affirmation vis-à-
25 vis the bond and oath that is required by Section

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1 23-13-20 and would tell the Court that the document
2 presented is just not in compliance.

3 THE COURT: It seems to me that goes to
4 the weight of the issue, not the admissibility of
5 the document.

6 MR. GARRETT: Yes, sir.

7 THE COURT: It's overruled. Mark this in.
8 It's the one you already marked before.

9 COURT REPORTER: State's One A, Your
10 Honor, in evidence.

11 THE COURT: All right.

12 (State's Exhibit Number One
13 A, Oath for county officers, was received in
14 evidence.)

15 Q State's One A, what's the name on it?

16 A Robert Edward Rushton.

17 Q What's your name?

18 A Robert Edward Rushton.

19 Q Appointed to what office?

20 A Deputy sheriff, McCormick County.

21 Q What address?

22 A It's Post Office Box 2036, McCormick,
23 South Carolina.

24 Q Whose address is that?

25 A That is the post office box for McCormick

1 Sheriff's Department.

2 Q Term to expire?

3 A Pleasure of the sheriff.

4 COURT REPORTER: Do what?

5 MR. RUSHTON: Pleasure of the sheriff.

6 Q This is the oath for county and state
7 officers from the Secretary of State's Office. It
8 says, "State of South Carolina, County of McCormick,
9 first, I do solemnly swear or affirm that I am duly
10 qualified according to the Constitution of this
11 state, to exercise the duties of the office to which
12 I have been elected or appointed; that I will, to
13 the best of my ability, discharge the duties hereof
14 to preserve, protect, and defend the Constitution of
15 this state and of the United States, so help me,
16 God." It is sworn to, subscribed to, on November 2,
17 2009. Whose signature is that on the bottom of
18 that?

19 A It would be my signature.

20 Q And who was your notary?

21 A At the time, it would have been the Clerk
22 of Court, Catherine Butler.

23 Q And she was the McCormick County --

24 A Clerk of Court.

25 Q Does that mean you took the oath of office

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1 when you came back from Iraq?

2 A I must have. I just did not recall doing
3 it.

4 Q Thank you.

5 MR. MYERS: That's all I have.

6 THE COURT: Redirect?

7 REDIRECT EXAMINATION

8 BY MR. GARRETT:

9 Q You do agree that either you, Moore, or
10 Melissa were under the roof area of the house?

11 A Deputy Moore and I were. Melissa, Deputy
12 McAllister, was off to the side.

13 Q And so y'all were under an actual roof
14 where a door was as well as under an area where the
15 only entrance next to that house was while ringing
16 the doorbell --

17 A I believe it was --

18 Q -- and knocking?

19 A -- it was the door and the garage door,
20 the only two.

21 Q But under the roof?

22 A Balcony -- under the balcony. I guess the
23 roof does protrude as far as the balcony does.

24 Q Do you agree that y'all were in a place
25 under the eave or under the roof on the night in

1 question, you and Officer Moore?

2 A Yes, we were standing on the front porch.

3 THE COURT: Further questioning of the
4 witness?

5 MR. MYERS: No, sir.

6 THE COURT: Thank you, sir. You may step
7 down.

8 MR. GARRETT: Nothing further.

9 THE COURT: Call your next witness,
10 please.

11 MR. GARRETT: We call Mr. Kirkham.

12 THE COURT: Come around here, please.

13 (Whereupon, the witness was
14 sworn.)

15 CLERK OF COURT: Thank you.

16 THE COURT: Have a seat and tell us your
17 name, please.

18 DR. KIRKHAM: Yes, Your Honor. My name is
19 George Kirkham.

20 THE COURT: Do you need him to spell that?

21 COURT REPORTER: Your last name, please.

22 DR. KIRKHAM: K-I-R-K-H-A-M.

23 COURT REPORTER: Thank you, sir.

24 MR. GARRETT: May it please the Court?

25 THE COURT: Yes, sir.

Robert E. Rushton - Redirect

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1 GEORGE KIRKHAM, having first been
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. GARRETT:

5 Q Dr. Kirkham, would you tell us a bit about
6 you and your background?

7 A Well, basically, I'm a criminologist. I
8 am professor emeritus at the College of Criminology
9 and Criminal Justice at Florida State University and
10 a criminal justice consultant. I can tell you about
11 my education and background, if you'd like.

12 Q Please do.

13 A I hold a bachelor's and master's degree in
14 the field of criminology from California State
15 University at San Jose, a doctorate in criminology
16 from the University of California, Berkeley. I've
17 worked over the years in most parts of the criminal
18 justice system.

19 I've been a probation counselor. I have
20 worked at a state prison, Salt Lake State Prison, as
21 a prison counselor. And I have also been a law
22 enforcement officer with four different agencies as
23 part of their individual research.

24 Q You say you've been a police officer
25 yourself?

1 A Police officer, deputy sheriff, and
2 undercover agent as part of a research project for
3 14 years, along with my university career.

4 Q All right. And have you ever testified in
5 a court of law before?

6 A Yes.

7 Q And how many times would you say you've
8 testified?

9 A I would say I've been involved in some --
10 you're talking about police related cases?

11 Q Yes, sir.

12 A Some thousand police related cases
13 throughout the course of the last 35 years, cases
14 that involved police procedure and standards, which
15 is my field.

16 Q Have you given opinions for both the State
17 and the defense?

18 A Yes, I've given opinions before for
19 plaintiff and defense in civil actions and
20 prosecution and defense in criminal cases.

21 Q Has courts approved you in order to
22 testify as an expert?

23 A Yes. I've been involved in cases very
24 recently and for a number of years.

25 Q Are you a published author, as well?

Dr. George Kirkham - Direct

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1 A Yes, I've published a variety of things.
2 Most importantly, under grants from the U.S.
3 Department of Justice, I've authored a series of
4 some 26 training videos for law enforcement officers
5 that are in use for many years in all of the states,
6 including South Carolina, and at the FBI Academy, as
7 well.

8 Some of them are also used abroad. There
9 are countries, for example, who train their
10 policemen, police in the field, obviously.

11 Q Is it fair to say you teach the teachers?

12 A Well, I do try to, to the extent that I
13 can. You know, over the last 18 years, I've gotten
14 as close to their world as virtually some of my
15 students who are police officers, to get out of the
16 ivory tower and go through a police academy and get
17 out on the streets.

18 I've done that initially full-time in a
19 high-crime university area in Jacksonville and then
20 subsequently part-time as a police officer with
21 three different agencies and two different sheriff's
22 departments. And it's -- you know, I had a whole
23 different understanding of the police role before I
24 left the ivory tower and got into it.

25 I was able to learn many more things and

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1 have spent my entire professional career studying
2 police procedure and standards, trying to make
3 contributions to make the world safer and better for
4 officers and citizens.

5 MR. GARRETT: Your Honor, I'd move at this
6 time to qualify George Kirkham as an expert in the
7 area of criminology.

8 THE COURT: Any voir dire?

9 MR. MYERS: No objection.

10 THE COURT: He is so recognized in that
11 field.

12 MR. GARRETT: Thank you, Your Honor.

13 Q Doctor, have you had an opportunity to
14 review this case file?

15 A Yes, I have.

16 Q All the documents that have been provided
17 to the defense from the Solicitor's Office?

18 A Yes, a very extensive case file.

19 Q All right. And have you had an
20 opportunity to review and synthesize that
21 information?

22 A Yes.

23 Q Have you had an opportunity to go out to
24 the site to see it?

25 A Yes, at nighttime, a very dark night, yes.

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1 Q Have you had an opportunity to review the
2 documents of statements, the crime scene
3 photographs, the evidence?

4 A Yes, all of the statements, the
5 photographs, all the evidence material, yes.

6 Q All right. Now, do you have an opinion
7 based upon your review of all those documents as to
8 whether or not the McCormick County Sheriff's
9 Department, and specifically Officer Rushton, on the
10 night question followed proper police procedure as a
11 matter of the law in the sense that we're talking
12 about --

13 MR. MYERS: Your Honor, I don't know what
14 that means, as a matter of law. We're talking about
15 policy and procedures. We're not talking about a
16 matter of law. I'd ask that he be more specific.

17 MR. GARRETT: Your Honor --

18 THE COURT: Yes, sir.

19 MR. GARRETT: -- if I may?

20 THE COURT: Yes, sir.

21 Q You read in the paperwork that McCormick
22 County provided us with a statement that they had no
23 policies and procedures in effect for the officer,
24 for the uniform, for the car, for anything. They
25 have no policies and procedures for McCormick County

1 Sheriff's Department?

2 A Yes, I did.

3 Q All right. And there is no -- you tell me
4 as an expert, if there's no policies and procedures
5 that are in written form for a county sheriff's
6 department, what do we default to, to find out where
7 their true policy and procedures are?

8 A Well, it's important to have policies and
9 procedures in written form so that everyone
10 understands what they're all doing. And whether the
11 department is small -- the average American police
12 force has about ten officers -- or whether it's like
13 LAPD or NYPD, there are some things that are not
14 dealt with in the policies that are dealt with in
15 training.

16 For example, I've trained at the South
17 Carolina Law Enforcement Academy in the past. And
18 those things, even in the absence of written policy,
19 are very well covered in basic recruit training.
20 These are very fundamental points that they follow,
21 which in this case are the actions of the officer,
22 particularly Deputy Rushton.

23 Q If there's no policy or procedure in
24 effect then in McCormick County, where would we look
25 to -- if we're trying to determine whether or not

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1 someone acted in accordance with policies and
2 procedures of South Carolina, where would we look?

3 A We could go to a number of places.
4 Probably the most immediate place would be the South
5 Carolina Law Enforcement Training Academy, which has
6 an excellent curriculum and which incorporates some
7 of the -- and has for some years -- some of the
8 state-of-the-art training that is received all over
9 the country, for example, the so-called street
10 survival seminar.

11 It covers -- in fact, officers and
12 deputies in South Carolina through the training
13 academy are given I think 14 or 16 hours of credit
14 for completing street survival training. So there
15 are a lot of sources, including the International
16 Association of Chiefs of Police, the FBI law
17 enforcement training bulletins.

18 There are many, but these are all -- what
19 this case is all about, with all due respect, is
20 following fundamentals, the same way a pilot landing
21 a plane follows basic standards in his profession or
22 a surgeon getting arterial bleeding does certain
23 things.

24 We're talking about basic standards, and
25 they really go more to his training and the

1 absorption of that material than to written
2 policies.

3 Q In addition to having read all of the
4 statements that have been provided by the State --
5 and you just heard Officer Rushton's testimony
6 concerning the foundation upon which decisions were
7 made that evening?

8 A Right.

9 Q I'd like for you to begin at the beginning
10 and tell the Court, if you would, where you see
11 areas, if you see any, of fail to procedures.

12 A And I'll try to do that --

13 Q -- to practice procedures.

14 A I think what is important to do -- and I
15 didn't understand this until I put on a uniform --
16 is to give the officer the benefit of the doubt.

17 MR. MYERS: I hate to interrupt, but I
18 really can't understand you.

19 DR. KIRKHAM: I'm sorry.

20 A You tell me if my voice drops. I had a
21 problem with it earlier. Looking at the whole
22 scenario from square one, I mentioned that it's
23 important -- it's difficult for people who have not
24 walked in the shoes of a police officer to
25 understand what they do.

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1 And so when I look at something like this,
2 I'm trying to be objective. I'm trying to give the
3 police the benefit of the doubt. There are some
4 things we don't know. There are things that happen
5 on calls that are totally different than what you'd
6 expect. So with that caveat, I'll try to do that.

7 Q Okay. And as we talked under the Castle
8 doctrine, the first thing an officer is responsible
9 to do or can do to be exempt from the protection of
10 the Castle doctrine is the officer has to identify
11 himself under applicable law.

12 A Now, again, I'm not a lawyer. I'm not a
13 member of the bar anywhere. So I'm speaking to you
14 as a specialist in police procedure in terms of what
15 an officer has to do. But if you wanted me to go
16 back, the best way to approach this is to start with
17 the call and what you do on a call like that, if I
18 may.

19 Q Okay. Why don't you pull that microphone
20 up? We're all having difficulty hearing you.

21 A Okay. The first point is there are calls,
22 and there are calls. The word "gun" defines this
23 type of call. There were shots fired.

24 I've been on numbers of those kinds of
25 calls. There are calls that come to us, we're just

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1 in the area floating around. There are rave calls.
2 They will usually go out with a warning or
3 something, some significant notation that they're a
4 serious call.

5 You don't know what you're getting. So
6 the first consideration is, is it an active shooter?
7 And by that we mean are shots being fired now, in
8 which case you would have to do things you would not
9 like to do.

10 You may have to expose yourself. You may
11 take certain risks and do things that you couldn't
12 do otherwise in a different situation.

13 But as this was not -- this didn't go out
14 as an active shooter. It just went out as a report
15 of a lot of disturbance, shots fired. And it
16 remains -- and I'd like to emphasize that I've lived
17 in rural areas myself, as well as metro areas.

18 It doesn't matter where the call goes out
19 in this day and time. It's always a serious
20 situation. So what do you do first? You get all
21 the information from dispatch you can while you're
22 going, and more is better than less when it comes to
23 backup -- two cars, three cars is fine. If there's
24 a supervisor on the road, they would probably
25 monitor it, as well.

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1 The first thing you do is you contact what
2 we call the R people. You go out to the location of
3 the R people, the complaining party. And no one --
4 in a situation like this, no one -- remember, we're
5 dealing with night. It's night. We know -- this is
6 very important because I've seen it.

7 We have many cases over the years where,
8 sadly, law-abiding citizens were shot by officers,
9 officers were shot by law-abiding citizens, and,
10 saddest of all, friendly fire where officers shot
11 one another because they couldn't see, they didn't
12 know what was going on.

13 So the first thing you have to do is to go
14 from party to party and start -- always start asking
15 the question if backup potential had been observed
16 at a safe distance and not with approach. That
17 violates fundamental officer safety principles the
18 same way that pilots don't do certain things on
19 approach, in violation of aviation procedures.

20 I represent to you that's the same in
21 every state in the country. I've looked at training
22 across the nation in this regard.

23 Q So in this case, are you saying, then,
24 that that happened in this case, there was a breach
25 of the fundamental approach?

1 A Yes, there was a breach of -- this is the
2 first one, which is to go to the reporting party,
3 the Sheffields, in this case. And before we put any
4 officer -- there's always hazard to an officer in
5 this role.

6 Before we put ourselves -- we know we
7 don't have shots fired now. So what do we want to
8 know? We want to know from these people, you know,
9 what was happening. Does this person have any
10 history of mental illness, for example, in relation
11 to a mental hospital?

12 Did he drink, since this has happened
13 before? Did he use drugs? Have you ever had any
14 run-ins with him or know of anybody else that's had
15 run-ins with him? And another big question is, what
16 kind of gun -- do you know what kind of gun he's
17 shooting?

18 I say that because -- you know, I own guns
19 myself -- in rural areas, people commonly own more
20 powerful weapons. And a rifle will go through --
21 you know, those ceramic inserts will go through like
22 a knife through warm butter. So that's another
23 question that would have helped.

24 Okay, so we know that. And they told us
25 -- we'll just say it what the Sheffields have said.

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1 "Well, he shoots from time to time." We don't know
2 -- right now, we don't know as we stand here talking
3 to the reporting party, is this just a guy who goes
4 out and shoots his gun from time to time late at
5 night, a little odd to be doing, or is he someone
6 whose emotions are stirred.

7 Is he off his meds? Maybe he's on some
8 antidepressant medication. Has he just killed his
9 wife or his mother? You can watch TV any night of
10 the week and see things like that happen. We know
11 as a police officer these things happen.

12 So we know enough now to know it's high
13 risk -- it's potentially a high-risk situation. And
14 that's where all the training that, again, the South
15 Carolina Law Enforcement Academy in its street
16 survival and officer safety, and cover and contact
17 -- the preference is always get them to come to us.

18 We want to take the situation on our
19 terms. And what's the safest way? There's nothing
20 mystical about this. It's very easy. Officers are
21 trained what to be aware of.

22 What's the safest thing to do? The first
23 thing you do is radio dispatch or call them on the
24 cell phone if you have any radio problems out there
25 and tell them to check the scene directory and to

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1 find the Worleys' number -- and I know that they
2 have a house phone out there that goes all through
3 the house -- and to call them up and tell them the
4 McCormick County Sheriff's Department is out here on
5 a call and engage whoever comes to the phone in
6 conversation.

7 "Who are you? We've got our deputies out.
8 We're out here on a call about shots fired." They
9 might say, "Well, I don't know what that's all
10 about." We don't know exactly what their response
11 may be.

12 If it's hang up, or it's expletives, then
13 we know something else. Well, there's no down-side
14 to making -- to having a dispatcher make that call
15 or get us the number and we'll make the call, if
16 they've got a cell -- probably the officers do have
17 cells; I used my cell out there last night -- and
18 then to call up and try to start some dialogue, to
19 get Mr. Worley on the phone.

20 "Mr. Worley, we've got a problem out here.
21 This is Officer So-and-So -- this is Bobby Rushton
22 with the Sheriff's Department. We need for you to
23 come and talk to us, okay?" And then what we're
24 going to do is we're going to -- we don't want to
25 surprise -- this is one of the tragedies; there are

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1 statistics all over the country about it.

2 We don't want to surprise someone at night
3 who's, you know, maybe asleep, has weapons in there,
4 coming out of a foggy state of sleep, and it is so
5 dark out there. I think the conditions I saw last
6 night or back on that night, November 15, 2009,
7 there was no moon at all.

8 It was just jet black, and I was concerned
9 about spraining an ankle walking around out there.
10 It was so dark. What we want to do then is, as
11 we're trained in the Academy, from rookies on,
12 patrol car visi-bar lights, we're going to turn on
13 emergency lights, spotlights, if you have a spot on
14 there, and go down there.

15 We immediately take position. We told
16 him, "We want you to come out." We're going to very
17 slowly approach the house. And the officer or
18 officers are going to take a position to cover,
19 which is between the door break -- the doors, as you
20 were -- and the engine block of the car.

21 And if that person comes at you, we are
22 behind a curtain of light. You heard the situation
23 here, the testimony earlier about the spotlight, the
24 deputy blinded by the spotlight.

25 It's the other way around. We want the

1 other person to be blinded by our headlights and our
2 visi-bar lights, which also we've already had a
3 phone call that said, "This is the Sheriff's
4 Department." Knowing about emergency lights, the
5 resident is knowing, you know, obviously we're law
6 enforcement here.

7 And that is immediately. If we draw
8 gunfire, we are in the best cover position we can.
9 Or if someone begins shouting and cursing at us, now
10 we now we've got a potential barricade situation.
11 And I assume that they have a liaison with the State
12 Police or their own SWAT unit. Then it's time to
13 get to get SWAT and HNT, a hostage negotiation unit,
14 out there and start dialogue with this guy.

15 So there would be every reason to expect
16 from all the evidence I've seen that this man, as a
17 criminologist having looked at his background, no
18 reason I could see why he would shoot a police
19 officer, that he would then come out.

20 We told him do not bring his weapon, come
21 out empty-handed. Why do we have to do that? Well,
22 it's important. We have a weapons call, and we
23 explain to him "You need to come out with nothing in
24 your hands." So I'm back there with my Glock, my
25 old .22 or .23, and I'm braced in the door.

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1 Other officers are out there in a cover
2 position, whatever the be positioning cars as
3 allowed by the driver. And he comes on around to
4 us. We're behind the Great Divide. We see him.

5 Let's suppose, for example, that you
6 couldn't raise him on the phone for whatever reason.
7 There's no down-side to trying that. Then you use
8 your head, same thing, cover and contact. We're not
9 going to insert to this. We'll walk around the
10 house under those kind of conditions, in darkness.

11 And it wouldn't matter what kind your car
12 was, but the Sheriff's Department -- and I'm not
13 criticizing your car, but it's somewhat dark and you
14 actually apparently carried off waste in it.

15 I don't know why, with all due respect --
16 I've never known an officer, you know, working
17 nights not to carry, and I never have carried
18 anything but a light kind of like really a five-
19 cell. You drop it off a ten-story building, and
20 it's stable and puts out an enormous beam of light.

21 But you're not going to be out there
22 walking around, because police officers die that
23 way. You're exposed, you left cover, and there's no
24 reason to do that. There's no reason to do that at
25 all. There's no hurry.

1 We have no indication of a hostage
2 situation. So we're going to try to get the person
3 to come to us. And if he won't come out, then we're
4 going to have another plan. But those are basic
5 concepts, and these are things you heard as a rookie
6 in the Academy and things that you should be keeping
7 with you in any retraining over the years.

8 But all of the officers involved, you
9 know, we have Moore and McAllister doing the same
10 things. This is just -- this is not a safe way to
11 handle a call. It's a tragedy for officers, and it
12 was tragic for the officer who suffered a grievous
13 wound, and for the homeowner, who may wind up
14 shooting at someone who's there to serve and
15 protect. So that's the long and short of it.

16 Q All right. You say that they are there to
17 serve and protect. Are they there to serve and
18 protect themselves, the neighbors, or who?

19 A Well, everybody. The highest priority is
20 the public. We're there to serve and protect the
21 public. And that's why I say -- and I've learned
22 these things at the Academy, and I've learned them
23 on the street, having been on calls like this many
24 times -- that you can't help anyone if you get
25 killed. And the worst thing, the greatest tragedy,

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1 is that you wind up killing an innocent person
2 unwittingly.

3 Q Based on what Officer Rushton said the
4 Sheffields had to say and based upon their
5 statements that are in the file that was provided,
6 did you see any exigent circumstances that would
7 require an officer -- that the Sheffields' safety
8 was at risk at that moment?

9 A No, no. There was an exigent situation.
10 And to try to give you a parallel, we're all
11 familiar with a tragedy or some other issue. If
12 you'd been an officer on the scene when Congressman
13 Giffords was shot, you'd be in a really difficult
14 position.

15 But you would have to rush, and you'd have
16 to stop that active shooter, and you'd be risking
17 hitting innocent people. That is a different
18 situation. This is not an active shooter. It's a
19 cold situation.

20 And so the safety mechanisms should kick
21 in now. And safety says stay back, stay frosty, get
22 some information. And I don't know exactly how much
23 information from his testimony he had, but we've got
24 enough to know gun, knife, private residence, shots
25 fired.

1 We want that guy to come to us under our
2 conditions, so let's try to hold of him. Let's try
3 to call him. Let's try to P.A. him. And if won't
4 respond to those things, now we know something else.

5 Q Let's suppose that the -- and I'm asking
6 about training now. Let's suppose that the officer
7 does not follow the rules, and he leaves cover and
8 puts himself in a risky situation.

9 Suppose that the homeowner -- and would
10 you agree with me that a homeowner should get the
11 highest level of protection as far as a citizen?

12 A Yes, the highest reasonable level that an
13 officer could provide, yes.

14 Q Okay. And if he leaves cover, and he
15 finds that there is a citizen or a homeowner on the
16 balcony, and he's got a gun, but it's not pointing
17 at you, and he's not pointing at anybody else --
18 he's just letting you know he's got a gun -- does
19 that give you the right to point to kill?

20 A It doesn't give you the right to shoot
21 him. It is a definitely what we call a try and
22 point situation. Same factors here, emphasizing
23 that, again, you don't want to be in that situation.

24 It's not like an officer pulls somebody
25 over, and they jump out of the car and start

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1 shooting at him because he's got you pulled over for
2 traffic. You know this is a bad call. You don't
3 know what kind of -- what may be going on. There
4 may be nothing.

5 But now what you've done is violated
6 fundamental principles of cover and contact, basic
7 procedures. You are now in the reverse situation
8 that we want. You're now -- I can say this from
9 having stood out there.

10 I'm a reasonably good shot with 20/20
11 corrected vision, and I do a lot of shooting with a
12 Glock .23. And I aim my finger simulating what
13 happened on that porch with what the deputy
14 describes when that spotlight is on. I was totally
15 blind, totally blind. And like I could not see.

16 I had people move. I couldn't tell if
17 there was one or two people on the balcony. I had
18 them point a five-foot broom, pressing out on
19 different points and moving around. I could not see
20 anything, just jet blackness.

21 So now I'm exposed, a deer in the
22 headlights of a car. It's the worst situation.
23 It's what the FBI law enforcement training bulletin
24 calls a killing zone. You put yourself in a killing
25 zone, and there is no reason to.

1 And obviously my concern is I want police
2 officers to go home to their families. Officers die
3 when they do this kind of thing.

4 Q All right.

5 A I know people do this.

6 Q And I guess the question is, are you
7 trying to shoot somebody just because they've shown
8 your their gun in the point position?

9 A No, you can't shoot -- let me emphasize.
10 You're going to be in a ready position. You're
11 going to be braced and pointed and ready to issue
12 commands, "Police" or "Sheriff's Office, drop the
13 gun, drop the gun."

14 You do that, and if there's any movement
15 at all -- any movement at all -- toward you, you're
16 going to shoot.

17 Q What if there's no movement?

18 A Well, here's the problem, from the
19 deputy's testimony, is you can't see anything. I
20 mean --

21 Q Well, the deputy says he saw the man
22 standing there.

23 A Okay.

24 Q The deputy says he saw a sandy-haired man
25 we'll describe as our client.

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1 A Salt and pepper?

2 Q He said he saw a gun that appeared to be a
3 long gun, a shotgun. He said he clearly could see
4 the butt and could see the stock. And he could
5 clearly see that it was pointed in a point position,
6 forearm's position.

7 A Right.

8 Q Now, if the officer saw that, does the
9 officer have a right to tell the person in his own
10 yard, in his own house, on his balcony that he has
11 to put his gun down?

12 A With all due respect, I think you're
13 asking a question of law. I'm not familiar with
14 South Carolina law. All I can think of is from a
15 police procedure standpoint, it's a command. It's a
16 point weapon command, drop your weapon. And then if
17 things go black because a light comes in, you're in
18 a hell of a fix.

19 Q Well, between you, if you put yourself in
20 that position, and the homeowner who sees you aiming
21 at him --

22 A Yes.

23 Q -- and who may not know you're a police
24 officer.

25 A That would be --

1 Q Who wins? Who's supposed to shoot?

2 A Well, it's a homeowner. I can't be in the
3 mind of anyone, Officer Rushton or Mr. Worley. But
4 it's a homeowner, bearing in mind that people
5 respond differently when they're asleep and they
6 have --

7 Maybe some of you in here have had the
8 experience of hearing a noise -- and I keep a gun by
9 my bedside -- and reaching for it, but it's only a
10 raccoon. You know, that's why it's so important,
11 purpose and presence of the officer be announced,
12 because if the homeowner sees somebody -- maybe he
13 doesn't see them terribly well, because of their
14 uniform, because of their physical position, because
15 they're bladed in profile -- and sees that person --

16 You know, burglars carry little lights
17 like that. Police officers don't usually carry them
18 in the field on calls. Something like that, and
19 sees them turning toward them with a gun, if I were
20 a homeowner, I'd shoot that person.

21 Q So if the officer makes the mistake, puts
22 himself in that position and he's got his gun in a
23 firing position towards you, if you're the
24 homeowner, you have a right to repel him?

25 A Any sense in that situation -- I mean,

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1 anyone in that situation. But it's more than
2 protecting your home. You've got your mother -- his
3 mother is inside the house. She's probably scared.
4 You would -- I mean, you would shoot in that
5 situation.

6 You assume you're dealing with a burglar,
7 a criminal, because there are so many ways for -- as
8 we just talked about -- so many ways for law
9 enforcement to make their purpose and presence
10 quickly known with no risk to anybody. It really
11 falls in the area of criminology we call
12 victimology.

13 Q What does that mean?

14 A We talk about victim of genesis, a person
15 who puts themselves in a position to be victimized.
16 I'm not really making any kind of comparison to the
17 deputy's conduct. This is just by way of example.

18 The guy who slaps his wife around the
19 kitchen and hands her a steak knife, he's drunk. He
20 says, "Go ahead." That's victim participation.
21 Police officers know better because we're trained
22 better.

23 We know about certain things not to do.
24 And nobody expects a law enforcement officer to have
25 a crystal ball. But you don't need one in this

1 situation. It's so clear. I mean, we can see this
2 in training over and over again, every state in the
3 union, err in the direction of caution. Be safe, go
4 home -- you know, do your job.

5 Q So had the officer done those things that
6 you are saying he should have done that he would
7 never have exposed himself to that situation?

8 A There is no reason. Somebody's got to --
9 if I take a knife to a child's throat or something,
10 or somebody's about to commit suicide, the officer
11 may have to -- may have to -- take chances. But
12 this is not that kind of situation. It's a go slow,
13 be careful situation.

14 Q If he had announced himself as a police
15 officer -- let's assume that for a moment -- in this
16 circumstance but he had not followed the proper
17 procedure, has he really identified himself as a
18 police officer at that time, as a police officer is
19 supposed to identify himself as a police officer to
20 a homeowner?

21 A Well, there's no question, there could be
22 no question -- from the dispatch call, the visi-bar
23 lights going on, the spotlight, the P.A. There's no
24 question at all that these are the police.

25 In a situation like that, I have never in

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1 my 35 years as a criminologist -- having worked a
2 thousand incidents, I've never seen a situation of
3 someone who opened fire on officers who was this
4 type of person, that he's had no mental arrest
5 history, no anger, no drugs, no alcohol, had no
6 fight with the wife, hadn't just killed members of
7 his family. Ordinary citizens don't do this kind of
8 thing to police officers. It doesn't fit.

9 Q No motive?

10 A There's no motive, no mens rea, no.

11 MR. GARRETT: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 Q After having reviewed the entire file and
14 based upon training -- because there's no procedures
15 that the county has, so based upon the South
16 Carolina law enforcement training -- is it fair to
17 say that at the time this officer identified
18 himself, he was not acting in accordance with the
19 procedures that he had been trained at the Academy?

20 A That is absolutely correct, yes.

21 Q And you talked about ways he could have
22 done that, properly identified himself with a host
23 of other things?

24 A Right. I mean no disrespect by this
25 comment, but if you were making a training video for

1 officers, which I've done numbers of, you could use
2 this tragedy in this case as a training video for
3 why not to do this. You could test officers on it.
4 This information is conveyed at the Academy
5 frequently.

6 Q All right. And do you believe policy, the
7 way everything came down that night --

8 MR. MYERS: Leading -- he's leading, Your
9 Honor.

10 THE COURT: Very well.

11 Q Let me ask that as a hypothetical. Based
12 on all the evidence that we've received into
13 evidence, okay --

14 A Okay.

15 Q -- and that you've heard Rushton, and
16 you've studied in this file, based upon the uniform
17 and failure to identify, failure to use the lights,
18 and the failure to phone call, and failure to use
19 the speaker phone, and failure to get all the
20 necessary information, failure to slow down and take
21 time, the failure to keep yourself under cover,
22 these actions by this officer do you believe to be
23 unreasonable to a citizen who's watching this
24 transpire in front of him, the parts that he doesn't
25 know, it's reasonable to think that this is not an

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1 officer?

2 A Yes, under the circumstances, it would be
3 eminently reasonable in my view as a criminologist,
4 having --

5 Q And if the individual homeowner --

6 THE COURT: Wait. Had you finished your
7 answer?

8 A It would be eminently reasonable from my
9 view as a criminologist, having evaluated many of
10 these kinds of shooting situations, to not realize
11 that they were law enforcement officers. All the
12 circumstances, all the evidence and material, points
13 to that. It would lead to that conclusion.

14 Q And therefore, if you really didn't
15 believe and if it's reasonable not to believe that
16 he was a law enforcement officer, and he's pointing
17 a deadly gun at you, you've got a right to return
18 fire?

19 A Yes. Under those conditions you would,
20 yes.

21 Q Thank you. Please answer any questions
22 for opposing counsel.

23 CROSS-EXAMINATION

24 BY MR. MYERS:

25 Q You reviewed all the material, Mr.

1 Kirkham?

2 A Yes, I have.

3 Q And you reviewed the neighbors' statements
4 that the defendant had been out shooting on his
5 porch before?

6 A The Sheffields' statements, yes.

7 Q And he was out there talking loudly --

8 A Yes.

9 Q -- and shooting a gun?

10 A Correct.

11 Q They didn't want to call the police, and
12 they talked with the mother?

13 A That's correct.

14 Q It continued to happen, though?

15 A It happened, yes.

16 Q Finally, the night of this incident, they
17 said that they couldn't it anymore, so they called
18 the Sheriff's Department?

19 A I'm sorry?

20 Q The night of this incident, the neighbors
21 said, "We had to call the Sheriff's Department,"
22 they couldn't take it?

23 A Yes.

24 Q And Mr. Sheffield from his house -- you
25 know where his house is?

Dr. George Kirkham - Cross

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1 A Yes, I do.

2 Q It's a pretty good ways?

3 A Well--

4 Q A pretty good ways?

5 A Yes.

6 Q Mr. Sheffield, inside his house, he said
7 he could hear the officers knocking and announcing
8 they worked for the Sheriff's Department?

9 A That's what he says, yes.

10 Q And you reviewed the other two deputies'
11 statements, Moore --

12 A And McAllister, yes.

13 Q -- and the lady?

14 A Yes.

15 Q And both of them said when they defendant
16 came out, they yelled, "Sheriff's Department," and
17 he said, "I don't give a blank"?

18 A That's correct. That's what they said.

19 Q Thank you.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. GARRETT:

23 Q Does that say that Mr. Worley was able to
24 hear that in his double-insulated house?

25 A I'm not a building expert. I'm not an

1 acoustics expert. Were I to try to say what's
2 audible at what decibel level in the night in that
3 location, it's a fact question really. It's a jury
4 question really.

5 Q All right. And there's nothing -- as it
6 relates to what the Sheffields heard isn't what is
7 important in this case?

8 A No, it's what -- what seems to be clear
9 that could have prevented this tragedy from
10 happening, proper police procedure. That's all.

11 Q And had we followed proper police
12 procedures, there would not have been a shooting
13 that night?

14 A No risk. It would be the same situation.

15 MR. GARRETT: Beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 MR. GARRETT: That's all.

18 THE COURT: Recross?

19 MR. MYERS: No.

20 THE COURT: Thank you, Doctor. You can
21 step down.

22 DR. KIRKHAM: Thank you, Your Honor.

23 THE COURT: How many more witnesses do you
24 have?

25 MR. GARRETT: Plaintiff's case,

Dr. George Kirkham - Redirect

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1 petitioner's case.

2 THE COURT: All right.

3 How many witnesses are you calling?

4 MR. MYERS: We don't have any witnesses,
5 Your Honor. But we would like to put in the
6 statements of Deputy Nicholas Moore and Deputy
7 Melissa McAllister, statements of Mr. Allen
8 Sheffield, statements of Gail Sheffield, and the
9 statement of Sheriff Reid.

10 THE COURT: Wait. Is there an objection
11 to that?

12 MR. GARRETT: Your Honor, I object to it.

13 MR. MYERS: Well, they -- they're allowed
14 to put in statements.

15 MR. GARRETT: Your Honor --

16 MR. MYERS: In that pre-trial hearing,
17 they said they put in witness statements. And this
18 last witness says he relied on all that. So if he
19 relied on all that, that makes it part of the
20 record.

21 THE COURT: Mr. Garrett?

22 MR. GARRETT: Your Honor, I request
23 permission to cross-examine those witnesses.

24 MR. MYERS: They've got the statements.
25 And all I'm offering is the statements. And their

1 expert witness just relied on them.

2 MR. MYERS: They might be inconsistent.

3 But the Supreme Court, filed May 9, 2011. They talk
4 about the statements therein. They talk about the
5 statements, 911 tapes, and other things that the
6 State is allowed to introduce.

7 MR. GARRETT: We would obviously object.

8 MR. MYERS: And I get to put them in
9 there. I didn't need to. You asked him if he
10 relied on them.

11 THE COURT: Well, expert witness in the
12 trial of that case. That's what was done in front
13 of another judge.

14 MR. MYERS: Okay, we'll recall the doctor,
15 Your Honor.

16 THE COURT: You want to recall him?

17 Doctor, will you come back up, please?
18 You're still under oath.

19 DR. KIRKHAM: Yes, sir.

20 THE COURT: These statements are in that
21 notebook that they handed up to me -- "they" being
22 the petitioner or the plaintiff?

23 MR. GARRETT: They are not, Your Honor.

24 THE COURT: Okay. I don't know if we ever
25 covered that issue. But they handed me a big

Dr. George Kirkham - Redirect

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1 notebook and said that they wanted that to be part
2 of the record. You all say they -- are you shaking
3 your head at me?

4 MR. GARRETT: No, no, no.

5 THE COURT: Okay.

6 You are still under oath.

7 (Defendant's Exhibit Number
8 Seven A, black notebook prepared by the defense, was
9 marked for identification.)

10 RECALL EXAMINATION

11 BY MR. MYERS:

12 Q Doctor, this is the statement of Deputy
13 Nicholas Moore, one of the guys that knocked on
14 their door?

15 A Yes.

16 Q And you relied on that statement?

17 A Yes.

18 MR. MYERS: Your Honor, we'd offer this
19 into evidence.

20 THE COURT: Any objection?

21 MR. GARRETT: No objection.

22 THE COURT: Mark it into evidence then,
23 please.

24 MR. MYERS: And this statement, that's
25 Deputy Nicholas Moore -- Nick Moore.

Dr. George Kirkham - Recalled

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1 THE COURT: What else?

2 Q And then this was five pages of a
3 handwritten statement and a typed statement of the
4 female deputy, Ms. McAllister. Have you read that?

5 A I did.

6 MR. MYERS: I'd offer that into evidence.

7 THE COURT: Any objection to this?

8 MR. GARRETT: Your Honor?

9 THE COURT: Okay, go ahead and mark it in
10 evidence.

11 Q And then also the neighbors, Dr. Kirkham,
12 Alan Sheffield and Gail Sheffield, and Sheriff Reid?

13 A Yes.

14 MR. MYERS: We offer these, too, Your
15 Honor.

16 THE COURT: Any objection to any of these?

17 MR. GARRETT: Subject to the prior
18 objection.

19 MR. MYERS: We'll mark these all as one
20 exhibit, Your Honor.

21 THE COURT: Mark those in the record,
22 please, ma'am.

23 MR. MYERS: That's State's Number Two A.

24 (State's Exhibit Number Two

25 A, 5 Statements, Moore, McAllister, Sheffield,

1 Sheffield, and Reid, were received in evidence.)

2 MR. MYERS: That's all I have.

3 THE COURT: All right, questions of the
4 witness?

5 MR. GARRETT: No further questions.

6 THE COURT: Thank you, Doctor, you may
7 step down.

8 All right, anything else from the
9 State?

10 MR. MYERS: No, sir.

11 THE COURT: Anything from the defense?

12 MR. GARRETT: We call Mr. Sheffield to the
13 stand.

14 THE COURT: Did you say Sheriff Reid?

15 MR. GARRETT: Sir?

16 THE COURT: Did you say Sheriff Reid?

17 MR. GARRETT: No, sir, I call Mr.
18 Sheffield.

19 THE COURT: Sheffield?

20 MR. GARRETT: Mr. Alan Sheffield.

21 THE COURT: Mr. Sheffield, will you come
22 around, please, sir?

23 (Whereupon, the witness was
24 sworn.)

25 THE COURT: If you would state your name,

1 sir.

2 MR. SHEFFIELD: Yes, sir. My name is Alan
3 Sheffield.

4 THE COURT: Wait.

5 Is your first name A-L-L-E-N?

6 MR. SHEFFIELD: A-L-A-N.

7 COURT REPORTER: A-L-A-N?

8 MR. SHEFFIELD: A-L-A-N.

9 THE COURT: Your last name?

10 MR. SHEFFIELD: S-H-E-F-F-I-E-L-D.

11 THE COURT: Thank you.

12 All right, Mr. Garrett.

13 MR. GARRETT: Thank you.

14 ALAN SHEFFIELD, having first been
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. GARRETT:

18 Q Mr. Sheffield, prior to November 15, 2005,
19 have you ever seen Joe Worley with a gun in his
20 hand?

21 A No, sir.

22 Q Had you ever heard shots fired at the lake
23 out there?

24 A Yes.

25 Q And have you ever heard shots prior to

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1 that fox out there on the Worleys' property?

2 A Yes.

3 Q How late would you say y'all have heard
4 shots out there?

5 A I'm really not sure.

6 Q Okay. And on the prior occasion where --
7 was it you, or was it your wife that contacted law
8 enforcement to express your concern about Joe
9 Worley?

10 A That was my wife.

11 Q Did you participate in that interview?

12 A No, sir.

13 Q You didn't?

14 A No, sir.

15 Q And on that occasion, did you go over and
16 speak to Joe about discharging a weapon, or getting
17 loud, or anything like that?

18 A I did not speak to Joe, no.

19 Q And did you speak to his mother and tell
20 his mother to tell Joe?

21 A I discussed it with his mother, yes, sir.

22 Q Do you have any knowledge whether or not
23 Ms. Worley talked to him?

24 A She indicated some days later that she
25 did.

1 Q All right. But you don't know that?

2 A I can just tell you what she told me.

3 Q Okay. But you don't know?

4 A No, I don't.

5 Q Okay. So do you know whether or not

6 Officer Carmine (PH) -- I hope I'm pronouncing that
7 right -- I believe he actually came out in September
8 to speak with your wife. Were you there when he
9 spoke to your wife?

10 A My wife actually went to the police
11 station herself.

12 Q All right. And she spoke to Officer
13 Carmine?

14 A I don't know.

15 Q All right. Do you know whether or not
16 Officer Carmine thought it was necessary to go down
17 to the Worley house to talk to Joe Worley about the
18 alleged incident that happened in September?

19 A I believe my wife -- I expressed the
20 concern that we didn't need that done, that we were
21 going to try to handle it ourselves. She felt it
22 was important to have it on record. That was her
23 decision. I don't disagree.

24 Q Y'all moved into that house in 2006?

25 A Six, yes.

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1 Q Were y'all in real estate at one time? Is
2 that right?

3 A Yes, I was.

4 Q At some point in time you had a very
5 cordial relationship?

6 A I had a pretty good relationship with him
7 for a while. Well, maybe in '08.

8 Q In '08.

9 A Yes.

10 Q All right. Y'all moved out there in '06.
11 Do you have knowledge about the general makeup of
12 that community in the four years before?

13 A No.

14 Q And had you ever made any complaints about
15 them, or Joe, or anybody in the community at any
16 time in the past?

17 A No.

18 Q None?

19 A No.

20 Q Okay. And after September, you made no
21 complaints until this night, is that correct?

22 A No complaints, that's correct.

23 Q All right. And on this night -- have you
24 ever been in the Worley house?

25 A No, sir.

1 Q Did you ever have the pleasure of meeting
2 Ms. Worley?

3 A Yes, I did.

4 Q And is he a well-educated man?

5 A Appeared to be.

6 Q A nice guy?

7 A Yes, he's a nice guy.

8 Q And he's proud of his house down there?

9 A That never came up in discussion.

10 Q Y'all didn't talk about that?

11 A It was mostly just the neighborhood.

12 Q You didn't talk about the features of
13 double-insulated in the home?

14 A No.

15 Q Have you ever seen any wild dogs down
16 there, any coyotes?

17 A I have not ever seen coyotes, no.

18 Q Seen any fox?

19 A Yes, sir.

20 Q And is it kind of common knowledge that
21 there are fox around there?

22 A I don't recall any conversations about the
23 fox, no.

24 Q But there are foxes down there?

25 A Sure.

Alan Sheffield - Direct

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1 Q What about Sweet Pea?

2 A Oh, yes. Yes, I've recently seen the cat
3 when she was coming around outside.

4 Q They've got a cat named Sweet Pea?

5 A Correct.

6 Q And did you ever know that they were
7 complaining the cat had gotten into a fight with a
8 fox, or a coyote, or something?

9 A I knew that Sweet Pea had been hurt, but I
10 don't recall any discussion about how that happened.
11 No discussion about that.

12 Q So you wouldn't deny that there's been
13 some problem with some type of wild varmints getting
14 hold of Sweet Pea?

15 A I don't know that.

16 Q Okay. Now, on the night in question, you
17 say you heard the officers knock and announce
18 themselves, November 15th, is that correct?

19 A Correct.

20 Q Did you have your windows open?

21 A Yes.

22 Q So with the windows open, you would not be
23 in a closed location; is that correct?

24 A That's true.

25 Q Now, I did go back and read your

Alan Sheffield - Direct

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1 statements, and one of the statements that you and
2 your wife gave that there was a shot. And you
3 actually saw the shot that hit Officer Rushton,
4 correct?

5 A I saw Officer Rushton go down to the
6 ground after a gunshot.

7 Q Okay. Well, how did you know it was a
8 gunshot?

9 A It sounded like a gunshot.

10 Q It sounded like it?

11 A Yes, sir.

12 Q Did you see any flash?

13 A No.

14 Q In your position, could you see up on the
15 balcony?

16 A No, sir.

17 Q How far out away from the deck would
18 Officer Rushton have to be in order for you to see
19 him being shot?

20 A Based on where that light is, if he's
21 anywhere out from the side of the house, I would see
22 him.

23 Q Okay. Out from the side of the house?

24 A Well, yes, that's where the light comes
25 down. The spotlight comes down, and if he's

Alan Sheffield - Direct

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1 anywhere outside of there, if he's not under the
2 deck, I can likely see him.

3 Q Did you look up to see whether or not he
4 was pointing a gun?

5 A It happened too quickly. I could not tell
6 whether Officer Rushton pulled his weapon or not. I
7 was not expecting what happened.

8 Q So you don't know?

9 A No, I don't know.

10 Q And you don't know whether on the southern
11 side of the house whether or not the Worleys
12 (inaudible.)

13 A There's no way for me to know that.

14 Q No way to know that.

15 A Yes.

16 Q I found -- in your affidavit and in Ms.
17 Sheffield's affidavit, I found three different times
18 you -- and I'm not trying to hold you to it, I'm
19 just wondering. But is it fair to say that the one
20 report that you gave Officer Stallo is that it
21 happened around 2:30 in the morning?

22 A I would say that's when it started, yes,
23 around 2:30.

24 Q And there's another one, another report,
25 where you say that it actually began about 3:30?

1 A I didn't realize that. It could be.

2 Q And then there's another one says around

3 3:15.

4 A I only made one statement.

5 Q Well, you made one statement to law

6 enforcement, and then you made one to Officer

7 Stallo.

8 A I didn't make that statement.

9 Q You didn't make any statement to the
10 officer?

11 A I made one statement. The other statement
12 from September was not made by me.

13 Q Who was it made by?

14 A My wife.

15 Q Oh, okay. I would assume your wife saw
16 basically the same thing.

17 A I would assume so.

18 Q And as far as the timing, would it be fair
19 to say you did not make a written statement as far
20 as--.

21 A We did not discuss our statements. We did
22 them at the same time, at the dinner table, with no
23 discussion.

24 Q Okay. And on this particular night,
25 you're not absolutely sure whether you heard one

Alan Sheffield - Direct

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1 shot?

2 A You're talking about before we called the
3 police?

4 Q Yes.

5 A I'm absolutely certain it was two, yes.

6 Q And at the time of the shooting, how many
7 shots did you hear?

8 A Two.

9 Q And according to your wife the shots down
10 there--

11 A Honestly, I didn't really read my wife's
12 statement very well. The shots where Officer
13 Rushton got shot were within a couple of seconds of
14 each other.

15 Q Okay.

16 A The time frame between the shots fired
17 prior to this time was more in the term of 15 to 20
18 minutes between shots.

19 Q Your wife's statement says it was minutes
20 minutes before the first shot and the second shot.
21 Do you recall that?

22 MR. MYERS: I think he said that he hadn't
23 read his wife's statement.

24 MR. GARRETT: Well, I'm just saying --

25 THE COURT: Are you abandoning your

Alan Sheffield - Direct

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1 question? I'm asking you, are you abandoning your
2 question? Do I have to rule on that?

3 MR. GARRETT: No, you don't have to rule.
4 I'll rephrase.

5 THE COURT: Go ahead.

6 MR. GARRETT: I'm sorry, Your Honor.

7 Q Officer Stallo said the statement was
8 given by you and Gail Sheffield. Is that incorrect?

9 A The one in September?

10 Q There's one on July the 21st that's made
11 to Shawn Stallo when he interviewed Alan and Gail
12 Sheffield at their residence.

13 A All right, I'm honestly sorry. I forgot
14 that one. I forgot what we were talking about. I
15 thought we were referring to the other.

16 Q Is that correct?

17 A Yes, we were interviewed.

18 Q He said that you said?

19 A Again, those aren't our words, and that's
20 not correct. It was not a few minutes. It was a
21 few seconds.

22 Q Okay. This was an interview by Agent
23 Shawn Stallo, July 21, 2010. It was at your house
24 in McCormick, is that correct?

25 A Correct.

Alan Sheffield - Direct

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1 Q All right. Let's look at that. Let's go
2 over that statement you gave when he interviewed you
3 and tell me what parts you say that are not the
4 truth. You can just go ahead and read it and tell
5 us what parts are your statement and what parts are
6 not your statement.

7 THE COURT: Let him read over it.

8 MR. GARRETT: Well --

9 Q What part do you disagree with as being
10 your statement?

11 A A couple of minutes between shots, when
12 Officer Rushton was shot.

13 Q A couple of minutes between the shots?

14 A Correct.

15 (The remainder of the testimony of this witness is
16 not available.)

17 (The next available testimony is as follows.)

18 *****

19 THE COURT: I need a break. Let's take a
20 break now.

21 (Whereupon, court was in
22 recess after which the following proceedings were
23 had:)

24 THE COURT: Do you all need Mr. Myers in
25 here?

Alan Sheffield - Direct

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1 MR. MAYE: No, sir. He told me to go
2 ahead.

3 THE COURT: Okay. Let's go ahead and tell
4 the jury to be here at 2:00 tomorrow afternoon. If
5 you all don't have anything else I can read, the
6 stuff we can do, I'll hear it.

7 All right, you wanted to call another
8 officer?

9 MR. GARRETT: We call Deputy Moore.
10 (Whereupon, the witness was
11 sworn.)

12 THE COURT: All right, Mr. Garrett. I'm
13 sorry, state your name.

14 MR. MOORE: Nicholas Moore.

15 NICHOLAS MOORE, having first been
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. GARRETT:

19 Q Deputy Moore, did you have an opportunity
20 to talk to this Officer Stallo (PH) on Wednesday,
21 July 21, 2010, about what happened at the Worley
22 residence on that evening?

23 A Yes, I did.

24 Q Okay. Are you familiar with that?

25 A Yes, sir.

Nicholas Moore - Direct

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1 Q Why don't we pick up at the point where it
2 says, "Deputies Rushton, Moore, and McAllister,"
3 about halfway down, "arrived at the incident
4 location." Are you with me?

5 A Uh-huh.

6 Q "Deputy Rushton approached the
7 complainant, Sheffield, while Deputy Moore knocked
8 on the door of Worley's residence," is that correct?

9 A Yes, sir.

10 Q All right. And who was in charge of that
11 operation? Were you in charge, was Rushton in
12 charge, or was Melissa in charge?

13 A Well, nobody was really in charge. Law
14 enforcement in general was out there.

15 Q Okay. So who was the senior-most deputy
16 there?

17 A I would have been.

18 Q Okay. Were you wearing that outfit --

19 A Yes, I was.

20 Q -- or a similar outfit like that?

21 A Yes.

22 Q All right. And did you realize that
23 Rushton did have a uniform on like that?

24 A Yes.

25 Q All right. And you would acknowledge that

1 he didn't have the badge on his shirt --

2 A Yes.

3 Q -- which is something that might have come
4 later, is that correct?

5 A Yes.

6 Q All right. Next, it goes on to say that
7 you knocked on the door for several minutes. You
8 knocked on the door?

9 A Yes.

10 Q And was leaving when the top deck
11 floodlights turned on, is that correct?

12 A Yes.

13 Q All right. So you had already left, and
14 you and Melissa were heading towards the back of the
15 building?

16 A Was leaving the --

17 Q The area.

18 A -- the area of the door.

19 Q Okay. And I'm assuming that Rushton was
20 over there with the Sheffields?

21 A Yes.

22 Q And as y'all were all kind of meeting back
23 up kind of where y'all split off behind the house to
24 go to your various directions, the light came on?

25 A Yes.

Nicholas Moore - Direct

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1 Q So the light was on. Any question about
2 the light being on?

3 A At what point?

4 Q At that time.

5 A No.

6 Q All right. Deputy Moore returned to the
7 door and heard someone walking on the top deck above
8 his head. Now, did you hear somebody on the deck
9 before the door opened?

10 A No, the door was opened first.

11 Q All right. So you would have heard the
12 door open, and then you would have heard somebody
13 walking?

14 A Step out.

15 Q Okay, step out. And then Deputy Moore
16 witnessed Deputy Rushton walked towards the top
17 deck. Where was Deputy Rushton when you witnessed
18 him walk towards the top deck?

19 A Out to my right.

20 Q All right. So let me make sure I
21 understand you. You're right there. If this is the
22 house -- counsel's desk is the house, okay -- you're
23 to the right of the house?

24 A I'm standing right against the doorway --

25 Q All right. So you're outside the door.

1 A -- outside the house.

2 Q And so he would be in your general area.

3 At that time, was he walking backwards?

4 A No, forward.

5 Q Did he walk towards the house?

6 A Yes.

7 Q Okay. So did he come -- I'm trying to
8 figure out how he came to the house. Did he come to
9 the house along with y'all, or did he come from a
10 different direction?

11 A I do believe he came with me and then
12 walked out to the edge of the woods --

13 Q Okay.

14 A -- and then started to walk -- maybe not
15 really walk but take a step towards to where he
16 could see what was going on, when the lights came
17 on.

18 Q So you would agree from your position you
19 couldn't see Joe up on his balcony?

20 A I could see his silhouette, I'll say.

21 Q Okay. But you couldn't see -- his
22 silhouette? In other words, you could see his
23 general outline?

24 A Yes, him and his general features.

25 Q Okay. And was the light still on?

Nicholas Moore - Direct

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1 A Yes, I do believe the light stayed on the
2 whole time.

3 Q All right. So there wasn't a situation
4 where the light cut off that blinded -- I mean, cut
5 on that blinded Rushton?

6 A Not once he cut the light off the first
7 time and then back on, he left it.

8 Q Well, when it's back on -- that's my
9 point, Deputy Moore. You said you knocked on the
10 door for several minutes and was leaving when the
11 top deck floodlights turned on. In fact, it was
12 only one light, isn't that correct?

13 A I don't recall. It lit up the whole front
14 yard.

15 Q All right.

16 A You know, I didn't have time to look and
17 count lights.

18 Q All right. And so you also didn't look to
19 the other -- you weren't able to see the other end
20 of the house to see whether that light came on?

21 A No, sir.

22 Q All right. And then you returned to the
23 door and heard someone walking on the top deck above
24 his head, is that correct?

25 A Yes.

1 Q "Deputy Moore returned to the door and
2 heard someone walking at the top above his head, is
3 that right? "Deputy Moore witnessed Rushton walk
4 towards the top deck, heard Rushton yell at the
5 person on the top deck 'Sheriff's Office,' and then
6 yell 'Gun.'"

7 A Yes.

8 Q "Deputy Moore next heard gunfire and saw
9 Deputy Rushton fall to the ground."

10 A Yes.

11 Q You're telling this to a federal law
12 enforcement officer, and you didn't say anything in
13 there about "Who are y'all? What y'all want? You
14 didn't say that in the statement, did you?

15 A No, sir.

16 Q You didn't say, "I don't give an f-u-c-k"
17 -- you didn't say that either, did you?

18 A No, sir.

19 Q And you didn't say, "Put your gun down,
20 put your gun down, put your gun down." Did you say
21 that?

22 A No.

23 Q All right.

24 A He didn't put it in the statement here,
25 but I don't know if I said it or not. So I would

Nicholas Moore - Direct

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1 guess I would say no.

2 Q Okay. I mean, it would be important for a
3 United States elected official or ATF officer who's
4 taking a statement -- not a sworn statement, but a
5 statement and a summary of events -- to put down
6 something like you put the guy on notice to put his
7 gun down, would you agree?

8 A Uh-huh.

9 THE COURT: Say "yes" or "no," please.

10 A Yes, sir.

11 Q All right. So you took cover and yelled
12 for Deputy Rushton to come to your location, is that
13 correct?

14 A Yes.

15 Q Did you ever have your gun drawn and aimed
16 at Joe Worley?

17 A I drew my gun, but I never took aim.

18 Q Okay. Is there any way Joe Worley could
19 have seen you where you were?

20 A I can't -- I can't say.

21 Q Well, if you couldn't see him good enough
22 to get aim on him -- I've walked out there. You've
23 got to get way out there to the right side to be
24 able to look up and see somebody up on that deck.

25 A He was on the porch. I never was. So I

1 can't say whether he could see me or not.

2 Q Okay. And what about Melissa? She says
3 in her statements that she was always four or five
4 feet to the back of you towards the trash can. Is
5 that right?

6 A I guess so. I really don't know where she
7 was at.

8 Q All right. I guess when the gunshot went
9 off, did you see the muzzle flash?

10 A I don't recall.

11 Q When he hit the ground, how long was he on
12 the ground?

13 A Two seconds.

14 Q Why didn't you shoot Joe?

15 A I didn't have a shot at him.

16 Q Okay. If you'd have had a shot at him?

17 A I'm not trained to shoot inside of a
18 residence or toward a residence. There may be
19 innocent people inside the residence.

20 Q Okay. And when did you decide that was
21 your position?

22 A Immediately.

23 Q That was your training, okay. And then if
24 Officer Rushton then had aimed his gun at Mr.
25 Worley, what would be the intent of that aim?

Nicholas Moore - Direct

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- 1 A From who?
- 2 Q From Officer Rushton.
- 3 A I can't tell you what his intent was.
- 4 Q Okay. Then you heard another gunshot --
- 5 is that correct -- on your statement?
- 6 A Yes, there was a total of two gunshots.
- 7 Q Two gunshots. Now, is it possible that
- 8 Joe could have shot him on the ground? Is there
- 9 anything that would prohibit him from shooting him
- 10 on the ground -- with an automatic 30.06?
- 11 A No, there was nothing that could have
- 12 stopped him, I don't guess.
- 13 Q Rushton couldn't, because he was hit, he
- 14 was down, he said flat on his face. Is that right?
- 15 A I don't know about flat on his face, but
- 16 he fell.
- 17 Q Well, did it twirl him like Joe said it
- 18 did? Did he take the impact of the gun, and it
- 19 turned him around?
- 20 A I can't say -- I can't say that. I can
- 21 tell you he fell. I don't know how exactly he fell.
- 22 Q Okay. So you weren't actually observing
- 23 his body when he fell?
- 24 A I wasn't watching him the whole time.
- 25 When I looked around, he was basically already on

1 the ground.

2 Q Okay. You were at the corner of the
3 house, looking at the silhouette of Joe. And off to
4 your right, you could see Rushton, okay. Did you
5 hear their conversation?

6 A I heard Rushton say something about a gun.

7 Q Okay. Then what did you do?

8 A There wasn't much of a conversation.

9 Q What happened?

10 A I was saying "Sheriff's Office" the whole
11 time.

12 Q Okay.

13 A There was never a conversation between
14 anybody.

15 Q From the time that door opened until the
16 time that shot came out, it was seconds, wasn't it?

17 A If even that long.

18 Q It was that fast. Basically, you heard
19 the door open, you heard a step, bang.

20 A Heard a bang.

21 Q You heard him yell, "Gun." And what about
22 this "I don't give an 'f'" and all that stuff?

23 A That happened while we were beating on the
24 door.

25 Q Well, if that door upstairs is not open,

Nicholas Moore - Direct

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1 how do you hear all that stuff allegedly from Joe?
2 If he's not out there, how does he hear you, and how
3 do you hear him?

4 A He must have been out there when it
5 happened.

6 Q All right. And is that why you say that
7 -- is that why there's a change in the statement now
8 that he was already out there on the deck when y'all
9 were walking up to the scene?

10 A No, I never said he was on the deck when
11 we was walking up.

12 Q Officer Rushton told Officer Stallo that
13 he was already there on the deck walking on the deck
14 when y'all arrived?

15 A I have no knowledge of what Rushton told
16 Stallo.

17 Q I understand. But you didn't observe that
18 or see anything like that?

19 A Him already on the deck?

20 Q Right.

21 A No, not when I first got there.

22 Q Your statement still is you heard
23 "Sheriff's Office" and then yelled "Gun"?

24 A Yes.

25 Q All right. And how many seconds was there

1 between "Sheriff's Office" and "Gun"?

2 A One, if that many.

3 Q I mean, it was like bam, just like that
4 "Sheriff's Office," "Gun," bam -- something like
5 that?

6 A Right.

7 Q Okay. And then there was another gunshot.
8 Are you -- the State has charged Joe in this case
9 with attempting to kill you. Are you aware of that?

10 A Yes.

11 Q Did he attempt to kill you?

12 A I don't know what his intentions were.

13 Q All right. Well, I mean, you know Joe?

14 A No, never seen him before until then.

15 Q All right. Have you got any reason to
16 believe he don't like you?

17 A I can't answer that question.

18 Q So why would Joe Worley intend to kill
19 you?

20 A Why would he want to intend to kill the
21 other deputy?

22 Q You know, you're lucky probably that he
23 didn't see you point that gun at him at his house on
24 his deck. What do you think?

25 A Well -- oh, well.

Nicholas Moore - Direct

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1 Q Oh, well. Then, of course, you helped get
2 cover with distance, and you helped Officer Rushton
3 get to safety?

4 A Yes.

5 Q Get himself to get treatment at the
6 Medical University, correct?

7 A Yes.

8 MR. GARRETT: That's all I have of this
9 witness.

10 MR. MYERS: I have just a couple.

11 CROSS-EXAMINATION

12 BY MR. MAYE:

13 Q Officer, the bottom line is when y'all
14 went out there, Bobby Rushton went over to the
15 Sheffield's house -- that's right -- to check on the
16 complaint, right?

17 A Yes, sir.

18 Q At some point in time when you were over
19 there, you saw a light come on and go off on the
20 Sheffield's house, right -- not on the Sheffield's
21 house but on the Worleys' residence, right?

22 A Yes.

23 Q Y'all went over after the light went out,
24 beat on the door, and continually announced
25 "Sheriff's Office" over and over again --

1 A Yes.

2 Q -- did you not?

3 A Yes.

4 Q Okay. At some point in time -- now,
5 there's no light on shining out in the yard. At
6 some point in time, y'all heard the screen door or
7 the sliding door open, is that correct?

8 A Yes.

9 Q Okay. And in response to that, you and
10 Bobby are down on the ground level at the door,
11 beating on it, steady calling "Sheriff's Office" and
12 beating on the door, is that correct?

13 A Yes, I was.

14 Q Wherever you were or wherever he was at
15 that point in time, Mr. Worley in this case, as
16 y'all are hollering "Sheriff's Office," you clearly
17 heard him reply back, in response to that, "I don't
18 give a fuck," is that correct?

19 A Yes.

20 Q Okay. So in acknowledgement of what
21 y'all said, you don't have any doubt that he
22 responded, "I don't give a fuck," when you
23 identified yourself as Sheriff's Office?

24 A No, sir, no doubt.

25 Q Okay. As Officer Rushton walked back out

Nicholas Moore - Cross

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1 into the yard and looked back up in this case, the
2 light came back on and blinded him at some point in
3 time, is that correct?

4 A Yes.

5 Q Because the light had been off and was not
6 on as he walked down in front of the house, is that
7 correct?

8 A Yes.

9 Q Okay. In response to Officer Rushton
10 telling Mr. Worley or him crying out "Gun," y'all
11 continued to cry out "Sheriff's Office" and identify
12 yourself as law enforcement officers, and there was
13 conversation about him dropping the gun, wasn't
14 there?

15 A Yes.

16 Q Y'all made those demands to him
17 continuously, didn't you?

18 A Yes.

19 Q Then he fired and struck Officer Rushton
20 in this case?

21 A Yes.

22 Q Any doubt in your mind about that?

23 A No doubt.

24 Q He then -- you motioned for him to come to
25 you, is that correct?

1 A Yes.

2 Q And he came to where you were?

3 THE COURT: Motioned for who to come?

4 Q Officer Rushton. You motioned for Officer
5 Rushton to come to you once you realized he had been
6 hit and fell to the ground, correct?

7 A Motioned and both probably told him to
8 come.

9 Q Okay. And he did come to you at that
10 point in time?

11 A Yes.

12 Q Okay. And a subsequent shot was fired by
13 Mr. Worley --

14 A Yes.

15 Q -- at some point in time?

16 A At some point.

17 Q Okay. Now, after you attempted to get him
18 to safety, what did you hear Mr. Worley say as he
19 came back out of the house and onto the ground
20 level, as y'all were fleeing and trying to get the
21 officer to safety? What did you hear him say?

22 A "Where you at, you son of a bitch?"

23 Q Okay. So he was down -- was he in pursuit
24 of y'all at that point in time?

25 A That's what I thought --

Nicholas Moore - Cross

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1 Q Okay.

2 A -- that he was coming after us.

3 Q Okay. Where was he at that point in time?

4 Was he on the ground level and left the house at

5 that point in time?

6 A He was ground level, would have been on

7 the left side of the house.

8 Q And y'all's primary concern was for

9 Officer Rushton's safety, and y'all got him out of

10 there, correct?

11 A Yes.

12 Q In fact, you left your automobiles there,

13 didn't you?

14 A Yes.

15 Q You only took one car, didn't you?

16 A Yes.

17 Q Because Officer Rushton was severely

18 injured?

19 A Yes.

20 MR. MAYE: Nothing further.

21 THE COURT: Further questions of the

22 witness?

23 MR. GARRETT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. GARRETT:

1 Q I'm just having trouble understanding.
2 While ago, didn't you tell me the light remained on?

3 A The light?

4 Q When I read this to you awhile ago, where
5 we talked about the light that had been on, had come
6 off, and now it was on.

7 A Yes, the light went off, came on -- was
8 off to begin with and came on, went off, and came
9 back on.

10 Q Came back on?

11 A When the actual shot -- when those shots
12 were fired, yes.

13 Q How is that possible?

14 A I guess he left it on.

15 Q He left it on when?

16 A The last time he turned it on.

17 Q All right. So you're not trying to say he
18 went in there and turned the light off and then
19 turned it on to blind Officer Rushton, are you?

20 A I don't know what his intentions were.

21 Q When Rushton was out there, was the light
22 on or off?

23 A Both. It was off to begin with. It came
24 back on.

25 Q Okay. When the shots occurred, were the

Nicholas Moore - Redirect

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1 lights on or off?

2 A On, I do believe.

3 Q On, okay. So the lights didn't get turned
4 off and turned on at the time he got shot. They
5 were already on, isn't that true?

6 A To the best of my knowledge, I do believe
7 they were.

8 Q Okay. That's inconsistent with what you
9 just told Mr. Maye, that they were off, they came on
10 about the time of the shot and blinded Officer
11 Rushton. Did you see -- you already said you didn't
12 see the flash, is that right?

13 A Yes, I don't think I did.

14 Q All right. And all these other statements
15 that you say that happened out there, you didn't
16 tell all that to the agent that was investigating
17 this from the Bureau of Alcohol, Tobacco, and
18 Firearms. You do agree with that, right?

19 A I don't know if I exactly agree with the
20 fact that I may not have told him that. It's not
21 written in the statement, but I can't say that I did
22 or did not tell him that.

23 MR. GARRETT: I'm not sure if I marked
24 this. I want to make sure I mark this, both for
25 identification and submission. That's 143.

1 THE COURT: Is there any objection?

2 MR. MAYE: Nothing, Your Honor, for the
3 purposes of this year, no objection.

4 THE COURT: Mark it in evidence.

5 COURT REPORTER: It's Defendant's Five A,
6 Your Honor.

7 THE COURT: Thank you.

8 (Defendant's Exhibit Number
9 Five A, Summary of events, Stallo, 7-22-10, was
10 marked for identification.)

11 Q Nick, have you had an opportunity to read
12 the other statements of the other officers in this
13 matter?

14 A I may have at some point in time, but I
15 have not recently.

16 Q Okay. And so you -- in preparation for
17 this trial, nobody went over that statement with you
18 in relationship to the other statements?

19 A I was told to go over my statement. I
20 have never sat and read anybody else's statement.

21 Q Okay.

22 A Not lately.

23 Q All right. So at one time, you did?

24 A I'm sure when the incident first occurred,
25 yes, I probably did.

Nicholas Moore - Redirect

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1 Q And here's why I ask the question. Your
2 last statement to the -- the statement that after
3 you heard somebody coming out the door and then
4 yelled "Where you at? Where y'all at?" or something
5 to that effect.

6 Isn't it true that all of the statements
7 say that any other statements were made while he was
8 still up there, and that was made at or about the
9 time of the second shot, hollering and telling them
10 to get out of there, or "I'll get you," or "Get from
11 here," or something to that effect? And that was
12 never made -- y'all had already gone, had cleared
13 the back, back there, before that statement was ever
14 made?

15 A What exactly are you asking me? I'm a
16 little confused.

17 Q Well, you said in your statement something
18 to the effect of -- with the cross-examination just
19 then -- that the officer -- that Joe made the
20 statement after he had come down out of the house
21 and was now on the ground, hollering "I'm going to
22 get you, you sons of bitches," or "you son of a
23 bitch," or something to that effect. What did you
24 say he said?

25 A Yes, he said, "Where you at, you son of a

1 bitch?"

2 Q "Where you at, you son of a bitch?"

3 A Yes.

4 Q He didn't say "bitches," more than one?

5 A We're talking about 2009.

6 Q I understand. But you recognize it as
7 singular as opposed to plural?

8 A I don't recall.

9 Q As best you recall, is that correct?

10 A Best I recall, I would say, "Where you at,
11 you son of a bitch?"

12 Q All right. And then the timing of that,
13 wouldn't that have been at or near the second shot?

14 A No, that was after, a good bit after.

15 Q All right. Is it true that Joe ran back
16 towards the house after he was hit? I'm sorry, is
17 it true that Officer Rushton ran back towards the
18 house after he was hit?

19 A He ran towards me.

20 Q And where were you standing?

21 A The corner of the house.

22 Q So isn't it fair that he ran towards Joe,
23 who was on the balcony of the same house that you
24 were at the corner of?

25 A He ran towards the house, but Joe was up

Nicholas Moore - Redirect

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1 on the top balcony. He couldn't have actually ran
2 towards Joe.

3 Q Well, he ran towards Joe's position.
4 Regardless of whether he was upstairs, he ran
5 towards Joe's house and Joe's position.

6 A Okay.

7 Q Is that fair?

8 A Yes.

9 Q And is it further fair that he ran towards
10 the door?

11 A Yes.

12 Q All right.

13 MR. GARRETT: No further questions.

14 THE COURT: Anything else?

15 MR. MAYE: Just one.

16 RE CROSS EXAMINATION

17 BY MR. MAYE:

18 Q The bottom line is this statement here,
19 this line about "I'm going to get you son of a
20 bitches" is included in the ATF agent's statement.
21 So whether or not you told him, Worley told him -- I
22 mean, you told him, Bobby told him, or Melissa told
23 him. After he interviewed all of you, he did
24 include this in his statement, correct?

25 A Yes.

1 Q All right. I'm going to make sure -- I
2 know you've been through this over and over again --
3 but when Bobby was over talking to the Sheffields in
4 this case, y'all saw the lights come on. Y'all had
5 already gone over and beat on the door of this
6 house, right?

7 A Yes.

8 Q You saw the lights come on. Y'all then
9 went back over to the Worleys' residence, right?

10 A Yes.

11 Q But that light went off, is that right?

12 A I never actually left the Worleys'
13 residence.

14 Q Okay. You stayed over there in the yard?

15 A Pretty much. I was proceeding to -- I was
16 fixing to leave, but I never actually got out of his
17 yard, and the light came back on.

18 Q As Bobby was over there, the light came
19 on, then it went off, right?

20 A Yes.

21 Q Okay. Y'all went back down there and beat
22 on the door over and over again. The light's off at
23 this point --

24 A Yes.

25 Q -- right?

Nicholas Moore - Recross

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1 A Yes.

2 Q As Bobby leaves the position of where you
3 two are beating on the door and announcing
4 "Sheriff's Office" and walks back out into the yard,
5 the light comes on and blinds him --

6 A Yes.

7 Q -- right?

8 A Yes.

9 Q You're absolutely certain that that's the
10 order?

11 A Yes.

12 Q Okay.

13 MR. MAYE: Nothing else.

14 THE COURT: All right, anything else?

15 MR. GARRETT: I'm having difficulty
16 understanding.

17 FURTHER REDIRECT EXAMINATION

18 BY MR. GARRETT:

19 Q Was the light on or off when Bobby got
20 shot?

21 A On.

22 Q Okay.

23 A The light came on when the shot was fired.
24 I don't know whether he left it on or turned it back
25 off.

1 Q Say that again?

2 A I said the light was on when Bobby was
3 shot, but I do not recall whether or not he turned
4 it off after he shot Bobby or not.

5 Q He turned the light off after he shot
6 Bobby?

7 A I don't recall if he did or not.

8 Q Okay. But it was clearly on -- the three
9 seconds before Bobby was shot, that light was on?

10 A I don't know if it was three seconds.

11 Q A half a second, a second, two seconds.
12 I'm not asking you to give me precisely, but some
13 time?

14 A Yes, the light was on when Bobby was shot.

15 Q All right. And also in that report, if it
16 was important for you to say about the, you know,
17 "Where you at, you son of a bitch or whatever,"
18 "SOB," whatever, it was important for you to tell
19 him the truth about what happened, is that correct?

20 A Yes.

21 Q So the other stuff about all these other
22 words and all these other things, all that couldn't
23 happen in those seconds, could it?

24 A All of what other things?

25 Q All these "Sheriff's Department," "Gun,"

Nicholas Moore - Further Redirect

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1 "I don't give an 'f'," "What do y'all want?" -- I
2 mean, we're talking seconds, aren't we?

3 A Not in between Bobby getting shot and him
4 asking "Where you at, you son of a bitch?" It was
5 maybe longer than seconds.

6 Q How many seconds?

7 A I'm going to say 30 to 45, maybe a minute.

8 Q It was a whole minute, then?

9 A I wasn't looking at my watch.

10 Q All right, one other thing. You said the
11 officer crawled to you. That's the first time I saw
12 that, "crawled to you." Did you tell Officer Stallo
13 that he crawled to you?

14 A Crawled to me, walked to me. I don't
15 really -- he got to me somehow. He was injured --

16 Q He ran, didn't he?

17 A -- and he got to me.

18 Q He ran, didn't he?

19 A I don't recall. I can't -- I mean, I
20 can't swear to you that he ran, he crawled, he
21 walked, he jogged. I can't swear to any of it. He
22 got to me, though, I know that.

23 Q In your original statement, you said he
24 ran, and the subsequent statement said he crawled.
25 I just wondered if there's some reason for the

1 change in that part.

2 A Probably the dates in the statements was
3 probably the reason.

4 Q Time had passed?

5 A Yes.

6 Q Thank you.

7 THE COURT: Anything else?

8 Thank you, sir. You can step down.

9 How many more witnesses do you
10 plan to call?

11 MR. GARRETT: Melissa. She'll probably be
12 the last witness, Judge.

13 THE COURT: All right, come on up, please.

14 MS. McALLISTER: Sara Melissa Hegler
15 McAllister.

16 COURT REPORTER: Could you repeat that,
17 please?

18 MS. McALLISTER: Sara Melissa Hegler
19 McAllister.

20 COURT REPORTER: Sara McAllister.

21 MS. McALLISTER: I go by Melissa --
22 Melissa H. McAllister.

23 SARA MELISSA McALLISTER,
24 having first been duly sworn, testified as follows:

25 DIRECT EXAMINATION

Sara Melissa McAlister - Direct

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1 BY MR. GARRETT:

2 Q Officer McAllister, when did you join the
3 McCormick County Sheriff's Department?

4 A In April of 2008.

5 Q Did you have an opportunity to bag
6 evidence and assist in the crime scene evaluation in
7 this case?

8 A Yes.

9 Q And what can you tell me you did in this
10 circumstance?

11 A In this incident?

12 Q Yes, ma'am.

13 A Photographed.

14 Q And who --

15 A Collected evidence into the bags.

16 Q Okay. And tell me exactly how that went.
17 Tell me how y'all investigated the scene -- who was
18 all involved? Were in charge in the investigation?

19 A I was never in charge of it, no.

20 Q Nick Moore, did he put you -- when the
21 sheriff got there, did he pull you aside to instruct
22 you or ask you to go on and do the evidence bagging
23 and photographing?

24 A No.

25 Q Who did that? Who asked you to do that?

1 A No one.

2 Q You just did it on your own?

3 A Yes.

4 Q So if Mr. Nick Moore said that he saw you
5 doing that, you just did that on your own, is that
6 correct?

7 A Yes.

8 Q You've had some difficulties in the past
9 with truthfulness in investigations, is that
10 correct?

11 A Yes.

12 Q In fact, you were terminated from the
13 Department of Natural Resources for not telling the
14 truth in a crime scene investigation, isn't that
15 correct?

16 A I was terminated, yes.

17 Q For that reason, and that's the stated
18 reason in the letter of termination that's been
19 provided to us from the State. Do you want to see
20 the letter?

21 A Sure.

22 THE COURT: What's your answer?

23 A Yes, I'd like to see the letter.

24 Q Let me get it for you. While I'm waiting
25 on the letter, why don't you just tell me what your

Sara Melissa McAlister - Direct

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1 version is as to why you were terminated? And I
2 want to be specific about crime scene investigation.
3 I'll let you look at that letter dated May 29, 2007,
4 from the Department of Natural Resources.

5 A Uh-huh.

6 Q Do you recognize that letter?

7 A Yes, sir.

8 Q And would you tell us the basis for the
9 termination? Did your supervisor --

10 A Failure to cooperate with an
11 investigation.

12 Q What else?

13 A "Your failure to be truthful."

14 Q Truthful?

15 A Right.

16 Q Okay, go ahead. What else --

17 A Do you want me to read all of it?

18 Q Well, what were you untruthful about?
19 What does it say?

20 A I wasn't untruthful.

21 Q Did you have some --

22 A I just did not comply.

23 Q There was a DNR death, is that correct?

24 A Uh-huh.

25 Q And I believe you were on one of the other

1 boats?

2 A Uh-huh.

3 Q Is that correct?

4 A Yes, sir.

5 Q Is that a "yes"?

6 A Yes, sir.

7 Q And as a result of the fatality, you were
8 required as a DNR officer to secure the scene, is
9 that correct?

10 A Yes.

11 Q All right. And did you secure the scene?

12 A No.

13 Q What did you not do to secure the scene?

14 A What did I not do?

15 Q Yes, ma'am. What did you fail to do?

16 A Well.

17 Q Tell me about the container of beer. What
18 did you do with the container of beer?

19 A I didn't do anything with the container of
20 beer.

21 Q What did somebody else do with the
22 container of beer?

23 A They took it.

24 Q They took it?

25 A Uh-huh.

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1 Q Where did they take it?

2 A I don't know where. I guess it was on the
3 bank.

4 Q You're guessing what?

5 A I'm guessing it was on the bank.

6 Q Somehow it got out of your boat that you
7 were in and got on the bank?

8 A Yes.

9 Q And did you know how that happened?

10 A No.

11 Q But you never reported that to the --

12 A No.

13 Q And they found out later on that happened,
14 is that correct?

15 A Yes, sir.

16 Q And when you were questioned about it, you
17 initially told them no, you didn't know anything
18 about that?

19 A Yes.

20 Q And then you subsequently told them that
21 you did, is that correct?

22 A No, there wasn't any time. I didn't tell
23 them.

24 Q Do you dispute the testimony?

25 A Yes, I didn't tell them.

1 Q All right. And as a result, you got
2 terminated?

3 A Yes, sir.

4 Q All right. Now, what steps did McCormick
5 do in hiring you, or do you know?

6 A I'm not really sure of their process.

7 Q So did you work anywhere from May 29,
8 2007, until you were hired in '08?

9 A No, I did not.

10 Q And you were hired when?

11 A '08.

12 Q '08 -- in what month of '08?

13 A April.

14 MR. GARRETT: We have marked that. I move
15 to introduce Six A into evidence, Your Honor.

16 THE COURT: Any objection to that?

17 MR. MAYE: No.

18 THE COURT: Mark it into evidence.

19 (Defendant's Exhibit Number
20 Six A, Letter of termination from DNR, was marked
21 for identification.)

22 Q Now, was this discussed when you got
23 hired?

24 A Uh-huh.

25 Q Is that a "yes"?

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1 A Yes.

2 Q We're from the South, and we're bad about
3 saying "uh-huh" and "huh-uh."

4 A I'm sorry.

5 Q But try to say "yes" or "no" in order to
6 help her, because she can't put an "uh-huh" or "huh-
7 uh," and we won't understand it later on.

8 A Yes, sir.

9 Q Okay, all right. Now, it seems to me that
10 you were kind of back behind Officer Moore, is that
11 correct --

12 A Yes, sir.

13 Q -- when all this stuff went down?

14 A Yes, sir.

15 Q Is that correct?

16 A Yes, sir.

17 Q All right. And he sent you back to go get
18 the car and to call in, is that correct?

19 A Yes.

20 Q And you got back there to the apex of the
21 vehicle, as you said in your report, is that
22 correct?

23 A Yes.

24 Q And waited until Officer Moore and Officer
25 Rushton got back to the bushes there -- or did they

1 get to the bushes first, and then you went to the
2 apex of the car, or how did that work?

3 A All I know is I was running.

4 Q Okay. When did you start running?

5 A When they began retreating.

6 Q Okay. So when Mr. Moore began retreating,
7 you began retreating, all right. What's the closest
8 you go to the corner?

9 A The closest I got to the corner?

10 Q The corner of the house there where the
11 door is.

12 A The catwalk area, where the trash cans are
13 over to the left, yes.

14 Q Eight to ten feet back?

15 A Uh-huh.

16 Q All right. And there's differing stories
17 between your stories and the other officers'
18 stories. Did you see Mr. Worley?

19 A No.

20 Q Did you ever see Mr. Worley?

21 A When he was arrested, yes.

22 Q When he was arrested, all right. And did
23 you see Rushton hit?

24 A I don't believe I saw him get hit. I just
25 heard "Oh, God."

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1 Q You heard what?

2 A "Oh, God."

3 Q Who said "Oh, God"?

4 A One of them.

5 Q Bobby?

6 A I'm guessing Bobby did.

7 Q Did Bobby say, "I'm hit"? Do you hear him
8 say, "I'm hit"?

9 A I did not.

10 Q Okay. And you say in your statement you
11 lost vision of him?

12 A Huh?

13 Q You said you lost vision of him.

14 A Uh-huh.

15 Q Of Bobby?

16 A Uh-huh.

17 THE COURT: Try to say "yes" or "no."

18 A Yes, sir.

19 Q Did you see him running back with Nick
20 Moore, or were you already headed out to go get the
21 car?

22 A I saw him going with Nick, and I was
23 running to the car.

24 Q Sprinted on out ahead. Where was your car
25 parked?

- 1 A Right behind Deputy Moore's.
- 2 Q And where was Deputy Moore's patrol car?
- 3 A In the next driveway over.
- 4 Q And where was your car parked, there?
- 5 A Yes, right behind him.
- 6 Q So both of your cars were in the next-door
- 7 neighbors' driveway?
- 8 A Yes.
- 9 Q Is that correct?
- 10 A Yes.
- 11 Q So there was only one patrol car at the
- 12 Worley residence?
- 13 A Yes.
- 14 Q And where was it parked?
- 15 A In the yard.
- 16 Q Where at?
- 17 A I couldn't tell you exactly where in the
- 18 yard.
- 19 Q At one point, you went out and got Nick
- 20 Moore's phone, is that correct?
- 21 A Yes.
- 22 Q His phone was across in the Stevens'
- 23 driveway?
- 24 A Yes.
- 25 Q All right. And you called in to 911?

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- 1 A No, I took the phone to Nick.
- 2 Q Okay.
- 3 A And then I went back to my vehicle to get
- 4 Bobby and Nick.
- 5 Q To get what?
- 6 A To get Bobby and Nick.
- 7 Q Okay. So you backed your car out of the
- 8 Stevens' driveway, pulled down to the Worley
- 9 driveway --
- 10 A Yes.
- 11 Q -- helped Nick load Bobby up?
- 12 A Yes.
- 13 Q And y'all went on up to the first
- 14 responders?
- 15 A Yes, sir.
- 16 Q And they were right there -- is it Sandy
- 17 Springs or Sandy Ridge?
- 18 A Yes, sir.
- 19 Q Right there?
- 20 A Yes, sir, they were already there.
- 21 Q Okay, all right. And what's your version?
- 22 A Huh?
- 23 Q What's your version of what happened?
- 24 A What's my version of what happened?
- 25 Q What happened that night?

1 A You want me to read the statement?

2 Q No, I want you to tell me what you
3 remember. If you don't remember, that's fine.

4 A I do.

5 Q It's been some time.

6 A Yes, it's been a year and a half.

7 Q Okay. Do you feel comfortable enough to
8 talk about it?

9 A Yes.

10 Q Okay, what happened?

11 A We arrived at the scene.

12 Q Okay.

13 A Knocked on the doors.

14 Q Who knocked on the doors?

15 A Nick.

16 Q Okay.

17 A Bobby talked to the next-door neighbors.

18 Q Okay.

19 A Nick knocked and announced again.

20 Q Okay.

21 A So a light had previously gone on and off.

22 Q While y'all were knocking or not knocking?

23 A I'm not really sure because he was the one
24 who -- Nick was the one who told me the light came
25 on.

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1 Q He told you it came on and off?

2 A Yes, because I was watching Bobby as he
3 was over at the Sheffields'.

4 Q Oh, okay. So you never saw the light come
5 on or off?

6 A Not until the light came on when someone
7 came out of the house.

8 Q All right, so the light came on, someone
9 came out of the house. Then what happened?

10 A Then what happened?

11 Q Yes.

12 A Bobby was shot.

13 Q Okay. So the light came on, somebody came
14 out of the house, and Bobby got shot?

15 A Yes. Nick stated, "Sheriff's Office," and
16 I heard, "I don't give a fuck."

17 Q Okay.

18 A And that's when shots were fired.

19 Q Gunshots fired?

20 A Yes, sir, as Bobby was stepping out.

21 Q All right. So you never heard anybody say
22 anything like "Who are y'all?" You didn't hear
23 that, did you?

24 A No, I didn't.

25 Q And you didn't hear any statements about

1 "Put your gun down, put your gun down"?

2 A I did.

3 Q Oh, you did?

4 A Yes.

5 Q While ago in your statement, you didn't
6 recall that?

7 A I don't have the statement right here in
8 front of me.

9 Q All right. That wouldn't be important --
10 "Put your gun down, put your gun down"?

11 A Yes.

12 Q Who said it?

13 A Both.

14 Q How many times?

15 A I can't recall.

16 Q More than once?

17 A I guess it would have to be more than
18 once. Nick said it, and Bobby said it.

19 Q Did they say it at the same time?

20 A I don't know.

21 Q When the word "gun" happened, how long was
22 it between the word "gun" and the fired shots?

23 A It all seemed so fast.

24 THE COURT: All of it what, now?

25 A It all seemed so fast.

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1 Q Between "gun" and the shot, was it about
2 like bang -- "gun," bang? Was it like that, or was
3 it longer?

4 A I can't recall. I don't know how fast it
5 was.

6 Q Okay. You didn't know Bobby had been hit,
7 is that right?

8 A Huh-uh.

9 Q Why? Is that a "no"?

10 A No, I did not. I did not realize he had
11 been until Nick stated that he was shot. I saw him
12 stumbling towards me, and so they ran. And it was
13 when he laid down, he was on the ground, that I
14 actually realized then.

15 Q That's when they were back behind the
16 house?

17 A The bushes.

18 Q In the bushes, hiding and cover?

19 A Yes.

20 Q When you realized he had been hit?

21 A Yes.

22 Q I believe you said you saw where he had
23 taken the shot where the bullet went in --

24 A Yes.

25 Q -- and maybe took off a finger?

- 1 A Yes, sir.
- 2 Q Okay. Do you know Worley?
- 3 A Huh?
- 4 Q Do you know Joe?
- 5 A No.
- 6 Q Do you have any reason to think he would
- 7 be trying to kill you -- any motive to kill you?
- 8 A I have no idea, no.
- 9 Q All right. You never met him before?
- 10 A Not that I can recall.
- 11 Q Do you know Margaret, do you know Ms.
- 12 Worley; his mom --
- 13 A No.
- 14 Q -- Ms. Mary?
- 15 A I met her that night.
- 16 Q Okay.
- 17 A But I wouldn't know her. I don't know
- 18 her.
- 19 Q She was very cooperative, wasn't she?
- 20 A Yes.
- 21 Q She invited y'all into the house?
- 22 A I don't know. I didn't go in the house.
- 23 Q You didn't participate in that?
- 24 A I didn't go into the house until later.
- 25 Q Okay. You said you took the photographs?

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- 1 A Uh-huh.
- 2 Q That's "yes"?
- 3 THE COURT: That's "yes"?
- 4 A Yes.
- 5 Q Whose camera did you use?
- 6 A The department's.
- 7 Q Did Bo Willis have a camera?
- 8 A Yes.
- 9 Q Is that his camera or a department camera?
- 10 A Two separate cameras.
- 11 Q So y'all use two separate cameras?
- 12 A Yes.
- 13 Q All right. And who took the photographs?
- 14 A I did.
- 15 Q All of it?
- 16 A No. I don't know what Bo took pictures
- 17 of. I can't account for him.
- 18 Q You can't account for Bo Willis?
- 19 A No, I can't.
- 20 Q So you did part of the investigation, and
- 21 he did the other part of the investigation?
- 22 A I have no idea. I did, yes. I'm guessing
- 23 he did. I mean, I was there a little while with Bo,
- 24 but I don't know what he did after I left.
- 25 Q What items of evidence did you pick up?

1 A What items of evidence did I pick up?

2 Q Yes, ma'am, and photographed -- that you
3 bagged and photographed?

4 A The shells.

5 Q The shells?

6 A Yes, the shells and the ammo from Bobby's
7 gun.

8 Q Okay. Where did you find the shells and
9 the ammo from Bobby's gun?

10 A Throughout the yard.

11 Q Throughout the yard?

12 A Yes.

13 Q Have you looked at the drawing that's been
14 prepared in this case by Bo Willis?

15 A No.

16 Q You haven't?

17 A No.

18 Q Have you read his report?

19 A No.

20 Q He draws a round -- basically, just a
21 round area right there in front of the flower bed
22 back to the porch, just around there, and it says
23 "various items found in this area." Did you take
24 any pictures of it as they lay on the ground? Did
25 you take any pictures of that?

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1 A Yes.

2 Q Okay. And what about the part that goes
3 from the grass all the way up to the flower bed, did
4 you take any pictures of that?

5 A I don't recall -- the flower bed, no, I
6 didn't.

7 Q There was a piece of Bobby's gun that was
8 found in that area. Did you find that piece?

9 A No.

10 Q Do you know who found that piece? Any
11 idea?

12 A No.

13 Q You just found casings and shells?

14 A What I saw.

15 Q Did you find any distorted bullets or
16 anything like that out there, do you recall?

17 A No, sir, I don't recall.

18 Q If you would have bagged that evidence,
19 would you have put your initials on it?

20 A Yes.

21 Q You took a picture of it. Give me your
22 procedure. What would you do?

23 A What would I do?

24 Q Uh-huh. How do you do it?

25 A How do I do it? I took the photograph and

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1 took the paper and the ammo and put into the bag,
2 sealed it, wrote my name, approximately where they
3 were located.

4 Q Okay. Did you take a picture of it where
5 it was located?

6 A Yes.

7 Q Okay. Did y'all use any GPS or anything
8 like that?

9 A No.

10 Q And is there any reason why y'all didn't
11 turn this thing over to SLED to have SLED
12 investigate it for y'all?

13 A Can you say that again?

14 Q Any reason that your department, the
15 Sheriff's Department -- was there any discussion as
16 to why y'all didn't turn it over to SLED and let
17 SLED investigate it?

18 A No.

19 MR. GARRETT: Nothing further.

20 THE COURT: Anything else?

21 MR. MYERS: No.

22 THE COURT: Thank you, ma'am. You may
23 step down.

24 Any other witnesses?

25 MR. GARRETT: No, Your Honor.

1 THE COURT: Is there anything further from
2 you all?

3 MR. MYERS: No, sir.

4 THE COURT: You want to make your
5 arguments tomorrow?

6 MR. GARRETT: Whatever you want to do is
7 fine.

8 THE COURT: Do you all want to make your
9 arguments tomorrow?

10 MR. MYERS: That would be good, Your
11 Honor.

12 THE COURT: You all be here at noon
13 tomorrow. Court is in recess until noon.

14 You all have Mr. Worley here tomorrow at
15 noon, okay?

16 MR. GARRETT: Yes, sir.

17 THE COURT: All right.

18 -- End of Day --

19 Wednesday, June 1, 2011

20 THE COURT: I'm ready. What's your
21 argument?

22 MR. HENDERSON: Your Honor, I'm Carson
23 Henderson and Your Honor, I'd like to get this
24 marked as a Court's exhibit. It's basically some
25 applicable law.

1 (Court's Exhibit 1A,
2 applicable law prepared by the defense, was received
3 in evidence.)

4 THE COURT: All right, go ahead.

5 MR. HENDERSON: Yes, sir, Your Honor, if
6 it pleases the Court. The top documents in this
7 packet, Your Honor, just bears proof that Deputy
8 Rushton had quit the McCormick County Sheriff's
9 Office and was rehired.

10 Your Honor, based on the testimony
11 presented yesterday defense believes it made a prima
12 facia showing that Deputy Rushton is not a qualified
13 deputy of McCormick County, Your Honor.

14 And the documents attached, and I'll just
15 flip through the documents, Your Honor, and this is
16 based upon his sworn testimony yesterday. He said
17 that to the best of his knowledge he'd never been
18 approved by a circuit court judge since he's been
19 rehired as a deputy. And Your Honor, that's code
20 section 23-13-10 which is provided in this packet of
21 materials.

22 Your Honor, this Deputy Rushton testified
23 as well that he'd never given an oath of office as
24 required by code section 23-13-20. But during his
25 testimony the solicitor's office produced a bond,

1 Your Honor. Actually, I've got it in my stack of
2 materials.

3 But under 23-13-20 there are two oaths
4 that are required for every deputy sheriff to be
5 taken, Your Honor. The one that was provided to us
6 was a constitutional oath which is required by
7 section 26 of article 3 of the constitution. The
8 one that he had not taken is the statutory oath and
9 they are different oaths, Your Honor.

10 Under 23-13-20 -- and these oaths are
11 required to be maintained by the Clerk of Court,
12 Your Honor. And I've put the constitutional oath in
13 here, Your Honor, and I've put a copy of the
14 document introduced into evidence yesterday as the
15 constitutional oath. But again, there is no
16 statutory oath. And Your Honor, he never presented
17 any evidence that he provided any bond, for whatever
18 it's worth, Your Honor.

19 We believe that we have put forth a prima
20 facia case that Deputy Rushton when all of this
21 happened on November 15th 2009 was not a duly
22 qualified deputy sheriff of McCormick County. And
23 Your Honor, I would refer to code section 23-13-50
24 which talks about those exact words, "When duly
25 qualified." It is our position that he wasn't duly

1 qualified.

2 Your Honor, under these Castle Doctrine
3 Motions, going back to this State vs. Duncan case
4 that we provided to the Court yesterday, you must
5 examine the Castle Doctrine Motion through the
6 defendant's eyes. In this case this is a law that's
7 designed to protect homeowners.

8 And the General Assembly has made it very
9 clear that they are protecting the right of
10 homeowners so I believe if you look through Mr.
11 Worley's eyes about whether there's sufficient
12 evidence in the record, more likely than not the
13 Castle Doctrine was -- that he's entitled to the
14 protection of the Castle Doctrine.

15 Your Honor, I've put this packet of
16 material together, code section 16-11-420, "That
17 homeowners have a right to expect to remain
18 unmolested and safe within their homes and that no
19 person should be required to surrender his personal
20 safety to a criminal nor should a person be required
21 to needlessly retreat in the face of intrusion or
22 attack."

23 Your Honor, Mr. Worley was clear in his
24 testimony. He thought he was being burglarized. He
25 had heard of home invasions through media. His

1 mother's property where he was at had been
2 burglarized before and there had been an attempted
3 burglary down there.

4 Mr. Worley testified heard this continuous
5 door bell ringing in the middle of the night, early
6 in the morning. He testified he heard no voices,
7 and again this is in the house, heard no voices. He
8 heard no door knock. And you heard the testimony
9 his house was double insulated.

10 And you heard Mr. Worley testify that when
11 he was looking out the upstairs sliding glass doors
12 the only thing he saw was dark. He didn't see any
13 light, didn't see any blue lights, didn't see
14 anything flashing at all.

15 And Mr. Worley indicated he wasn't about
16 to go downstairs and open up the ground floor door
17 when it had no peep hole and no window. Plus there
18 no windows downstairs at all, Your Honor. His only
19 means to look out was this upstairs sliding door and
20 he didn't see anything.

21 Your Honor, based upon Mr. Worley's
22 testimony, at this point in the case, I believe
23 under 16-11-440 he is entitled to the presumption
24 that he believed somebody was in the process of
25 unlawfully and forcefully entering his building or

1 residence. And that there is evidence in the record
2 to suggest that he knew or had reason to believe
3 that an unlawful or forceful entry or act was
4 occurring or was about to occur.

5 Your Honor, I think that at this point in
6 the case I think he's entitled to this presumption.
7 Now, you look at whether or not law enforcement is
8 protection against Mr. Worley's presumption under
9 the Castle Doctrine.

10 The first one is, Your Honor, under 16-11-
11 440, and I've tried to break it down, that the first
12 step the government has to prove is that Mr. Rushton
13 was a law enforcement officer. And Your Honor, as
14 we believe, we believe we put up a prima facia case
15 indicating that he is not a qualified deputy sheriff
16 of McCormick County.

17 But Your Honor, assuming and to play
18 devil's advocate, which we're not conceding, but
19 assume that he is a qualified deputy sheriff of
20 McCormick County, the next issue is whether or not
21 he attempted to enter a dwelling or residence. And
22 Your Honor, by Deputy Rushton and Deputy Moore's own
23 admission they were up under the roof of this porch
24 or balcony ringing door bells and banging on the
25 door.

1 And under the Castle Doctrine the porch
2 area and any area under the roof is included in your
3 definition of residence and dwelling. So I believe
4 we have that element that they were attempting to
5 enter the residence, Deputy Rushton was attempting
6 to enter the residence. And then the issue of in
7 performance of his official duty again we maintain
8 that there can be no official duty if you are not
9 duly qualified to be a law enforcement office.

10 But without conceding that Deputy Rushton
11 is not, assume that he is for a moment, that he's
12 there in the performance of his official duty. The
13 next issue is did he identify himself in accordance
14 with applicable law.

15 Your Honor, again, going back to the
16 evidence that's in the record Mr. Worley only heard
17 the door bell prior to opening the door. He never
18 heard any knocking, never heard any voices. Again,
19 we're talking about prior to opening the door. Mr.
20 Worley testified he didn't see anyone prior to
21 opening the door, it was pitch black outside. And
22 you heard evidence that this was the darkest night
23 of November '09. Literally there was no moon that
24 night, Your Honor.

25 Deputy Rushton has testified he was not

1 wearing a departmental issued uniform. In fact, he
2 bought these clothes someplace himself and was
3 waiting on his uniform to come in. Your Honor, you
4 heard testimony from Deputy Rushton that he wasn't
5 wearing a hat, that law enforcement officers
6 typically wear.

7 And of course, if he didn't wear a hat he
8 didn't have badge on that hat he's not wearing and
9 Your Honor, you've heard testimony that he wasn't
10 wearing any clothing marked sheriff's department or
11 law enforcement, police, anything along these lines.
12 And you've heard testimony that Deputy Rushton was
13 wearing no florescent clothing.

14 Your Honor, at the back of this material
15 I've produced code section 23-23-10 and all the
16 subsequent statutes that deal with law enforcement
17 training. Your Honor, actually this is the
18 legislation that created the South Carolina Criminal
19 Justice Academy and made it a stand-alone entity
20 from the Department of Public Safety.

21 And I've underlined various portions of
22 this law, Your Honor, that says the purpose of this
23 criminal justice academy is to train law enforcement
24 officers. That we're setting standards for law
25 enforcement service, that we shall provide

1 facilities and training for officers. So the law is
2 very clear that we've got an agency here in South
3 Carolina, the Criminal Justice Academy that's sole
4 duty is to train police officers in proper procedure
5 and policies.

6 Your Honor, yesterday Dr. Kirkham, our
7 expert witness, testified that in his professional
8 opinion, that all this was a shots fired, a gun
9 call, that the prudent way to do this, the
10 acceptable way to do this would have been Deputy
11 Rushton either have dispatched, called the Worley
12 residence -- Your Honor, the Worley's phone number
13 was in the county phone book at this time.

14 Or the proper thing would be for Deputy
15 Rushton once he got the number to call the Worley
16 residence. Wake them up, let them know law
17 enforcement is outside and wants to talk to them.
18 And then if that didn't work Dr. Kirkham said Deputy
19 Rushton should have used his squad care PA
20 loudspeaker system, some sort of bull horn to wake
21 the people up if you truly wanted to talk to them.

22 And at that point in time, when you're
23 making this contact, with the Worleys, turn on your
24 blue lights. You could have blared your siren. You
25 would have made these people wake up and come out of

1 the house and come to you.

2 Now, Your Honor given -- there's been a
3 lot of factual dispute about what was said after Mr.
4 Worley came outside on November 15th 2009. And Your
5 Honor, I submit to you, it really doesn't matter
6 what was said.

7 Everybody's got a different remembrance
8 about what was said or not said. But according to
9 Dr. Kirkham that if anything was said the actions of
10 Deputy Rushton and these other deputies did not
11 match up with what Mr. Worley saw.

12 He's looking at the darkness. He doesn't
13 see any blue lights. He doesn't hear sirens. All
14 me sees is somebody in his yard with a small
15 flashlight that he testified he believed was a
16 burglar's flashlight. He saw Mr. Rushton not
17 dressed in a uniform. And most importantly, he saw
18 Deputy Rushton aiming a fire arm at him, going to
19 kill him.

20 Deputy Rushton testified to that, that he
21 intended on shooting him. I can only assume that he
22 was going to shoot Mr. Worley, going to shoot him to
23 kill him. That's what Mr. Worley saw that night,
24 Your Honor. Regardless of what got said, anything
25 he could see did not match up with what, you know,

1 what words of anything he heard didn't match up with
2 what he was seeing.

3 And you heard Dr. Kirkham testify that in
4 his professional opinion that Deputy Rushton and
5 other law enforcement officers did not announce
6 themselves in accordance with applicable law, which
7 includes no applicable policies and procedures
8 taught by the South Carolina Criminal Justice
9 Academy.

10 And Dr. Kirkham testified that to his
11 professional opinion that a reasonable homeowner or
12 a person inside a home, inside Mr. Worley's position
13 that night, would not have known that Deputy Rushton
14 was a law enforcement officer.

15 And Your Honor, the Castle Doctrine here
16 under 16-11-450 -- again, I submit to the Court that
17 the Court looks at this through Mr. Worley's eyes,
18 through the homeowner's eyes. And more likely than
19 not was he justified in doing what he did.

20 Your Honor, under 16-11-450 not only do we
21 submit that Mr. Worley is entitled to protection
22 under the Castle Doctrine statute but that code
23 section also incorporates any other applicable
24 provision of law that justifies a homeowner in using
25 deadly force.

1 Your Honor, we would submit this is flatly
2 the case of self defense. We would submit this is a
3 classic case of defense of habitation. But also
4 that Mr. Worley had the right to resist an unlawful
5 arrest assuming that Deputy Rushton is in fact a
6 qualified deputy. Your Honor, I believe pointing
7 and aiming a firearm at you is the most effective
8 means of arrest that can be out there.

9 And also Code section 17-13-20 that Mr.
10 Worley has the absolute right in the nighttime to
11 arrest a person that he believes is felon. And Your
12 Honor, we would submit that under all of these
13 various statutory rights and or common law case law
14 -- and in Your Honor's notebook we provided
15 yesterday there is plenty of law on all of these
16 issues.

17 We would submit that Mr. Worley has proven
18 looking through his eyes more likely than not that
19 he is entitled to protection of the Castle Doctrine.
20 And we would ask, Your Honor, that the indictment be
21 dismissed against Mr. Worley.

22 THE COURT: Solicitor?

23 MR. MYERS: Your Honor, the defense of
24 habitation and/or the Castle Doctrine is all based
25 on reasonableness. The word "reasonable" appears

1 throughout the Doctrine itself. 16-11-420 section
2 (d) says, "The General Assembly finds that it is
3 proper for law-abiding citizens to protect
4 themselves, their families, and others from
5 intruders and attackers."

6 Subsection (e) says, "The General Assembly
7 finds that no person or victim of a crime should be
8 required to surrender his personal safety to a
9 criminal. Nor should a person or victim be required
10 to needlessly retreat in the face of intrusion or
11 attack." That's in the first part.

12 In 16-11-440 (a) (1) talks about a person
13 using deadly force in a home if the person against
14 whom the deadly force is used is in the process of
15 unlawfully and forcefully entering.

16 Subsection (a) (2) says that the person
17 who uses deadly force knows or has reason to believe
18 that an unlawful and forcible entry is occurring or
19 has occurred.

20 Throughout this, Your Honor, it talks
21 about attacks, intrusions, or attackers and
22 intruders. And to come under the statute, the
23 action of the people outside the property must be
24 unlawful, and they must be forcibly entering.
25 There's no evidence to support that. There's no

1 evidence anywhere.

2 The officers were out there lawfully.
3 They were responding to a complaint of a weapon
4 being fired between three and four o'clock in the
5 morning. They were out there to try to calm things
6 down, to stop disturbing the peace, interfering with
7 the neighbors' lives.

8 Now, there were three duly qualified,
9 sworn, certified deputies out there. And it doesn't
10 say he's not a deputy, Your Honor. That's an
11 administrative thing. He has taken the oath of
12 office, he has been to the academy, he trained
13 officers in Iraq. He is a qualified deputy.

14 Coming down, Your Honor, to 16-11-440
15 subsection (d), the presumption provided in
16 subsection (a) does not apply, Castle Doctrine does
17 not apply, if the person against whom deadly force
18 is used is a law enforcement officer who enters or
19 attempts to enter a dwelling, residence, or occupied
20 building, in the performance of his duty, and he
21 identifies himself in accordance with applicable
22 law, or the person using force knows or reasonably
23 should have known that the person entering or
24 attempting to enter is a law enforcement officer.

25 Here again, there's nothing unlawful. And

1 we submit to you that this is an "or" in subsection
2 (4). It's not an "and," it's "or," that he officer
3 identifies himself in accordance with law. Or that
4 the homeowner reasonably should have known the
5 person entering or attempting to enter was a law
6 enforcement officer.

7 They weren't out there unlawfully. They
8 were out there performing their sworn duty. Again,
9 Your Honor, in the same act, in 16-11-450,
10 subsection (a), "A person who uses deadly force as
11 permitted by the belief in this argument or another
12 capital belief or argument is justified in using
13 deadly force and is immune from criminal prosecution
14 in a civil action for the use of deadly force unless
15 the person against whom deadly force was used is a
16 law enforcement officer acting in the performance of
17 his duties and he identifies himself first under the
18 applicable law. Or, again, if the person using
19 deadly force knows or reasonably should have known
20 that the person was a law enforcement officer."

21 We submit to Your Honor, first of all, the
22 main part of 440 does not apply because they have to
23 show that whatever these officers did was unlawful
24 and there was force used to enter or attempt to
25 enter.

1 In Duncan, it cites Fair versus the State
2 of Georgia, 702-SE2nd-420, a 2010 case. That's what
3 they did in this case. They cover that case, which
4 our Supreme Court says it's a similar statute. The
5 Court majority says they can plead that under this
6 that the requirement that the entry or attack must
7 in fact be unlawfully or for the use of threat
8 before it can justify it with the defense of
9 habitation.

10 Therefore, they have failed to begin with
11 on the main part of the statute. They were
12 obviously there lawfully. No force was used
13 whatsoever.

14 The second thing, Your Honor, is these
15 officers out there in their capacity identified
16 themselves as law enforcement officers. That's a
17 jury issue. The defendant says he didn't know. The
18 officers said, "We were shouting, screaming, banging
19 on the door, ringing the bell."

20 Even the next-door neighbors way over
21 across the path over there heard this. I can't
22 believe the man's living in a sound-proof house and
23 he can't hear people talking. That defies common
24 sense.

25 It's a jury question as to that, of them

1 identifying themselves. It's also a jury question,
2 Your Honor, as to whether the defendant reasonably
3 should have known that the person entering or
4 attempting to enter, neither of which occurred, is a
5 law enforcement officer. And I think the clearest
6 thing we have is he knew, because when they said
7 "Sheriff's Department," he said, "I don't give a
8 blank." He didn't. He didn't really care.

9 He said he's been asleep since 11 or 12.
10 Well, that's disputed by the neighbors next door,
11 when the shots occurred 15 or 20 minutes apart,
12 three and four o'clock in the morning. The officers
13 get out there about four. They were performing
14 their duties.

15 We submit to you, Your Honor, the Castle
16 Doctrine was not enacted to prevent officers from
17 carrying out their duties. The officers were
18 carrying out their duties.

19 They identified themselves, they were
20 lawfully there, there was not even an attempt to
21 enter the Worley residence. They were knocking on
22 doors, ringing bells. And they can come in with the
23 Monday morning quarterback and play hindsight all
24 they want to. The facts are the facts.

25 The officers weren't out there to arrest

1 anybody. They go out there, and they would say,
2 "Let's stop all this foolishness. Let's stop this
3 shooting in the middle of the night. Let's have
4 peace in the neighborhood." They were peace
5 officers trying to restore peace. We submit to you
6 this is an issue for the jury, that the Castle
7 Doctrine does not apply.

8 THE COURT: All right, is there any reply?

9 HENDERSON: Very briefly, Your Honor. I
10 think it's the government that's looking at this in
11 hindsight, Your Honor. Mr. Worley has testified
12 about his perceptions that night.

13 And of course, now we know Mr. Worley
14 knows that some of the perceptions he made that
15 night were wrong, they were inaccurate. But, Judge,
16 you look at this more likely than not through the
17 defendant's eyes while this was happening.

18 I mean, this is something that we can't
19 Monday morning - of course, we Monday morning
20 quarterback about it now. But that night, there was
21 no time. Mr. Worley has testified about what he
22 reasonably believed, based upon what he was hearing
23 and seeing at that point. Your Honor, I think
24 that's got to be very clear.

25 And as for this Georgia case, Fair vs.

1 State, Georgia has a somewhat different Castle
2 Doctrine than we do, Your Honor. And plus, in that
3 case, there was a no-knock warrant being served.
4 And the Georgia Supreme Court says because there was
5 a warrant being served that the deputies could not
6 be trying to enter the house unlawfully.

7 That's why we made it very clear in this
8 case, Your Honor, that Deputy Rushton had no
9 warrant. They did not have any lawful right to
10 enter that house to get anybody.

11 Your Honor, in looking through Mr.
12 Worley's eyes here, there is ample evidence in the
13 light most favorable to him, more likely than not,
14 that he believed that somebody was unlawfully and
15 forcefully trying to enter his house to do something
16 to him.

17 And, Your Honor, in talking and going back
18 to the issue about whether or not Deputy Rushton is
19 a qualified law enforcement officer, under the
20 statute I've given you it talks about oaths, and it
21 talks about going in front of the circuit judge.
22 These are "shall," these are not permissive
23 statutes. These are mandates, and from his own
24 testimony he has not been through what the law
25 mandates before he can duly discharge any duties as

1 a deputy sheriff.

2 THE COURT: Anything else, Solicitor?

3 MR. MYERS: No, sir.

4 THE COURT: I'll notify you of my decision
5 in writing. Thank you.

6 MR. MYERS: Thank you.

7 MR. HENDERSON: Your Honor, may I be heard
8 on one other matter?

9 THE COURT: Sure.

10 MR. HENDERSON: Your Honor, we would like
11 to renew our motion for bond. Your Honor, we
12 previously made several motions that the Court has
13 denied based upon the government's allegation that
14 Mr. Worley is a menace and a danger to the
15 community.

16 Your Honor, I believe the testimony that
17 came out yesterday told a totally different side of
18 the story. Yesterday was Mr. Worley's chance to
19 get up in court and put forth evidence about what he
20 says happened through his eyes.

21 Your Honor, we believe that just totally
22 paints a whole different picture. Your Honor, we've
23 repeatedly asked for a speedy trial in this matter,
24 and again the government opted to have this Castle
25 Doctrine hearing at the same time that they wanted

1 to have the trial.

2 I know this Duncan case has just come
3 down. I think it has given us a lot of guidance
4 under these Castle Doctrine cases. I have a feeling
5 this case is going to give us some more guidance
6 from the appeal courts level.

7 Your honor, but based upon what the Court
8 heard yesterday, we would submit that Mr. Worley
9 should be entitled to a reasonable bond. And, Your
10 Honor, as we have suggested to the Court before, we
11 have no problems if the Court put him under house
12 arrest at his primary home in Aiken County and that
13 he can't come to McCormick County unless he is here
14 on court business or visiting one of his attorneys.

15 And, Your Honor, if you wanted him to
16 report to the Aiken sheriff, Aiken probation,
17 whoever, we will consent to any requirements that
18 the Court put on him. But, Your Honor, Mr. Worley
19 has now been incarcerated for 18 months, and we
20 believe that yesterday hopefully shed a different
21 light on what went on at his mother's residence on
22 the night of November 15, 2009.

23 THE COURT: Does the State wish to be
24 heard?

25 MR. MYERS: The State takes the same

1 position they have previously as to the dangers of
2 that, Your Honor.

3 THE COURT: I'll notify you of that
4 decision in writing as well.

5 MR. HENDERSON: Thank you, Your Honor.

6 THE COURT: Thank you very much.

7 --End of Transcript of Record--

8

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

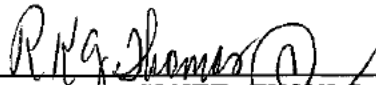
COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND
NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE BUT PARTIAL TRANSCRIPT OF RECORD OF
THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE
ABOVE-CAPTIONED CASE ON MAY 31, 2011, IN MCCORMICK,
SOUTH CAROLINA.

THIS RECORD IS INCOMPLETE DUE TO AN ILLEGAL
BREAK-IN TO MY PERSONAL VEHICLE ON 6/23/2011,
WHEREIN ITEMS WERE STOLEN FROM THE VEHICLE,
INCLUDING PART OF THIS RECORD; COLUMBIA POLICE
REPORT #110018381.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL
NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF
ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS
OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND
AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE
TWENTY-EIGHTH DAY OF AUGUST 2011.


REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

1 State of South Carolina Court of General Sessions
2 County of McCormick
3
4

5 State)
6)
7 v.) Transcript of Record
8 Joe Ross Worley) 10-GS-35-0049
9) 10-GS-35-0050
10) 10-GS-35-0051
11) 10-GS-35-0052
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June 14, 2013
Edgefield, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

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1 (The following proceedings were held on June
2 14, 2013.)

3 **THE COURT:** This is in the matter of the State
4 versus Joe Ross Worley. This is a McCormick County
5 case. I previously conducted a hearing under the
6 Defense of Persons and Property Act in McCormick
7 quite some time ago and made rulings and basically
8 denied the efforts of the defense to be declared to
9 be immune from further prosecution or civil suit.

10 After that ruling was made and in the written
11 order, I felt that I was having to make such fact
12 specific findings that dealt with the credibility of
13 the claims of Mr. Worley that the appropriate thing
14 for me to do was to recuse myself from further
15 consideration of the civil or criminal cases, and I
16 put that in the order. It wasn't because of any
17 actual bias or animus or anything else. It was just
18 what I felt was the appearance. Having made
19 specific findings on very fact specific issues, I
20 just felt it would be better that I recuse myself.

21 So I notified the other resident judge, Judge
22 McMahon, under the procedure that we're to follow.
23 And my understanding is that he subsequently recused
24 himself and Judge Addy was assigned by the Chief
25 Justice.

1 Now, what I really did not think through, I
2 guess, was that there might be a motion for a
3 reconsideration, which there was. So there was a
4 rather detailed motion for reconsideration that was
5 filed. There also had been bond matters because
6 Mr. Worley has been incarcerated for an extended
7 period of time. He's still incarcerated.

8 Now, Judge Addy was able to deal with the bond
9 issues, but the reconsideration issue, I then had an
10 ethical question as to whether I could having
11 recused myself from the case due to the
12 reconsideration motion. With the consent of
13 counsel, I contacted Professor Freeman, who is, I
14 think, recognized as certainly one of the most fore
15 -- foremost authorities on ethics in South Carolina
16 and got an opinion from him, which should be in the
17 file. And I do have the McCormick Clerk of Court
18 here and the McCormick -- the case file is here. In
19 any event, my recollection of Professor Freeman's
20 response to me was not only did I have the ability
21 to do it, I had the obligation to do it.

22 So the reconsideration motion was, as I
23 mentioned, extensive. It took quite a while to do.
24 I went through all of those things. And I did agree
25 with some of the positions of the defendant and did

1 modify the order. I've got so many different
2 versions of the order in the computer, I have a real
3 hard time figuring out which one is the last one
4 because I've done so many orders in this case.

5 However, there was another twist that came
6 along. The defense had asked if they could get the
7 transcript before I ruled on the reconsideration.
8 And all this is coming from my memory, I apologize
9 to you all. If I state anything incorrectly, you
10 can correct me. They wanted the transcript and it
11 was learned that the court reporter had equipment in
12 a vehicle and the vehicle was broken into and
13 certain things were stolen, and because of that,
14 there are gaps in the record. I have not talked to
15 the court reporter. Having recused myself from the
16 case, I have purposely stayed as far away from it as
17 I possibly can.

18 So I learned that the case had been taken up on
19 appeal. I knew it was going to be appealed
20 regardless of how I ruled because the procedure now
21 is for us to have this Castle Doctrine hearing, the
22 Defense of Persons and Property Act hearing, wherein
23 the defendant had the burden of proof and it's a
24 preponderance of the evidence standard. And it's
25 immediately appealable. So regardless of whether I

1 ruled for the State or the defense, I knew it was
2 going to go up on appeal and it did, apparently.
3 And the South Carolina Court of Appeals has it.

4 And there is, in the memorandum that was
5 submitted and in -- in the letter that was sent to
6 Judge McMahon, there are attachments, one of which
7 is that Judge Cureton has issued an order, which was
8 filed on March 28th, 2013, which denied a motion for
9 a de novo hearing and remanded the matter to this
10 Court for reconstruction of the missing portions of
11 the record. A copy was sent to various attorneys.

12 I didn't know anything about it. Somebody
13 notified me about it. I can't say exactly how I
14 learned. I think it was in an e-mail and -- Oh, it
15 was an e-mail or some sort of response going back
16 because Judge McMahon had said that I was recused,
17 if I recall correctly, and Judge McMahon was recused
18 and they should refer it to Judge Addy. And, of
19 course, Judge Addy wasn't present for the hearing,
20 so we're here.

21 We had previously scheduled this, it was
22 continued. I don't know that a hearing is
23 necessary, but I wanted to afford an opportunity for
24 a hearing and my understanding was that Mr. Worley's
25 counsel was requesting one. And I'm certainly very

1 amenable to allowing the presentation of whatever we
2 need to present today.

3 The first thing I guess I need to cover,
4 however, is that I did not try to seek a second
5 opinion from Professor Freeman because I think the
6 concept's the same. Nobody else is in the same
7 position to decide issues about reconstruction of a
8 record or to attempt to. I don't know how it's fair
9 for any other judge to be put in the position of
10 trying to reconstruct it.

11 A reconstruction of the record doesn't deal
12 with any further rulings as far as any future
13 rulings on the criminal case or the civil case. It
14 just deals with the prior matters that were handled.
15 And so I think the same thing applies that Professor
16 Freeman would say, I've got not only ability, but
17 the obligation. But if any of y'all want to put
18 anything on the record about the recusal, now is the
19 time.

20 **MR. MAYE:** Nothing from the State, Your Honor.

21 **MS. BALLARD:** Nothing from the defendant, Your
22 Honor.

23 **THE COURT:** All right. Now, Ms. Ballard, your
24 side has the burden, so I guess we'll start with
25 you.

1 **MS. BALLARD:** Yes, sir. Thank you, Your Honor.

2 I've been practicing for 30 years and I've
3 never had to be involved in a reconstruction of a
4 record, so I'm not sure exactly what the procedure
5 is. I looked to the prior case law for guidance on
6 that issue and, fortunately, there was some. I have
7 cases that I can hand up to Your Honor.

8 For the record, China versus Parrott, a 1968
9 case from the Supreme Court of South Carolina, which
10 provides guidance in reconstructing the record that
11 permits affidavits of counsel and an affidavit of
12 the court reporter, also indicates that -- I'm sorry
13 -- There's a subsequent case that permits the trial
14 judge's notes, that's Whitehead versus State, to
15 also be used. That's, again, from the South
16 Carolina Supreme Court in 2002.

17 The most recent case from our appellate courts
18 that address the issue of reconstruction of the
19 record is Adams versus Allen decided by the Court of
20 Appeals in May 2012. There are some other cases as
21 well.

22 What these cases tell me, Your Honor, and I'll
23 hand up copies to you and to the State, that we are
24 supposed to use your notes from the trial. We are
25 supposed to use affidavits of the counsel who

1 attended trial and the testimony of the court
2 reporter, who is present here today, to reconstruct
3 what was missing.

4 Your Honor, I'd like to, if I could, mark Judge
5 Cureton's order dated March 28th, 2013, as an
6 exhibit to this hearing, if that's agreeable.

7 **THE COURT:** Sure. Hand it to the court
8 reporter, please.

9 (Defendant's Exhibit Number 1, Order of
10 Judge Cureton, marked and admitted into evidence.)

11 **MS. BALLARD:** Thank you, Your Honor.

12 As we prepared for this hearing, we have Judge
13 Cureton's order, of course, that remanded it to
14 reconstruct the missing portions of the transcript.
15 And I provided Justin, prior to the hearing, with a
16 copy of the portion of the transcript that we
17 received from the court reporter. And it picks up I
18 can't tell how far into the hearing, but all of the
19 introduction of the hearing, the motions that were
20 made by Mr. Henderson and Mr. Garrett are missing
21 and all of Mr. Worley's testimony is missing.

22 There is another gap in the transcript that
23 begins on page -- another gap that begins on page
24 159 at the -- I can't tell if it was the conclusion
25 of the testimony of Allen Sheffield or whether his

1 testimony was finished. And I can't tell how long
2 the break was.

3 So what we have, Your Honor, we have great
4 concerns about whether a sufficient record can be
5 reproduced at this point. Some of the cases from
6 the appellate courts, particularly State versus
7 Ladson and Koon versus State, as well as the Adams
8 case that I've already referred to Your Honor, talk
9 about the difficulty in reconstructing the record.
10 And, particularly, the Adams case talks about the
11 inabil -- if the court is unable to adequately
12 reconstruct the record, the defendant's due process
13 rights are implicated and a new trial will be
14 warranted.

15 That being the case, Your Honor, we have
16 attempted, to the best of our ability, to summarize
17 from trial counsel's notes, Mr. Worley's testimony.
18 It's a document that we had submitted to the Court
19 of Appeals as a proposed portion of the record on
20 appeal. This document was done made -- by Mr.
21 Henderson and Mr. Garrett based on their trial notes
22 taken contemporaneously with Mr. Worley's testimony,
23 but we don't have any other notes of the other
24 witness that was testifying, Mr. Sheffield, of his
25 missing testimony.

1 And all we have -- we don't have anything about
2 what the pretrial motions were other than,
3 apparently, the case was actually being called for
4 trial. And Mr. Henderson made a motion under the
5 Castle Doctrine, which is -- we have that portion of
6 the transcript missing. Mr. Garrett made a motion
7 to sequester witnesses, that, of course, is missing
8 as well. And that portion of the transcript starts
9 with Your Honor saying to Mr. Garrett, Call your
10 next witness. So we have the entire beginning
11 portion of the hearing missing, as well as all of
12 Mr. Worley's testimony.

13 And the problematic thing with that, Your
14 Honor, is that Mr. Worley had the burden of proof.
15 So it's ironic that his is the testimony that is
16 completely missing from the record.

17 I would introduce into evidence, the State has
18 already received this as part of the appellate
19 proceedings, the affidavit of Mr. Henderson and Mr.
20 Garrett with their reconstruction of Mr. Worley's
21 testimony from their contemporaneous trial notes.
22 I'd like to introduce that into evidence as Exhibit
23 2.

24 **THE COURT:** Mark it in the record, please.

25 (Defendant's Exhibit Number 2,

1 reconstruction of Joe Worley's testimony, marked and
2 admitted into evidence.)

3 **MS. BALLARD:** I have two witnesses, Your Honor.
4 One is the court reporter, Rema Thomas, and her
5 supervisor from Court Administration to talk about
6 the efforts that have been made to -- why the record
7 is missing, first, and the efforts, if any, that
8 have been made to reconstruct the record. I propose
9 calling Ms. Thomas to the stand at this point.

10 **THE COURT:** All right. Call your witness.

11 **MS. BALLARD:** Ms. Thomas.

12 REMA THOMAS,
13 having been duly sworn, testified as follows:

14 **MS. BALLARD:** Your Honor, Ms. Thomas is
15 represented by Mr. Nicholson from the Attorney
16 General's Office. I just wanted to make sure that
17 was noted for the record.

18 **THE COURT:** All right.

19 DIRECT EXAMINATION

20 BY MS. BALLARD:

21 **Q** Ms. Thomas, how are you employed?

22 **A** I'm employed by South Carolina State Court
23 Administration.

24 **Q** All right. And how long have you been employed
25 as a court reporter?

1 A Nineteen and a half years.

2 Q Are you assigned to a particular judge?

3 A No.

4 Q Are you what they call a roving court reporter?

5 A Yes.

6 Q Were you the court reporter at a hearing held
7 before Judge Keesley on May 31st, 2011 and June 1st,
8 2011?

9 A I was.

10 Q Prior to that hearing, did you test your
11 equipment and determine that everything was working
12 appropriately as far as you could tell?

13 A I did.

14 Q Did you have backup tapes?

15 A I did.

16 Q And did you record, forgive me if I use the
17 wrong term, stenographically versus steno mask?

18 A Stenographically, yes.

19 Q Stenographically. And just for the record,
20 that's the one with the keyboard as opposed to the
21 mouthpiece; is that right?

22 A Correct.

23 Q Okay. And did you take those entire
24 proceedings in the Worley case those two days?

25 A I did.

1 Q Did you maintain a trial log of the proceedings
2 in that case as required by the South Carolina Court
3 Reporter Manual?

4 A I did.

5 Q Ms. Thomas, what did you do after the trial
6 with your tapes and your stenographic notes and your
7 trial log?

8 A They are all assembled, put into an expanding
9 folder and shelved for future reference.

10 Q All right. Where do you keep those?

11 A At my house.

12 Q Do you have a special area set aside where
13 those are retained in a secure location?

14 A I do. I have an office, yes, room.

15 Q Did you receive one or more requests to
16 transcribe those proceedings?

17 A I did.

18 Q How many requests did you receive, if you
19 recall?

20 A I don't recall. I know three for sure.

21 Q All right. And what is your procedure when you
22 receive requests for preparation of a transcript?
23 What do you -- what's your first step?

24 A I would log those requests with the dates
25 they're received onto a log sheet that's used at the

1 end of the month for a report.

2 Q Is this an official form from Court
3 Administration?

4 A The monthly report is that this information is
5 transferred to. And then I would see how far down
6 my list of what's ahead of that transcript.
7 Sometimes there might be 5-, 6-, 800 pages ahead of
8 this one, so I would hold that request until I get
9 to where it's time to transcribe it. And when it's
10 time for that particular one, then I would pull off
11 of my shelf the folder which has everything in it
12 from that week of court, everything.

13 Q All right. The file, the folder I think you
14 called it that you prepared for Mr. Worley's case,
15 what specifically was in that file?

16 A Everything.

17 Q You need to give me more than everything?

18 A It would have my courtroom worksheets. It
19 would have the paper tape from court. It would have
20 the disk out of my machine. It would have the
21 backup tapes. Other words, if I drop dead and Court
22 Administration came to secure everything that I had
23 done, one week's trial work would be contained in a
24 folder. It's not piecemealed here, there and yonder
25 because somebody might need to pull a week's worth

1 off a shelf that needs to all be together.

2 Q Okay. So the folder that you're talking about
3 was not a folder exclusively for Mr. Worley's case,
4 it was a folder for that whole term?

5 A It would have been for the whole term.
6 However, when I pull it off the shelf, I don't take
7 everything out. I mean, I don't take the worksheet
8 for a second or third trial we might have had that
9 week. The backup tapes that pertain to that would
10 be -- I would take those out, put them in a folder
11 like this and set them on the shelf. They'd be
12 left. They wouldn't be pulled down because I
13 wouldn't need them.

14 Q All right. So what did you do when you
15 accessed this file to obtain the materials related
16 to Mr. Worley's hearing?

17 A Usually, at least once or twice a week, I meet
18 with a typist, pick up work from her, take her work.
19 So during that week some time, whenever I had time,
20 I usually go by where she works at night -- or where
21 she lives at night or where she works during the day
22 and I would bring her the next one or two trials or
23 one or two or three guilty pleas, whatever I want
24 her to transcribe next, I would take it to her and
25 pick up what she has ready.

1 Q All right. Who is the typist?

2 A Her name is Becky Mayo, M-a-y-o.

3 Q Is she an employee of the State?

4 A She is, but not for Court Administration.

5 Q Is she employed for the purpose of transcribing
6 -- is she employed by the State for the purpose of
7 transcribing official records?

8 A No. She's employed at the university
9 full-time. She does transcribing at nights and on
10 weekends as a second job.

11 Q All right. And as whose agent does she do that
12 work?

13 A Me. I mean, I'm responsible for the work. She
14 types for me. She has no liability for the job.
15 It's my job that -- there's no way you could ever
16 keep up with transcripts if you didn't have somebody
17 helping you.

18 Q Okay. So is using a typist a procedure that's
19 been approved by Court Administration?

20 A Yes. They encourage it.

21 Q Okay. And I'm sorry, I'm not completely
22 familiar with the Court Reporter Manual. Is that
23 discussed in the Court Reporter Manual?

24 A I don't know. I'm not sure.

25 Q Okay. Tell us what you did to assemble the

1 materials for this request, this transcript request,
2 what you assembled and what you did.

3 A I would pull down the file. I would look on my
4 -- the courtroom log sheet. It would have been
5 audio tapes one through 33 or whatever that would
6 have applied to that particular trial. I would have
7 pulled the other ones out, left them on the shelf
8 and handed her -- and taken the worksheet, the disk
9 from my computer and everything else that was in the
10 file.

11 Q Now, Ms. Thomas, I understand that your vehicle
12 was broken into; is that correct?

13 A Yes.

14 Q Tell us about the circumstances. Where were
15 you and where were you coming from when that
16 occurred?

17 A I'd been, I believe, in Manning in court that
18 day and I was coming back up 378 to Columbia. And I
19 had planned to stop and meet with the typist at the
20 end of the day at 5:00 and I needed to kill just a
21 little bit of time before I got to USC where she
22 works. So I pulled, and I'm not real familiar with
23 378, so I pulled off into -- I was looking for a
24 shopping center somewhere that I could get my nails
25 done or go to a grocery store, somewhere just to

1 kill about an hour or however much time I needed. I
2 don't remember exactly. And that's what I did was
3 just pull into a shopping center to spend some time
4 before it was time to go to meet with her. I came
5 out of the shopping center --

6 Q Let me stop you before you came out of the
7 shopping center. When you went into the shopping
8 center, did you ensure that the materials that you
9 had brought to give to Ms. Mayo were still in your
10 vehicle?

11 A Yes.

12 Q Were they still intact at that time?

13 A Yes.

14 Q And how long were you gone from the vehicle?

15 A I don't know.

16 Q Can you estimate for me?

17 A An hour.

18 Q All right. When you came back, what did you
19 find?

20 A I came back. I got in my van. I left the
21 parking lot. I pulled back out on 378 and I
22 happened to remember that I had passed a fruit stand
23 under a big tent just maybe a half a mile down the
24 road before I had pulled over into the shopping
25 center. So I went back down the road to where the

1 fruit stand was, pulled in, got out, bought peaches,
2 watermelon, cantaloupe, whatever I bought. Then I
3 opened the side door, the sliding door of the van,
4 to put my stuff in and that's when I realized that
5 it had been ransacked and gone through.

6 Q All right. What type of vehicle were you
7 driving?

8 A Toyota van.

9 Q And how is it -- other than the driver's door,
10 how is the back portion of it accessed?

11 A Well, you can lift the gate in the main back,
12 but there's a bench seat across the back there or
13 you can open the sliding glass -- the sliding doors
14 on the sides.

15 Q And where was your file for the Worley case?

16 A In -- I have the seats taken out of the van so
17 I can have boxes and whatever. So when you open the
18 sliding door, they would have been sitting right
19 inside there on the floor where a seat would
20 normally be.

21 Q So that was, essentially, what would have been
22 a back seat?

23 A The middle row seats.

24 Q The middle row seat, all right. When you came
25 back out and got in your van, did it appear to be

1 anything wrong with your van?

2 A I didn't notice anything wrong.

3 Q There were no doors standing open?

4 A No.

5 Q So when you noticed something was amiss, what
6 did you see?

7 A Well, when I opened the sliding door and I
8 looked in, the stuff was just kind of -- there was
9 tapes thrown everywhere. There was papers from
10 other personal stuff that I had in there, just
11 somebody had gone through things quickly and just,
12 you know, dumped them, thrown them out. And -- I
13 mean, it wasn't like I left it. And my big
14 briefcase was gone.

15 Q Your big briefcase which would have -- does the
16 briefcase have anything to do with the file from
17 Mr. Worley's case?

18 A Yes. That briefcase I usually have -- it's
19 big. It has two zippers on each side and inside of
20 it would be those files that's sitting in there.

21 Q All right. So I want to make sure I'm clear.
22 All of Mr. Worley's transcript materials or
23 pre-transcript materials were in the briefcase; is
24 that correct?

25 A Correct.

1 Q And the entire briefcase was gone?

2 A Gone.

3 Q All right. What from Mr. Worley's file was
4 left?

5 A Well, there were some cassette tapes on the
6 floor with other papers and stuff, which was from
7 other stuff in the van. So, at that time, not
8 knowing what numbers or whatever goes with what, I
9 really didn't know. And I didn't try to go through
10 things and touch things and disturb things until I
11 called the police. So as it turned out, there was,
12 I don't know, two or three or four cassette tapes
13 there on the floor that had fallen -- either been
14 thrown out of the briefcase or fallen out or
15 whatever, but they were there on the floor.

16 Q All right. And you testified that you called
17 the police?

18 A Oh, yes, I did immediately.

19 Q Let me show you -- I'll have this marked first.

20 MS. BALLARD: Would you mark this for
21 identification? It's a police report with
22 attachments.

23 (Defendant's Exhibit Number 3, incident
24 report, marked for identification.)

25 Q Ms. Thomas, can you identify what's been marked

1 as Defendant's Exhibit Number 3?

2 A Yes, that looks like it.

3 Q Looks like what?

4 A The police -- the incident report, June the
5 23rd, 2011.

6 Q From the theft of your vehicle?

7 A Correct.

8 MS. BALLARD: Your Honor, I'd move Plaintiff's
9 Exhibit Number -- excuse me -- Defendant's Exhibit
10 Number 3 into evidence.

11 THE COURT: Any objection to this?

12 MR. MAYE: None.

13 THE COURT: Mark it in evidence, please, ma'am.

14 (Defendant's Exhibit Number 3, incident
15 report, admitted into evidence.)

16 BY MS. BALLARD:

17 Q Ms. Thomas, the -- how many police officers
18 responded?

19 A One.

20 Q And I assume you told him essentially what
21 you've told us?

22 A Right.

23 Q Did you go back to the location where your car
24 had been parked for about an hour or did he come to
25 the fruit stand where you were?

1 A He came to the fruit stand.

2 Q All right. Did he take any photographs of the
3 damage?

4 A Not that I know of.

5 Q Did you take any photographs of the damage?

6 A I did while I was waiting on him.

7 Q All right. How many photographs did you take?

8 A Two.

9 Q And are those photographs still in existence?

10 A No.

11 Q What happened to those photographs?

12 A Some time last fall I needed space on my cell
13 phone which had filled up for the capacity of photos
14 I can take, so that was part of photos that I
15 eliminated for space. I had no reason to believe I
16 would need them, so.

17 Q Okay. You were aware at that time, were you
18 not, that we had made a request for the transcript
19 and there was a portion of it missing?

20 A Yes. I knew there was a portion missing.

21 Q Okay. Defendant's Exhibit Number 3 indicates
22 that you called the police about 4:45 in the
23 afternoon. Does that sound about right?

24 A Yes.

25 Q And I'm not good with police reports, but it

1 appears to indicate that the time of the incident is
2 8:00 a.m. Do you see that?

3 A I don't know what that means. I don't know
4 what a 24-hour clock is. I don't know.

5 Q Okay. Well, the police report reflects that
6 the incident date was 6/23/11 at 8 -- 0800 on a
7 24-hour clock ending on 6, it's either 23 or 29, at
8 1500 o'clock. I don't know the 24-hour clock very
9 well either, but that sounds to me like a period of
10 several hours. Did you report to the officer that
11 you weren't sure at what time during the day your
12 car had been broken into?

13 A Oh, no, I was very sure. I just -- no. I was
14 very sure.

15 Q Okay. So what time did you tell him the event
16 had occurred?

17 A Approximately an hour before.

18 Q Okay. And pages two and three of Exhibit
19 Number 3 are what?

20 A Pages two and three are the -- is the memo that
21 I sent to Court Administration letting them know
22 what had occurred.

23 Q Okay. Did you speak with anyone at Court
24 Administration about this event? Don't tell me what
25 they said, just tell me if you had any

1 conversations.

2 **A** Not at that time.

3 **Q** Did you ever have any conversations with Court
4 Administration about this event and the request for
5 the transcript?

6 **A** No.

7 **Q** What efforts, if any, were undertaken by you to
8 create a transcript with what you had left?

9 **A** Immediately we transcribed what I had. I
10 started immediately working on what I had.

11 **Q** What did you have?

12 **A** What was found on the floor of the van.

13 **Q** And what was that?

14 **A** Cassette tapes.

15 **Q** And those cassette tapes were what? Were they
16 backup tapes?

17 **A** They were the backup tapes of testimony of some
18 of the witnesses.

19 **Q** All right. Did you have anything from which
20 you could transcribe from your Stenograph machine?

21 **A** No.

22 **Q** So the transcript that's been provided to us
23 that we provided to Judge Keesley was prepared
24 solely from the backup tapes?

25 **A** Correct.

1 Q If you'd had the -- did you did you do it or
2 did someone else do it?

3 A I did part of it. I started it and I think
4 Becky finished it.

5 Q Okay. Working exclusively from the backup
6 tapes?

7 A Yes.

8 Q Did you have a list of witnesses?

9 A No.

10 Q Did you have a list of -- did you have your
11 trial log?

12 A No.

13 Q Did you attempt, through contact to the Clerk's
14 office or anyone else, to try to obtain any
15 information to assist you in making a better
16 reconstruction of the record?

17 A I did not and I don't know what they would have
18 that would have been beneficial.

19 Q How do we know, looking at the transcript that
20 we have, who the witnesses were since we only have a
21 portion of the transcript?

22 A Well, I guess you just have to assume that
23 what's there is correct.

24 Q All right. So is there anything in the
25 official record that will tell us who the witnesses

1 were, who all the witnesses were?

2 **A** No.

3 **Q** Is there anything that, in the official record,
4 that tells us what all the exhibits were?

5 **A** No.

6 **Q** In the transcript that was prepared, was it all
7 audible so that you could accurately transcribe it?

8 **A** Yes, definitely.

9 **Q** All right. And the references in the
10 transcript to exhibits are simply what was reflected
11 in the backup tapes; is that correct?

12 **A** Yes.

13 **Q** All right. So as we sit here today, we don't
14 know how many witnesses' testimony is missing; is
15 that correct?

16 **A** Correct.

17 **Q** And when you prepared the transcript to provide
18 to the parties that had requested it, you did a
19 certification which indicated that it was an
20 incomplete record, did you not?

21 **A** That's correct.

22 **Q** Did Court Administration assist you in any way
23 in trying to reconstruct the record by obtaining
24 information from the Clerk's office or from any
25 other source?

1 A No, because it's not their job to have that
2 information conclusively. That is the job of the
3 court reporter.

4 Q All right. But you didn't contact the Clerk's
5 office or attempt in any way to supplement what was
6 left after the theft to create a complete record; is
7 that right?

8 A No, because they wouldn't have anything.

9 Q They being --

10 A The Clerk's office.

11 Q -- the Clerk's office?

12 A No.

13 Q They wouldn't have exhibits?

14 A They would have the original exhibits.

15 Q But you didn't make any effort to ensure that
16 the transcript you prepared identified all of the
17 exhibits, did you?

18 A Well, they were identified inside the -- in the
19 testimony in the transcript.

20 Q So the exhibits that are identified in the
21 partial transcript that we have are only the
22 exhibits that were referenced during that portion of
23 the hearing that we do have backup tapes for,
24 correct?

25 A Correct.

1 Q All right. Now, you've brought with you today
2 what?

3 A Exactly what you handed me except for the
4 subpoena and I have a floppy disk from the
5 testimony -- from the transcript that was prepared
6 from the cassette tapes.

7 Q All right. Now, you had cassette tapes. What
8 happened to the cassette tapes?

9 A The cassette tapes that -- the portion of the
10 transcript that we have were pulled out the first of
11 the year and reused because that's what we do. If
12 we're not notified that there's some challenge to
13 the testimony, then we reuse them.

14 Q All right. So what do you have on the CD?

15 A The transcript.

16 Q Where did that come from?

17 A From the cassette tapes.

18 Q Explain to me, is it an audible CD or is it a
19 PDF of what you typed? What is on the CD?

20 A There's no CD.

21 Q I'm sorry. I thought you said you brought a
22 CD?

23 A I did not. I said I brought the floppy
24 diskette.

25 Q I'm sorry. What's on the floppy diskette?

1 **A** The transcript that was prepared from the
2 cassette tapes.

3 **Q** And is that an audible re-creation of the -- is
4 that a copy of the backup tapes, an audible copy of
5 the backup tapes?

6 **A** It is the transcript that was prepared from the
7 cassette tapes that you audibly listen to and
8 transcribe from.

9 **Q** All right. So what we have on the floppy disk
10 that you brought today is simply an electronic copy
11 of the transcript that was typed up; is that
12 correct?

13 **A** That's right.

14 **Q** All right. So we don't have any audible record
15 or any written record of the proceedings that
16 occurred before Judge Keesley on May 31st, 2011 and
17 June 1st, 2011, other than the partial transcript
18 that you prepared from the backup tapes; is that
19 right?

20 **A** Yes.

21 **MS. BALLARD:** Beg the Court's indulgence just a
22 moment.

23 **THE COURT:** Yes, ma'am.

24 (Pause.)

25 **BY MS. BALLARD:**

1 Q Was your vehicle locked at the time of this
2 incident?

3 A As far as I know, it was locked.

4 Q Okay. Does it lock -- is it a manual lock or
5 is it one that you click with a key fob?

6 A Both.

7 Q How do you normally lock it?

8 A Manually.

9 Q You push the lock down before you close the
10 door? Before you went into wherever -- the store,
11 did you check to make sure that the car did, in
12 fact, lock when you left it?

13 A I think I probably did.

14 Q Is that your normal custom and habit?

15 A Right, it is.

16 Q When you came back to get into the van, was it
17 still locked?

18 A Well, I hit the key fob to unlock it, so I'm
19 assuming it was locked.

20 Q But you didn't try it to see if it was locked?

21 A I did not.

22 Q Okay. Did you hear anything click when you hit
23 the fob?

24 A I don't recall thinking it was not locked, so.

25 Q Okay. Now, the tapes that were left in your

1 vehicle, what size tapes are these?

2 A Cassette recorder standard tapes.

3 Q They're not mini tapes. They're the size of a
4 pack of cigarettes maybe?

5 A Yes.

6 Q All right. And how many tapes from
7 Mr. Worley's matter remained?

8 A I don't know because the courtroom log sheet
9 was missing also and that would have told me how
10 many tapes there were.

11 Q Were the tapes labeled in any way?

12 A Dates and numbers.

13 Q Dates of the hearing?

14 A Uh-huh. The dates -- right.

15 Q And what else was on there?

16 A The -- they would have been numbered.

17 Q All right. Was there anything on the outside
18 of the tapes that would indicate whose witnesses --
19 whose witnesses' testimony was included on the tape?

20 A No.

21 Q Did the briefcase also contain the disk or
22 memory from your Stenograph machine?

23 A It did.

24 Q All right. Was that also taken?

25 A Yes.

1 Q Does your Stenograph machine have any built-in
2 memory other than a CD or some other tape?

3 A No.

4 Q Before you put the materials in your car to
5 take them to Ms. Mayo, did you copy them on to a
6 hard drive somewhere so you would have a backup in
7 the event there was an accident or some other event?

8 A No.

9 Q All right. So the only place we would have had
10 any record at all was in the back seat of your car
11 that day, correct?

12 A Yes.

13 Q Was there any damage to your car?

14 A The police report says there was no damage, but
15 we did, later that night, notice long scratches
16 along the side of it, so.

17 Q Did any repairs have to be made --

18 A No.

19 Q -- to your vehicle?

20 A No. Well, we didn't -- the scratches are still
21 there. We didn't have it repaired.

22 Q Was a latch broken or anything?

23 A No.

24 Q Do you still have the vehicle?

25 A I do.

1 Q Okay. After you left Manning, had you made any
2 stops before you pulled into this shopping center?

3 A I don't recall.

4 Q You don't recall if you made any or --

5 A If I might have stopped to get gas or something
6 before I left Manning, I really don't remember.

7 Q Okay.

8 MS. BALLARD: I don't have any further
9 questions for this witness.

10 THE COURT: All right. Anything from the
11 State?

12 MR. MAYE: No questions.

13 THE COURT: Mr. Nicholson.

14 MR. NICHOLSON: No questions, Your Honor.

15 THE COURT: All right. Ms. Thomas, if you'll
16 stay there, I'm going to direct the questions to
17 everyone.

18 How did the exhibits get to the Court of
19 Appeals?

20 MS. BALLARD: The exhibits, Your Honor?

21 THE COURT: Yeah. I never did appellate work,
22 so you'll have to forgive me, I don't know.

23 MS. BALLARD: Yes, sir.

24 THE COURT: There's -- I have the Clerk's file
25 up here. I can see on the top that there are

1 exhibits. You asked her about exhibits. I had made
2 a note in my margin to ask the same thing you did,
3 Wouldn't you transmit the exhibits to the clerk at
4 the end of the trial? And the transmittal sheet
5 that I do see is here. So I'm confused about the
6 questioning about how would you know that all of the
7 exhibits were there.

8 **MS. BALLARD:** Your Honor, I was hired to handle
9 the appeal. I didn't try the case. I had the
10 exhibits that were provided to me by the trial
11 counsel. I did not contact the Clerk's office to
12 get copies of the exhibits because my co-counsel had
13 their own copies.

14 **THE COURT:** All right. So the Clerk of Court
15 doesn't transmit the exhibits to the Court of
16 Appeals normally?

17 **MS. BALLARD:** No, sir. The way it works is the
18 appellant is responsible for putting together the
19 record on appeal, which normally includes written
20 documents. If -- there's a rule, and I don't recall
21 the rule number, I can find it for you, that if the
22 original exhibits are demonstrative evidence or
23 they're oversized or otherwise cannot fit into the
24 transcript on appeal, the Court of Appeals issues an
25 order to the Clerk of Court to transmit the original

1 exhibits to the Court of Appeals, but that did not
2 occur in this case.

3 **THE COURT:** Okay. But as far as the exhibits,
4 they should all be right here should -- whether
5 they're referred to on the tape or not, they should
6 be -- the original exhibits should have been
7 transferred to the Clerk of Court at the conclusion
8 of the hearing.

9 **MS. BALLARD:** Ms. Thomas should have done that,
10 yes, sir.

11 **THE COURT:** Which is what this form indicates.
12 It's signed for by Buffey Shorter, who works with
13 the Clerk of Court's office in McCormick, and by Ms.
14 Thomas on June the 1st.

15 **MS. BALLARD:** Yes, sir. And my question to her
16 was whether she accessed the Clerk's file to ensure
17 that she had identified all of the exhibits in the
18 official transcript and she said she had not.

19 **THE COURT:** Do y'all have anything else with
20 this witness?

21 **MS. BALLARD:** Let me check.

22 **MR. MAYE:** Nothing from the State, Your Honor.

23 **THE COURT:** Ms. Thomas, did you want to chime
24 in on that at all?

25 **THE WITNESS:** No, sir.

1 BY MS. BALLARD:

2 Q Have you had any other break-ins to your
3 vehicle?

4 A No.

5 Q And the tapes that were left, were they intact?

6 A One of them had to be rewound. It was pulled
7 out of the casing, but we were able to wind it back.

8 Q And for a two day hearing, how many tapes would
9 you normally have?

10 A Well, you could have one or you could have 30
11 depending on --

12 Q Because the reason I'm asking is we have -- the
13 entire beginning of the hearing is gone. We don't
14 have any of that. And then on page 159, we have
15 another gap. How come?

16 A That's what I found on the floor of the van.

17 Q So we don't know how big that gap on page 159
18 is. We don't know how many witnesses there were or
19 what those proceedings were?

20 A The courtroom worksheet that had the numbers,
21 the witnesses, the cross, the redirect, the recross,
22 the next witness, the tape number, the reference to
23 my paper tape numbers, those were all on the
24 courtroom worksheet.

25 Q . And the courtroom worksheet had not been

1 photocopied or scanned or --

2 **A** No.

3 **Q** -- duplicated in any way?

4 **A** And I also would have had the copy of the
5 exhibit sheet. When I hand the exhibits to the
6 Clerk of Court's office, we get a receipt for those.
7 That would have been in there, too. But in, you
8 know, 19 years, I've never had a problem, so.

9 **MS. BALLARD:** Okay. Thank you, Your Honor. I
10 don't have any further questions for this witness.

11 **THE COURT:** Thank you, ma'am. You may step
12 down.

13 **MR. NICHOLSON:** Your Honor, may she be excused?

14 **MS. BALLARD:** I have no objection.

15 **THE COURT:** Thank you very much, ma'am.

16 **MS. BALLARD:** Your Honor, we call Desiree Allen
17 to the stand.

18 **THE COURT:** Come around, please, ma'am.

19 She's free to go.

20 **DESIREE RUTLEDGE ALLEN,**

21 having been duly sworn, testified as follows:

22 **THE CLERK:** Have a seat. State your full name
23 and spell your last name, please.

24 **THE WITNESS:** Desiree Rutledge Allen,
25 A-l-l-e-n.

1 DIRECT EXAMINATION

2 BY MS. BALLARD:

3 Q My married name is Allen just for your
4 information.

5 A Maybe we're cousins or something.

6 Q Maybe we are. Where do you work, Ms. Allen?

7 A I work for the South Carolina Judicial
8 Department.

9 Q And in what particular office?

10 A The Office of Court Administration.

11 Q What is your specific title?

12 A Program manager.

13 Q Do you have multiple programs that you oversee?

14 A No, just two.

15 Q And what are those two?

16 A Court reporters and court interpreters.

17 Q With reference to your duties as to court
18 reporters, what do those include?

19 A They include the scheduling of court reporters
20 to terms of court, approval of leave, the day-to-day
21 operation of the scheduling of court reporters, any
22 problems that may come up, the overseeing of monthly
23 reports that they file, the approval of travel.
24 Those are the basic things that I can think of.

25 Q What kind of monthly reports are court

1 reporters required to file?

2 A The court reporters are required to file a
3 monthly report of transcript requests that they
4 receive. They have to indicate the date that the
5 request was received, the date of the hearing, how
6 many pages it is, whether they need an extension,
7 whether the case is on appeal. I think that's
8 what's asked for on the form.

9 Q All right. Do the court reporters have to
10 provide you with reports of what proceedings they've
11 taken in the regular course of their duties?

12 A Not specifically. There's no -- like, I would
13 have no idea what cases were heard unless it was
14 requested because then it would be placed on the
15 monthly report.

16 Q By the court reporters?

17 A Yes.

18 Q Okay. Ms. Allen, did you receive communication
19 from Ms. Thomas after the events that she described?

20 A Yes, I did.

21 Q What, essentially, shortly did she tell you?

22 A She described an incident where her vehicle was
23 broken into and various materials were taken.

24 Q Was this a verbal conversation or was it
25 something transmitted to you in writing?

1 A I don't recall. It seems to me that she
2 probably called to let me know that something had
3 happened and then I, in turn, asked her to reduce it
4 to writing so that we would have, you know,
5 something in her file concerning that.

6 Q And referring to Defendant's Exhibit Number 3
7 pages two and three, can you identify what those
8 are?

9 A This appears to be a memorandum that she
10 provided to me after, you know, calling to tell me
11 about the incident.

12 Q And what's the date of that memorandum?

13 A The date of the memorandum is July 5th, 2011.

14 (Defendant's Exhibit Numbers 4 and 5,
15 letters, marked for identification.)

16 Q Let me show you what's been marked for
17 identification as Defendant's Exhibit Number 4. Do
18 you recognize this letter, Ms. Allen?

19 A Not specifically, but it is addressed to me at
20 Court Administration.

21 Q Do you recall receiving that letter? It's a
22 letter from me, correct?

23 A Yes, ma'am.

24 Q Do you recall receiving that letter?

25 A Not specifically.

1 Q Let me show you Defendant's Exhibit Number 5
2 and ask if you can identify that?

3 A This appears to be a letter from your office
4 dated September 1st, 2011, addressed to me.

5 Q And do you recall receiving that letter?

6 A Not specifically.

7 Q Ms. Allen, when it was brought to your
8 attention that Ms. Thomas had incomplete records
9 from the Worley hearing, what, if anything, did
10 Court Administration do to assist her in preparing a
11 complete transcript of the proceedings for May 31st,
12 2011 and June 1st, 2011?

13 A What did we do to assist her in preparing a
14 transcript?

15 Q Yes.

16 A Nothing.

17 Q Did Court Administration contact law
18 enforcement or contact the Clerk's office or do
19 anything to try to produce a complete transcript?

20 A No, ma'am.

21 MS. BALLARD: Your Honor, I'd move Exhibits 4
22 and 5 into evidence, although she's not been able to
23 specifically...

24 THE COURT: Anything y'all need to put on the
25 record?

1 (Pause.)

2 MS. BALLARD: I understand there's no
3 objection, Your Honor.

4 THE COURT: Mark those in evidence.

5 (Defendant's Exhibit Numbers 4 and 5,
6 letters, admitted into evidence.)

7 BY MS. BALLARD:

8 Q Ms. Allen, there's Rule 607 of the appellate
9 court rules that governs court reporters; is that
10 correct?

11 A That's correct.

12 Q And are you -- I assume you're familiar with
13 that rule?

14 A Yes, ma'am.

15 Q Subsection (i) of that rule requires a court
16 reporter to retain backup tapes for a period of five
17 years. Are you familiar with that?

18 A Yes, ma'am.

19 Q Is it permissible for court reporters to
20 dispose of the tapes more than five years -- or less
21 than five years after a proceeding?

22 A No. The rule is clear that the proceedings --
23 the materials from those proceedings should be kept
24 for five years.

25 Q All right. So what's a court reporter supposed

1 to do with the backup tapes after she has prepared a
2 transcript?

3 A If we're talking about after the transcript is
4 prepared, then they only have to keep them for 30
5 days. After that, they are allowed to destroy them.

6 Q All right. So, in this case, when there was
7 only partial backup tapes, what would Court
8 Administration's requirements have been regarding
9 the backup tapes?

10 A Thirty days after the transcript was prepared,
11 those tapes could be destroyed.

12 Q Is there any exception for a circumstance where
13 the court reporter is not able to provide a complete
14 transcript?

15 A No, ma'am.

16 Q Ms. Allen, did you report this event to anybody
17 else in Court Administration or with the judicial
18 department?

19 A No, I did not.

20 Q Was an incident report done at Court
21 Administration regarding the missing tapes or the
22 inability to produce a transcript?

23 A No, there was not.

24 MS. BALLARD: That's all I've got. Thank you
25 very much.

1 **THE COURT:** Any questions of the witness?

2 **MR. MAYE:** None from the State, Your Honor.

3 **MR. NICHOLSON:** Nothing, Your Honor.

4 **THE COURT:** Anything else?

5 BY MS. BALLARD:

6 **Q** How often does this happen, Ms. Allen?

7 **A** How often does what happen?

8 **Q** That a court reporter is unable to produce an
9 entire transcript.

10 **A** There's no set time, but I would say that
11 that's not the first time. I don't know.
12 Occasionally.

13 **MS. BALLARD:** Okay. Thank you.

14 **THE COURT:** Anything else?

15 **MS. BALLARD:** Nothing further from this
16 witness.

17 **THE COURT:** Thank you very much. You may step
18 down.

19 **MR. NICHOLSON:** Your Honor, may Ms. Allen be
20 excused?

21 **THE COURT:** Any objection to the witness being
22 excused?

23 **MS. BALLARD:** No objection.

24 **THE COURT:** You're free to go. Y'all can go
25 out the back if you would like to leave. You're

1 welcome to stay if you like to stay.

2 Any other witnesses for the defendant?

3 **MS. BALLARD:** Your Honor, I would ask you to
4 accept the summary of the testimony of Mr. Worley --

5 **THE COURT:** Hold on just a second.

6 I'm sorry. Go ahead.

7 **MS. BALLARD:** Your Honor, I had introduced into
8 evidence the affidavits of Mr. Henderson and Mr.
9 Garrett which include the -- their summaries from
10 their contemporaneous notes of the testimony of
11 Mr. Worley, but I don't have anything else that can
12 be used to assist us in reconstructing the record.
13 I know I'm not supposed to ask you, but does Your
14 Honor have any trial notes from the hearing that can
15 be used to help reconstruct the record?

16 **THE COURT:** I'm trying to locate them. The
17 order -- the orders that have been entered, my
18 recollection is, pretty much contain all --
19 everything. But I looked this morning. I will let
20 you all know if I have problems locating them. I'll
21 just have to look. I did not know it would come to
22 this. I suspect they're somewhere in the office in
23 a file. One of my law clerks went through at my
24 direction and reorganized everything and --

25 **MS. BALLARD:** I was a law clerk. I know how

1 that's done.

2 **THE COURT:** Well, I have a file with
3 Mr. Worley's name on it right here that I have kept
4 in my handwriting in my office, but I know -- I seem
5 to recall sitting over there doing those orders and
6 going through each of those witnesses and the notes.

7 Now, I have affidavits from the attorneys. Is
8 there any kind of affidavit or anything from
9 Mr. Worley that you all want to put in?

10 **MS. BALLARD:** No, sir.

11 **THE COURT:** I'll let y'all know what I find out
12 about the notes. If I can't find my notes -- I
13 don't know why I won't be able to find them except
14 I've just been doing this so long that there's a big
15 stack.

16 **MS. BALLARD:** Your Honor, the cases that I've
17 read indicate that the judge's notes can be used to
18 assist in reconstructing the testimony.

19 **THE COURT:** I have no problem whatsoever. If I
20 can locate them, then I will make a copy of them. I
21 know they're not going to be legible, so I'll
22 probably have to type out what they say and attach
23 the handwritten copy to it. And if I cannot find
24 them, I will say my mea culpas and say I just cannot
25 find them.

1 **MS. BALLARD:** I guess my question was going to
2 be could we -- if you do find them, could we
3 introduce them as part of the record?

4 **THE COURT:** Oh, yeah. I think the remand is
5 for me to try to reconstruct the record. And I've
6 always thought any notes that I might have would be
7 about the only means by which I could reconstruct
8 the record.

9 **MS. BALLARD:** Well, the case law, fortunately,
10 lets us have affidavits as well.

11 **THE COURT:** That I could reconstruct the
12 record. I'm sorry. I'm still phrasing that poorly.
13 That personally I would be able to say anything
14 about what happened. But, yes, I agree with the
15 affidavits and the concept. I do have -- do y'all
16 have anything y'all want to put in?

17 **MR. MAYE:** Your Honor, I have my raw notes. I
18 mean, I think anything else almost gets to advocacy.
19 I've got my raw notes here and you can certainly
20 have them, but I've got, you know, I got Worley's
21 name written down and I've got the things that I've
22 noted that he wrote down. And I wrote it
23 contemporaneously. And I haven't edited or changed
24 it in any way, but I have my raw notes here as to
25 his testimony.

1 It looks like it's about -- looks like about
2 seven pages. And I looked through it to make sure I
3 didn't put any editorial comments like I need to go
4 to the bathroom or anything bad. It looks all
5 pretty clean to me. So I can -- I'll certainly be
6 glad to give it to the Court for what it's worth.

7 **THE COURT:** I don't want them modified.
8 Whatever you've got --

9 **MR. MAYE:** No. I got just as I wrote it back
10 then.

11 **THE COURT:** All right. You've got notes of the
12 direct examination of Mr. Worley.

13 **MR. MAYE:** Yes, it appears to me. I just
14 pulled in this notebook right here -- I mean, pulled
15 it out of.

16 **THE COURT:** I recall Solicitor Myers being
17 there and I recall you being there. I don't know if
18 Mr. Young was there or not.

19 Were you there too, Mr. Young?

20 **MR. YOUNG:** Your Honor, I personally went back
21 and tried to find my notes. I had written some
22 notes, investigatory notes, on the front of the
23 folder he's referring to, but I cannot locate the
24 notes that I made. I will go look again.

25 **THE COURT:** All right. Well, do you recall who

1 conducted the cross-examination of Mr. Worley?

2 MR. MAYE: Solicitor Myers.

3 THE COURT: That's what I was thinking, but I
4 wasn't certain.

5 MR. MAYE: And, Your Honor, I just sat as I
6 normally did and I jotted down --

7 THE COURT: Is the testimony of the Clerk of
8 Court in there, in the transcript?

9 MS. BALLARD: No, sir.

10 THE COURT: Do you all recall -- at some point
11 in time, the -- what was the name of the person who
12 was shot?

13 MS. BALLARD: Mr. Rushton.

14 THE COURT: Mr. Rushton was testifying about
15 not recalling whether he ever took the oath or not
16 and somebody went down to the Clerk's office and got
17 the oath, which is part -- a copy of the written
18 note is one of these exhibits. Do you all recall
19 whether the Clerk took the stand?

20 I thought -- it wasn't you. It would have been
21 Ms. Butler.

22 MS. BALLARD: Mr. Garrett says he recalls her
23 taking the stand.

24 MR. GARRETT: Or did we stipulate?

25 THE COURT: I don't recall.

1 All right. Let me ask you this, and the
2 Clerk's here and I don't know how formal this has to
3 be, what does the Clerk write down about the
4 witnesses and what kind of log does the Clerk keep
5 during court?

6 MS. BALLARD: That would be helpful, Your
7 Honor.

8 THE COURT: You probably need to do this under
9 oath. Can you come around and be sworn?

10 GWENDOLYN DORN CHILES,
11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat. State your full name
13 and spell your last name, please.

14 THE WITNESS: My full name is Gwendolyn Dorn
15 Chiles, C-h-i-l-e-s.

16 EXAMINATION

17 BY THE COURT:

18 Q And, Madame Clerk, you're now the Clerk of
19 Court of McCormick County; is that correct?

20 A Yes, sir.

21 Q And at the time of this hearing we're talking
22 about, what position did you hold?

23 A I was the Deputy Clerk of Court at the time.

24 Q Do you recall whether you were in the courtroom
25 or not?

1 **A** Yes, sir, I was.

2 **Q** Do you remember if you were there the whole
3 time?

4 **A** Pretty much the whole time.

5 **Q** And the Clerk of Court was who?

6 **A** The Clerk of Court was Kathryne Butler.

7 **Q** And Ms. Butler has now been elected probate
8 judge and you were elected Clerk -- you were first
9 appointed Clerk and then elected Clerk of Court,
10 correct?

11 **A** Yes, sir, that's correct.

12 **Q** All right. Now, how long have you worked in
13 the Clerk's office?

14 **A** I've been in the Clerk of Court's office for 23
15 years.

16 **Q** What's the normal procedure and what would have
17 taken place as far as what notes the Clerk of Court
18 would have made? Is there any kind of log or
19 journal or anything that the Clerk maintains in a
20 hearing of this sort?

21 **A** As the deputy clerk, I took the position as to
22 create my own little journal. I have a --

23 **MS. BALLARD:** May I get a little closer, Your
24 Honor?

25 **THE COURT:** Sure.

1 **THE WITNESS:** I have a five subject tablet that
2 I use to write notes. And usually I do try to write
3 down the time and the date and the name of the
4 witness that was present or that testified that day.

5 BY THE COURT:

6 **Q** Do you know if you have that in this case?

7 **A** I'm sure that I do because I've been doing this
8 for quite some time.

9 **Q** Can you find it?

10 **A** Yes, sir, I can.

11 **Q** All right. Would you mind sharing it with us?

12 **A** I have no problem with sharing it. I'll be
13 glad to.

14 **Q** Do you swear to me you will not modify it in
15 any way?

16 **A** I swear to you I will not modify it in any way.

17 **Q** All right. Well, would you obtain it, secure
18 it, make copies of it, put a copy of your notes in
19 the file that you brought today, send a copy to the
20 attorneys for both sides for me?

21 **A** Yes, sir, I will.

22 **THE COURT:** All right. Do y'all want to ask
23 her --

24 **Q** But what about is there any other official
25 record? Is there any kind of journal or log? I see

1 clerks writing down there and I don't know what
2 they're writing. Is there any kind of journal or
3 official record aside from your notebook?

4 **A** No, sir. I can and will check with Ms. Butler
5 to see if there's anything that she have, but I
6 don't think so. I think I was mostly the record
7 keeper.

8 **Q** Do you recall if Ms. Butler took the witness
9 stand or anyone took the witness stand from the
10 Clerk's office to certify that that oath was in the
11 files of the Clerk's office?

12 **A** I don't think Ms. Butler took the stand. I
13 think we obtained the information that was needed
14 from the administrative secretary, the information
15 that she had, along with the information that we had
16 on record, I think that was used. But I don't think
17 she took the stand.

18 **THE COURT:** All right. Do you want to ask her
19 any questions?

20 **MS. BALLARD:** No, sir. I just was up here
21 because I wanted to make sure I could hear.

22 **THE COURT:** Do you want to ask her anything?

23 **MR. MYERS:** No.

24 **THE COURT:** Thank you very much, Madame Clerk.

25 We'll just adjourn this hearing then and I will

1 attempt to obtain my notes, we'll get Mr. Maye's
2 notes --

3 MS. BALLARD: Can I get a copy of Mr. Maye's
4 notes?

5 THE COURT: Sure.

6 MR. MAYE: Sure. And, Your Honor, I haven't
7 looked at them since the day that we had the hearing
8 nor have I touched them since the day. I looked in
9 the notebook here and they were in here and I have
10 them just exactly they were that day. They're not
11 voluminous.

12 THE COURT: Can we make your originals part of
13 the record?

14 MR. MAYE: Sure, as long as I can get a copy.

15 THE COURT: Ms. Newby, would you make copies of
16 this for both sides and for me?

17 THE CLERK: Sure.

18 MR. MAYE: Your Honor, that's raw just as I
19 took them that day.

20 THE COURT: That's the way mine are going to be
21 too when I locate them.

22 MR. MAYE: Because I note the next thing that I
23 have in there is I wrote Bobby Rushton's name and I
24 went down and -- what else is missing, just his?

25 THE COURT: Well, we don't know what's missing

1 at this point, that's the problem. If you've got
2 other notes, make them all part of the record.

3 MR. YOUNG: Your Honor, again, I will make an
4 effort to try to locate any notes that I may have.

5 THE COURT: Give me all the notes from the
6 hearing.

7 MR. MAYE: Sure.

8 THE COURT: Because one of the questions is
9 what witnesses may be left out in this and, of
10 course, her journal is going to help a lot once we
11 get that.

12 All right. I'm just going to recess this
13 hearing then until we can try to supplement -- get
14 this additional information. If we need to
15 reconvene, y'all let me know, all right?

16 MS. BALLARD: Yes, sir. And I just want to
17 reserve my right to make any motions after we have a
18 reconstructed record as to the sufficiency of the
19 record.

20 THE COURT: Certainly.

21 MS. BALLARD: Thank you, Your Honor.

22 THE COURT: All right. Now, if there's any
23 matters about Mr. Worley's bond or anything else
24 aside from the reconstruction of the record, y'all
25 take those up with Judge Addy, all right.

1 **MS. BALLARD:** Thank you, Your Honor.

2 **THE COURT:** Thank you very much. Thanks for
3 accommodating me today.

4 (Court's Exhibit Number 1, notes of Ervin
5 Maye, marked for identification.)

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7

END OF PROCEEDINGS

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF MCCORMICK

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for McCormick County, South Carolina, on the 14th of June, 2013.

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

July 31, 2013



Stacy L. Sheppard, RPR
Circuit Court Reporter

1 State of South Carolina
2 County of McCormick

Court of General Sessions

3
4
5 State)
6)
7 v.)
8 Joe Ross Worley)
9 Defendant.)

Transcript of Record
10-GS-35-0049
10-GS-35-0052

10 December 16 - 20, 2013
11 McCormick, South Carolina

12
13 B E F O R E:

14 The Honorable R. Lawton McIntosh, Judge; and a
15 jury.

16
17 A P P E A R A N C E S:

18 Donald V. Myers, Solicitor
19 Ervin J. Maye, Assist. Solicitor
Attorneys for the State

20 Billy J. Garrett, Jr., Esquire
21 Carson M. Henderson, Esquire
Desa Ballard, Esquire
Attorneys for the Defendant

22
23
24
25 Stacy L. Sheppard, RPR
Circuit Court Reporter

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1 (The following proceedings were held on
2 December 16, 2013.)

3 **THE COURT:** All right. My understanding -- and
4 y'all correct me -- is that there are some matters
5 or whatever that need to be placed on the record
6 because of the status of this case and there's a
7 prior appeal.

8 Ms. Ballard --

9 **MS. BALLARD:** Yes, Your Honor.

10 **THE COURT:** -- do you have some things you
11 wanted to bring up on that?

12 **MS. BALLARD:** That's correct.

13 **THE COURT:** And I also understand that there's
14 some motions in limine in this case; is that
15 correct?

16 **MR. HENDERSON:** Just very quickly, Your Honor,
17 yes, sir.

18 **THE COURT:** Okay. Ms. Ballard, I'm going to go
19 ahead and hear from you first.

20 **MS. BALLARD:** Mr. Worley is not here yet. I'm
21 not sure --

22 **THE COURT:** Thank you. I'm sorry.

23 **MS. BALLARD:** We've been wondering. We don't
24 know whether --

25 **THE COURT:** I assume that y'all have checked to

1 make sure he was properly attired?

2 **MS. BALLARD:** He was first up today, so he
3 should have been here first thing this morning.

4 (A brief conversation was held off the
5 record.)

6 **MS. BALLARD:** Your Honor, I'll hand you up this
7 petition. This is --

8 **MR. MYERS:** On the defendant's pre-trial
9 motions in limine.

10 **THE COURT:** Okay. This will just be the
11 petition that was filed by Ms. Ballard on behalf of
12 the defendant seeking the court -- Supreme Court to
13 take this case certiorari.

14 **MS. BALLARD:** That's related to the appeal, Mr.
15 Myers.

16 **THE COURT:** Do you want to see a copy of this?

17 **MR. MYERS:** Is it about the appeal?

18 **THE COURT:** Yes, sir.

19 **MR. MYERS:** No, sir.

20 (Pause.)

21 (Mr. Worley enters the courtroom.)

22 **THE COURT:** Before we get started, I just want
23 to make sure just for the sake -- out of abundance
24 of caution that no jurors summoned for this term of
25 court are in the courtroom today.

1 (There was no response.)

2 **THE COURT:** Okay. Ms. Ballard, that being
3 done, I'll be glad to hear from you.

4 **MS. BALLARD:** Thank you very much, Your Honor.

5 I am not Mr. Worley's trial counsel. I'm
6 handling some appellate issues. And the reason I
7 wanted to address the Court is to tell you where we
8 are with the appeal because it's had somewhat of an
9 unusual path to get where we are today.

10 Mr. Worley was arrested originally in November
11 of 2009 and bond was denied. He's been in jail all
12 of this time. The Supreme Court of South Carolina
13 decided the Duncan case in May 2011. The Duncan
14 case was the case that said that a pretrial
15 determination under the Castle Doctrine, since it
16 involved immunity, had to be appealed immediately.
17 So Judge Keesley had the Castle Doctrine hearing in
18 this case in that same month that began on May 31st
19 of 2011. And Judge Keesley issued an order -- there
20 were two orders, but the final one was on July 6th,
21 2011, in which he denied Mr. Worley the right to
22 immunity under the Castle Doctrine Statute.

23 So based on the Duncan case, Your Honor, we
24 took an appeal at that time. When we appealed the
25 case, we learned that the transcript of the

1 proceeding before Judge Keesley was incomplete.
2 What was missing, interestingly enough, was
3 Mr. Worley's own testimony. Everybody else's is
4 here with the exception of, I think,
5 cross-examination of one of the other witnesses, but
6 Mr. Worley's testimony was missing.

7 There were petitions to the Court of Appeals,
8 and the matter was remanded to Judge Keesley to
9 reconstruct the record. We had a hearing in front
10 of Judge Keesley in June of this year. It was a
11 full-day hearing for judge -- the purpose of which
12 was to reconstruct Mr. Worley's testimony from the
13 Castle Doctrine hearing for purposes of the eventual
14 appeal. Well, for purposes of the appeal that was
15 then pending.

16 Two months after we had the hearing, while
17 Judge Keesley was still reconstructing the record,
18 and he had obtained the Solicitor's notes from
19 trial, he obtained the affidavit from the trial
20 counsel as to what the testimony was and the clerk's
21 notes, he obtained all of that information to
22 reconstruct the record, and then in August of 2013,
23 the South Carolina Supreme Court decided the Isaac
24 decision, which said, Well, what we meant to say in
25 Duncan was that if it's a defendant who's appealing,

1 he can appeal after final judgment.

2 So on that same day, the Court of Appeals,
3 Judge Few, issued an order dismissing Mr. Worley's
4 appeal. There was language in that order -- and
5 that order is dated August 21st, 2013 -- it
6 indicated -- and it should be in the Court's file.
7 It indicated that the reconstruction of the missing
8 portion of the Castle Doctrine hearing was no longer
9 necessary. And it proceeded to go on to say that
10 the parties should proffer to the court, meaning at
11 trial, proffer to the court any testimony relevant
12 to the immunity motion that is not presented to the
13 jury.

14 We took issue with that, Your Honor, because it
15 purported to instruct Your Honor what to do at this
16 trial, and we petitioned the Court of Appeals and
17 asked for reconsideration of that issue. Our motion
18 for reconsideration was denied. And we have filed a
19 petition with the Supreme Court seeking certiorari
20 to address the issue of what we believe was a
21 statement by the Court of Appeals that went beyond
22 the issues that were before it.

23 But the gist of where we are is that we are
24 about to proceed in the trial. We have to preserve
25 testimony regarding the Castle Doctrine hearing that

1 was held in May 2011, and we don't have a
2 reconstruction of Mr. Worley's testimony. So Mr.
3 Garrett and Mr. Henderson are going to deal with
4 that at trial.

5 But the point I wanted to make to Your Honor is
6 we filed the petition for writ of certiorari and a
7 petition for writ of prohibition with the Supreme
8 Court. The State's response to that is due today,
9 but there is nothing that prevents the trial from
10 proceeding. I think the trial judge just has to be
11 aware of the Court of Appeals' order, which I think
12 directs how the preservation of the record is
13 supposed to occur with reference to the immunity
14 issues under the Castle Doctrine.

15 **THE COURT:** Well, educate me again exactly what
16 the Court of Appeals has ord -- I do not have that
17 opinion in front of me and I would like to get a
18 copy of it, but --

19 **MS. BALLARD:** It should be in the clerk's file,
20 but I'll read it to you, Your Honor, and I'll get
21 you a copy of it. What it said is, This court
22 notes -- this is Judge Few's order -- This court
23 notes that this appeal has been remanded for the
24 reconstruction of the missing portions of the
25 immunity hearing transcript.

1 I'm on the second paragraph, Your Honor.

2 That reconstruction will no longer be
3 necessary, so the remand order is rescinded. At
4 trial, the parties should proffer to the court any
5 testimony relevant to the immunity motion that is
6 not presented to the jury.

7 **THE COURT:** So it's just a matter of making a
8 record and preserving that issue for appeal is what
9 I'm --

10 **MS. BALLARD:** That is the issue for purposes of
11 should there be an eventual appeal following these
12 proceedings, Your Honor. It's a question of we were
13 not -- we didn't finish the reconstruction process.
14 We were right in the middle of it when the decision
15 came out in Isaac, and so the Court of Appeals sua
16 sponte dismissed it. And Judge Keesley had begun
17 the draft of the order to reconstruct the testimony
18 but had not completed it. We took issue with the
19 fact that reconstruction was no longer necessary,
20 because we knew we had a trial coming, and
21 eventually, an appeal, should that become necessary.

22 But I wanted you to be aware that that order
23 was out there, and we have petitioned for cert, but
24 under the appellate court rules, that doesn't
25 prohibit you from proceeding to trial. And that's

1 what I wanted to bring to Your Honor's attention.

2 **THE COURT:** All right. Let me ask you this --

3 **MS. BALLARD:** Yes, sir.

4 **THE COURT:** -- and thank you for doing that,
5 but from a practical matter, from -- so the parties
6 can preserve what issues need to be preserved at
7 this juncture --

8 **MS. BALLARD:** Yes, sir.

9 **THE COURT:** -- are the parties -- maybe you're
10 not the right person for me to ask this question to
11 -- is the appellant ready to present, the State
12 ready to present what portions of the testimony they
13 think should be made a part of the record as a court
14 exhibit, not to go to the jury?

15 **MS. BALLARD:** What I think would be
16 appropriate, Your Honor, is to put in this record
17 all of the information that was introduced before
18 Judge Keesley. And what he had at that point was
19 information from the Solicitor's Office, I believe
20 it was Mr. Maye's notes, he had his own notes, his
21 hand notes, Judge Keesley's notes, and he had the
22 sworn testimony from Mr. Garrett and Mr. Henderson
23 as to their contemporaneous notes regarding what
24 Mr. Worley's testimony had been, and we have a
25 transcript of the hearing on June 14th, 2013.

1 I would propose that be made a part of this
2 record as well so that it can all go up together.
3 And I think that will enable us to have as much of a
4 record as we can have to reconstruct that testimony.

5 **THE COURT:** Okay. And just so I'm clear, in
6 reading the order denying the immunity from
7 prosecution, it sounded as if there was two days of
8 full trial testimony taken by Judge Keesley.

9 **MS. BALLARD:** Yes, sir. It's a rather large
10 record.

11 **THE COURT:** Right. And I think what you're
12 saying is turn in the transcript of that, any
13 supplemental notes or records you think you need to
14 add, but you're not seeking to reconstruct the
15 actual hearing itself.

16 **MS. BALLARD:** No, sir. What I'd like to do is
17 put in the reconstruction hearing, which was the
18 transcript --

19 **THE COURT:** Sure.

20 **MS. BALLARD:** -- from the June 14th hearing,
21 plus all of the exhibits. And I can't refer you to
22 exhibit numbers because the way we did it is, at the
23 hearing, Judge Keesley kind of explored what might
24 be out there. And he had the clerk send her notes
25 and Mr. Maye sent his notes, and we had already

1 introduced into testimony {sic} Mr. Worley's
2 testimony. But an order never came about because we
3 didn't finish the proceedings on remand.

4 So I think the best thing I can do, to protect
5 my client, is to introduce the June 2013 hearing
6 before Judge Keesley and all of the exhibits from
7 that in order to satisfy the Court of Appeals'
8 order.

9 **THE COURT:** Mr. Myers.

10 **MR. MYERS:** We have no objection.

11 **MS. BALLARD:** Thank you, Your Honor. I'll get
12 those things marked, and we'll have them made part
13 of the record.

14 **THE COURT:** Thank you.

15 **MS. BALLARD:** Thank you.

16 **THE COURT:** Anything further with regard to the
17 issue of preservation?

18 **MS. BALLARD:** Nothing for the defendant, Your
19 Honor.

20 **THE COURT:** Do you think it's a good time to go
21 ahead and go through the pretrial motions in limine
22 from the defense at this stage? Any reason why we
23 can't?

24 Well, it's 15 till 1:00. We've got the jury
25 coming in at 2:00; is that right?

1 **THE CLERK:** Yes, sir.

2 **THE COURT:** What would be the -- how long do
3 you anticipate your case in chief to be, Mr. Myers?

4 **MR. MYERS:** We should finish tomorrow
5 afternoon.

6 **THE COURT:** Tomorrow afternoon?

7 **MR. MYERS:** Yes, sir.

8 **THE COURT:** And I know this is a soft question,
9 but, roughly, do you anticipate, if you were to
10 present evidence, how long it would be?

11 **MR. HENDERSON:** And I'm assuming Mr. Myers is
12 starting tomorrow morning, because I assume the jury
13 qualification would take up all afternoon.

14 **THE COURT:** Well, that's not necessarily a safe
15 assumption.

16 **MR. MYERS:** We can start this afternoon,
17 whatever Your Honor would like.

18 **MR. HENDERSON:** That's --

19 **THE COURT:** I'm trying to get that in mind
20 right now for me so I can tell...

21 **MR. HENDERSON:** At least a day, Your Honor.

22 **THE COURT:** At least a day?

23 **MR. HENDERSON:** Yes, sir.

24 **THE COURT:** If you present some -- okay. Let's
25 do this then: Let's go ahead and pick our jury this

1 afternoon. Let's try to do pretrial motions after
2 we get through, then start it tomorrow afternoon.
3 That makes the most sense to me at this stage. Any
4 reason why that wouldn't be appropriate from the
5 State's position?

6 **MR. MYERS:** No, sir. You want us to go ahead
7 and take up everything today and start the case in
8 the morning?

9 **THE COURT:** Yes, sir.

10 **MR. MYERS:** That would be fine.

11 **THE COURT:** I think that would work.

12 **MR. HENDERSON:** That would be fine with us as
13 well, Your Honor.

14 **THE COURT:** Unless somebody's got a better
15 suggestion, let's go ahead and do that.

16 **MS. BALLARD:** No, sir. And just to explain my
17 absence, I was day one in a nonjury in Richland
18 County today, so my partner went, and I have to
19 attend a status conference tomorrow morning, but
20 I'll get here as soon as I can tomorrow. They can
21 certainly proceed without me; I'm simply the
22 appellate counsel.

23 **THE COURT:** Very good. All right. We'll be in
24 recess until two o'clock.

25 **MR. HENDERSON:** Thank you.

1 **MR. MYERS:** If we finish with all of the jury
2 stuff and motions this afternoon and you want us to
3 start with witnesses, we're available to do whatever
4 you tell us.

5 **THE COURT:** All right. Thank you, Mr. Myers.

6 (A recess transpired.)

7 **THE COURT:** Before we get started, let me ask:
8 Does the State believe the strike number is five and
9 five?

10 **MR. MYERS:** Yes, sir.

11 **THE COURT:** Defense?

12 **MR. HENDERSON:** That's correct, Your Honor.

13 **THE COURT:** Would you call your case,
14 Mr. Myers?

15 **MR. MYERS:** Yes, sir, Your Honor.

16 It's indictment 2010-GS-35-052, indictment for
17 assault and battery with intent to kill;
18 2010-GS-35-049, indictment for possession of a
19 weapon during a violent crime. Both of these
20 against -- the State versus Joe Ross Worley, true
21 billed. The State's ready for trial, Your Honor.

22 **THE COURT:** Very good.

23 All right. Ladies and gentlemen, you heard the
24 Solicitor announce that we're about to begin the
25 case of the State versus Joe Ross Worley, who is

1 charged with the charges outlined by the Solicitor.

2 Before we get started, two things, let me tell
3 you that, number one, the fact that the defendant
4 was charged and indicted is not evidence of guilt,
5 does not raise an inference or any presumption of
6 guilt. It's simply the charging mechanism by which
7 the State of South Carolina will bring a defendant
8 before a jury such as yourselves for a trial and a
9 determination of guilt or innocence.

10 I will also remind you that you're still under
11 oath. And I have some very specific questions that
12 I need to ask that relate not to qualifications or
13 exemptions, but to your participation in this case.

14 Unlike the procedure we used earlier, I will
15 not be giving you an opportunity to come forward and
16 speak with me in a more confidential setting. So if
17 you need to respond, you need to stand up, give us
18 your jury number or your name and give us your
19 response, okay.

20 If somebody has a exceedingly good reason for
21 me to consider, I will let you come up and explain
22 to me why I should listen to a confidential matter
23 instead of announcing it in front of your fellow
24 jurors. But since these questions are not geared to
25 elicit that kind of information, the likelihood that

1 you'll need to do so probably does not exist.

2 With that being said, can everyone hear me
3 okay?

4 The first question: Has anyone ever been
5 related by blood or marriage to either Joe Ross
6 Worley or Bobby Rushton? Is that Mr. -- where is
7 Mr. Rushton?

8 Okay. Does everybody see Mr. Worley and
9 Mr. Rushton? Has anybody ever been related by blood
10 or marriage to either of these gentlemen? Would you
11 please stand?

12 (There was no response.)

13 **THE COURT:** Has anyone ever had a close
14 personal or social relationship with either Joe Ross
15 Worley or Bobby Rushton; if so, would you please
16 stand?

17 (Juror stands.)

18 **THE COURT:** I know you spoke with me earlier.
19 What is your jury number and your name, please?

20 **JUROR:** Number 36, and my name is Cherry Brown.

21 **THE COURT:** Did you get that?

22 **COURT REPORTER:** Yes, I did.

23 **THE COURT:** Okay. And you have a personal
24 relationship with either one of these gentlemen?

25 **JUROR:** Well, Mr. Rushton -- my husband is a

1 retired law enforcement officer -- is a good friend
2 and his wife has taught my children, so I know him.

3 **THE COURT:** Okay. Now, the fact that your
4 husband has a relationship with him or that his wife
5 had her relationship with your children, would that
6 affect your ability to listen to the testimony and
7 to evidence and to apply the law as I give it to you
8 unbiased by those relationships?

9 **JUROR:** No, sir.

10 **THE COURT:** Can you be fair and impartial, in
11 other words, to both the State and to the defense in
12 this matter?

13 **JUROR:** Yes, sir, I believe I can.

14 **THE COURT:** Now, let me tell the attorneys, and
15 I know y'all don't do it a lot with me, but if you
16 desire any additional voir dire, just indicate. If
17 not, I'm going to assume that you do not indicate,
18 okay. Does anybody wish to have any extra voir
19 dire?

20 **MS. BALLARD:** Not as to this witness, Your
21 Honor.

22 **MR. MYERS:** No, sir.

23 **THE COURT:** All right. Thank you, ma'am.
24 Thank you. You may be seated.

25 Anyone else?

1 (Juror stands.)

2 **JUROR:** Jocylene Jennings, Juror Number 141. I
3 used to work --

4 **THE COURT:** Just one second. Let me make sure
5 the court reporter got that.

6 Did you get that?

7 **COURT REPORTER:** 141?

8 **THE COURT:** 141.

9 Okay. Go ahead.

10 **JUROR:** In 1999 and 2000, I used to work with
11 Bobby Rushton.

12 **THE COURT:** In what capacity did you work with
13 him?

14 **JUROR:** I was a jailer/dispatcher for McCormick
15 County.

16 **THE COURT:** And how long did you do that?

17 **JUROR:** I worked for McCormick for about two
18 years.

19 **THE COURT:** And how closely did you work with
20 Mr. Rushton?

21 **JUROR:** We talked whenever we worked together.

22 **THE COURT:** Right. Did you socialize with him?
23 I don't mean anything extraordinary by that, but did
24 you ever socialize with him outside of work?

25 **JUROR:** Just spoke, you know, Hey, how you

1 doing type of relationship.

2 **THE COURT:** Okay. Well, the same applies to
3 you.

4 And, ladies and gentlemen, what I'm making sure
5 that we do is we pick a jury of people who are able
6 to give both sides of this case a fair and impartial
7 trial, who can listen to the lawyers' arguments and
8 their closings, listen to the testimony, listen to
9 the law as I give it to you, and be able to engage
10 in fair, impartial deliberations.

11 Now, the question to you, ma'am: Can you
12 listen to the testimony, evidence, arguments of
13 lawyers -- arguments of the lawyers and my charge on
14 the law and be fair and impartial to both the State
15 and to the defendant in this matter?

16 **JUROR:** Yes.

17 **THE COURT:** Okay. Very good. Thank you,
18 ma'am.

19 Anyone else?

20 (There was no response.)

21 **THE COURT:** All right. Ladies and gentlemen,
22 I'm going to give you a list of potential witnesses,
23 and I emphasize potential witnesses, who may testify
24 in this case. There will be a number of people, so
25 listen closely. If you don't get it, raise your

1 hand and my law clerk will stop me and make sure
2 that I repeat that name so that you do understand.
3 And after I get through going through the entire
4 list, I'll come back and ask you a question or two
5 about it.

6 The potential witnesses are: Nick Moore,
7 McCormick County Sheriff's Office; Dr. George L.
8 Kirkham; Robert F. "Bob" Worley, that is the brother
9 of Joe Ross Worley; George Reid; Joe Collier.

10 (Juror stands.)

11 **THE COURT:** Okay. I'm not asking if you know
12 him now. I'm asking if you cannot hear me now. Can
13 you hear me?

14 **JUROR:** I can hear you.

15 **THE COURT:** Okay. Just make a mental note and
16 stand up at the end, okay. Thank you.

17 Going back: Joe Collier; Mary C. Worley, the
18 mother of Joe Ross Worley; the records custodian for
19 the McCormick County Emergency Services; Kenneth
20 Whitler; Melissa McAllister, McCormick County
21 Sheriff's Office; Jonathan McAllister; Melvin Brock;
22 Alan Sheffield; Gayle Sheffield; Selena Kinard;
23 Dr. Robert Densmore; Donald Garman.

24 First, did everyone hear all the names?

25 Very good.

1 The question I have: Has anyone ever been
2 related by blood or marriage to any of the folks
3 I've just read to you; if so, would you please
4 stand?

5 (Jurors stand.)

6 **THE COURT:** Okay. And your jury number is
7 what, please, ma'am?

8 **JUROR:** 199.

9 **THE COURT:** You are Ms. Payton?

10 **JUROR:** Uh-huh.

11 **THE COURT:** And which of those witnesses are
12 you related to by blood or marriage?

13 **JUROR:** Sheriff Reid. Sheriff Reid.

14 **THE COURT:** Okay. Did you say George Reid?

15 **JUROR:** Uh-huh.

16 **THE COURT:** Okay. And what is your
17 relationship to him?

18 **JUROR:** I'm his aunt.

19 **THE COURT:** You're his aunt?

20 **JUROR:** Uh-huh.

21 **THE COURT:** Okay. Any reason, ladies and
22 gentlemen, that I shouldn't excuse his aunt for
23 cause in this matter?

24 **MS. BALLARD:** We would agree with that, Your
25 Honor.

1 **THE COURT:** Okay. Thank you, ma'am. I tell
2 you what I'm going to do is excuse you from this
3 trial, but if you remember, I asked you to call in
4 tomorrow night after six o'clock, if you would do
5 so, get the number on the card they gave you, to
6 determine whether we need you to come back. And if
7 you'll do so until they give you a message that
8 you're excused from this week's service, okay?

9 **JUROR:** All right.

10 **THE COURT:** Thank you, Ms. Reid {sic}.
11 Yes, ma'am, what is your jury number?

12 **JUROR:** 228.

13 **THE COURT:** 228? You're Ms. Sibert?

14 **JUROR:** Yes.

15 **THE COURT:** And who are you related to?

16 **JUROR:** George Reid.

17 **THE COURT:** What is your relationship to
18 Mr. Reid?

19 **JUROR:** Sister.

20 **THE COURT:** You're his sister?

21 **JUROR:** Yes.

22 **THE COURT:** I'm definitely going to excuse you.
23 All right. Ms. Sibert, if you will do the same
24 thing, please.

25 **JUROR:** Okay.

1 **THE COURT:** All right. Thank you so much.

2 All right. The next question: Has anyone ever
3 had a close personal or social relationship with any
4 of the folks I've just read to you; if so, would you
5 please stand?

6 (There was no response.)

7 **THE COURT:** Very good. I'm going to ask the
8 attorneys for Mr. Worley to please stand and
9 identify themselves and their firms and where you
10 practice, please.

11 **MR. GARRETT:** I'm Billy Garrett. I practice
12 law in Greenwood, South Carolina.

13 **MS. BALLARD:** I'm Desa Ballard, and I practice
14 law in Columbia, South Carolina.

15 **MR. HENDERSON:** And my name is Carson
16 Henderson. I practice law in Greenwood.

17 **THE COURT:** Mr. Myers.

18 **MR. MYERS:** Donnie Myers, the Solicitor for the
19 Eleventh Circuit.

20 **MR. MAYE:** I'm Ervin Maye. I'm an Assistant
21 Solicitor for the Eleventh Judicial Circuit.

22 **THE COURT:** Ladies and gentlemen of the jury,
23 has any member of the jury panel ever been related
24 by any of the attorneys here in this courtroom or
25 any of the attorneys of their respective firms or by

1 the attorneys employed by the Solicitor's Office; if
2 so, would you please stand?

3 (There was no response.)

4 **THE COURT:** Has any member of the jury panel
5 ever been related by blood or marriage or have you
6 ever had a close personal or social relationship
7 with any of the attorneys here in the courtroom or
8 any members of their firms or any members of the
9 Solicitor's Office; if so, would you please stand?

10 (There was no response.)

11 **THE COURT:** Has any member of the jury panel
12 read or heard anything about the case of the State
13 versus Joe Ross Worley prior to coming to court
14 today; if so, would you please stand?

15 (Jurors stand.)

16 **JUROR:** My name is --

17 **THE COURT:** Okay. One second, one second.
18 We'll get right with you.

19 What is your jury number, please?

20 **JUROR:** I'm not sure.

21 **THE COURT:** And tell me your name then.

22 **JUROR:** Erika Harris.

23 **THE COURT:** Harris?

24 **THE CLERK:** 115.

25 **THE COURT:** 115, Ms. Harris.

1 And don't tell me -- any of you tell me what
2 you've heard, but you have heard something about
3 this case prior to today?

4 **JUROR:** Being a former corrections officer --

5 **THE COURT:** Okay. Don't tell me what you
6 heard, but you heard it in your capacity as a
7 corrections officer?

8 **JUROR:** Right.

9 **THE COURT:** Did you hear anything under any
10 kind of press, T.V., or other type of communication
11 about this case? I don't even know if there's been
12 any.

13 **JUROR:** No.

14 **THE COURT:** Okay. You just heard it in your
15 employment as a corrections officer?

16 **JUROR:** Yes.

17 **THE COURT:** And would the fact that you heard
18 something about this case prior to today affect your
19 ability to be fair and impartial to both this
20 defendant and to the State of South Carolina?

21 **JUROR:** No, sir.

22 **THE COURT:** Can you make your decision based on
23 the testimony and evidence and according to the law
24 as I give it to you at the end of this case,
25 uninfluenced by what you may or may not have heard

1 prior to today?

2 **JUROR:** I can.

3 **THE COURT:** Thank you, ma'am. Ms. Harris,
4 before you sit, just one second, please.

5 **MR. GARRETT:** May we approach?

6 **THE COURT:** Yes, sir.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury panel, but
9 out of the hearing of the jury panel.)

10 **THE COURT:** All right. Ms. Harris, I'm going
11 to excuse you from the trial of this matter, but if
12 you would make sure you have that card and call in
13 tomorrow night after 6:00, after 6:00, to determine
14 when and if you need to come back. And if you'll do
15 that each day until you're excused on the message,
16 okay?

17 **JUROR:** Thank you.

18 **THE COURT:** Thank you so much for being here.

19 Yes, ma'am? And I know you gave it to me
20 already, but tell me your jury number and name
21 again.

22 **JUROR:** 36, Cherry Brown.

23 **THE COURT:** Okay. Ms. Brown, you heard --
24 again, I remind you not to tell me what, but you
25 heard something about this case prior to today?

1 **JUROR:** Yes, sir.

2 **THE COURT:** And was the source of this your
3 husband, who's in law enforcement?

4 **JUROR:** Yes, sir.

5 **THE COURT:** And did you hear about it from
6 another source?

7 **JUROR:** Basically, because I live in that area
8 and knew that there was something going on.

9 **THE COURT:** Okay. Just be careful. Did you
10 hear about any kind of -- any type of media?

11 **JUROR:** Any type of what?

12 **THE COURT:** Any type of news outlet, blog,
13 media, television, radio?

14 **JUROR:** Just what's in the paper.

15 **THE COURT:** Ma'am?

16 **JUROR:** Just what was in the paper.

17 **THE COURT:** Okay. Well, that would be media.

18 Okay. Would the fact that you heard it from
19 whatever source, whether it be your husband or
20 through some type of other media or in the
21 neighborhood, would that affect your ability to
22 listen to the evidence, to listen to the law as I
23 give it to you, the statements of the attorneys and
24 make your decision uninfluenced by that outside
25 information prior to this trial?

1 **JUROR:** It shouldn't affect me.

2 **THE COURT:** No, you got to be certain.

3 **JUROR:** I mean, no, sir.

4 **THE COURT:** Okay. I know what you mean, but we
5 have a record this lady takes down, so I got to be
6 sure.

7 So the bottom line, can you be fair and
8 impartial and will you be fair and impartial to both
9 the State and to the defendant in this matter?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Thank you very much.

12 **MR. GARRETT:** May we approach?

13 **THE COURT:** Yeah.

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury panel, but
16 out of the hearing of the jury panel.)

17 **THE COURT:** Let me ask the juror to come down
18 here, please.

19 (Whereupon, the following bench conference
20 was held on the record with the juror.)

21 **THE COURT:** I don't want you to speak so
22 anybody can hear you, except for this lady and these
23 attorneys, okay. What information did you get prior
24 to trial, either from your husband or from the
25 paper -- from your husband?

1 **JUROR:** It's been a while, but because we live
2 right up the road from where the incident happened,
3 we heard the sirens. And I guess when he checked
4 in, he said that there was some shooting that
5 occurred, and the police officer, he told me who it
6 was, was either injured or -- I mean, not -- he
7 wasn't killed, so he was injured. And it was a man
8 from Florida maybe. That's all I knew.

9 And then the paper, it was just I think Sheriff
10 Gable, he's not a sheriff, but he works as a deputy,
11 just what his comments were in the paper.

12 **THE COURT:** What were his comments? I have not
13 seen --

14 **JUROR:** The incident that the deputies were
15 called to a facility, and I can't tell you the name,
16 but my home is less than a mile away from it, and
17 that there was an incident of a deputy being injured
18 during the altercation. I can't remember all of it.

19 **THE COURT:** Do you recall hearing something
20 that night? I know you said something about -- did
21 you hear something that night?

22 **JUROR:** I wasn't home, but it's when we got
23 back, there was something about a lot of noise.

24 **THE COURT:** Did you hear anything about timing
25 about the incident?

1 **JUROR:** I thought it was late at night.

2 **THE COURT:** Okay. Nothing more specific than
3 that?

4 **JUROR:** No, sir.

5 **THE COURT:** All right. Mr. Garrett?

6 **MR. GARRETT:** There's not sufficient cause.

7 (Bench conference was concluded.)

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

9 (Juror stands.)

10 **THE COURT:** Okay, sir. Now, go ahead -- and
11 I'll remind you, this is the time if you have any
12 questions of whether or not you should stand up, you
13 need to clarify it with me.

14 Give me your jury number, please.

15 **JUROR:** 168.

16 **THE COURT:** 168?

17 **JUROR:** Yes, sir.

18 **THE COURT:** Okay. And you're Ms. McCann?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Again, don't tell me what. Just
21 tell me --

22 **JUROR:** I'm not even sure if this is it, but a
23 neighbor had told me of an incident.

24 **THE COURT:** Don't go to -- was it involving the
25 matters in this case?

1 **JUROR:** Honest, I'm not sure. I just know
2 there was a particular incident that happened a few
3 years ago. I don't know if this is it or not.

4 **THE COURT:** Okay. Well, I'll tell you -- let
5 me ask the attorneys to step up here for one second.
6 Let me double-check something.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury panel, but
9 out of the hearing of the jury panel.)

10 **THE COURT:** Come on up here.

11 (Whereupon, the following bench conference
12 was held on the record with the juror.)

13 **THE COURT:** Generally, tell me what you've
14 heard and try not to speak overly loud.

15 **JUROR:** My neighbor said he had been shot in
16 his hand, and he lost his fingers.

17 **THE COURT:** Well, that's what this case is
18 about, okay.

19 Now -- and you heard that from a neighbor?

20 **JUROR:** Yes.

21 **THE COURT:** Now, the question I have of you is,
22 would that impact on your ability to listen to the
23 testimony and evidence that's elicited in this
24 case --

25 **JUROR:** No.

1 **THE COURT:** -- to listen to the attorneys'
2 arguments, listen to the law from me, and give a
3 fair and impartial decision based on that evidence
4 and testimony?

5 **JUROR:** Yeah, I think I can do that.

6 **THE COURT:** Now, you've got to do better than
7 that. You've got -- no, you can't or --

8 **JUROR:** Oh, yes, sir.

9 **THE COURT:** So the question is, will you be
10 fair and impartial to both sides?

11 **JUROR:** Yes, I will.

12 **THE COURT:** Okay. Any other questions from
13 either side?

14 **MR. GARRETT:** What is -- who was it that told
15 her this?

16 **THE COURT:** Her neighbor.
17 Who was your neighbor?

18 **JUROR:** Whitney McQueen.

19 **MS. BALLARD:** You're going to give the standard
20 instruction about her not speaking with the other
21 jurors about facts?

22 **THE COURT:** I mean, I'll be glad to do that,
23 but normally -- not normally -- anything that you
24 may have heard, you're not allowed to discuss it,
25 even in your deliberations, but during a trial --

1 and I will tell this to everybody -- you can't talk
2 about testimony, you can't talk about anything that
3 happens during a trial. The only thing you can
4 discuss, until after the case is over, from one or
5 the other, is what you heard in the courtroom and
6 your --

7 **JUROR:** Well, I had just told my husband.

8 **THE COURT:** That's okay. Right now, you
9 haven't been selected.

10 **MR. HENDERSON:** And let me ask you this, too:
11 This is your husband, and both of you are on the
12 panel?

13 **JUROR:** Yes.

14 **THE COURT:** Okay. Anything further?

15 **MS. BALLARD:** No, sir. Thank you.

16 **THE COURT:** Thank you.

17 (The bench conference was concluded.)

18 **THE COURT:** Okay. Sir, what is your jury
19 number?

20 **JUROR:** 128.

21 **THE COURT:** One --

22 **JUROR:** 128.

23 **THE COURT:** All right. Mr. Holloway?

24 **JUROR:** Yes, sir.

25 **THE COURT:** Okay. I just want you to tell me

1 from what source you might have heard something
2 prior to today.

3 **JUROR:** I would rather not tell you in front of
4 everybody.

5 **THE COURT:** Well, come around.

6 And let me just tell this, ladies and
7 gentlemen, you know, I don't know if any of y'all
8 have ever been involved in the judicial system,
9 especially a criminal trial, but those of you who
10 are not selected and those of who are selected, I'll
11 tell you that it's not like you see on T.V., and it
12 doesn't happen in five minutes. It's slow, and it's
13 methodical. And our goal that we take painstakingly
14 is that we give the State and the defendant a fair
15 and impartial trial with jurors who are unbiased to
16 one side or the other, and that's our goal. So if
17 it takes a little while to do that, then so be it,
18 okay.

19 Come around, please, sir.

20 (Whereupon, the following bench conference
21 was held on the record with the juror.)

22 **JUROR:** It was another attorney.

23 **THE COURT:** Huh?

24 **JUROR:** It was an attorney, not in this room.

25 **THE COURT:** And not telling me the attorney's

1 name, what did he tell you?

2 **JUROR:** (No response.)

3 **THE COURT:** You don't have a choice; you have
4 to tell me.

5 **JUROR:** He told me he wasn't guilty.

6 **THE COURT:** Huh?

7 **JUROR:** He told me he wasn't guilty.

8 **THE COURT:** And did this attorney, was he in a
9 position to know it?

10 **JUROR:** I have done work for this fellow.

11 **THE COURT:** Sir?

12 **JUROR:** I have done work for this man.

13 **THE COURT:** You've done work for this guy?

14 **MS. BALLARD:** For the lawyer or Mr. Worley?

15 **JUROR:** Mr. Worley.

16 **THE COURT:** For this man?

17 **JUROR:** Uh-huh.

18 **THE COURT:** The defendant? What kind of work
19 did you do for him?

20 **JUROR:** I done some landscaping.

21 **THE COURT:** Okay. So I tell you what, I think
22 I'm going to have to let you go, okay.

23 I know you don't want me to from --

24 **MS. BALLARD:** I understand.

25 **THE COURT:** But I think it's appropriate in

1 this case, unless anybody has any objection to it.

2 **MR. GARRETT:** I object to it, Judge. I think
3 you have to go through further colloquy as to
4 whether or not he can be a fair and impartial juror
5 in spite of it.

6 **THE COURT:** Okay. Well, I'll do that, and I
7 think you're right, Mr. Garrett.

8 The fact that you were told by this attorney or
9 the fact that you did work for this gentleman or a
10 combination of that, would that affect you in being
11 fair and impartial to this defendant and to the
12 State?

13 **JUROR:** It probably would.

14 **THE COURT:** All right. I'll excuse you then.

15 **JUROR:** I mean, I --

16 **THE COURT:** That's fine. You don't have to
17 explain yourself. I just want to get the
18 information. Thank you so much.

19 **MS. BALLARD:** Thank you.

20 (The bench conference was concluded.)

21 **MS. BALLARD:** What was your juror number?

22 **MR. MYERS:** 128.

23 **MS. BALLARD:** Thank you.

24 **THE COURT:** All right. Is there anyone else
25 that had a response to that question?

1 (There was no response.)

2 **THE COURT:** Has any member of the jury panel
3 formed or expressed an opinion about any issue or
4 matter involved in this case prior to coming to
5 court today; if so, would you please stand?

6 (There was no response.)

7 **THE COURT:** Is there any member of the jury
8 panel aware of any bias or prejudice that you may
9 harbor against the State of South Carolina or this
10 defendant in this matter, Mr. James [sic] Ross
11 Worley?

12 If you have a bias or prejudice for or against
13 the State, for or against Mr. Worley, would you
14 please stand?

15 (There was no response.)

16 **THE COURT:** Is there any member that was a
17 member of the McCormick County Grand Jury that
18 issued the indictments in this matter; if so, would
19 you please stand?

20 (There was no response.)

21 **THE COURT:** Is there any member of the jury
22 panel who is a member of or a contributor to any
23 group which has, as its primary concern, the
24 promotion of law enforcement or victims' rights?
25 Examples of these type of organizations, but

1 certainly not an exclusive list, would be MADD,
2 SADD, or CAVE. But if you are a member of or a
3 contributor to those groups or any group which has,
4 as its primary concern, the promotion of law
5 enforcement or victims' rights, would you please
6 stand?

7 (There was no response.)

8 **THE COURT:** Is there any member of the jury
9 panel who has a religious or moral opposition to the
10 consumption of alcohol; if so, would you please
11 stand?

12 (There was no response.)

13 **THE COURT:** Does any member of the jury panel
14 know of any reason -- and I emphasize any reason --
15 whatsoever why you should not be selected to serve
16 as a juror in the trial of this matter with
17 particular emphasis being placed on your ability to
18 be fair and impartial to both the defense and to the
19 State in this matter? If you know of any reason why
20 you should not be selected because of any bias or
21 prejudice or for any other reason, please stand.

22 (There was no response.)

23 **THE COURT:** Is there any member of the jury
24 panel currently employed by any law enforcement
25 agency or who was formerly employed by any law

1 enforcement agency; if so, would you please stand?

2 (Jurors stand.)

3 **JUROR:** I was formerly employed.

4 **THE COURT:** That's right. And tell me your
5 jury number.

6 **JUROR:** Jury number 141.

7 **THE COURT:** 141?

8 **JUROR:** Yes. I was employed by the State of
9 South Carolina with the department of corrections,
10 and I also was a jailer in McCormick County Jail.

11 **THE COURT:** Okay. Now, would the fact that you
12 had that former employment affect your ability to be
13 fair and impartial to both the State and the defense
14 in this matter?

15 **JUROR:** No.

16 **THE COURT:** Okay. Thank you, ma'am.
17 Just one second.

18 **MR. GARRETT:** Can you find out when she was
19 working in the McCormick County Jail?

20 **THE COURT:** When did you work for McCormick
21 County, please?

22 **JUROR:** I worked for McCormick County in --
23 from 1999 to 2002.

24 **THE COURT:** Okay. Thank you, ma'am.

25 And over here, I can't see you because of the

1 glare, but would you give me your jury number.

2 JUROR: Juror number 6.

3 THE COURT: 6?

4 JUROR: Yes, sir.

5 THE COURT: Okay. And you are Ms. Andrews?

6 JUROR: Yes, sir.

7 THE COURT: And who did you work for?

8 JUROR: For the department of corrections.

9 THE COURT: And what years did you work for the
10 department of corrections?

11 JUROR: I left there in 2000. I last worked
12 there in 2000.

13 THE COURT: 2000?

14 JUROR: Yes, sir.

15 THE COURT: Now, would the fact that you were
16 formerly employed by the department of corrections
17 affect your ability to be fair and impartial to both
18 the State and to this defendant?

19 JUROR: No, it wouldn't.

20 THE COURT: Thank you very much.

21 All right. Ladies and gentlemen, is any member
22 of the jury panel currently employed by any
23 Solicitor's Office, any prosecutor's office, or the
24 Solicitor's Office here in this circuit or anywhere
25 else in South Carolina or outside of South Carolina?

1 If you have been or currently are employed by any
2 Solicitor's Office, including this Solicitor's
3 Office for Mr. Myers, would you please stand.

4 (There was no response.)

5 **THE COURT:** Does any member of the jury panel
6 have a spouse, family member or close family friend
7 that was employed by any law enforcement agency,
8 that were formerly employed by any law enforcement
9 agency or employed by any Solicitor's Office,
10 including Mr. Myers' office; if so, would you please
11 stand?

12 (Jurors stand.)

13 **THE COURT:** What is your jury number?

14 **JUROR:** 255.

15 **THE COURT:** Ma'am?

16 **JUROR:** 255.

17 **THE COURT:** 255?

18 **JUROR:** Did I understand you to say spouse?

19 Did you say a spouse that was --

20 **THE COURT:** That's right, I did. And where was
21 he employed?

22 **JUROR:** Michigan.

23 **THE COURT:** Michigan?

24 **JUROR:** Michigan State Police.

25 **THE COURT:** Now, the fact that your -- when did

1 he last work for Michigan and in what capacity?

2 **JUROR:** 1994.

3 **THE COURT:** In what capacity did he work?

4 **JUROR:** As a trooper.

5 **THE COURT:** He was a trooper? Would the fact
6 that your husband was a former trooper in Michigan
7 affect your ability to be fair and impartial to both
8 sides of this case, to the State and to this
9 defendant?

10 **JUROR:** No.

11 **THE COURT:** Thank you very much.

12 And is it the same -- give me your jury number
13 again.

14 **JUROR:** Jury number 36, Cherry Brown.

15 **THE COURT:** And you had a husband who formerly
16 worked for this law enforcement here?

17 **JUROR:** Yes, sir, here and South Carolina Law
18 Enforcement Division.

19 **THE COURT:** Okay. And your prior responses to
20 me is that it would not affect your ability to be
21 fair and impartial; is that correct?

22 **JUROR:** That's correct, yes, sir.

23 **THE COURT:** Okay. Thank you, ma'am.

24 Is there any member of the jury panel that
25 would believe the sworn testimony of a law

1 enforcement officer over the sworn testimony of a
2 person who is not law enforcement; if so, would you
3 please stand?

4 (There was no response.)

5 **THE COURT:** Has any member of the jury panel,
6 other than the ones we have previously spoken to,
7 read or heard anything about Joe Ross Worley
8 shooting Bobby Rushton on November 15th, 2009; if
9 so, would you please stand?

10 (Juror stands.)

11 **THE COURT:** Okay. I don't want you to tell me
12 what you heard, but tell me your jury number and
13 name.

14 **JUROR:** Number 180, David J. Morrah, III.

15 **THE COURT:** And tell me where you received your
16 information.

17 **JUROR:** Just from the news.

18 **THE COURT:** From the news?

19 **JUROR:** Yes, sir.

20 **THE COURT:** Okay. Would the fact that you
21 happened to read an article in the news affect your
22 ability to listen to the testimony that's brought
23 forth in this courtroom, listen to the arguments of
24 these lawyers, and listen to the law as I tell you
25 it is, and apply those unbiased and unprejudiced to

1 either the State or to the defendant?

2 **JUROR:** No, sir.

3 **THE COURT:** Okay. Thank you very much.

4 Has any member of the jury panel discussed this
5 case with any friends or family members on direct
6 communication, social network or otherwise or had --
7 or seen it discussed by anyone in any capacity,
8 either by Facebook, direct communication, over
9 e-mail, telephone, or otherwise? Have you discussed
10 it or had it discussed to you or heard it discussed;
11 if so, would you please stand?

12 (There was no response.)

13 **THE COURT:** Has anybody read, other than the
14 normal news outlets, newspapers and T.V., read
15 anything about this case, such as on Facebook or
16 otherwise; if so, would you please stand?

17 (There was no response.)

18 **THE COURT:** Has any member of the jury panel
19 been contacted by Mr. Rushton, his family, or anyone
20 associated with this case or who may have knowledge
21 about this case?

22 (There was no response.)

23 **THE COURT:** Is there any member of the jury
24 panel who's been contacted by Joe Ross Worley, by
25 his family or anyone associated with the case or who

1 may have knowledge about this case?

2 (There was no response.)

3 **THE COURT:** Has any member of the jury panel
4 had any communication with either Joe Ross Worley's
5 family or Mr. Bobby Rushton's family prior to today
6 about any matter involving this case?

7 (There was no response.)

8 **THE COURT:** Have you had any communication with
9 a close friend or social friend either with
10 Mr. Worley or Mr. Rushton prior to today?

11 (There was no response.)

12 **THE COURT:** Has any member of the jury panel
13 spoken with or heard from Melissa McAllister or her
14 family or social -- close social friends prior to
15 the commencement of this trial? And by
16 communication, I mean, verbal, oral, telephone,
17 written, e-mail, Twitter, any way you may
18 communicate, if you -- that applies to any of these
19 questions.

20 **JUROR:** Did you say about the trial?

21 **THE COURT:** About the facts -- surrounding the
22 facts of this trial. I need you to stand up,
23 please, sir, and give me your name and jury number.

24 **JUROR:** Jury number 11.

25 **THE COURT:** Number 11, Mr. Bartlett?

1 **JUROR:** Yes, sir.

2 **THE COURT:** Okay, sir. And don't tell me what
3 you heard, but you --

4 **JUROR:** I didn't hear anything about the trial.
5 I just heard -- I might have misunderstood.

6 **THE COURT:** Okay. What I'm looking for --

7 **JUROR:** Have you ever spoke to Melissa. And I
8 used to drive for the EMS years ago.

9 **THE COURT:** No. I'm looking for communications
10 -- the question is looking for communications from
11 any of these people or their family members or close
12 personal friends or family members about this trial.

13 **JUROR:** No, sir.

14 **THE COURT:** Okay. Now, Mr. Bartlett, while I
15 got you here, one of the prior questions were if you
16 had an acquaintance with these other folks, would it
17 affect your ability to be fair and impartial to the
18 State and to the defendant in this matter? And
19 since you didn't rise, I'm going to ask you
20 directly: Would your prior relationship with
21 whoever you just mentioned -- I believe that was
22 Ms. McAllister -- affect your ability to be fair and
23 impartial to both the State and the defendant?

24 **JUROR:** No, sir, I don't believe so.

25 **THE COURT:** Very good. Thank you so much.

1 Has any member of the jury panel spoken to Nick
2 Moore, his family, or any close personal, social
3 friends of Nick Moore's about this case prior to
4 today, and by communications, as I defined it
5 earlier, by any form of communication out there?
6 Has anybody had any communications with Nick Moore,
7 his family, or close personal friends about this
8 case prior to today?

9 (There was no response.)

10 **THE COURT:** Very good.

11 Has any member of the jury panel, your spouse
12 and/or a close friend ever been the victim of an
13 actual or attempted robbery, burglary, home
14 invasion, and/or other type of violent crime; if so,
15 would you please stand?

16 (There was no response.)

17 **THE COURT:** All right. As to the other
18 requests for voir dire, if you would make those a
19 part of the record, and they'll have those to
20 review. Those are the ones I'm going to ask.

21 Any other ones that are not requested
22 previously from the defense?

23 **MR. GARRETT:** None from the defense, Your
24 Honor.

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

1 **MR. MYERS:** None, sir.

2 **THE COURT:** Okay. Very good.

3 Ladies and gentlemen, let me go over with you
4 how this will work. In just a minute, we're going
5 to have your names called. In the old days, we
6 would have to have somebody who could not read or
7 was legally blind. We would have had this big
8 spindle, and they would spin it and they'd draw your
9 name out and you'd be called up. In that case, you
10 would walk around here and stand between -- right in
11 front of me between the State and the defense, and
12 they'll make a determination as to whether or not
13 you will be called here.

14 Now, in this case, in this day and age, we
15 don't have people who are blind or who cannot read;
16 we have a computer, but the computer is going to do
17 the same thing, so it will take a moment. We're
18 going to run off a list. In just a minute, there
19 will be your names printed off on a sheet, it will
20 be given to me, and my clerk -- and the Clerk. They
21 will then call your name.

22 If your name is called, I need you to bring
23 your personal belongings with you, and that you come
24 walk around and you stand right in front of me, in
25 between Mr. Myers and the defense counsel, and face

1 them for the determination as to whether or not
2 you'll be selected in the trial of this matter,
3 okay.

4 If y'all will just bear with us and stay here
5 in the courtroom for one moment.

6 (Pause.)

7 **THE COURT:** All right. The Clerk tells us
8 we're going to still do it the old-fashioned way.
9 So there we go.

10 **THE CLERK:** Number 91, Shameaka Ervin.

11 (Whereupon, Shameaka N. Ervin, a black
12 female, was called forward.)

13 **THE COURT:** And, again, five and five?

14 **MR. HENDERSON:** Yes, sir.

15 **MR. MYERS:** Yes, sir.

16 **THE CLERK:** What says the State?

17 **MR. MYERS:** Present Ms. Ervin.

18 **THE CLERK:** What says --

19 **MR. GARRETT:** Swear Ms. Ervin.

20 **THE CLERK:** Ms. Ervin, if you will, have a seat
21 in the jury box.

22 **THE COURT:** Her jury number is what?

23 **THE CLERK:** Number 11 -- I'm sorry -- Number
24 91.

25 The next one in my hand is Number 11, Stephen

1 Bartlett.

2 (Whereupon, Stephen E. Bartlett, a white
3 male, was called forward.)

4 **THE CLERK:** What says the State?

5 **MR. MYERS:** Present Mr. Bartlett.

6 **THE CLERK:** What says the defense?

7 **MR. GARRETT:** Excuse the juror.

8 **BAILIFF:** Go back to your seat, sir.

9 **THE CLERK:** Number 253, Diana Weaver.

10 (Whereupon, Diana W. Weaver, a white female,
11 was called forward.)

12 **THE CLERK:** What says the State?

13 **MR. MYERS:** Present Ms. Weaver.

14 **THE CLERK:** What says the defense?

15 **MR. GARRETT:** Swear Ms. Weaver.

16 **THE CLERK:** Ms. Weaver, if you'll have a seat.
17 Number 34, Annie S. Brown.

18 (Whereupon, Annie S. Brown, a black female,
19 was called forward.)

20 **THE CLERK:** What says the State?

21 **MR. MYERS:** Present Ms. Brown.

22 **THE CLERK:** What says the defense?

23 **MR. GARRETT:** Swear Ms. Brown.

24 **THE CLERK:** If you'll have a seat.

25 Number 199, Mildred Payton was excused by the

1 Court.

2 Number 69, Cornelia Crawford.

3 (Whereupon, Cornelia Crawford, a white
4 female, was called forward.)

5 **THE CLERK:** What says the State?

6 **MR. MYERS:** Excuse Ms. Crawford.

7 **THE CLERK:** Ms. Crawford, you may return to
8 your seat, please.

9 Number 214, Robin Reeder.

10 (Whereupon, Robin J. Reeder, a white female,
11 was called forward.)

12 **THE CLERK:** What says the State?

13 **MR. MYERS:** Present Ms. Reeder.

14 **THE CLERK:** What says the defense?

15 **MR. GARRETT:** Swear Ms. Reeder.

16 **BAILIFF:** Over here, please, ma'am.

17 **THE CLERK:** Number 79, Julie M. Davis.

18 (Whereupon, Julie M. Davis, a white female,
19 was called forward.)

20 **THE CLERK:** What says the State?

21 **MR. MYERS:** Present Ms. Davis.

22 **THE CLERK:** What says the defense?

23 **MR. GARRETT:** Swear Ms. Davis.

24 **THE CLERK:** Number 176, Ms. Shirley Milligan.

25 (Whereupon, Shirley Milligan, a white

1 female, was called forward.)

2 **MR. MYERS:** What was the number?

3 **THE CLERK:** 176.

4 What says the State?

5 **MR. MYERS:** Present Ms. Milligan.

6 **THE CLERK:** What says the defense?

7 **MR. GARRETT:** Swear Ms. Milligan.

8 **THE CLERK:** Thank you, Ms. Milligan. If you'll
9 have a seat, please.

10 Number 207, Henry E. Price.

11 (Whereupon, Henry E. Price, a black male,
12 was called forward.)

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

14 **MR. MYERS:** Excuse Mr. Price.

15 **THE CLERK:** Mr. Price, if you'll return to your
16 seat, please.

17 Number 261, William A. Wilkie, Jr.

18 (Whereupon, William A. Wilkie, Jr., a white
19 male, was called forward.)

20 **THE CLERK:** What says the State?

21 **MR. MAYE:** Present Mr. Wilkie.

22 **THE CLERK:** What says the defense?

23 **MR. GARRETT:** Swear Mr. Wilkie.

24 **THE CLERK:** Mr. Wilkie, if you'll have a seat.

25 Number 117, Shakita S. Harris.

1 (Whereupon, Shakita S. Harris, a black
2 female, was called forward.)

3 **THE CLERK:** What says the State?

4 **MR. MYERS:** Present Ms. Harris.

5 **THE CLERK:** What says the defense?

6 **MS. BALLARD:** Excuse us one minute.

7 (Pause.)

8 **MR. GARRETT:** Swear Ms. Harris.

9 **THE CLERK:** Ms. Harris, if you'll have a seat.
10 Number 124, Alice M. Hicks.

11 (Whereupon, Alice M. Hicks, a black female,
12 was called forward.)

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

14 **MR. MYERS:** Present Ms. Hicks.

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

16 **MR. GARRETT:** Swear Ms. Hicks.

17 **THE CLERK:** Ms. Hicks, if you'll have a seat in
18 the jury box.

19 Number 60, Octavius Chiles.

20 (Whereupon, Octavius D. Chiles, a black
21 male, was called forward.)

22 **THE CLERK:** What says the State?

23 **MR. MYERS:** Present Mr. Chiles.

24 **THE CLERK:** What says the defense?

25 **MR. GARRETT:** Swear Mr. Chiles.

1 **THE CLERK:** Mr. Chiles, if you'll have a seat.
2 Number 228, Willie M. Sibert was excused by the
3 Court.

4 Number 194, Pete L. Palek.

5 **MR. MYERS:** 194?

6 **THE CLERK:** 194, yes, sir.

7 (Whereupon, Pete L. Palek, a white male, was
8 called forward.)

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

10 **MR. MYERS:** Present Mr. Palek.

11 **THE CLERK:** What says the defense?

12 **MR. GARRETT:** Swear him.

13 **THE CLERK:** Have a seat in the jury box,
14 please.

15 Number 57, Ernest F. Caughman.

16 **MS. BALLARD:** I'm sorry, 57?

17 **THE CLERK:** 57.

18 **MS. BALLARD:** Thank you.

19 (Whereupon, Ernest F. Caughman, a white
20 male, was called forward.)

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

22 **MR. MYERS:** Excuse Mr. Caughman.

23 **THE CLERK:** Mr. Caughman, if you'll return to
24 your seat, please.

25 Number 119, Dianne Harrison.

1 (Whereupon, Dianne C. Harrison, a white
2 female, was called forward.)

3 **THE CLERK:** What says the State?

4 **MR. MYERS:** Present Ms. Harrison.

5 **THE CLERK:** What says the defense?

6 **MR. GARRETT:** Swear Ms. Harrison.

7 **THE CLERK:** Ms. Harrison, if you'll have a
8 seat.

9 **THE COURT:** Counsel, I was thinking about two
10 alternates. Any problem with having two, from the
11 State?

12 **MR. MYERS:** No, sir.

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

14 **MR. GARRETT:** No, sir.

15 **THE COURT:** All right. Defense two, State one
16 in alternates.

17 **THE CLERK:** Number 122, Tonya Heath.

18 (Whereupon, Tonya M. Heath, a black female,
19 was called forward.)

20 **THE CLERK:** What says the State?

21 **MR. MYERS:** Present Ms. Heath.

22 **THE CLERK:** What says the defense?

23 **MR. GARRETT:** Swear Ms. Heath.

24 **THE CLERK:** Have a seat.

25 Number 269, Lindsay L. Wood, Jr.

1 (Whereupon, Lindsay L. Wood, Jr., a white
2 male, was called forward.)

3 **THE CLERK:** What says the State?

4 **MR. MYERS:** Present Mr. Wood.

5 **THE CLERK:** What says the defense?

6 **MR. GARRETT:** Swear Mr. Wood.

7 **THE CLERK:** Have a seat, Mr. Wood.

8 **THE COURT:** Any motions directed to the jury
9 selection from the State?

10 **MR. MYERS:** No, sir.

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

12 **MR. GARRETT:** None, Your Honor.

13 **THE COURT:** Very good.

14 Ladies and gentlemen of this jury, what I'm
15 going to do is ask you to follow the bailiff out to
16 your jury room, and if you would select among
17 yourselves who you would like to be the foreperson
18 of this jury.

19 I'll tell you that the foreperson is the person
20 who will preside over deliberations of this trial at
21 the end of this case and will also be responsible
22 for communicating with the Court during the course
23 of the trial if there is need for communication.

24 The alternates may not serve as to foreperson,
25 but they may vote on who the foreperson is. Unlike

1 your decision at the end of this case, it doesn't
2 have to be unanimous; it can be by a simple
3 majority.

4 Once you select who you'd like to be your
5 foreperson, I'm going to ask that foreperson to get
6 a piece of paper and write their name and jury
7 number down on it, and to then poll your jurors to
8 determine who, if anyone, would like to have pad and
9 pencil for use during the trial of this matter.

10 Once you get that information, write the number
11 of folks, not their names but just the numerical
12 number, who would like to have pad and pencil, knock
13 on the door, we'll receive that back here in the
14 courtroom. But if you will go with the bailiff at
15 this point, please.

16 (The jury retires to the jury room.)

17 **THE COURT:** Any additions or exceptions from
18 the State or defense to those instructions?

19 **MR. MYERS:** None from the State.

20 **MR. GARRETT:** None from the defense.

21 **THE COURT:** Ladies and gentlemen of the jury,
22 those of you who were not selected, I can tell by
23 the looks on your faces you're extremely
24 disappointed, but guess what? We may give you
25 another chance this week. And so if you would, make

1 sure you keep with you those cards that have the
2 number for you to call in, and if you would,
3 beginning tomorrow night after, after six o'clock,
4 call in to determine whether or not we need you to
5 come back, and if so, when. And if you'll do that
6 each day after six o'clock until there is a message
7 that says you've been excused for the week.

8 Otherwise, thank you for being here today,
9 thank you for your patience, but you're excused for
10 the day.

11 (The remaining jury panel was excused.)

12 **THE COURT:** All right. Do we have any jurors
13 or anyone from the panel in the courtroom?

14 Very good.

15 Just for the record, my records indicate that
16 the State strikes -- struck number 69, 207, and 57,
17 defense struck number 11. Does that purport comport
18 with your notes?

19 **MR. GARRETT:** That's correct.

20 **THE COURT:** Very good.

21 Also, just from a housekeeping standpoint, I
22 know that there were four indictments; two are not
23 being pursued at this point. I don't know whether
24 they're being nol prossed or not.

25 **MR. MYERS:** They will be, Your Honor.

1 **THE COURT:** Okay. Very good.

2 Any other administrative matters I need to take
3 up other than the in limine motions from the State?

4 **MR. MYERS:** None from the State, Your Honor.

5 **THE COURT:** Okay. While we're waiting, let's
6 go over -- we may not be able to finish, very
7 likely, today, but let's get as much of it done as
8 we can, okay.

9 Do you have a copy of the motions in limine,
10 Mr. Myers?

11 **MR. MYERS:** Yes, I do.

12 **THE COURT:** Okay. Number one, as to
13 sequestration, that's granted.

14 **MS. BALLARD:** Thank you, Your Honor.

15 **MR. HENDERSON:** And the fact witnesses. I know
16 we've got one expert, and upon information and
17 belief, they have --

18 **THE COURT:** If I'm asking for argument, I'll
19 let you know. Right now that goes for plaintiff --
20 I mean, the State and the defense, okay.

21 **MR. MYERS:** Now, on the sequester, we'll get to
22 keep the custodian of evidence and Mr. Rushton.

23 **THE COURT:** That's exactly right. Any
24 objection to that?

25 **MR. HENDERSON:** Oh, no, sir.

1 **THE COURT:** Okay. Number two, to visit the
2 site. I'm going to take that under advisement. We
3 had a discussion of that in my chambers.

4 And let me tell everybody: If we have a
5 discussion in chambers, I generally like to try to
6 put it on the record. If I omit to put something on
7 the record, y'all please clarify it for me and I
8 want you to feel free to do so.

9 **MR. MYERS:** Your Honor, we would join in that
10 motion.

11 **THE COURT:** Join in the motion to visit the
12 scene?

13 **MR. MYERS:** Yes, sir.

14 **THE COURT:** Okay. Then that will be granted.
15 We need to make arrangements.

16 In the meantime, I'm going to ask the State to
17 take care of this since you have the ability better
18 to get a bus to arrange to carry the jury panel,
19 okay. If there's a reason you can't do this,
20 Mr. Myers, let me know, and I can try to make
21 arrangements for it. And we need to make sure that
22 we have proper precautionary -- precautions taken
23 for the defendant in this matter as well.

24 All right. The next one, any reference to
25 Bobby Rushton as victim during the trial. Number

1 three, calling -- referring to Mr. Rushton as the
2 victim. Mr. Myers, what's your position on that?

3 **MR. MYERS:** Your Honor, I have to object to
4 that because he is the victim. And I'd hate to say,
5 yes, I'm going to do it, and during the trial, I
6 refer to him as the victim, because I -- I may or I
7 may not. But I just object to that because when you
8 have a crime, you have a defendant and you have a
9 victim.

10 **THE COURT:** Well, I tend to agree with you, but
11 go ahead.

12 **MR. HENDERSON:** Your Honor, it's not -- nobody
13 is a victim in this courtroom until 12 people have
14 said that they are a victim. I think it's a comment
15 on the facts. And I know what Judge Griffith likes
16 to do, for example --

17 **THE COURT:** I'm not Judge Griffith.

18 **MR. HENDERSON:** Oh, I understand. But instead
19 of, like, using victim, call everybody Mr. or Ms.,
20 Officer, Deputy, Colonel, Reverend, Ma'am, Sir;
21 where you're not calling people defendant, you're
22 not calling them victim, and you're also not calling
23 them by their first name.

24 **THE COURT:** Well, in -- and let me say this:
25 I'm not going to make a prohibition against him

1 referring to Mr. Rushton as a victim. I don't want
2 -- if it starts to be unduly emphasized in the
3 courtroom, I will stop it, but I don't want there to
4 be a big brouhaha over an occasional statement of
5 the victim or the defendant or something like that,
6 okay.

7 I mean, if you'll notice, I try not to do it
8 when I'm questioning folks. I think it's not
9 necessarily appropriate to try to call attention to
10 those things, but I don't want to eliminate somebody
11 who does it occasionally during a case, okay. But I
12 note your objection to that.

13 And that would go to saying, Well, if
14 Mr. Moore, in this matter, would there be any need
15 to call Mr. Moore a victim since there's nothing in
16 this case --

17 **MR. MYERS:** Four and five, we'll agree to.

18 **THE COURT:** Okay. Granted to number four and
19 five.

20 Is there anything in the defendant's criminal
21 record that you intend to elicit during this case at
22 this point?

23 **MR. MYERS:** Not in the case in chief.

24 **THE COURT:** Okay. So only on reply, if he
25 opens the door, I would assume?

1 **MR. HENDERSON:** That's correct, Your Honor.

2 **THE COURT:** Okay. All right. Mr. Myers,
3 what's your feeling about number seven?

4 **MR. MYERS:** Number seven, just per se, the
5 possession of the rifle is not a violation of the
6 federal law, the state or local law, but it is a
7 crime for which we are on trial here for, possession
8 of a weapon during a violent crime.

9 **THE COURT:** Sure.

10 **MR. MYERS:** Other than that, there's no other
11 law that we can bring above that.

12 **THE COURT:** I guess a better way to put it:
13 Other than as indicted, any reference to any state,
14 federal or municipal code violation by possession of
15 this weapon?

16 **MR. MYERS:** Correct.

17 **MR. HENDERSON:** And that's what we were
18 concerned about, Your Honor.

19 **THE COURT:** Okay. How about number eight,
20 modification of the ammunition?

21 **MR. MYERS:** Oh, yes, sir. We strenuously
22 object to that. We object to that because it
23 goes --

24 **THE COURT:** Let me do this -- I don't mean to
25 cut you off, but I want to hear why you think that

1 that should be appropriately excluded.

2 **MR. HENDERSON:** Your Honor, again, this is a
3 weird fact scenario. My client was using his
4 deceased father's rifle and ammunition, which had
5 been modified. After all of this went down --

6 **THE COURT:** How has it been modified,
7 allegedly?

8 **MR. HENDERSON:** There's no allegedly. I mean,
9 it had been modified.

10 **THE COURT:** Okay.

11 **MR. HENDERSON:** The lead had been drilled out
12 and had put steel in the shells. And his father had
13 done that years ago. His father has been dead now
14 for several years.

15 Keep in mind, after my client was arrested,
16 this was turned over to ATF. ATF has investigated
17 this and came back that it was not a violation for
18 him to be in possession of this modified ammunition,
19 and it wasn't against the law if he had been the one
20 to have modified the ammunition, which he wasn't.
21 That wasn't against the law.

22 And keep in mind, I think this just would be
23 prejudicial and irrelevant that his father had
24 modified ammunition that happened to be used this
25 night. It has no bearing on anything, Your Honor,

1 other than to inflame the jury.

2 **THE COURT:** So it's not relevant to 403?

3 **MR. HENDERSON:** It's not relevant at all. And,
4 obviously, the danger of prejudice far exceeds any
5 relevancy. Everybody has agreed that Mr. Worley
6 shot Mr. Rushton. That's not in dispute. It's not
7 in dispute the rifle he shot him with or the
8 ammunition he shot him with. The fact that it had
9 been modified, we believe, is irrelevant.

10 And, Your Honor, that kind of goes into number
11 ten on the list here, you know, about making
12 allegations of it being cop-killer bullets,
13 armor-piercing. It's not any of that because this
14 is lawful ammunition that my client or any other
15 person can possess under federal law.

16 **THE COURT:** Let me ask, Mr. Myers -- I'm going
17 to skip in between and go to number nine -- do you
18 agree that there are -- the representation that
19 possession of this ammunition does not violate
20 state, federal, or local law?

21 **MR. MYERS:** The violation of the ammunition we
22 don't think violates the law. Possession of that
23 gun was a violation of federal law by him, but we're
24 not going to bring that out.

25 So, yes, as far as number nine, on the

1 violation of the law, we're not going to bring up
2 anything about it being a violation of law.

3 Was that number eight?

4 **THE COURT:** Yes, sir. On number eight and ten,
5 I just looked at those. Those are kind of the same
6 thing in regards to how I'm thinking about it.

7 **MR. MYERS:** Yes, sir. And on those, I don't
8 care who modified the bullets. He had it. He used
9 the gun with those bullets in it. It goes to
10 malice. It goes to assault and battery with intent
11 to kill. It goes to how this injury was inflicted
12 on Bobby Rushton. Yes, sir, we think that's most
13 relevant. And it's survives a 403. It survives it
14 plainly because it's an element of the crime as far
15 as malice in using that type of ammunition, yes,
16 sir.

17 **THE COURT:** Well, let me ask you this: At this
18 juncture -- I've read some, but I don't have,
19 certainly, all of the facts -- what I generally like
20 to do is have you proffer it in an in-camera
21 hearing, let me hear it a little bit more
22 exclusively, then make a call at that point. Any
23 reason in this case that we can't follow that
24 procedure?

25 **MR. MYERS:** No, sir.

1 **MR. HENDERSON:** No, sir.

2 **THE COURT:** Okay. That's what I'll do then.

3 When you start to get to it, let me know, we'll let
4 the jury go out and we'll hear it in camera. I'll
5 rule on it at this time.

6 So as to your request eight and ten, I'm
7 holding those in abeyance.

8 **MR. HENDERSON:** Thank you, Your Honor.

9 **THE COURT:** So going back for the record --

10 **MR. MYERS:** You want to hear that today or
11 tomorrow, because it may come up with the first
12 witness?

13 **THE COURT:** I'll do it whenever you want to do
14 it. We're still waiting for the jury. I'm glad to
15 get it done today.

16 **MR. MYERS:** Yes, sir.

17 **THE COURT:** Unless you have -- you do have them
18 here?

19 **MR. MYERS:** Sir?

20 **THE COURT:** Do you have any of your witnesses
21 here with regard to that?

22 **MR. MYERS:** Yes, sir.

23 **THE COURT:** Any reason why we can't do it
24 today?

25 **MR. HENDERSON:** No, sir.

1 **THE COURT:** Okay. I'd rather just start in the
2 morning with opening statements, that way we can go.

3 But going back and recapping for the record
4 defendant's pretrial motions in limine: Number one
5 is granted; number two is granted; number three is
6 denied with a cautionary note; number four is
7 granted; number five's granted; number six is
8 granted; number seven is granted; number eight and
9 ten are in abeyance; and number nine is granted.

10 Okay. As to visiting the scene, I need to
11 just -- at some time during the trial, we need to
12 have some conference so we can do the logistics of
13 that. It would seem to me at the end of the
14 testimony, either before or after I charge them on
15 the law, to go, you know, I'd rather probably do it
16 before I charge them on the law. I think that would
17 make more sense. Just food for thought right now.

18 All right. Mr. Myers, you need a minute for
19 you to get your witnesses here?

20 **MR. MYERS:** If we can just round them up, yes,
21 sir.

22 **THE COURT:** Okay.

23 (Pause.)

24 (Court's Exhibit Number 1, defendant's voir
25 dire request, marked for identification.)

1 **MR. MAYE:** Your Honor, he's taking all the gun
2 evidence back, but it's right there. It's right
3 diagonal -- you can see it from here.

4 **THE COURT:** Do you have a problem with me just
5 going ahead and giving an instruction to the jury
6 with you while he's out? Would you rather he be --

7 **MR. MAYE:** No, absolutely not.

8 **THE COURT:** I was just going to dismiss them
9 and give them basic instruct --

10 **MR. MAYE:** Sure. No sense in them sitting back
11 there. That's fine.

12 **THE COURT:** Is that okay with you?

13 **MR. MAYE:** That's fine. It's already five
14 o'clock. That's no problem.

15 **MR. HENDERSON:** Your Honor, before we get
16 going, if we could exclude the fact witnesses. I
17 mean, I know a couple are sitting in here that
18 you've already sequestered.

19 **THE COURT:** Okay.

20 **MR. MAYE:** I only have one. The sheriff would
21 be the only one that would not be permitted. I have
22 the chief officer, Nick Moore, and I have the
23 victim, but we'll ask the sheriff to step out when
24 we do this. That would be all.

25 **THE COURT:** If you don't mind, Mr. Sheriff,

1 then we'll get you back in.

2 And these other two folks back here --

3 **MR. MAYE:** Not witnesses. My investigator and
4 the victim's wife.

5 **THE COURT:** Okay.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Was the jury able to select a
8 foreperson?

9 **FORELADY:** Yes, Your Honor.

10 **THE COURT:** And who is the foreperson? Just
11 raise your hand. And do you know your jury number?

12 **FORELADY:** I believe it's 76.

13 **THE COURT:** 76. Okay. All right. And what is
14 -- well, that's okay.

15 Let me ask you this and instruct you: If you
16 would, you don't have to do it today, but tomorrow
17 when we come back to trial, if you would sit right
18 over here on the right-hand side where this
19 gentleman is on the front row.

20 **FORELADY:** Sure.

21 **THE COURT:** And if you and the two alternates
22 would maintain those seats. You can have that one
23 seat there throughout the course of this trial. So
24 whenever we come and go, you would sit there; the
25 alternates will sit where they are. The rest of you

1 sit wherever you would like to during the course of
2 this case. And I'll tell you, it just helps the --
3 myself and the Clerk keep up with some
4 administrative matters we have to keep up with,
5 okay.

6 Now, Madame Forelady, did the jury determine
7 how many, if any, pads and paper they'd like to have
8 during the course of this trial?

9 **FORELADY:** Yes, we'd like 14.

10 **THE COURT:** 14? Everyone wants pad and paper?

11 **FORELADY:** Yes, they do.

12 **THE COURT:** Okay. They will be available for
13 you tomorrow.

14 Let me give you a few ideas before I let you go
15 for the day. Number one is throughout the course of
16 this case, just like in just a minute, I'm getting
17 ready to excuse you, you are not allowed to engage
18 in any deliberations until the end of this case when
19 I specifically send back word that you may begin
20 your deliberations. You'll be given the verdict
21 form and any exhibits that may be placed in
22 evidence, if any are.

23 Until that time, you may not talk amongst
24 yourselves about this case. You can't comment
25 about, Oh, what the judge said here or what this

1 witness said here. You may not discuss it with
2 anyone. I'm married. I've got a little girl. I
3 can tell you when I came home -- if I'd come home,
4 as I was on a jury, both of them would be querying
5 me all up and down saying, Tell me about the case,
6 tell me what's going on here. It would be improper
7 for you to discuss this case with anyone, not only
8 amongst yourselves but with any family member,
9 significant others, other friends.

10 And if you remember when I was asking
11 questions, it's any type of communication. There's
12 more types of communication than I know. I mean,
13 I'm thinking of direct, oral communications, written
14 communications, e-mail, Twitter, phone. Any way
15 that you may communicate you may not engage in any
16 communication with other people about this case
17 until after the trial is over with.

18 You may only discuss the case amongst
19 yourselves when you are in here deliberating on the
20 case. So if we were deliberating more than a day
21 and I were to send you home, it would be improper
22 for you to get on the phone and talk to one another
23 or have a conference call amongst yourselves about
24 this case, only when you are here and are beginning
25 and have been advised to do your deliberations.

1 In addition, our Chief Justice of the South
2 Carolina Supreme Court, Chief Justice Jean Toal, has
3 instructed all trial judges to tell jurors that they
4 are not to engage in what is called independent
5 juror research. What that simply means is this:
6 Until this trial is over and you have been
7 dismissed, you are not to look up anything about
8 this case in any public media, private media,
9 Facebook, any other source other than what you hear
10 in this courtroom.

11 Likewise, you may not look up anything about
12 any court official, say, for example, me, our Clerk,
13 the attorneys, any witnesses in the case. You may
14 not look up any issue you hear in the case or you
15 may not do research on an issue that you think will
16 be helpful.

17 And I'll tell you why that is: If you recall
18 throughout the questioning process, I kept asking
19 the panel whether or not you can be fair and
20 impartial to both the State and to the defense in
21 this matter. What we seek to make sure occurs is
22 that you will make your decision based on the
23 testimony and evidence that you hear in this
24 courtroom according to the arguments of counsel and
25 according to the law as I give it to you, unaffected

1 by any outside influence that the lawyers, the Court
2 have no ability to look at and to check or to
3 cross-examine anybody about. Okay. That's the
4 reason for the prohibitions. After the case is
5 over, research till your heart's desire. Okay.

6 With that being said, I'm going to tell you
7 that each day that we're in court, I'm going to ask
8 each of you, not independently but as a group,
9 whether or not anyone has read, heard, or seen
10 anyone -- anything about this case. And I'm going
11 to ask if you have, to raise your hand.

12 So I'm going to request that you not do that,
13 and I'm going to excuse you for the evening, and
14 tomorrow morning at 9:30 -- work for the State?

15 **MR. MYERS:** Yes, sir.

16 **THE COURT:** That work for the defense?

17 **MR. HENDERSON:** That's good, Your Honor.

18 **THE COURT:** Okay. We'll bring you back at
19 9:30. So if you'll be in your jury room at 9:25,
20 we'll do our best to start promptly at 9:30.

21 Thank you and good night.

22 (The jury was excused for the day.)

23 **THE COURT:** Any exceptions to my instruction
24 from the State?

25 **MR. MYERS:** None from the State.

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

2 **MR. HENDERSON:** No, sir.

3 **THE COURT:** Very good.

4 Mr. Myers, are you ready to proceed with your
5 in camera hearing?

6 **MR. MYERS:** Yes, sir.

7 **THE COURT:** Okay, sir. You can call your first
8 witness.

9 **MR. MAYE:** The State would call Investigator
10 Joe Collier to the stand.

11 JOSEPH E. COLLIER, JR.,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MAYE:

15 **Q** Investigator Collier, state your name for the
16 record.

17 **A** Joseph E. Collier, Jr., C-o-l-l-i-e-r.

18 **Q** Where are you now employed?

19 **A** At the McCormick County Sheriff's Department.

20 **Q** How long have you been in law enforcement?

21 What -- and what did you do prior to being a law
22 enforcement officer?

23 **A** I was in the United States Navy for six years
24 on active duty and four years on reserves, where I
25 specialized in electronic signals intelligence.

1 **Q** Okay. You also had firearms training, did
2 training in small arms while you were in the Navy;
3 correct?

4 **A** Yes, sir. One of my collateral duties was as a
5 nuclear weapons guard. I was trained as a Special
6 Response Team member.

7 **Q** Okay. Tell us about your specialized training.
8 I know that you've had -- you've been a narcotics
9 officer; correct?

10 **A** Yes, sir.

11 **Q** You've been a training officer for the
12 sheriff's department for a number of years; is that
13 correct?

14 **A** Yes, sir.

15 **Q** Tell us about the specialized training and
16 experience that you have in the area of small arms,
17 firearms, and the associated ammunition for small
18 arms.

19 **A** I am certified by the South Carolina Criminal
20 Justice Academy as a firearms instructor and have
21 been so certified since 1995. I'm certified by the
22 National Rifle Association Law Enforcement
23 Instructor Division as a patrol rifle and
24 handgun/shotgun instructor and have been since 2004,
25 I believe. And I also was certified by Blackwater

1 as a tactical carbine instructor.

2 **THE COURT:** As a what?

3 **THE WITNESS:** As a tactical carbine instructor.

4 And that was in 2001, that certification.

5 BY MR. MAYE:

6 **Q** You also, it's my understanding, been to Glock
7 Armorer School; is that correct?

8 **A** Yes, sir.

9 **Q** And you completed that and you are a Glock
10 Armorer?

11 **A** Yes, sir, and I have been for a good many
12 years. I'm also a graduate of the Glock Instructor
13 Program.

14 **Q** Okay. And if memory serves me correctly, you
15 also attended and had specialized training in the
16 area of firearms at the New Jersey State Police
17 Academy at Sea Girt, New Jersey; is that correct?

18 **A** Yes, sir. In 1998 or '99, you accompanied us
19 on that trip.

20 **Q** All right. Let me ask you this: Do you act as
21 a training officer for the sheriff's office now as
22 one of the many hats that you wear at the sheriff's
23 office?

24 **A** Yes, sir.

25 **Q** Okay. Is part of your training the selection

1 of firearms and ammunition, and do you act as an
2 advisor to the sheriff?

3 **A** Yes, sir, I do.

4 **Q** Do you also not carry out and conduct the
5 firearms qualification for officers on a regional
6 basis, not only the sheriff's office, but for a
7 myriad of different agencies --

8 **A** Yes, sir. The Solicitor's Office, the Ethics
9 Commission, retired law enforcement officers, a long
10 list of retired SLED agents and law enforcement
11 officers, and some officers from the FBI.

12 **Q** You have been to numerous federal law
13 enforcement training facilities, I believe FLETC
14 facilities? You've been to numerous specialized
15 courses and training there in that regard as well,
16 have you not?

17 **A** Not in firearms, not at FLETC, no, sir.

18 **MR. MAYE:** Your Honor, at this time, based on
19 his qualifications, I'd certainly offer him up to
20 the defense in this case, if they care to ask him
21 about his qualifications, but I believe the State's
22 met the requisite threshold to qualify him as an
23 expert witness in the area of small arms, firearms,
24 and the associated ammunition. And I offer it to
25 the defense, if they've got any objections to his

1 qualifications as an expert. We would certainly
2 maintain, respectfully, that that would go to
3 weight, but not his qualifications.

4 We do believe, in South Carolina, he would meet
5 the threshold of having specialized knowledge and
6 experience that would assist the trier of fact in
7 reaching any decisions in regard to firearms or
8 ammunition.

9 **THE COURT:** Mr. Garrett, any voir dire?

10 VOIR DIRE

11 BY MR. GARRETT:

12 Q This particular ammo, did you look at it?

13 **A** What particular ammo?

14 Q The ammo that's involved in this case.

15 **A** I have looked at it, yes, sir.

16 Q And did you analyze it?

17 **A** No, sir.

18 **Q** So what is your purpose?

19 **A** I'm here because I was directed to be here.

20 **MR. MAYE:** Your Honor, I would object to asking
21 questions about -- from doing a visual inspection of
22 the ammo. I'm not going to ask him if he X-rayed
23 it. I'm not going to ask him if he fired it in the
24 ballistic gel. I'm going to ask him from a visual
25 inspection and in looking at this commercially

1 available ammo --

2 **THE COURT:** Let me ask Mr. Garrett this: The
3 area, if I understand, is small arms and firearms
4 and associated ammunition, is to be an expert in
5 those areas. Do you have an objection to him being
6 qualified in those areas?

7 **MR. GARRETT:** Not -- no, not -- that's fine.

8 **THE COURT:** Okay.

9 BY MR. MAYE:

10 **Q** Investigator Collier, let me ask you this: I'm
11 going to hand you now --

12 **MR. MAYE:** And I guess we can go on and mark
13 this for identification. It's marked as Sheriff's
14 Office 3, and I don't want to mess the court
15 reporter up; I'll do whatever she wants to, but she
16 can assign it whatever number she would like to for
17 identification. But it's Sheriff's Office Item
18 Number 3 right now.

19 (State's Exhibit Number 3, magazine and
20 bullets, marked for identification.)

21 **Q** I'm going to ask you to look at State's 3, at
22 this point in time for ID, a sealed bag and
23 accompanying items that are in that bag. Could you
24 tell us what's in that bag?

25 **A** There's a magazine and four unfired 30-06

1 caliber rounds.

2 **Q** Let me ask you this: Have you had an
3 opportunity -- you helped to gather the evidence in
4 this case and all. Have you had an opportunity to
5 look at the unfired cartridges that were retrieved
6 in this case from the Remington 742 rifle that was
7 taken by the sheriff's department --

8 **THE COURT:** Just a second. Is that -- maybe
9 you need to pull that microphone a bit back. We're
10 getting feedback.

11 BY MR. MAYE:

12 **Q** Have you had an opportunity to look at the
13 unfired cartridges and the magazine that came from
14 the Remington 742 rifle that was seized from
15 Mr. Worley's residence that's been associated with
16 the shooting of Investigator Bobby Rushton or
17 Officer Bobby Rushton?

18 **A** Yes, sir.

19 **Q** Okay. Have you looked at those and done,
20 basically, a visual analysis of those unfired
21 rounds?

22 **A** Yes, sir.

23 **Q** What can you tell us, with specificity, is the
24 difference in between those rounds? Are they
25 standard? Are they stock rounds? Have they been

1 modified? Or what can you tell us from looking at
2 those rounds in this case?

3 **A** Well, they appear to have been modified. The
4 standard .30-06 round would be normally a lead core
5 with a copper jacket. These appear to have a steel
6 rod -- I'm not sure of what type -- that has been
7 inserted into the bullet section, and they appear to
8 have been filed to a sharp point at the very end.

9 **Q** Okay. Are you -- can you look and observe the
10 tool marks on there and the way that it's been
11 modified? Can you tell me whether or not that's
12 consistent with commercially produced ammunition by
13 one of the ammunition companies like Federal or
14 Winchester or somebody that makes ammo? Based on
15 your experience and training, can you look and
16 compare and contrast that ammo with that steel tip
17 that's been placed into it and inserted into the
18 bullet? Can you tell us how that differs from
19 standard hunting and commercially available
20 ammunition?

21 **A** Well, having hunted for many years and also
22 seeing many different types of ammunition, I have
23 never seen any ammunition, including in the
24 military, that had a point like this that had a
25 steel core that was readily visible and pointed at

1 the end, filed like this appears to have been.

2 **Q** Okay. So this is an exceptional lot of
3 ammunition? Those four unfired rounds, based on all
4 of your experience and training, both in the
5 military and all of your experience as a law
6 enforcement officer, that -- that is the first time
7 that you've encountered rounds that were modified in
8 that fashion; is that correct?

9 **A** I have never seen anything like this.

10 **Q** Okay. Quite obviously, based on your
11 experience and training, it would have to be whoever
12 manufactured or modified those, what way would
13 somebody be able to modify those?

14 **A** Well, having looked at them and thought about
15 it, I'm not sure. It appears that possibly the
16 bullet was drilled and the rod was inserted. My
17 question would be there was that the heat generated
18 doing so would possibly make the round cook off
19 because of the amount of powder that's in there.

20 So I'm not sure if the bullets were done and
21 then inserted as in a reload or if it was done --
22 possibly, I've seen things that were drilled and
23 machined in water to keep them cool, but it's very
24 strange, the way it's inserted. And I never have
25 seen anything like this, and we were talking about

1 that when I first saw these.

2 **Q** Okay. So you could either -- in manufacturing
3 something like that, you could check it and lay and
4 flatten it and drill it and insert the core, but you
5 would have the danger of the round cooking off --

6 **A** The round cooking off.

7 **Q** -- and falling off when you were doing so?

8 **A** Definitely.

9 **Q** Or you could either buy a bullet and modify the
10 bullet and then load it as a reload? That would be
11 one possibility?

12 **A** Certainly.

13 **Q** Correct?

14 **A** Certainly.

15 **Q** Which would be safer and more sophisticated,
16 but you'd also have to be able to crimp the bullet
17 back down with the powder in it and the primer
18 intact on the end of the casings; correct?

19 **A** Obviously, if you had reloading equipment, that
20 would not be a problem. I would not want to be
21 machining it with the bullet intact.

22 **Q** But, obviously, whatever method was utilized in
23 order to round this bullet, the nose of it off,
24 drill it and insert that steel core, quite
25 obviously, that has been done.

1 **A** Yes, sir.

2 **Q** Correct?

3 **A** Yes, sir.

4 **Q** And, quite obviously, not only has a steel core
5 been inserted in the bullet portion of those four
6 unfired rounds, but it has been sharpened to an
7 exceedingly fine point?

8 **A** Yes, sir, very much so, as sharp as a nail.

9 **Q** Okay. Tell us about a lead bullet, either a
10 soft lead bullet or a hollow point round as to when
11 it hits soft tissue -- you're involved in the
12 selection of ammunition that the sheriff's
13 department uses; is that correct?

14 **A** Yes, sir.

15 **Q** That's one of your duties down there and one
16 area of expertise that you have at the sheriff's
17 office; correct?

18 **A** Yes, sir.

19 **Q** Okay. When a soft or a hollow point bullet
20 hits soft tissue, what is the resulting impact or
21 what happens when that does that?

22 **A** Normally, the hollow point bullet will create a
23 larger wound channel because the intent of the
24 hollow point is for the bullet to spread --

25 **Q** Yes.

1 **A** -- therefore, creating a larger wound channel,
2 which would incapacitate a person, a violent person
3 quicker.

4 Typically, in rifle ammunition, regardless of
5 the caliber, you don't see hollow points used as
6 much as you do just a jacketed solid bullet,
7 although, with some of the hunting rounds available,
8 you do see that now. But a solid round would
9 penetrate deeper, typically, penetrate a harder
10 surface much more effectively than a hollow point
11 round.

12 **Q** Okay. And for bullets to be modified, I know
13 that, in the military, large rounds that are fired,
14 for example, by a large round like a tank, they
15 refer to those as sabot rounds. They have a softer
16 external area for a large bore and then they have a
17 hardened insert. They call that a sabot round, do
18 they not?

19 **A** Many times, yes, sir.

20 **Q** And the purpose of that is to go up against a
21 hardened surface, for example, armor plating, and
22 have all of the power that's behind a big round, and
23 when it impacts that area, that hardened steel core
24 penetrates armor plating; is that correct?

25 **A** That's the intent behind that.

1 **Q** Okay. That round right there, that rifle
2 round, has been modified in a similar fashion, has
3 it not?

4 **A** With that steel core inserted, I would think
5 so, because the outer jacketed core would tend to
6 peel away and leave the hard insert to penetrate.

7 **Q** Okay. And rounds modified in that fashion
8 would be able to penetrate body armor with ease,
9 would they not?

10 **A** Certainly, but a .30-06 round by itself would
11 also penetrate body armor with ease.

12 **Q** But bulletproof vests also have a shock plate
13 in the center; do they --

14 **A** They do have a shock plate, yes, sir --

15 **Q** What is that made out of?

16 **COURT REPORTER:** Please don't talk over each
17 other.

18 **MR. MAYE:** Sorry.

19 **THE WITNESS:** Oh, I'm sorry.

20 BY MR. MAYE:

21 **Q** What is that shock plate made out of?

22 **A** Typically, metal or some type of ceramic, or
23 the cheaper ones are made out of some type of Kevlar
24 fiber.

25 **Q** Okay. As those rounds are modified, they would

1 be much more capable of penetrating that shock plate
2 or any hardened shock plate that was in body armor,
3 would they not?

4 **A** I would think so because of the steel core.

5 **Q** If someone took shield behind the door of an
6 automobile or some hardened surface that was metal,
7 that round would be much more capable of penetrating
8 the metal, certainly deeper, and would have a much
9 better chance of penetrating any type of metal,
10 would it not?

11 **A** I would certainly think so. This is the
12 equivalent of a military armor-piercing round, which
13 is normally a steel core.

14 **Q** And that round has been modified to make it an
15 armor-piercing or a body armor-penetrating round;
16 correct?

17 **A** That would be my belief of the intent of why --
18 I would know no other reason to do it.

19 **Q** That was my next question. In all of your
20 experience and training in law enforcement, have you
21 ever seen rounds modified in that fashion for a
22 legitimate sporting purpose?

23 **A** No, sir. I have never seen any rounds modified
24 in this fashion at all.

25 **Q** Okay. And, in fact, there's a lot of science

1 and research that goes into bullet shape and the
2 shape of the projectile or the bullet by firearm
3 manufacturers, is there not?

4 **A** Oh, definitely.

5 **Q** Okay. Because they reach, what, supersonic
6 speeds?

7 **A** Definitely.

8 **Q** And a .30-06 round is certainly a round that
9 reaches supersonic speed. It's not a subsonic
10 round.

11 **A** Oh, no. No, typically, the .30-06 would run in
12 2500 to 3500 feet per second at least.

13 **Q** Okay. So when you begin to modify a round like
14 that, a hunting round, you begin to dramatically
15 alter the ballistic characteristics of it, and you,
16 in fact, erode or hurt the intended purpose of a
17 hunting round by modifying a bullet in that fashion,
18 would you not?

19 **A** I would think that, ballistically, that
20 ballistics have gone all to pieces with this steel
21 insert. The bullet is not shaped like it was
22 intended to be shaped originally, obviously. I
23 don't know of any reason for it being done.

24 **Q** Other than to penetrate body armor --

25 **A** Or hard surfaces.

1 **Q** -- or to penetrate a hard surface.

2 Either the shock plate or some hardened surface
3 like metal or the shock plate in a vest?

4 **A** Yes, sir, I would think so.

5 **Q** And that would be your expert opinion as to
6 those rounds; that they have been modified in a
7 fashion that for, let's say, close range, they would
8 be much more effective in penetrating a hardened
9 surface, a bulletproof vest, or a shock plate?

10 **A** Definitely, because from a hunting standpoint,
11 they would -- it would be such a small wound
12 channel, that it would not be effective.

13 **Q** So if you were going to shoot small game with
14 it, for example, a fox, a muskrat, something small
15 with it, you've done exactly the opposite from what
16 a hunting round needs to do. You've destroyed that
17 round's ability to mushroom and make a big wound
18 channel; correct?

19 **A** Yes, sir, I would think so.

20 **Q** Okay. So if you intend to use that round for
21 hunting purposes or a legitimate sporting use,
22 you've destroyed its effectiveness; is that not
23 correct?

24 **A** Yes, sir.

25 **Q** But you've definitely enhanced that round's

1 effectiveness to penetrate the body armor that a
2 police officer might wear; correct?

3 **A** It would certainly do so, or metal or any hard
4 surface.

5 **Q** Okay. Thank you.

6 **MR. MAYE:** Your Honor, that's basically it. We
7 have a firearms examiner that's coming from SLED,
8 but I knew that certainly Investigator Collier is
9 more than qualified to give that expert testimony.
10 I'd certainly offer him to any cross-examination
11 prior to any argument by the State as to the
12 relevancy of this as to the intent in this case.

13 **THE COURT:** Thank you, sir.
14 Mr. Garrett?

15 **MR. GARRETT:** Thank you, sir.

16 CROSS-EXAMINATION

17 BY MR. GARRETT:

18 **Q** Officer Collier, do you duck hunt?

19 **A** Sir?

20 **Q** Do you duck hunt?

21 **A** No, sir.

22 **Q** Do you know anything about lead when the
23 federal legislature made its changes to where we had
24 to make it steel shot?

25 **A** I do -- I'm aware of that, yes, sir.

1 **Q** All right. And there's a reason for that.
2 Would you tell the Court the reason for that
3 being --

4 **A** The reason for the change is because the
5 migratory birds were ingesting the lead.

6 **Q** They were what?

7 **A** They were ingesting the lead, and it was
8 causing, you know, I guess, lead poisoning.

9 **Q** And it was killing off our ducks?

10 **A** Excuse me?

11 **Q** It was killing off our ducks?

12 **A** Yes, sir. And geese and stuff, yes, sir.

13 **Q** And so we decided to make it a law that you had
14 to use steel shot in order to protect the
15 environment?

16 **A** Yes, sir, I believe that's correct.

17 **Q** Now, suppose you're an environmentalist.

18 **A** Okay.

19 **Q** Suppose you work in a nuclear power plant and
20 you're an engineer, suppose you've been loading your
21 ammo since the beginning of time, and suppose, at
22 the same time, you wanted to go ahead and make sure
23 that when you shoot your animals at or around the
24 lake there, you don't expose them to lead as opposed
25 to metal. That's possible, isn't it?

1 **A** I'm sure it could be, yes.

2 **Q** But that's a possible use other than to use it
3 to try to pierce -- pierce armor or whatever?

4 **A** Certainly it could be used that way. It
5 wouldn't be effective, but it could be used that
6 way.

7 **Q** Well, it could be. And if somebody had just
8 shot a fox with the same ammo or didn't even know
9 the fact that they were loaded that way, I mean, can
10 you -- do you have to inspect them to tell that
11 they're loaded that way?

12 **A** Do you have to inspect them?

13 **Q** Yeah.

14 **A** You would have to look at them, yes, sir.

15 **Q** And you haven't taken one apart, have you?

16 **A** No, sir.

17 **Q** To see how exactly it was done?

18 **A** No, sir.

19 **Q** So, as an expert, in order to come to that
20 conclusion, wouldn't you have to take it apart?

21 **A** To find out exactly how it had been done, you
22 probably would.

23 **Q** Okay. And you haven't done that?

24 **A** No, sir.

25 **MR. GARRETT:** All right. No further questions.

1 **MR. MAYE:** I've got one.

2 REDIRECT EXAMINATION

3 BY MR. MAYE:

4 **Q** That bullet is still entirely encased in lead;
5 is that not correct?

6 **A** It's encased in copper jacketing. Whether
7 there's lead present still inside the bullet or not,
8 you can't tell.

9 **Q** But if somebody wanted to buy ammunition, you
10 can get steel-jacketed ammunition, you can buy
11 military ammunition, surplus ammunition --

12 **A** Yes, sir.

13 **Q** -- on a regular basis?

14 **A** Yes, sir.

15 **Q** And you don't have to insert a hardened steel
16 core and sharpen it to a razor point if one were an
17 environmentalist, because there are a wealth of ammo
18 choices that are available that would not be lead.
19 They would, for example, be steel-jacketed military
20 ammunition; is that correct?

21 **A** Certainly.

22 **MR. MAYE:** Okay. Thanks.

23 **MR. GARRETT:** May I recross?

24 **THE COURT:** Yes, sir.

25 *****

1 RECROSS-EXAMINATION

2 BY MR. GARRETT:

3 Q You don't have any problem with people doing
4 their own loading, do you?

5 A Reloading? No, sir.

6 Q Loading and reloading their own -- and if they
7 want to do it a different way, that's really none of
8 the government's business, is it?

9 A It doesn't bother me.

10 Q It's not a violation of the federal law to
11 modify that bullet in a long gun, is it?

12 A Apparently not.

13 Q Apparently not.

14 A Yes, sir.

15 MR. GARRETT: Thank you.

16 THE COURT: Thank you, sir. You may step down.

17 MR. MAYE: Your Honor, basically, in this case,
18 we have -- they are asserting in this case, I can
19 tell at this point in time -- like I said, they
20 haven't put up any testimony in this case, but I can
21 tell from the arguments of counsel, they are trying
22 to counter him having ammunition that was
23 specifically modified for the purpose of which we've
24 got our expert to talk about here.

25 There's no legitimate supporting basis for

1 this. The only reason that someone would
2 manufacture ammunition like this would be to
3 penetrate a hardened surface or to penetrate body
4 armor. And, certainly, that would go to -- that's
5 one of the questions in this trial, what his intent
6 was.

7 We certainly would maintain, under a 403(b)
8 analysis, it goes specifically to intent.

9 **THE COURT:** Well, let me ask you this:
10 Wouldn't you have to have more additional
11 information from a foundational standpoint to make
12 it relevant?

13 **MR. MAYE:** Well, Your Honor, the fact that the
14 gun was loaded with all of that ammunition, and we
15 took -- one reason -- I think it's going to come out
16 in this case, that the capacity of this weapon is
17 four and one. It has a four round -- the Remington
18 742 rifle has a four-round box magazine. If you
19 chamber a round and drop the mag and loaded an
20 additional round, you could have basically four
21 point plus one. The only way -- I mean, maximum, if
22 you had a fully charged weapon with one in the
23 chamber and four in the magazine, you could fire
24 five rounds.

25 I think it's going to become evident in this

1 case that two rounds were fired at the officer. One
2 was fired striking him. An additional round was
3 fired just shortly thereafter. Then when they came
4 back and got the gun, it was hidden in the house,
5 and they found it inside the house after the time of
6 the shooting, it still had four rounds in it. It
7 was reloaded.

8 And so I think, in this case, there's going to
9 be no question that he reloaded a round that was
10 exactly like the other three that were in the
11 magazine. There would have been no way for him to
12 fire two rounds out of this gun and not specifically
13 -- this individual specifically load one of these --
14 and they don't want the words cop killer and
15 armor-piercing rounds. It's exactly what these
16 rounds are. There's no other -- to try to say that
17 he was an environmentalist, we would just maintain
18 would be the most ridiculous assertion, that someone
19 wanted to insert a steel core.

20 This is body-armor penetrating ammo, which he
21 loaded --

22 **THE COURT:** What you are going for is what I
23 was looking at a little bit and that is some type of
24 knowledge.

25 **MR. MAYE:** Well, he loaded it. Absolutely. We

1 maintain there's no other way. They could not have
2 gotten this gun with four rounds in it and him
3 firing two if he didn't come out of that house and
4 reload that gun. He dropped that magazine right
5 there out and put at least one additional round in.
6 So he certainly had knowledge.

7 He can't say that he got this gun that had been
8 put up since 1972 or something like that and picked
9 it up and fired it. He had one of those rounds in
10 his hand, and he loaded it.

11 And like I said, it's not like it's just one
12 odd round is like that. Every round in this gun.

13 And, also, we've got evidence in this case that
14 he shot through the Glock handgun. And we're going
15 to put that gun into evidence in this case. It
16 destroyed it. It disintegrated that Glock handgun.
17 It blew the rounds from that 40-caliber gun all over
18 the yard. It penetrated, it went through the gun
19 and it went through his hands. It absolutely
20 carried out its intended purpose.

21 Now, they're wanting to say that this dad
22 modified them, because this is, we would maintain,
23 devastatingly significant evidence in this case,
24 totally irrelevant, in that somebody shot this
25 officer with a .30-06 weapon with rounds that were

1 expressly modified to either penetrate body armor, a
2 shock plate, or a hardened surface. The general
3 public doesn't buy or manufacture or make rounds
4 like this.

5 He's trained as a machinist in this case. That
6 came out from the initial testimony. I don't know
7 if he'll testify or not, but he said he had
8 specialized training as a machinist. It takes
9 somebody with specialized training in order to
10 manufacture something with the uniformity that that
11 has. We maintain it is exceedingly relevant in this
12 case as to the issue of intent.

13 We have somebody that didn't pick up -- a
14 .30-06 is a devastating weapon in and of itself. It
15 can go through body armor, almost any type of body
16 armor, absent something with a ceramic shock plate
17 or a specially manufactured shock plate. But
18 somebody that would modify a round like this would
19 be specifically doing it to penetrate body armor or
20 a hardened surface.

21 And we think that that is overwhelming evidence
22 that someone had malicious intent in this case and
23 was intending to hurt a police officer or somebody
24 wearing body armor or somebody that was shielding
25 themselves behind a hardened surface, because

1 there's no legitimate sporting reason to have
2 manufactured rounds like that.

3 And we think, with his background, we think
4 there's circumstantial evidence that he did it. We
5 think there's direct evidence in this case that he
6 had it, he knew what he had, and he reloaded that
7 gun.

8 **THE COURT:** Thank you.

9 **MR. GARRETT:** Your Honor, by his own admission,
10 a .30-06, in and of itself, without any other
11 capabilities in this case would have done the same
12 thing probably to that pistol.

13 It's really interesting, the bullet casing, the
14 actual front of the trigger guard, there's a hole in
15 the middle of it where the officer was pointing the
16 gun at my client, and the bullet went right through
17 it, and it did destroy it, but it didn't go into his
18 body other than through his hand, didn't go into the
19 rest of his body.

20 But the point is is that, by their own
21 knowledge, they have no evidence whatsoever that he
22 has any antipolice attitudes or he was drunk or
23 anything like that, Your Honor. They have nothing
24 like that. No evidence whatsoever that he was in
25 any way mean-spirited towards anybody except trying

1 to get rid of a fox earlier that evening.

2 He fired two shots at a fox. And he really
3 wasn't trying to kill the fox; he was trying to
4 motivate him out of there. The fox had bothered his
5 cat. The cat called Sweet Pea. And they had been
6 having trouble with this fox. And that evening,
7 earlier before this thing happened, he fired that
8 thing from the same gun at a fox. And a fox sure
9 isn't the police and certainly isn't a person.

10 And so -- on the same evening, he also fired it
11 at two fox. But, again, it's an environmental
12 bullet.

13 **MR. MAYE:** Your Honor, respectfully --

14 **THE COURT:** I got it. Thank you.

15 **MR. MAYE:** Excuse me.

16 **THE COURT:** Here's my ruling on that:

17 Certainly, this environmental aspect of that would
18 be subject to cross-examination, but assuming that
19 the State is able to lay the proper foundation, I am
20 going to find that it is relevant and that it is not
21 -- the prejudicial impact is not -- the substantive
22 value doesn't -- excuse me -- I'm trying to do a 403
23 analysis, and I'm not doing very good.

24 But the value is not substantially outweighed
25 by the prejudicial impact to this defendant. So,

1 with that being said, there still has to be a proper
2 foundation.

3 **MR. MAYE:** Absolutely, Your Honor. We
4 understand. We just wanted to -- because that was a
5 motion in limine at the start of the case, we wanted
6 to be sure that we addressed it, because like I
7 said, I think it's going to -- it's probably coming
8 into play with the very first witness that we've got
9 in this case.

10 **THE COURT:** Okay. Well, I'm glad we went ahead
11 and got it done now.

12 Guys, thank you for you being willing --

13 **MR. HENDERSON:** Your Honor, are they going to
14 be allowed to call it cop killer? I mean -- or
15 armor piercing?

16 **THE COURT:** Let me say this, I was addressing
17 eight and ten together. I think there is a
18 distinction. I think that, you know, the cop killer
19 needs to be toned down.

20 **MR. MAYE:** Your Honor, we can do that. We can
21 call that ammunition with intent -- body
22 armor-penetrating ammunition or armor-piercing
23 rounds. I know that they would have a specific
24 objection to the cop killer. I think the cop killer
25 designation is more Teflon bullets anyway.

1 **THE COURT:** Subject to your objection to my
2 prior ruling, any problem with calling it
3 armor-piercing?

4 **MR. GARRETT:** No problem with calling it
5 armor-piercing, because it is.

6 **THE COURT:** Okay. And then -- I think that
7 would be appropriate under the circumstances.

8 **MR. MAYE:** And, Your Honor, like I said -- and
9 specifically, in this case, what we would maintain
10 is not only armor-piercing, but body armor-piercing
11 rounds as well, Your Honor. We're not going to call
12 it a cop-killer bullet, but certainly,
13 interchangeably, we think it could be referred to
14 either way.

15 **THE COURT:** I don't know if I know what the
16 armor -- I don't know what the difference is between
17 body armor and armor. I guess armor would be a
18 tank; I don't know. What is the difference?

19 **MR. MAYE:** Well, you know, body armor is
20 Kevlar. And like I said, it stops a bullet by
21 grabbing it and spreading it out.

22 **THE COURT:** Oh, the distinction you were making
23 over there earlier about the one being --

24 **MR. MAYE:** Yes, sir.

25 **THE COURT:** That will be fine.

1 **MR. MAYE:** Thank you.

2 **THE COURT:** Anything else from the State before
3 we break for this afternoon?

4 **MR. MYERS:** No, sir.

5 **THE COURT:** Anything from the defense?

6 **MR. GARRETT:** No, sir, Your Honor.

7 **THE COURT:** I note your objection on the record
8 from the defense as to my ruling in limine.

9 With that being said, thank you for working
10 late tonight. We'll see y'all at 9:30 in the
11 morning.

12 **MR. MAYE:** Thank you, Your Honor.

13 **MR. GARRETT:** Thank you.

14 **MS. BALLARD:** I won't be here till later, Your
15 Honor. Thank you.

16 **THE COURT:** Got you.

17 (The proceedings were concluded for December
18 16, 2013.)

19 (The following proceedings were held on
20 December 17, 2013.)

21 **THE COURT:** Mr. Myers, anything from the State
22 before we begin opening statements?

23 **MR. MYERS:** Nothing from the State.

24 **THE COURT:** Anything, Mr. Garrett?

25 **MR. GARRETT:** Nothing from the defendant, Your

1 Honor.

2 (The jury enters the courtroom at 9:40 a.m.)

3 **THE COURT:** All right. Ladies and gentlemen of
4 the jury, good morning. First, let me thank you all
5 for being here promptly. That helps move us along
6 and get things going smoothly.

7 Before we get started, I'm going to ask you all
8 to stand, and I'm going to give you the oath before
9 we get started. Would you please stand and raise
10 your right hand?

11 (The jury was duly sworn by the Court at
12 9:41 a.m.)

13 **THE COURT:** Let the record reflect that all
14 jurors gave an affirmative response to the charge.

15 First, Madame Forelady, before I begin the
16 charge to you, let me just say this to you and the
17 rest of the jurors: This is not an endurance
18 contest, so if, at any time, that you need to take a
19 break -- most court reporters, this one including
20 who is Stacy, will tell you that I have a tendency
21 sometimes to get engaged in the trial and I might
22 run a little long. So if you need a break and I'm
23 not giving you one at the time, raise your hand, and
24 I will be glad to accommodate you.

25 Also, if I call you back to the courtroom

1 before you're ready, please let us know. If you
2 need anything while you're -- during the breaks,
3 drinks or something else, please let us know, and
4 we'll make sure that we do our best to accommodate
5 your needs as jurors, okay.

6 Also, I told you yesterday, before I excused
7 you, that I would ask you if anyone read, heard, or
8 had seen anything about this case during the break
9 overnight. If you have, raise your right hand.

10 Let the record reflect that no one responded.

11 Also, has anyone spoke with each other or with
12 anyone else about this case during the break?

13 Likewise, they all responded in the negative.
14 Thank you.

15 Now, ladies and gentlemen, as you know, we're
16 about to start the case of the State versus Joe Ross
17 Worley. I don't know if any of you have been
18 involved in the judicial system before, either in a
19 civil case or a criminal case, but I will tell you
20 that I will suspect each and every one of you have
21 watched what purports to be a trial on T.V. or at
22 the movies or some combination of the two. Let me
23 quickly dispel you: Trials are nothing like T.V.
24 They're nothing like the movies. They don't happen
25 in five-minute vignettes or ten-minute vignettes.

1 They're slow, they're very deliberate, and
2 they're very methodical. They're not entertainment,
3 but they are a fundamental part of our democracy.
4 As in the vernacular of attorneys, trials are a
5 search for the truth to try to ensure that justice
6 is done.

7 Now, these attorneys you have in the courtroom,
8 when they were sworn in to the bar, they take an
9 oath to be zealous advocates for their clients. And
10 they have a duty to aggressively and zealously
11 represent their client's position and interest in
12 any court proceedings, and this will be no
13 different.

14 But let me also tell you this: They're also
15 officers of the court. What that means is you, as a
16 jury, can expect these attorneys to be professional,
17 to be competent, and to be ethical in their dealings
18 with one another, in any witnesses, and with this
19 Court throughout this case.

20 Likewise, you have just taken an oath where you
21 swore or affirmed that you would do your best to
22 reach a fair and a just verdict in this matter.
23 What that simply means is the parties, the
24 attorneys, and this Court have a right to expect of
25 you that you will be reasonable, that you will be

1 impartial and ethical in your dealings, and you will
2 abide by your oath.

3 Now, what I'm telling you now is not the law
4 that you will apply in this case. They are simply
5 remarks on what you can expect on the procedural
6 aspects of this case.

7 First, all of you have requested that you be
8 allowed to take notes. Some judges will not let you
9 do that; I think it is important to let you do that.
10 But each trial, I give jurors who select to have
11 notes a little precautionary warning:

12 Number one, at the time when you are allowed to
13 begin your deliberations at the end of this case --
14 and you'll know with no uncertain terms that you are
15 to begin your deliberations then, when you start to
16 debate what the facts are in this case -- just
17 because something appears in a juror's notes doesn't
18 mean it trumps somebody else's memory, okay. That's
19 why they're deliberations, Ms. Forelady, and you
20 will just have to hash out the differences.

21 Also, in making findings of fact -- and I'll
22 tell you more about that in a minute -- one of the
23 functions you will have to engage in is to judge the
24 credibility of the witnesses or the evidence you
25 have before you. Now, sometimes, one of the parts

1 of that is watching a witness' demeanor while
2 they're on the stand. If you get so engaged in
3 taking your notes that you watch or you miss a
4 subtle reaction of somebody on the stand, you may
5 not be able to make that determination of their
6 demeanor in judging their credibility. So I warn
7 you against that.

8 Now, in this case, the defendant is charged
9 with assault and battery with intent to kill and
10 also possession of a weapon during the commission of
11 a violent crime. As I told you yesterday, these
12 indictments -- the fact that this defendant was
13 charged and arrested and indicted is not evidence of
14 his guilt. It does not raise an inference of his
15 guilt nor a presumption of his guilt. These
16 documents are simply what we call the charging
17 documents by which the State of South Carolina
18 brings a criminal defendant, such as Mr. Worley,
19 before the Court, before a trial, and a
20 determination of his guilt or innocence.

21 In fact, as to both these indictments,
22 Mr. Worley has said, I'm not guilty. What that
23 means is is that the burden is on the State of South
24 Carolina to prove his guilt by proof beyond a
25 reasonable doubt. The State has the burden to prove

1 each and every element of both charges by proof
2 beyond a reasonable doubt.

3 It will be up to you, at the end of this case
4 when you are told to begin your deliberations, to
5 determine whether or not the State has met its
6 burden to one or both of these indictments.

7 With that being said, let me give you a brief
8 idea of what reasonable doubt is so you can have
9 this in your mind throughout this trial, and I'll
10 charge you more on that at the end of this case. A
11 reasonable doubt is this: A reasonable doubt is the
12 kind of doubt that would cause a reasonable,
13 sincere, and conscientious person to hesitate to act
14 in an important matter of their own affairs.

15 Now, the State has the burden of proving the
16 defendant guilty beyond a reasonable doubt. Now,
17 some of you may have been involved or served on a
18 jury in a civil case. In that case, the burden of
19 proof is by a preponderance of the evidence, which
20 is to say the greater weight of the evidence. In
21 criminal cases, the burden of proof is much more
22 powerful than that; it is proof beyond a reasonable
23 doubt.

24 Now, proof beyond a reasonable doubt is proof
25 that leaves you firmly convinced of the defendant's

1 guilt. With that being said, ladies and gentlemen,
2 there are very few things in this world that we know
3 with absolute certainty, and in criminal cases, the
4 law does not require proof that overcomes every
5 possible doubt.

6 If, based on your consideration of the
7 testimony and the evidence, you are firmly convinced
8 that the defendant is guilty of the crime or crimes
9 for which he has been charged, it will be your duty
10 to find him guilty. On the other hand, if you think
11 there is a real possibility that the defendant is
12 not guilty to the charge or charges for which he is
13 before you, then you must give him the benefit of
14 the doubt and find him not guilty.

15 Now, your purpose as jurors are to determine
16 the facts. That is a nice way of saying guilt or
17 innocence. You are the sole judges of the facts, so
18 therefore, if I do anything throughout the course of
19 this trial that seems to indicate to you the verdict
20 you are to reach or the facts you are to find, I'm
21 going to ask you and also instruct you that you are
22 to disregard it.

23 I'll tell you that our constitution in South
24 Carolina does not allow any trial judge to make a
25 comment on the facts nor to have an opinion on the

1 facts. I consider my job somewhat akin to being a
2 referee in a sporting event, to make sure that the
3 process is followed, that the rules are followed,
4 and at the end of the day, to instruct you on the
5 law that you must apply in this case.

6 Now, ladies and gentlemen, as finders of the
7 fact, you will determine the facts from the
8 testimony and the evidence that you hear in this
9 courtroom. You will not be and you shall not be
10 influenced by what you hear outside of this
11 courtroom, any opinions or comments that you may
12 have had or heard outside of this courtroom. Now,
13 it will be up to you to determine what inferences
14 you feel are appropriate -- appropriately drawn from
15 the facts and the evidence that is admitted in this
16 case.

17 Now -- and it is important -- it is very
18 important for you, during the course of this
19 trial -- and this will be a few days, as I
20 understand it -- to pay close attention during the
21 testimony because, ordinarily, an erroneous finding
22 of fact by a jury is not correctable on appeal. If
23 I make a mistake of law, there are groups down in
24 Columbia that will correct my errors of law, but
25 normally, if you make an incorrect finding of fact,

1 that's not correctable.

2 Now, on the other hand, the law that makes you
3 the sole judges of the facts, makes me the sole
4 judge of the law, and that is equally important as
5 your job as finders of the fact, mine is to the
6 instruction on the law. You must follow the law as
7 I give it to you. You may disagree with it, you may
8 think that it should be something other than it is,
9 but it would be incorrect and a dereliction, I
10 guess, for lack of better terms, of your sworn duty
11 and oath as jurors to try to apply law that is not
12 as I charge to you.

13 As I told you earlier, before we let you go
14 yesterday, you may not and you shall not begin your
15 deliberations until the end of this case. What that
16 simply means is, at any time during a break,
17 overnight, or at some other time during this trial,
18 until I specifically say, Now, you may begin your
19 deliberations, you may not talk amongst yourselves
20 or with anyone else about this case, either
21 directly, orally, in writing, or by any other type
22 of communication device.

23 Also, I'm not going to go all the way through
24 it, but I'm also going to remind you that you may
25 not and shall not engage in any third-party or

1 juror-independent research. You are to determine
2 what the facts are based solely on the testimony and
3 the evidence that is presented here in this
4 courtroom and according to the law as I give it to
5 you during this trial.

6 Madame Forelady, ladies and gentlemen of the
7 jury, to let you generally know where we are during
8 any case, each trial, whether it be criminal or
9 civil, has five phases. The first phase will be
10 opening statements, the second phase will be the
11 presentation of the evidence, the third phase will
12 be the closing arguments by the attorneys, the
13 fourth phase will be my charge on the law to you
14 that you must apply, and the fifth phase will be
15 your deliberations. I tell you that just so you'll
16 have a general idea about where you are, and I'll
17 also tell you that the presentation of the evidence
18 will take up the vast majority of the time in this
19 case.

20 Now, in just a moment, the Solicitor will make
21 what is called an opening statement. The Solicitor
22 will explain to you what the issues are in this case
23 or what at least he contends the issues are in this
24 case. The defendant's attorney, Mr. Worley's
25 attorney rather, may make an opening statement, but

1 he's not required to. Remember that, at all times,
2 the burden remains on the State of South Carolina to
3 prove his guilt by proof beyond a reasonable doubt.

4 Now, what the Solicitor, and if Mr. Worley's
5 attorney chooses to, tells you in opening statement,
6 it is not evidence. These attorneys have not been
7 sworn. They've not been subjected to examination
8 and cross-examination. That's not to minimize what
9 they say because what they say is helpful and it
10 helps you understand what the case is about and to
11 guide you through this case, but if, at the end of
12 this case -- and I'll remind you if what either or
13 both of them tell you is contrary to your memory of
14 what the facts are, then your memory will control.

15 In every case that I've ever been involved
16 with, either as an attorney or a judge, there are
17 objections. I anticipate there will be no
18 difference in this case. Sometimes, Madame
19 Forelady, you may feel like you're cattle being
20 herded in and out of this courtroom. I'll tell you
21 that goes into what I was telling you earlier about
22 trials being slow and methodical. Attorneys have an
23 absolute duty to object any time that they feel like
24 something is wrong in the courtroom, whether it be
25 the presentation of evidence or the manner of the

1 questioning or something of that sort.

2 The fact that an objection was made, and if I
3 let you stay in here in the courtroom while I
4 respond to that objection, it is not to be discussed
5 by you. And, Madame Forelady, when you begin your
6 deliberations, it will be your duty to not allow any
7 juror to discuss the fact that there was an
8 objection or my ruling on that objection, okay.

9 Now, Madame Forelady, it will be your job to
10 preside over the deliberations at the end of this
11 case. And again, at any time, if there's any need
12 to communicate with me, I'm going to ask that you
13 write the information down on a piece of paper, the
14 question or whatever it is, sign your name, and give
15 it to one of the bailiffs so they can get it to me,
16 and we can take appropriate action on that, okay.

17 At this point, what I'm going to do to make
18 sure that I have not omitted to tell you something
19 that I should have or I may have stated something
20 incorrectly, I'm going to ask that you briefly go
21 back to your jury room, then we'll bring you back
22 out for opening statement, okay. Madame Forelady.

23 (The jury retires to the jury room.)

24 **THE COURT:** Mr. Myers, any additions or
25 exceptions from the State?

1 **MR. MYERS:** None, Your Honor.

2 **THE COURT:** Mr. Garrett?

3 **MR. GARRETT:** None, Your Honor.

4 **THE COURT:** Do you want to take a quick break
5 or are you ready to go now?

6 **MR. MYERS:** We're ready.

7 **MR. GARRETT:** We're ready.

8 **THE COURT:** Okay. Would you bring the jury
9 back in once they're --

10 **MR. MAYE:** Your Honor, my victim and my officer
11 ducked out for a second. Let me retrieve them.

12 **THE COURT:** All right. That's fine.

13 **MR. MAYE:** Thank you. I'm sorry.

14 **THE COURT:** That's all right.

15 (Pause.)

16 **MR. GARRETT:** Your Honor, clarification.
17 Yesterday, we made a motion to sequester. We wanted
18 to make sure that that did not include our expert
19 witness.

20 **MR. MYERS:** I think it applies to all of the
21 witnesses.

22 **THE COURT:** Normally my rule, Mr. Garrett, is
23 that it does include your expert witness.

24 **MR. GARRETT:** It does apply.

25 **THE COURT:** If you tell me there's an exception

1 to that, I'll be glad to look at it, but I thought
2 it included -- excluded everybody.

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

4 **MR. HENDERSON:** Your Honor, our sequestration
5 motion was strictly for fact witnesses. And
6 actually, I was going into the fact that we had an
7 expert, and in fact, I believe the defense may have
8 an expert, but keep in mind, our expert's already
9 sat through one set of live testimony that he has
10 used to help form his opinion. And I think the rule
11 on experts is that he can stay in here to hear
12 evidence at the trial or before the trial.

13 **THE COURT:** I know the rule is that he can
14 testify and formulate his opinion as to what he
15 heard in trial or presented in trial.

16 Where is your expert, Mr. Myers? Is he here?

17 **MR. MYERS:** Yes, sir. He's back in the back
18 room. And I wouldn't have agreed to this unless
19 everybody was excluded, except maybe custodian of
20 records.

21 **THE COURT:** I tell you what, I'm going to agree
22 with Mr. Henderson. You can get your expert and
23 bring him in here. I'm going to let their expert
24 stay in here.

25 **MR. HENDERSON:** I think he's here, Your Honor.

1 I think he's sitting --

2 **THE COURT:** I'm talking about Mr. Myers'
3 expert.

4 **MR. HENDERSON:** I think Mr. Myers' expert --

5 **MALE SPEAKER:** Yes, sir. I was not aware that
6 I was sequestered.

7 **THE COURT:** Oh, okay.

8 **MR. HENDERSON:** He's not, Your Honor.

9 **THE COURT:** I got you. You can stay. I'm
10 going to let the experts stay. I note Mr. Myers'
11 objection for the record.

12 Do you want to go ahead and make sure your
13 expert is here?

14 **MR. HENDERSON:** Oh, he is here, Your Honor.
15 He's sitting on the front row.

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

17 **MR. GARRETT:** No.

18 **THE COURT:** All right. We got everybody,
19 Mr. Maye?

20 **MR. MAYE:** We're prepared, Your Honor. Thank
21 you.

22 **THE COURT:** Mr. Garrett?

23 Would you bring the jury back in please, sir?

24 (The jury returns to the courtroom.)

25 **THE COURT:** If the bailiffs will make sure that

1 nobody comes in or out of the courtroom during
2 opening statements.

3 Mr. Myers, is the State ready for the opening
4 statement?

5 **MR. MYERS:** The State's ready, Your Honor.

6 **THE COURT:** Mr. Garrett, does the defense wish
7 to have an opening statement?

8 **MR. GARRETT:** We do, Your Honor.

9 **THE COURT:** Very good.

10 Mr. Myers.

11 **MR. MAYE:** May it please the Court, Your Honor.

12 **THE COURT:** Mr. Maye. Excuse me.

13 OPENING STATEMENT

14 **MR. MAYE:** Ladies and gentlemen, November the
15 15th of 2009 was a Sunday. Alan and Gayle
16 Sheffield, in the very early morning hours of that
17 Sunday morning, just before the hours of four
18 o'clock in the morning, were sound asleep in their
19 house on Presidents Drive here in McCormick County.
20 Both of them were suddenly jolted awake by a
21 Remington 742 semiautomatic .30-06 rifle being fired
22 in close proximity to their house. As the shock and
23 the rudeness of being awoken by that wore off, the
24 reality set in that it was an all-too-familiar
25 situation that was playing out there at their house

1 at Presidents Drive.

2 All of you that have been taken away from what
3 you would have normally been doing this week to come
4 up here and sit as judges of the facts in this case,
5 been taken away, as the Judge mentioned to you
6 earlier, from your jobs, from whatever you would
7 have been doing this week to come up here for this
8 vitally important matter.

9 All of you live here in McCormick County. To
10 set the stage for all of the events that took place,
11 subsequently, on November the 15th of 2009, you
12 leave here from the courthouse on 378, driving back
13 out towards the lake. You go across the bridge
14 there, Little River Bridge, just a little ways, and
15 you turn left on Holiday Road. There's some
16 businesses out there, there's a hospital facility
17 out there. You hang a left right there. You go out
18 and you hook another left on Independence Drive, and
19 you drive down till you just about get to the lake
20 to the Little River subdivision.

21 And as you get out there to the end, Presidents
22 Drive kind of makes a loop around. And there are a
23 lot of nice older houses out there. That's not in
24 Savannah Lakes Village, but that's an older
25 subdivision that was here for a long time. There

1 are a lot of nice houses in there, and there's a
2 mix. There's some older lake houses that were in
3 there, a little more simple construction, and there
4 are some big, fine houses that have been built
5 lately.

6 Alan and Gayle Sheffield live out there. In
7 the weeks that had taken place prior to November the
8 15th of 2009, the Sheffields had a problem. Their
9 next-door neighbor, Mary Worley, lived right next
10 door to them, not much difference than the width of
11 this courthouse here apart. The houses are in
12 pretty close proximity because they're all rode up
13 around the cove there, as the road, that circular
14 drive goes around.

15 Well, they were faced with a situation where
16 Mary Worley had a son that's here, charged with
17 assault and battery with intent to kill and
18 possession of a weapon during the commission of a
19 violent crime today. He's seated right over there
20 with his lawyers.

21 On the weekends, Mary Worley's son, Joe Ross
22 Worley, was coming out there to the lake house, and
23 it was a repeating pattern. The Sheffields were
24 being bothered because, on over in the very early
25 morning hours, usually over the weekends in the

1 weeks that took place prior to that day, Joe Ross
2 Worley would be out there raising cane, cussing,
3 talking loud in the middle of the night, and
4 shooting off a gun.

5 As early as September the 9th of 2009,
6 Ms. Sheffield had been down to the sheriff's
7 department, because it was taking place even before
8 then, and she had complained to the sheriff's office
9 about it, that Joe Ross was out there, he'd be out
10 in the middle of the night, calling around, cussing,
11 and shooting off this gun.

12 Now, you're going to hear from the testimony in
13 this case and as it develops, the Sheffields were in
14 kind of a difficult situation. They liked Mary
15 Worley and they didn't want to be bad neighbors and
16 they didn't want to create bad blood or animus
17 between them, but they also didn't want to be laying
18 asleep in the bed at night with somebody shooting a
19 high-powered .30-06 rifle next to them and cussing
20 and talking loud and disturbing them, as close as
21 the houses are.

22 And you're going to hear Mr. Sheffield even
23 talked to Mary Worley about it. And you're going to
24 learn, for whatever reason, either she wasn't able
25 to or didn't want to, it didn't stop.

1 But you're going to hear again, November the
2 15th of 2009, when they got awakened again, and it
3 had been going on for all that time, they had had
4 enough, and they called 9-1-1. They called the
5 sheriff's department. They had already gone out and
6 filed a preliminary report, tried to address it,
7 nothing had worked. They called 9-1-1.

8 You're going to hear it's about four o'clock in
9 the morning on an early Sunday morning in McCormick,
10 and there's not a lot going on at that particular
11 time of night on that night, and there are three
12 officers only. Bobby Rushton, the first of them.
13 And you're going to hear Bobby Rushton had just
14 gotten back recently from Afghanistan where he'd
15 been serving. He'd been gone for about four years,
16 but he had previously been employed with the
17 sheriff's department, but he was back. He'd gotten
18 everything straight again. He got his training and
19 experience and sworn back in again as an officer.
20 He was back on the job as a sheriff's deputy, and he
21 was working that night.

22 You're also going to hear there was another
23 officer from the sheriff's department, Nick Moore,
24 that responded, and a female deputy named Melissa
25 McAllister. All of them were out patrolling at

1 different areas and they're driving regular marked
2 patrol cars and they're all out at different areas,
3 but they converge. They get a call. The Sheffields
4 call in and tell the sheriff's department, Look, we
5 complained on this guy before, Joe Ross Worley, out
6 there, talking loud, cussing, shooting his gun off.
7 It's happening again. He's out there on the deck of
8 the house. Shots are being fired, you know, right
9 now, tonight.

10 So the officers go out there, the three of
11 them. There's not a lot going on. I submit to you
12 you're going to hear from them. They converge out
13 there, and they travel down and try to locate the
14 house. You're going to hear that Bobby Rushton was
15 kind of behind the other two officers, but he's
16 looking for the street sign and the names there, and
17 he sees out at the end of the driveway. The first
18 two officers go by, and they don't see the driveway.

19 You'll hear from Investigator Rushton or
20 Officer Rushton in this case that he sees a little
21 wooden sign out there that says Worley, and he's
22 tipped off that's where it is, so he turns in the
23 first driveway. The other officers -- the driveways
24 almost parallel each other as they go back in there
25 to the houses. But two of the officers pulled in

1 and stopped their patrol cars, and Bobby Rushton
2 goes down and stops his. And you're going to hear
3 they all get out of the car.

4 Officer Rushton's going to tell you that he can
5 see over next door at the Sheffield's residence, he
6 can see some movement and he can see a light. He
7 can see some individuals moving around over there,
8 and so he thinks those are the complainants or
9 somebody that's involved in it. That's the only
10 activity he sees as he goes out there in the dark in
11 the night at four o'clock in the morning. And he
12 gets out of his car. He goes over to talk to Alan
13 and Gayle Sheffield, goes over towards their house.

14 Melissa McAllister and Nick Moore get out and
15 go to the back of the Worley residence. And you're
16 going to see diagrams, you're going to see
17 information on this, but the house basically -- the
18 Worley household is kind of an elevated structure
19 with a tapered roof on either side, predominantly
20 faces out towards the lake. Garage door at the
21 bottom of it. There's a balcony up above. There's
22 sliding glass doors and windows looking out towards
23 the lake, but it's a structure like where there's
24 storage and things downstairs and living quarters
25 are upstairs.

1 But Melissa McAllister goes up to the back
2 corner of the house. Nick Moore goes around. Bobby
3 goes over to the Sheffields' house. You're going to
4 hear from the officers as they testify in this case,
5 Nick Moore goes around to the door at the bottom of
6 the front side facing the lake and starts beating on
7 the door and ringing the doorbell and hollering,
8 Sheriff's office, Sheriff's office. Beats on the
9 door. Knocks. Beats on the door. Knocks.
10 Nothing. Nobody comes out. Nothing.

11 You're going to hear that Officer Rushton is
12 over talking to the Sheffields. He gathers the
13 information from them, gets that same information,
14 Look, we've complained. We're laying in the bed.
15 We're tired of this loud talking. We're tired of
16 him shooting in the middle of the night. Do
17 something about it.

18 You're going to hear that, as Officer Rushton
19 is standing there talking to the Sheffields, that
20 towards the lakeside of the house, what we call the
21 front of it, there's some high-intensity lights that
22 light up the yard. They see one of those lights
23 come on on the house and light up the yard as it
24 goes down towards the lake, and then they see it go
25 off. So they know somebody's up, and they know

1 somebody's turning that light on and off. So
2 Officer Rushton tells the Sheffields, Go back to
3 your house.

4 They all get back over there to the edge of the
5 house, Bobby, Nick, and Melissa. They walk up the
6 side of the house, around to the front where the
7 deck is. The same thing again: Bobby Rushton and
8 Nick Moore get around kind of underneath this
9 balcony area or the raised-up portion where the door
10 is, knocked on the door, Sheriff's office. Ring the
11 doorbell, Sheriff's office. Beating, trying to get
12 somebody to respond.

13 Now, Melissa McAllister positions herself back
14 at the side of the house, not up there where they're
15 beating on the door, but she is back along the side
16 of the house. The two officers are steadily beating
17 on the door, trying to get somebody to come out,
18 knocking, ringing the doorbell.

19 You're going to hear that Nick Moore and
20 Officer Rushton hear the sliding glass door from the
21 balcony up above, they could hear it open. And
22 you're going to hear that Bobby Rushton was down
23 there, and he backs up from the doorway. And he
24 looks up at the sliding door that's up on the
25 balcony into the darkness. Now, the light has been

1 turned on and turned off. So as they come around to
2 the front of the house, there's no light on.

3 And you're going to hear from Bobby Rushton
4 that, as he's peering into the darkness and looking,
5 that he can see a figure up there at the sliding
6 door, and he says, Sheriff's office, and identifies
7 himself. Nick Moore hollers, Sheriff's office. And
8 you're going to hear in this case that Joe Ross
9 Worley, who's standing up there at the sliding door,
10 responds back, in response to them calling out
11 sheriff's office, I don't give a fuck.

12 You're going to hear that as Officer Rushton is
13 peering up there and seeing Joe Ross Worley, he
14 realizes that he has a rifle or a long gun in his
15 hands. He's going to tell you, as he's watching him
16 and keeping his eye on him there and sees him with
17 that long gun, he sees him looking off to the side
18 and easing over towards the edge of the balcony to
19 where Melissa McAllister and Nick Moore are. He's
20 backed up out of the yard looking up there. He sees
21 him peering over and easing side to side with that
22 gun. He hollers out to the other two officers that
23 are there to notify them of what's going on, Gun.

24 Then he and Nick Moore say, Sheriff's office,
25 drop the gun. And you're going to hear that Bobby

1 Rushton, as he's watching him ease over towards the
2 edge of that balcony over to where the other two
3 officers are, he begins to draw his weapon. And
4 just at that point in time, the high-intensity
5 floodlight comes on and blinds him, and he is
6 completely blind and cannot see what's going on as
7 he's peering up there into the darkness, and
8 suddenly his vision is blocked out by that bright
9 light.

10 You're going to hear, ladies and gentlemen,
11 from the witnesses in this case, at that point in
12 time, Joe Ross Worley, the defendant in this case,
13 having been advised that they are sheriff's officers
14 and replying, I don't give a fuck, takes that
15 Remington 742 semiautomatic .30-06 rifle and fires
16 at Officer Rushton.

17 You're going to hear this shot hits right as he
18 brings his hand up, the round comes in his hand and
19 completely shatters the Glock handgun that he has in
20 his hand. Blows it to pieces. Spreads the bullets
21 that are in the magazine, the hand grip magazine
22 that hold the bullets for this gun, just sprays the
23 bullets all over the yard there, and absolutely
24 shatters his hand.

25 He is knocked flat on the ground, ends up

1 flopped over, facedown on the ground. You'll hear
2 that Officer Nick Moore and Melissa McAllister are
3 around there at the side of the house looking at
4 him. The balcony is up here. He's been shot. He's
5 lying in the yard, facedown, motionless.

6 You're going to hear that Officer Nick Moore,
7 who's over at the edge of the balcony where the wood
8 from the balcony is shielding him, he begins to call
9 out as he sees any sign of life to Bobby Rushton,
10 Come to me.

11 You're going to hear that Bobby Rushton, at
12 that point in time, having been wounded as seriously
13 as he had been wounded from being shot with this
14 .30-06, comes to, starts to run and/or crawl over to
15 where Nick and Melissa are around the side of the
16 house. And as he starts to move and Joe Ross Worley
17 realizes he's not dead from him shooting him, he
18 fires the Remington 742 rifle again, missing him.

19 You're going to hear the officers, at this
20 point in time, they're in full retreat. Joe Ross
21 Worley's armed with a high-powered rifle. He's got
22 the high ground on them. There's nothing that they
23 can do but retreat.

24 Their comrade, their fellow officer, Bobby
25 Rushton, is seriously wounded at this point in time.

1 They gather him up and take him down the side of the
2 house to the backyard and get him down in the edge
3 of the house there and get him down to try to take
4 assessment as to what in the world they can do to
5 help him in this case. They're in full retreat,
6 these three officers. They can't get out on their
7 radios down there.

8 Nick Moore sends Melissa McAllister back to the
9 car to get a cell phone so they can call for help at
10 this point in time. And as they are trying to take
11 stock of what they can do with Bobby's shattered
12 hand and the situation at hand, they hear Joe Ross
13 Worley, who has come out of the house looking for
14 them, they hear him say, as he comes along the side
15 of the house, Where are you, you son of a bitch, or
16 son of a bitches? They hear him. He's in full
17 pursuit of them at that point in time.

18 Well, they know, at this point in time, there's
19 nothing they can do but flee, to try to get Bobby
20 out of there. So these three officers gather up and
21 flee across the yard there back up towards the back
22 of the property and get in one of the cars and flee.

23 They've got Bobby. He's seriously injured at
24 this point in time. They need to get him out of
25 there, so that's exactly what they do. They get in

1 one of the patrol cars of the three that had been
2 driven down there and are parked out there in the
3 yard, and they drive him away. And they go back up
4 to 378. And, of course, they're calling for help at
5 this point in time. The EMS comes. They begin to
6 try to treat Bobby in this case, to try to do what
7 they can for his shattered hand.

8 You're going to hear that the sheriff himself,
9 Sheriff Reid, is roused up out of the bed that
10 night and that, ultimately, he and Nick Moore go
11 back down there, and the sheriff gets out of his car
12 and he wades up in there. And you're going to hear,
13 as he gets back to the Worley household, that he
14 sees two individuals walking in the yard there, and
15 they got flashlights. And he's going to tell you,
16 as he walks up there, they're shining the
17 flashlights in his face.

18 You're going to hear from the sheriff in this
19 case that it's Joe Ross Worley and his mother who
20 are outside with flashlights. And you're going to
21 hear, without any response at all from the
22 sheriff -- the sheriff doesn't say a word to him --
23 Joe Ross Worley, the defendant in this case, says, I
24 put your deputy's gun in his patrol car.

25 The sheriff then asked, Who was doing all the

1 shooting?

2 Joe Ross Worley responds, I was.

3 Now, Sheriff Reid, at that point in time,
4 states to him, You know you shot the deputy. And
5 incredibly, Joe Ross Worley's response is, not that
6 there was any mistake or any confusion, he said, The
7 deputy didn't have any business ringing my doorbell.

8 I submit you're going to hear from the sheriff
9 in this case, he cleaned it up a little bit, but
10 what he actually said was, The deputy didn't have
11 any business ringing my damn doorbell.

12 Now, here, the sheriff of the county's out
13 there, and he's telling him that he shot the deputy,
14 and he's telling him he shot him because he didn't
15 have any business ringing his doorbell.

16 Naturally, he is arrested. The sheriff's
17 deputies and everyone descends on the house. You
18 can imagine what takes place with an officer
19 shooting. And they go back up in the Worley
20 household in this case, and lo and behold, they find
21 that Joe Ross Worley has hidden that Remington 742
22 up under the bottom of a couch in the house. Now,
23 they can see the butt stock sticking out when they
24 go in the house. Now, they can see that there's a
25 case lying open on a bed, but the gun didn't go back

1 in the case; he hides it up under a bed.

2 And you're going to hear that the officers take
3 custody of that Remington 742 rifle. And you're
4 going to hear some expert testimony and you're going
5 to hear a lot of talk about guns and ballistics and
6 all, but this is a semiautomatic rifle, you'll hear
7 from the experts that testify in this case. And a
8 semiautomatic rifle is not like a machine gun, when
9 you hold the trigger down and it just boop, boop,
10 boop, shoots one after another.

11 A semiautomatic rifle, you pull the trigger, it
12 shoots. You pull the trigger, it shoots. You don't
13 have to do anything. You don't have to work a bolt.
14 You don't have to pump an action to make each round
15 go in. You pull the trigger and every time you pull
16 the trigger, the gun goes off.

17 And a Remington 742 has got what they call a
18 magazine; it's a box that goes under the bottom of
19 it, and it holds four bullets. So if you load the
20 four bullets up and pop it up in the bottom of that
21 gun and lock it in place and pull a lever back, you
22 can put one in the chamber. If you drop the box
23 back out again, you can add one more bullet to it.
24 So the maximum amount of rounds that you could have
25 in that gun would be five, but you'd have to go

1 through a pretty good step to do that. You'd have
2 to load four in, put it up, pull it back, let it go
3 forward, drop the magazine, put another one in, then
4 you'd have five in it.

5 I submit you'll hear from the Sheffields that
6 he shot twice that night when they called 9-1-1.
7 And you'll definitely hear in this case he shot one
8 time when he shot Bobby Rushton and hit him, and he
9 shot again when he realized he wasn't dead, and he
10 tried to hit him again. That's two shots.

11 The sheriff's department's going to tell you,
12 when they get this gun, it's got four rounds in the
13 magazine. So you'll hear from the testimony in this
14 case he had to have reloaded it after he shot once
15 and hit Bobby Rushton and shot again to try to hit
16 him as he was down, as he started to move, as he
17 showed any signs of life. But before he comes out
18 looking for him, Where are you, you sons of bitches,
19 he reloads it. So he's got a full magazine when he
20 goes back out in pursuit of that officer.

21 More significantly still, you're going to hear
22 expert testimony in this case that the very bullets
23 that are loaded up in that gun have been modified.
24 They've been drilled out, the soft core that would
25 have been in those bullets, they've been drilled

1 out, and a highly sharpened steel point has been
2 inserted into those bullets.

3 You're going to hear from the experts in this
4 case that the purpose of that is to defeat body
5 armor or to defeat armor, and that's what he's got
6 that Remington 742 rifle loaded with, not hunting
7 rounds, but rounds designed to defeat body armor or
8 to penetrate a hardened surface.

9 You're going to hear from Bobby Rushton, who'll
10 tell you about the wounds and the injuries to his
11 hand, from a doctor who came in, his shattered hand,
12 he lost a finger. His law enforcement career is
13 over for good, as he comes into this courtroom to
14 testify in this trial.

15 Now, the Judge has already told you in this
16 case the State's got the burden of proof. He's
17 charged with assault and battery with intent to
18 kill, and the Judge is going to go into great detail
19 and tell you about what that is. He's also charged
20 with the crime of possession of a weapon during the
21 commission of a violent crime. Now, the State's got
22 the burden of proof in this case, and I submit to
23 you that the State welcomes it.

24 At the conclusion of all of the evidence in
25 this case and after you hear the law from the Judge,

1 the State's going to ask you for guilty verdicts in
2 this case for assault and battery with intent to
3 kill and for possession of a weapon during the
4 commission of a violent crime.

5 Mindful of the facts that you have been taken
6 away from what you would have normally been doing
7 this week to sit as the judges of the facts in this
8 case, we're going to ask that you do justice and
9 come back with a verdict that speaks the truth in
10 this case.

11 **THE COURT:** Mr. Garrett.

12 **MR. GARRETT:** If it please the Court, Your
13 Honor.

14 **THE COURT:** Yes, sir.

15 **MR. GARRETT:** Madame Forelady and ladies and
16 gentlemen of the jury, that's a very interesting
17 statement you just heard, and I want you to hold the
18 State to what they just said. Hold them to that
19 burden of proof.

20 There's a lot of things, the misdirection going
21 on here that I want to try to help y'all understand
22 about this case. And I want y'all to listen to all
23 the evidence and everybody that has anything to say,
24 listen closely and use your common sense.

25 There's absolutely no reason that Mr. Worley

1 would want to hurt Bobby Rushton. Let's start with
2 that. What would the motive be to hurt Bobby
3 Rushton?

4 Y'all may not understand this, but as you hear
5 this case, it's horribly tragic, because it starts
6 off with a cat by the name of Sweet Pea, and this
7 cat was found, and it was a scraggly cat and it had
8 a collar on it. And Mr. Worley's father took on the
9 cat and protected this cat, and it became a cat here
10 in McCormick.

11 And they'd been over on that property for over
12 40 years. The Worley family comes down here every
13 weekend and has for 40 years. They've been broken
14 into before.

15 This family is there with his mother, who is 84
16 years old at the time. Mr. Joe Worley and his
17 mother, 84 years old, in their little garage
18 apartment, and their cat, Sweet Pea. And when you
19 go out there, if His Honor will let you go out
20 there, there's an elaborate cathouse and catwalk
21 that they built. They love their little cat.

22 Well, in September, when the Sheffields
23 complained the first time, there's a fox --
24 actually, it was the Sheffields that told the
25 Worleys that there was a fox out there -- and that

1 fox had injured this cat, had injured it to the
2 point they had to take it to the vet.

3 Now, Mr. Worley that evening, the 15th,
4 November the 15th of 2009, goes out on his balcony,
5 and he hears a noise. He flips on his light, and he
6 sees movement out there, and he said, The dadgum fox
7 again. So he's out there hollering at it and trying
8 to get rid of it. He goes into his house and gets
9 his father's -- his deceased father by now -- gets
10 his gun, and he loads it with ammo that his father
11 had. And he goes outside and he shoots towards the
12 lake to motivate the fox that was bothering their
13 cat to get out there. He shot twice. He went on
14 back to bed. And he might have hollered, but he
15 shot twice and then he went back to bed.

16 And that's only happened one other time. It
17 happened back in September when Ms. Sheffield
18 complained. Now, she complained to his mother,
19 Ms. Mary Worley. Ms. Mary Worley never told Joe
20 about -- anything about it. Never told him that she
21 complained about him shooting down there or shooting
22 at this cat {sic}. It's not against the law to
23 shoot in the county, all the way out there. It's
24 not against the law.

25 Now, so here we've got two sets of things going

1 on. Joe goes back to bed. His mother is still
2 asleep and is asleep. He goes to sleep. Well,
3 unbeknownst to him, the Sheffields decide to call
4 the law.

5 And the next part of this is going to be really
6 interesting. Y'all need to look at the times. Why
7 is that important? The relevant time here is 107
8 seconds. Just 107 seconds. One minute and 47
9 seconds for a lot of things to have happened. So
10 let's kind of -- let's kind of walk through it just
11 a minute:

12 Mr. Worley's in the bed. Law enforcement gets
13 called at 4:06. They all converge upon the
14 property. Mr. Rushton pulls his car into the Worley
15 driveway, but he doesn't have any blue lights on.
16 He doesn't announce his presence. The other two
17 cars pull into Mr. Stevens' driveway. And you'll
18 see that these roads are parallel; they run side by
19 side. You got two cars over there and one car here,
20 but none of them have any blue lights on.

21 They walk to the back of the Worley house. The
22 Worley house is so designed that it only has one
23 entrance, and that's in the front towards the lake.
24 They're at the back.

25 And as said, Mr. Rushton sees the Sheffields

1 over there, and he walks through the woods, 137 feet
2 through the woods, to go talk to the Sheffields.
3 While over there, the light comes on. The knocking
4 by Rushton -- excuse me -- the knocking by Moore and
5 McAllister woke him up. And actually, it wasn't the
6 knocking that woke him up; it was the ringing of the
7 doorbell.

8 This house is so insulated and was built by an
9 engineer. Their father was a nuclear engineer at
10 the Savannah River Plant. And he had built this
11 house specifically to be airtight, soundtight,
12 airproof, that type of thing.

13 So he was woken by the bell. So while they're
14 over there talking, Melissa Moore -- Melissa
15 McAllister and Officer Moore walk to the back of the
16 house again, thinking that there's nobody going to
17 come to the door. The light comes on. They all
18 converge back to the front of the house.

19 Now, y'all need to listen to the testimony
20 because it's really important at this point in time.
21 Mr. Rushton's not in a uniform. Unfortunately,
22 Mr. Rushton, it was his first night back to work.
23 He was not in uniform. In addition to that, he was
24 carrying a very small flashlight. He wasn't
25 carrying a police flashlight. I submit to you this

1 is a police flashlight {indicating}. He was
2 carrying a little burglar's flashlight or a light
3 that looks like a burglar.

4 What happens is -- and I want you to listen to
5 Nick Moore's testimony because it's important,
6 because when he talked to the Federal Government
7 about this case, in his interview, he said this is
8 what happened. He said they knocked on the door and
9 they announced, got no response. The light came on.
10 The light came on. They heard a door open. As the
11 sliding glass door opened, Mr. Worley stepped out
12 with a gun in the port position. And that's
13 important. He had his gun up.

14 At that time -- at the same time he steps out,
15 Rushton is walking with his flashlight. He drops
16 his flashlight, and he comes up, and he aims his gun
17 to shoot Mr. Worley. Mr. Worley, not recognizing
18 him as a police officer, and it happened just that
19 fast (indicating), and he shot him.

20 Now, ladies and gentlemen, I submit to you,
21 when you see the gun and how it's demolished, you
22 will see that Officer Rushton had to have that gun
23 pointed directly at Joe Worley, and all Mr. Worley
24 could do was defend himself. He has an absolute
25 right to self-defense if he was in his house, on his

1 balcony, under his eave, under his roof. And this
2 person, who he says, from Joe's testimony, you will
3 hear, basically this: All I said was, Freeze. And
4 they say all they said was, Gun. And then, boom,
5 right after the word gun, boom.

6 So y'all need to really watch that timeframe,
7 because within a minute and 47 seconds, Mr. Rushton
8 is still over -- and you'll listen to the dispatch.
9 In a minute and 47 seconds, Mr. Rushton is still
10 talking to the Sheffields. All the way to the time
11 that the -- Melissa McAllister has run all the way
12 back to the car now and has got on her mic and says,
13 Officer shot, officer down, is a minute and 47
14 seconds.

15 So he had to walk -- Mr. Rushton had to walk
16 all the way from the Sheffield house, through the
17 woods, at dark, to get back over there, all of this
18 colloquy or whatever happened there had to happen,
19 and then the shots were fired, and then they ran
20 off. As far as he was concerned, the burglar had
21 ran off.

22 Now, if he intended to kill him, this
23 semiautomatic rifle that he had, this .30-06 is a
24 self-loading gun. In other words, it's a
25 semiautomatic. What happens is, as soon as you

1 shoot a round, it puts another round in it. He's on
2 top of him, and he's on the ground. If he wanted to
3 kill him, he had him right there in his sights. He
4 didn't want to kill him. He shot the gun. He
5 didn't shoot him. He shot the gun. And if that man
6 hadn't pulled the gun on him, he wouldn't have shot
7 him. It's just that simple.

8 And had he known he was a police officer, he
9 wouldn't have shot him. And if he'd come over there
10 with blue lights, if he had come over there in a
11 uniform, with sheriff on it, a badge, sheriff's
12 badge, you know, a hat that says sheriff, where a
13 person who has just woken from a sleep could
14 recognize that it was an officer, instead he thought
15 it was somebody trying to come in on him and hurt
16 him and his mother.

17 And in all the horrible tragedy of it, it was
18 all over this cat. That's the horrible tragedy of
19 it.

20 Mr. Worley's not happy about the fact that he
21 shot this officer. And there's some questions about
22 whether or not he was truly an officer at the time.
23 Some oaths that had to be taken, some bonds that had
24 to be made, some documents that had to be signed.
25 While he was gone in Afghanistan, he wasn't working

1 for the United States Military. The evidence will
2 show instead that he was working for a private
3 contractor, so he wasn't in the military while he
4 was there. And he was coming back right from a war
5 zone, and we believe that the procedures that he
6 carried out that night were horrible.

7 We've got the renowned Dr. George Kirkham here,
8 who is a criminologist. He's going to discuss
9 exactly what police procedures should have been
10 followed and what were followed, and but for his
11 failure in his police procedure, he would never put
12 himself into that position.

13 On top of that, the evidence is going to show
14 that this case is about money. Officer Rushton has
15 sued Joe Worley and his mother, brought a lawsuit
16 against them.

17 So I want you to keep all of that in mind as
18 you sit here and you listen to this case. There's
19 two real sides of this story. I just ask you to
20 listen to both sides, give both sides a fair trial.
21 Thank you.

22 **THE COURT:** All right. Would you call -- how
23 long is your first witness?

24 **MR. MAYE:** He's a fact witness. He'll be as
25 long as any we're going to have.

1 **THE COURT:** All right. I'll tell you what
2 then, let's go ahead and take a quick break, and
3 then we'll come back with the witness at that point.

4 Madame Forelady, if you'll take the jury back
5 to the jury room. If you need anything, please let
6 us know.

7 (The jury retires to the jury room)

8 **THE COURT:** Let's take about a 10 to 15-minute
9 break.

10 (Brief recess.)

11 **THE COURT:** State ready to proceed?

12 **MR. MAYE:** The State's ready.

13 **THE COURT:** Defense ready?

14 **MR. GARRETT:** Defense is ready.

15 **THE COURT:** Would you bring the jury in,
16 please, sir?

17 (The jury returns to the courtroom.)

18 **THE COURT:** All right. Madame Forelady, did
19 the jury find all they needed -- have all they
20 needed during the break?

21 **MADAME FORELADY:** Yes.

22 **THE COURT:** Very good.

23 Is the State ready to proceed?

24 **MR. MAYE:** The State's ready, Your Honor.

25 **THE COURT:** Defense ready?

1 **MR. GARRETT:** Defense is ready, Your Honor.

2 **THE COURT:** Call your first witness.

3 **MR. MAYE:** The State would call Officer Nick
4 Moore of the McCormick County Sheriff's Office.

5 NICHOLAS MOORE,

6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. MAYE:

9 **Q** Officer Moore, state your name for the record.

10 **A** Nicholas Moore.

11 **Q** Nick, tell the ladies and gentlemen of the jury
12 where you're from, give them a little information
13 about your background in law enforcement.

14 **A** I'm from Abbeville, South Carolina. I started
15 my career with the City of Abbeville Police
16 Department in 1999, worked there as a patrol officer
17 until 2007. In 2007, I started work for the
18 McCormick County Sheriff's Office.

19 **Q** So on November the 15th of 2009, you were
20 working for Sheriff Reid; right?

21 **A** Yes, sir.

22 **Q** Okay. Let's get straight to it. Deputy Moore,
23 tell us about the events of November the 15th of
24 2009. When did you go on shift that night?

25 **A** At six o'clock, Saturday night. 6:00 p.m.

1 **Q** 6:00 on Saturday night.

2 Officer Moore, how did you get involved in
3 this? Where were you when you initially took the
4 call?

5 **A** I initially took the call, I was on Highway 81
6 in Mount Carmel, which is on the north end of
7 McCormick County.

8 **Q** Okay. Let me show you something. Let me show
9 you a map. Let's get oriented here.

10 **MR. MAYE:** Any objection?

11 **MR. GARRETT:** No objection.

12 **MR. MAYE:** Your Honor, at this point in time,
13 to save time, I'm going to offer this as State's 1.
14 I think there's no objection to this.

15 **MR. GARRETT:** No objection, Your Honor.

16 **THE COURT:** It's admitted without objection.

17 (State's Exhibit Number 1, aerial map, was
18 marked and admitted into evidence.)

19 BY MR. MAYE:

20 **Q** Officer Moore, I want you to come down off the
21 stand here and take State's Exhibit Number 1, orient
22 the ladies and gentlemen of the jury to where we're
23 talking about. And I want you to basically draw out
24 for them -- pick a landmark somewhere close to where
25 you were and show them how you drive to get down to

1 where you responded to that night.

2 **A** (Witness leaves the witness stand.)

3 To where I was?

4 **Q** Yes, sir.

5 **A** Can you balance it for me, please?

6 **Q** Sure.

7 **A** I would have been somewhere in here off the
8 map. I would have came Highway 7 to 378.

9 **Q** What's at that corner right there at 7?

10 **A** The Village Store.

11 **Q** Okay.

12 **A** A convenience store/gas station.

13 Took a right here {indicating}, 378.

14 **THE COURT:** Let me stop you right quick.

15 Can these jurors see over here? Okay. I'm
16 sorry.

17 **THE WITNESS:** Took a left. I'm sorry. I would
18 have took a left. Made a right onto Holiday Road
19 right here, passed by the Sandy Branch Fire
20 Department, I believe, Savannah Lakes Nursing Home,
21 Petra Health Care -- it's changed names; I can't
22 exactly recall. Would have traveled down Holiday
23 Road to Independence where we would have made a
24 left-hand turn, traveled down Independence, made a
25 right onto Presidents, made another right into the

1 Worley residence, which I actually turned into the
2 driveway past the Worleys' residence, which would
3 have been the -- I can't remember the name; I'm not
4 sure.

5 BY MR. MAYE:

6 **Q** Go back and retake the stand then.

7 **A** (Witness resumes the witness stand.)

8 (Pause.)

9 **MR. MAYE:** Any objection?

10 **MR. GARRETT:** No objection.

11 **MR. MAYE:** Again, the same procedure, Your
12 Honor. I'm going to ask to admit this as State's 2,
13 which I understand comes in without objection.

14 **THE COURT:** Admitted without objection.

15 (State's Exhibit Number 2, aerial map,
16 marked and admitted into evidence.)

17 BY MR. MAYE:

18 **Q** Nick, to further help the ladies and gentlemen
19 of the jury get oriented, I want you to come down
20 off the stand and show them, when you go onto
21 President Drive, orient them to where the
22 Sheffields' property is and the Worleys' property is
23 on that.

24 **A** (Witness leaves the witness stand.)

25 Okay. The Sheffields' is here {indicating},

1 Worleys' here, and then here's another neighbor,
2 Stephens, in which I pulled into this driveway,
3 which it runs parallel. Y'all heard him speak
4 earlier of that. This is the Worleys' in black.

5 **Q** Okay.

6 **A** (Witness resumes the witness stand.)

7 **Q** Nick, do you remember about what time it was
8 the night you were on patrol, do you remember about
9 what time you got a call to go out and respond to
10 the shots fired call?

11 **A** Yes, sir. It was around four o'clock. The
12 clock in my patrol car, I believe, said 4:06, but
13 it's not completely accurate. It would be different
14 probably from what would be the dispatch office
15 would have, but it would be close.

16 **Q** Okay. Who all was on shift that night? This
17 is Sunday night, the 15th of November of 2009. Who
18 all was on shift?

19 **A** Myself, Bobby Rushton, and Melissa McAllister.

20 **Q** Okay. How do you patrol? Were you in uniform?
21 Were you wearing a -- what were you doing that night
22 and how were you dressed?

23 **A** I was dressed basically like I am now, in a
24 uniform. I drive a marked patrol car. I was just
25 traveling around the Mount Carmel area. The other

1 deputies, I can't say where exactly they were at the
2 time.

3 **Q** Were y'all driving marked patrol car -- regular
4 McCormick County Sheriff's Department marked patrol
5 cars?

6 **A** Yes, we were.

7 **Q** Okay. And stand up there. Is that the uniform
8 that y'all wear now?

9 **A** This is the uniform we wear now, yes.

10 **Q** Okay. Y'all don't wear the old Barney Fife
11 style of uniform. Is that typical of what y'all
12 wear?

13 **A** Yes, it is.

14 **Q** Okay. And that's about what you had on that
15 night?

16 **A** It's very similar.

17 **Q** Okay. All right. As y'all go in -- as you go
18 down Independence and you get to Presidents Drive,
19 who's in front and who's behind? Tell us what's
20 happening.

21 **A** I do believe Melissa and Bobby were both in
22 front of me.

23 **Q** Okay.

24 **A** I was the last one to turn in because,
25 apparently, I must have came the furthest; I'm not

1 sure.

2 I followed in. We go into Presidents. We're
3 looking for the address of [REDACTED]. It's hard to see
4 the addresses sometimes at night. I drove past it.
5 Bobby stated on the radio that he sees it here.
6 There's a piece of wood marking it. I pull into the
7 driveway right past it.

8 **Q** Okay. Let me stop you for just a second.

9 Nick, I want you to take a look at this,
10 without showing it or publishing it to the jury
11 right now.

12 **A** Okay.

13 **Q** I want you to take a look at this. What is
14 this item that I'm showing you? And I'm going to
15 mark it for ID at this point in time. Give me just
16 one second.

17 **MR. MAYE:** I'd like to mark this for State's,
18 for ID.

19 (State's Exhibit Number 4, diagram, marked
20 for identification.)

21 BY MR. MAYE:

22 **Q** Deputy Moore, let me show you State's 4 for ID,
23 ask you if you can identify this that I've got for
24 identification. What is this?

25 **A** It's a diagram of the scene, the crime scene.

1 **Q** Okay. Did you help participate in the
2 preparation of this diagram?

3 **A** Yes. Myself, an artist, and the other officers
4 involved all went to the scene, and went over some
5 of the facts of the case while the artist took notes
6 to draw this diagram.

7 **Q** Did y'all take photographs and all and provide
8 him with the photographs and all?

9 **A** Yes, we did.

10 **Q** Okay. Let me ask you this: Does it fairly and
11 accurately reflect the basic layout of the yard
12 there at the Worley household: The residence, the
13 building, the driveways? Does it basically, fairly
14 and accurately, represent the scene there?

15 **A** Yes, it does. It's not to scale, but, yes.

16 **Q** Okay. But the critical areas in this and the
17 basic layout, even though you say it's not to scale,
18 do fairly and accurately reflect the area of the
19 Worley household?

20 **A** Yes.

21 **MR. MAYE:** Your Honor, at this time, the State
22 moves to admit this into evidence. I believe we've
23 laid a foundation for it, subject to any objections
24 to the defense.

25 **MR. GARRETT:** Your Honor, we have a matter

1 outside the presence.

2 **THE COURT:** Okay. Madame Forelady, would you
3 take your jury to the jury room, please.

4 (The jury retires to the jury room.)

5 **THE COURT:** Mr. Garrett.

6 **MR. GARRETT:** Your Honor, for general
7 demonstrative purposes, we wouldn't have any problem
8 with him referring to it, letting him look at it.
9 But to make it evidence, this case is absolutely
10 critical -- the defense's case is absolutely
11 critical to have exactness in time and distance, and
12 that doesn't have any of the relevant times and
13 distances on it. I don't want the jury to be misled
14 by a not-to-scale drawing, because it also doesn't
15 reflect the evidence as it relates to Bo Willis'
16 crime scene investigation. It's not included on
17 that. So it's not fairly and accurately
18 representing the area, and our defense is based on
19 absolute timing.

20 **THE COURT:** Well, let me ask you this: Since
21 the parties have stipulated and I've agreed to allow
22 the parties to go out to the scene, what prejudice
23 would you suffer, since the document itself says
24 it's not to scale, and not all the objects are out
25 there shown, wouldn't that be more a subject for

1 cross-examination more than admissibility?

2 **MR. GARRETT:** Your Honor, we believe it doesn't
3 fairly and accurately represent it. And, also, it
4 doesn't even have the lake there, the area where the
5 fox was. So, you know, again, if they want to, you
6 know, if we had an accurate drawing with distance
7 and measurements and that type of thing, we wouldn't
8 have any problem with it, but we feel like that is a
9 misleading document, and we shouldn't be put to the
10 task of having to demonstrate those distances that
11 aren't even accurately reflected there at all.

12 **MR. MAYE:** Your Honor, basically, we would
13 maintain that goes to weight not admissibility. I
14 think we've laid an adequate foundation for it. I
15 think the cases would certainly support that.

16 The jury's going out to the scene to view this.
17 It states clearly on there that it's not to scale
18 and not all items are shown, but we would like it
19 admitted into evidence. We think we've laid an
20 adequate foundation, and any objections go to weight
21 rather than admissibility.

22 **THE COURT:** Anything further, Mr. Garrett?

23 **MR. GARRETT:** Your Honor, again, it's
24 misleading because it doesn't have distances in this
25 case. And we need accurate distances and we need

1 for the lake area to be in place.

2 **THE COURT:** All right. I note your objection.
3 I'm going to find that it's admissible, that a
4 proper foundation has been laid, and especially any
5 prejudice suffered by the defense will be overcome
6 by the fact that the State -- I mean, that the jury
7 is going to be taken to the actual crime scene
8 itself. So I'm going to admit it into evidence
9 subject to your objection.

10 **MR. GARRETT:** Thank you, Your Honor.

11 **THE COURT:** Everybody ready to start back?

12 **MR. MAYE:** The State's ready, Your Honor.

13 Thank you.

14 **THE COURT:** The defense ready to start back?

15 **MR. GARRETT:** Yes, sir.

16 **THE COURT:** Could you bring the jury in,
17 please?

18 (The jury returns to the courtroom.)

19 **THE COURT:** Mr. Maye.

20 **MR. MAYE:** Thank you, Your Honor.

21 (State's Exhibit Number 4, diagram, admitted
22 into evidence.)

23 BY MR. MAYE:

24 **Q** Officer Moore, I'm going to show you State's 4
25 now that's been admitted into evidence. Come down

1 and help orient the ladies and gentlemen of the jury
2 and show them where y'all drove in from Presidents
3 Drive, orient them as to how you arrived.

4 **A** From Presidents Drive, Bobby would have been
5 the one that came into the actual driveway for the
6 Worleys. Myself and Melissa would have went to the
7 next driveway, as I was explaining on this one,
8 which would have been this driveway here
9 {indicating}.

10 **Q** Okay. All right. Tell the ladies and
11 gentlemen of the jury what you did when you got
12 there. Y'all pull up. You've already testified
13 Bobby pulled into their driveway, and you pulled in
14 just next door. What did you do?

15 **A** Once we got there, Bobby had -- he had -- I saw
16 Bobby go over to the neighbors' house, the
17 Sheffields. At the time of the incident, I didn't
18 know they were Sheffields, so I'll -- but the
19 neighbors' house.

20 He went there. Myself and Melissa went to the
21 Worleys' residence, and I attempted to speak with
22 someone by knocking on the door, getting somebody to
23 come downstairs.

24 I knocked on the door, rang the doorbell. I
25 announced that I was sheriff's office to let whoever

1 know inside the residence that we were sheriff's
2 deputies.

3 **Q** How many times did you do that?

4 **A** Numerous. You know, more than once. I can't
5 give you an exact amount of how many times I did it,
6 but numerous. I would have given him fairly enough
7 knocks and doorbell rings to come to the door before
8 I decided nobody was coming to the door.

9 **Q** No matter how loud you spoke or how hard you
10 knocked, you couldn't get anybody to the door?

11 **A** Couldn't get anybody to the door.

12 **Q** And you rang the doorbell as well?

13 **A** Yes, I did.

14 **Q** Okay. Show them on this diagram, where is that
15 door on this house?

16 **A** (Witness leaves the witness stand.)

17 Right here by these steps, up under this --
18 where the diagram says large window, that would have
19 been upstairs. The door that I was knocking on
20 would have been directly basically up under that
21 window on the lower level.

22 **Q** Okay.

23 **A** (Witness resumes the witness stand.)

24 (Pause.)

25 **MR. GARRETT:** Beg the Court's indulgence.

1 **THE COURT:** Yes, sir.

2 (Pause.)

3 BY MR. MAYE:

4 **Q** Officer Moore, let me show you this photograph
5 and ask you, can you identify that photograph?

6 **A** Yes, I can. That's the lower door in which I
7 was knocking on and the upper level of the Worley
8 residence.

9 **Q** Okay. Now, you don't know the exact date this
10 photograph was taken, do you?

11 **A** No, I do not.

12 **Q** Okay. So there are items around. There's a
13 towel hanging and things like that. You're not
14 saying that that is exactly as it was that night,
15 but the basic layout of the house, the structure of
16 the house, where the door is, where the balcony is
17 on that structure, does that fairly and accurately
18 reflect that -- subject to those exceptions, the
19 items of personal property that are around?

20 **A** Yes, sir.

21 **Q** Okay. But that fairly and accurately reflects
22 it?

23 **A** Yes, sir, it does.

24 **Q** Okay. But you're not saying that that was
25 taken on the 15th?

1 **A** No, I'm not.

2 **MR. MAYE:** Your Honor, subject to that, I'm
3 going to move to admit it in evidence.

4 **THE COURT:** What number would that be?

5 **MR. MAYE:** I haven't marked it for ID, and I
6 apologize.

7 **THE COURT:** Exhibit Number 5.

8 Any objection?

9 **MR. GARRETT:** With reservations, no.

10 **THE COURT:** Okay. Admitted without objection
11 with reservation.

12 (State's Exhibit Number 5, photograph,
13 marked and admitted into evidence.)

14 BY MR. MAYE:

15 **Q** Nick, come down here and show the ladies and
16 gentlemen State's 5 and show them where you were
17 knocking on the door and announcing your presence.

18 **A** (Witness leaves the witness stand.)

19 I would have been on this {indicating} side of
20 the door, which would be y'all's left, my right;
21 this area right here. Deputy Rushton would have
22 been on this side of the door.

23 **Q** When he later came back; correct?

24 **A** Yes, when we later came back, yeah. I'm sorry.

25 **Q** Okay.

1 **A** At the first one, he was over at the
2 Sheffields, I was over here by myself knocking, and
3 from this {indicating} side.

4 **Q** Okay. Now, the upper photograph, does that
5 reflect the balcony area of the household?

6 **A** Yes.

7 **Q** Okay. All right.

8 **A** (Witness resumes the witness stand.)

9 **Q** So you're knocking and announcing and beating.
10 You can't get anybody to the door. What's the next
11 thing that happens?

12 **A** The next thing, I decide that nobody's going to
13 come to the door. I'm just going to go ahead, get
14 with Bobby; get with Melissa; the complainants,
15 which would have been the Sheffields; and leave for
16 the night. As I walk --

17 **Q** Okay. What's the next thing that happens?

18 **A** I walk over to -- Bobby actually meets me kind
19 of in the middle of both yards. Melissa's there
20 also. I tell them, Can't make contact with anybody
21 at the door, may as well just leave for the night.

22 At that time, a light comes on from the
23 residence, so that I -- I know then we know somebody
24 has woke up. The light goes back off, and we go
25 over and attempt again to make contact with somebody

1 in the residence.

2 **Q** Where is that light that y'all see go on and
3 then subsequently go off? Where is that light?

4 **A** Up on the top deck. It lights up the whole
5 front yard.

6 **Q** Okay. I'm going to show you what's State's 5.
7 Can you show them the location of the light that you
8 saw or that you can see that was going on and off?

9 **A** (Witness leaves the witness stand.)

10 Yes. These top lights in this area. There's
11 one on each side of the residence.

12 **Q** In the upper portion here, the light on the top
13 of the balcony area?

14 **A** Yes.

15 (Witness resumes the witness stand.)

16 **Q** Okay. Officer Moore, once y'all saw that light
17 go on and go off, what did y'all do?

18 **A** We went back to the door, myself, Rushton --
19 Deputy Rushton went with me at this time. We're
20 knocking on the door, ringing the doorbell and,
21 again, announcing, Sheriff's office, steadily
22 knocking on the door. At that time, I can hear some
23 movement up top, like the sliding glass door slide.
24 You can hear that, but you still can't really see
25 anybody.

1 **Q** Now, where were you standing at the time that
2 you could hear it sliding? Where were you standing?

3 **A** Still basically right beside that door, up
4 against the wall, but up against the door, by the
5 door. You want me to point it out?

6 **Q** Yes. And about where was Bobby?

7 **A** (Witness leaves the witness stand.)

8 I would have been in this general area up
9 against the wall. Bobby would have been basically
10 in the same area until he heard the door slide open.

11 **Q** Okay. So no one comes to the door. Y'all are
12 knocking and --

13 **A** (Witness resumes the witness stand.)

14 Nobody -- nobody has came to the door while we
15 were knocking and announcing. We were knocking and
16 announcing, Sheriff's office. At that time, I heard
17 a voice say, What do y'all want? Again, say,
18 Sheriff's office. The voice says, I don't give a
19 fuck.

20 **Q** Okay. So you announce, Sheriff's office, and
21 what is said in response?

22 **A** I don't give a fuck.

23 **Q** Okay. What's the very next thing that happens?

24 **A** The door was opened. I could hear a step out
25 onto the porch. I look up. Bobby has started to

1 step backwards to where he can see, because we're
2 under the porch at that time, so he had started to
3 walk backwards out into the yard to where he could
4 see what was going on with that door.

5 **Q** About where did Bobby step out on this diagram?

6 About where did he go to at that point in time?

7 **A** (Witness leaves the witness stand.)

8 He would have stepped off of the porch and
9 headed into this general direction.

10 **Q** Okay. Where are you at the time that he's
11 backing up and walking in here?

12 **A** I'm still over here by the residence, by the
13 door, but close to the residence.

14 **Q** Are you able to see from your vantage point
15 whoever is walking up here?

16 **A** I can see a silhouette of a person.

17 **Q** Okay.

18 **A** (Witness resumes the witness stand.)

19 **Q** What's the next thing that happens?

20 **A** Bobby, he's walking backwards. I'm under
21 there. I see a silhouette come out onto the porch
22 and see movement. Bobby, he yells, Gun. Myself and
23 Bobby yell, Sheriff's office, drop the gun. The
24 lights come on --

25 **Q** Now, what light comes on?

1 **A** The lights on the porch. The bright lights.
2 Light up the whole front yard.

3 **Q** That light comes on?

4 **A** That light comes on.

5 **Q** What's the very next thing that happens?

6 **A** Bobby's shot. He hits the ground, just
7 {snapping fingers} seconds. Time the light comes
8 on, it's almost like he turned the light on and the
9 shot went off.

10 Bobby hits the ground. I see that Bobby is
11 still moving. I tell him to come to me. Bobby
12 looks at me and starts to come towards me. When he
13 does, another shot is fired.

14 **Q** Now, where are you at the time that the second
15 shot -- once Bobby shows signs of life, where are
16 you when that second shot is fired?

17 **A** I'm still basically in this same -- this same
18 area by the door close to the house.

19 (Witness leaves the witness stand.)

20 **Q** You're on this side of the house?

21 **A** Yes. Still in this -- in this general area. I
22 stayed in this general area until Bobby got to me
23 after he had been shot.

24 **Q** Where were you calling for him to come to you?

25 **A** Over here, this area {indicating}.

1 **Q** And where is he, approximately, at that time?

2 **A** Over here by this railroad tie, in this area.
3 He had fallen down after he was shot.

4 **Q** As he begins to move, which direction does he
5 travel?

6 **A** Towards me, over here.

7 **Q** He's coming back towards you?

8 **A** Coming back towards me.

9 **Q** And that's when the second shot is fired?

10 **A** That's when the second shot is fired, yes.

11 (Witness resumes the witness stand.)

12 **Q** Okay. What's the next thing you do after Bobby
13 has been shot and the second shot at him is fired?
14 Where do you go next?

15 **A** Once Bobby gets to me, I see that he is
16 wounded. I look at his wound. There's been another
17 shot. I realize that the main thing to do is to get
18 Bobby out of there and get him help.

19 We start to make distance between us and head
20 back towards where our vehicles are parked.

21 **Q** Which side of the house did you go up at that
22 point in time?

23 **A** That's -- we go back on this same side of the
24 house that I was -- that I was on the whole time.

25 (Witness leaves the witness stand.)

1 **Q** Where do y'all head to once you gather Bobby
2 up?

3 **A** Our cars are over here. We first head to
4 here --

5 **Q** Yes.

6 **A** -- to right directly behind the house, because
7 at that point, I know that -- well, I don't know
8 that, but I feel that I'm out of danger for a second
9 to assess the situation.

10 **Q** Okay. Where is Melissa at this point in time?

11 **A** At this point in time, to be honest, I don't
12 really know.

13 **Q** Okay. What happens next after y'all are at the
14 back of the house and you're assessing his injuries?
15 What happens next?

16 **A** I hear a voice from over in this {indicating}
17 area state, Where you at you son of a bitch?

18 At that time, I realized we're in danger; we
19 got to go. So I take Bobby to these bushes where I
20 let him catch his breath once again, because he's
21 hurt. His equipment is falling off of his belt. He
22 has a duty belt on, and his equipment is starting to
23 fall off.

24 We stop here. We catch our breath for just a
25 minute. That's when I tell Melissa to go get me a

1 cell phone, get a patrol car, we got to get out of
2 here.

3 **Q** The person that says, Where are you, you son of
4 a bitch, they're on this side of the house?

5 **A** Somewhere in this side. I never saw -- I never
6 saw the person. I just heard the voice.

7 **Q** But you know they were outside in this area?

8 **A** I know they was outside on this side of the
9 residence.

10 **Q** Okay.

11 **A** (Witness resumes the witness stand.)

12 **Q** So once you hear that there's somebody outside
13 looking for you -- Where are you, you son of a
14 bitch? -- what does that cause you to do at that
15 point in time?

16 **A** That caused us to create more distance. We
17 continued to try to get out of there. That's when I
18 had told Melissa to go get a car, get a cell phone,
19 get us some help, because our walkie-talkies won't
20 make contact with the office. I can't get in touch
21 with them; they can't hear me.

22 So she goes to get a car, and we continued --
23 I'm going to have to show you again.

24 (Witness leaves the witness stand.)

25 **Q** Sure. Use whatever you need.

1 **A** We continued to try and retreat. We go up
2 through here. There's a light pole with a -- what I
3 call a night light, a yard light, street light,
4 whichever you would refer to, in this area. We
5 leave and go up here, and there's a large bank right
6 here {indicating}.

7 Once again -- Bobby falls once again right here
8 as we're trying to get out. The whole time, we're
9 just continuing to try to get to safety. Melissa
10 pulls her patrol car in this general area here.
11 That's where we load -- we load Bobby up, take him
12 to -- can I use the other one?

13 **Q** Sure. Whatever you need. Just say what the
14 State's Exhibit is if you're going to refer to it.

15 **A** Okay. It's State's Exhibit 1. We load Bobby
16 into the back seat of the patrol car. I leave my
17 patrol car, leave Bobby's patrol car on scene. We
18 get it -- we all three get in Melissa's patrol car,
19 and we leave the same way we came in and go to 378
20 to meet the ambulance.

21 The ambulance that normally would have
22 responded was already on a call; it had to come from
23 Modoc that night. That's why I went here to meet
24 the ambulance to get him medical attention as fast
25 as I could.

1 At that time, I think I had called for the
2 sheriff on the radio during that, but I also called
3 the sheriff and the chief deputy on the telephone
4 once I got to this location where we met the
5 ambulance.

6 The sheriff met me there. We went back
7 after --

8 **Q** Just go back and retake the stand. You can put
9 that down.

10 **A** Okay.

11 (Witness resumes the witness stand.)

12 **Q** So without going into anything the sheriff
13 said, do you apprise the sheriff of the situation at
14 hand and tell him the information that has taken
15 place?

16 **A** Yes, yes. The sheriff and the chief deputy
17 both, and both of them told me that they were on
18 their way.

19 **Q** Okay.

20 **A** Sheriff got there. Excuse me. Myself, the
21 sheriff, and Officer Wideman from the city police
22 department went back to the Worley residence. As
23 we're walking down to the Worley residence, we see
24 two flashlights in the woods.

25 **Q** Do y'all turn in the driveway or where do y'all

1 pull up?

2 **A** I do believe we pulled right in the driveway,
3 at the top of the driveway, because I rode back down
4 there with the sheriff in his patrol car.

5 **Q** Okay.

6 **A** Stopped at --

7 **Q** So what happens next?

8 **A** We walked towards the individuals that were out
9 there with the flashlights. And we get to speaking
10 with them, and the -- they were shining the
11 flashlights towards our face, and I remember the
12 sheriff telling one of them, Don't shine that
13 flashlight in my eyes.

14 And they asked him who he was, and he said, I'm
15 Sheriff Reid. Who are you? And they stated their
16 names, Joe Worley and I believe it's -- I'm not sure
17 of his mother's name. I have no --

18 **Q** His mother? Those were the two individuals?

19 **A** Yes.

20 **Q** Let me ask you two questions in this case;
21 one's going to sound silly: The place it was where
22 Bobby got shot and shot at again and the location
23 you responded to, what county is that in?

24 **A** McCormick County.

25 **Q** That's in McCormick County?

1 **A** Yes.

2 **Q** The individual that came out and identified
3 himself as Joe Ross Worley, is he present here in
4 the courtroom today?

5 **A** Yes, he is. He's sitting right there.

6 **Q** Could you tell us where he's seated and how
7 he's dressed?

8 **A** He's sitting right there {indicating} in a blue
9 suit, light blue shirt, and tie.

10 **Q** The gentleman that's standing up right now?

11 **A** Yes.

12 **Q** Okay. That's Joe Ross Worley?

13 **A** Yes.

14 **MR. MAYE:** Your Honor, I'd like for the record
15 to reflect he's identified the defendant, Mr.
16 Worley, in this case.

17 **THE COURT:** The record so reflects.

18 **THE WITNESS:** So Mr. Worley then, he tells the
19 sheriff, I put the deputy's gun in his patrol car.

20 BY MR. MAYE:

21 **Q** Wasn't in response to any question; he just
22 stated that?

23 **A** He just stated that. He was not questioned at
24 any time by the sheriff. He just stated that, I put
25 the deputy's gun in his patrol car.

1 **Q** All right. What's the next thing that he says?

2 **A** The sheriff asked who had been doing all the
3 shooting. And Mr. Worley said, I have. And the
4 sheriff then asked him, Do you realize you shot my
5 deputy? And he said, Yes, he had no business
6 ringing my damn doorbell.

7 At that time, that's when I placed Mr. Worley
8 under arrest.

9 **Q** He didn't say anything about a mistake of
10 identity or anything else? Are you absolutely
11 certain?

12 **A** No. He never mentioned that it was a mistake,
13 that he thought somebody was trying to break in on
14 him, that he thought somebody was trying to hurt
15 him. All he said was, He had no business ringing my
16 damn doorbell.

17 **Q** So you took him into custody; correct?

18 **A** Yes.

19 **Q** Skip forward a little bit. You had him charged
20 in this case with assault and battery with intent to
21 kill; correct?

22 **A** Yes.

23 **Q** And possession of a weapon during the
24 commission of a violent crime?

25 **A** Yes.

1 **Q** Correct?

2 **A** Yeah.

3 **Q** Is assault and battery with intent to kill a
4 crime of violence in South Carolina under 16-1-60?

5 **A** Yes. It's defined under 16-1-60, South
6 Carolina Code of Laws.

7 **Q** Okay. And so those are the two charges that
8 you caused to be levied against the man that you
9 arrested out there that night: Assault and battery
10 with intent to kill on Bobby Rushton and possession
11 of a weapon during the commission of a violent
12 crime?

13 **A** Yes.

14 **Q** Okay. What was the next thing that you
15 participated in or what did you do out there, Nick?
16 What happened next?

17 **A** After that, the sheriff spoke with Ms. Worley
18 and asked her for consent to go into the residence
19 to try to locate the gun.

20 **Q** Did y'all obtain consent from her?

21 **A** Yes, we did.

22 **Q** What did you do? Where did you go?

23 **A** Went inside the residence, and the first weapon
24 that I --

25 **Q** No. Just go into the weapon in this case that

1 is at issue in this case, only this weapon in this
2 case.

3 Let me ask you this -- in fact, I'm going to
4 show you at this point in time --

5 **THE COURT:** Just let me stop you right there.

6 Ladies and gentlemen of the jury, to the extent
7 there may be weapons introduced in this case, these
8 weapons have been disabled, so they're not capable
9 of firing, so you'll feel at ease during the course
10 of this trial.

11 And I'm instructing the witnesses involved in
12 this case: When handling these weapons, do not
13 point them at anyone during the course of this
14 trial. I know you wouldn't; just to make sure.

15 **MR. MAYE:** Thank you, Your Honor.

16 **THE COURT:** Yes, sir.

17 **MR. MAYE:** And the weapon has been rendered by
18 the sheriff's department in accordance with the
19 rules for the courts of South Carolina.

20 The bolt's secured and there are zip ties
21 through it and it's rendered where it cannot be
22 fired.

23 **THE COURT:** Thank you, sir.

24 **MR. GARRETT:** Without objection, Your Honor.

25 **THE COURT:** Admitted without objection.

1 (State's Exhibit Number 6, Remington rifle,
2 marked and admitted into evidence.)

3 BY MR. MAYE:

4 **Q** I'm going to show you State's 6 that's into
5 evidence in this case and ask you if you can
6 identify this, tell us what it is.

7 **A** This is a Remington .30-06 semiautomatic rifle
8 Model 742.

9 **Q** Did you record the serial number that night?

10 **A** Yes, I did.

11 **Q** Now, Investigator Moore, you were involved in
12 the processing of a number of items of evidence in
13 this case in accordance with your responsibilities
14 with the sheriff's department that night; correct?

15 **A** Yes, I was.

16 **Q** Okay. What's the serial number of that weapon?

17 **A** The serial number of this weapon is 7070652.

18 **Q** And that's the weapon that you seized at the
19 Worley household --

20 **A** Yes, it is.

21 **Q** -- that night?

22 **A** This is the evidence tag that I would have put
23 on it the date that I seized it.

24 **Q** And you're absolutely certain that's the gun
25 that you seized at the residence?

1 **A** Yes.

2 **Q** Okay.

3 (Pause.)

4 **MR. GARRETT:** Without objection, Your Honor.

5 **MR. MAYE:** Your Honor, I have four photographs
6 that are going to be by -- I'm offering them, and
7 the defense is stipulating. I'm moving to admit
8 these four photographs into evidence.

9 **THE COURT:** These are going to be numbers 7, 8,
10 9 and 10?

11 **COURT REPORTER:** Yes, sir.

12 **THE COURT:** They'll be admitted without
13 objection.

14 (State's Exhibit Numbers 7 through 10,
15 photographs, marked and admitted into evidence.)
16 BY MR. MAYE:

17 **Q** Officer Moore, I'm going to show you State's
18 Exhibits 7, 8, 9 and 10.

19 **A** Okay.

20 **Q** Tell the ladies and gentlemen of the jury --
21 and utilize these exhibits -- when you went in for
22 your search for the weapon that had been used to
23 shoot Bobby Rushton in this case, where did you
24 locate what's been marked into evidence already as
25 State's 6, the Remington 742 rifle? Where did you

1 find it?

2 **A** In the living area upstairs residence under a
3 -- what I would call a love seat, a short couch.

4 **Q** Okay. Show them what you first saw that
5 indicated to you that there was a gun put up under
6 there.

7 **A** (Witness leaves the witness stand.)

8 What I first saw was the stock of the butt of
9 the rifle sticking out from under --

10 **THE COURT:** Mr. Maye, would you have him
11 identify the exhibit?

12 BY MR. MAYE:

13 **Q** What number is that?

14 **A** Number 9. State's Exhibit Number 9.

15 **Q** So the weapon was hidden under the couch?

16 **A** Yes, it was.

17 I also --

18 **Q** What was the next one or what's the exhibit
19 number? You can refer to it, just --

20 **A** State's Exhibit Number 8 --

21 **Q** -- do it by number.

22 **A** Okay. The first thing I -- the next thing I
23 saw was the barrel sticking out of the other end.

24 **Q** What did you then do next?

25 **A** Then we moved the couch away from the rifle

1 where we could photograph it before we ever moved
2 it.

3 **Q** Okay. Do you have that photograph? What
4 number is it?

5 **A** Number 7. That's just the rifle laying on the
6 floor. All we did was picked up the couch and move
7 the couch.

8 **Q** Okay.

9 **A** And I have one of the couch if they want to see
10 it.

11 **Q** Sure. What number is that?

12 **A** Number 10 is just the couch.

13 **Q** That weapon was stuck up under the couch?

14 **A** (Witness resumes the witness stand.)

15 Yes, it was. There was a -- inside of the
16 residence also was a case for this weapon and a
17 scope that would have went on a rifle, laying on a
18 bed in the back room, opened.

19 **Q** On a bed?

20 **A** On a bed, yes.

21 **Q** Again, this weapon was nowhere near that bag;
22 it was hidden under a couch?

23 **A** Yes, that's correct.

24 **Q** Okay. You seized that weapon and sheriff's --
25 took it into custody?

1 **A** Yes.

2 **Q** Correct?

3 **A** Correct.

4 **Q** All right. Let me ask you this. Let me show
5 you what's been marked at this point in time as
6 State's 3 for ID. Ask you if you can identify the
7 items that are in that bag.

8 **A** Yes. These are the .30-06 rounds that I
9 removed from the rifle when I seized it that night.

10 **Q** What else is in that bag, the black object
11 that's in that bag?

12 **A** The magazine in which you would load the rounds
13 into. And there's four rounds in here that have
14 been modified.

15 **Q** Okay. Now, you took custody of those and
16 cleared those -- you removed those bullets from the
17 weapon?

18 **A** Yes. When I seized it, before I would have
19 transported this weapon in my patrol car, I would
20 have took the rounds out of it to where it wouldn't
21 fire.

22 **Q** Okay. And you documented that and you're
23 absolutely certain that those are the modified
24 rounds and the box magazine from that same 742 that
25 you seized there at the scene?

1 **A** Yes. This is it. This is my evidence bag with
2 my handwriting on it, date and time.

3 **MR. MAYE:** Your Honor, I move to admit these
4 into evidence at this time.

5 **MR. GARRETT:** Without objection.

6 **THE COURT:** Admitted without objection.

7 (State's Exhibit Number 3, magazine and
8 bullets, admitted into evidence.)

9 BY MR. MAYE:

10 **Q** Now, Officer Moore, the gun -- the box magazine
11 holds how many rounds?

12 **A** Four.

13 **Q** Okay. So what's the maximum number of rounds
14 that you could have in that weapon at any one time?

15 **A** You could have five, if you had four in the
16 magazine and one chambered.

17 **Q** Okay. And so when you got the weapon where it
18 was hidden under the couch, it still had four rounds
19 in it?

20 **A** Still had four rounds in it, one in the
21 chamber, three in the magazine.

22 **Q** Okay. And Bobby got shot, and there was a
23 second shot; correct?

24 **A** Correct.

25 **Q** And when you seized the weapon, it had four

1 rounds in it?

2 **A** That's correct.

3 **Q** So at the time that you seized it, it had been
4 reloaded? At least one additional round had been
5 put in it?

6 **A** Yes, would have had to have been.

7 **Q** Okay.

8 **MR. MAYE:** I'd like to mark this for
9 identification.

10 (State's Exhibit Number 11, shell casings,
11 marked for identification.)

12 **MR. MAYE:** Any objection to these three
13 photographs?

14 **MR. GARRETT:** No.

15 **MR. MAYE:** Your Honor, I have three
16 photographs, at this point in time, that the defense
17 has indicated they do not have any objection to
18 being admitted into evidence. I'm going to ask the
19 court reporter to record them.

20 **THE COURT:** They'll be 12, 13, and 14?

21 **COURT REPORTER:** Yes, sir.

22 **THE COURT:** They'll be admitted without
23 objection.

24 (State's Exhibit Numbers 12 through 14,
25 photographs, marked and admitted into evidence.)

1 BY MR. MAYE:

2 Q Officer Moore, I'm going to show you two bagged
3 items that are cumulatively marked as State's 11 for
4 identification. I believe they're marked on the bag
5 as -- for ID, both are 11, but I believe one of the
6 bags has Sheriff's Office Evidence Number 3 and 4;
7 is that correct?

8 A On the inside of the bag.

9 Q Okay. On the inside of the bag.

10 Let me ask you this: Where were those -- what
11 are the items that are in 11 and where were those
12 obtained?

13 A These are .30-06 shell casings in which the
14 bullet had been fired. They were obtained in the
15 yard by the steps. Can I show on the --

16 Q Sure.

17 A (Witness leaves the witness stand.)

18 Q Utilizing State's --

19 A 4.

20 They were located in this general area by the
21 steps.

22 Q Okay.

23 A (Witness resumes the witness stand.)

24 MR. MAYE: Your Honor, at this time, I move to
25 admit the two bagged items which are attached

1 together that are 11 for ID at this point in time.

2 **THE COURT:** Any objection?

3 **MR. GARRETT:** Without objection.

4 **THE COURT:** 11 will be admitted without
5 objection.

6 (State's Exhibit Number 11, shell casings,
7 admitted into evidence.)

8 BY MR. MAYE:

9 **Q** Utilize these three photographs with the jury,
10 show them where you located those rounds and how you
11 identified them. And each photograph, as you refer
12 to it, use the number.

13 **A** (Witness leaves the witness stand.)

14 Okay. Number 12, and I'm going to use Number 4
15 also. This Photograph Number 12 which shows the
16 shell casings in the yard that are in this general
17 area {indicating}.

18 **Q** Okay. All right. What are the other
19 photographs, the other two photographs? Refer to
20 them by number and what do they show?

21 **A** Number 13 and Number 14 are the shell casings
22 also in the yard, same place before we picked them
23 up, with the tags inside of them, number 3 and
24 number 4, that's for identification purposes. And
25 that's the .30-06 shell casings in the yard.

1 **Q** Okay. Thank you, sir.

2 **A** (Witness resumes the witness stand.)

3 (Pause.)

4 **MR. MAYE:** Your Honor, I have at this time --
5 I'm moving into evidence actually eight bags that
6 have a sheriff's office number on them of 6, 7, 10,
7 11, 12, 13, 14, and 15. I have all of these bags.
8 Rather than put individual numbers on them, since
9 they're all similar items, I'm going to staple them
10 together.

11 **THE COURT:** You're going to make it a group
12 exhibit?

13 **MR. MAYE:** I'm going to make it a group
14 exhibit. I'm going to staple them all together
15 here. I've announced the numbers. They're -- each
16 of the bags have that number at least somewhere on
17 them that indicates the sheriff's office number.
18 And I've shown them to the defense. They indicate
19 that they don't have any objection to these eight
20 bags of items -- different items coming into
21 evidence in this case.

22 **THE COURT:** Okay. That will be Number 15?

23 **COURT REPORTER:** Yes, sir.

24 **THE COURT:** Admitted without objection?

25 **MR. GARRETT:** I do.

1 **THE COURT:** Thank you.

2 (State's Exhibit Number 15, eight bags of
3 unfired rounds, marked and admitted into evidence.)

4 BY MR. MAYE:

5 **Q** I'm going to show you State's 15 that's now in
6 evidence in this case. Nick, what are those eight
7 bagged items, the eight separate bags there? What
8 are those items?

9 **A** These are the unfired rounds that we recovered
10 from Bobby's handgun.

11 **Q** Okay. What was the result -- once Mr. Worley
12 shot Bobby, what was the resulting damage to the
13 handgun?

14 **A** The handgun grip basically exploded, along with
15 the magazine that holds the rounds in it. That's
16 why they were scattered all through the yard. And
17 there's only eight of them here. I guess we were
18 unable to find the rest of them.

19 **Q** What's the capacity of the full-size Glocks
20 that y'all were carrying at the time?

21 **A** Thirteen in the magazine, one in the chamber.

22 **Q** And they're 40 caliber. So those are unfired
23 rounds that came out of --

24 **A** Yes.

25 **Q** -- Bobby's gun when it blew apart?

1 **A** Yes.

2 **Q** Of course, Bobby never fired his gun that
3 night, did he?

4 **A** No, he did not.

5 (Pause.)

6 **MR. GARRETT:** Without objection.

7 **MR. MAYE:** I've got three photographs, at this
8 point in time, Your Honor, that we're going to admit
9 without objection.

10 **THE COURT:** 16, 17, and 18 admitted without
11 objection.

12 (State's Exhibit Numbers 16 through 18,
13 photographs, marked and admitted into evidence.)
14 BY MR. MAYE:

15 **Q** Let me show you what's been admitted in
16 evidence as State's 18 at this time point in time.

17 **A** Okay.

18 **Q** Come down here and tell the ladies and
19 gentlemen of the jury what 18 is.

20 **A** (Witness leaves the witness stand.)

21 Number 18 is a railroad cross tie that was in
22 the front yard. That's approximately where, when
23 Bobby was shot, where he fell or either he may have
24 tripped over that. I can't say exactly, but that's
25 where he was at when he shot and fell face-first.

1 **Q** Is that close to the same location as when he
2 got up, where Mr. Worley shot at him again?

3 **A** Yes.

4 **Q** I'm going to show you State's 17 as well. Show
5 them what that is.

6 **A** Number 17, once again, is the railroad cross
7 tie.

8 **MR. MAYE:** Your Honor, I have an additional
9 photograph here that's going to come in without
10 objection.

11 That's State's 19 now in evidence, Your Honor.

12 **THE COURT:** Admitted without objection.

13 **MR. GARRETT:** Without objection.

14 (State's Exhibit Number 19, photograph,
15 marked and admitted into evidence.)

16 BY MR. MAYE:

17 **Q** I'm going to show them State's 19. Tell the
18 ladies and gentlemen of the jury the relevance to
19 your testimony of this photograph or what that area
20 depicts.

21 **A** Okay. Number 19 is the area that I had stated
22 previously in Number 4 where we had went up the
23 embankment by the light pole, once again, where
24 Bobby fell due to him being injured, his stuff was
25 falling off his belt, as we were trying to leave the

1 area to get him to safety.

2 **Q** That's an approximate location where you heard
3 Mr. Worley outside?

4 **A** Approximate location where we heard Mr. Worley
5 say, Where you at, you son of a bitch?

6 **Q** Okay. I'm going to show you State's 16 -- you
7 can keep standing up here -- that's already in
8 evidence in this case. Talk about this view of the
9 house, the significance of that car.

10 **A** This side would have been the side where I
11 would have heard the voice coming -- Where you at,
12 you son of a bitch? -- because I would have been on
13 the other side. This vehicle is a vehicle that was
14 on the scene when we got there that night, remained
15 there the entire time. I'm assuming that it belongs
16 to the Worleys.

17 **Q** Okay. But that one was there and stayed there
18 the whole time?

19 **A** That vehicle was there and stayed there the
20 whole time, yes.

21 **Q** Okay. Now, it depicts a patrol car in there,
22 but this was taken later in the morning; correct?

23 **A** Yes, it was. That's approximately where
24 Bobby's patrol car would have been parked, but that
25 is not his car. This is taken later that day.

1 **Q** These cars are all marked the same way.
2 They're police cars with push bars and light bars
3 and markings and everything else on them?

4 **A** Yes. Yes.

5 **Q** So the car he was driving was essentially
6 identical to this one --

7 **A** Identical to that one, yes.

8 **Q** A full-blown police car?

9 **A** Yes.

10 (Witness resumes the witness stand.)

11 (Pause.)

12 **MR. MAYE:** Mark this for ID, please.

13 (State's Exhibit Number 20, photograph,
14 marked for identification.)

15 BY MR. MAYE:

16 **Q** Nick, I'm going to show you what's marked as
17 State's Exhibit 20 and ask you, in this case, what
18 does that photograph depict that's 20?

19 **A** That's Joe Worley on the night he was arrested.

20 **Q** Okay. That's as he appeared, his face and all
21 and his facial features as he appeared that night?

22 **A** Yes.

23 **Q** Okay. Now, he's got some kind of black thing
24 or some kind of hood around the front of him
25 covering up his T-shirt there. That's something

1 they put on at the jail?

2 **A** They do that at the county jail.

3 **Q** So there's contrast for the photo?

4 **A** Yes.

5 **Q** He wasn't wearing this black cape thing out
6 there that night?

7 **A** No, he was not.

8 **Q** But this is him as he appeared that night, Joe
9 Ross Worley? This is the individual that you took
10 into custody --

11 **A** Yes, it is.

12 **Q** -- that night for shooting Rushton?

13 **A** Yes, it is.

14 **MR. MAYE:** Your Honor, that's State's 20 for
15 ID. At this point in time, I'm going to move to
16 admit it into evidence at this point time.

17 **MR. GARRETT:** With that caveat, Your Honor,
18 that the black thing was not on him that night.

19 **THE COURT:** Admitted without objection.

20 (State's Exhibit Number 20, photograph,
21 admitted into evidence.)

22 BY MR. MAYE:

23 **Q** Officer Moore, let me ask you this: Is there
24 any doubt in your mind that you adequately
25 identified yourself to Joe Ross Worley that night as

1 sheriff's officers and he fired upon Bobby Rushton
2 after being advised of that?

3 **A** No. There is no doubt in my mind, because he
4 replied back, I don't give a fuck.

5 **Q** You're absolutely certain that he heard you
6 identify yourselves as sheriff's department, fired
7 on him anyway?

8 **A** Yes.

9 **Q** You're absolutely certain, as Bobby got up, he
10 fired upon him a second time?

11 **A** Yes, I am.

12 **MR. GARRETT:** Leading, Your Honor.

13 **THE COURT:** Rephrase.

14 **MR. MAYE:** Withdrawn.

15 Nothing else.

16 **THE COURT:** Let me see the attorneys around
17 here for a second.

18 (Whereupon, a bench conference was held off
19 the record, in the presence of the jury, but out of
20 the hearing of the jury.)

21 **THE COURT:** All right. Ladies and gentlemen of
22 the jury, what we're going to do now, after
23 consulting with the attorneys, is that, instead of
24 letting cross-examination begin and taking a lunch
25 break in the middle of it, I'm going to go ahead and

1 call a lunch break now. Then we'll bring you back
2 at 1:30, and we will resume testimony at that point.

3 Let me remind you, you're going to be on lunch
4 on your own; however, while you're at our lunch, you
5 may not speak amongst yourselves or with anyone else
6 about this case. If anyone comes up to you and
7 tries to speak with you about this case, just say,
8 I'm a juror; I can't speak with you. If they
9 persist, bring it to one of our attention, and that
10 will be dealt with immediately. Okay?

11 With that being said, we'll excuse you for
12 lunch and ask that you be back in your jury room at
13 1:25, please.

14 (The jury was excused for lunch.)

15 **THE COURT:** All right. Mr. Moore, since you're
16 still on the stand, you may not speak with anybody
17 about your testimony. It's okay to have general
18 conversation with folks, but nothing whatsoever
19 about your testimony, about this case. Okay, sir?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** All right. Very good.

22 We're in recess until 1:30.

23 (Whereupon, there was a luncheon recess.)

24 (Defendant's Exhibit Numbers 1 through 3,
25 dispatch logs, and Court's Exhibit Number 2, record

1 reconstruction, marked for identification.)

2 **THE COURT:** State ready to proceed?

3 **MR. MYERS:** The State's ready.

4 **THE COURT:** Defense ready?

5 **MR. GARRETT:** Defense is ready, Your Honor.

6 **THE COURT:** Will you bring the jury in, please?

7 **MS. BALLARD:** Your Honor, just for the record,
8 I added the exhibit as Court's Exhibit Number 2 that
9 we talked about yesterday.

10 **THE COURT:** And that is for purposes of
11 settling the record?

12 **MS. BALLARD:** Yes, sir.

13 **THE COURT:** Okay. Thank you, Ms. Ballard.

14 **MS. BALLARD:** It's been marked, and I've given
15 Mr. Myers a copy.

16 **THE COURT:** Thank you.

17 (The jury returns to the courtroom.)

18 **THE COURT:** Madame Forelady, ladies and
19 gentlemen of the jury, before we get started, let me
20 check to see if you spoke with anyone or anyone
21 attempted to speak with you about this case during
22 the lunch break.

23 (There was no response.)

24 **THE COURT:** Very good.

25 Defense ready for cross-examination?

1 **MR. GARRETT:** Yes, Your Honor.

2 **THE COURT:** Mr. Garrett.

3 **MR. GARRETT:** Officer Moore.

4 CROSS-EXAMINATION

5 BY MR. GARRETT:

6 **Q** Officer Moore, that night is probably and, in
7 fact, it was the darkest night in November 2009 for
8 that month; in other words, a no-moon night.

9 **A** Okay.

10 **Q** Was it?

11 **A** I don't know. I have no way of knowing.

12 **Q** You don't remember?

13 **A** No, I don't remember.

14 **Q** I just noticed, when you said as y'all were
15 coming up, you didn't see -- y'all were unable to
16 see the Worley driveway, and Bobby said on the radio
17 dispatch he saw the driveway.

18 **A** Yeah. There's a lot of driveways in the county
19 that we drive past when we're first looking for
20 them.

21 **Q** I understand.

22 **MR. GARRETT:** For identification, this is
23 Defendant's Exhibit Number 1, 2, 3.

24 **MR. MAYE:** No objection. Put them into
25 evidence as defense exhibits.

1 **THE COURT:** 1, 2, and 3?

2 **MR. GARRETT:** 1, 2, and 3.

3 **THE COURT:** Be admitted without objection.

4 **MR. GARRETT:** Thank you, Your Honor.

5 (Defendant's Exhibit Numbers 1 through 3,

6 dispatch logs, admitted into evidence.)

7 BY MR. GARRETT:

8 **Q** These are some dispatch excerpts. And you were
9 on the radio that afternoon, weren't you?

10 **A** Yes, sir.

11 **Q** And if the Sheffields had called in at
12 4:06:22 --

13 **A** I'm not sure of the exact time.

14 **Q** Not sure what time?

15 **A** Not exactly.

16 **Q** But if that was the dispatch log, you show
17 around four o'clock is what you said when --

18 **A** In the area, yeah.

19 **Q** In the area?

20 All right. And then, at 4:06, did you hear
21 dispatch talking to Mr. Sheffield? Did you hear any
22 of that?

23 **A** No. I can't hear what dispatch says to them.

24 **Q** You can't hear what they said. Have you went
25 back and looked at it to see what was being said

1 that night?

2 **A** No, I have not.

3 **Q** You haven't? Okay.

4 Let's suppose that this was said to dispatch
5 that night.

6 **A** I have no way of knowing.

7 **Q** Okay. Well, let's -- would you step down here
8 and let's read this?

9 **A** Okay.

10 (Witness leaves the witness stand.)

11 **Q** We've stipulated these are excerpts from that
12 night. So let's go -- Mr. Sheffield apparently
13 called at 4:06:22, right there. Could you read what
14 it says right there?

15 **A** McCormick 9-1-1, what's your emergency?

16 **Q** Okay. Then Mr. Sheffield said what?

17 **A** Well -- all of this took place in one second,
18 from here to here?

19 **Q** No. We know that's not true. Okay? That's
20 just part of it, but that's the way it's set up, and
21 that's what your log will show.

22 **A** Okay. I'm just asking about this sheet you
23 have here. It's saying all this took place in less
24 than one second.

25 **Q** I understand. Go ahead.

1 **A** Yes. My name is Alan Sheffield. I -- we
2 reported about a month or so ago. I need to speak
3 to the sheriff or something. My neighbor sits
4 outside and talks at the top of his lungs, sounds
5 like he fires guns.

6 **COURT REPORTER:** I didn't hear the last part.
7 I didn't hear the last part.

8 **THE WITNESS:** Which part? Sounds like he fires
9 guns?

10 BY MR. GARRETT:

11 **Q** All right. And then dispatch responds?

12 **A** Okay. I'll let you speak with law enforcement
13 dispatch. Hold on.

14 **Q** Response from Mr. Sheffield?

15 **A** Thank you.

16 **Q** Dispatch?

17 **A** Sheriff's office.

18 **Q** Okay. Mr. Sheffield again?

19 **A** Yes. Good morning. My name is Alan Sheffield.
20 I live out at [REDACTED] Presidents Drive. My wife had
21 reported our neighbor about a month or so ago, sits
22 outside at night talking very loudly, occasionally
23 what appears to be discharging guns. He's done it
24 twice tonight, and he's out on the deck again.

25 **Q** Dispatch?

1 **A** Okay.

2 **Q** Then Mr. Sheffield?

3 **A** The name of the house is Worley. I think it's

4 [REDACTED]. We are at [REDACTED].

5 **Q** And that [REDACTED], that will be Presidents Drive?

6 **A** I would assume, yes.

7 **Q** Okay. Dispatch?

8 **A** I'll send someone down.

9 **Q** Mr. Sheffield?

10 **A** Thank you.

11 **Q** Dispatch?

12 **A** I need a county unit at three zero Presidents
13 Drive. Correction: It'll be [REDACTED] Presidents Drive
14 for loud --

15 **Q** All right. Did you get that call or is that
16 what went out to you? Is that the first time you
17 heard it or do you recall?

18 **A** I can't recall exactly what she said.

19 **Q** Okay. Go on down next.

20 **A** Be advised, caller says that he and his wife
21 have complained before about the neighbor.

22 **Q** Okay. Complete the rest of that.

23 **A** Who sometimes -- he said he comes outside and
24 talks very loudly and discharges firearms. He says
25 he's on the deck doing that now.

1 **Q** Melissa?

2 **A** 10-4.

3 **Q** And I'm assuming Melissa works at dispatch? Do
4 you know who Melissa is?

5 **A** Yeah, Melissa McAllister.

6 **Q** Okay. That will be Melissa McAllister. All
7 right. Go ahead.

8 Is this a question mark?

9 **A** Yes. That would be me asking, He's discharging
10 the firearm now?

11 **Q** And what did dispatch say?

12 **A** Affirmative.

13 **Q** That's not true, is it? When you got out
14 there, he wasn't out there discharging a firearm?

15 **A** Not when I got out there, but I don't know what
16 he was doing at 4:09.

17 **Q** Okay. Let's move on.

18 **A** Is the complainant at [REDACTED] or is the subject at
19 [REDACTED]?

20 **Q** Melissa?

21 **A** That was Melissa.

22 **Q** Okay. And then what's dispatch say?

23 **A** Subject's at [REDACTED]. The complainant is at [REDACTED].

24 **Q** And Melissa says 10-4. What does that 10-4
25 mean?

1 **A** I guess 10-4 that she copies the address. I
2 don't know. I mean, I have no way of knowing what
3 she would say 10-4 to.

4 **Q** Okay. Is 10-4 a call sign or basically a
5 statement by her saying I got the information?

6 **A** It would be okay or affirmative.

7 **Q** Okay. And then Melissa comes back?

8 **A** I'm still looking for Presidents Road.

9 **Q** And then who's next?

10 **A** Bobby.

11 **Q** What time is that?

12 **A** 4:27.

13 **Q** 35?

14 **A** Yes.

15 **Q** And what does Bobby say?

16 **A** Could you have the complainant, ask them if
17 they live next door to the right-hand side of the --
18 I guess it didn't copy -- with their lights on in
19 the garage.

20 **Q** All right. What does dispatch do?

21 **A** 113, be advised I'm not getting any response
22 from that residence.

23 **Q** And then what does Bobby say?

24 **A** Headquarters, I'm speaking with them.

25 **Q** All right. Now, earlier on, you said that, in

1 your testimony -- hold on a minute, let me look at
2 this drawing -- Bobby was speaking with the
3 Sheffields. Would that have put him right here
4 {indicating}?

5 **A** I can't say where he was at speaking with them,
6 not the first time.

7 **Q** How many times did he speak to them?

8 **A** Twice, I do believe.

9 **Q** All right. Explain that.

10 **A** Explain?

11 **Q** That Bobby spoke to the Sheffields twice.

12 **A** He went over there when we first got there, I
13 believe, and then he went -- may have went back
14 after we decided to leave. I can't speak for sure
15 exactly what Bobby did.

16 **Q** All right. But you said that Bobby went over
17 there to talk to the Sheffields?

18 **A** Uh-huh.

19 **Q** The light --

20 **A** No, it was over here when --

21 **Q** You were over --

22 **A** When the light flickered, we was over here.

23 **Q** You were at the house?

24 **A** Yeah.

25 **Q** Okay.