VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Jessica A. Salvini, Circuit Court Judge

HEIRBERONE H. FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-001297

APPENDIX

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County of Lexington) Eleventh Judicial Circuit

State of South Carolina,) Transcript of Record
vs.) 2016-GS-32-03022
) 2016-GS-32-03023
Heirbrane H. Foster,) 2016-GS-32-03040
Defendant.)

May 20th-23rd, 2019

Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge; and a Jury

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

Rhonda Patterson, Assistant Solicitor
Luke Pincelli, Assistant Solicitor

On behalf of the State of South Carolina

Aimee J. Zmroczek, Esquire
Ryan Schwartz, Esquire

On behalf of the Defendant

Stacy S. Johnson, RPR
Circuit Court Reporter

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(The following proceedings were held May 20, 2019, beginning at 9:36 AM.)

(Whereupon, the jury panel was qualified and excused from the courtroom at 10:36 AM.)

THE COURT: All right. Are they all out of earshot?

BAILIFF: Yes, sir.

THE COURT: Door's closed?

BAILIFF: Yes, sir.

THE COURT: What's your motion?

MS. ZMROCZEK: Thank you.

Your Honor, the one motion that we had that -- probably that needs to be heard before jury selection dealt with the severance of the third charge. Your Honor, the third charge is a felon in possession of a weapon -- or, excuse me, in possession of ammunition -- or possession of ammunition or a firearm by a prior convicted felon, I'm sorry, Your Honor, and we would move to sever those charges. And, Your Honor, the reason is obviously of the prejudicial nature. The only qualifying conviction that would be used against my client when he takes the stand is a 2010 CDV, high and aggravated nature, which we will argue at a later time it's also more prejudicial than probative in this case, and so, Your Honor -- and the nature of these charges. This is a -- he's also charged with murder and possession of a weapon during the

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commission of a violent crime and it stems from a familial argument, his son is the decedent, and so, Your Honor, for those reasons we would ask that that particular charge be severed, especially under the 403 analysis of undue prejudice outweighing any probative value that that may have.

THE COURT: What's the State's position?

MS. PATTERSON: Your Honor, it's the State's position that that charge not be allowed to be severed. It arose out of the same chain of circumstances as the murder and the possession of a weapon during the commission of a violent offense. It will be proved by the same evidence, it's of the same general nature, and it's the State's position that the Defendant wouldn't be prejudiced by this because if a different jury had to be picked to hear that case, they would be allowed to hear, one, that he possessed the firearm and, two, the circumstances surrounding that possession of a firearm under res gestae, Your Honor, and that is supported in statute State v. Wright -- caselaw State v. Wright and State v. Sweat, Your Honor. It's also our position that the acts are integrated as part of the same crime of the murder charge and the possession during the commission of a violent offense, Your Honor, so we ask that we be allowed to call all three of the offenses as part of the integral part of the same crime.

THE COURT: Any response?

MS. ZMROCZEK: No response, Your Honor.

THE COURT: All right. We'll take a ten-minute break and I'll give you the ruling then, okay?

MS. ZMROCZEK: Thank you, Your Honor.

MS. PATTERSON: Thank you, Your Honor.

(Recess taken at 10:42.)

(Back on the record at 10:51 AM.)

BAILIFF: All rise. Court is now in session.

THE COURT: Thank you. Be seated, please.

The ruling of the Court on the motion to sever is that the motion is granted.

I'm advised that the Defendant's first name on the indictment is misspelled on the indictment. Is it misspelled? Is that right?

MS. ZMROCZEK: That's correct, Your Honor.

THE COURT: Okay. And you-all agree to amend those?

MS. ZMROCZEK: I agree, Your Honor. That was clearly a clerical error and he has a difficult name, and someone with a difficult name understands that, so we have no objection to the correcting of the spelling of his name.

THE COURT: Without objection the indictment that we're going to try will be amended to correct the scrivener's error.

All right. You can tell the jury to come back in.

(Whereupon, the jury panel returns to the courtroom at 10:54 AM.)

THE COURT: All right. Ladies and gentlemen, as I told you before the break, we're going to change our focus now. We're going to move away from the more general to the more specific, and what's gonna happen is that the State is going to call the case that it plans to try -- or cases that it plans to try first. I will then go through a process that will look very similar to what we just did; that is, I'll be posing questions to you and if the question applies to you or if you have doubt if the question applies to you, you'll need to stand and listen carefully to the question I ask of you and answer the question when I call on you. Obviously you will have to identify who's speaking.

So if you -- if you would, when I pose a question, listen carefully to it after we've identified who's speaking and we'll get you to answer that question. There may be times when I limit your response. I may say, for example, just to answer your question -- answer the question yes or no. If you feel that you cannot adequately answer the question within the limitation I place on you, I still need you to give me the full answer, but I want you to give it to me down front. Come down front and give me the full answer down here; otherwise, it defeats the

purpose of the limitation. So if I restrict your answer and you say you need to give me more information, then come down front and give it. And remember that you're under oath, please.

All right, Solicitor. Call your first case.

MS. PATTERSON: Thank you, Your Honor. May it please the Court?

THE COURT: Yes.

MS. PATTERSON: Indictment 2016-GS-32-3022, the State of South Carolina versus Heirbrane Foster, indicted for murder. 2016-GS-32-3340, the State of South Carolina versus Heirbrane Foster, possession of a weapon during the commission of a violent crime.

THE COURT: Ladies and gentlemen, please give me your attention. We're about to qualify a jury to hear two separate and distinct indictments. Each of these indictments is a separate case. It has to be evaluated on its own merit or lack of merit, but they will be tried together for purposes of convenience. There may be throughout this case -- throughout the trial where I say the singular case or the plural cases. Don't be confused by that. They're two separate and distinct charges, each of which have to be evaluated on its own merit or lack of merit.

And both of these cases are captioned the State of

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South Carolina versus Heirbrane Heava Foster and one indictment charges Mr. Foster with the offense of murder. That indictment alleges that in Lexington County on or about May the 10th, 2016, that Mr. Foster willfully, feloniously and with malice aforethought, either express or implied, shot Heirbrane Will Foster and that Mr. Foster -- Heirbrane Will Foster died as a proximate result thereof.

The other indictment charges possession of a firearm during the commission of a violent crime. It reads that Heirbrane Heava Foster did in Lexington County, South Carolina, on or about May 10, 2016, knowingly and willfully possessed a firearm during the commission of a violent crime or attempted commission of a violent crime, specifically murder.

Now upon his arraignment on these charges, Mr. Foster has entered pleas of not guilty.

Ms. Zmroczek, I'm assuming your client's been arraigned or waived arraignment; is that right?

MS. ZMROCZEK: That is correct, Your Honor.

THE COURT: He has entered pleas of not guilty. He is presumed to be innocent. It is incumbent upon the State of South Carolina, who's brought these charges, to prove every essential element of each offense charged beyond a reasonable doubt. An indictment is not evidence.

An indictment is a charging paper. Is it merely the formal means by which someone is charged and brought to trial. You may not give an indictment any evidentiary value whatsoever.

I'll be asking you questions. If any of these questions apply to you or if you have doubt about whether they apply to you, please stand and follow the procedure that I outlined earlier.

Is Heava Foster in the courtroom? Heirbrane Heava Foster.

MS. ZMROCZEK: He is.

THE COURT: Would you please stand, Mr. Foster, and face toward the jury.

(Whereupon, the Defendant stands and faces the potential jury panel.)

THE COURT: Thank you very much, sir.

Is there any member of the jury panel who is related by blood or marriage or connected by employment with the Defendant in the case, Heirbrane Heava Foster? If so, please stand.

Do any of you know anything at all about this matter? To the best of your recollection, have you overheard anybody discussing anything about the case, have you heard, seen or read anything about it through any media source or any other source? Do you have any knowledge whatsoever

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about the underlying factual allegations either by direct knowledge or by hearing it or reading it through some other source? If so, please stand.

The following persons have been identified as potential witnesses in the case. Now, folks, I seriously doubt many, if any of them, are gonna be here right now. So I'm gonna read out a list of names, and it's a lot of names, so listen carefully. When I finish with all of them, if any of them apply to you, you'll need to stand. If I read out a common name and you're not sure or read out a name and you know somebody by that name or have some connection to somebody by that name and you're not sure if it's the same person, let me know that and we'll get more identifying information from the attorneys.

If any of these witnesses do happen to be in the courtroom, I need that person to stand as his or her name is called.

Investigator Brandon Miller of the Lexington County Sheriff's Department. Face that way. Thank you, sir.

Deputy Christopher Burnett of the Lexington County Sheriff's Department. Deputy Tyler Watford of the Lexington County Sheriff's Department. Deputy Franklin McFalls of the Lexington County Sheriff's Department. Lieutenant Jessie Laintz, L-A-I-N-T-Z. I'm sure I'm mispronouncing it.

MS. PATTERSON: Laintz.

THE COURT: Laintz?

MS. PATTERSON: Yes, sir.

THE COURT: With Lexington County Sheriff's Department. Agent Daniel Schirra of the United States Court Systems. Agent Keith Sprinkle of the United States Court Systems. Investigator Shelby Derrick, Lexington County Sheriff's Department. Candy Kyzer with the Lexington County Sheriff's Department. Tiera Robinson, who works with Lexington County Emergency Management Services -- or Emergency Medical Services. Christopher Carlucci of Lexington EMS. Myra Counts, who works with the Clerk of Court's office in Lexington. Catherine Tack, who is the Lexington County coroner. Dr. Janice Ross, who is with Newberry Pathology. Nikki Rodgers with Lexington County Communication. Leann Cotton. Haley Foster. Cathy Foster. Troy Flood. Vernon Blanding. Savanah Smith. Latar, L-A-T-A-R, Blanding. And Agent Suzanne Cromer of SLED. Olivia Biddle of Lexington County DSS. The initial "B" Steen of Lexington County Sheriff's Department. The initial "M" Singleton of Lexington County Sheriff's Department. Is that "S-A" special agent or is that his initials?

MS. ZMROCZEK: It's initials.

THE COURT: Initial "S", initial "A" Sharpe of the

Lexington County Sheriff's Department. The initial "B" Treaster, T-R-E-A-S-T-E-R, of the Lexington County Sheriff's Department. Kevin Blake with the Lexington County Sheriff's Department. The initial "E" Richardson of the Lexington County Sheriff's Department. And then there's a Brandon Steen. I don't know if that's the same person as B. Steen of the Lexington County Sheriff's Department. The initial "J" Grooms of the Lexington County Sheriff's Department. The initial "N" Burt, B-U-R-T, of the Lexington County Sheriff's Department. Savannah Singleton, who works with the Lexington County Sheriff's Department. Ronita Cotton. Renee Gantt. Freddie Freeman. Cheyenne Adams. Nellie Foster. Lahavia, L-A-H-A-V-I-A, Foster. Bradley Foster. Damian Williams. Tommy Shealy, who's an attorney. And Walt Whitmire, who's an attorney, Jason Turnblad, who's an attorney. Jason Rushton, who is a private investigator with Kneece Investigations, LLC. Christina Metze. Felipe Santana Gaston -- I'm sorry, Felipe Santana, Gaston, South Carolina. Abby Dole {sic}. Sergeant Hare, H-A-R-E, who is a records custodian at the Lexington County Detention Center. Nikki Vega, who works with Lexington County Solicitor's Office. And there's also listed a custodian of records from Lexington Medical Center, but there's no name.

Folks, to the best of your knowledge do any of you

have any connection at all to any of the potential witnesses in this cases? Do you -- are you related by blood or marriage, connected by employment -- currently or formerly connected by employment, have you ever been a neighbor, a friend, attend the same church or civic clubs? If you have any connection whatsoever with any of the potential witnesses in the case, please disclose that to us by standing.

(Potential jurors stand.)

THE COURT: Your name?

POTENTIAL JUROR: I recognize one of the names. I'm not sure if it's the same or --

THE COURT: What's your name?

POTENTIAL JUROR: 144, Janet Popenhagen.

THE COURT: Ms. Popenhagen, 144, which name was it you were curious about?

POTENTIAL JUROR: Candy Kyzer.

THE COURT: All right. And you know someone by that name?

POTENTIAL JUROR: I do. Me and the girl I'm thinking about, her husband, went to high school together. I think I know her. That's her married name now. The same lady.

THE COURT: I know she's worked there a long time. Can you-all give more identifying identification about Ms. Kyzer?

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MS. ZMROCZEK: She's the evidence custodian at Lexington County Sheriff's Department. She's been there for quite some time.

THE COURT: They tell me she's the evidence custodian at Lexington County Sheriff's Department.

POTENTIAL JUROR: I couldn't tell you. I just know the name.

THE COURT: You knew her from high school?

POTENTIAL JUROR: Yeah, if it's the same person. I'll tell you what year I graduated high school if that will help you. She's a year or two younger than I am.

THE COURT: All right. I'm not gonna ask a woman her age, but if you volunteer it.

POTENTIAL JUROR: To be honest, I graduated in '86, and she probably graduated in maybe '87, '88.

THE COURT: Okay. That sounds like the same timeframe. If it is the same person, is there anything at all about your connection with Ms. Kyzer, your experiences with her that might affect your ability to be a fair and impartial juror in the case?

POTENTIAL JUROR: No. Like I said, I just went to high school with her husband. I didn't know she worked for the law.

THE COURT: Okay. Do you have any doubt about your ability to be fair and impartial based on what you've told

me?

POTENTIAL JUROR: I don't think I do. That name's kind of unusual, so I wanted to make sure you knew.

THE COURT: Thank you, ma'am. 144 is eligible to serve.

Let's see. Your name, sir?

POTENTIAL JUROR: William Morris.

THE COURT: Say your name again loudly.

POTENTIAL JUROR: William Morris.

THE COURT: 132?

POTENTIAL JUROR: Yes, sir.

THE COURT: What's your situation, Mr. Morris?

POTENTIAL JUROR: The pathologist for Newberry Hospital, correct?

THE COURT: Yes.

POTENTIAL JUROR: What was his name?

THE COURT: Her name is Dr. Janice -- Dr. Ross.

POTENTIAL JUROR: No.

THE COURT: Do you know anybody by that name?

POTENTIAL JUROR: No. I know a pathologist at Newberry Medical Center. I took a class and he was a guest lecturer.

THE COURT: Okay. Is there anything at all about your experience with that class or the connection with the pathologist at the hospital in Newberry that might affect

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your ability to be fair and impartial?

POTENTIAL JUROR: No, sir.

THE COURT: Any doubt in your mind?

POTENTIAL JUROR: No, sir.

THE COURT: Thank you.

132, Mr. Morris, is eligible to serve.

Your name, please.

POTENTIAL JUROR: Samantha Neimeyer, 138.

THE COURT: All right, Ms. Neimeyer. What's your situation?

POTENTIAL JUROR: I believe you said Abby Doyle and I went to high school with her.

THE COURT: Did I read out Doyle? Did you say Doyle?

POTENTIAL JUROR: I think it's D-O-Y-L-E.

MS. ZMROCZEK: It may be, Your Honor, D-O-Y-L-E.

THE COURT: What number is it?

MS. ZMROCZEK: She's Lexington County Probation, Pardon and Parole.

MS. PATTERSON: 48 on defense's list.

MS. ZMROCZEK: 48.

THE COURT: Okay. I'm going blind apparently. Hold on a second.

MS. ZMROCZEK: 48, Your Honor.

THE COURT: Oh, okay.

How do you know Abby Doyle?

POTENTIAL JUROR: We went to high school together.

THE COURT: All right. So it's not Dole, it's Doyle?

MS. ZMROCZEK: Doyle, Your Honor. Sorry.

THE COURT: How would you describe your connection? Would you say you were friends, acquaintances, just classmates, what?

POTENTIAL JUROR: We knew each other, but we weren't like friends.

THE COURT: Okay. Now I need to ask you some questions and I need you to answer yes or no. If you need to go beyond that, come down front and give me a full explanation, okay?

POTENTIAL JUROR: Yes, sir.

THE COURT: If you're a juror in this case, you have to evaluate the credibility or believability of every witness who testifies. Do you understand that?

POTENTIAL JUROR: Yes, sir.

THE COURT: If Ms. Doyle testifies in this case, is there anything in your experience with her that might affect your ability to be fair and impartial as a juror?

POTENTIAL JUROR: No, sir.

THE COURT: And have you formed in your own mind or have you ever expressed to anyone else an opinion as to whether she -- or a belief that she's a believable person or not?

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POTENTIAL JUROR: No, sir.

THE COURT: Any doubt in your mind about your ability to be fair and impartial?

POTENTIAL JUROR: No, sir.

THE COURT: Thank you.

Ms. Neimeyer, 138, is eligible to serve.

Your name, please?

POTENTIAL JUROR: Larkyn Timmerman, 197.

THE COURT: Ms. Timmerman, is Juror 197. What's your situation, please?

POTENTIAL JUROR: I believe you said Daniel Schirra.

THE COURT: Okay.

POTENTIAL JUROR: He's my cousin's husband.

THE COURT: Does he work for the U.S. Court Systems?

POTENTIAL JUROR: Yes.

THE COURT: Is he expected to testify?

MS. PATTERSON: Yes, sir.

THE COURT: I can sit her aside. Do you-all want to be heard?

MS. PATTERSON: No, sir.

THE COURT: All right. Ms. Timmerman, I'm gonna set you aside on this case, but you stay with us for further instructions, okay?

197's set aside on this trial.

Your name, please?

POTENTIAL JUROR: Dawn Coulter, Juror Number 45. I believe you said Lahavia Foster and I did go to high school with a Lahavia Foster, graduated the same year.

THE COURT: Which Foster?

POTENTIAL JUROR: Lahavia Foster.

THE COURT: Okay. So you went to high school how many years ago with her?

POTENTIAL JUROR: I graduated in '94, so if it's the same person, we graduated the same year.

MS. ZMROCZEK: It is the same person, Your Honor.

THE COURT: All right. Is there anything that you know of about your connection with Ms. Foster that might affect your ability to be fair and impartial in this case?

POTENTIAL JUROR: No, sir. I just remember her from high school, but...

THE COURT: Speak up a little bit.

POTENTIAL JUROR: I don't -- I mean, I haven't seen her since high school.

THE COURT: Okay. What connection -- is she kin to Mr. Foster?

MS. ZMROCZEK: She is the Defendant's sister.

THE COURT: Okay. Do you understand that she's the sister of the Defendant?

POTENTIAL JUROR: (Nods head.)

THE COURT: Speak your answer.

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POTENTIAL JUROR: Yes, sir.

THE COURT: She has to take down what we're saying.

POTENTIAL JUROR: I'm sorry. Yes, sir.

THE COURT: All right. Is there anything about that connection that might affect your ability to be fair and impartial in the case?

POTENTIAL JUROR: I don't think so.

THE COURT: Do you have any doubt?

POTENTIAL JUROR: I don't know. I mean, maybe I should step aside, if possible. I just...

THE COURT: Don't give me a reason.

POTENTIAL JUROR: I'm sorry. Yes, sir.

THE COURT: All right. I'll set you aside on this case.

Juror Number 45 is set aside on this trial. Just stay with us for further instructions.

Anybody else?

All right. I'm gonna have the attorneys stand up and introduce themselves to you beginning with the State.

MS. PATTERSON: Good morning. My name is Rhonda Patterson. I'm an assistant solicitor here in the Eleventh Circuit Solicitor's Office. I will be assisted by Luke Pincelli this week in the trial of this case.

THE COURT: All right. And the defense.

MS. ZMROCZEK: Thank you, Your Honor.

My name is Aimee Zmroczek and I have my own business out of Columbia, but I practice throughout the State. And...

MR. SCHWARTZ: You need me to --

MS. ZMROCZEK: Yes. Certainly.

MR. SCHWARTZ: Good morning. My name is Ryan Schwartz. I practice all over the State and I live in Charleston.

MS. ZMROCZEK: Thank you. And we work together.

THE COURT: Ladies and gentlemen, do any of you have any connection of any kind with any of the attorneys in this case? To the best of your knowledge, have you ever been represented by one of them or anyone with whom they're affiliated? To the best of your knowledge, have you ever been on the opposite side of a case or defended by one of these attorneys or anyone with whom they're affiliated? Are you related to them in any way, friends, attend the same church or civic clubs? If you have any connection whatsoever with any of these attorneys and you need to disclose it to us, please stand.

Okay. Do any of you have any connection currently or formerly, yourself or somebody very close to you, that could -- I'm not gonna define whose close to you because some people have family members who are more distant than other folks, so I'll let you decide how this question

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applies, but if anybody very close to you has ever had any connection with any of these agencies involved in the case or any of the entities or if you yourself have had ever had any connection with them, you need to let us know about it. So that would include the Lexington County Sheriff's Department, the United States Court Systems, Lexington County EMS, the Clerk of Court's office, the coroner's office, Newberry Pathology, the 9-1-1 or communications center, the solicitor's office, the law firms, any connection of any kind, or SLED, any of these agencies or any of these entities. If so, you need to let us know about them.

(Potential jurors stand.)

THE COURT: In the black shirt, your name, sir?

POTENTIAL JUROR: Michael Brown, Juror 26.

THE COURT: Hold on just a second, Mr. Brown.

All right. What's your situation, sir?

POTENTIAL JUROR: Former CO at Lexington County Detention Center and my wife used to work for SLED.

THE COURT: Okay. What's your wife do at Lexington County Family Practice?

POTENTIAL JUROR: She's an MA, medical assistant.

THE COURT: Is that what she did at SLED?

POTENTIAL JUROR: No, she was a code analyst at SLED. She just entered information in computers.

THE COURT: All right. How long ago was it that you left the sheriff's department?

POTENTIAL JUROR: 2003.

THE COURT: Okay. I just wanted to make sure it didn't overlap with this case.

Is there anything at all about your connection with the agencies, the sheriff's department, SLED, or your experience with any of those agencies that might affect your ability to be a fair and impartial juror in this case?

POTENTIAL JUROR: No, Your Honor.

THE COURT: Do you have any doubt in your mind?

POTENTIAL JUROR: No, sir.

THE COURT: Thank you, sir.

Mr. Brown, 26, he's eligible to serve.

Yes, ma'am.

POTENTIAL JUROR: Amber Priddy-Benson, Juror 146.

THE COURT: Hold on just a second, please.

146, Ms. Priddy-Benson, what's your situation, ma'am?

POTENTIAL JUROR: My brother-in-law is Evan Steele. He works for Lexington County Sheriff's Department.

THE COURT: I intend to set her aside. Do you-all want to be heard?

MS. PATTERSON: No, sir.

MS. ZMROCZEK: No objection.

THE COURT: What about the case that backs this one

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up, is it Lexington County Sheriff's Department?

MS. USRY: No, sir, that case is not Lexington County Sheriff's Department.

THE COURT: Mr. Priddy-Benson, I'm gonna set you aside on this case, but I need you to stay for further instructions, okay?

POTENTIAL JUROR: Okay.

THE COURT: That's Number 146.

Your name, sir?

POTENTIAL JUROR: Joshua Watkins, 209.

THE COURT: Hold on just a moment. What's your situation, Mr. Watkins?

POTENTIAL JUROR: I'm not married, but my significant other of eight years, her father is Captain Mark Joyner with Lexington County police department.

THE COURT: Is that the sheriff's office?

MS. PATTERSON: Yes, sir.

THE COURT: Do you-all live together? You live with this person?

POTENTIAL JUROR: No. My significant other, not her father. I don't live with him.

THE COURT: That was a very poorly worded question. I'm sorry. I think I'm gonna set him aside. Do you-all want to be heard?

MS. PATTERSON: No, sir.

MS. ZMROCZEK: No objection.

THE COURT: We'll set you aside on this case. Stay with us for further instructions.

209 stays for the next one.

Is there anything at all about the nature of the allegations in these cases; that is, the allegation of murder, the allegation of possession of a firearm during the commission of a violent crime, anything about the mere allegation that because of something in your background, in your experience, either yourself or somebody very close to you, that the mere allegation of committing such an offense might affect your ability to be a fair and impartial juror in the case? If so, please stand.

Are any of you members of or financial contributors to any organization which has its primary purpose the support of law enforcement or the assistance as far as victims and victims rights? That would include organizations like Citizens Against Violent Crime, the sheriff's association, the trooper's association, Mothers Against Drunk Driving, the State Office of Victim Assistance, any volunteer organizations or shelters for abused or neglected persons. If you've got any connection of any kind, either as a financial contributor, a volunteer or an employee, currently or formerly, with any type of organization that has as its primary purpose the support of law enforcement

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or victims rights, please let us know about it.

I think I've already asked you this question, but I'm gonna expand it a little bit. Have any of you ever worked in the field of law enforcement in any capacity; Federal, state, local or military, currently or formerly, or has anybody very close to you, either a relative or a very close personal friend been employed in law enforcement in any capacity; Federal, state, local or military, currently or formerly? If so, please stand.

(Potential jurors stand.)

THE COURT: Your name, please?

POTENTIAL JUROR: Jennifer Foley, Juror 61.

THE COURT: 51?

POTENTIAL JUROR: 61.

THE COURT: 61. Ms. Foley, 61, what's your situation?

POTENTIAL JUROR: I resigned from the Department of Corrections. My son-in-law works for the Columbia Police Department.

THE COURT: To the best of your knowledge, is there anything at all about those connections or experiences that might affect your ability to be fair and impartial in this case?

POTENTIAL JUROR: No.

THE COURT: Do you have any doubt in your mind?

POTENTIAL JUROR: No.

THE COURT: Thank you. 61, Ms. Foley, is eligible to serve.

Your name, ma'am?

POTENTIAL JUROR: Jennifer Lincoln, 108.

THE COURT: 108, Ms. Lincoln, what's your situation?

POTENTIAL JUROR: My husband used to be in the military. He was a corrections officer for Fort Leavenworth.

THE COURT: Okay. Is there anything at all about your connection with him or any of his experiences that might affect your ability to be fair and impartial in this case?

POTENTIAL JUROR: No.

THE COURT: Any doubt in your mind?

POTENTIAL JUROR: No.

THE COURT: Thank you. 108, Ms. Lincoln, is eligible to serve.

Yes, sir.

POTENTIAL JUROR: Jeff Hutchison, Number 85. I have two close friends; one's a West Columbia deputy, a Lexington County deputy, and now works at Fort Jackson for DOD.

THE COURT: Is there anything at all about your relationship with him or her or the experience of that person that might affect your ability to be a fair and

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impartial juror in this case?

POTENTIAL JUROR: No.

THE COURT: Any doubt in your mind?

POTENTIAL JUROR: No.

THE COURT: Thank you. Number 85, Mr. Hutchison, is eligible to serve.

Yes, sir.

POTENTIAL JUROR: My brother-in-law --

THE COURT: I need your name again. I'm sorry.

POTENTIAL JUROR: I'm sorry. I'm Number 144. The last time I spoke to my brother-in-law he was in law enforcement. That was fifteen years ago.

THE COURT: Okay. Where does he work?

POTENTIAL JUROR: I have no idea.

THE COURT: Anything about that connection or experience that might affect your ability to be a fair and impartial juror in this case?

POTENTIAL JUROR: No.

THE COURT: Any doubt in your mind?

POTENTIAL JUROR: No.

THE COURT: 144, Ms. Popenhagen, is eligible to serve.

Anybody else?

Let me see the attorneys up here.

(Proceedings held at the bench; not reported.)

THE COURT: Ladies and gentlemen, I, like you, will

be hearing the case for the first time and I need you to understand that I will explain to the jury in much more detail later if actually picked on the case, that the judge is not allowed to comment on the facts of the case. So I'm not commenting on the facts of the case, I don't know anything about the case other than what's in the basic file that I've read as far as allegations go, so don't take anything I'm saying as being a statement of fact.

If there is evidence introduced into this trial concerning the use or consumption of alcohol or drugs at or around the time of the alleged incident, is there anything in your background or anything about anyone with whom you are connected in their backgrounds that might affect your ability to be a fair and impartial juror just by mention of the allegation that alcohol or drugs were connected to the incident? If so, please stand.

Are any of you related to each other? Sometimes we'll have husbands and wives and sometimes we'll have parents and children.

If the allegation in this case asserts the use of a gun to kill the decedent or use of a gun that killed the decedent, those are the allegations, is there anything in your belief system, your personal beliefs, anything in your experiences related to the use of guns that might impact your ability to view evidence fairly and impartially? If

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so, please stand.

Have any of you had any formal legal training that you haven't told us about previously? That would include going to law school, having paralegal training, law enforcement training, things like that. If any of you have any legal training, particularly criminal court-related legal training, please let us know about it.

Have any of you ever served as a witness in a trial in a criminal case before? If so, please stand.

All right. I'm going to pose a question that will have multiple parts to it. I always save this one toward the end and what's gonna happen is after I pose the question, we're not gonna talk about it in front of everybody. I'm gonna have each of you come down front and talk about it over on the side, but it's a multiple part question so you need to listen to all of the parts because I'm trying to do this -- I'm trying to merge as many of these proposed questions together as I can.

If any of you or anybody very close to you has ever been accused of committing any crime of violence or if any of you or anybody very close to you has ever been the victim of any crime of violence, I need you to tell me about it, and I need you to tell me about it whether or not formal charges were brought. And that's any crime of violence. If so, please stand. That's you or anybody

very close to you. It could be somebody close to you, not you yourself, either -- on either side, either accused of committing it or the victim of.

(Potential jurors stand.)

THE COURT: Okay. I need you to form a line over here with the bailiff, please, and come down. The lawyers may join me on the sidebar if you wish.

(Proceedings held outside the hearing of the jury panel.)

BAILIFF: 204, Judge.

THE COURT: Okay. Ms. Twymon?

POTENTIAL JUROR: Yes, sir.

THE COURT: Now I need this lady to be able to hear you.

POTENTIAL JUROR: Yes, sir.

THE COURT: Okay. What's your situation?

POTENTIAL JUROR: Years back I was accused of a CDV.

THE COURT: You were -- you were accused of CDV?

POTENTIAL JUROR: Yes.

THE COURT: Okay. You actually told me previously you were convicted of it, right?

POTENTIAL JUROR: Yes. Yes, sir.

THE COURT: Okay. Was that in Lexington County?

POTENTIAL JUROR: Yes, sir.

THE COURT: Was it -- who came out to investigate it,

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was it the sheriff's department or was it the local police or town police?

POTENTIAL JUROR: Sheriff's office.

THE COURT: Okay. Is there anything at all about that experience that affects your ability to be fair and impartial in this case?

POTENTIAL JUROR: No, sir.

THE COURT: Do you have animosity or any ill feelings toward the sheriff's department?

POTENTIAL JUROR: No.

THE COURT: Okay. Are you confident you can be a fair and impartial juror?

POTENTIAL JUROR: Yes, sir.

THE COURT: Thank you. Just have a seat back there.

Ms. Twymon, 204, she's eligible to serve.

BAILIFF: 64, Judge.

THE COURT: Mr. Fox?

POTENTIAL JUROR: Yes, sir.

THE COURT: What's your situation?

POTENTIAL JUROR: May 5, 2010, I was a victim of a DUI. I was hit head-on by a guy that was drunk.

THE COURT: Okay.

POTENTIAL: I spent quite a while in the hospital and he was never prosecuted because he skipped town and probably skipped the country.

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THE COURT: All right. Is there anything about that experience that affects your ability to be fair and impartial in this case?

POTENTIAL JUROR: I don't know. Alcohol ain't my favorite thing if that had any part of it.

THE COURT: My understanding is there's gonna be -- they intend to introduce evidence concerning the use of alcohol and drugs.

POTENTIAL JUROR: Yeah, I can't say that I'm a fan.

THE COURT: You have a doubt about your ability to be fair and impartial?

POTENTIAL JUROR: Kind of, yeah.

THE COURT: All right. I'll set you aside.

All right. Don't discuss any of that with your fellow jurors and just stay with us for further instructions.

64 is set aside on this case.

BAILIFF: 146, Judge.

POTENTIAL JUROR: Did you set me aside?

THE COURT: I did, yes, ma'am, so you don't have to answer.

146 has previously been set aside.

BAILIFF: Number 8, Judge.

THE COURT: Ms. Armstrong?

POTENTIAL JUROR: Yes, sir.

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THE COURT: What's your situation?

POTENTIAL JUROR: My little brother was convicted a few years back of armed robbery of a pizza man -- of a pizza delivery driver. He's currently in -- he served his time, but he's currently in Lexington again for assault.

THE COURT: Okay.

POTENTIAL JUROR: I don't know if that matters, but...

THE COURT: Is there anything about your relationship with him or those experiences that affect your ability to be fair and impartial?

POTENTIAL JUROR: I don't think so, no.

THE COURT: Do you have any doubt in your mind?

POTENTIAL JUROR: No.

THE COURT: Do you know what prosecuting law enforcement agency was involved? Was it --

POTENTIAL JUROR: Lexington County Sheriff's Department.

THE COURT: The fact that they're involved in this, would that affect your ability to be fair and impartial?

POTENTIAL JUROR: No, sir.

THE COURT: So you don't have any animosity toward them or --

POTENTIAL JUROR: I don't have any animosity toward either parties, but... I don't think it would affect --

THE COURT: Do you have any doubt about your ability

to be fair and impartial?

POTENTIAL JUROR: No, sir.

THE COURT: Now if it happened here in Lexington County, you understand the same prosecuting officers would be prosecuting this?

POTENTIAL JUROR: Well, he did it, so.

THE COURT: Okay. But you understand it may not have been either one of these individuals --

POTENTIAL COURT: Correct.

THE COURT: -- but it was somebody with the same office. Is there anything about that that affects your ability to be fair and impartial?

POTENTIAL JUROR: No. No, sir.

THE COURT: All right. Thank you, ma'am.

Juror Number 8, Ms. Armstrong, is eligible to serve.

BAILIFF: Number 85, Judge.

THE COURT: Mr. Hutchison?

POTENTIAL JUROR: Yes, sir.

THE COURT: What's your situation?

POTENTIAL JUROR: My brother served some time for domestic violence on his wife. Ex-wife now.

THE COURT: Okay. Were you involved in that case at all?

POTENTIAL JUROR: No.

THE COURT: Is there anything about that experience

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or your relationship with him that affects your ability to be fair and impartial?

POTENTIAL JUROR: No.

THE COURT: Any doubt in your mind?

POTENTIAL JUROR: No.

THE COURT: Was it in Lexington County?

POTENTIAL JUROR: No, it was in Pittsburgh.

THE COURT: Thank you, sir.

85, Mr. Hutchison, is eligible to serve.

BAILIFF: 219, Judge.

THE COURT: Mr. Wright?

POTENTIAL JUROR: Yes, sir.

THE COURT: All right. What's your situation?

POTENTIAL JUROR: My nephew got -- twenty-five years ago got shot and killed.

THE COURT: Did they prosecute anybody?

POTENTIAL JUROR: They never found enough evidence to convict the guy.

THE COURT: Was that here?

POTENTIAL JUROR: Yeah, Lexington County.

THE COURT: Anything about that experience that affects your ability to be fair and impartial in this case?

POTENTIAL JUROR: No, sir.

THE COURT: Any doubt in your mind?

POTENTIAL JUROR: No doubt.
THE COURT: Thank you.
219, Mr. Wright, is eligible to serve.
BAILIFF: 209, Judge.
THE COURT: I thought I set him aside.
THE CLERK: You did.
THE COURT: 209 has previously been set aside.
BAILIFF: 182, Judge.
THE COURT: Ms. Steele?
POTENTIAL JUROR: Yes.
THE COURT: What's your situation?
POTENTIAL JUROR: My husband's father was shot and killed when my husband was two.
THE COURT: Was it -- what was the background on it?
POTENTIAL JUROR: He was working at a gas station and some guy came in and robbed him and took him in another room and shot him.
THE COURT: Is there anything about your relationship with your husband or anyone in that for that matter that might affect your ability to be fair and impartial?
POTENTIAL JUROR: Yes.
THE COURT: Okay. I'm gonna set you aside on this case, but stay with us for other cases, okay?
POTENTIAL JUROR: Okay.
THE COURT: 182, Ms. Steele, is set aside on this

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case.

BAILIFF: 207, Judge.

THE COURT: Mr. Wackerhagen?

POTENTIAL JUROR: Yes, sir.

THE COURT: What's your situation?

POTENTIAL JUROR: I have a cousin, I haven't seen him in probably fifteen years, in North Carolina who was in prison for murder or second degree murder or something. I'm not exactly sure.

THE COURT: Anything about that relationship or that experience that affects your ability to be fair and impartial?

POTENTIAL JUROR: No, sir.

THE COURT: Any doubt in your mind?

POTENTIAL JUROR: No, sir.

THE COURT: Thank you.

207, Mr. Wackerhagen, is eligible to serve.

(The following proceedings were held in open court.)

THE COURT: Have any of you ever had any kind of -- I'm sorry. This light comes on when it's off. Have any of you ever had any kind of experience with any type of law enforcement, attorney -- excuse me, law enforcement officer or prosecutor's office that might affect your ability to be fair and impartial in this trial? If so, please stand.

Do any of you possess such strong moral or religious beliefs that you -- to deal with passing judgment on another person that might affect your ability to perform your service as a juror and decide the case? If so, please stand.

All right. I've kind of asked this, but I want to make sure. If any of you have ever been exposed in any way to an act of domestic violence, whether it was charged or not, you being a witness to it, the perpetrator of it allegedly or the victim of it and you haven't already told me about it, you need to tell me about that. Anybody?

Have any of you formed or expressed any opinions about these cases? If so, please stand.

Are any of you aware of any interest, bias or prejudice that you might have for or against the State, for or against the Defendant, Mr. Foster, for or against anyone or any entity involved in this case? If so, please stand.

Can each of you give both the State of South Carolina and the Defendant, Mr. Foster, a fair and impartial trial? If you know any reason why you cannot, please stand now.

I think I've covered in general fashion all of the things from the State. Is there anything else from the State?

MS. PATTERSON: No, sir, Your Honor.

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THE COURT: From the defense side, I'm not gonna ask three. I think I covered one, two, four, five, six, seven, eight, nine, ten, eleven. I don't plan to ask twelve. I've asked thirteen and I've asked fourteen.

Anything else from the defense?

MS. ZMROCZEK: Nothing, and we withdraw the ones that you denied.

THE COURT: All right. The jury panel is qualified.

All right. Ladies and gentlemen, the way we draw juries in general sessions court is different than what we do in civil court. What we do in this court is that the clerk -- you-all can do that over here, can't you?

THE CLERK: Yes, sir.

THE COURT: The clerk is gonna instruct the computer to randomly draw names from -- put together a random list of names of those of you who are still eligible to serve on the case. She will then start at the top. If she calls your name, you need to gather your personal belongings, go to the nearest aisle to the center and come the quickest route you can to the center and come straight down front here to this rail in front of me and then turn around and face so that I'm looking straight at your back. So you'll be down there in front of the clerk's desk facing with your back towards the Court.

Are you gonna show them how to do it?

THE DEPUTY: (Demonstrating.)

THE COURT: Perfect.

Don't think you've got to walk all the way around the courtroom. Just come straight down, okay?

Once you get down here, the clerk's gonna ask questions of the State's attorney and the defense attorney, so she won't be talking to you. Some people get confused and think the Clerk's talking to them, she's asking the attorneys, and based on the responses that are given, you will be told either to return to your seat in the courtroom or to have a seat over here in the jury box. That's the reason why you need to bring your personal belongings because your next stop may be over here.

All right. When you-all are ready. The strikes are five and ten?

MS. ZMROCZEK: Yes, Your Honor.

THE COURT: Five and ten?

MS. PATTERSON: Yes, sir.

THE CLERK: How many alternates do you want?

THE COURT: Two.

Can you just draw from the whole list?

THE CLERK: We've got fifty-five or we can cut it down to forty.

THE COURT: Whatever's quickest. I mean, when we run out of names and strikes, we're gonna stop.

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These ladies over here -- I've told you it's different in civil court. It's a little different in civil court.

(Pause in proceedings.)

THE COURT: Are you ready?

THE CLERK: Yes, sir.

THE COURT: Madam Clerk, give us the jury, please.

THE CLERK: Juror Number, 108, Jennifer Lincoln.

(Whereupon, Jennifer Lincoln, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Have a seat in the jury box, please, ma'am.

139, Sue Odom.

(Whereupon, Sue Odom, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Have a seat in the jury box, please.

Juror 169, Amy Simoes.

(Whereupon, Amy Simoes, a white female, was called

forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Have a seat in the jury box, please, ma'am.

THE CLERK: 94, Ann Johnson.

(Whereupon, Ann Johnson, a white female, was called forward.

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please excuse the juror for this trial.

THE COURT: You can have a seat back out there.

Juror 144, Janet Popenhagen.

(Whereupon, Janet Popenhagen, a white female, was called forward.)

MS. ZMROCZEK: I'm sorry, could you repeat the number?

THE CLERK: Juror 144.

MS. ZMROCZEK: Thank you.

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror?

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please swear the juror.

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THE CLERK: Have a seat in the jury box, please, ma'am.

Juror 97, Michael Jones.

(Whereupon, Michael Jones, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: I beg the Court's indulgence, please.

THE COURT: Yes, ma'am.

MS. PATTERSON: Please excuse the juror.

THE CLERK: You can have a seat back out, please.

Juror 190, Collin Sweeny.

(Whereupon, Collin Sweeny, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

86, Frank Iannacone.

(Whereupon, Frank Iannacone, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Please have a seat in the jury box.
132, William Morris.
(Whereupon, William Morris, a white male, was called forward.)
THE CLERK: What say you for the State?
MS. PATTERSON: Please present the juror.
THE CLERK: What say you for the defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
128, Richard Miller.
(Whereupon, Richard Miller, a white male, was called forward.)
THE CLERK: What say you for the State?
MS. PATTERSON: Please present the juror.
THE CLERK: What say you for the defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
24, Camron Brooker.
(Whereupon, Camron Brooker, a black male, was called forward.)
THE CLERK: What say you for the State?
MS. PATTERSON: Please present the juror.
THE CLERK: What say you for the defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Please have a seat in the jury box.

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Number 9, Diane Arnold.

(Whereupon, Diane Arnold, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please swear the juror.

THE CLERK: Please have a seat in the jury box.

79, Terry Hite.

(Whereupon, Terry Hite, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Please excuse this juror.

THE CLERK: You can have a seat back out, please.

134, Karen Murrell.

(Whereupon, Karen Murrell, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. PATTERSON: Please present the juror.

THE CLERK: What say you for the defense?

MS. ZMROCZEK: Can you give me the number one more time? I'm sorry.

THE CLERK: 134.

MS. ZMROCZEK: Thank you. Please swear the juror.
THE CLERK: Please have a seat in the jury Box.
111, Denise Mabus.
(Whereupon, Denise Mabus, a white female, was called forward.)
THE CLERK: What say you for the State?
MS. PATTERSON: Please present the juror.
THE CLERK: What say you for the defense?
MS. ZMROCZEK: Please excuse the juror from this trial.
THE CLERK: You can have a seat back out.
Juror 171, Daniel Skar.
(Whereupon, Daniel Skar, a white male, was called forward.)
THE CLERK: What say you for the State?
MS. PATTERSON: Please present the juror.
THE CLERK: What say you for the defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
THE COURT: All right. We'll draw an alternate. Strikes are one for the State, two for the defense.
THE CLERK: Juror 150, Motlese Rauch.
(Whereupon, Motlese Rauch, a black female, was called forward.)
THE CLERK: What say you for the State?

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MS. PATTERSON: Please present the juror.
THE CLERK: What say you for the defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
THE COURT: Draw another alternate. The strikes are one for the State, two for the defense.
Juror 168, Jennifer Sickle.
THE COURT: Say that number again, Mona.
THE CLERK: 168, Judge.
(Whereupon, Jennifer Sickle, a white female, was called forward.)
THE CLERK: What say you for the State?
MS. PATTERSON: Please present the juror.
THE CLERK: What say you for the defense?
MS. ZMROCZEK: Please swear the juror.
THE CLERK: Please have a seat in the jury box.
THE COURT: Are there any matters to take up prior to the jury being sworn, including composition of the jury from the State?
MS. PATTERSON: Nothing from the State.
THE COURT: From the defense?
MS. ZMROCZEK: Nothing from the defense.
THE COURT: Thank you very much.
May I see the attorneys up here again, please?
(Proceedings held at the bench; not reported.)

THE COURT: All right. Ladies and gentlemen, normally what would happen is I would send you out of the courtroom and send you to the jury room, but I don't know if we've got a jury from over here, so. There's been -- I love this courthouse, I worked here many, many years, and it's very -- functionally, it works great, it's just we have a new one. So I'm gonna go ahead and give the instructions I normally give the jury, so you folks are gonna have to wait a little while out there.

Now what's gonna happen is that I'm gonna let you folks leave after I finish these instructions and when you come back you're gonna come to the new building across the street and -- we're gonna be in 3-C?

THE CLERK: Yes, sir.

THE COURT: So the bailiffs should be there and you've got your red buttons on. I know that's not an accessory you would choose for your outfit, but have your red buttons on. When you go through the security kiosk, when you get down there, if there's any questions, tell them you're a juror on the third floor. Now they've got a case going on on the fourth floor. You're not part of that. You're on the third floor. My name's Keesley. Judge Keesley's courtroom. The bailiffs will send you straight back to a jury room behind the third floor courtroom and so just come on in. They'll direct you up.

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There will be somebody there for you.

I don't know exactly when to tell you to be there. I think it's gonna be around 10:00, but I'm not sure. So what I'm gonna have you do is you were given a card. Do you still have that card?

Did you-all tell them about calling in?

THE CLERK: Yes, sir.

THE COURT: You know, on one side of it there's a number to call in. Are they calling in on that death penalty case?

THE CLERK: No, sir.

THE COURT: You need to call that number tonight after six and follow the instructions and if we run long this afternoon, which we may, I may not finish stuff. I actually had scheduled an unrelated matter, a completely unrelated matter, months ago that just happened to fall on this date long before I knew what we'd be doing this week. So I've got to do that this afternoon. Hopefully I can get through that in about thirty minutes and then I'll start on this case.

So call that number, follow the instructions, come to the new building, go up to the third floor, and wait until we bring you in.

Now do not discuss this case in any way among yourselves. Don't talk about the people involved, don't

talk about the type of case it's alleged to be, don't talk about this case in any way whatsoever until the very end of the trial when I tell you that you can start your deliberations. You won't have any idea when that is. Don't discuss this case with family members, friends or anybody else until the week is over and you've been discharged from the jury.

Now it's okay to tell a spouse, an employer or whoever you have to tell that you're on a jury, but don't tell them what the case is about, don't tell them who's in it, don't talk about the case in any way whatsoever.

Don't do any independent investigation. In the old days when I worked over here, I would tell people don't go to the law library and look up law. Well, nowadays you probably are carrying in your pocket or pocketbook a device that you can look up all kinds of law. The thing is a little knowledge is a dangerous thing. The reason I'm here is to put all those pieces of the puzzle together and at the end of the trial tell the jury the law. And so you may read a perfectly valid principle of law, but you may not understand there's three caveats and two exceptions to it, so don't look up law.

Don't look up names. Don't look up any kind of name search, word search, anything that might relate to this case in any way. If you're a person who uses social media,

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that's great, but don't post anything about your jury service or anybody connected to the court until you're through with your jury service. So if you post something on one of the Internet sites, that's worse than going on the front steps of the courthouse and screaming it out, so don't post anything until you're through with jury duty.

Now if you have a true emergency that arises that prevents you from being here, use your common sense, make sure it's a true emergency, but if you can't be here, have somebody call the clerk's office and tell them what's going on. You saw we go through a very methodical process of choosing a jury that's fair and impartial and I can't just pick one of the alternates. I've got to find out what's going on with you and where you are and whether we can get you up here or not. So if you have a true emergency, please have somebody let us know what's going on.

I'll try to keep you abreast as the case proceeds as to how things are developing and give you information about how to plan your week. I expect the case is gonna take most of the week, so I don't know if you'll get it Thursday or you'll get it Friday, but it'll probably take most of the week and I'll -- as things go along, I'll update you.

Any questions before you leave? Everybody got the number?

All right. So you -- how will you-all list the

message? State versus Foster or just --

THE CLERK: Whichever way would be easier.

THE COURT: Can you-all remember the Foster case? We'll just tell them to put on there State versus Foster. They may say my name.

Do you put that on there or does Hope do it?

THE CLERK: I can do it.

THE COURT: Do you-all still do the Internet thing?

THE CLERK: Yes, sir. We can update that, too.

THE COURT: All right. Some of you may look it up on the Internet.

Okay. Any questions?

Folks, I'll look to see you sometime in the morning and call and make sure the exact time. Hopefully we'll get you in about ten and get started. Thank you so much. Follow the bailiff.

(Whereupon, the jury was excused at 12:05 PM.)

THE COURT: Ladies and gentlemen, if you were not selected on this case, I do not know if we will be bringing you back or not. It's too early in the week for me to turn you loose though because they have a backup case. So if this case were to fall apart for some reason unexpected to us now, we would go to the next case, and then maybe they've got one to back that one up. The solicitor's office, the prosecutor's office, generally

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puts the list together in conjunction with the chief judge for administrative purposes and for the first time in many, many years I'm not the chief judge for administrative purposes, so Judge Addy and -- and the solicitor's office will get together a list and they'll go down the list and call these cases.

So what I need you to do is to call that number tonight and follow the instructions for the balance of the panel not selected on the jury. The balance of the panel not selected on the jury. That's who you are, okay? As soon as I know that I don't need you, I promise you I'll tell the clerk's office to cut you loose.

If you do not come back in, you have an exemption for jury service at the state court level for 2019, '20 and '21, so the earliest you could be called back for civil or criminal state court would be 2022. That's not a disqualification, you can serve if you want to, but you don't have to serve. Just try to remember when you served. It was around Memorial Day of this year, okay?

I can't really discuss much else with you because I don't know if you're going to be drawn on a jury not, but I do want to thank you very much for your service. And just tell you that I promise you I know -- I know you've got other things to do.

All right. If you are called back, we will probably

narrow the pool down to a number that will fit in the courtroom over there. That will be my plan if we can do it and not come back over here because it disrupts things. All these security folks and everybody is from over there. So if you are called back in, you probably are gonna be reporting to the new building, okay? It's ten years old, but it's still new to us.

All right. So thank you so much. You're free to go.

(Whereupon, the jury panel was excused for the day at 12:08 PM.)

THE COURT: All right. I was gonna put on the record about amending the indictments, but we've already done that.

Okay. If you-all want to try to start something sooner, we can try. I don't know how much we'll be able to get in. We'll have to stop around one. Well, that won't work. You-all be back -- you-all be back at around 2:15 just in case that other thing finishes a little early, okay?

MS. ZMROCZEK: I'm sorry, and that's 3-C?

THE COURT: 3-C.

Is Mr. Foster still in custody?

MS. ZMROCZEK: Yes, sir.

THE COURT: All right. So you-all take care of that.

THE DEPUTY: Yes, sir.

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THE COURT: All right. This trial's in recess until 2:15 at the earliest.

(Whereupon, a luncheon recess was taken at 12:10 PM.)

(Back on the record at 2:18 PM.)

THE COURT: All right. Is there a castle doctrine hearing we need to do first?

MS. ZMROCZEK: I'm sorry?

THE COURT: Is there a castle doctrine hearing first or stand your ground? Which is it?

MS. ZMROCZEK: We can. Yeah, we can do it that way. That's -- whichever way the Court prefers.

THE COURT: Well, what --

MS. ZMROCZEK: And we're gonna withdraw our Jackson v. Denno, Your Honor. We don't contest the voluntariness of his statement. Do you have the list in front of you?

THE COURT: No.

MS. ZMROCZEK: Oh, okay. We can -- we can do the castle doctrine first. However the Court would like to proceed.

MS. PATTERSON: Your Honor, with regards to the Jackson v. Denno, are you withdrawing -- because he made two statements. One of them he made to one officer, which we will -- we would suggest that wasn't a custodial interrogation taking place, and then he made another statement to the officer after he was Mirandized, to

another officer, so are you stipulating to both?

MS. ZMROCZEK: Yes.

MS. PATTERSON: Okay. So then we won't need that hearing.

THE COURT: I'll be happy to hold the hearing -- my preference is to hold it if he's in custody, but my --

MS. ZMROCZEK: Just to cover our bases.

THE COURT: Well, the reason I'm suggesting that we do the castle doctrine hearing first is because if I rule in his favor, then it stops everything.

MS. ZMROCZEK: Then it stops everything else. Exactly. And there's, I guess, some issues -- there's one issue that I think will affect your decision on the castle doctrine hearing and so -- and it's not the statement, but it's -- so Mr. Foster was arrested on October 24th of 2015 --

THE COURT: Okay.

MS. ZMROCZEK: -- and he was charged with CDV high and aggravated nature. Your Honor, that charge has never been -- it's never been addressed, it's never been dealt with. He -- the officer was let go from Lexington County and is no longer there and I have some paperwork from the alleged victim who was continuously trying to drop the case. She gave the victim statement to the attorney at the time, which was Tommy Shealy, and then when I received

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the file, I received those papers. And -- so, Your Honor, the issue is she had been trying for months and months and now years to get that charge dismissed, but there was a bond -- you know, the typical bond conditions that they put on CDV high and aggravated with no contact, but she -- since she couldn't get the courts or anybody to lift that, she just let him go back to the house.

And so I bring that up because the issue is whether this is gonna fall under Subsection A or Subsection C of the act because he was at his house and now there's a question of whether the son -- and just because they share the same first name, Your Honor, I will throughout the hearing and throughout the trial refer to the son as "Will" because that's the name that he went by. But so Will didn't have a room there, he didn't live there, but he was the son, so the question is if it's a family member, if it falls under Subsection A, then that -- that bond condition I don't think even matters. If it falls under Subsection C, then I think we have to address the bond condition about if you're in a -- you have a right to be in a place that you have to be --

THE COURT: Well, I think you-all just put up the evidence and then I'll make the ruling on it.

MS. ZMROCZEK: Okay.

THE COURT: I mean, I don't know how else to -- I

can't retroactively lift bond conditions.

MS. ZMROCZEK: Certainly. Certainly.

Okay. And, Your Honor -- and I'm gonna -- I'm gonna go grab that witness. In the meantime, he's gonna -- we'll start the hearing by putting Mr. Foster up on the stand.

THE COURT: Okay.

(Whereupon, Heirbrane Heava Foster was duly sworn by the Court.)

THE COURT: All right. Mr. Foster, have a seat. You're under oath.

MR. SCHWARTZ: May it please the Court, Your Honor?

THE COURT: Yes, sir.

HEIRBRANE H. FOSTER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MR. SCHWARTZ:

Q. Heirbrane, why don't you say your name and then spell it slowly because it's difficult.

A. Heirbrane Heava Foster. H-E-I-R-B-R-A-N-E. Heava, H-E-A-V-A. Foster, F-O-S-T-E-R.

Q. And, Heirbrane, tell me a little bit about your background. How old are you?

A. 58. I just turned 58, [redacted].

Q. Happy birthday. I meant to tell you that.

A. Thank you.

Q. Where are you from?
A. Right here in Lexington.
Q. Okay. You were bore and raised?
A. Yes, sir.
Q. And where did you go to school?
A. Airport High School.
Q. Did you graduate?
A. Yes, sir.
Q. Okay. And where do you -- well, besides the detention center, where did you live at the time of this incident?
A. At [redacted] Oak Glenn in Gaston.
Q. Okay. How long did you live there?
A. About three years.
Q. Okay. Who did you live at [redacted] Oak Glenn with?
A. With my wife Cathy, Haley, and Bradley.
Q. Okay. What did you do for a living all this time?
A. I was a construction worker. Owned my own business.
Q. How long did you do that?
A. I did it for about twenty some odd years.
Q. Okay. Why did you stop?
A. I had a 22-pound sledgehammer fall off a 18-foot wall and hit me in the center of the back.
Q. Okay. And that -- you have health issues because of that?
A. Yes, sir.

Q. And what are those health issues?
A. Degenerative disk, lumbar disease, sciatica, high blood pressure, and a number of other issues.
Q. Okay. What kind of medications did you take prior to being incarcerated three years?
A. Blood pressure, cholesterol medicine, pain medication. Different things.
Q. Okay. What kind of health issues have you been dealing with since you've been incarcerated?
A. Depression.
Q. Stemming from what?
A. Stemming from this incident.
Q. Okay. Have you had thoughts of suicide since this happened?
A. Yes, sir.
Q. Okay. I want to talk a little bit about your family. And they're here in the courtroom, some of them, right?
A. Yes, sir.
Q. Okay. Can you tell us about your parents?
A. Beautiful people. Beautiful people.
Q. Okay. What about your -- your mother, Nellie? I met her the other day. Tell me about her.
A. She's 78. Loves me with everything she's got. She's -- she'll give me the world. She'll give me the shirt off her back if she could.

Q. Okay. What about your father?
A. My father loved me. He was a beautiful man.
MS. PATTERSON: Objection, Your Honor. I don't see the relevance of this line of questioning, especially for this hearing.
THE COURT: Where are you going with this?
MR. SCHWARTZ: Your Honor, I'm gonna lay a foundation for the -- the familial relationship and to -- then I'm gonna lead into the relationship with his son, and they're gonna testify as to the relationship with their son, which is why we're here today. That they were at the house, they had a strong family unit, they spent a lot of time together. Not just he and his kids, but his entire extended family.
THE COURT: Overruled. Go ahead.
BY MR. SCHWARTZ:
Q. Your father passed away. Do you have siblings?
A. Yes, sir.
Q. Okay. And do you see them regularly?
A. Not that regular, but pretty much we stay in contact with each other.
Q. Okay. Would you say that you have a close relationship with your family?
A. Yes, sir.
Q. All right. And you -- you mentioned you were married

to Cathy Foster?
A. Yes, sir.
Q. How long were you-all married?
A. Twenty-four, twenty-five years.
Q. Okay. When did you-all get divorced?
A. About a year and a half ago.
Q. Why was that?
A. Due to this issue here. It's so painful.
Q. Okay. Do you still talk with Cathy?
A. Yes, sir.
Q. Okay. How many children did you and Cathy have?
A. Three.
Q. All right. What were their names and their ages?
A. Well, Will Heirbrane Foster, 25; Haley Nicole Foster, 24, and Bradley Jamal Foster, 20.
Q. Okay. What kind of relationship did you have with your children?
A. Great.
Q. What was so great about it?
A. We were a family. We were a unit.
Q. Okay. Now you know the reason that we're here today is because of Will, right?
A. Yes, sir.
Q. And I want to focus on -- on him. Is he your oldest son?

A. Yes, sir.
Q. Okay. And what was Will like as a young child?
A. Outgoing. Outgoing. He played basket -- baseball, played football. A beautiful child.
Q. Okay. How would you describe Will as a young adult?
A. Looking back now, troubled.
Q. Okay. What was Will's relationship with the other family members in the house?
A. He loved all of them.
Q. He loved them?
A. Yes, sir.
Q. How did you try to protect Will when he was growing up? There were some instances, right?
A. Quite a few. Quite a few.
Q. Okay. Was there an instance about some gang members who tried to jump him and you helped him out?
A. Yes, sir.
Q. Well, do you want to talk about that?
A. Once in Glenn Village where we lived, [redacted] Oak Glenn, I had Will helping me build this two-car garage and we had got through for the day, getting ready to get paid, and these six guys -- I looked up, these six guys had surrounded Will and -- saying they were gonna beat him, and so I ran to him and I pushed him behind me and told them that no, they wasn't gonna do that because the first thing

they'd have to do was have to get to me.
Q. Okay. So you described him as troubled, but you still loved him?
A. Oh, of course.
Q. Okay. Did Will have a girlfriend?
A. Yes, sir.
Q. Who was that?
A. Leann Cotton.
Q. And how do you know Leann Cotton?
A. She lived two houses up from us.
Q. Is that how they met --
A. (Nods head.)
Q. -- Will and Leann?
A. Yes.
Q. Okay. How would you describe that relationship between Will and Leann?
A. Toxic.
Q. How so?
A. It was always -- it was always something. Always something.
Q. Were they -- were they fighting or were they yelling or what, you know --
A. They were fighting, he was fighting back and forth with her ex-boyfriends or boyfriends or babies' daddies or her.

Q. And you were able to witness that because you lived two doors down or how do you know about these?
A. Because it carried over into mine.
Q. Okay. Did Will have any substance abuse problems?
A. Alcohol, weed I would say.
Q. Okay. Let's talk about the alcohol. There's two types of Will, right?
A. Yes, sir.
Q. Or two faces of Will, right, when he was sober and when he was drinking?
A. Yes, sir.
Q. What was he like when he was sober?
A. Patient. Patient. He was Heirbrane. That's the difference between Heirbrane and Will.
Q. Okay.
A. Heirbrane is sober, Will is out there.
Q. Okay. And when you mean "out there", what does that mean?
A. Reckless.
Q. When he's drinking or when he's --
A. When he's drinking.
Q. Okay. When did Will start drinking heavily?
A. I would say in the year 2006 or '07 when he was playing football.
Q. Okay. Describe for His Honor what Will was like when

he started drinking.
A. It was uncontrollable.
Q. Uncontrollable?
A. Yeah.
Q. How so?
A. You could ask him something and he -- sometimes he'd act like he cared and the majority of the time it was like it was in one ear and out the other one. It's like he had a different -- a different agenda than everybody else.
Q. Okay. What would Will drink? What was his drink of choice?
A. Gin.
Q. Gin?
A. Yes, sir.
Q. When Will would drink, would he drink a little bit or a lot or -- I mean, how much?
A. Until he couldn't get no more.
Q. Until he couldn't get anymore?
A. Yes, sir.
Q. How would he act when he was drunk? Was he aggressive?
A. Very.
Q. How so?
A. You couldn't tell him -- you couldn't -- nobody could tell him nothing and you'd -- he did what Will wanted to

do. He didn't have to just control everything, he had to -- it's like he had to force things.

Q. Okay. And by force things, what do you mean?

A. He had to make people do things. He had to force people to do things.

Q. Okay. Would you say that the older he got the worse he got or the better in terms of his drinking and behavior?

A. His drinking and behavior got worse.

Q. It got worse?

A. Got worser.

Q. Okay. Is it also true that Will was using drugs?

A. As far as I know.

Q. Okay. What do you -- what do you have personal knowledge of the drugs that Will was using?

A. Marijuana.

Q. Weed?

A. (Nods head.)

Q. Okay. Did you or your family learn how to react to him or deal with him when he was drunk or high?

A. We tried.

Q. What did you-all try to do?

A. We tried to talk to him. We tried to give him love --

Q. Okay.

A. -- but we ended up in fights or us walking off or us catering to him.

Q. Okay. Did you or your family ever have to call the police on Will for his behavior when he was drunk?
A. Yes, sir.
Q. Can you give an estimate of how many times?
A. Over twenty.
Q. Okay. Do you know of any other people who had called the police on Will when he was drunk?
A. Leann.
Q. His girlfriend?
A. Uh-huh.
Q. What about people in the neighborhood?
A. People in the neighborhood, his prior girlfriend to Leann.
Q. Okay. Had Will threatened you or your family prior to May 10, 2016?
A. Yes, sir, quite a few times.
Q. Had Will assaulted you or family members or neighbors prior to May 10, 2016?
A. Yes, sir.
Q. Has Will ever put -- excuse me. Has Will ever put his hands on you?
A. Yes, sir.
Q. What has he done --
A. Choked --
Q. -- prior to this incident?

A. Choked me, spit on me, hit me in the face with a pistol, stabbed --
Q. Pistol-whipped you?
A. Yeah. Stabbed me in the hand with -- with a pick.
Q. With a pick?
A. A steel hair pick.
Q. Okay. Did he ever assault any of the other family members, his brother or sister?
A. His sister, he choked out. He about choked her out.
Q. Okay. What about -- what about Bradley, his brother?
A. He -- they fought constantly.
Q. Okay. Did you call the police on Will every time that he was out of control or no?
A. No.
Q. As his father, did you have the knowledge of his propensity for violence?
A. Yeah.
Q. I mean, did you know about his legal issues as well?
A. Yeah.
Q. Okay. Is that because you were the one that most of the time called the police on him?
A. I was the one that called the police and I was the one that most of the time paid to try to get him out of whatever he got into.
Q. Okay. So you knew that Will had a history of criminal

and violent acts?
A. Yes, sir.
Q. All right. I want to talk to you a little bit about his history. Some of his history is as you as the victim, right?
A. Yes, sir.
Q. Do you recall back in December of 2007 when he ran away from home?
A. Yes, sir.
Q. And you called the police?
A. Yes, sir.
Q. And why did you call the police?
A. I was trying to protect him because he was on probation and he was supposed to -- he was supposed be in the house at a certain time, so I went and looked for him trying to find him and couldn't find him and I was worried about him.
Q. You cared about him?
A. Yes, sir.
Q. Okay. What about in October of 2007? He had taken some money from some family members?
MS. PATTERSON: Objection, Your Honor. Leading.
MR. SCHWARTZ: I'm gonna ask him about it, what he knows about it.
THE COURT: You can't suggest the answer. Rephrase

your question.
BY MR. SCHWARTZ:
Q. Do you recall when Will took money from family members?
A. Yes, sir, quite a few times.
Q. Talk about that instance and what happened.
A. Well, when he was around fourteen or so, he took Haley and Bradley's money, which they had been saving, and I finally caught up with him and he cursed me and threw a chair at me and told me to get out from where he was at and don't come up there no more.
Q. Did he use a weapon at that time as well?
A. I want to say it was a -- I want to say it was a stick or something he threw at me.
Q. Okay. Do you recall July of 2008 when Will was arrested for tobacco and having a knife on him?
A. When -- I think that's when he got in the fight with the policeman, trying to attack the police or something.
Q. Okay. Do you recall what happened there?
A. Not in details I don't, sir, but I know -- I mean, I remember he got arrested for the -- with the alcohol and tobacco and had a knife on him and trying to fight the police in South Congaree.
Q. Okay. Back in December of 2009, you were actually the victim and Will got arrested for assaulting you. Do

you recall that?
A. There's so many times that Will done attacked me, sir, and I done called the police.
Q. Okay.
A. Now you'd have to give me a little more than just, you know, that time, 2009 or something.
Q. Okay. Do you recall that -- a time where he had after the fight went to his grandmother's to cool off?
A. Oh, yeah. Yeah.
Q. Talk about that.
A. Well, after he had done what he done, after he done attacked me and all that, then he -- then he said he was sorry and went to his grand-mama's house to cool off.
Q. Did you call the police then?
A. Yes, sir, I did.
Q. And what happened?
A. Nothing. I begged them to do something, but they couldn't.
Q. You begged them to do something like what?
A. To arrest him, to talk to him, and not -- I had Sergeant Jones of South Congaree talk to him, sit him in the police car, ride him around, take him to the -- to the department and sit him down there quite a few times.
Q. Did any of that seem to help?
A. No, sir.

Q. Okay. Do you recall in 2009 when Will and Bradley burglarized some houses?
A. Yeah.
Q. What happened with that?
A. Well, they stole jewelry, laptops, guns.
Q. Did he get arrested?
A. I think he did.
Q. Okay. What about in 2010? Do you remember an incident with a Brianna Pickett?
A. Yes, sir.
Q. What was that?
A. Will was -- let me see. That was when he was choking and slinging Brianna down. She was at my grandmother's house and Brianna was trying to protect Bradley and Will jumped on Brianna and told Brianna that she was his girlfriend and then it went from one thing to another.
Q. Well, what does that mean, one thing to another? Because the judge doesn't know what that means.
A. Oh, I'm -- I apologize. I apologize. Well, we was about to call the police and we begged -- actually we begged Brianna not to call the police so that Will wouldn't go back to jail because he was out on probation then.
Q. Was there an iron involved in that fight?
A. Yeah, he threw the iron at her.
Q. Did he hit her?

A. No, sir.
Q. Okay. How many times have you called the police for Will not leaving your home when you've asked him to?
A. Which year or when?
Q. 2015, do you recall that?
A. 2015? Maybe, six, seven times.
Q. Okay. Do you recall an incident when -- this was back in June of '15 when your wife Cathy called the police on Will.
A. To get him to leave the house --
Q. Yeah.
A. -- and he wouldn't leave the house? Yeah, 'cause he was -- he was trying to attack me again.
Q. Okay. Do you recall in July -- or, excuse me, August of '15, your neighbor Anita, when she called the police?
A. She called the police because they were -- because they were -- because they were fighting on Will.
Q. Who was "they"?
A. Leann. Leann and Will was fighting.
Q. Okay. Do you recall back in -- a couple of days later on August 12th of 2015 when a group of people came up to you with a gun?
A. Yeah.
Q. What happened then?
A. It's the Blood gang. They told me Will couldn't wear

-- he couldn't wear a white bandana with black in it around their neighborhood because that was saying that he's a Folk.

Q. A Folk. You're referencing a gang?

A. Yeah, another gang member of -- a different gang member.

Q. Okay.

A. So I told them that they didn't buy Will's clothes, so they can't tell me what -- what Will could wear.

Q. Okay. What about a couple of months later in 2015, in October? Did you have two gang members point a gun at you?

A. Yeah, that was because of the same - well, because of the same thing because Will was riding with this guy who was a Folk and the guy dropped Will off to the house, so -- so this one guy knocked on the door and asked me where Will was and he was brandishing a gun. I called the police. He was brandishing a gun and told me that they was gonna kill Will because Will's not supposed to be having no Folks around there, so then the guy -- so then they had about eleven or twelve --

MS. PATTERSON: Objection, Your Honor. This has nothing to -- Will did not do this. He's talking about something some other people did.

MR. SCHWARTZ: This is -- Your Honor, this is related

to Will and his propensity for violence. He's a gang member. He's in a gang. He's being threatened by gang members. It's showing that he associates with violent people and he is violent and I think it absolutely is relevant.

THE COURT: The objection's sustained. If you want to make your proffer, go ahead and make your proffer.

MR. SCHWARTZ: I'll just move on.

BY MR. SCHWARTZ:

Q. Do you recall when Will called the police back in November of 2015 on himself?

A. Not really.

Q. You don't recall him asking for help?

A. Yeah.

Q. Okay. What happened then?

A. He said he was -- he said he was drunk. He said he was gonna hurt somebody if they didn't -- if somebody didn't get out there then, he was gonna hurt somebody.

Q. Who was he around then?

A. Me, Haley, Cathy and Bradley.

Q. Your family?

A. Yes, sir.

Q. Okay. Did he have a weapon on him when the police came?

A. A knife.

Q. What's that?
A. A knife.
Q. A knife?
A. (Nods head.)
Q. Do you remember an incident with a guy named Rodney Mack?
A. Yes, sir.
Q. What was that incident?
A. Rodney said Will and somebody -- said Will took his money, which is Rodney's money, and another guy's money.
MS. PATTERSON: Objection. Hearsay.
MR. SCHWARTZ: He has personal knowledge of it.
THE WITNESS: Rodney --
MR. SCHWARTZ: Hold on.
THE WITNESS: Oh, I'm sorry.
THE COURT: Sir?
MR. SCHWARTZ: He's got personal knowledge of this incident. He was involved in this incident.
THE COURT: Well, lay the foundation so I know that.
BY MR. SCHWARTZ:
Q. How do you know about this incident with Mr. Mack?
A. I was there.
MR. SCHWARTZ: May I continue, Your Honor?
THE COURT: Yes.
BY MR. SCHWARTZ:

Q. So you were there, so what happened?
A. I had to keep Will -- I had to break Rod -- Rodney and Will up because Rodney wanted to jump on Will for jumping on him and taking his money.
Q. So Will had, like you said, jumped on Rodney and taken his money?
A. Yes, sir.
Q. Okay. What about in March of 2016? Do you recall Will threatening his brother with a knife?
A. Yes, sir.
Q. What happened then?
A. A long story. How do I start? First, Will -- I broke Will and one of his girlfriends up when Will was choking her, so Will got up and Bradley was trying to stop it, stop us from fighting, so Will got up and got a butcher knife, got a set of brass knuckles, and was going towards Bradley, which is my younger son. In the meantime, I grabbed a stick and hit him on the arm and hit him on the -- in the head. He went to the hospital and got twenty -- I think about thirteen staples in his head.
Q. And he was going after who?
A. Bradley, my youngest.
Q. With a knife?
A. With a knife and the brass knuckles.
Q. Okay. Was Will arrested?

A. No.
Q. Okay. What about an incident with -- in 2016 with a stolen truck?
A. It was on national television, sir.
Q. Okay. What happened?
A. He got arrested for possession of Tramadol, crack cocaine.
Q. Okay. Was he in a vehicle as well?
A. Supposedly a stolen vehicle.
Q. Okay. Did he have a weapon on him when he was arrested?
A. A knife.
Q. A knife. Did you bond him out?
A. No, sir.
Q. Okay. Who bonded Will out on that -- on those charges?
A. My daughter.
Q. Haley?
A. Yes, sir.
Q. Did that cause a problem at the house?
A. Yes, sir.
Q. What was that?
A. I didn't -- I didn't want her to bond him out then because he was -- I figured if he stayed in there for a couple weeks or so that that would remind him -- that would

bring back memories and he wouldn't want to stay there and he would slow down, but instead she had done done it.

Q. Okay. Did that cause issues moving forward after that incident?

A. With me and my daughter?

Q. With you and your daughter and your son.

A. They just -- they just bonded together closer.

Q. Okay. Now you had mentioned that you didn't call the police every time on Will, right?

A. Yes, sir.

Q. How did you deal with Will if you didn't call the police? How did you get him to stop?

A. When he was sober, he would stop. When he was sober, it wasn't no big problem. When he was drunk, then you could -- his momma could talk to him sometimes and calm him down.

Q. Okay. Do you have personal knowledge of Will going to prison at any time for any of these offenses?

A. Yes, sir.

Q. How long did he do in prison?

A. He did -- as a minor, he did some time. I can't -- I can't say how much, but then after that then he did two years at Lexington County and then he did three years at Turbeville and that's when he got out in '15, I think.

Q. Late -- late 2015?

A. Yes, sir.
Q. Okay. Would you say that his drinking and -- would you say his drinking got worse after he got out of prison?
A. Yeah.
Q. Yes?
A. Yes. In other words, before he went in there and then when he come out did he get worse?
Q. Yes.
A. Yeah.
Q. Okay. Did he have pending charges when he got -- when he got out from -- let me rephrase that.
A. He was on parole.
Q. He was on parole?
A. Yes, sir.
Q. Okay. What did you notice about Will's criminal activity and -- and violence the older he got?
A. He got smarter he thought.
Q. Okay. What you do mean he got smarter?
A. He did more of it.
Q. He did more of it?
THE COURT: He did what?
THE WITNESS: He did more of it.
BY MR. SCHWARTZ:
Q. And by -- more of what? What does that mean?
A. The stealing. Just the stealing. He did more of the

stealing and then just -- the fighting. He wanted to run -- he wanted to run everything; the house, the -- Leann's house, the streets. He wanted to run everything.

Q. Okay. I want to bring you back to this day when all this happened, okay? And I know it's emotional, so if you need to take your time, take your time. What happened the night before this incident?

A. The night before, Bradley, my younger son's parole -- probation officer did a night visit, and Will was drunk. Will went outside from -- from two houses up at the time because they had -- about three police cars came up and nobody didn't know what they were for, so Will run up to the police cars and told them what were they doing here, he was raging and saying get out from around our house now when he was staying two houses up. So come to find out it was Bradley's probation agent and afterwards they finally left, Will come in the house and said he handled that, he handled that. He was drunk.

Q. Okay. What was his attitude towards the police --

A. Hostile.

Q. -- that night? Hostile?

A. Hostile.

Q. Because he had been drinking?

A. Yes, sir.

Q. Okay.

A. And he -- he hated police.
Q. He hated police?
A. He made that clear.
Q. Okay. Did he get arrested that night?
A. No, sir.
Q. Okay. Had you put Will on trespass notice to your house before?
A. Yes, sir.
Q. You had?
A. (Nods head.)
Q. Okay. All right. Let's go back to that morning. What time did you wake up that morning?
A. Around 9:30.
Q. Okay. And what did you do after you -- after you woke up?
A. I called my mother and asked my -- I called my mother and asked her was she still gonna take me to the grocery store and asked her whether she was gonna take my daughter to work.
Q. Okay. You were -- who did you go to the grocery store with?
A. My mother.
Q. All right. About what time did you get to the grocery store?
A. I would say eleven. Something like 11:00, 11:15.

Q. Okay. And what did you get at the grocery store?
A. Some of everything because the food stamps came and we do our monthly shopping at once -- at that once a month because we don't have transportation and I can't have my mother going back and forth.
Q. So you buy everything at once because that's when you have the money and you have a ride?
A. Yes, sir.
Q. Okay. What time did you get back to your house?
A. Around 2:30. In between 2:30 and 3:15 I would say.
Q. Okay. What was the issue with Will using your grill?
A. On the way from the grocery store Will called -- Will called I want to say my mother's phone, it may have been my phone, but he called the phone and asked could he use the grill and I told him yeah, sure, he could use it, but to make sure and save me something to eat or keep some coal because I wanted to put something on the grill also.
Q. Okay. And so you told him that he could use it?
A. Yes, sir.
Q. Okay. And what was the issue with the grill when you got back to the house from grocery shopping?
A. The grill was in the -- the grill was on the side of the carport. In other words, it was in another place rather than where it normally would have been and it was sideways. So I didn't think nothing much about it, but

that's where the grill was at.
Q. Was that at your house or Will's house?
A. My house.
Q. Okay. What did you learn about the grill when you had gotten back?
A. I learned that Will had taken the grill to Leann's house, which is where he stayed, two houses up, and my wife had went up there and got it and took it from him and told him that he didn't ask his daddy, so she brought it back. So Will was raging and I told him well, the grill is there now, get it.
Q. You said Will was what?
A. He was raging.
Q. Raging?
A. Yeah.
Q. Okay. So he had permission to use the grill, but --
A. Right, but his mom went and took it, went back and got it.
Q. So it was a misunderstanding?
A. Right.
Q. Okay. And so what happened next?
A. I told him to get it, the grill's there, so go ahead and get it.
Q. Okay. Was Will able to carry the grill back to his house or what happened?

A. No, sir.
Q. Why not?
A. He was too drunk.
Q. Okay. So who moved the grill?
A. His friend Troy tried to move it, but he was too drunk, so I took it up there.
Q. You took it up to Will's house?
A. Yeah.
Q. Okay. And when you got up to Will's -- when you got up to Will's house, which is two houses down?
A. Two houses up. I put the charcoal in the grill, light the charcoal and told him if you can't cook it, then you don't need to eat it.
Q. Okay. All right. Then what happened after you had fired up the grill and everything for Will?
A. I started walking back towards the house. When I started walking back towards the house, a gray van pulled up and the tire was going flat, so I told the lady, I said you can't go nowhere on that tire because, you know, the tire's too flat and she said okay. By the time she said that, then this great big hissing noise came from underneath the front of the car and the hissing noise was fluid running out of the car.
Q. Okay. Let's go back to the van. Who was driving the van?

A. Eventually I learned it was Ronita Cotton.
Q. Who was that?
A. Leann Cotton's sister.
Q. And Leann is Will's girlfriend?
A. Yes, sir.
Q. Okay. And she was going to Leann's house?
A. Yes, sir.
Q. Okay. And so the tire's flat and the now it's leaking from under the car, right?
A. Yes, sir.
Q. And what happened next?
A. And so I asked her did she want me to -- first I asked her did she have a jack and did she have a spare tire and she said she didn't know, so I said well, if you've got one, then I'll be more than happy to help you change it and she said well, let's look and she said you know what's going on and I said no, I have to jack it up and look up under the car and see what was leaking.
Q. Okay. And where was Will at this point?
A. Will was underneath the carport -- underneath Leann's carport playing cards.
Q. Okay. So what happened next once you told her, you know, you need to go get the jack and look at the car? What happened next?
A. This guy Rodney, which is -- they came -- Fat Bastard

pulled up wanting to sell some steaks and him and Will jumped in the car. Will went with him and he come back and he had another fifth of liquor.

Q. Another fifth of liquor?

A. Yes, sir.

Q. What kind?

A. Gin.

Q. Did you see it?

A. Yes, sir.

Q. Okay. Was he drinking it?

A. Yes, sir.

Q. Was he already drunk when he was drinking this?

A. Yes, sir.

Q. Okay. In your opinion, how drunk was he at this time when he came back?

A. Well, you say how drunk. I don't know. He was walking.

Q. He was walking?

A. He was walking.

Q. Okay. So Will gets back with a pint -- or how much liquor was it?

A. A fifth.

Q. A fifth of gin?

A. Yes.

Q. Okay. He gets back with -- I think you called him

Fat Bastard.

MS. PATTERSON: Objection. I didn't hear him say that.

MR. SCHWARTZ: I think he said it.

THE WITNESS: I did.

THE COURT: He said it. It was hard to hear, but he said it.

THE WITNESS: Oh, I apologize, sir.

BY MR. SCHWARTZ:

Q. Okay. Will gets back and then what -- he gets back from the -- with the pint -- or, excuse me, the fifth of gin you said, and then what happens?

A. And then this girl named Faith came out of Leann's house pointing a finger and raising hell at Will and I didn't -- at first I didn't know what it was about, but she told Will that he was going to give her --

MS. PATTERSON: Objection. Hearsay.

MR. SCHWARTZ: Your Honor, he testified that he literally was standing there and witnessed this.

MS. PATTERSON: But he's testifying about what somebody else said.

THE COURT: He can't -- unless you can cite me an exception to the hearsay rule and lay a foundation, it's hearsay.

MR. SCHWARTZ: Okay.

BY MR. SCHWARTZ:

Q. Did they get in an argument?

A. Yes, sir.

Q. Do you know what it was about?

A. About a grill.

Q. What kind of grill?

A. A gold grill.

Q. Like teeth -- for your teeth?

A. Yes, sir.

Q. Okay. And so what happened after that when they got in an argument?

A. Three people -- four people pulled up in a gray car and the four people, which was -- one of them was Felipe. They pulled right -- the reason why I'm saying they pulled up in the car and mentioned it is because they pulled up in the way right beside the van which I was working on.

Q. Okay.

A. And the whole time I was working on the van they were back and forth with Will and Faith because they were looking for Faith.

Q. Okay. What kind of mood was Will in when he was talking and you see someone pull up in the second car?

A. Drunk.

Q. Drunk?

A. Yeah.

Q. Okay. Then what happens?
A. Then -- let's see. All right. I go over to the house.
Q. Whose house?
A. I go over to my house, which is two doors -- two houses down. I go get a cement block so when I jack the car up, then I could put the block up under so the jack wouldn't fall on me. I go behind Leann's house to get a four by four to put underneath the jack -- underneath the block so the jacked car wouldn't fall on me. I take the tire off, I go back to the house. I've got to get the lug wrench that will fit the lugs because she didn't have a lug wrench. So during this time back and forth, Will and Fat Bastard is going back and forth up and down the road, Faith and Leann, and Faith and Felipe and his three girlfriends are arguing about the gold grill, which Will was supposed to have taken. They never found the gold grill. So after that Fat Bastard left to take Leann Cotton and her cousin to the grocery store because her cousin couldn't take her to the grocery store because the car was tore up, so Fat Bastard took them.
Q. What were they gonna get at the grocery store?
A. Groceries because it was food stamp day.
Q. Okay. All right. And when they went to the grocery store, what were you doing?

A. Working on the van.
Q. Okay. What did you discover under the van?
A. That the transmission line was busted.
Q. Okay. When did you discovered that, what did you try to do?
A. I tied to -- I told them before they left to get five quarts of transmission fluid, but I didn't know that the line had busted and that she had to get ahold of some clamps. So I couldn't tell them to get ahold of some clamps, I just told them to get transmission fluid.
Q. Okay.
A. So when I jacked the car up, I went and I told Will to call Leann and tell Leann to tell Ronita to get a hose and two clamps.
Q. Okay. And Leann did Will do when you asked him to make a phone call to Leann?
A. He said he ain't doing that and stop missing with him. He wasn't doing that. Those -- those weren't his exact words.
Q. What were his exact words to you?
A. I ain't fucking with that.
Q. Okay. Was he -- did he say it aggressively, did he say it jokingly?
A. He said it just like I said it, aggressively.
Q. Okay.

A. Like leave him alone.
Q. Okay. And what was he doing when you asked him to do that?
A. Playing cards.
Q. Okay. So after he told you that, what did you do?
A. I said okay, fine. So I kindly walked my little tail right on back to my house and sat up underneath the carport.
Q. Okay. And then what happened after you sat under the carport?
A. Then he kindly came over there. Him and Troy came over there with liquor and telling me about why are you acting like that. I said why am I acting like that? I told you what -- I told you what to do to get the van fixed for your old lady and he walked back over there.
Q. Okay.
A. By that time Leann and them pulled up.
Q. Okay. And what happened when Leann pulled up?
A. When Leann pulled up, she started raising hell at Will for leaning over in the car with Felipe and the three girls in the case because Will ain't had no business in the three girls' face.
Q. Okay. Did they get in an argument about that?
A. They got in an argument about that.
Q. And what happened?

A. And then Leann asked -- Leann asked me why -- because I told Ronita that she had to get a ride back to the store to get the hose and the two clamps and Leann came over there and wanted to raise hell at me because I didn't call her and tell her to get the hose and the clamps while they were out and I say you raise hell with your boyfriend because I told your boyfriend to call you.

Q. Okay. Did they get in an argument about that?

A. They done got in an argument about that and I walked off. I walked off then.

Q. Did you see the argument from a distance?

A. I saw them arguing, yes.

Q. Did they get physical?

A. I learned later that they did, but I didn't see them get physical.

Q. Okay.

A. But I heard the grill -- I heard the barbecue grill turn over. I heard the barbecue grill go clink, clink, clink, clink, clink.

Q. Okay. Somebody had kicked it or pushed it?

A. I can't say I saw that because I didn't see that, but then Leann came over and said what you gonna do, Mr. Foster, because Will's done tore up your grill. I said you think I'm worried about an old grill like that.

Q. Okay. All right. So they get in argument and a fight

and you walk away and then happens?
A. Okay. Wait a minute. You've got to give me -- give me a moment, please.
Q. Take your time.
A. Okay. After they get in an argument, Will comes over there.
Q. Where's there? You've got to be specific.
A. Over to my house. After him and Leann done raising sand, he comes over to the house, walks in the house, slams -- beats on the refrigerator trying to turn the refrigerator over, knocks a hole in the sheetrock, and I'm standing there and I'm saying Will, stop.
Q. Where are you standing?
A. I'm standing at -- in the door. Under the carport's door. I'm standing in the doorway.
Q. That's a -- it's a doorway into your house?
A. Yes, sir.
Q. Okay. And Will's inside the house?
A. Yes, sir.
Q. And he's doing what?
A. He's literally trying to turn the refrigerator over.
Q. Why?
A. Anger. He's -- he's got these anger issues where he's got to hit something, he's got to do something, and he's sitting they're trying to -- trying to turn the

refrigerator over.
Q. All right.
A. And I told his wife that -- I told his -- my wife, I'm sorry. I told my wife Cathy that I wasn't gonna sit there and look at it, I wasn't gonna sit there and watch him tear up my house again no more. I'm not gonna do it.
Q. Okay.
A. So when I said that, that's when he turned around and he grabbed a level and said I'll kill you now and that's when he ran me out the back door with the level.
Q. Okay. Let's talk about the level. What kind of level was it?
A. It's a --
Q. Are you talking about a little one, a big one?
A. It's about -- about a three-foot aluminum level.
Q. Okay. Kind of heavy?
A. Yeah.
Q. Was he swinging it at you?
A. Yeah.
Q. Did he point it at you?
A. Yeah.
Q. And he said what?
A. I'm gonna -- he said I'll kill you. I'm gonna kill you.
Q. Okay. And what was Cathy doing at this point when

she was inside the house?
A. Hysterical.
Q. Okay. Was she trying to help you?
A. No, she was standing -- actually she was standing in one spot calling Will's name, calling Will's name.
Q. Trying to calm him now?
A. Yeah, I would say that's what she considered it doing.
Q. Now you had mentioned earlier that she was able to sometimes calm him down. Was she able to do that that day?
A. That entire day?
Q. That instance right there when you're in the house and he's got a level?
A. No. No. No.
Q. Okay. When he was swinging the level at you, you said you moved to the back door?
A. I went out the back door.
Q. You went out the back door to where?
A. I went out the back door. As I went out the back door, he came behind me out the back door. I went out the back door to the side around the table, which is under the carport where the other door that we came in at is at. I went around the table, he came around the table, slammed the level on the table, hit the table. I went around -- Troy's sitting at the table now. He wouldn't get up. He's sitting at the table. Will done slammed the level on the

table. He should have got up, but he didn't get up. He just didn't get up. Will come around the table. When he come around the table, I went to where the dog was at.

Q. Okay. Were you trying to get away from him? What were you trying to do?

A. I was trying to get away from him.

Q. Okay. Now you said that you went from the carport where the -- the table was in the carport to where your dog was. What kind of dog do you have?

A. A Bullmastiff.

Q. How big is he?

A. About 120 pounds.

Q. Okay. And can anybody just go up to this dog?

A. No.

Q. Why did you go -- what's your dog's name?

A. Chopper.

Q. Why did you go to Chopper at that time?

A. Because I knew Will couldn't come to him.

Q. Why?

A. Will or anybody else could come nowhere near the dog except for me and Cathy.

Q. Okay. Was that dog protective of you or --

A. Yes.

Q. Okay. And so when you went to the dog, what did Will do?

A. Will was swinging -- steady swinging the level at me, then he was trying to swing the level at the dog, but he couldn't. So Will stepped back, took off his shirt and took him a drink out of his bottle and I looked at him and I shook my head and he said there ain't no need you shaking your head because I'm gonna fuck you and Bradley up.

Q. Okay. Was anybody else in the backyard at this point?

A. That's when Cathy and Haley and Leann came outside. Haley and Cathy came outside first trying to take the level from him. They couldn't.

Q. Okay. How did they try to take the level from -- what happened when they tried to take -- when Cathy and Leann tried to take the level from Will?

A. They was wrestling over -- they was wrestling over the level and when they were -- when Leann and Will was wrestling over the level, Will wrestled Leann almost to the ground but not to the ground, but she knocked the youngest baby of hers down on the ground.

Q. Okay.

A. And when -- Cathy came over there and did get the level from him. When she got the level from him, then I went back under the carport because that -- I had time. I had time to go back under the carport, so I went back under the carport to get away from him. Now I'm looking at him. He picks up a two by four and comes towards me with it.

Q. He picked up a what?
A. A two by four.
Q. How big -- how long was that two by four?
A. About five-foot.
Q. Okay. So it was big?
A. Yes, sir.
Q. Okay. So you're under the carport and he picks up the two by four. What happens at that point?
A. At that point he comes under the carport at me. Cathy, Leann and Haley are sitting there trying to stop him, but he's steadily coming to the carport, so I kindly back on up at a very fast pace up two houses up to the -- where the van was at where Ronita Cotton was at on her knees in a dress trying to get up underneath the car to fix her own car.
Q. Okay.
A. So at this time Cathy and Haley is next door that's in between our house and Leann's house.
Q. Okay.
A. Cathy and Haley -- Cathy, Haley and Leann is next door. Leann and Cathy is about to fight.
Q. About what? Why are they about to get in a fight?
A. Because Cathy can't stand Leann and Leann can't stand Cathy.
Q. Okay.

A. So Cathy blames Leann -- Cathy blames Leann for everything Will does and Leann blames Cathy for everything Will does.
Q. Okay.
A. So they about to fight, but instead I didn't get up, I stayed there, and I told Ronita no, no, I'll get it, I'll finish this here because she was gonna give me $150 anyhow --
Q. Okay.
A. -- so I said I'll finish this here. So at that time here comes Will. Leann -- Ronita, she grabs me by the foot and said get up, get up, you-all need to finish this, you-all need to finish this, you-all need to finish what you-all are doing before you can finish the car.
Q. Okay.
A. So during this time I hear this bang-bang like on the car, so at the moment I'm thinking that he's trying to knock the jack out from underneath the car.
Q. Who is?
A. Will.
Q. So are you under the car at this point? Where are you?
A. Yeah, I'm up -- I'm getting from under the car.
Q. Okay.
A. Getting from under the car.

Q. And you hear -- you hear what you describe --
A. What I thought was him trying to knock the jack from underneath the car --
Q. Okay.
A. -- but he wasn't.
Q. Did he say anything to you at that point?
A. No, he was -- that's when he was about five foot away, so he wasn't close enough to do that.
Q. Okay.
A. So I get up and when I get up, there he is.
Q. How close was he?
A. He was about three foot away.
Q. Okay. What was he doing?
A. Swinging the two by four.
Q. Were you scared at that point?
A. Yeah.
Q. Yes?
A. Yes, sir. I'm sorry, I --
Q. That's okay. So what happened -- after you got out from under the car and he's swinging that two by four at you, what happened next?
A. I'm begging Cathy and Haley and them to please get him, please get him, please get Will. Somebody please stop Will, just stop -- somebody stop Will, and nobody would -- they couldn't stop him, nobody could stop him period, and

they tried.
Q. Okay.
A. And then that's when Cathy grabbed the two by four and he knocked Cathy down and when he knocked Cathy down, she said oh, my arm, and I said Will, I done told you shit, I fucking told you. I mean, I'm sorry, but I told him and I told him good, and that's when I went in the house and I got the shotgun and that's when I brung the shotgun and the shotgun went off and when the shotgun went off --
Q. All right. Hold on. Let's slow down. Just slow down. Do you need a moment? Do you want some water?
A. No. No, just a tissue.
Q. All right.
MR. SCHWARTZ: May I approach, Your Honor?
THE COURT: Sure.
THE WITNESS: I apologize.
MR. SCHWARTZ: No need to apologize.
BY MR. SCHWARTZ:
Q. All right. Let's go back. Let's slow it down a little bit, okay? He's swinging a two by four at you at the car, right?
A. Yes.
Q. And you ask people to help you?
A. Yes, sir.
Q. Okay. And nobody was able to calm him down, right?

A. Yes, sir.
Q. Then what happened?
A. Then that's when I walk off. I walked off backwards watching him with the two by four and I went in the house to get the gun.
Q. Whose gun was that?
A. His gun.
Q. Who's "he"?
A. Will.
Q. How did you know that -- one, how did you know it was Will's gun?
A. Because I don't -- I don't mess with guns.
Q. Have you ever owned a firearm?
A. Never.
Q. Have you ever shot a firearm?
A. Never.
Q. Have you ever been trained on a firearm?
A. Never.
Q. Where was the -- where was the shotgun when you got it?
A. By the freezer.
Q. By the freezer?
A. Yes, sir.
Q. Can you estimate for the judge how far away that was away from the entrance to your house?

A. About -- from the entrance from the door --
Q. Yes.
A. -- to the inside of the house, maybe ten foot.
Q. Okay. How did you know the gun was where it was?
A. Because four days prior to that it was underneath my bed.
Q. And what did you do with it?
A. I told Will to come get his shit and to get it out of my house before I go to jail for something that I didn't have anything to do with.
Q. Okay. And did he move it?
A. I don't know who moved it.
Q. Okay. But you knew it was next to the freezer?
A. Yes, sir.
Q. Okay. When you went into the house, do you remember if the door was open or closed when you got in the house?
A. No, I don't know.
THE COURT: Do you need a break, Mr. Foster?
THE WITNESS: Please.
THE COURT: Okay.
All right. We'll be at ease.
MS. ZMROCZEK: Judge, would you remind him that he can't talk to anyone?
THE COURT: Yeah.
Mr. Foster, the rule is you're not supposed to talk

about your testimony during the break, okay?

THE WITNESS: Okay.

THE COURT: All right. Thank you. You can step down if you'd like.

(Recess taken at 3:13 PM.)

(Back on the record at 3:26 PM.)

BAILIFF: All rise. Court's now in session.

THE COURT: All right. Be seated, please.

You may continue.

MR. SCHWARTZ: Are you ready, Your Honor?

THE COURT: Yes.

MR. SCHWARTZ: All right.

BY MR. SCHWARTZ:

Q. All right. I think the last question we were -- where we were at was you had grabbed the gun, the shotgun --

A. Uh-huh.

Q. -- and so let's get back to that. You grabbed the shotgun inside the house and then what did you do?

A. I walked outside and I pumped it.

Q. You pumped it?

A. Yeah.

Q. When you said you walked outside, where were you when you pumped it?

A. On the steps.

Q. On the steps of?
A. The carport.
Q. Okay. And where was Will when you pumped the shotgun?
A. On the side of the carport.
Q. How close to you?
A. Maybe eight foot.
Q. Okay. Did he have anything in his hands?
A. I don't know.
Q. Did he have anything in his hands when you walked inside the house?
A. Yes, sir.
Q. What did he have?
A. The two by four.
Q. Okay. And when you pumped the shotgun, what happened?
A. It went off.
Q. It went off?
A. Yes, sir.
Q. Okay. Did that surprise you?
A. Uh-huh. Excuse me.
Q. Sir?
A. Yes, sir.
Q. Okay. The shotgun went off and then what happened?
A. It's kind of hard to explain --
Q. What do you mean?
A. -- but I'll do my best.

Q. That's all we ask.
A. Three parts of me went out of me. I don't know what parts to this day, I can't explain that, but it's like -- it's like I went different places looking down at myself watching me move. I was watching myself move and I was trying to figure out -- in my mind I was trying to figure out what happened. I was trying to figure out what happened.
Q. Why did you pump the shotgun?
A. To scare him.
Q. Okay.
A. To make him stop.
Q. To make him stop?
A. To make him stop.
Q. Make him stop what?
A. To make him stop. He's gonna hurt somebody. He's gonna -- I knew somebody was gonna get hurt. I knew I was gonna get hurt because he didn't -- he just didn't look right. He just didn't -- he just kept coming and he kept coming and he kept coming and he wouldn't stop coming.
Q. And by coming, what do you mean?
A. He just kept coming at me. He just kept coming at me and he wouldn't stop and he just wouldn't stop.
Q. When Will was coming at you as you say, what kind of language was he using towards you?

A. I'm gonna kill you. I'm gonna kill you. I'm gonna kill you. He kept saying it over and over. I'm gonna kill you and -- and I kept begging him to stop and I kept begging him to stop over and over and over. And I kept asking somebody to help me, like get over, and I pumped the shotgun and I thought that would scare him and it just went off and when it went off, that was -- that was it.

So anything after that I didn't know. I just knew I had to call 9-1-1 and I wasn't calling 9-1-1 for him, I was calling for me because I needed help, because I needed help, because I didn't know what happened.

Q. Okay. What did you do with the gun after it went off?

A. I don't know really what I done. I just knew I sat it down. I just looked at me setting it down and, honest to God, I don't know. I don't know. A lot of it I don't know.

Q. Okay. Did you try to hide it or get rid of it or anything?

A. No.

THE COURT: What did you say?

THE WITNESS: No.

BY MR. SCHWARTZ:

Q. Do you recall what you did after you dropped the gun?

A. I walked -- I know I walked -- I went over the fence.

Q. Whose fence?

A. I don't know. The backyard.
Q. Your backyard fence?
A. Yeah.
Q. And where did you end up?
A. At the neighbor's. I looked for somebody. I looked for somebody to help me because I tried to call 9-1-1 and I couldn't, I couldn't talk, and a lady was standing there and I handed her the phone and she asked me what happened and I told her I accidentally shot my son and she -- she got the telephone and --
Q. Who called 9-1-1? You or somebody else?
A. I know I tried to call 9-1-1 and so I must have did because I remember hearing the lady saying hello, hello, hello. I remember the lady saying it.
Q. Okay. And when the police came, where were you?
A. I was trying to get in the chair to sit down, but I couldn't get in the chair.
Q. Where were you at at this point?
A. At a neighbor's house.
Q. How far away were you feet -- in feet from your house?
A. Shoot, maybe a hundred yards.
Q. Okay. Did you feel threatened by Will that day?
A. I was scared.
Q. Scared of what?
A. I was scared he was gonna hurt somebody or hurt me.

Q. Why was -- why was this day different than other times?
A. Because he looked crazy. He looked -- he looked different. He looked crazy. He looked like -- I don't know. And he just wouldn't stop. He just wouldn't stop. Nobody could stop him.
Q. How did you feel when he was swinging the level at you?
A. Begging him to stop. Begging him over and over and over and over.
Q. What about when he was swinging the two by four at you, how you did you feel?
A. Begging him to stop over and over.
Q. Why were you begging --
A. Backing up, running, backing up, going from this place to that place, constantly saying stop, Will, constantly saying stop, Will, please quit.
Q. Do you recall if Will had a two by four in his hand when the shotgun went off?
MS. PATTERSON: Objection. Asked and answered.
THE COURT: Overruled. Do you remember?
THE WITNESS: I don't know what he had in his hand because I didn't see his hand.
BY MR. SCHWARTZ:
Q. What about when you went into the house to grab the

firearm, do you recall if he had a two by four in his hand then?

A. Yeah, he had it. Yeah.

Q. I'm sorry?

A. Yes, sir.

Q. Did you feel that he would have hurt any -- you know, your wife or your -- your other children that day if you wouldn't have stopped him?

A. Do I feel -- say that again.

Q. Do you feel he would have hurt somebody else had you not stopped him?

A. I don't think he would have meant to.

Q. How many times did you walk away from Will that day?

A. Eight -- six to eight times.

Q. Okay. How many times did Will keep following you when you walked away?

A. Six to eight times.

Q. Why didn't you call 9-1-1 when you went into the house to get the gun?

A. I don't have a clue.

Q. What was your intention when you grabbed that -- that shotgun?

A. To make him stop. Just to make him stop.

Q. Heirbrane, did you wake up that morning intending to kill your oldest son?

A. No.
Q. Did you feel like you were in harm's way that day?
A. What do you mean in harm's way?
Q. Do you feel that you were gonna get hurt if something didn't happen?
A. Me or somebody else.
Q. Do you honestly believe that?
A. Yeah.
MR. SCHWARTZ: Court's indulgence, Your Honor.
THE COURT: Yes, sir.
MR. SCHWARTZ: No other questions, Mr. Heirbrane.
Mr. Heirbrane, please answer any questions the State might have, okay?
THE WITNESS: Yes, sir.

CROSS-EXAMINATION (In-Camera)

BY MS. PATTERSON:
Q. Mr. Foster, the defense attorney went through a whole litany of things that Will had been involved in, his prior record and things like that, but you have had a busy prior criminal record yourself, haven't you?
A. I don't know. What would you call a busy prior criminal record?
Q. In fact, don't you have a number -- number of convictions for criminal domestic violence high and aggravated nature?

MR. SCHWARTZ: Objection, Your Honor.

THE COURT: Yes, sir.

MR. SCHWARTZ: I don't believe he actually has a conviction. He has one conviction --

MS. PATTERSON: He has two convictions, Your Honor.

MR. SCHWARTZ: Your Honor --

THE COURT: Let me hear the argument.

MR. SCHWARTZ: I believe he has one conviction, not two.

MS. PATTERSON: Your Honor, I have the certified convictions right here that I can show Mr. Foster. He pled to two counts of domestic violence high and aggravated nature on the same day. That was provided in discovery.

THE COURT: What day?

MS. PATTERSON: That was February 29, 2012.

THE COURT: Show it to counsel.

Do you have an objection?

MR. SCHWARTZ: No objection, Your Honor.

THE COURT: Pose your question.

BY MS. PATTERSON:

Q. Isn't it true that you have two convictions for criminal domestic violence of a high and aggravated nature from 2012?

A. Yes, ma'am, if you say so.

Q. And isn't it true you also in 1990 have an aggravated

assault and battery?

MR. SCHWARTZ: Objection, Your Honor. Relevance. I believe that outside the scope.

MS. PATTERSON: He went through Will's record, Your Honor. He went through it all.

MR. SCHWARTZ: Your Honor, those -- those were within ten years. 1990 was twenty-nine years ago.

MS. PATTERSON: They were all -- he talked about juvenile convictions and being in DJJ and everything.

MR. SCHWARTZ: Your Honor, all our instances were under 402(b) -- (a), excuse me.

THE COURT: What is this being offered for?

MS. PATTERSON: Your Honor, to show that he also has violent tendencies, Your Honor. I'm gonna get into his drinking just as they did about Will, Your Honor. He has prior DUIs as well.

THE COURT: Bear with me. Go ahead.

MR. SCHWARTZ: Your Honor, I think they're -- we're using his instances and arrests to show propensity for violence and that he had a reason to fear his own son because he knew about all these violent instances. A DUI from whenever, 1990, I don't believe is relevant and I don't believe it's relative to this incidence.

MS. PATTERSON: And it's also used to show, Your Honor, that maybe the victim knew his father's propensity

and that's why he was standing up to him defending himself in these incidents.

MR. SCHWARTZ: Judge, I believe the -- I believe the victim was born in 1992. If she wants to bring up a DUI from 1990, I don't know how he would have knowledge of that.

THE COURT: I can't speculate what was in the mind of the decedent, so as far as that argument goes the objection is sustained.

I just -- I don't see a rule it falls under, but -- so the objection's sustained, but you can make your proffer. Go ahead.

BY MS. PATTERSON:

Q. Isn't it true, Mr. Foster, you've been -- you've had criminal arrests and convictions for aggravated assault, and I can move on, from 1998?

A. You'd have to remind me of it.

Q. So you don't remember that?

A. No, sir -- no, ma'am.

Q. What about driving under the influence in 2000?

MR. SCHWARTZ: Your Honor, again, objection.

THE WITNESS: I don't remember that.

THE COURT: She's making a proffer.

BY MS. PATTERSON:

Q. So you don't remember that?

A. I've probably got a few of those DUIs.
Q. Sir?
A. I probably have a few DUIs.
Q. So you do remember these DUIs. And, in fact, you have a propensity to drink alcohol yourself, don't you?
A. I don't know what you mean by pro -- propensity.
Q. Don't you -- don't you have a --
MR. SCHWARTZ: I'm gonna object to this, Your Honor. It's not a propensity, a character trait. I mean, being violent is, and under 402(a) it's allowable, but saying you like to drink beer when there's been no testimony yet that he's been violent or is violent when he drinks, I mean, that's irrelevant.
MS. PATTERSON: Your Honor, I --
THE COURT: Overruled.
MS. PATTERSON: Thank you. I'm getting there.
BY MS. PATTERSON:
Q. And you like to drink alcohol yourself, don't you?
A. Yes, ma'am.
Q. And you also like to -- as a matter of fact, I think your nickname is Boozey, correct?
A. Yes, ma'am.
Q. And you were drinking on this incident date that Will was killed, correct? Had you been drinking?
A. If you call drinking a half a can of beer drinking,

yes, ma'am.

Q. Okay. But you had been drinking. As a matter of fact, there's a lot of beer cans around your house, isn't it?

A. Yes, ma'am.

THE COURT: I think we've moved on from the proffer. Go ahead.

BY MS. PATTERSON:

Q. And you like to fight your family members when you drink, don't you?

A. No, ma'am.

Q. But you have fought your family members, haven't you?

A. What do you mean family members? Who?

Q. Didn't you have a pending domestic violence first offense and your wife Cathy was your victim?

A. A relative was what it was. I mean, you're saying she's the victim. That was alleged, isn't it?

Q. But you were arrested for domestic violence in which Cathy Foster, your wife, was the alleged victim, correct?

A. I was arrested -- I was arrested for murder and I ain't murdered my son.

Q. Isn't it correct that you had a domestic violence charge and your wife Cathy --

A. I have a domestic violence charge, yes, ma'am.

Q. As a matter of fact, you wasn't even supposed to be

at the house due to a bond condition of that domestic violence, correct?
A. Yes, ma'am.
Q. And you knew about that, didn't you?
A. Yes, ma'am.
Q. And so you knew you were not supposed to be at the house on the incident date, right?
A. Yes, ma'am.
Q. But you chose to be there anyway, correct?
A. I was there, ma'am.
Q. And two months prior you hit Will in the head with a stick, didn't you?
A. Defending my son.
Q. You hit him in the head --
A. Defending my youngest son.
Q. But you hit him in the head with a stick, didn't you?
A. Yes, ma'am.
Q. And you put him in the hospital, didn't you?
A. No, ma'am.
Q. He didn't go to the hospital?
A. Yeah, he went to the hospital.
Q. Okay. He went to the hospital as a result of you hitting him in the head?
A. I can't change words and mince words because you're gonna win and I'm not here for winning with my son. My son

is dead, so I'm not about to switch words with you. Now I'll answer yes or no, but as far as if I don't agree with the words, then I can't. I can't.

Q. Well, yes or no, didn't he go to the hospital as a result?

A. Yes, ma'am.

Q. Okay. And you wasn't supposed to be at the house on that day, were you?

A. You already said that.

Q. On the day that you hit him in the head with a stick, you weren't supposed to be in the house on that day in March, were you?

A. According to the bond agreement, yes, ma'am, I wasn't supposed to be there.

Q. Okay. And you've said on several occasion that you accidentally shot your son, correct?

A. Yes, ma'am.

Q. Okay. And you told Officer Watford that when you was in his patrol car?

A. I don't even recall Mr. Watford.

Q. Okay. But you remember sitting in a patrol car when you ran across to your neighbor's yard?

A. Yes, ma'am.

Q. Okay. And do you remember just talking voluntarily about what happened?

A. Somewhat.
Q. Okay. And during that conversation kind of with yourself you said you accidentally shot your son, correct?
A. Yes, ma'am.
Q. Okay. Do you remember talking to Investigator Miller later on?
A. Yes, ma'am.
Q. Okay. And did you tell him you accidentally shot your son?
A. I don't recall.
Q. Okay. And so now today you're saying that you are -- are you saying that you meant to shoot your son? I'm not quite sure what you're saying today.
A. I'm not -- I don't understand the question.
Q. So today are you still saying you accidentally shot your son?
A. Yes, ma'am.
Q. Okay. So you didn't shoot him because you were afraid he was gonna kill you or anything, did you?
A. Those are your words. Now you changed -- you can't put words in my mouth.
Q. Okay. So you never said that, correct?
A. No, I said I was afraid for my life.
Q. Okay. When did you say that, today at this hearing?
A. All day -- all day long.

Q. Okay. At this hearing today, but you never told those officers that, did you?
A. They didn't ask me probably. I don't know. I don't know what I told them that day.
Q. Okay. And isn't it true you both were -- were arguing back and forth, weren't you?
A. No, ma'am.
Q. So you wasn't arguing back and forth with Will?
A. No, ma'am.
Q. And isn't it true that you both -- at some point during this argument had something in your hand as well?
A. No, ma'am.
Q. Okay. And everything started at Leann's house up -- two doors down, didn't it?
A. No, ma'am.
Q. It didn't?
A. No, ma'am.
Q. Okay. But somehow it made its way to the house that you wasn't even supposed to be at, correct?
A. Yes, ma'am.
Q. And you had friends over at your house as well, didn't you?
A. No, ma'am.
Q. Nobody was sitting inside your carport drinking beer?
A. Your question was did I have friends over there.

Q. Okay. There was some people over at your house drinking beer?
A. I don't know who was over there drinking no beer and they weren't with me.
Q. And isn't it true that Will sometimes stayed at the [redacted] address with his momma?
A. Yes, ma'am, as far as I know.
Q. And sometimes he would stay with Leann, correct?
A. As far as I know.
Q. Okay. And isn't it true that at some point Vernon Blanding removed the stick that Will had in his hand?
A. I don't know that. I didn't see that.
Q. And isn't it true that Will never raised this object to hit you, did he?
A. Quite a few times Will raised that object to hit me.
Q. Did he ever hit you with it?
A. Yes.
Q. Where on your body did he hit you with it?
A. On my leg.
Q. Did you ever tell anybody that?
A. Didn't anybody ever ask me that.
Q. Okay. But you managed to tell --
A. I managed to answer questions.
Q. When you were in Deputy Watford's car, did he ask you questions? He didn't ask you any questions, did he?

A. No, he didn't.
Q. He didn't. But you -- but you told him what you wanted him to know, didn't you?
A. Yes, ma'am.
Q. And you never told him that Will made contact with you, did you?
A. I don't know.
Q. Okay. Did you go over your discovery with your defense attorney?
A. Yes, ma'am.
Q. And did you see that video?
A. No, ma'am.
Q. Okay. And then when you talked to Investigator Miller, you never told him Will made contact and hit you, did you?
A. I can't remember every -- exact everything. You'll have to be more specific.
Q. But you never told the police that Will hit you, did you?
A. I don't know what all I told the police, ma'am.
Q. And when you called 9-1-1, did you tell them that you were being attacked?
A. No, ma'am.
Q. You didn't tell them that, did you?
A. No, ma'am.

Q. In fact, you said you accidentally shot your son, correct?
A. As far as I remember I did.
Q. And then I think at some point you went over near your dogs, correct?
A. Yes, ma'am.
Q. Because you knew Will was scared of these dogs, wasn't he?
A. Yes, ma'am.
Q. And you had your cell phone with you all this time, correct?
A. Yes, ma'am.
Q. And you say there was several fights going on in the yard and you say Will and Rodney were fighting, correct?
A. Which day are you speaking of?
Q. On the day that Will was shot and killed, did you say Rodney and Will was out there fighting?
A. No, ma'am.
Q. Okay. That was another day?
A. Yes, ma'am.
Q. But on this day you said Will and Leann was out there fighting?
A. No, ma'am.
Q. That was another day?
A. Yes, ma'am.

Q. Okay. And Leann and Cathy I think you said were out there fighting. Was it this --
A. I didn't say they was fighting.
Q. They was about to fight. You said they was about to fight, correct?
A. Yes, ma'am.
Q. And so did you intervene in that situation?
A. Yes, ma'am.
Q. What did you do?
A. I grabbed Cathy by the arm and told her to come on.
Q. Okay. And did she come with you?
A. Yes, ma'am.
Q. And where did you-all go?
A. We headed towards the house.
Q. Okay. And was anybody following behind you-all? Nobody --
A. Will.
Q. I'm sorry?
A. Will.
Q. Okay. And did you go inside the house and call the police?
A. No, ma'am.
Q. Did you have -- you had your cell phone with you, didn't you?
A. Yes, ma'am.

Q. And you didn't think to call the police?
A. No, ma'am.
Q. And you also said that you had saw this gun under your bed days before, correct?
A. Yes, ma'am.
Q. And that you told Will to come and get the gun, correct?
A. Yes, ma'am.
Q. But you never saw where he put the gun, correct?
A. No, ma'am.
Q. But when you went inside the house, you went and got the gun behind the freezer, correct?
A. Yes, ma'am.
Q. Isn't it true you knew that gun was behind the freezer because you put it behind the freezer?
A. No, ma'am.
Q. Was the gun already loaded or did you load it?
A. I don't have a clue. I know I didn't load it.
Q. And Will never had a gun outside in the yard, did he?
A. Which -- which day? When are you talking about?
Q. On the day he was shot, he never had a gun out in the yard, did he?
A. No, ma'am.
Q. And when you went inside the house, you didn't lock the door, did you?

A. No, ma'am, not as I remember.
Q. Will did not try to come inside the house, did he?
A. I don't know whether he was trying to come in there or not.
Q. Did he come in?
A. No, ma'am.
Q. Okay. So you were safe inside that house, wasn't you?
A. I don't know. I didn't feel like I was safe.
Q. But nobody was inside that house with you, were they?
A. Not -- not when I was in there.
Q. And you could have locked the door, couldn't you?
A. I guess I could have.
Q. But you didn't, did you?
A. No, ma'am, I didn't. Not that I know of.
Q. And your cell phone was in your pocket, wasn't it?
A. Yes, ma'am.
Q. You also had a knife in your pocket, didn't you?
A. Yes, ma'am.
Q. You didn't call the police, did you?
A. No, ma'am.
Q. And you went inside and you got the gun from behind the freezer and you unwrapped it from a sheet, didn't you?
A. Yes, ma'am.
Q. And you were in the house for a few minutes, weren't you?

A. I'm not sure.
Q. And then you came outside, correct?
A. Yes, ma'am.
Q. And which -- and you went out the side door where you knew Will was last standing, didn't you?
A. Yes, ma'am.
Q. So you didn't go out the front door. You had a front door, didn't you?
A. Yes, ma'am.
Q. And you had a back door that you had said you went out earlier, didn't you?
A. Yes, ma'am.
Q. And you didn't go out that door either?
A. That was -- that was earlier. You're getting ahead of yourself now. I didn't go out the door -- out the back door until the thing was over with. I didn't go out the back door earlier.
Q. Didn't you testify earlier today that you went out there --
A. Okay. You just now corrected yourself. Thank you.
Q. Didn't you testify earlier today that you had went outside the back door --
A. You just said I went outside the back door earlier. You didn't say I testified earlier.
Q. Did you go out the back door earlier this day to go

near your dogs?
A. Could you rephrase the question, please?
Q. Didn't you go out that back door before this shooting to go near your dogs? Didn't you say that?
A. No.
Q. Okay. So when you went back out with the gun, you went back out through the carport, correct?
A. Yes, ma'am.
Q. And you know Will was out there, correct?
A. I assumed that.
Q. Okay. And you opened the door, correct?
A. I -- I -- I'm not sure whether the door was open or did I open the door.
Q. And didn't you say to Will I told you not to fuck with me?
A. I said that all that day.
Q. So you were saying some threats all that day, correct?
A. No, I was not saying threats. You said that just now. I didn't say that, not like you said it. You're saying it in a threatening manner. I didn't say nothing in a threatening manner.
Q. So how --
A. Stop fucking with me means stop fucking with me.
Q. Okay.
A. Because I ain't threatening nobody. I'm saying leave

me alone.
Q. But when you said it to Will this time, isn't it true you had a gun in your hand?
A. No.
Q. So you didn't -- you said it to him before you had the gun in your hand?
A. Five or six times.
Q. So you came back out with the gun, you pumped the gun --
A. That's it.
Q. -- and you pulled the trigger, correct?
A. You said that. You're adding on now.
Q. The gun went off, correct?
A. Yes, ma'am. That's what -- those were my words.
Q. And you hit Will in the chest?
A. The gun hit Will in the chest. I ain't hit nobody.
Q. And there were a lot of people still outside around you-all, correct?
A. As far as I knew.
Q. And you didn't like Will standing up to you in front of all these people, did you?
A. It didn't make me -- people didn't make -- don't make me no different and didn't then.
Q. Okay. And then you saw Will grab his chest, correct?
A. When?

Q. After -- after the gun went off, you went back in the house, didn't you?
A. Yes, ma'am.
Q. And you put the gun back down and wrapped it back in the sheet, didn't you?
A. No, ma'am.
Q. So did you just drop the gun?
A. I -- to tell you the truth, to be honest, as far as what I done was all over the place.
Q. Well, you didn't drop the gun after it went off, did you?
A. I don't think I dropped it, no, ma'am.
Q. You didn't run and check on Will after you -- after the gun went off, did you?
A. No, I didn't.
Q. Okay. In fact, you went back inside the house, didn't you?
A. Yes, ma'am.
Q. And you went out the back door, correct?
A. Yes, ma'am.
Q. And you talked earlier about you having back problems, correct?
A. Yes, ma'am.
Q. But you ran through your yard, right?
A. That's -- that's what you say. I ain't -- I ain't

never said I ran through no yard.
Q. Well, you walked through your yard, correct?
A. Yes, ma'am.
Q. And you jumped over a fence, correct?
A. Yes, ma'am. I climbed over the fence.
Q. Climbed over a fence. And then you were in your neighbor's yard, correct?
A. Yes, ma'am.
Q. You knew the police had been called, didn't you?
A. What do you mean I knew the police had been called?
Q. Did you hear the police officer at your house that day after the shooting?
A. You're gonna have to ask me a question or something because I don't understand.
Q. Did you know the police had been called?
A. I called the police.
Q. Okay.
A. So what do you mean did I know they were called?
Q. Did you know if anybody else had called the police?
A. How would I know that?
Q. So you didn't know?
A. How would I know?
Q. Okay. So the answer is no?
A. No.
Q. Okay. And then when you went to your neighbor's yard,

you saw them standing outside, correct?
A. Yes, ma'am.
Q. And you stopped and you asked them to call 9-1-1, correct?
A. It was a blur. It was a blur and -- I mean, it was a blur.
Q. You told them it was an accident, correct?
A. I remember saying that.
Q. You say everything was a blur, but weren't you able to give law enforcement information about what happened?
A. To my knowledge.
Q. In those domestic violence charges, and I can show you, do you remember them telling -- you signing it and saying it was unlawful for you to have a gun?
A. Yes, ma'am.
Q. Okay. So you remember that?
A. Yes, ma'am.
MS. PATTERSON: I beg the Court's indulgence, Your Honor.
THE COURT: Yes, ma'am.
BY MS. PATTERSON:
Q. And you remember you said there had been a lot of people out in the front yard when all of this was going on?
A. Yes, ma'am.
Q. But you testified a little while ago with defense

counsel that you went out the back door to find somebody to get you some help, correct?

A. Yes, ma'am.

Q. Why didn't you run out the front door to find some help?

A. I think they didn't hear me. I didn't think about it.

Q. So all those people out in the front, you didn't think to ask them for help?

A. To say now in hindsight, if they didn't help me when I was begging them for help, I mean, common sense would tell me not to go out there and try to get them to help me then.

MS. PATTERSON: I beg the Court's indulgence, Your Honor.

THE COURT: Yes, ma'am.

BY MS. PATTERSON:

Q. And isn't it true Bradley wasn't even there when this incident happened, was he?

A. Yes, Bradley was there.

Q. And why didn't you -- you said Will was in the house earlier that day beating on the refrigerator trying to turn it over, correct?

A. Yes, ma'am.

Q. And you say he also put a hole in the sheetrock, correct?

A. Yes, ma'am.
Q. And you didn't think to call law enforcement when he was acting like that, did you?
A. No, ma'am.
Q. But you had called law enforcement you testified in the past when Will would act aggressive, correct?
A. Yes, ma'am.
Q. But on this date you didn't call, correct?
A. No, ma'am.

MS. PATTERSON: Your Honor, no further questions.

THE COURT: Yes, ma'am.

Redirect?

MR. SCHWARTZ: Just briefly, Your Honor.

REDIRECT EXAMINATION (In-Camera)

BY MR. SCHWARTZ:

Q. Heirbrane, these domestic violence convictions were they against your son?
A. No.
Q. Were they against any of your children?
A. No.
Q. How much did you have to drink that day?
A. A half a can of beer, if that.
Q. A half a can of beer?
A. Yeah.
Q. Had you been allowed -- had Cathy allowed you back in

that house since your arrest?
A. Yeah.
Q. How long -- how long had you been in that house?
A. About five days after I was arrested.
Q. Okay. And had the police been out to your house since you had been on bond for that charge?
A. Yes.
Q. And you were at that house?
A. Yes.
Q. Did they ever arrest you or move for a bond revocation for being there?
A. No, sir.
Q. Where did you unload the groceries to that day?
A. In my house at [redacted] Oak Glenn.
Q. Okay. But where inside the house?
A. In the kitchen.
Q. Okay.
A. In the refrigerator, in the freezer, in the cabinet.
Q. In the freezer?
A. Yes, sir.
Q. Next to the firearm?
A. Yes, sir.
Q. Is that how you knew that's where the shotgun was?
A. Yes, sir.
Q. Did you place the shotgun there?

A. No, sir.
Q. Do you know who did?
A. No, sir.
Q. Okay. Was this an accident or was this self-defense?
A. Both.
MS. PATTERSON: Your Honor, that's a legal argument.
THE COURT: Do you wish to be heard?
MR. SCHWARTZ: I'll ask it a different way.
THE COURT: All right.
BY MR. SCHWARTZ:
Q. If Will would have kept coming at you when you had the gun in your hand, what would you have done?
A. I'd have to shoot him.
Q. Did you want to shoot him?
A. No.
MR. SCHWARTZ: No further questions.
MS. PATTERSON: Just briefly, Your Honor.
THE COURT: Yes, ma'am.

RECROSS EXAMINATION (In-Camera)

BY MS. PATTERSON:
Q. Although Cathy allowed you in the house, it was still your bond condition that you not be at [redacted] Oak Glenn Drive, correct?
A. Yes, ma'am.
Q. And you knew that, didn't you?

A. I also knew that I shouldn't have been charged with CDV. I shouldn't have been charged and the bond -- I shouldn't have had a no contact order, too.
Q. But you knew the bond condition was still active, didn't you?
A. I knew I was fighting the charge, too.
Q. Yes or no, Mr. Foster?
A. Okay. Yes, ma'am.
Q. And the gun was wrapped in a blanket, wasn't it?
A. Yes, ma'am.
Q. So how were you able to see it behind that freezer?
A. It's the blanket -- the sheet.
Q. Okay.
A. It wasn't behind the freezer, it was on the side of the freezer anyhow.
Q. And Will wasn't coming at you when you had the gun -- when you went back outside and had the gun, Will wasn't coming at you, was he?
A. Who said that? Who said he was?
Q. Will wasn't coming at you --
A. What -- was that a question? Is it a question or a statement?
Q. Was Will coming at you --
A. Yes, ma'am.
Q. -- when you had the gun?

A. Yes, ma'am.
Q. And is that -- and did you ever tell law enforcement that?
A. They ain't never asked.
Q. But you never voluntarily told them, did you?
A. I told them what I could think of at that time.
Q. What you could think of, but now you're saying something different?
A. Whatever was in my mind at that time. That's all.
Q. Okay.
A. I wasn't on the stand -- I wasn't on the stand. I wasn't being prosecuted like I am now. I'm not -- I wasn't knowing that then. They was asking questions. I was saying what I thought that I was supposed to say. That's all I know. Now you guys -- now I'm being defended for something that -- I didn't murder my son.
Q. So you're saying that you told them what you thought you were supposed to say, correct?
A. You're not gonna twist my words and just think I'm gonna sit here and just agree with what you say because I ain't gonna do it.
Q. Did you just say that, Mr. Foster?
A. Did I just now say I ain't murdered my son?
Q. Mr. Foster, did you just say you told law enforcement what you thought you had to say, correct?

A. No, not like you saying it. No. No, ma'am.
Q. Okay. And at that point everything would have been fresh in your mind, correct?
A. When?
Q. On the day that you were talking to law enforcement.
A. I didn't know my name. Basically I didn't know whether I was even on the planet. My son just got his chest blew out.
Q. But isn't it true you did tell them your name, correct?
A. Yes, ma'am.
Q. Your son's name, correct?
A. Yes, ma'am.
Q. I think you even spelled your-all's name for them, didn't you?
A. I don't know. I might have did. I might have.
Q. Okay. So you -- you were thinking clearly right after when you was talking to them, correct?
A. No. No, I'm not gonna agree with that.
Q. Okay. But you were able to give them that information?
A. How I don't know.
Q. But you never told them that Will was coming at you, did you?
A. I didn't tell them I had on pink drawers either.

MS. PATTERSON: Thank you, Mr. Foster.
THE COURT: Anything else from the witness?
MR. SCHWARTZ: Nothing from the defense, Your Honor.
THE COURT: Thank you, sir. You may step down.
THE WITNESS: Thank you so much.
(Witness excused.)
THE COURT: Call your next witness.
MS. ZMROCZEK: Your Honor, we call Cathy Foster.
THE COURT: Cathy Foster?
MS. ZMROCZEK: Yes, Your Honor.
THE COURT: Are you, Cathy Foster?
THE WITNESS: Yes, sir.
THE CLERK: Have a seat on the witness stand.
(Whereupon, Cathy Foster was duly sworn by the Court.)
THE CLERK: State your name and spell your last name for the court reporter, please.
THE WITNESS: It's Cathy Foster. Well, my name's Cathy Amaker. It's A-M-A-K-E-R.
THE COURT: Say that again. I didn't understand you.
THE WITNESS: Amaker. It's -- the last name is Amaker now.
THE COURT: Spell it for me.
THE WITNESS: A-M-A-K-E-R.
THE COURT: Do you spell Cathy with a "C" or a "K"?
THE WITNESS: A "C".

THE COURT: Thank you, ma'am.

MS. ZMROCZEK: Thank you, Your Honor.

CATHY FOSTER AMAKER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. ZMROCZEK:

Q. Is it okay if I call you Cathy?

A. Uh-huh.

Q. Cathy, do you know Heirbrane Foster?

A. Yes.

Q. How do you know him?

A. Because he was my husband.

Q. For how long?

A. Oh, for a long time. I don't know how many years.

Q. Cathy, I want to talk to you specifically about October 24, 2015, when Mr. -- when Heirbrane was arrested for criminal domestic violence of a high and aggravated nature.

A. Uh-huh.

Q. Do you remember that?

A. Uh-huh.

THE COURT: Try to say yes or no and not uh-huh.

THE WITNESS: I'm sorry. This is my first time.

THE COURT: That's okay. That lady takes down what we say and --

THE WITNESS: Oh, okay. I'm sorry.

THE COURT: -- if you say yes or no, we're clear. If you say uh-huh, there's a question.

THE WITNESS: Okay.

BY MS. ZMROCZEK:

Q. And, Cathy, on that day did you call the police?

A. Yes, ma'am.

Q. And did you have any -- were you even assaulted that day?

A. Unh-unh.

Q. Is that a no?

A. No.

Q. Okay. Did the police arrest him anyway?

A. No, ma'am.

Q. Did the police arrest Heirbrane?

A. No, ma'am.

Q. Okay. For CDV high and aggravated nature?

A. I mean, I don't know.

Q. Okay.

A. I'm all messed up. I don't know what's what because, you know, if -- I'm -- I'm too upset about the whole situation. I don't want to -- I don't really want to deal with it --

Q. Right.

A. -- so I don't know what you're talking about or what

part or what's what.
Q. Okay.
(Defendant's Exhibit Number 1 was marked for identification.)
BY MS. ZMROCZEK:
Q. Let me show you what's been marked as Defense Exhibit 1. I'm gonna ask you if you recognize Defense Exhibit 1?
A. Yes, ma'am.
Q. Okay. And you've seen those four papers before?
A. Yes, ma'am.
Q. Okay. Did you sign that? Did you fill out those papers?
A. Yes, ma'am.
Q. And you signed them?
A. Yes, ma'am.
Q. And you gave them to Heirbrane's former public defender for these charges, right?
A. Yes, ma'am.
Q. Okay. And everything in this -- these papers is true and accurate?
A. Yes, ma'am.
MS. ZMROCZEK: Your Honor, at this time we'd move Defense Exhibit 1 in.
MS. PATTERSON: Without objection.

THE COURT: All right. This is just for the purposes of this hearing?

MS. PATTERSON: Yes, sir.

MS. ZMROCZEK: Yes, sir.

THE COURT: Just mark it for ID at this point.

MS. ZMROCZEK: Okay.

BY MS. ZMROCZEK:

Q. And you told the State what that charge -- that none of -- none of that criminal domestic violence stuff happened, right?

A. Uh-huh. Yes.

Q. That's what you told them?

A. Uh-huh.

Q. And so on -- and I'm just gonna ask you one question about May 10, 2016. Just one question. Was Mr. -- was Heirbrane allowed to be at your house?

A. Ma'am?

Q. Was he allowed to be at your house?

A. No, ma'am.

Q. I mean, did you allow him to be?

A. Oh, yes, ma'am.

Q. Let me -- let me rephrase that. Did you allow him to be?

A. Yes, ma'am.

Q. Okay. Had you tried to get the courts to lift that

bond condition?
A. Well, see, I -- but, see, I already thought it was and I didn't know. I thought it was lifted.
Q. Okay.
A. Nobody didn't tell me nothing.
Q. Right. And -- but he was allowed to be in that house?
A. Yes, ma'am. Because I didn't know nothing -- I didn't know it was dropped or what was what.
Q. Okay. Thank you.
A. So I can get down now?
MS. ZMROCZEK: No, she has to -- she gets to ask you questions.
THE COURT: Cross.

CROSS-EXAMINATION (In-Camera)

BY MS. PATTERSON:
Q. And, Ms. Foster, since she didn't really get into the incident on December {sic} 10th, I'm not gonna really get into those facts with you. However, do you remember giving a statement to Michelle Singleton?
A. No. I don't know the names. I mean, who is that?
Q. Do you remember giving a statement to someone?
A. To the police?
Q. Yes, ma'am.
A. Yes, I did.
Q. Okay.

(State's Exhibit Number 1 was marked for identification.)

BY MS. PATTERSON:

Q. So May 10th, which was the date Will -- May 10, 2016, which was the date Will was shot, you gave a statement to Michelle Singleton, and I'm just gonna show you --

MS. ZMROCZEK: Your Honor, I don't think -- I think that the proper way to introduce that statement or to ask her about it is to ask her about it and then if she would like to refresh her recollection, she can do that.

THE COURT: Do you wish to be heard?

MS. PATTERSON: Yes, sir, Your Honor. I asked her and she said she wasn't sure, so I was gonna show it to her to refresh her memory and let her see her signature.

THE COURT: You may do that, but you need to ask her if she made the statement and then if she denies it, then you can perhaps use the document.

MS. PATTERSON: Oh, I'm sorry. I --

THE COURT: I think that's the objection.

MS. ZMROCZEK: That's correct.

MS. PATTERSON: I apologize. I thought I asked her.

BY MS. PATTERSON:

Q. Do you remember giving -- making a statement to law enforcement?

A. Yes, ma'am.

Q. You do?
A. Yes.
Q. Okay. And do you remember her asking you about whether or not your ex-husband was even supposed to be at [redacted] Oak Glenn Road?
A. Yes, and just like I told her, like I was telling her, I didn't know the thing had been dropped until she told me. I didn't know if it was still active or not, so that's the reason why he came back to the house because I didn't know it was dropped, so.
Q. Okay.
A. And just like I told her, the paper I probably signed or what she wrote, I probably said something out of madness or upset. So, you know, I wasn't -- I wouldn't do anything to hurt my son's dad.
Q. Okay. So you --
A. And I'm not doing it for -- for just making people, you know, feel good about the whole situation. I'm doing it for my son, so I don't even want to go back through this.
Q. Okay. So you're saying you didn't tell her that?
A. I told her that out of upsetness because I was upset, what I was going through with my son just got in front of me. I was upset because of that and I'd probably say anything to her just to -- because I was upset.

Q. So isn't it true you told her he wasn't supposed to be there?
A. Yes, I did told her that.
Q. Okay. And that was because of a bond condition that the judge put on from a domestic violence charge in 2005, correct?
A. For who?
Q. 2015, correct?
A. For who?
Q. Against --
A. Against him, but for who? For me?
Q. Yes, ma'am.
A. For what? I mean, what did he do to me? I mean, what did he done? You-all didn't tell me what he done.
Q. Isn't it true you told her that he wasn't supposed to be there because of a domestic violence charge against you in 2015, correct?
A. I didn't say nothing about that he did anything to me. I just thought that she said something about being out there to the house. That's the only thing I had said. The other stuff I don't even know.
Q. Okay. So you would agree that you told her that, correct?
A. Not -- not by him hitting me, no. I didn't told her nothing like that, no. He didn't hit me with -- he didn't

hit me.
Q. Okay.
A. I don't -- I don't know what you talking about. I -- I thought I was here talking about my son. I don't know what you talking about. That's why I thought I was here, with my son.
Q. Okay. And when the police was out there to talk about your son, you gave her a statement, correct?
A. Yes, I did.
Q. And she asked -- and isn't it true she asked you if Heirbrane, your ex-husband, was supposed to be at [redacted] Oak Glenn Road, correct?
A. He didn't supposed to be there because I didn't know that whatever he had not to be there to the house. I thought it was dropped. I didn't know. That's what I explained to her because she brought it up to me and said do you know he's still on this. I didn't know he was still on it. That's why he came back to the house. So I don't know what's what. You-all are getting my confused and I'm getting you-all confused. I don't know what's going on. I'm here talking about my son.
MS. PATTERSON: I beg the Court's indulgence, Your Honor.
THE COURT: Yes, ma'am.
MS. PATTERSON: Your Honor, Ms. Foster seems confused.

Can I -- I would like to show her State's Exhibit Number 1, Your Honor.

THE WITNESS: I thought I was here talking about my son. I didn't know I was talking about something else.

MS. ZMROCZEK: Your Honor, she doesn't seem confused. It's just I don't think the State likes the answer. She said she said that, but she didn't mean it, and that -- I mean, I don't think there's any confusion.

THE COURT: Then show the witness the statement.

BY MS. PATTERSON:

Q. Is that your signature, Ms. Foster?

A. Yes, that's my signature.

Q. Okay. And I'm gonna read this and I just want you to read your response.

A. I didn't wrote this.

Q. Isn't it true, Ms. -- that someone wrote it for you, and that's Michelle Singleton. You may not have known her name, but didn't she write that for you because you were upset at the time because your son had got shot, correct?

A. Yes, but I told her at that -- I didn't know -- I didn't wrote it, but I had signed it. But what I had said, I didn't mean to sign whatever I had signed because I was too upset about my son.

Q. Okay. But isn't it true she let you read over this?

A. No.

Q. She didn't let you read over it?
A. No.
Q. Okay. Let's turn to the first page. Are these your initials?
A. Yes.
Q. Did you initial it?
A. Yes. I didn't know -- I mean, I signed it, yes.
Q. Okay. And --
A. Yes.
Q. The second page, are those your initials?
A. Uh-huh. What I was saying, she was writing. That's all I was saying. That's all I know.
Q. So what you were saying she was writing it and then you signed it at the end?
A. That's my handwriting, yes.
Q. Okay. And so let's go, again, to the last question of the last page. Was Senior supposed to be at the [redacted] Oak Glenn Road in Gaston, South Carolina?
A. Who? Who?
Q. I'm reading on the last page. I'm sorry.
A. Was who supposed to be there?
Q. This is what I was reading.
A. Who? Who was supposed to not be here?
Q. Senior. Was Senior supposed to be at the [redacted] Oak Glenn Road in Gaston?

A. His dad?
Q. Yeah, Senior, meaning your ex-husband.
A. Yes. That's like I say, yes, because I didn't know the stuff had done been dropped.
Q. And isn't it true your answer was no, because he was not supposed to be here according to a judge who put a no contact order in place from a domestic violence charge against me in 2015, and are those your initials after that statement?
A. Yes.
Q. Thank you.
A. Now may I get down?
MS. PATTERSON: I have no further questions, ma'am.
THE COURT: Redirect?
MS. ZMROCZEK: Nothing further.
Nothing further, Cathy. You can step down.
THE WITNESS: Thank you.
(Witness excused.)
THE COURT: Court's in recess for ten minutes.
MS. PATTERSON: Thank you.
(Recess taken at 4:21 PM.)
(Back on the record at 4:25 PM.)
BAILIFF: All rise. Court's now in session.
THE COURT: Thank you. Call your next witness.
MS. ZMROCZEK: Thank you. It's gonna be Nellie

Foster, Your Honor.

THE CLERK: Raise your right hand and put your left hand on the Bible.

(Whereupon, Nellie Foster was duly sworn by the Clerk of Court.)

THE CLERK: State your name.

THE WITNESS: Nellie Foster.

THE COURT: How do you spell your first name? With a "Y" or "I-E"?

THE WITNESS: Nellie Foster.

THE COURT: How do you spell your first name? Is it "Y" --

THE WITNESS: N-E-L -- N-E-L-L-I-E.

THE COURT: Thank you, ma'am.

NELLIE FOSTER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ZMROCZEK:

Q. Are your -- can you hear me okay?

A. I can hear you now.

Q. Okay. You got them fixed?

A. I've got them in, but sometimes they don't work.

Q. Okay. That's okay. Ms. Foster, how are you related to Heirbrane Foster?

A. My son.

Q. And how are you related to Will Foster?
A. My grandson.
Q. Okay. I want to ask you just a few questions about May 10th of 2016, okay?
A. Okay.
Q. What did you do that day?
A. I took Haley to work that morning.
Q. And who's Haley?
A. Haley's my grandchild.
Q. Your granddaughter?
A. Granddaughter.
Q. And so you said you take her to work. How did you -- where was she?
A. She work at the UPS.
Q. Right. And where did you pick her up from?
A. I didn't pick her up, somebody else brought her.
Q. Someone brought her. Okay. And then after you took Haley to work?
A. My son called me, Heirbrane, to take him to the grocery store.
Q. Okay. About what time did you get to his house?
A. Between 10:30 and 11:00.
Q. And where was his house? I'm not gonna quiz you. Was it [redacted] Oak Glenn?
A. Oak Glenn, yeah.

Q. And how long had he lived there?
A. About three years, I think.
Q. Okay. And -- and after -- so you said you went there about 10:30 or 11:00 and picked him up in the morning, right?
A. Uh-huh.
Q. On May 10th?
A. May 10th.
Q. And where did you-all go?
A. Where did I took him?
Q. Uh-huh. Pull that microphone down just a little bit. No, you're fine. I'll just -- we can move this so that way when you talk into it, we can hear a little bit better.
A. Okay.
Q. Okay. Where did you go that day?
A. We went to two grocery stores; the IGA and the Food Lion.
Q. Okay. So you went to the IGA and Food Lion?
A. Uh-huh.
Q. How long did those two trips take?
A. Around four hours.
Q. About four hours?
A. Yeah.
Q. Okay. Why did they take so long?
A. Because it was the 10th of the month and they was on

the food stamps and they was supposed to buy enough to last a month.

Q. Buying enough food to last a month?

A. Uh-huh.

Q. Okay. And you were driving?

A. I was driving.

Q. And so you went to the two stores for about four hours. Where did you go after that?

A. We -- we came straight on home.

Q. And when you say straight on home, do you mean to --

A. To his --

Q. -- [redacted] Oak Glenn?

A. And he took the groceries in.

Q. When you went straight on home, who did you see in the yard?

A. I didn't see nobody under his carport.

Q. Okay.

A. They was over at Leann's house.

Q. Over at Leann's house?

A. Uh-huh.

Q. And who did you see there?

A. Will.

Q. Okay.

A. And there was more people over there, but --

Q. But you saw Will?

A. Will, uh-huh.
Q. And what, if anything, did you remember about Will when you saw him?
A. Will always speak to me when I drive up, but Will was over there and Will didn't have a shirt on and he had -- he come to the -- he didn't come all the way to the car, but he came about half the way.
Q. Uh-huh.
A. And he had a liquor bottle in one and a beer in one.
Q. So he had a liquor bottle in one hand --
A. And a beer in one and he throwed them up and say hey, grandma.
Q. So he had a liquor bottle in one hand a -- what kind of beer was it?
A. I think it was -- he usually drank -- I know he drank Bud Light.
Q. He drank Bud Light?
A. Yes.
Q. Okay. And was the liquor clear or was it dark?
A. It looked like it was kind of in a red -- I'm not sure, but I know it was a liquor bottle. I do know it was a liquor bottle.
Q. Okay. And then after -- and so you saw that he held both of those up when he said hello?
A. Hey, grandmamma, yeah.

Q. Okay. And then what did you say?
A. What did I say to Will?
Q. What did you say to Heirbrane?
A. I told Heirbrane, I said he's -- he's really high. Don't say nothing to him.
Q. You told Heirbrane don't say nothing to him?
A. You just don't say nothing to him.
Q. Why would you have to say that to him?
A. Because I know Will. I know how Will gets.
Q. And so since you know, tell the judge how Will -- you mean when he was drinking?
A. Uh-huh.
Q. Is that a yes?
A. Yes.
Q. How does Will get when he's drinking?
A. Will get mean and angry at everybody.
Q. And had he been doing this for a little -- a little while?
A. Yeah, if he's -- he's drinking, but he's basically nice when he's not.
Q. He's -- so -- and there's no question when he's not drinking he's not the same person, right?
A. No.
Q. But when he was drinking, he would -- he would be mean?

A. Uh-huh. He's mean. Very mean.
Q. And angry you said?
A. Angry, uh-huh.
Q. So why would you feel the need to tell Heirbrane not to say anything?
A. Because I know it would escalate.
Q. It would escalate?
A. Yeah. Yeah, so.
Q. Did -- did Heirbrane say anything?
A. Not as I could see. He just got the groceries out and I know that Heirbrane would separate the groceries to make it last, you know, in bulk, and sort it out.
Q. And then after the groceries were unloaded, did you stay or did you leave?
A. No, I -- I left because I had to go to work at 5:00.
Q. So you left?
A. Yeah.
Q. So after that you -- you didn't witness any of the other --
A. I didn't witness nothing else.
Q. But you had -- but you knew that Will had been drinking that day?
A. Uh-huh.
Q. And you had told Heirbrane not to get upset because you knew that Will --

A. Yeah.
Q. -- got mean and angry when he drank?
A. I knew how he was.
Q. Now prior to that, had you ever seen Will get angry at Heirbrane when he was drinking?
A. Yeah.
Q. And what did he do? He, Will.
A. He -- he, you know, would just get mean and curse and just really curse at him, at his momma, too, you know, so.
Q. Was there --
A. But not me.
Q. Right. Right. Were there any other sources of -- were there any other topics that made Will particularly upset?
A. His girlfriend. You know, if he was drinking, he would get really upset with her.
Q. And would they have arguments?
A. Uh-huh.
Q. And you witnessed those?
A. Uh-huh.
THE COURT: Say yes or no, please.
Q. Was that -- was that a yes?
A. Yes.
Q. Okay.
A. I witnessed those.

Q. Okay. Did you ever see Will when he was drinking get in arguments with Bradley?
A. Say that again.
Q. Did you ever see Will when he was drinking get in arguments with Bradley?
A. Oh, yes. Oh, oh, yes.
Q. And is Bradley -- who is Bradley?
A. Bradley is my grandson, too.
Q. Also your grandson?
A. Uh-huh.
Q. And you said oh, oh, yes. Did that happen quite a bit?
A. Oh, yeah, because at one -- one point they lived with me and Will and Bradley would get into it and they would -- you know, I would have to stop them.
Q. Was Will living with Leann on May 10th of 2016?
A. Yeah.
Q. He was at her house?
A. Uh-huh. Yeah.
Q. He was living with her?
A. He was -- he was over there.
Q. Over there. Okay.
MS. ZMROCZEK: I beg the Court's indulgence.
THE COURT: Yes.
BY MS. ZMROCZEK:

Q. And when you were -- when you came back and were unloading the -- or they were -- the groceries were being unloaded, did you see Bradley at the house as well?
A. Bradley was -- yeah, Bradley -- Bradley was at the house, too.
Q. Okay. And had Haley gotten back from work yet?
A. I didn't see Haley, but Haley had got -- got a way back. Somebody had picked her up.
Q. Okay. You didn't have to pick her up?
A. No, I did not.
Q. You didn't see her when you got back?
A. No.
Q. Okay.
MS. ZMROCZEK: Thank you, Your Honor. No further questions. Please answer any questions -- you've got to wait because you've got to let them ask you some questions.
THE COURT: Any cross?

CROSS-EXAMINATION (In-Camera)

BY MS. PATTERSON:
Q. Ms. Foster, your son wasn't supposed to be at that house, was he?
A. No.
Q. Because, as a matter of fact, he stayed with you when he got arrested for domestic violence on Cathy, didn't he?
A. No.

THE COURT: I'm sorry, what did you say?

THE WITNESS: No, he didn't stay with me.

BY MS. PATTERSON:

Q. He didn't stay with you?

A. Unh-unh.

Q. Did he return back to [redacted] Oak Glenn Road -- or Drive?

A. Uh-huh, but he -- he was never arrested at my house for domestic violence.

Q. No, ma'am. No, ma'am. But when he -- do you remember when he went to jail for domestic violence against Cathy?

A. Yeah, but --

Q. Did he -- and did he come and stay with you sometime after that?

A. He -- after that, yeah, he -- he stayed with me a while after that.

Q. Because he wasn't supposed to be at the [redacted] Oak Glenn Drive house, correct?

A. Unh-unh.

Q. And the day that you took him grocery shopping, did you help him unload the groceries?

A. No, I did not.

Q. Okay. Who -- who helped him unload the groceries?

A. Cathy and him. Mostly him.

Q. Okay. So Bradley was there, but Bradley didn't help unload the groceries?

A. I -- no, I was -- I was in a hurry to go home and get my cooking and things done. I don't -- I don't know who helped.

Q. Isn't it true Bradley --

A. I know -- I know Heirbrane got most of it out.

Q. Okay. And isn't it true Bradley wasn't even there?

A. Wasn't there for that?

Q. Wasn't there when you took him back from the grocery store?

A. I didn't see him, unh-unh.

Q. You didn't see Bradley?

A. I might have seen him come to the door, but he didn't come to the car.

Q. And you say you saw Will and he was at Leann's house, correct?

A. Correct.

Q. And you said at that point he didn't have a shirt on, correct?

A. That's correct.

Q. But you remember him speaking to -- to you, correct?

A. Yes.

Q. So he wasn't mean or cursing or anything at that point, correct?

A. No.

Q. Okay. And isn't it true you told Heirbrane don't

mess with Will because it would escalate because you knew Heirbrane had a temper, too, correct?

A. I -- he -- he has one, but I have one, too. I guess we all do. I mean, I know you want me to say --

Q. Yes, ma'am. But he has one, too, correct?

A. Uh-huh.

Q. And so you went home -- after you -- you dropped him off at home, you went home?

A. Yes.

Q. So you don't know what he did after you went home, do you?

A. No, I don't know what he did after.

Q. Okay. And you don't know what the incident involves because you went home, correct?

A. That's right.

MS. PATTERSON: I beg the Court's indulgence, Your Honor.

THE COURT: Yes, ma'am.

MS. PATTERSON: No further questions, Ms. Foster.

THE COURT: Redirect?

MS. ZMROCZEK: Very briefly.

REDIRECT EXAMINATION (In-Camera)

BY MS. ZMROCZEK:

Q. When you-all were grocery shopping, was Heirbrane drinking?

A. No, ma'am, not at all. We had a good conversation. He wouldn't have gone to the store if he had been drinking.
Q. Okay.
A. No, ma'am.
Q. And would you have taken him to the store if he had been drinking previously?
A. No, ma'am, I wouldn't have taken him.
Q. Okay. And you said that -- she asked you -- she was trying to get you to say that he lived with you after he got arrested, but where did he -- where did Heirbrane live when he got out of jail? Where was he -- where was he living May 2016?
A. He went to my brother's house.
Q. Right, and then where did he go?
A. And then he came to my house.
Q. Right. And when did he move back to [redacted]? How long had he been there?
A. He had -- he had been there -- I think it was maybe in March --
Q. In March?
A. -- when -- when he went back over there.
Q. Okay. And he had -- and he was allowed to be there, right?
A. Because he -- he --
Q. Did Cathy allow it?

A. Yeah, he was allowed to be there.
Q. Yes. Cathy allowed him to be there, right?
A. Yeah, Cathy allowed him to be there.
Q. And that's where you would pick him up every month on the 10th to go grocery shopping?
A. Yeah, on the 10th.
MS. ZMROCZEK: Thank you. No further questions.
THE COURT: Recross?
MS. PATTERSON: No, sir, Your Honor.
THE COURT: Thank you, ma'am. You may step down.
(Witness excused.)
THE COURT: Call your next witness.
MS. ZMROCZEK: It's Lahavia Foster, Your Honor, and this will be our final witness.
THE CLERK: Raise your right hand and place your left hand on the Bible.
(Whereupon, Lahavia Foster was duly sworn by the Clerk of Court.)
THE CLERK: State your name for the court reporter and will you spell your first and last name for the court reporter.
THE WITNESS: Okay. It's Lahavia Foster. Spelled L-A-H-A-V-I-A.
MS. ZMROCZEK: And you can speak into the microphone or you can pull it back to you.

THE COURT: Yeah, you have to speak into the mic.

LAHAVIA FOSTER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. ZMROCZEK:

Q. Ms. Foster, how do you know Heirbrane Foster?

A. He's my brother.

Q. And how do you know Will Foster?

A. My firstborn nephew.

Q. Your firstborn nephew?

A. Yes.

Q. And did you spend a lot of time around Heirbrane and Will?

A. Heirbrane, yeah, definitely growing up and, Will, yes.

Q. Okay. And, well, obviously you spent time with him growing up. After he married Cathy, were you able to witness what kind of relationship they had?

A. Yes.

Q. What kind of relationship did Heirbrane and Cathy have?

A. Not one that you see very much.

Q. What do you mean?

A. It was very loving, they were extremely affectionate, and just had a really good rapport.

Q. And how were they with his children?

A. The same.
Q. And how was he with his children?
A. The same.
Q. Okay. What -- how well did you know Will?
A. I knew him well.
Q. You spent a lot of time around him?
A. Being my firstborn nephew, I spent time baby-sitting him from that and throughout high school he would spend time with me as well.
Q. And did you even see him afterwards?
A. Yes.
Q. Okay. And what did you notice about Will's behavior from when he was drinking to when he was not drinking?
A. It was Dr. Jekyll and Mr. Hyde. I mean, it was two different people.
Q. Two different people?
A. Yeah, one person was very patient, very docile, extremely friendly, and it was the exact opposite of that when he was drinking.
Q. Okay.
A. Quick tempered and prone to be violent.
Q. And do you know where your brother was living on May 10th of 2016?
A. At the -- I don't remember the address.
Q. At [redacted] --

A. Yeah, at [redacted].
Q. At [redacted] Oak Glenn?
A. Yes.
Q. Okay. And how did you know that?
A. I had been there to visit him and we had a function or two for the family there.
Q. Okay. Do you-all grill out a lot?
A. Yes, we did.
Q. Did you ever see any incidents where Will -- when Will was drunk and get aggressive or angry?
A. I did.
Q. Okay. And what -- describe that.
A. I'd stop by after visiting my mom because they're in close proximity and I don't get on that side of town too often and Will had been outside drinking with some of his friends and I went in the house to see everybody else, Heirbrane and Cathy, and Cathy was going back to the room because Heirbrane and her were laying down watching a movie together, and I started talking to my niece, started talking to Haley, and Will comes in the house and he asked me -- he asked me to take him to the store.
Q. "He" who?
A. Will.
Q. Okay.
A. Prior to me even going into the house, and I took him

to the store, but, you know, they -- they do that because they don't have a car, so I figured they wanted some snacks or what have you or to lure me to buying him some things, okay, and so they came out with beer and I was like, you know -- so when I went back to the house after some -- some time of talking to Heirbrane and Haley and Cathy, he asked me to take him back to the store and I'm like you're not -- for what, no, I'm not taking you back to the store, you've already finished what you already had, and he was like yeah. He was like yeah -- yeah, I had it, but I know I'm gonna need more later and I know I'm not gonna have a ride to the store and I said well, I'm not taking you to the store for that. And I said ask -- ask your daddy or do you even have any money and he was like fuck him and I'm like okay, and so -- and he just got mad. He was like nobody ever does anything for me and just -- just enraged, just a bunch of profanity, and by that time Heirbrane came out of the room and he was like what's going on and he was like F-U, too, and he was kind of going towards him with his arms down with his fists -- you know, his fists clinched, so I felt like he was gonna do something, so I stood in between them and went calm down and chill out, calm down, and so at that point he kind of pushed me to the side and he went towards -- went towards Heirbrane, but Heirbrane was able to grab him and he grabbed him around his arms and

was like please, stop it, I love you, it's okay, I love you, and they both started crying like because obviously it was, you know, something that had been taking place before, but he was able to defuse Will's anger at that point because it was like -- with love like, and I think that's how it started out most of the time whenever before Will escalated all the way to -- all the way to that point.

Q. And you think before he escalated --

A. He was able to defuse it by not having that same behavior, but showing him love and showing him that he was there for him and he didn't have to act out that way.

Q. What did you notice about -- you said escalating. What had you noticed about Will's behavior in the months just preceding his death?

A. It was just a lot of heavy drinking. He --

Q. More so than before?

A. Yes. Yes, and, I mean -- but I remember a time when he was getting in trouble, you know, like with the stealing and what have you, but he wasn't drinking. So I remember a time where he wasn't a drinker.

Q. Right. Is that something that -- that was more recent?

A. Right.

Q. And so you were aware that he was out on bond -- he had been arrested in April of 2016?

A. Right.
Q. Were you aware of that?
A. I was.
Q. Okay. And so he was out on bond when this incident occurred?
A. Yes.
Q. Okay. Now was there some discussion amongst the family members about bonding him out?
A. Yes.
Q. Okay. And what was that discussion?
A. I know that me and my mother were adamant about it. We felt --
Q. About getting him out or leaving him in?
A. No, about -- about him getting out of -- out of jail, so that really wasn't an option for us at this point, and there was a discussion of his sister being able to do it and I said specifically that I didn't think it was a good idea. I felt like with just the whole dynamics of how he was kind of wreaking havoc at home that it would probably be a better idea for him to basically spend some time thinking about what he did.
Q. Okay. And now were you there prior to -- were you there on May 10th?
A. I did get there after the incident.
Q. After the incident?

A. Yes.
Q. So you -- but you didn't know of anything about before?
A. No.
Q. Okay. Did you see Cathy after the incident?
A. Yes.
Q. How -- what was her demeanor?
A. It was -- she was shaking, just kind of in shock for a moment. I think my mother was trying to actually talk to her and she was kind of stoic and wasn't able to really formulate words for -- for a good minute.
Q. Okay. Did you see your brother at all after that?
A. No.
Q. Okay. Have you ever known your brother to have guns?
A. No.
Q. Any weapons?
A. Never.
Q. And when you were ever over at the house, did you ever see any weapons?
A. No.
Q. Okay.
MS. ZMROCZEK: I beg the Court's indulgence.
THE COURT: Yes, ma'am.
MS. ZMROCZEK: Nothing further, Your Honor.
THE COURT: Cross?

CROSS-EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. Ms. Foster, you did know your brother was arrested for domestic violence, correct?

A. Yes, I did.

Q. And you knew your brother was -- had a temper as well, correct?

A. No.

Q. Your brother never had a temper?

A. No.

Q. And --

A. I don't even ever recall having an argument with my brother, so that's new to hear. He's never had a temper.

Q. So you've never had an argument with your brother, correct?

A. No.

Q. But you've known others -- him to get into it with other people, correct?

A. No.

Q. So you didn't -- you wasn't aware when your brother went to jail for domestic violence?

A. I was aware of it.

Q. Okay. And he was in jail a couple of times for that, correct?

A. I'm not aware of that.

Q. Okay. And this situation where Will was -- you thought Will was coming after you, did you call the police?
A. I did not.
Q. Okay. But you were concerned about Will's temper and his drinking, but you didn't call the police on him that day?
A. No, I didn't because we were able to defuse the situation.
Q. And you said Will was crying with his daddy, correct?
A. Yes.
Q. So he was able to control himself, get himself under control, correct?
A. He was crying after he -- after my brother embraced him and told him that he loved him and he wanted him to stop.
Q. And the [redacted] Oak Glenn Drive address, you said your mom lived close to this address?
A. It depends on what you mean by close.
Q. You said close.
A. It's in the same -- it's in the same city, the same city.
Q. In the same city. About how far away?
A. I couldn't gauge it. Maybe five or ten minutes away.
Q. Five to ten minutes?
A. Maybe like ten minutes away.

Q. Okay. And you described Cathy and Will as having a loving relationship, correct?
A. Cathy and Heirbrane, yes.
Q. And Heirbrane?
A. Yes. I remember him having a loving relationship with her -- with his children and her.
Q. But Cathy and Heirbrane at one point split up, didn't they?
A. I'm not aware.
Q. Didn't Heirbrane have another relationship with another woman, correct?
A. I believe so.
Q. Okay. And you wasn't there May 10th when Will was shot, were you?
A. No, I got there after.
Q. So you -- so you have no idea what Will was doing that day, do you?
A. I don't.
Q. And you have no idea what your brother was doing that day?
A. I knew that he had went to the grocery store with my mother.
Q. Okay. But after that you have no idea what was going on at that residence that day, correct?
A. I wasn't there.

Q. Okay.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. PATTERSON: No further questions.

MS. ZMROCZEK: Nothing further, Your Honor.

THE COURT: Thank you. You may step down.

(Witness excused.)

MS. ZMROCZEK: Your Honor, those would all be -- those would be all the witnesses we would present.

THE COURT: Does the State have witnesses?

MS. PATTERSON: Your Honor, we have about three witnesses. I don't know given the time of the day if you want us to wait until the morning. We can have them here at 9:00.

THE COURT: Do you have anybody here?

MS. PATTERSON: Yes, but she may be kind of a little longer.

THE COURT: Who is it?

MS. PATTERSON: Leann Cotton.

THE COURT: Call her.

Are you Ms. Cotton?

THE WITNESS: Yes, sir.

THE COURT: Come up to the stand, please, ma'am.

(Whereupon, Leann Cotton was duly sworn by the Clerk of Court.)

THE COURT: All right. Please state your name and spell it for the court reporter, please.

THE WITNESS: Leann Cotton, L-E-A-N-N C-O-T-T-O-N.

LEANN COTTON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. Ms. Cotton, do you know Will Foster?

A. Yes, ma'am, I do.

Q. How do you know Will?

A. He is my ex and the mother -- I mean, I'm the mother of his child.

Q. And how long did you and Will date?

A. For almost two years.

Q. And how many children do you have together?

A. One.

Q. Boy or girl?

A. Girl.

Q. How old is she?

A. She just turned three.

Q. When was she born?

A. April 14, 2016.

Q. And what's her name?

A. Ny-Shay.

Q. And do you know the Defendant, Heirbrane --

THE COURT: Spell that, please.

THE WITNESS: N-Y hyphen S-H-A-Y.

BY MS. PATTERSON:

Q. Do you know the Defendant, Heirbrane Foster?

A. Yes, ma'am.

Q. And how do you know him?

A. He was my neighbor even prior to me knowing Will.

Q. And when you say neighbor, how far away did you live from him?

A. One house over.

Q. So were you right next door to him or was it a house in between?

A. A house in between us.

Q. And describe like where your house was located in -- on the street.

A. Centered in the cul de sac.

Q. Okay. And do you remember the day that Will got shot?

A. Yes, ma'am.

Q. And when you and Will was together, at some point would he ever go and stay at his mom's house at [redacted] Oak Glenn?

A. Yes, ma'am.

Q. And then he would stay with you sometimes?

A. Yes, ma'am.

Q. And on the incident date, what was going on earlier

that day?
A. Between me and Will or just in general?
Q. Just in general.
A. We were getting ready to have a cookout.
Q. And when you say "we", who do you mean?
A. Me and Will.
Q. And who was coming to the cookout?
A. Everybody in the neighborhood. It's kind of like a high traffic area, so generally whoever comes by. I just used to put meat on the grill for anybody and we'd just have a nice time.
Q. And did you have everything you needed for the cookout?
A. No, ma'am.
Q. And so who went and got the supplies or what you needed?
A. Me and my sister went to the grocery story. She needed to grab something. I went to grab meat.
Q. And what's your sister's name?
A. Ronita Cotton.
Q. Where does Ronita live now?
A. In Southern California.
Q. And how did you and Ronita get to the grocery store?
A. One of the guys from the neighborhood gave us a ride.
Q. And do you know where Will was when you left for the

grocery store?
A. In the front yard.
Q. Of whose --
A. My front yard. Excuse me.
Q. And when you got back from the store, do you know about how long you were gone?
A. Maybe twenty minutes.
Q. And when you got back to the store, what -- from the store, what happened?
A. There was a group of girls in the front yard in a car, I don't know the car or the girls, and me and Will got into an argument because there were girls in my yard.
Q. And where were you and Will arguing?
A. Underneath my carport.
Q. And had Will been drinking?
A. No, not yet.
Q. Okay. And did this argument turn physical? Did Will hit you or you hit him?
A. No.
Q. And so about how long did the argument last?
A. Not even five minutes. He got upset because I -- I basically shut the argument down, I didn't want to hear what he had to say, and he kicked the grill and that was it.
Q. And where was the grill that he kicked? Where was it

at?
A. Off the side of my carport.
Q. Do you know whose grill it was?
A. Heirbrane's.
Q. And do you know if you-all had permission to use the grill?
A. Yes, ma'am, we did.
Q. Did you-all use the grill often?
A. Yeah.
Q. And were it a lot -- was there a lot of people hanging outside at this point?
A. Yes, there was.
Q. And was any of Will's family there?
A. In my yard, no.
Q. Or just hanging outside?
A. Besides Heirbrane, I didn't see any of his family hanging around. I believe Cathy and Haley were in their house.
Q. Okay. And when Will kicked the grill, do you know if Heirbrane knew he kicked the grill?
A. Yes, he was watching us while we were arguing and he started cursing him out when he kicked the grill.
Q. And what happened when he began cursing him out?
A. They were yelling back and forth cursing each other out from across the yards. Heirbrane was in his -- under

his carport, Will was under mine, and then they just do what they always do, which is start arguing.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. PATTERSON:

Q. And so when they were arguing, was Will -- was Heirbrane still in his yard?

A. Yes, ma'am.

Q. And Will was in your yard?

A. Yes, ma'am.

Q. And at this point was it a lot of people outside?

A. Yeah, there were about ten people outside when the argument began.

Q. And did anything in particular happen when they started arguing back and forth?

A. Initially, no. They were just bickering, both of them kind of yelling at each other. Will walked over and they were sitting there yelling at each other further. Boozey picked up the stick and Will picked up a stick, which Cathy tried to grab the stick from Boozey.

Q. And you say "Boozey", who was that?

A. Heirbrane. I'm sorry.

Q. Okay. And Heirbrane picked up the stick first?

A. Yes, ma'am.

Q. And where did he pick that stick up from?

A. From the far side of his carport.
Q. And where did he go when he picked up that stick?
A. They were both standing there holding sticks yelling in each other's face.
Q. Did they ever swing at each other with those objects?
A. No, they did not. Vernon came over and snatched the stick out of Will's hand because Cathy was unsuccessful in snatching it and Heirbrane threw down whatever the stick was that he had.
Q. Okay. And so after they both were no longer holding anything, what happened?
A. They continued arguing. And prior to the argument, Heirbrane was supposed to be working on my sister's car -- van, which was in front of my house broke down. He walked over and they were both walking together arguing. They were walking along with each other arguing and they started to walk back towards Cathy's house in which they were standing in the middle of the person who lives between us yard and my son was in between them, so I start yelling at both of them telling them to just go back in their own yard, take that back over there because their arguing was something that happened often and I just didn't want my son around it.
Q. Okay. Did -- did Heirbrane ever start working on your sister's car?

A. No.
Q. So he never got up under the car?
A. No.
Q. So you never seen Will over there kicking at any -- kicking at the car?
A. No, he never got underneath the car to begin with. They were arguing standing up walking the whole entire time.
Q. Okay. And at any point did they lay hands on each other?
A. No. They never even got within arm's reach of each other.
Q. And, Leann, just for this --
MS. PATTERSON: Your Honor, may I have permission for the witness to step down?
THE COURT: Sure. Just keep your voice up, please.
(Whereupon, the witness steps down from the witness stand.)
BY MS. PATTERSON:
Q. Just kind of stand right there. Keep your voice up so the judge and defense counsel can hear you.
A. Okay.
Q. If this was Cathy -- Cathy Foster's, Will's mom's house, where would your house have been?
A. Right here.

Q. And you can use this. I don't have a pointer.
A. This house in the center of the cul de sac, that's my driveway --
Q. Okay.
A. -- that's their house, and this is the yard between us.
Q. Okay. And where were they when they were arguing back and forth with each other?
A. They kind of were going from here to here, the person in between us yard, and when they were in the middle of the person in between us yard, that's when I was yelling at them because my son was standing in between them, at the time he was five years old, and he was just in the midst and just in case they started fighting I just told them just to get out my yard because I didn't want that around my son.
Q. So if they were right here, why did you tell them to get out of your yard?
A. Because I kind of felt like that was my yard, too.
Q. Okay. And so where were they when they had objects in their hands?
A. This is their house.
Q. Uh-huh.
A. The back side of their carport.
Q. Okay.

(Whereupon, the witness retakes the witness stand.)

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. PATTERSON:

Q. Did they have a lot of objects laying around in the yard?

A. Yes, they did.

(State's Exhibit Number 2 and 3 were marked for identification.)

BY MS. PATTERSON:

Q. And I'm gonna show you what's been marked as State's Exhibit 2 and 3, and ask you to take a look at what's in those photographs. And do you recognize those?

A. Yes, ma'am. The random stuff in the back of their yard.

Q. And does that fairly and accurately represent the way their yard would have looked on the day that Will was shot?

A. Yes, ma'am.

Q. Does it look like it's been changed?

A. No.

MS. PATTERSON: Your Honor, at this time I move these -- State's 2 and 3 to be admitted.

THE COURT: Any objection?

MS. ZMROCZEK: Without objection.

THE COURT: How do you want to do this? If the trial

goes on, do you want to mark these for ID now and enter them in at the trial?

MS. ZMROCZEK: I think that's probably easier, Your Honor.

MS. PATTERSON: Yes, sir.

THE COURT: All right. Well, they're in evidence for purposes of this hearing.

Have you got that, Madam Court Reporter?

THE COURT REPORTER: Yes.

THE COURT: Thank you.

(State's Exhibit Number 2 and 3, photographs, were admitted into evidence for purposes of the pretrial hearing.)

BY MS. PATTERSON:

Q. Do you recognize any of those objects that either one of them may have had in their hands?

A. The shovel was what Heirbrane had in his hand. It was a random stick that Will had in his hand. I don't see it there, but it was not a two by four.

Q. And what happened to the object that Will had in his hand?

A. Vernon snatched it out of his hand. I don't if he walked off with it or threw it, but Vernon Blanding snatched it from him.

Q. Okay. But you didn't see where it went?

A. No, ma'am.
Q. Okay. And so at any point during this incident did you think everything was over?
A. Yes. When Heirbrane went into the house, Will was calm. Me and Haley, which is Will's sister, we were standing there talking to Will together. We had been standing there for a couple of minutes, just, you know -- the situation had defused, we kind of even laughed about it, and we were getting ready to walk off before he came back outside and shot him.
Q. And who was laughing about it?
A. Me, Will and Haley.
Q. Okay. Do you know -- did you ever see Cathy out there?
A. Yeah, she walked off prior to Heirbrane walking in the house. Right before he walked in the house, she walked down the street.
Q. Okay. And did you see Bradley out there that day?
A. No, I didn't.
Q. Okay. And when Heirbrane went into the house, did Will try to follow them in there?
A. No, he did not.
Q. Did Will even go inside the house?
A. No, he didn't even walk up on the porch. He was off the side of the carport.

Q. And at this point was Will even saying anything to Heirbrane?
A. No, the argument was over to our knowledge anyway.
Q. And what happened after? Did Heirbrane ever come out of the house?
A. Yes, with the gun.
Q. And what happened when he came out the house?
A. Will's back was to Heirbrane when he stepped out. He stepped out with the gun and his words were "didn't I tell you not to fuck with me", and then before Will can even fully turn around, he was shot.
Q. Okay. And did you see where the shot went?
A. Into his chest.
Q. And what did Will do after he was shot?
A. He tried to turn and take a couple of steps like he was trying to run, but he only made it like two steps before he fell and seized and stopped breathing.
Q. Did you hear Heirbrane pump the gun?
A. No, I did not.
Q. And did you see where Heirbrane went afterwards?
A. He took off running through the back door.
(State's Exhibit Number 4 was marked for identification.)
BY MS. PATTERSON:
Q. State's 4. Where was Will standing when he got shot?

A. The side of the carport. Like the dirt right on the edge of it.

Q. I'm gonna show you State's Exhibit Number 4 for ID only at this point and ask if you recognize that?

A. Yes, ma'am. That's his blood splatter.

Q. And what do you recognize in that picture also? Is that their house?

A. Yes, ma'am. The side of their house.

Q. And can you kind of point and show us where Will was standing?

A. Right here off the side of the carport where that big bloodstain is, not the splatter.

Q. And where did Heirbrane come out of the house at? Where was he standing?

A. In the doorway. He never even took a step down. He just opened the door and was standing in the doorway.

Q. Okay. And how long would you say Heirbrane was inside the house?

A. I'd say three to five minutes. It was a good minute. Me and Haley -- like I said, we were holding a whole conversation with him. We felt like the situation was defused. We even started to laugh and had told him, you know, let's walk off, which he agreed.

Q. Okay.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

Let me see those.

MS. PATTERSON: And, Ms. Cotton, please answer any questions the defense attorney may have.

THE WITNESS: Yes, ma'am.

MS. ZMROCZEK: Your Honor, may I see State's 4? I promise I'll give it back.

THE COURT: You can have them up. I just wanted to see a little closer.

CROSS-EXAMINATION (In-Camera)

BY MS. ZMROCZEK:

Q. Ms. Cotton, I wanted to ask you real quick about State's 4 to make sure I understood your testimony --

A. Yes, ma'am.

Q. -- so I'm gonna come over here, okay? You said that -- can you show me where he -- he, Will, was standing?

A. Off the side of the carport right here.

Q. Okay. So off the side?

A. Yeah, where that large splatter is.

Q. Okay. And so he had to step up to get onto the carport?

A. No, he didn't go onto the carport.

Q. Right, right.

A. He was standing there.

Q. He didn't get up, he was -- but he was on the ground?

A. Yes, ma'am.
Q. Okay. And then you're saying that -- that Heirbrane was up here --
A. In the doorway.
Q. -- in the doorway? Up here in the doorway. You have to go up some stairs and he's in the doorway?
A. Yes, ma'am.
Q. Okay. You didn't give a statement to the police?
A. No, I did not.
Q. And, in fact, you did give a statement in June of 2018 to the solicitor's office?
A. Yes, ma'am, I did.
Q. And that was right after you were arrested for drug possession?
A. Yes, ma'am, I did.
Q. Okay. And what else do you have on your record?
A. Driving under suspensions.
Q. Is that the only thing?
A. A few of them.
Q. A few of them?
A. Uh-huh.
Q. And then this drug charge?
A. Uh-huh.
Q. And what was that drug charge?
THE COURT: Say yes or no, please. Say yes or no.

A. I apologize. Yes, ma'am.
Q. And, ma'am, what was that drug charge?
A. What you do mean what was it?
Q. What were you charged with?
A. Possession.
Q. Of?
A. MDMA. I think that's what you call it.
Q. Okay. What happened with that charge?
A. What do you mean what happened with it?
Q. What's the dis -- is it still pending?
A. Yes.
Q. Okay. Is the solicitor -- the same solicitor's office prosecuting you?
A. You mean is she from here?
Q. I mean, from this office.
A. Yes, ma'am.
Q. Okay.
A. And it's only still pending because the last time I went in for court I went into labor.
Q. Okay. But -- but right after that is when you gave your first statement written down, right?
A. No, prior to that I gave my first statement.
Q. Right, you -- prior to labor, but after you were arrested?
A. No, I already --

Q. When were you arrested?
A. I was arrested in 2017, I think.
Q. Okay. And you gave your statement --
A. I'm not for sure.
Q. -- on June 1st of 2018, right?
A. Yes, ma'am.
Q. Okay. So that was after you were arrested?
A. Yes, ma'am.
Q. Okay. And -- and in that statement that -- you said that you met Will in December of 2014. That was right when he got out of prison?
A. Yes, ma'am, the day he got released.
Q. Okay. Yeah. Right when he got released, right?
A. Uh-huh.
Q. And then you said that Will moved in with you around January of 2015?
A. Yes, ma'am.
Q. Okay. So Will lived with you?
A. Yes, ma'am.
Q. At [redacted] Oak Glenn Road?
A. Except for when we weren't together.
Q. Okay. And when was that?
A. There's been a couple of times we've broken up --
Q. Okay.
A. -- and he was living with his mother.

Q. When was that? When was the most recent time?
A. The -- like maybe a month before he was killed.
Q. Was that when he --
A. Around the time he got hit in the head.
Q. Okay. Well, he got hit in the head in March, right?
A. Uh-huh.
Q. Is that a yes?
A. Yes, ma'am.
Q. Okay. So was he living with you in March or was he living with Cathy and Heirbrane in March?
A. Both.
Q. Okay. And, in fact, you gave a statement, that same statement I'm talking about in June, and you told the solicitor's office that Heirbrane had been sexually abusing Haley since she was a teenager, right?
A. Yes, I did.
Q. Okay. You told them that, right?
A. Yes, I did.
Q. And he's never been arrested for that, right?
A. No, he hasn't.
Q. Okay. And there's never been any complaints about that?
A. To the police, maybe not.
Q. Okay. But -- but only to you? Haley comes to you and tells you this?

A. And Will as well.
Q. Oh, and Will told you that as well. Okay. And -- and you told them in March -- in this March incident when Will got hit in the head that he stayed in the ICU for several days?
A. He stayed overnight and he checked his self out. He chose not to -- to continue to stay there. Yes, he was in surgical ICU.
Q. But -- but it wasn't several days?
A. Two.
Q. Two days?
A. Yes, ma'am.
Q. Okay. So if the medical records show he checked out thirty minutes after he got there, they would be wrong?
A. He did not check out. He got there one night, he had surgery, and we did not leave until the next day.
Q. He had surgery?
A. Yes.
Q. Is that -- is that your testimony?
A. That's what they called the procedure, yes, ma'am.
Q. Okay. So he had surgery and he -- and it's your testimony he stayed two days in the hospital?
A. Yes, ma'am.
Q. Okay. And -- and that's your testimony under oath?
A. Yes, ma'am.

Q. Okay. You also said that -- well, let me ask you this. You were -- you said that when you and Will got into your argument over the girls at the car that he wasn't drinking?
A. No, he hadn't started drinking. No, ma'am.
Q. Okay. And what time of the day was that?
A. It was early. Pretty early in the morning.
Q. Okay.
A. We had just gotten out of bed when we came out the door.
Q. So when he did start drinking?
A. He didn't drink that day. That was my point.
Q. He never drank that day?
A. No, he didn't.
Q. So if his blood alcohol at his autopsy had a .20 --
A. Well, to my knowledge he didn't have a drink.
Q. Okay.
A. We didn't have anything to drink in our house. I don't know if maybe he got something from his mother -- mother's house, but we did not have anything to drink in my house --
Q. Okay.
A. -- and that's where he stayed that night prior to his death.
Q. Okay. So you -- when his blood alcohol came back at

.20, you have no idea how that happened?
A. No, I don't.
Q. Okay. When did he take -- when did he take the Xanax that was in his system?
A. I don't know.
Q. Okay. He didn't have a prescription for that, did he?
A. No, he didn't.
Q. Okay. What about the crack that was found in his pocket?
A. Probably was his father's.
Q. Oh, that -- so that's your testimony, it was his father's crack?
A. Yes, ma'am.
Q. Okay. Even though it was in his pocket?
A. Yes, ma'am.
Q. And a month before he had been arrested for possession of crack?
A. Yes, ma'am.
Q. Okay. And that would be "he", Will?
A. Yes.
Q. Okay. And Heirbrane has no drug arrests on his record?
A. No, but he's a known crackhead.
Q. He's a known crackhead?
A. Yes, ma'am.

Q. Okay. That's your testimony?
A. Yes, ma'am.
Q. Okay. And, in fact, just a little while ago out in the hall you and Cathy were having a discussion, an argument, weren't you?
A. No, we never had an argument at all.
Q. No? You never yelled at her and told her she's not doing the right thing?
A. Today, no.
Q. Okay. Have you ever said that to her?
A. Yeah, I told it to her when Will was still alive.
Q. Why -- why wasn't she doing the right thing?
A. Because she was allowing Heirbrane to be around them. That her --
Q. Right. She was allowing him to be around them, right? She let him live --
A. Them all.
Q. Yeah, them all. Because he lived at [redacted] Oak Glenn, right?
A. Who?
Q. Heirbrane.
A. Oh, yes, he did.
Q. And -- and he was allowed to be there?
A. Yeah.
Q. Okay. And then you said -- going back to this March

incident, and I'll let that go, you said that you called the police?

A. In March?

Q. Yes.

A. Yes, ma'am.

Q. Okay. Is your name Jamal Johnson? Do you go by that name as well?

A. No, that's Peanut.

Q. That's Peanut?

A. Yes, ma'am.

Q. Okay. And you're aware that when 9-1-1 is called they ask for the caller's name and they take down their number, right?

A. Yes, ma'am. We were right there together.

Q. Okay. So did you call or --

A. He's the one who let me know that Will's head was bleeding and he had blacked out in their house and he came over to my house and I called -- I called the police. Yes, I did call them.

Q. Okay. So if the communication center reports caller name Jamal Johnson, that wouldn't be you, right?

A. No, ma'am. My name is Leann Cotton.

Q. Okay. Because he didn't call?

A. He was there with me when I called, yes, ma'am.

Q. Okay. I want to ask you about August of 2015 --

A. Okay.
Q. -- when the police were dispatched for yelling and gunshots to [redacted] Oak Glenn Drive. That's your house, right?
A. Yes, it is.
MS. PATTERSON: Objection, Your Honor. What's the relevance of something to do with her house?
MS. ZMROCZEK: Where Will lived, Your Honor, and --
THE WITNESS: He wasn't there at the time and it had nothing to do with him.
THE COURT: Hold on. Hold on. Hold on.
MS. ZMROCZEK: Your Honor, I'll move on.
THE COURT: Okay.
BY MS. ZMROCZEK:
Q. He said -- where was Will in November of 2015? Was he living with you?
A. I'm not sure.
Q. Okay. So you're not sure that -- about him calling the police and telling them to come get him before he hurts someone?
A. Oh, no.
Q. You don't know about that?
A. No.
Q. Okay. And you knew that he carried weapons?
A. No.
Q. Never?

A. No.
Q. Never had a knife?
A. No.
Q. Okay. Who is Faith?
A. She's someone from the neighborhood.
Q. And she was arguing with Will that day, wasn't she?
A. The day that he died?
Q. Yes, ma'am.
A. No.
Q. Okay. Wasn't she missing a gold teeth grill?
A. I'm not sure, but if they argued it wasn't that day.
Q. Okay. But you weren't around that whole day, right?
A. I only went to the store for those twenty minutes.
Q. Just for those twenty minutes?
A. Yes.
Q. And what time did you go to the store?
A. That morning as soon as I woke up. I don't know a specific time.
Q. Okay. And your sister, when did her car break down? When did her tire go flat?
A. Like a day or so before. It had been in the yard for like a day or two.
Q. Okay.
A. And it wasn't her tire.
Q. All right. And so who put the car up on -- on a jack?

A. Boozey put it there the day before and, like I say, it wasn't to change her tire, it was something about her muffler or something.
Q. Okay. And at the time of this incident Will was out on bond for those drug charges, right?
A. Yes, ma'am.
Q. Okay. So the Tramadol, he didn't have a prescription for that either?
A. No.
Q. But you don't know where he got that?
A. No, and he wasn't staying with me at the time he got arrested. He did not come back to my house until after he was released on bond, so I don't know about the charge or anything that led up to that.
Q. Okay. So -- but he was back at your house three days later?
A. Yes, ma'am.
Q. And he never left again?
A. No.
Q. Okay. So from April 18th or so to May 10th he was living with you?
A. Yeah.
Q. Okay. That's where he was residing?
A. Yes.
Q. Okay. And didn't he get so upset he knocked your

child down that day? He, Will.

A. No, my children were never touched by anyone.

Q. How many times has DSS been out to our house?

MS. PATTERSON: Objection. Relevance.

THE WITNESS: A couple of times.

THE COURT: Hold on just a minute.

MS. ZMROCZEK: I'll move on, Your Honor.

THE COURT: Okay.

BY MS. ZMROCZEK:

Q. You have seen Will fight with people before?

A. I've seen him get into an altercation, a fight, once.

Q. Okay. And who was that with?

A. Dominique Gantt.

Q. Okay. And what was that over?

A. Me.

Q. Okay. And was he drinking?

A. No, and he didn't even want to fight, Dominique wanted to fight him. He tried to defuse the situation and Dominique just hit him in the face. And it really wasn't a fight. He just got hit and hit his head on the ground and that was the end of it.

Q. Okay. In fact, Will did have a temper when he was drunk, right?

A. No.

Q. And so you're saying you didn't even see Haley that

day of March 10th -- excuse me, May 10, 2016?
A. Yeah, I seen Haley. I just said me and Haley were talking to Will before he shot him.
Q. Okay.
A. She wasn't out there that morning before everything started as far as the cookout and things like that.
Q. Okay. Did you see Nellie Foster?
A. No.
Q. Did you ever see her that day?
A. Oh, she dropped Heirbrane off prior to the arguing and everything going on. She just dropped him off. I did.
Q. How -- how much prior?
A. Like maybe fifteen, twenty minutes before me and Will started arguing.
Q. But I thought you said that you and Will had started arguing first thing in the morning?
A. And I also said I was gone for about fifteen or twenty minutes. He got dropped off before I even went to the store. Heirbrane was coming home and we had to wait for him to come home to ask permission for the grill and once he okayed us getting the grill, I went to the store.
Q. Okay. Who was playing cards under your carport?
A. Nobody was playing cards under my carport. The only person standing underneath my carport at the time was my

cousin, John Hill, which he tried to take up for Will in the argument and, like I said, I shut the argument down and he walked off because I was yelling at both of them.

Q. And you never smacked him in the head?

A. No.

Q. And when Will got -- when you -- you would yell at Will, would he go to his house -- to his mom's house? Excuse me.

A. Will would only leave if I made him leave, not because I'm yelling at him.

Q. Okay. So did you make him leave that day?

A. No.

MS. ZMROCZEK: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. ZMROCZEK: Nothing further, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. Leann, prior to you coming to my office last summer to give me the statement, did law enforcement to your knowledge try to get in touch with you to get the statement?

A. Yes, there was an investigator that came out previously and I did give them my name and number, but the day of the incident I went in the house once the

paramedics got there because my children were outside and they did see Heirbrane shoot Will, so I had to tend to my children. So law enforcement was surveying and questioning other people and they never got around to me and I was just kind of distraught and also dealing with my kids at the time, so I didn't step back outside.

Q. Okay. So on this day you were too distraught to give a statement?

A. Yes, ma'am.

Q. And then afterwards before my office tried to get in touch with the witnesses, do you know if anybody tried to get in touch with you?

A. There was an investigator who came out and spoke with me. I don't know his name. He was very tall and bald and he was really big.

Q. Did you give him a statement?

A. Yes, ma'am. And I also gave him the names of a couple other people who were there that they didn't have the information who didn't write statements like Latar and what was his name, Wayne or Troy? I'm sorry.

Q. So you gave somebody some more names?

A. Yes, ma'am. I believe he was for their -- their side though. I'm not sure.

Q. Okay.

A. But he was an investigator.

Q. He was an investigator. So you don't know if he was an investigator with the sheriff's department?
A. No.
Q. Okay. And when you said -- when Will got hit in the head, did you see Will get hit in the head?
A. Yes, I did.
Q. And you called the police?
A. No, I didn't call the police. Or I called them, but I didn't speak to them, Peanut did.
Q. Peanut. Okay.
A. Or whatever Jarell or whatever his real name is.
Q. And did you go to the hospital with Will?
A. Yes, I rode in the ambulance with him.
Q. And do you know who hit Will in the head?
A. Heirbrane did, and his back was turned. He was at the sink when he got hit in the head.
Q. And what house was they at? Where were they at?
A. In Heirbrane's house. Cathy's house.
Q. And Heirbrane gave you-all permission to go get the grill and use it?
A. Yes, ma'am.
Q. And this was something he did often?
A. Yes, ma'am. And sometimes he himself would come over and cook on the grill at my house for us.
Q. And Heirbrane, you've known him to use drugs as well?

A. Yes, ma'am.

MS. PATTERSON: No more questions. Thank you.

THE COURT: Anything else of the witness?

MS. ZMROCZEK: Nothing further, Your Honor.

THE COURT: Thank you, ma'am. You may step down.

(Witness excused.)

THE COURT: Court's in recess until 9:30 in the morning.

MS. ZMROCZEK: And before -- Your Honor, so there's a video that I think that they're probably gonna introduce tomorrow, or at least I'm gonna introduce if they don't, and it's fifty-four minutes long. In order to save time, what I would like -- what I would like to do is mark it for ID and ask that -- and it's up to you. I just -- I know we don't like to keep jurors waiting, but instead of playing it in court, if -- I know that Your Honor will watch it if you say, and I think the State will agree, that it's probably -- you need to see it in order to judge this case and so I think --

THE COURT: Give it to me and I'll watch it.

MS. ZMROCZEK: Okay. And we'll just mark it as Defendant's 2.

(Defendant's Exhibit Number 2 was marked for identification.)

MR. PINCELLI: Your Honor, the State would also

request a stipulation. There's a lot of -- if you watch the video in full, there's a lot of dead time where nobody's speaking. I've written down some possible redactions and if we could confer with defense counsel, I think there's a lot of time we could cut from that when we do need to play it in front of the jury. So if you would watch it, then we can also have a stipulated redacted copy.

THE COURT: Sure. It suits me.

MR. PINCELLI: And, Aimee, I'll give you the times.

MS. ZMROCZEK: Thank you.

And you said 9:00, Your Honor?

THE COURT: 9:30.

MS. ZMROCZEK: 9:30. Thank you.

THE COURT: We're in recess.

MS. PATTERSON: Thank you, Your Honor.

MR. PINCELLI: Thank you, Your Honor.

(Whereupon, the proceedings were concluded for May 20, 2019, at 5:37 PM.)

(The following proceedings were held May 21, 2019, beginning at 9:32 AM.)

(Defendant's Exhibit Number 3 through 19 were marked for identification.)

BAILIFF: All rise. Court is now in session. The Honorable Judge William P. Keesley presiding.

THE COURT: Thank you. Have a seat, please.

Call your next witness.

MS. PATTERSON: The State calls Haley Foster.

(Whereupon, Haley Foster was duly sworn by the Clerk of Court.)

THE CLERK: Please be seated. Once you're seated, please state your name, spelling your last for the record.

THE WITNESS: Haley Foster, F-O-S-T-E-R.

THE COURT: Spell your first name, please.

THE WITNESS: H-A-L-E-Y.

THE COURT: Thank you.

HALEY FOSTER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. And, Haley, how old are you?

A. Twenty-six.

Q. And do you know the Defendant, Heirbrane Foster?

A. Yes, ma'am.

Q. How do you know him?

A. He's my dad.

Q. Do you have any brothers or sisters?

A. I have two brothers.

Q. What are their names?

A. Bradley Foster and Will Foster.

Q. And who's the oldest -- who was the oldest?

A. Will.
Q. And how many years older was Will than you?
A. A year apart.
Q. And describe you and Will's relationship.
A. Like peas in a pod.
Q. You remember the day your brother was shot?
A. Yes, ma'am.
Q. And where were you living when this happened?
A. [redacted] Oak Glenn.
Q. And who all was living at this house with you?
A. Me, my momma, Will, and my dad.
Q. And where did Bradley live?
A. He stayed there, too.
Q. And let's go back to that day and tell us what was going on before Will got shot. Were you there all day?
A. Yes, ma'am.
Q. Okay. And what was going on that day?
A. Will was at Leann's house and it was like a little altercation between Will and Leann and after the altercation had left -- Will had left Leann's house and came to the house, to my house, and that's when Will started with my dad, but at the end of all of the -- the arguments Will and my dad had went to the backyard, my dad had went where the dog was and Will was standing right there in front of my dad, and after that they had walked

off from the dog. My dad was behind Will, Will was in front of him. I pulled Will. As I was grabbing Will from my dad, I -- and then he had let his shirt go. He had pulled me and he was trying to get away, so I grabbed his shirt even tighter and he got out of his shirt, and I said Will, let's go. I grabbed his arm and I yanked him from trying to get close to my daddy, so I yanked him and that's when Leann came to help me with Will.

Q. Okay. And when all of this was going on, did Will have anything in his hand?

A. Not at first.

Q. Okay. Did your dad have anything in his hand?

A. No, ma'am.

Q. And at some point did Will have something in his hand?

A. He had a -- I don't know what you call the -- it had like liquid in it, but I don't know what you call that. It's like a tool.

Q. And did he try to hit your dad with that tool?

A. He had it in his hand and I figured it was me or Leann had grabbed it out of his hand. So other than that he didn't have anything in his hand.

Q. Okay. Did your dad ever have anything in his hand?

A. Not that I recall.

Q. And do you remember if it was a lot of people outside?

A. I don't recall.

Q. Okay. And so you and Leann, were you-all successful in getting Will away from your dad?
A. We got him away from him.
Q. And were they both arguing together?
A. It was a little argument, yes, ma'am.
Q. So they both were saying words to each other?
A. Yes, ma'am.
Q. And when you and Leann pulled Will away, where were you-all at?
A. When we got him, we had got under the garage porch.
Q. And at who -- which residence? Which house?
A. At the [redacted].
Q. Okay. And once you and Leann pulled Will away, what did you think -- what was your impression of the argument?
A. I just figured it was petty.
Q. Okay. And did you think it was still going on?
A. No, ma'am.
Q. And so what had you -- what did you do after you thought it was over?
A. When we got in under the garage porch, me, Leann and Will, we was talking and laughing, and as soon as we turned around -- as soon as we had turned around, that's when my dad came out with the gun.
Q. Okay. And when your dad came out with the gun, did you hear him say anything?

A. He didn't say nothing.
Q. You didn't hear him say anything?
A. (Shakes head.)
Q. Did you hear Will say anything?
A. No, ma'am.
Q. Did you hear the gun rack?
A. Yes, ma'am.
Q. And then what did you see?
A. When I seen my dad shot my brother, I was on the phone with 9-1-1.
Q. Okay.
A. And when I seen him hit the ground, I called Leann over there towards Will because I was frantic, I didn't know what to do. So I was on the phone with 9-1-1 and then I seen my brother hit the ground. I didn't know what to do.
Q. Now when your dad went inside the house, did Will have anything in his hands at that time?
A. No, ma'am.
Q. And do you know about how long your dad stayed inside the house?
A. I want to say fifteen minutes.
Q. Did you ever see any guns in the house?
A. No, ma'am.
Q. Did you ever see Will with a gun outside that day?

A. No, ma'am.
Q. Did you see Will hit your dad that day?
A. No, ma'am.
Q. Did you -- when your dad went in the house, did Will try to go inside the house after him?
A. No, ma'am.
MS. PATTERSON: I beg the Court's indulgence.
THE COURT: Yes, ma'am.
BY MS. PATTERSON:
Q. And after Will fell to the ground, did you see where your dad went?
A. I wasn't paying no attention.
Q. And what was you focussed on?
A. My brother.
Q. And you gave a statement to law enforcement?
A. Ma'am?
Q. Did you talk to law enforcement when they came there?
A. I probably did. I don't remember.
Q. Okay. And how close to Will were you standing when he got shot?
A. (No verbal response.)
THE COURT: We'll be at ease for about five minutes. Don't discuss your testimony with anybody, Ms. Foster.
You can step down if you'd like.
(Recess taken at 9:46 AM.)

(Back on the record at 9:51 AM.)

(Whereupon, the witness resumes the stand.)

BAILIFF: All rise. Court is now in session.

THE COURT: Thank you. Be seated, please.

Ms. Foster, I think the last question was how far you were from your brother.

THE WITNESS: Well, the mailbox was to where he laid on the ground, so about five or ten feet from him.

BY MS. PATTERSON:

Q. And so you had got up to the mailbox. Where were you going?

A. I was on the phone with the police.

Q. Okay. Before he was shot, where were you going?

A. I just stood at the mailbox.

Q. And, Haley, do you remember an incident in March of 2016 before Will was shot in which -- involving your dad?

A. With?

Q. I'm sorry?

A. With?

Q. With Will and your dad. Do you remember Will getting hit in the head with a stick?

A. Yes, ma'am.

Q. And who hit him in the head with a stick?

A. My dad.

Q. And do you know where they were when that happened?

A. In the kitchen.
Q. At what house?
A. [redacted] Oak Glenn.
Q. And do you know what that fight was about?
A. No, ma'am.
Q. Okay.
MS. PATTERSON: Please answer any questions the defense attorney may have, okay?

CROSS-EXAMINATION (In-Camera)

BY MS. ZMROCZEK:
Q. Haley, how are you?
A. Fine.
Q. Thank you for being here. I know this is difficult. I just have a few -- couple of questions to ask you, okay? She just asked you about the incident in the kitchen in March. Your dad was never arrested, right, for that?
A. Not that I recall.
Q. No. And that was -- and Will and Bradley were fighting that day as well, weren't they?
A. Not that I recall.
Q. Okay. And you said that -- you remember giving your statement and telling the police that day? You wrote a statement on May 10th that someone had taken a stick or a board away from Will. Do you remember that?
A. Yes, ma'am.

Q. And when did -- when did that happen?
A. When he got -- you're talking about when he got shot?
Q. Right.
A. When he was in the middle of the next door neighbor's yard.
Q. I'm sorry?
A. When he was in the next door neighbor's yard.
Q. Okay. So when he was in the next door neighbor's yard and somebody had to take that from him?
A. Yes, ma'am.
Q. Okay. And you had -- you had already talked about how you and Leann were trying to -- or did take that -- did you call it a lead pipe thing?
A. I don't -- it had like liquid in it. I don't know what it's called.
Q. Okay. You don't know what a level is, right?
A. No, ma'am.
Q. Okay. But it was metal and not wood?
A. Yes, ma'am.
Q. Okay. And you kept saying that Will started with your dad. Will and your dad, they always had each other's back, right?
A. Yes, ma'am.
Q. But then sometimes when Will had a little too much to drink things got a little rough?

A. Not really.
Q. Okay. But today -- on this day, on that day, had Will -- Will had been drinking?
A. No, ma'am.
Q. Okay. You were at work that day for a good part of the day, weren't you?
A. I was off that day.
Q. Okay. So your grandmother didn't come and pick you up and take you to work?
A. No, ma'am.
Q. Okay. And so if your work records reflect that you were at work, could it just be that you were confused?
A. I could have been. I don't recall, but I could have been there at work. I don't remember.
Q. Okay. Because you worked at UPS, right?
A. Yes, ma'am.
Q. And you go in about 10:30?
A. In between, yes, ma'am.
Q. Okay. And you get off around 2:00 or 2:30?
A. Maybe three or four.
Q. Okay. Maybe three or four. Is it kind of depending on how busy it is?
A. Yes, ma'am.
Q. Okay. And you kept saying that you were -- you and Leann were both trying to pull Will away from your dad.

Why were you doing that?
A. So Will wouldn't get -- because I didn't want my brother to get in the -- in -- I can't say the word. In -- I can't say the word.
Q. Okay.
A. But that's what I was trying to say. I didn't want him to get into it with my dad.
Q. Okay. But he was the one that was starting it?
A. At first he was.
Q. Okay. And -- and your dad went out by the dog because the -- because Will was afraid of the dog, right?
A. Will didn't like the dog.
Q. Okay. The dog don't like Will?
A. No.
Q. Okay. And when you said -- that little argument that they were both saying words she asked about, when they were both saying words, Will was the only one with something in his hands, correct?
A. At first he was.
Q. Okay. And then you're saying when your dad was in the house, that's when he had something in his hands?
A. Who had something in his hand?
Q. Your dad. When your dad was in the house and came out, that's when he had something in his hands?
A. When my dad had something in his hands?

Q. Right.
A. Yes, ma'am.
Q. Okay. That's the only time you're talking about and it was after he went in the house, right?
A. When my dad went in the house, Will didn't have anything in his hands.
Q. Right, but that's when your dad had something in his hands?
A. Yes, ma'am.
Q. Okay. And that's the only time?
A. Yes, ma'am.
Q. Okay. And you -- you said that Will was staying there during that time?
A. Will was back and forth with Leann. He was back and forth at Leann's house and my house.
Q. Okay. And where was Bradley living?
A. He was living there. In and out.
Q. Okay. And how many bedrooms is there?
A. Three.
Q. All right. So who shared a room?
A. My brothers.
Q. Okay. They slept in the same bed?
A. No, ma'am.
Q. Okay. Did they take turns?
A. Will slept on the couch, my brother slept in the room.

Q. Okay. When you gave that statement obviously you were pretty emotional when this happened?
A. Yes, ma'am.
Q. Okay. But -- but for sure it's your clear memory that you and Leann had to take that lead thing from Will and you were pulling him away from your dad?
A. Yes, ma'am.
Q. Okay.

MS. ZMROCZEK: I beg the Court's indulgence. No further questions, Your Honor.

THE COURT: Redirect?

MS. PATTERSON: No, sir, Your Honor.

THE COURT: Thank you. You may step down, ma'am.

(Witness excused.)

THE COURT: Call your next witness.

MS. PATTERSON: The State calls Tyler Watford.

(Whereupon, Tyler Watford was duly sworn by the Clerk of Court.)

THE CLERK: Please be seated in the witness stand. Once you're seated, please state your name, spelling your last name for the record.

THE WITNESS: Tyler Watford, W-A-T-F-O-R-D.

TYLER WATFORD,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. And, Deputy Watford, who are you employed with?

A. The Lexington County Sheriff's Department.

Q. How long have you been employed with the Lexington County Sheriff's Department?

A. Since November of 2015.

Q. And on May 10, 2016, were you on duty?

A. Yes, ma'am, I was.

Q. Did you have the opportunity to speak to the Defendant, Heirbrane Foster?

A. I had plenty of opportunity, but I didn't.

Q. Okay. Did you interact with him?

A. Yeah, I interacted with him.

Q. And can you tell us under the circumstances in which you came in contact with him?

A. I got the call to the shooting incident. While I was en route, another deputy arrived on-scene first to the actual incident location. During that time, that deputy advised over the radio that the subject had fled. Before I got there, dispatch had also told me that the subject -- they were getting another call-in off Dixiana Road that the subject was at an address on Dixiana Road, gave the -- gave the subject's clothing description and the location of [redacted] -- or Dixiana Drive. I responded to that location where Mr. Foster was in the driveway on his knees in a

praying position over a metal chair in the driveway and the two homeowners were there on the phone with 9-1-1.

Q. And what was the first thing you did when you made contact with him?

A. The first thing I did when I made contact with him was detain him in handcuffs.

Q. And why did you detain him in handcuffs?

A. Due to the given situation, I'm being told that there was just a shooting, someone was just shot. Not knowing if he still had a firearm at the time, his clothing description matched the exact description of the one given to me, and he repeatedly said I'm sorry, I'm sorry, I'm sorry over and over again, meaning that something just happened involving him.

Q. And as a patrol officer, was it your duty to ask him any questions about the incident?

A. No, ma'am.

Q. Did you attempt to ask him any questions?

A. I did not.

Q. Did he have any complaints while he was -- after he was cuffed, what did you do?

A. After he was cuffed, I walked him over to the front of my patrol car in front of my dash camera. I checked him for any additional weapons or anything like that and then he was secured in the back of my patrol vehicle until

investigators arrived.
Q. And did he have anything on his person?
A. He had a pocketknife in his right front pants pocket and he had a -- I believe he had a piece of paper, but he also had his cell phone, which I carried over in my hand and set it on the hood of the car.
Q. And where was his cell phone located?
A. I don't recall where I got it from exactly, but I -- reviewing the video, I took the cell phone. I was walking to the car with the cell phone in my hand; therefore, I believe the cell phone -- that his cell phone was the one that the people called 9-1-1 on.
Q. Did Mr. Foster have any complaints while he was in your car?
A. He complained of his -- saying that he couldn't breathe and his back was hurting because he had a herniated disk or degenerative disk.
Q. Did you try to accommodate his complaints?
A. I did. I did. I tried to adjust him in the patrol car to make him however he could be comfortable to breathe and not have any issues.
Q. Did he complain about any leg injuries?
A. Not that I recall.
Q. And did -- at any time did Mr. Foster voluntarily speak to you about the incident?

A. Many times.
Q. Did you engage him in this conversation?
A. I did not. The only thing I said to him was I tried to calm him down and let him know that somebody -- if he wanted to speak to somebody, I would have somebody come talk to him as soon as they could.
Q. And did this stop him from talking?
A. It did not.
Q. And was his conversations recorded?
A. They were.
Q. I'm gonna show you what's been marked as Defense's Number 2 for ID purposes, and what's -- what is that labeled as?
A. Watford in-car video. Heirbrane Foster. A copy.
Q. Okay. And did you have an opportunity to view a copy of your dash cam?
A. I have.
Q. And did it appear to be altered in any way?
A. It did not.
MS. PATTERSON: Your Honor, at this time I move to publish Defense's Exhibit 2.
MS. ZMROCZEK: We have no objection. I thought Your Honor watched it yesterday --
THE COURT: I watched it last night.
MS. ZMROCZEK: -- which was the point to --

MS. PATTERSON: And I didn't know if Your Honor needed to publish it in court to rule on it.

THE COURT: Well, I watched it last night. The only thing I'll say is there's two stops on that -- I mean, it's two incidents on it.

MS. ZMROCZEK: Right. The first one was unrelated to this.

THE COURT: Yeah, I didn't know it, but...

MS. ZMROCZEK: Oh, sorry.

MS. PATTERSON: Yes, sir.

BY MS. PATTERSON:

Q. And when you first came in contact with Mr. Foster, what was his -- what did he say about the incident?

A. Like I said, when I initially made contact with him he kept apologizing, saying I'm sorry, I'm sorry, and during the time he kept saying it was an accident, it just went off, the gun just went off.

Q. So did he ever tell you that he meant to do this --

A. No.

Q. -- or say that?

A. No.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. PATTERSON:

Q. And in these conversations -- well, not conversations,

in this -- when Mr. Foster was talking, did he ever saying anything about being afraid?

A. Not that I recall, no.

Q. Did he ever say anything about being in fear of death?

A. No, ma'am.

Q. Did he ever say anything about being in fear of great bodily injury?

A. No, ma'am.

Q. Did he say anything about him -- his ability to be at that location?

A. He -- during his time of just talking freely, he said he -- he mentioned that he wasn't even supposed to be there.

Q. And did he tell you what he did with the gun?

A. He advised that he put it back in the kitchen before leaving the house.

MS. PATTERSON: Thank you. No further questions.

THE COURT: Cross?

MS. ZMROCZEK: Thank you.

CROSS-EXAMINATION (In-Camera)

BY MS. ZMROCZEK:

Q. Deputy Watford, you went to the academy?

A. I did.

Q. You got trained?

A. Correct.

Q. You had a basic law enforcement training schedule?
A. Correct.
Q. They teach you about guns?
A. Correct.
Q. They teach you about gun safety?
A. Correct.
Q. They teach you to never point your gun at a person?
A. Correct.
Q. Unless you intend to use it?
A. (Nods head.)
Q. And they do that because sometimes a gun can go off, you don't have control of it sometimes; isn't that right?
A. It depends on the gun.
Q. It's possible?
A. It's possible.
Q. And -- and, in fact, you are also trained in recognizing ways to deal with potential persons that could harm you, right?
A. Correct.
Q. In fact, when you got out -- when you got out of the car, the first thing you did you had your hand on your weapon, right?
A. Correct.
Q. Because what you knew was there was somebody that had had a weapon and so you have your hand on your weapon

because you're trained to protect yourself, right?
A. Correct.
Q. And sometimes as a road deputy you encounter situations where people are out of control, either drunk or on drugs or just mental defects, right?
A. Correct.
Q. And so sometimes when you pull the gun and point it at them, that gets their attention, right?
A. Sometimes.
Q. Sometimes it does?
A. (Nods head.)
Q. You don't have to shoot everybody all the time, right?
A. Correct.
Q. Sometimes just pulling the gun out will get their attention; isn't that right?
A. Sometimes.
Q. I mean, that's why you do it, right?
A. Well, no, I don't pull my guns to get their attention.
Q. Okay. But if you feel like the situation is getting out of control and you might get hurt, if you pull your gun out sometimes that can change the situation?
A. It has that effect, yes.
Q. Okay. And -- and that's what you're trained to do is to know how to control a situation, right?
A. Correct. How to deescalate, yes.

Q. And you also are trained that -- that a danger could be within twenty-one feet of you. You-all receive that training at the academy, don't you?
A. Correct.
Q. Okay. That's twenty-one feet. You -- you had a chance to review the video?
A. I did.
Q. Okay. And you agree that it is reflective of what happened?
A. Correct.
Q. So, I mean, you did ask him if it was an accident, why did you run, man?
A. That was more of a rhetorical question. That wasn't an interrogation question. I didn't ask him looking for an answer.
Q. Right. Right. Right. And you would agree that [redacted] Dixiana from the backyard to [redacted] Oak Glenn is about 255 feet?
A. I couldn't -- I couldn't answer that question.
Q. Okay. And you weren't the case investigator in this, right?
A. Correct. Correct.
Q. And you said that when he got there he was on his knees?
A. Correct.

Q. He was compliant?
A. Correct.
Q. He was respectful?
A. Correct.
Q. As a road deputy, you're kind of like the first encounter with a lot of incidences?
A. That's correct.
Q. You're trained to recognize symptoms of shock?
A. I -- no, I'm not.
Q. That's out of your training?
A. Yes.
Q. Okay. But you have certainly encountered people who have been in difficult situations at times?
A. Correct. Yes.
Q. Okay. Mr. Foster was emotional?
A. Yes.
Q. Okay. In fact, he even told you that -- he started to say it was an acc -- I assume he was gonna say accident. I didn't even know it went off. I was going for my wife, I didn't shoot, and then you asked him where his wife was about --
A. No.
Q. -- three minutes in.
A. I don't recall that.
Q. Okay. You-all had a discussion about his back

problems and you were very accommodating?
A. Yes.
Q. Okay. And he kept telling you that he didn't want any problems with you?
A. Correct.
Q. He wasn't gonna run?
A. Correct.
Q. And then at times he would spontaneously moan and be emotional and say oh, God, and I told you no. He would just -- he would just utter things?
A. Correct.
Q. Okay. And certainly those weren't at any questions you were asking, he was --
A. Just speaking.
Q. -- just speaking.
A. Yes.
Q. He goes on to -- to tell you that it wasn't his intention to do any of that?
A. I don't recall his exact words, ma'am, no.
Q. Okay. He told you that he was just talking --
MS. ZMROCZEK: And, Your Honor, this is about seventeen minutes in.
Q. I'm just talking -- I'm hoping -- I'm just talking to put something in my mind. I begged him -- I begged him to leave me alone, leave me alone, leave me alone. He keep

picking up two by four's coming at me. I walk off, I walk off, I walk off. I keep walking off, I keep walking off, and he keeps coming. He keeps coming, he keeps coming, he keeps coming and he keeps coming, and I told him to leave me alone, and he just kept repeating that.

A. That's correct.

Q. Did you know the "he" that Mr. Foster was talking about?

A. Not exactly who he was talking about directly, no.

Q. Okay.

A. Not at the time.

Q. Right. And you knew that he had -- that there had been a shotgun fired --

A. Correct.

Q. -- and that there was one person down?

A. Correct, yeah, but I was not aware of who the exact person was at that time.

Q. Right. Right. He asked you about the ambulance and if the ambulance was over there?

A. That's correct.

Q. He was concerned for his son?

A. Correct.

Q. He said don't let him die and then he goes on to -- I think at that time Mr. -- Investigator Miller walks up and says hey, we'll talk later. There were other people

that were on your dash cam, right?
A. Correct.
Q. Okay. And that Mr. Foster goes on to say everybody around -- everybody tell you -- everybody around here will tell you I walk off, I run from him, I went by the dog, the dog don't let anybody bother me. I went by the dog. He keep begging me to get out from behind the dog, I said no, I don't want no trouble. He says that he wouldn't leave me alone, picked up the two by four and swung the two by four at me. And these are all just -- just streams of consciousness talking, right?
A. (Nods head.)
Q. He says all this not in response to your questions, he's just saying it?
A. Correct, he's just saying it.
Q. Okay. He talks about the car and he ran under the car and he was gonna let the jack down, came back with a two by four, and then he repeatedly told you he never pulled the trigger?
A. Yes.
Q. Okay.
A. Yes, he --
Q. And when I say told you, I mean, you were there when he was talking?
A. Yeah. Yeah. Yeah.

Q. Okay. It wasn't that you were -- he wasn't, you know, responding to any questions. He was just --
A. Correct. No, that was one of the things he said.
Q. Okay. And he even said when I pumped it, it went off, and then he asked you when you pump it, is it supposed to go off, and you responded you didn't know what type of gun it was?
A. Correct.
Q. Okay. Are you familiar with the recall problems of the Mossberg 12-gauge pump shotguns?
A. I'm not. I'm not familiar with that firearm.
Q. Okay. And receiving training, I'm assuming you have Glocks and that kind of training?
A. (Nods head.)
Q. So firearm training is different depending on the firearm?
A. Correct, every gun's different.
Q. And, in fact, he was very respectful and thanked you for the accommodations that you were giving him?
A. Correct.
Q. He then goes on to say -- he said I thank you from the kindness of my heart. What I'm gonna do except fight. To fight, to live. I can't fight him. I tried my best. I really do. What more can I do? I mean, that's what life throws at you. You run. How do you run from trouble when

it's in your home? Anybody tell you that was out there I ran from it. I ran. I literally, literally, ran, stopped, leave. Stop, please leave me alone. And he goes on, again, to talk about the car and the two by four and the wife and the girlfriend took the two by four and he's just -- all of this he's just saying?

A. Correct.

Q. Okay. He even says he came back with a pipe. I'm not making no excuses. The gun went off. He does say that he was scared. And you would agree that obviously he's doing a lot of -- of talking?

A. Correct.

Q. So -- and I'm certainly not asking you to remember each and every word that was said. It's almost an hour long video.

A. Yes, ma'am.

Q. But if that's said on the video, certainly we didn't edit those words in there, right?

A. Correct.

Q. Okay. So, you know, he did say that he was scared.

A. If he did, I don't recall hearing it.

Q. Okay. But if it's on the video, you would agree that he had said it then?

A. Yes.

Q. Okay. And then you even I think at one point stopped

another officer and confirmed that -- that you weren't to Mirandize him, right?

A. I -- yeah, I spoke to another detective, yes. Yes.

Q. Okay. And they said just let him talk. If he's talking, just let him talk, right?

A. Yes. Basically just reassured of to what I was doing at the time with him.

Q. Certainly. Certainly. And because that's what you learn in the academy. You want to make sure that -- you know, that all the constitutional rights are followed?

A. Correct.

Q. And -- and that's what you did in this case. You just recorded it and let him talk and what he said is what he said?

A. (Nods head.)

Q. Okay.

A. Correct.

MS. ZMROCZEK: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. ZMROCZEK: Nothing further, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. Deputy Watford, in your -- in your experience when you come in contact with suspects, is it unusual for them

to give you their side of the story?
A. It depends on the situation. Some do, some don't.
Q. Okay. But has that happened in your experience, that they give you their side of the story?
A. Yes.
Q. Okay. And you had cuffs on Mr. Foster, didn't you?
A. I did.
Q. And he was still able to give you pertinent information like spelling his name, address, things of that nature, correct?
A. Correct.
Q. And at one point on the video, did he state -- did he say that he told Will that he was gonna shoot him with his own gun?
A. Yes.
Q. And at one point in the video did he ever -- at any point in the video did he ever say that his son tried to come after him inside the house?
A. I don't recall that.
Q. And do you remember him saying anything about not being mad?
A. I do believe he -- I do recall he did say that about not being mad.
Q. Do you recall him saying anything about it was an accident, but I never should have done it?

A. I don't recall that exactly.
Q. And did another officer come and relieve you after you talked to Mr. Foster -- or after Mr. Foster was in your car?
A. Yes.
MS. PATTERSON: I beg the Court's indulgence.
THE COURT: Yes, ma'am.
MS. PATTERSON: No further questions.
THE COURT: Recross?
MS. ZMROCZEK: None, Your Honor. I could go through the video, but I believe that you watched it and certainly your recollection of what was said and wasn't said is accurate, so nothing further.
THE COURT: I watched it. I watched it from start to finish, so I watched.
MS. ZMROCZEK: Okay.
THE COURT: Thank you, sir. You can step down.
(Witness excused.)
THE COURT: We'll be in recess for five minutes.
(Recess taken at 10:21 AM.)
(Back on the record at 10:32 AM.)
BAILIFF: All rise. Court is now in session.
THE COURT: Thank you. Be seated, please.
Anything else on the castle doctrine hearing from the State?

MS. PATTERSON: No, sir, Your Honor.

THE COURT: Any response, any reply?

MS. ZMROCZEK: No reply, Your Honor. Just brief argument.

THE COURT: All right. Go ahead.

MS. ZMROCZEK: Thank you, Your Honor.

Your Honor, we raised this immunity petition under the castle doctrine, Subsection A, and we understand that -- that there is some question about whether or not Will lived there and I guess it really just depends. As the Court said in State v. Scott most recently, that the judge sits as the trier of fact; meaning that you get to weigh the credibility of the witnesses and the evidence and that it's our burden, 51 percent, beyond a preponderance of the evidence, that Mr. Foster was acting in his defense.

The presumption is presumed when he is at his home. Your Honor, he was at his home.

THE COURT: All right. I think you said whether Will lived there. Is that what you said?

MS. ZMROCZEK: Well, I think the question becomes if Will lived there, then -- and you believed that he does, even though Leann testified that he didn't live there, and that the only -- and Mr. Foster testified that he didn't live there, and that the testimony was that maybe he was in and out, I think the Court addressed that issue in State

v. Whitley Jones, which was affirmed by the Supreme Court, Your Honor, because the Court said well, if -- you know, if we can't find under A, then we default to Subsection C. And Subsection C, Your Honor -- and it's our position that this case does fall under Subsection A, but that the caselaw was very clear the reason -- and the statute's very clear, the reason the legislature codified this, Your Honor, is as the trial judge said in the State v. Shannon Scott order is that the purpose of the act was not so that someone is to retreat into their home, lock the doors and wait for the calvary. That was a direct quote from the judge in that order which was affirmed by the Supreme Court as modified, but, Your Honor, the modification did not come from that part of the order.

There were several questions from the State regarding well, why didn't you call 9-1-1, why didn't you get somebody to help you. Your Honor, he was doing everything that he was doing and the law doesn't require that he do that. The law does not require that he lock the doors and wait for him to find another weapon in the yard or in the house to -- to come after him. When you look at the totality of the circumstances, and although the two witnesses want to testify that he wasn't drinking, his blood alcohol, you know, was a .20, the grandmother says that he had a fifth in his hand, and the problems that

arose from his drinking. Even as you watched in the -- in the video in the car, Mr. Foster right after the incident is saying I was scared, he kept coming, he kept coming, he kept coming. The last Mr. Foster testified is that the last time I saw him he had something in his hand. When he went inside, he doesn't know what happened outside. And, Your Honor, those -- all of those things combined, plus his knowledge and his interaction with -- with his son prior to this when he was drinking and having to call the police, the dealing with the threats, Your Honor, those all are taken into his reasonableness of whether or not he was in fear.

There's an issue about the no contact order. We believe that the no contact order doesn't even come into play under Subsection A, but if the Court has to default to Subsection C where the question is are they in a place where they have a right to be, and, Your Honor, I've done some extensive research on bond conditions, because they are not laws he was not violating the law. Even the wife, Cathy, everybody said that he had a right to be there. There's certainly no question that he had a right to be there, he wasn't breaking any laws and the only remedy for a violation of a bond order, Your Honor, would be that the State would have to have a civil contempt hearing and then determine, you know, whether he was in violation, and I

can't remember the other thing, Your Honor, but -- but the point is that everybody -- everybody that testified, all the credible testimony, was that he had a right to be there. The police had been called out to his place numerous times after his arrest and there was never an issue.

Your Honor has a copy of the statement where she said that that CDV didn't happen and that's obviously the subject of a later motion, but that she wanted him home and that she kept trying to get the courts to deal with that. So, Your Honor, we do not believe that the no contact order negates any rights under this act and so if you do default to C, certainly you have to look at the elements of self-defense minus the duty to retreat, which coincidentally Mr. Foster had been doing the entire time. And when you watch that video he did say he was scared, he did say he kept coming at me, he did say he didn't know what else to do. And he also did say, Your Honor, that he didn't pull the trigger. And there are actually several cases. In Brayboy, beginning with Brayboy, State v. Brayboy, Your Honor, State v. Gibson, and State v. Mekler -- it's M-E-K-L-E-R -- that talk about you can be operating in self-defense and still have an accidental discharge. And in State v. Gibson, Your Honor, which is what was decided December -- September 29th of 2010, the

Court goes into a very detailed explanation how the Supreme Court specifically pointed out there's a difference between being armed in self-defense and acting in self-defense, and they cite including Brayboy, but also State v. Light, which is 378 SC 641, it's a 2008 case, and State v. Burriss. And State v. Burriss, Your Honor, as you know means that even if you are prohibited from having a firearm that that doesn't negate acting in self-defense when you are using it strictly in self-defense.

Was he at fault in bringing on the difficulty? Your Honor, when you're looking at that prong of self-defense, I think clearly the testimony even today from -- reluctantly or not from his own daughter, was saying that she had to pull -- she was pulling him off so much that his shirt came off, that it took two girls to pull him off. Your Honor, he certainly -- and when asked directly who started it, she said Will at first. And, Your Honor, that is clearly the testimony. The State certainly will try to, I guess, make some argument that they were engaged in mutual combat, but, Your Honor, as you know, mutual combat is -- means that combat in agreed upon terms. In this case, that wasn't the case. Mr. Foster believed that there was a threat and he needed to respond defensively. And even Officer Watford explained that sometimes showing

a gun is objectively reasonable when you're trying to get someone to stop and, Your Honor, that's certainly what he was trying to do, was trying to get him to stop. And when you watch that video, he said it over and over and over and over; he just kept coming, he just kept coming. That was his mindset, Your Honor. He was acting in self-defense when the gun accidentally discharged, which is certainly proper under the law, and in this case, Your Honor, we certainly believe we have met our burden to a preponderance of the evidence that he is entitled to immunity under the act.

This obviously is very tragic for the family, but -- but when the law was codified, Your Honor, we believe that this was one of the very specific reasons it was codified for. Thank you.

THE COURT: What's the State's position?

MS. PATTERSON: Your Honor, it's the State's position that the defense's motion for immunity be denied. I'm a little confused, Your Honor. Under -- the purpose of the castle doctrine is to apply when a person admitted to doing the killing because they presumed to have a reasonable fear of imminent peril of death or great bodily injury to himself or another when using deadly force that is intended or likely to cause death or great bodily injury. If the person against whom the deadly force is

used is in the process of unlawfully and forcefully entering or has entered a dwelling, residence or occupied vehicle.

A residence, Your Honor, is some place that a person has the right to be living at. Mr. Foster acknowledged, his wife acknowledged, his mother acknowledged, he did not have the right to be there. Although she may have came to our office to drop a dismissal form, Your Honor, it was still an active court order, Your Honor, and in that bond condition, which he acknowledged knowing about, it says and he signed I understand that if I violate any condition of this order, a warrant for my arrest will be issued. He knew it, Your Honor. He even said it on Deputy Watford's video. He knew he was not supposed to be there.

So, Your Honor, it would be our position that, first of all, this is not even his residence to stand his ground on, Your Honor. Secondly, there was testimony Will lived there. Will had a right to be there. This was his house. Sometimes he would stay at his girlfriend Leann's house, just two doors up, but his sister testified that he lived there, Leann said that he would stay at that residence as well. And there was no testimony that Will tried to enter into the residence after the Defendant or had even made entry into the house.

This doctrine is predicated on the absence of

aggression or fault on the Defendant's part in bringing on the difficulty. There was testimony, Your Honor, this was mutual. It was some testimony that it started at Leann's house. Will may have started it eventually, but it was -- it was a mutual combat, Your Honor. Both of them was engaged in this argument. According to Ms. Cotton's testimony, Your Honor, it started in her yard. The Defendant came over there first with an object in his hand and, yes, Will had something in his hand, Your Honor, but he did not have anything in his hand at the time that he was shot and moments even before that because Ms. Cotton and Ms. Foster testified that they thought that everything was over, Your Honor, that there was a sufficient cooling off period, they were going on their merry way. The Defendant went inside the residence that he was not even supposed to be at, stayed there for moments, Your Honor, before reentering outside with a deadly weapon.

Again, I'm a little confused, I don't know, because he's always said it was an accident. Even yesterday during cross-examination when I questioned him, he would not admit to purposely firing this gun. He said it was all an accident. That is not the purpose of this castle doctrine statute, Your Honor. It must apply when a person will admit to -- to shooting or killing the person, Your Honor.

Subsection C would not apply, Your Honor. As we stated, he did not have the right to be there. I don't care what Ms. Foster may have -- Ms. Foster may have allowed, Your Honor. It was still an active condition of bond. You, yourself, Your Honor, as a matter of fact, revoked his bond on the domestic violence case because he was present at the [redacted] Oak Glenn address, which he was not supposed to be at.

Additionally, Your Honor, Subsection C of the statute, not only does it require a person to be at a place they have right to be, it says force must be met with force. There was never any mention of Will having a gun. The only thing he had in his hand was a two by four that was taken away and it was found some distance away from him. Therefore, force was not met with force. This subsection -- I mean, this section would also require there to be a valid case of self-defense. Again, they were mutually arguing. At some point according to Ms. Cotton they both had objects in their hands. There was enough testimony that the Defendant said that he was in imminent danger of losing his life or sustaining great bodily injury. He may have said on Deputy Watford's video that he was scared, but he never said he was in fear that he was about to lose his life or sustain great bodily injury. The victim never swung at him, never made contact with him. Yesterday was

the first time he suggested that he may have been hit in the leg. He was complaining on Deputy Watford's video about everything else. He never complained or stated that he was hit in the leg.

Even if Your Honor finds -- I mean, even if you find that Will may have been going back and forth, Your Honor, although we suggest he was -- he was living there, he was an invitee. They told him to come over, he could borrow the grill. He was over there, Your Honor, as an invitee of his -- of his mom I would suggest, Your Honor, because the Defendant didn't even have the right to invite someone to a place that he didn't have the right himself to be.

In order for a valid self-defense, Your Honor, the first element must be met, bringing about the difficulty. Not only was he not supposed to be there, Your Honor, he was not supposed to possess a firearm as prohibited in his two domestic violence -- criminal domestic violence convictions from 2012, and he knew that. The Defendant -- it also implies the Defendant had no other probable means of avoiding the danger. He himself says he was able to safely go into his house without anybody following him, Your Honor. He had a cell phone. He could have called for help. He attempted to have someone call later after the shooting. He waited three to five minutes or Ms. Haley said fifteen minutes she thought before entering outside

the house through the door where he knew the victim would reasonably be standing or close to and reengaged the victim by pointing the gun and telling him didn't I tell you not to fuck with me, Your Honor, and shooting him square in the chest, Your Honor.

It's the State's position, Your Honor, that the castle doctrine under neither subsections would apply in this instance, Your Honor and we would ask Your Honor to deny defense's motion.

THE COURT: Yes, ma'am.

MS. ZMROCZEK: Briefly in reply, Your Honor.

If you recall the direct testimony of the Defendant yesterday, not only did he say he was in fear for himself of death or great bodily injury, but also of his family, so that was testified to and additionally testified to on the camera. Your Honor, she says that even you revoked his bond after he was found to be at the house. Your Honor, that was done through the process of filing by the State. You had to have a hearing about it. It's not something that the police could have gone and just issued a warrant for. There has to be a civil contempt hearing or a contempt hearing on that bond condition. It is possible, Your Honor, under the law to have -- to have the discharge be an accident and still be acting in self-defense. And, Your Honor, one of the reasons that -- and I believe it

was -- well, you can even -- by looking at the State's exhibits that they put in, Your Honor, if you look, he was up the stairs. He said he was at the top of the stairs, everybody says that, and that Will was -- and this is State's 4, Your Honor, off the carport, and there's clearly a space that you have to step down. So is it reasonable as a finder of fact in this hearing that he was racking the gun and holding it down and that's why it went directly to his chest? It certainly is reasonable. He said that he pulled the gun out to make him stop. Your Honor, that is an act of arming yourself in self-defense.

Bringing about the difficulty, the case law is clear under Burriss and its progeny about you can't be bringing on the difficulty just because you're in possession of a gun when you're not supposed to be. And, again, this whole dispute about whether he was supposed to be there or not, I think the testimony was clear from every single witness, State and defense, that he was allowed to be there, that he had been there, and that's where he lived.

And, Your Honor, for all of those reasons we believe that this is a clear case of stand your ground. Not only under Subsection A, but even if the Court found it didn't fit under Subsection A, that it certainly applied under Subsection C. Thank you.

MS. PATTERSON: Can I add one more quick thing, Your

Honor?

THE COURT: Sure.

MS. PATTERSON: The witnesses, Your Honor, they argued that the difficulty was over. The Defendant went inside and he came back out and reengaged the difficulty. They -- they were headed in another direction, Your Honor. They had started having a conversation, laughing, they were about to walk away when he reentered, Your Honor, so I would argue that the difficulty was over.

THE COURT: All right. I'm gonna go back here and read some of these things you've cited and while I'm doing that if you can agree on some of these motions, you-all need to be working on that.

We're at ease.

MS. PATTERSON: Thank you.

(Recess taken at 10:52 AM.)

(Back on the record at 11:49 AM.)

BAILIFF: All rise.

THE COURT: Okay. Be seated, please.

I want to the preface the ruling on the Defense of Persons and Property Act hearing by saying a few things first. My recollection is that all of these I have done we've had in advance of trial for a sufficient period of time that I could do a written order and set forth specific findings of facts and conclusions of law. Once we were

notified that this case was docketed for me to preside over, the attorneys and the Court made a diligent effort to try to arrange to have this hearing last week. We were all in agreement as to dates. The difficulty that we ran into was that there's an unprecedented situation as far as I know here in Lexington County in that there is a death penalty case going on here that is probably going to be one of the longest cases ever tried in criminal court in South Carolina, and involves the alleged killing of five children. There is tremendous media attention which has necessitated even more restraint on resources because there's sections of the courthouse that are cordoned off, and so I had my law clerk contact the security staff, and I anticipated what I would be told, and that was that they pretty much had their hands full and they preferred that we not have it here, so that was fine. We started trying to find another location to have this hearing and basically we were told that they preferred not to have to transport the Defendant.

So I'm not saying that to cast fault to anyone else. Everything that I just said I believe to be a legitimate issue. I do think that the security here in Lexington is outstanding and they do everything they can to comply with any requests of the Court, and always have, and I feel like they always will, but I say that to say that we did make an

effort to try to have this so that I could do a written order, but not having the benefit of that time, I'm gonna have to rule from the bench.

First of all, the Defense of Persons and Property Act is a law which our Supreme Court has encouraged the legislature to revisit. It is a law which the courts have tried to interpret as best they can and -- and there are some issues that arise in trying to interpret it as to -- as to exactly what the legislature intended or what was meant. The law does have a preamble and states a purpose and included in that is that it's proper for law abiding citizens to protect themselves, their families and others from intruders.

The finding of the Court is going to be based largely on the fact that, number one, the Defendant has the burden of proof by a preponderance of the evidence to show that he is entitled to immunity under the act, and if there's a question as to whether the proof has been established, that is a significant factor. The second thing is that based upon my review of this act and its application in many different settings, it does not appear to me that this case presents itself as one for which the act was intended, and I'll go into that in more detail in a moment.

I will agree with defense counsel that there's a difference between lawfully arming one's self in

self-defense and carrying through an act of self-defense; that there can be an accidental shooting that occurs after one has lawfully armed in self-defense. I concede and have had also thought of the analogy related to the caselaw where someone can act in self-defense even if that person is barred by law from possessing a firearm, and the analogy to that seems to be a strong one in interpreting a lot of the facts that are present in this case.

The negligent handling of a loaded gun is one of the grounds for an involuntary manslaughter charge being given to a jury and this may well be a case of the jury being given numerous options, including involuntary manslaughter. The Court has wrestled over the concept about an accidental act of self-defense. I don't know that such an animal exists. One can be armed in self-defense, but then it seems to me that the jury then decides whether it was an accidental shooting or not, but that's not the foundational basis of my ruling.

In looking at Subsection A of the Defense of Persons and Property Act, it deals with the presumption of fear of death or great bodily injury. Under Subsection A(1), that applies if the victim -- I'm gonna use the term "victim" for junior and "Defendant" for senior here -- if the victim was in the process of unlawfully and, the conjunction is and, forcibly entering the residence. That has not been

proven. There is abundant testimony from witnesses that the victim was not attempting to enter the residence and though Mr. Foster testified himself somewhat different than some of the other witnesses, the Court finds that he has failed to establish that the victim was unlawfully and forcibly entering or attempting to enter the residence. I've dealt with this issue in my mind about the curtilage, where it extends to. I believe that there is a question of fact as to where the victim was standing at the significant time. In my view, the evidence does not prove that he was underneath the roof. The dwelling is a defined term which includes all the logical things you would think of and it specifically states a covered porch. The testimony from the victim's girlfriend was that he was standing on the dirt and -- and I think there was testimony from more than one witness that he had his back turned or partially turned towards the Defendant when the Defendant -- at the point of coming out of the house.

The second way under Subsection A(1) was that the victim was in the process of unlawfully and forcibly entering -- or, I'm sorry, the victim had unlawfully and forcibly entered the residence. There's no proof of that.

And the third way is that the victim is removing or has removed an occupant. There's no proof of that. So A(1) does not entitle -- it has not been established that

the Defendant is entitled to immunity or a presumption of fear of great bodily injury under Subsection A(1).

Subsection A(2) is a little bit more problematic. It applies and gives a presumption of fear of great bodily injury if the Defendant knows or has reason to believe that an unlawful and, again, the conjunction is "and", forcible entry is or has occurred. For the same reason previously stated, there's an absence of proof there. It has not been established by the greater weight of the evidence that an unlawful or forcible entry had occurred. And the second part of that is that an unlawful and forcible act is occurring or has occurred.

Now as to the unlawful and forcible act occurring, the Court find that the greater weight of the evidence establishes that basically the difficulty had resolved. It -- I'm not saying people were not upset and people were not angry, but the threat, if you will, was over. There -- there was no unlawful and forcible act taking place by the victim at the time that seems to be significant. The language that's troubling is has occurred. An unlawful and forcible act has occurred. I don't know what the legislature intended for that, but logically and in any real world setting if you're going to tie an act to self-defense law, you have to incorporate those principles and self-defense law establishes that once the difficulty

has ended, once the threat is over, you don't get to jump back in and say well, he did this a while back. It's -- it's just not -- in my view it's not the purpose of the law just if -- it's not the purpose of the law to grant immunity from prosecution based on something that had occurred previously. There would have to be some nexus to a current existing threat.

Further, in Subsection A, it states the presumption of fear of death or great bodily injury does not apply if the victim has the right to be there. In my view, the -- the Defendant has failed to establish by the greater weight of the evidence that the victim was not a resident. I've got negatives there, maybe too many negatives, but there's an abundance of evidence that the victim lived between these two households; sometimes with the girlfriend, sometimes with his mother. There also was an absence of proof as to who basically had the right to control that residence. It was described, I think, as being the wife's residence, but in any event the Defendant has failed to prove by the requisite degree of proof that the victim lacked the right to be there. If he was a lawful resident, then the presumption does not apply.

Also, if you read State versus Curry, it cites a section of the act and it talks about a presumption of reasonable fear of imminent, and I think that the word

"imminent" is critical, imminent peril of death or great bodily injury. At the moment that's most critical here, there was no imminent -- it's not been proven that there was an imminent threat or imminent peril of death or great bodily injury either to the Defendant or to others.

Now with regard to this issue about others, again, I'm gonna discuss that in a little bit more detail in a minute, but basically if -- if a person is attacked, then that's one scenario. If in defending himself he also can defend others. And, of course, again, I think that ties into well recognized law about the defense of others. So basically what I'm saying as far as the right to be where the victim was, in my view the defense has failed to establish by the requisite degree of proof that the victim had no right to be where he was at that particular time.

Now so we go to Subsection C and it provides that a person who is not engaged in an unlawful activity. The allegation by the State here is that the Defendant lacked the ability lawfully to be at the residence and I assume that there is an assertion that he lacked the ability to lawfully possess any type of firearm. I think caselaw has established the firearm issue. I think he can -- if he needs to act in self-defense, the fact that he cannot legally possess a firearm doesn't prevent him from grabbing it and acting in self-defense.

As for the question of the bond issue, I think there is a failure of proof by the defense, but I will -- I will concede that for the purpose of this evaluation that he -- the bond issue does not prevent him from being present. in other words, that he was attacked in a place where he had a right to be, that the bond issue would be conceded.

And as far as engaged in an unlawful activity, I don't think the bond issue would trigger an unlawful activity. There is a lot of evidence from -- from others, and I think it's probably a 50/50 split on this about whether both of them were engaged in an unlawful activity as opposed to one or the other. But, anyway, conceding those two points about being engaged in an unlawful activity and is attacked in a place where he has a right to be, the law states that he has a right to stand his ground -- that's the wording in the statute -- he has a right to stand his ground. Well, he changed his ground. He moved into his house. That's why I asked my law clerk to make sure we were talking about the same case when it was cited that somebody doesn't have to go into the house and wait on the calvary to arrive, and the case that was given to me is State versus Shannon Scott, which I'd actually read before. I read it yesterday. That was a situation where there was a -- there was a kind of a vehicle chase and at the end of a vehicle chase one person went to his residence, if I recall it

correctly, and the other car stopped and started shooting at the person at his residence and the person returned fire. The problem is he didn't just return fire to the vehicle that had been chasing him that he had difficulty with, he turned and fired at another vehicle with just some innocent person driving down the road and killed somebody. So the question was whether he was entitled to the Protection of Persons and Property Act and there was a split decision; that the circuit judge decided that he was because he -- he was acting in self-defense and so the law applied. There was a pretty vigorous dissent that said he shouldn't have been and then there was a concurrence which said what I mentioned earlier, that the Court would really appreciate the legislature clarifying some of these things.

Anyway, so I looked at that case again. I just think that scenario that's in Scott is completely different than this one. The difficulty, the trouble, was occurring outside and the Defendant went into the house and my view of the preponderance of the evidence is that the altercation had stopped, that they were standing -- or they, being the victim and his sister and his girlfriend, were standing there kind of joking and talking and the three of them -- or I had two of them testify, obviously the decedent can't testify, and considered it to be over, and the preponderance of the evidence seems to be that the

victim was not even facing toward the door. He was -- either had his back to it or he was angled away from it. So the law would give immunity and give a person a right to stand his ground. Again, he changed his ground. He can stand his ground to meet force with force. Well, there was no force at the time from the victim. And in order to do that he has to establish that he reasonably believed that it was necessary to do that to prevent death or great bodily injury to himself or to others or to prevent the commission of a violent crime.

Again, the Court's ruling is that the defense has failed to establish the requisite degree of proof on those things. Mr. Foster testified about a threat to himself. Well, again, that threat in my view had ended. He was inside the house. He had a phone. He knew there was a gun there. It would be a completely different scenario if the victim had a gun. It would be a completely -- you know, because he can shoot through a window, he can shoot through a door. None of that exists here. He had a board. He had a level at some point. So there's just not enough proof that he -- that he, the Defendant, Mr. Foster, was under any threat of death or great bodily injury when he acted. He testified, Mr. Foster did, about his concern about others and in the Court's view that is -- the proof there is nothing more than speculation. There's no

evidence that the victim turned his wrath upon others at that time. There's testimony from beforehand, but that was all long in the past at this point. And the other way is to prevent the commission of a violent crime. Again, the same thing. The violent crime would be speculation.

Mr. Foster may have an excellent defense to the charge of murder. He may well have an excellent defense that entitles him to a not guilty verdict or the lowest of the lesser included defenses. It's a tragic, tragic situation, but to sum it all up I'll say what I said at the beginning. I don't think this is a situation that the legislature intended to prevent the State from prosecuting. I think this is a situation where it's a prototypical jury case. There's a whole bunch of dispute about exactly what happened out there, there's a whole bunch of concurrence about what happened out there; who was drunk, who said what, when. But I think that the State is within its rights to prosecute the Defendant and he's not entitled to immunity.

All right. It's a quarter after twelve. We're gonna have some time constraints. How many motions are left; do you know?

MS. ZMROCZEK: Really, Your Honor, the motions -- and I think that -- I think that we'd have to probably do a very short Jackson v. Denno just to, you know, protect

ourselves in case, you know --

THE COURT: You're gonna have to do a Jackson v. Denno because he got on the stand yesterday and said he didn't know what he was saying --

MS. ZMROCZEK: Okay. Yeah.

THE COURT: -- he wasn't in his right mind and things like that and so we're definitely -- I'm uncomfortable not having a Denno hearing anyway --

MS. ZMROCZEK: Yeah.

THE COURT: -- but when he said that on the stand --

MS. ZMROCZEK: I think that kind of solidified it as well.

And, Your Honor, the major -- major issue -- I raised the speedy trial just because under Hunsberger and all of those cases, it's something that has been raised over and over. In fact, in the file that I received from the public defender's office, Your Honor had actually -- he had written to you even though you weren't the admin --

THE COURT: Right. He wrote me several nice letters, very --

MS. ZMROCZEK: -- trying to get -- trying to get this case moved.

THE COURT: Yeah. I mean, they were very well written, very nice letters, yeah.

MS. ZMROCZEK: And so even though Judge Addy did

address that issue, I just -- I thought I needed to bring it up again just simply to preserve that issue. But our biggest issues, Your Honor, quite honestly deal with two things; one, we do not believe that there can be -- I know that for the purposes of the hearing we -- we conceded some facts.

THE COURT: Sure, but it's completely different when it gets to trial.

MS. ZMROCZEK: Absolutely. That the CDV that he is -- that is still pending that's older than this case, Your Honor, and the fact that he was on trespass notice, we disagree that unless and until we open the door to that, that that is not to be brought in because there is, A, no proof -- well, he hasn't been convicted of it, so it's not a prior conviction and given the evidence that you have in front of you from yesterday regarding her statement that it didn't even happen, they -- the State I don't think even can meet that -- that portion of somehow trying to get it in under what I'm assuming is Lyle. They said that they did want to talk about prior bad acts and so the two issues that we are moving to keep out in front of the jury are that pending CDV and -- and this March 2, 2016, incident between Mr. -- between father and son. No one was arrested. There's clearly a dispute about what happened and why and -- and, Your Honor, we certainly don't believe

that unless and until we open the door to that, that that is improper evidence before the jury. We certainly don't intend to do that, but our position -- and our biggest position as far as that goes is that those two incidences, especially since they aren't convictions, are not to be discussed unless and until we open the door to them, which we don't intend on doing.

THE COURT: How do you-all plan to go into this domestic violence and the prior incident where the victim was hit?

MS. PATTERSON: Well, the domestic violence charge, Your Honor, if they open the door to it, I certainly think we can cross the Defendant on it regarding the pending domestic violence if he starts talking about how his family was -- was peaceful and harmonious and his marriage and all of that information. The only thing I would argue -- I was gonna argue, Your Honor, but I understand your ruling, that the issue doesn't prevent him from being present because that was part of my whole burden of the first element of self-defense, if he was gonna try to argue self-defense, that he didn't have the right to be there and he brought about the difficulty by being there, but I understand Your Honor's ruling on that.

So, Your Honor, I'll just have to wait and see how the testimony presents itself and if I feel like it, I can

ask Your Honor for a sidebar.

THE COURT: All right. Let me just tell you-all since we're kind of cutting to the chase. We're not gonna try this case based on what happened before. Now if self-defense is raised, if it comes in, there's a self-defense issue, then you have legitimate questions that arise about the fear of death or imminent peril and prior difficulties between them would be relevant and would be admissible. But we're not gonna try this case on whether he did or did not commit domestic violence against somebody else at some prior point in time. We're not -- but I understand, Solicitor, very well what you're saying. I wrestled with that issue about what does it mean for him to have a right to be there or not have a right to be there and without prejudging a ruling, the trial as already been pointed out is going to be a different context, a different evaluation without making a ruling in advance. I just want you-all to understand that -- it seems to me that everybody that was there agreed that Mr. Foster had -- was allowed to be there. The only person who didn't was the judge who issued the order and it's a bond condition. I'm just gonna have to evaluate it, like you said, in the context in which it arises.

MS. ZMROCZEK: And that's my concern was like in the opening and just making sure that that --

THE COURT: We need to stay away from that in direct -- in the case in chief. All of that needs to stay away. If they raise self-defense and they put in evidence of self-defense, either through cross-examination or through their own witnesses, then the inquiry's gonna change and it's going to depend on exactly what's said. If a door is opened, a door's opened. So even if it violates the rules of evidence to let it in, if it passes a 403 analysis, it comes in because the door was opened.

But I've got a conference call at 1:00. The jury's coming at 1:30. So we can either tell the jury to wait a while and come back tomorrow, but -- but just I want you-all to understand things like whether he had a DUI twenty years ago, we ain't trying this case with that stuff.

I don't know about the nickname Boozey. It's just going to depend on -- you-all know the caselaw better than I do about using nicknames to try to besmirch character. This jury needs to decide this case based on what happened that day and to the extent that it's relevant to an inquiry about whether he reasonably -- he, being the Defendant, reasonably believed himself to be in fear of death or serious bodily injury, then sure, prior difficulties, those kind of things, come in. That's -- that's the -- that's well established, but if a person is dead drunk ten

straight days and is sober on the fourteenth day whenever some act is committed, you don't go back to the ten days he was drunk and talk about that. That doesn't have anything to do with the case.

MS. PATTERSON: And, Your Honor, is that regarding the victim as well? Because yesterday they went into great detail about specific instances of the victim, Your Honor, and we did some research, Your Honor, and we would ask that all of that be excluded as well per State v. McCray, and I have a copy of that case, Your Honor. But in that case, Your Honor, character evidence of the victim -- on the part of the deceased are not admissible unless they are directed at the Defendant or against others and is so closely connected in point and time to the crime, and they were going way back, too, when the victim was -- I think he was at DJJ, Your Honor, so we would ask that that be also addressed so we'll know --

THE COURT: Well, you can have evidence of a reputation for violence, you can have evidence -- in a self-defense case, you can have evidence about -- everybody in this courtroom knows that there's some people when they drink alcohol they're different. Some of them are happy and friendly and won't leave you alone and some are mean as a snake and so they have to be -- if they want to raise that issue, they have to be allowed to get that evidence

in, and the specific rulings are going to depend -- again, I'm not trying to dodge a ruling, but I don't know how to rule without hearing the specific way that it comes in and what's said, then I can make a ruling. But for me to take twenty-eight motions and rule in advance even now that I've heard the gist of the case, it's just not possible because I don't know what's gonna be presented to that jury.

MS. ZMROCZEK: And I think, Your Honor --

THE COURT: So the victim's character is relevant for certain things, it's not relevant for other things.

Yes, ma'am.

MS. ZMROCZEK: And we reread 402(a) and obviously we'll take away, you know, the runaway -- I mean, there are things that we know that aren't admissible and so we'll certainly, you know, play within the rules as their -- as the evidence is presented. But, Your Honor, other than the Jackson v. Denno hearing, I think all the other issues are either premature or have been decided, so.

THE COURT: All right. You-all be back if you can at -- I mean, this is gonna be a short break, but, say, at 1:15 and I'm through with the conference call and then we will start your Denno hearing as close to that time as we can.

All right. Thank you.

MS. ZMROCZEK: Thank you.

THE COURT: We're in recess.

(Whereupon, a luncheon recess was taken at 12:23 PM.)

(Back on the record at 1:21 PM.)

BAILIFF: All rise.

THE COURT: Thanks. Have a seat.

All right. Let's do the Denno hearing.

MS. PATTERSON: The State calls Brandon Miller.

(Whereupon, Brandon Miller was duly sworn by the Clerk of Court.)

THE CLERK: State your name. Once you're seated state your last name; spelling your name for the record.

THE WITNESS: My name is Brandon Miller, M-I-L-L-E-R.

BRANDON MILLER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. And what is it, Sergeant Miller?

A. Yes, ma'am.

Q. Sergeant Miller, where are you employed?

A. The Lexington County Sheriff's Department.

Q. And how long have you been at the Lexington County Sheriff's Department?

A. Approximately eleven and a half years.

Q. And on May 10th of 2016, did you have an opportunity to interact with the Defendant, Heirbrane Foster?

A. I did.
Q. And under what circumstances did you interact with him?
A. That evening I received a phone call from -- he's now Lieutenant Jesse Laintz with the Lexington County Sheriff's Department, and I was told that there was a shooting incident at [redacted] Oak Glenn Drive in the Gaston area of Lexington County, South Carolina, and I was instructed to head to the scene to be the lead investigator to work the crime.
Q. And what scene did you -- did you go to?
A. While I was en route, I received a phone call that a possible suspect had been located at [redacted] Dixiana Drive, so I responded to there.
Q. And did you -- did you receive information before you made contact with Mr. Foster that he wanted to talk to you?
A. Yes, I did.
Q. And who did you get that information from?
A. Deputy Watford.
Q. And at the time, was Mr. Foster detained?
A. Yes, ma'am.
Q. Was he under arrest at this point?
A. No.
Q. And prior to speaking to him, did you read him his Miranda rights?

A. I did.
Q. How did you read him these rights?
A. I read them from a department-issued card given to me several years ago.
Q. And is that something you do routinely in your investigations?
A. Yes.
Q. You read straight from the card?
A. Yes.
Q. And did you ask him if he understood these rights?
A. I did.
Q. And you read him each one of these rights?
A. Yes, ma'am.
Q. And how did he answer?
A. He stated that he understood his rights and he was willing to speak with me.
Q. And did you force him to speak with you?
A. No.
Q. Did you threaten him to speak with you?
A. No.
Q. Did you make any promises to speak with you?
A. No.
Q. Did you intimidate him in any way?
A. No.
Q. And did he, in fact, speak to you about what happened?

A. Yes.
Q. And when speaking with you, did you have any problems understanding his speech?
A. No.
Q. Did it make sense?
A. It did.
Q. And did you have cameras in your patrol car -- well, where did you talk with him at? Where were you when you spoke with him?
A. I spoke to him in the front passenger seat. He was in the passenger seat and I was in the driver's seat of my unmarked patrol car.
Q. Okay. And did you have any cameras in your unmarked patrol car?
A. No.
Q. Was any of his statements written down?
A. Not by him. I made some notes on a notepad, but he -- he declined to provide a written statement.

MS. PATTERSON: Your Honor, at this time I have no further questions.

MS. ZMROCZEK: Briefly.

CROSS-EXAMINATION (In-Camera)

BY MS. ZMROCZEK:

Q. Investigator Miller, don't -- don't you typically have them sign a form?

A. Not necessarily.
Q. Okay. So that's not policy?
A. No, ma'am.
Q. And you said that he declined not to write a statement. Wasn't it that he wasn't -- he said he wasn't able because he was so upset?
A. I don't recall.
Q. Okay.
A. I remember offering him to write a statement and he declined to write a statement.
Q. Right. But there's a difference between declining and then not being able to. Was he visibly upset?
A. Yes.
Q. Okay. But you said even though he was upset, you still felt like the information he gave you was credible and his perception at the moment?
A. I have no way of knowing what he was thinking --
Q. Okay.
A. -- as far as credibility.
Q. All right. Did he seem to be able to perceive the situation?
A. Yes.
Q. And was he -- did he appear confused?
A. No.
Q. So he was just upset?

A. Yes.
Q. Okay.
MS. ZMROCZEK: Your Honor, those are all the questions that I have.
THE COURT: Anything else?
MS. PATTERSON: Nothing from the State, Your Honor.
THE COURT: So what statement did he give?
MS. PATTERSON: Your Honor, I wasn't sure if you wanted me to go into the statement. We just wanted at this point to argue that he was properly Mirandized, but I can go into the statements.
THE COURT: You do what you need to do.
MS. PATTERSON: Okay.

REDIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:
Q. And, Sergeant Miller, what -- what, if anything, did the Defendant tell you about what had occurred?
A. He told me that there was an incident between he and his son, an argument that had been going on throughout part of the afternoon, and he said that he eventually went into the house, retrieved a shotgun and shot his son and -- claiming that it was an accident.
Q. Okay. Did he tell you at any point that his son tried to come into the house --
A. No, ma'am.

Q. -- after him?
A. (Shakes head.)
Q. And did he say at any point that his son had a gun when this was going on?
A. No.
THE COURT: What did you say? I didn't hear your answer.
THE WITNESS: No.
THE COURT: Okay.
BY MS. PATTERSON:
Q. At any point, did he tell you he was in fear of his life?
A. No.
Q. And what did he tell you about what he thought about the incident about him being wrong?
A. He made the statement, something to the effect of, I'm not saying I didn't do anything wrong.
Q. Did he say anything about where Will was when he -- when the gun went off?
A. I believe he said he was on the carport.
MS. PATTERSON: I beg the Court's indulgence.
THE COURT: Yes, ma'am.
MS. PATTERSON: No further questions, Your Honor.
THE COURT: Any cross?
MS. ZMROCZEK: Yes, just very briefly.

RECROSS EXAMINATION (In-Camera)

BY MS. ZMROCZEK:

Q. In fact, you gave a brief summary of what he said, but he actually provided intimate details about that day, correct?

A. Yes, ma'am.

Q. Including, he -- he laid it out for you step by step as to what he remembered happened that day?

A. I think so. Yes, ma'am.

Q. Including, being attacked with two by fours?

A. He never said --

Q. Or being threatened with two by fours?

A. He never said he was threatened. He said his son held one.

Q. Okay. So when he says -- Mr. Foster stated Will followed him around and grabbed a two by four?

A. Yes.

Q. Okay. He did say that?

A. (Nods head.)

Q. He said Will was swinging the two by four?

A. He did.

Q. Okay. Will pushed his girlfriend away?

A. I believe that's correct.

Q. Okay. Will came over and said he was gonna knock the jack from underneath the car while Mr. Foster was under it?

A. I don't recall him saying that.
Q. Okay. Would it refresh your recollection to see your notes?
A. Sure.
Q. (Handing.)
A. I'm sorry. I'm not seeing it.
Q. Where my thumb is.
A. Okay. He did.
Q. Okay. He stated that he pointed the gun and pumped it?
A. Yes.
Q. And, in fact, on the way to your car, he actually asked you if -- if shotguns did go off accidentally, right?
A. I don't believe he said accidentally. I just believe he just asked when a shotgun goes off.
Q. When it -- I believe he asked you when it's pumped can it go off?
A. Yes.
Q. Okay. And that's -- and that was a poorly phrased question, but he did ask you if it went off when you pumped it?
A. Yes.
Q. Okay. He told you that he called 9-1-1?
A. I believe so.
Q. Okay. About how long did this interview take?

A. I don't know for sure. Probably forty, forty-five minutes.
Q. Okay. And you said that he was visibly upset, but did he appear to understand your questions?
A. Yes, ma'am.
Q. Okay. You said that you began to question him further and he said he could not answer any more questions. What did you mean by that?
A. I asked him specifically about whether Will had a two by four in his hand when he was shot and he couldn't elaborate further. That's what he said.
Q. Okay. So he just couldn't -- he just couldn't answer. He didn't say yes or no, he just couldn't answer?
A. That's correct.
Q. Okay. And then when you took him to the jail, did they find any medical -- obviously you have a protocol when you book them in?
A. There is a protocol, yes.
Q. Okay. And did they find any medical problems with him?
A. I don't know.
Q. Okay.
MS. ZMROCZEK: That's all I have, Your Honor.
THE COURT: Anything else?
MS. PATTERSON: Just one question.

FURTHER REDIRECT EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. Why did Mr. Foster say he pointed the gun at his son?

A. To scare him.

MS. PATTERSON: Thank you. No further questions.

THE COURT: Anything else?

MS. ZMROCZEK: Nothing further.

THE COURT: Thank you, sir. You can step down.

(Witness excused.)

(Pause in proceedings.)

(Whereupon, a portion of the record was replayed for the Court.)

(Back on the record at 1:42 PM.)

BAILIFF: All rise.

THE COURT: Thank you. Have a seat.

Anything further?

MS. ZMROCZEK: I was going to put Mr. Foster back up on the stand just for purposes of this hearing.

THE COURT: Sure.

MS. ZMROCZEK: Thank you. Heirbrane Foster.

THE COURT: You're still under oath, sir.

HEIRBRANE H. FOSTER,

having been previously sworn, testified as follows:

DIRECT EXAMINATION (In-Camera)

BY MS. ZMROCZEK:

Q. Mr. Foster, I just have a few questions about -- and this is just surrounding what happened in the police vehicle or as you were being detained while you were sitting in Deputy Watford's car and then later on when you were sitting in Investigator Miller's car, okay?
A. Yes, ma'am.
Q. Okay. So when you previously testified yesterday, you were -- you said I could have said anything or I don't -- I was out of my mind. When you said that, did you mean that you were literally -- what did you mean? Were you referring to your emotional state?
A. Yes, ma'am.
Q. Okay. What was your emotional state?
A. Shock.
Q. You were shocked?
A. (Nods head.)
Q. Were you distraught?
A. Yeah.
Q. Okay.
A. That's a better way to put it.
Q. Okay. Since yesterday, I actually typed out a transcript of the -- of the interaction between you and Deputy Watford, and I know he wasn't always asking you questions, sometimes you were just talking. After reading the transcript, do you recall -- do you recall being in the

car?
A. Yes, ma'am.
Q. And it was some time ago. It was three years ago, right?
A. Yes, ma'am.
Q. Even though you don't remember exactly every word that you said, would you agree that you did say those things?
A. Yes, ma'am.
Q. Okay. Did you feel like you were threatened to do that?
A. No, ma'am.
Q. Okay. When you met with Investigator Miller a little later on -- now he did -- did he make you any promises or did he tell you anything?
A. He said that he could help me.
Q. Just to try to help you?
A. Yes, ma'am.
Q. Okay. And did you tell him everything that you could remember at that time to the best of your ability?
A. Yes, ma'am.
Q. Now were you so distraught that you couldn't answer questions?
A. No, ma'am.
Q. Okay. It's just that you were distraught -- when you said you were out of your mind, you were just distraught?

A. Yes, ma'am.
Q. Okay.
MS. ZMROCZEK: Those are all the questions I have, Your Honor.
THE COURT: Any questions of the witness?
MS. PATTERSON: No, sir, Your Honor.
THE COURT: Thank you, sir. You may step down.
(Witness excused.)
THE COURT: Anything else from the defense?
MS. ZMROCZEK: That's all we have, Your Honor.
THE COURT: Anything else from the State?
MS. PATTERSON: No, sir, Your Honor.
THE COURT: All right. I have a situation where basically it was agreed upon that we didn't need to have a Denno hearing. Based on statements that were made yesterday during the castle doctrine hearing, I had additional concerns with the -- on top of the general idea of not having a Denno hearing and I expressed to you-all my concerns related to his statement about Mr. Foster not knowing what was going on, things of that nature. Well, the State produced no evidence related to -- in the Denno hearing as to whether the Defendant appeared to be under the influence or whether he appeared -- as to his mental faculties or those sorts of things. I also didn't hear anything specific about Miranda warnings. I was told that

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the Defendant was given his Miranda warnings, but they weren't told to the Court so that I could know that all of them were clicked off. Mr. Foster has now testified indicating that he understood well enough to answer questions and that he was not trying to imply that he was out of his mind or was suffering from any type of delusions or having any mental or emotional problems that prevented him from understanding the questions, understanding his rights and responding to them.

So based on the totality of the situation and the evidence, the Court finds that the State has met its burden of proof and it's established by clear and convincing evidence that the Defendant was properly advised of his rights under Miranda versus Arizona and the United States Constitution, that he made a free, knowing, voluntary and intelligent decision to waive his rights, that he did not do so based on any compulsion, duress, fear, promise or hope of reward. The only promise that was said was the officer made a vague reference to trying to help Mr. Foster, and that does not prevent the Court from finding in any way that the statement was free, voluntary, knowingly and intelligent, and if the -- if the requisite foundation is established in front of the jury, the statement will be admitted.

All right. Are you-all ready to proceed?

MS. ZMROCZEK: We are, Your Honor. And with regards to -- based on your ruling about some of the statements that were made in Deputy Watford's car regarding he wasn't supposed to be there, the State and I have discussed and agreed on what should be redacted pursuant to that evidence, Your Honor, and it's my understanding that they have their IT department working on it and they will provide a copy of that early in the morning before court so that I may review it and just make sure that it -- it's what we agreed upon, but when we do -- when that does get moved into evidence, it should comply with the rules of evidence at that time.

THE COURT: All right.

MS. ZMROCZEK: Thank you.

THE COURT: Is the State ready for the jury?

MR. PINCELLI: Your Honor, we have a matter to bring up about producing the firearm during this trial. We're understanding that you want to follow the regular court rules that the firearm not be -- obviously be pointed in inappropriate directions, it should be pointed at the ceiling.

Our expert -- we would like to have the expert manipulate the firearm and I think in order to do so we might need to remove the lock. I've spoken with courthouse security. They've assured that they would clear the gun

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and make sure that the room is free from all ammunition that would fit that firearm. We would just like your permission for our expert to have that weapon unlocked to manipulate it to show that was in a functioning order and to demonstrate her tests on that gun.

MS. ZMROCZEK: I don't think that that's happening today, is it?

MR. PINCELLI: It's not.

MS. ZMROCZEK: Okay. So we need to --

THE COURT: Have the expert show me what it is that she intends to do outside the presence of the jury.

MR. PINCELLI: Thank you, Your Honor.

THE COURT: The general rules are, as you know, that the gun has to be locked, it has to be -- somebody has to certify that it's not loaded, it can't be pointed in anyone's direction.

Anything else?

MS. ZMROCZEK: Just one thing, Your Honor. We had initially talked about the stipulation of sequestering witnesses; however, because of the technical definition of the victims rights act and because of the unique nature of this case wherein everyone is related, Your Honor, we've just decided to waive any sequestration from the State and the defense.

Is that correct?

MR. PINCELLI: That's correct from the State, Your Honor.

MS. ZMROCZEK: So that's not gonna be an issue, Your Honor.

THE COURT: Okay. Thank you.

Are you ready for the jury?

MS. ZMROCZEK: Yes.

THE COURT: Is the State ready for the jury?

MR. PINCELLI: Yes, Your Honor.

THE COURT: Did they give you the oath, Madam Clerk?

THE CLERK: Yes, sir. I have it.

THE COURT: Bring the jury in, please.

(Whereupon, the jury enter the courtroom at 1:54 PM.)

THE COURT: All right. Bear with me for another moment, please.

What's your name in the red shirt?

JUROR: Richard Miller.

THE COURT: Mr. Miller is Juror Number 128; is that right?

JUROR: Yes, sir.

THE COURT: You're in the foreman's seat, Mr. Miller. It looks good on you. I'm gonna let you stay there and be the foreman of the jury, okay?

JUROR: All right.

THE COURT: Thank you.

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Now, let's see. Ms. Rauch, where are you? Ms. Sickle? All right. You're in the right place.

Okay. Ladies and gentlemen, we finished the matters I had to deal with to the extent that I could deal with them and now we're gonna start the trial of the case. And the first thing I have to do is have you placed under the oath of the trial jury. It's a different oath than you took yesterday.

So please stand, raise your right hand, and the clerk will administer your oath.

(Whereupon, the jury was duly sworn by the Clerk of Court.)

THE CLERK: Please answer by saying I do.

THE JURY: (Jury answers.)

THE CLERK: Was there anyone who could not take the oath?

Please be seated.

THE COURT: Thank you. No one was unable to take the oath.

All right. Ladies and gentlemen, I'm going to take about ten, twelve minutes and give you some opening instructions, and what I'll do is I'll explain to you how I expect the case to begin. I won't go through the whole thing, but I'll tell you how we will get started, and then I'm gonna give you some instructions you have to follow

throughout the trial.

The first thing that's going to happen is you're going to hear the opening statements of the attorneys. Now in these opening statements the attorneys are not permitted to engage in what we refer to as argument. An opening statement can be an introduction, an outline, an overview. Generally, in law school we're taught that an opening statement should express what each side believes the evidence will show. So the attorneys are given that opportunity to stand before you, introduce themselves and their positions, and give you their take on how -- what they feel the evidence will show in the case.

Now once the opening statements are finished, I will call upon the State to present its witnesses. The State brought these charges against Mr. Foster and the State has the entire burden of proof. The State has to prove every essential element of each offense charged beyond a reasonable doubt, so I'll recognize the Solicitor's office to call witnesses in an attempt to meet that burden.

When the State finishes presenting its case in chief, the solicitor will advise me that the State rests. At that point I have to send you out of the courtroom and I have to discuss some legal issues with the attorneys. When you come back in, I'll tell you where we go from there, but those are the landmarks you can kind of look for as we get

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started with the case.

Now it's really important that you understand a few things. First, that oath that you just took was one in which you promised us that you're gonna decide this case based on the evidence and the law, so you need to know where those things come from. The evidence comes from the sworn testimony of the witnesses. Evidence can also come in the form of exhibits. An exhibit can be anything tangible that's marked in the record. It can be a map, a chart, a photograph, a videotape. It can be anything tangible that's marked in the record. If something is an exhibit in the trial, you will have it with you in the jury room when you decide the case.

The law comes from me. It's my job to decide what law applies to the case and tell it to you at the end of the trial. So the law comes from me, the evidence comes from the witnesses and the exhibits. What the lawyers say is not evidence. I want you to pay close attention to what they say because they facilitate the introduction of the evidence, but what comes out of their mouths is not evidence. The evidence comes in the form of the exhibits and witness testimony. Now there is an exception to that rule about what the lawyers saying not being evidence. If it comes up in this case, I'll tell you about it. Otherwise, I won't burden you with it.

It's also really important that you understand that there are two judges in the courtroom. I'm the judge of the law. As I just told you, it's my job to decide what law to applies to the case and instruct the jury on it at the end of the trial. I preside over the trial. I'll rule on legal issues as they arise. That's my job. I'm the judge of the law.

You're the other judge. You must understand that you are the only judge of the facts. Only you are going to get to decide such things as whether evidence is believable or not. Only you get to decide what weight, if any, to put on the evidence. Those things are entirely your prerogative and I'm not going to invade your province.

Now while you've promised us that you're going to decide the case based on the evidence and the law and you must do that, I'm not telling you to leave your common sense at home. We want you to use your common sense. You use your sense of logic and reason and your good judgment. It makes good common sense that you keep an open mind about the case and you don't make up your mind until you've heard all of the evidence and you know what law applies to the case.

So there's a rule that we insist that you follow, and it's very hard to follow, and that rule is that you are not to discuss this case in any way among yourselves

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until I tell you to. Don't talk about the people involved in the case, don't talk about the type of case it's alleged to be, don't talk about the case in any way whatsoever until I tell you to begin your deliberations and then, folks, we wit on you.

Do not discuss this case with family members, friends or anybody else until you're completely discharged from the jury. If anybody attempts to contact you and discuss the case with you, report it to me so I can deal with them. I never know if there's going to be media coverage of a trial. I don't anticipate any in this case, but if there should be any media coverage of the trial, get away from it and report it to me at the first opportunity what you might have seen, heard or read through the media.

I mentioned to you yesterday not to do any independent investigation, and to reiterate that, do not go looking up law, don't look up names, don't look up cases, don't look up anything that might relate to the case in any way. Once you find out where this is alleged to have occurred, don't go out there and look around. That's not your job. They'll present the evidence to you in the courtroom. There are procedures to deal with things like going to the scene if it's necessary and stuff like that, but those are all within certain parameters and they're set up so that everything is done a particular way, and if I just have

somebody going off on their own doing their own thing that I don't know about, that taints the trial. So don't do any independent investigation.

I told you about social media. Stay off social media. Don't comment about the case in any way until you're completely through with jury service, if at all. I don't know it's wise to make any comments, but if you're gonna make any, don't do it while you're on jury duty.

Okay. I think I've covered everything I have to cover with the exception of thanking you. Ladies and gentlemen, I mentioned to you yesterday that I know you've got other places to be and other things to do, and I can tell you that if this trial is like every other trial I've ever been involved in, you're going to have to hurry up and wait. You've already experienced some of it. I try to have you here so we can start as soon as possible, but I don't always guess exactly right.

So some trials go right on through and there's no issues and we still have hurry up and wait. Just understand this, folks. One of my big pet peeves is having a juror wait on us. It drives me nuts. I can't stand it. If you're ever waiting on us back there, we're working. There's never gonna be a situation where we're out here goofing off and you're back there waiting. We'll -- we'll proceed through the trial as best we can, giving

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everybody a fair trial, the State and the defense, and I'll do everything to protect their rights, but I also want to be cognizant of the fact that you have other things to do, so I thank you very much for your service.

All right. Something's gnawing at me.

Oh, yes. That's why I've got a law clerk. Hold on a second.

MS. ZMROCZEK: And may we approach briefly while you're looking at that?

THE COURT: Sure.

(Proceedings held at the bench; not reported.)

THE COURT: My law clerk mentioned to me, and I've got to pull it up on the computer, I'm supposed to read to you one time a directive from the Supreme Court of South Carolina. It is pretty much repetitious of what I just told you except it is written in more legalese and hopefully the way I explained it to you will be sufficient, but the chief said read it, so I'm gonna read it if I can find it.

All right. Ladies and gentlemen, while you're on jury duty until your jury service is concluded, you're not to discuss the case with other people, including other jurors, except as authorized by the Court. You're not to read or listen to any news reports about the case. You're not to use a computer, a cell phone or any other

electronic device with communication capability while attending the trial or during your deliberations. You may use such devices during lunch breaks or an extended break, but you may not use them to obtain or disclose prohibited information. You're not to use a computer, a cell phone or any other electronic device with communication capabilities or any other method to obtain or disclose information about the case when you're not in court.

And information about the case includes, but is not limited to the following things: Any information about a party, a witness, an attorney or a court officer, any news accounts of the case, any information collected through juror research on any topics raised or testimony offered by any witness, and any information collected through juror research on any other topic that the juror might think would be helpful in deciding the case.

The chief never asked me how to word that. The last two paragraphs -- sentences have always kind of bothered me because it tells you not to share juror research. I'm telling you not to do it, which is you're not supposed to do any independent research. So if you don't do it, you certainly are not gonna be sharing it. So don't do independent research.

And there's one other thing that I didn't hit. If you want to take notes, that's fine with me. If you need

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a notepad, a pen, just tell the bailiff and they'll get that for you. If you take notes, I need to explain some things to you. The judges who do not allow jurors to take notes, the reason they give most often is that they're concerned that when a juror writes something down and when you start your deliberations that will be given too much deference by people who didn't write things down. I don't buy into that at all. You know what you heard, you know what you remember, you know what you feel strongly about.

So it's fine with me if you take notes, but they tell us if you take notes we have to have three rules. The first is during any break you have to leave your notes in the courtroom. So if you take notes, you need to write your juror number or something on it so it can be identified, and usually they just turn it face down on the rail or in your chair if it's a short break. At the end of the day or during the lunch break, the bailiff will take them up, give them back to you, but we never read your notes. They just collect them and give them back to the person whose notepad it is.

The second rule is that when you go back to the jury room you may take your notes with you when you're deliberating, but you're not allowed to physically show them to another juror. So you can look at them and you can say whatever you like, but you're not allowed to say

here, I wrote it down right here and look and see. You can't do that.

The third rule is at the end of the trial the notes have to be destroyed. So if you're writing them on something you need to keep, we'll take a black Magic Marker and obliterate it. If you use something you don't need to keep, we just shred them and throw them away. So if you want to take notes, that's fine.

Any of you-all want a notepad? Do you have any around?

BAILIFF: There were some on the refrigerator. I'll get some, Judge.

THE COURT: How many was it? Was it four or five?

While he's getting those, I told you I'd try to keep you abreast of how the case is progressing. Nothing's happened right now that's changed my opinion that you won't finish it today, you won't finish it tomorrow. Probably it will be Thursday or Friday. Tomorrow is my anniversary. That probably means she'll sit in one room and watch TV and I'll sit in another room and watch TV, but I probably need to be over there at least in the same household with her.

All right. Solicitor, you're recognized for your opening statement.

MR. PINCELLI: Thank you, Your Honor. May it please

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the Court?

THE COURT: Yes.

MR. PINCELLI: What should have been water under the bridge turned into blood on the ground. We're here today because the Defendant stands accused of murder. Murder and possession of a weapon during a violent crime.

You heard the indictment when it was called. This event occurred May 10, 2016, at [redacted] Oak Glenn in Lexington County. On that day, that afternoon, the Defendant shot and killed his son, Will Foster. It started with a petty argument. You'll here some witnesses. They'll tell you earlier that afternoon people were coming over to the neighborhood and they were preparing for a cookout. The grill was out, kids were in the yard, the neighborhood's buzzing, an argument starts between a father and a son. The argument had a little bit to do with that grill and who could have it, the grill might have gotten kicked you'll hear, and then some fussing occurred.

It escalated. You'll hear that both Will and the Defendant ended up with objects in their hands, that they might have threatened each other. You'll hear from one -- one witness, the victim's girlfriend, told them that she didn't want that to happen in front of her kids, told them to take it down the road. Because [redacted] Oak Glenn Drive was, in fact, where the Defendant was living, Mr. Foster, and

his son stayed between that house and his girlfriend's house just two doors down, so this was a neighborhood affair.

So the argument took into that yard and it continued, but then the argument ended. No more objects in hands, no more shooting, and it ended because the Defendant went inside. He went inside his house. You'll hear from multiple witnesses; the victim's girlfriend, the victim's sister, a neighbor, other people on the scene. You'll hear that everybody thought it was over at that time. The Defendant went inside, nobody's yelling anymore, nobody's trying to get inside. People are talking and joking about a petty argument that just occurred at a cookout at 5:00 in the afternoon on May 10th.

Then what happened next is what is murder. That's why we're here today. The Defendant opened the door to his house and he'd gotten a shotgun from inside. He points the shotgun, cocks -- racks the shotgun and shoots. Now you'll hear there's some discrepancy whether shotgun went off, whether it was intentional. You'll hear from an expert who will tell you how that shotgun works. Not just a shotgun, how the specific shotgun in this instance, how it fires. And you'll hear that it was in perfect working order, that it only fires when you rack it and pull the trigger, and that's what happened on that day.

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The Defendant after an argument was done walked in his house. You will hear he was in there for several minutes. People are talking outside and laughing. He came back out after he retrieved the gun, opened the door, pointed it at his son, and his son was shot in his chest. You'll hear EMS. They declare him dead on the scene. A terrible injury. You'll see some other evidence about how -- how the injury certainly caused his death. The judge talked to you earlier about common sense. Your common sense alone will show you that this was certainly the injury that caused his death. And it was all avoidable. All over a petty argument.

So you heard about what led up to that, you heard about the actual murder, the shooting. Right after that, the Defendant fled the scene. He went back inside the house. You'll hear he goes out the back door. You'll hear he hops a fence. You'll hear he keeps going and stops when he sees neighbors in the yard.

Now the special thing that you'll hear about in this case, and something that is not always the case, law enforcement you'll hear was on-scene sadly too late, but they were on-scene within a minute of this getting called in. Within a minute. You'll hear law enforcement, the first member on-scene, got on his PA system, his loudspeaker from his vehicle, and at that time it's an

active shooting situation. He'd heard the shooter had gone back in the house, so you'll hear he made comments over a loudspeaker. The presence of law enforcement on the scene was known. There were loud commands coming out over a loudspeaker. At the time the Defendant fled over a back fence. You'll hear 9-1-1 calls were made. The Defendant makes a 9-1-1 call. You'll hear he talked to his neighbors and because law enforcement was on-scene so quickly, you'll hear that he was apprehended right at those neighbors' house. And I told you law enforcement was on-scene. Many more showed up. You'll hear from what they saw, what they observed. You'll hear from the EMS and sadly they couldn't do anything to save Will after he was shot.

And I told you it was murder and I told you the other charge was possession of a weapon during a violent crime. A murder is a violent crime, a shotgun is a weapon. That's pretty clear. The judge a minute ago explained to you that he's the judge of the law. He'll explain the elements of those. Murder is generally the intentional killing of another with malice, malice aforethought. He'll explain to you what malice is, but generally it's a hostility in the heart, it's ill will.

He'll also explain that the State has the burden of proof. And everybody watches TV or hears -- I'm sure

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you've heard our burden of proof, beyond a reasonable doubt, and the judge will explain to you what that is, but generally what that is, is reasonable doubt is something that leaves you -- if you're not firmly convinced, you have reasonable doubt. What reasonable doubt is not, is beyond all doubt. Because there's very few things in this world we can be one hundred percent sure of. You must be firmly convinced. And after you hear all of the testimony and after you see all of the evidence, you'll listen to some recordings, as the judge said, you'll use your common sense, one of the most important things you-all brought into this courtroom today. One of the things we were looking for when we picked the jury, people with common sense. You'll put all that together and as the judge said as you are the judges of the facts, you will judge credibility and look at all that evidence and you'll see this for what it was, a petty argument that was over, something that should have been water under the bridge. You'll see that it started back up because one man came out with a gun and murdered his son, and that's why you'll convict Mr. Foster of murder and possession of a weapon during a violent crime.

Thank you.

THE COURT: Thank you, Mr. Pincelli.

Which of you is gonna make the opening?

Mr. Schwartz?

MR. SCHWARTZ: Yes, Your Honor.

THE COURT: You're recognized for your opening statement.

MR. SCHWARTZ: Thank you, Your Honor.

Choices, causes and consequences. On May 10, 2016, Will Foster made the choice to mix drugs and alcohol. His choices caused him to become violent like he always did when he was drunk and his choices caused some serious everlasting consequences not only for himself, but his family.

On May 10, 2016, my client, friend, Heirbrane Foster, made the choice to protect himself and his family. His choice caused him to make the most difficult decision of his life and he and his family will have to live with that decision until the day that they die.

Choices, causes and consequences. You will hear this is not a whodunit, but a why-I-done-it. This case is about one family's struggle to deal with a son who was Dr. Jekyll when he was sober, but when he started drinking he became Mr. Hyde. He became violent, angry, aggressive. Not only towards other people, but towards his own family. The family had called police dozens of time on him asking for help. The neighbors called the police on him. The family begged the police to help them. They tried to get him

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help. Will himself called 9-1-1 asking for help.

MR. PINCELLI: Objection, Your Honor.

THE COURT: Hold on just a moment.

Yes.

MR. PINCELLI: Your Honor, in pre-trial we discussed the possible prior bad acts --

MS. ZMROCZEK: Your Honor --

THE COURT: Hold on just a second.

MR. PINCELLI: We didn't rule on them --

MR. SCHWARTZ: Hold on.

MR. PINCELLI: -- but I believe they're being brought up at this time.

THE COURT: I don't think this violates -- I told you it would depend on the specific -- the way it's brought up specifically and that depends on how it's brought up in the trial. I don't think this violates any ruling on that.

Go ahead.

MR. SCHWARTZ: Thank you, Your Honor.

The family pleads for help, they try to get Will help, but their cries fall on deaf ears. On May 10, 2016, it started out as a normal day. Heirbrane went to the grocery store with his grandmother {sic} like he always does to buy the groceries for that month. When Heirbrane gets back from the grocery store, he starts unloading the groceries and they realize that Will greets them with a Bud Light in

one hand and a fifth of gin in another. His mother tells him hey, go ahead and get the groceries back in the house because I don't want to deal with this because she knows how he gets when he starts drinking.

The family and the neighbors in the neighborhood planned on having a good cookout that day and so it should have been fun for everybody. However, Will's choice to drink and mix Xanax gets worse and he continues to drink and continues to get aggressive. He starts arguing with his girlfriend and with others in the neighborhood. At one point he picks up a metal level and attempts to hit Heirbrane with it. After the level was taken from him, he continues to come at his father, following him around the house, into the house, into the backyard, around the carport, still yelling and threatening him. Family members have to pull a two by four from him. He's swinging at Heirbrane trying to hit him, telling him I'm gonna kill you. He's in a complete -- completely drunken state at this point and he's unable to control his anger. Heirbrane is chased back into his house and Will still has the two by four in his hand and nobody can seem to stop him at this point and his anger continues to grow.

Now usually the family is able to talk Will down when he's angry and he's drunk, but this -- this is not happening today. His mother can't do it, his sister can't

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do it. Something is different that day. Will can't be stopped and he doesn't quit. He's caused things to boil over with his family and his choices that day have caused his family to lose not only one of the members, him, but also their father.

Fearing for his life and fearing for his family, Heirbrane steps into the house to grab a firearm. That firearm is Will's firearm. What happens next is every parent's worst nightmare. He has to make a decision to choose between his family and his safety or to stop his son. He pumps the shotgun, it goes off, and he strikes his son in the chest almost killing him instantly. Heirbrane drops the gun in the kitchen, runs out the back door, and goes to call 9-1-1.

When the police arrive, he tells them that Will just wouldn't stop, he kept coming, he kept coming, he kept coming. He had a two by four, he had a level. He's hysterical. He was living, and he still lives to this day, a father's worst nightmare. He had shot his firstborn son. And you're going to witness that raw emotion and the sadness and the grief from that day, but you're also gonna witness and hear that he was forced to do something to stop his son from hurting him or hurting somebody else.

The evidence is gonna show the Dr. Jekyll side of Will Foster; that he was a kind and a shy and a loving man.

The evidence is also gonna show that the Mr. Hyde side of Mr. Foster was angry, aggressive and violent and a bully and a man who didn't hesitate to fight with his family. It's gonna show that he had a blood alcohol level over twice the legal limit to drive and he had Xanax in his system, which he did not have a prescription for, and that crack cocaine was found in his pocket --

MS. PATTERSON: Objection, Your Honor.

MR. PINCELLI: Objection.

THE COURT: Yes.

All right, folks. You-all understand right now I explained to you what the lawyers say is not evidence. These are opening statements. What the lawyers say are not evidence. They are telling you what they believe the evidence will show.

The other objection, I'll refer the attorneys to Rule 404(a)(2). If the evidence doesn't show it, then the jury can discount it. I mean, I don't know what else to say.

All right. Thank you.

MR. SCHWARTZ: Thank you, Your Honor.

The evidence is gonna show he had crack cocaine in his pocket. Will Foster's choices caused permanent consequences not only for himself, but for his entire family. Had Will tried -- not tried to kick the jack from

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under the car Heirbrane was working on that day, this may not have happened. Had he not picked up the metal level and tired to hit Heirbrane with it, this may not have happened. Had he not grabbed the two by four and swung at Heirbrane, this may not have happened. Had Will stopped coming after his father, this may not have happened.

In South Carolina you have the right to protect yourself and your family from death or deadly -- from harm or death with deadly force. Even if that deadly force is as a result of an accident. While it's the State's job to prove murder beyond a reasonable doubt, it's their job to disprove self-defense. Evidence is going to show that Heirbrane was not acting with malice that day. Evidence is going to show that Heirbrane was forced to protect himself and his family. Evidence is gonna show that he did what he had to do that day to protect himself and his family and that he's not guilty of murder.

Thank you.

THE COURT: Thank you, Mr. Schwartz.

Call your first witness, Solicitor.

MS. PATTERSON: The State calls Haley Foster.

THE COURT: Come around, please, ma'am.

(Whereupon, Haley Foster was duly sworn by the Clerk of Court.)

THE CLERK: Once you're seated, please state your

full name, spelling your last for the record.

THE WITNESS: Haley Foster, F-O-S-T-E-R.

HALEY FOSTER,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PATTERSON:

Q. Haley, how old are you?

A. Twenty-six.

Q. Do you have any children?

A. Yes, ma'am.

Q. And how many children do you have?

A. One.

Q. Boy or girl?

A. Boy.

Q. How old is he?

A. Two.

Q. What's his name?

A. Shacor Reed.

Q. And, Haley, are you an only child?

A. No, ma'am.

Q. And how many brothers and sisters do you have?

A. I have two brothers.

Q. What are their names?

A. Will Foster and Bradley Foster.

Q. And who's the oldest out of you-all?

A. Will.
Q. And where do you fall in line with them?
A. With who?
Q. Are you in between Will or are you the baby?
A. No, ma'am.
Q. Okay. And so you're a middle child?
A. Yes, ma'am.
Q. And who is your other brother?
A. Bradley Foster.
Q. And how old is he?
A. Twenty-two.
Q. And can you describe you and Will's relationship?
A. My best friend. Like two peas in a pod.
Q. So you-all got along fine?
A. Yes, ma'am.
Q. And so you know the Defendant, Heirbrane Foster?
A. Yes, ma'am.
Q. How do you know him?
A. My dad.
Q. And do you remember the day Will was shot?
A. Yes, ma'am.
Q. And where were you living?
A. [redacted] Oak Glenn Road.
Q. And who all was living at that house?
A. Me, my mom, Will, Bradley, and my dad.

Q. Now let's go back to that day. Tell us what was going on that day. Did you have -- were you working then?
A. On that day?
Q. Did you have a job just in general around that time?
A. Yes, ma'am.
Q. Where were you working?
A. UPS.
Q. And on that day do you remember if you were working or not?
A. I don't recall.
Q. So what do you remember about what was going on earlier that day before Will got shot?
A. I know Will was -- him and Leann had got into it. Will had --
Q. And who is Leann? I'm sorry.
A. His girlfriend. But him and Leann had a little altercation. Will had the grill, they was about to have a cookout, and as soon as the altercation had slowed down, Will went to the house. [redacted].
Q. And let me ask you where was Will and Leann when they had their altercation?
A. Under her garage porch.
Q. Where was Leann living?
A. Next door.
Q. Okay. Was it right next door?

A. It was like where we stayed at in the middle and then her house right here on the end.
Q. So it would be fair to say she lived two doors up?
A. Yes, ma'am.
Q. And so do you know why they got in an argument?
A. No, ma'am.
Q. Okay. And where were they when they were arguing?
A. Under her garage porch.
Q. And where were you?
A. In the front yard on the porch.
Q. So you saw or heard them arguing?
A. I heard them arguing, but I don't know what they was arguing about.
Q. Okay. And where was the grill at?
A. At Leann's house.
Q. Do you know who the grill belonged to?
A. My dad.
Q. Do you know if they had permission to use the grill?
A. I don't recall.
Q. And so what happened after Will and Leann was arguing at her house?
A. Will had came over to the house at [redacted]. I was still in the front yard, on the front porch. When Will came in the house, my momma had stopped Will from coming in the house. Basically she was getting them from arguing, Will

and my dad from arguing. So my momma told Will to put -- I don't remember what he had in his hand, but he had something in his hand and my momma told him to put it down. So when my momma told Will to put it down, Will came in the house and then when my dad and Will had went to the back door, that's when I got off the front porch and went to the backyard. My dad was by the dog and Will was right there in front of the dog. Will didn't get too close to the dog because the dog didn't like Will. So my dad was right there beside the dog and Will was like five or ten feet away from the dog. Will didn't have nothing in his hand when he came to my daddy. After the fact when they had -- when Will had left from being by my dad, Will came over by the garage where the first pole was. I grabbed Will and he liked -- me and him was tussling.

Q. Okay. Let me slow you down just a little bit. So Will came over from Leann's house to the [redacted] address?

A. Yes, ma'am.

Q. And you stay he started arguing with your daddy. Do you know what they were arguing about?

A. No, ma'am.

Q. Okay. And at this point Will went inside the house?

A. Yes, ma'am.

Q. And where did Will and your daddy go?

A. At first my dad was laying down in the living room.

Will came in the house in the living room after -- and my momma was in the living room with them.

Q. Okay.

A. So after that Will and my dad had got from the living room to the back door.

Q. And did they go out the back door?

A. Yes, ma'am.

Q. And what's located in the backyard?

A. A dog.

Q. Is this a friendly dog?

A. The brown dog, no, ma'am. It gets along with my dad, but not my brother.

Q. And what was going on in the backyard?

A. My dad had went beside the dog. He's staying like behind the dog. My brother was right in front of the dog, but he didn't get too close to the dog. He was like I want to say five feet away from the dog. And when -- when Will --

Q. I know this is tough, so you can take your time.

THE COURT: Do you need a break, ma'am?

THE WITNESS: Yes, sir.

THE COURT: Ladies and gentlemen, step in the jury room. Don't discuss the case. Leave your notes in the courtroom, please.

Wait a second. Wait a second.

Not -- I'm sorry. I was talking to her. I apologize. She can't walk out with you-all. You-all have to go out first.

(Whereupon, the jury retires to the jury room at 2:36 PM.)

THE COURT: Okay, Ms. Foster. You're not permitted to discuss your testimony during the break. You can step down now.

(Whereupon, the witness steps down from the jury stand.)

THE COURT: Thank you. We're at ease.

(Recess taken at 2:37 PM.)

(State's Exhibit Number 5 through 8 were marked for identification.)

(Back on the record at 2:44 PM.)

BAILIFF: All rise. Court's now in session.

THE COURT: Thank you. Have a seat.

(Whereupon, the witness returns to the witness stand.)

THE COURT: Are you okay, Ms. Foster?

THE WITNESS: Yes, sir.

THE COURT: All right.

Tell them to bring the jury, please.

(Whereupon, the jury returns to the courtroom at 2:45 PM.)

THE COURT: All right, Solicitor. You may continue.

MS. PATTERSON: Thank you, Your Honor.

BY MS. PATTERSON:

Q. Haley, when Will came inside the house, was he just arguing with your daddy?

A. Yes, ma'am.

Q. Did they ever hit each other?

A. No, ma'am.

Q. And did Will have anything in his hand at this point?

A. When he came in the house?

Q. Yes, ma'am.

A. No, ma'am.

Q. And so you said your daddy went outside and he was behind the dog?

A. Yes, ma'am.

Q. And at this point is that when Will put something in his hand?

A. When they came beside -- when they went to the dog, Will didn't have nothing in his hand at that time.

Q. Okay. And so when did Will grab something in his hand?

A. When he had got by that third pole under the garage.

Q. First, let me show you what's been marked as State's Exhibit 5, 6, 7 and 8, and ask you to take a look at them.

MS. ZMROCZEK: I'm sorry, I didn't hear the numbers, Your Honor.

MS. PATTERSON: 5, 6, 7 and 8.

MS. ZMROCZEK: Thank you.

BY MS. PATTERSON:

Q. Take a look at each picture and let me know if you recognize what's in the photographs. And just look at the next one. And let's start with Photograph Number 5. Do you recognize what's in that picture?

A. Yes, ma'am.

Q. And what -- what is that a picture of?

A. The dog.

Q. And where is the dog located?

A. On the tree.

Q. And where is it?

A. The backyard of the house.

Q. Okay. And does that appear to be the way the house looked on May 10, 2016? Is that the way the backyard at [redacted] looked?

A. Yes, ma'am.

Q. Does it look like it's been changed or altered in any way in this photograph?

A. I don't recall.

THE COURT: What's your answer?

THE WITNESS: I don't recall.

BY MS. PATTERSON:

Q. You don't recall if that's what the back yard looked

like on that day? Is that the way the backyard looked at [redacted] Oak Glenn on May 10, 2016?

A. Yes, ma'am.

Q. Okay. Does it look like it's -- that picture has been changed?

A. No, ma'am.

MS. PATTERSON: Your Honor, at this time we move State's Exhibit 5 into evidence.

MS. ZMROCZEK: Without objection, Your Honor.

THE COURT: Mark 5 into evidence, please, ma'am.

(State's Exhibit Number 5, a photograph, was admitted into evidence.)

BY MS. PATTERSON:

Q. Take a look at Picture Number 6. What's in that picture?

A. The --

Q. Just generally --

A. The thing that my brother had --

Q. Okay.

A. -- in his hand.

Q. I'm sorry. And where's that located?

A. On the ground.

Q. And where at on the ground, which location is that?

A. At [redacted].

Q. Okay. Does that -- that's the way it looked like on

May 10, 2016?
A. I don't recall.
Q. Okay. You don't recall if that's the way that part of the yard looked?
A. You was talking about how the whole thing or just that one item?
Q. Just -- just that part of the house.
A. Yes, ma'am.
Q. Okay. Does it look like it's been changed in that picture?
A. No, ma'am.
MS. PATTERSON: Your Honor, at this time we move State's Number 6 into evidence.
MS. ZMROCZEK: May I view it, Your Honor?
THE COURT: Sure.
MS. ZMROCZEK: No objection.
THE COURT: Mark 6 into evidence, please, ma'am.
(State's Exhibit Number 6, a photograph, was admitted into evidence.)
BY MS. PATTERSON:
Q. Number 7.
A. I don't remember that blue bucket being here.
THE COURT: I can't hear you.
A. I don't remember that blue bucket being there.
Q. Okay. And what about Photograph Number 8, do you

remember that?
A. You're talking about the whole thing, right?
Q. Yes, the whole area in that picture.
A. I don't.
Q. Okay. You don't remember that?
A. No, ma'am.
Q. Haley, I'm gonna give you this pointer to just kind of point out to the jury and just press this button.
A. This one?
Q. Uh-huh. Haley, I'm gonna show you what's been entered as State's Exhibit Number 5. Can you see what's in that photograph?
A. Yes, ma'am.
Q. Okay. Do you see the dog that you talked about in that photograph?
A. Yes, ma'am.
Q. And can you use the pointer and point for the jury where the dog was located?
A. Right there.
Q. And where was your dad when he went in the backyard?
A. He was like right there be -- behind the dog.
Q. And do you know if Will was afraid of that dog?
A. Yes, ma'am.
Q. Okay. Were you afraid of that dog?
A. Yes, ma'am.

Q. Now I'm gonna show you what's been entered as State's Exhibit Number 6, and ask you to take a look at that, and do you see what you describe Will having in his hand?
A. (Indicating.)
Q. And where would that have been in relation to where your dad was with the dog?
A. Can I see that other picture again?
Q. (Handing.)
A. When Will and my -- my dad was right there behind the dog. Will didn't have -- that item I showed you, he didn't have that item then. He had that item when he was -- Will was like right there, my dad was right there. When Will walked off from -- in the other picture I showed you --
Q. (Handing.)
A. -- Will was standing right there. That's when he had that item. Right there.
Q. Okay. When he was standing by that pole?
A. Yes, ma'am. And that's when I was tussling with him. When he was standing right there, that's when he got -- right there.
Q. And why were you tussling with him?
A. To keep him from getting into an altercation with my dad with this item right here.
Q. Okay. And so were you able to get that away from Will?

A. I did, and Leann took that out of my hand when I was still holding onto Will.
Q. Okay. And you know if she dropped it right there?
A. I don't remember if she dropped it right there, but I just know that she took it out of my hand when I took it from Will.
Q. Okay. And so after you took that out of Will's hand, where did you-all go?
A. When I took that, me and Will landed -- stood right there. Then when we moved from -- when I was tussling with him, that's when we end up right there. Then we had moved back and we end up right there.
Q. Okay. And so where was your dad?
A. He was -- when I was tussling with him, he wasn't like nowhere right here, but when we got to the second part right here, he was right like over here somewhere.
Q. Okay. And during all of this, was your dad and Will both saying things to each other?
A. When I was -- when I had Will, Will didn't say no words when I had him.
Q. So you didn't hear Will saying anything?
A. No, ma'am.
Q. And did you hear your dad say anything?
A. When I heard him say -- not that I recall, no, ma'am.
Q. Okay. And so at this point did everybody stay in

the same place or did you-all move around?
A. After?
Q. After -- after that incident where you took that from Will.
A. When I moved Will from right here, me, Will and Leann was right there. My dad was right here by like -- by the porch.
Q. Okay.
A. And then that's when me, Will and Leann -- well, I was like I want to say two foot away from Will and Leann was like right there and Will was like standing like right there and my dad was right here where this first or second porch step's at.
Q. Okay. And so what were you and Will and Leann doing?
A. When my dad went in the house or when he was already outside?
Q. Yeah, when your dad was outside, what were you and Leann and Will doing?
A. Just talking, joking, and just standing there.
Q. Okay. And at this point, what did you think about the argument?
A. We thought it was over.
Q. Okay. And so what were you-all starting to do next?
A. Are you talking about when this -- are you talking about when my dad was already outside or when he went in

the house?
Q. Yeah, when he was outside.
A. We was about to walk off.
Q. And where were you-all gonna walk to?
A. Leann's house.
Q. And what were you-all gonna do at Leann's house?
A. Just stand around and talk and joke.
Q. And so did you-all make it to Leann's house?
A. No, ma'am.
Q. So tell the jury what happened before you could make it to Leann's house.
A. I can use the picture?
Q. Uh-huh.
A. When we was all standing right there, my dad had went in the house. We all thought everything was over with and then when we was about -- me, Will and Leann was talking, joking. When Will was about to turn around, everybody was about to turn around, my dad came out the house. I don't remember if he was on the first porch or outside the door, but he came out with the gun and he was standing right there, Will was right here. I'm like two feet away from Will. Leann was like right there behind him. We thought everybody got shot, like me or Leann. We thought one of us had got shot. So after that, my dad came out with the gun and he start -- and he shot. We looked -- me and

Leann --

Q. Let me back you up for one second. I think you testified in another hearing at some point Will may have had a stick in his hand?

A. That part was when he was at right there in the middle of where the -- where our house at and the next door neighbor's house at.

Q. Okay. Well, let me just -- let's just talk about that for a minute before we talk about the shooting.

(State's Exhibit Number 9 was marked for identification.)

THE COURT: Is this in evidence?

MS. ZMROCZEK: Without objection, Your Honor.

MS. PATTERSON: State's 9, Your Honor.

THE COURT: It's in evidence without objection.

(State's Exhibit Number 9, a photograph blowup, was admitted into evidence.)

BY MS. PATTERSON:

Q. Okay. Haley, if this is the [redacted] Oak Glenn Road address, where did Leann live?

A. Can I come down? Because I can't see that far.

MS. PATTERSON: Permission for the witness to step down, Your Honor.

THE COURT: Yes, as long as you keep your voice up. Speak loudly and try not to block the jury's view.

Thank you.

A. This is [redacted]. The house right here, this is where Leann had stayed.

Q. Are you sure now? Look at the picture.

A. No, that was in the cul de sac --

THE COURT: Wait a minute. If you're gonna talk, you have to talk loud enough for the court reporter to take it down.

A. So this right here was where Leann stayed. This is where Will was right here.

Q. Okay.

A. That's where he had the board in his hand. Then when he had the board in his hand, my momma had took the -- was trying to get the board out of his hand, so -- and she couldn't get it out of his hand. That's when Vernon came and got the board from Will and he took the board from him.

Q. And what did Vernon do with the board?

A. Threw it on the ground. I don't recall what he did with it.

Q. Okay. And did you ever see the board on the ground where he threw it?

A. No, ma'am.

Q. Okay. And so was that before or after the incident with the dog in the backyard?

A. When they came from the backyard, it was like --

like right -- I don't know whether Will was right here or wherever, but I just know they came from the backyard.

Q. And they went into the neighbor's -- into the neighbor's yard?

A. Like near the neighbor's yard, yes, ma'am.

Q. Okay. And then Vernon took the board and -- from Will?

A. Yes, ma'am.

Q. So Will didn't have anything in his hands at that time?

A. No, ma'am.

Q. You can have a seat.

A. (Witness complies.)

MS. ZMROCZEK: I'm sorry, Your Honor. I can't see the witness. May I?

THE COURT: That's fine.

BY MS. PATTERSON:

Q. Did you ever see your dad working on a car?

A. Not to -- not to my knowledge. I don't remember.

Q. You don't remember your dad ever working on a car?

A. No, ma'am.

Q. Okay. And so when your dad went inside the house, let's go back to that, at that point did Will have anything in his hand?

A. No, ma'am.

Q. Okay. And is that the point where you-all were getting ready to walk back to Leann's house?
A. Yes, ma'am.
Q. Okay. And so what happened before you-all could get back to Leann's house?
A. Well, as soon as we -- as soon as we all was about to turn around and walk off, we was about to turn off right here, everybody was about to turn around right here; me, Will and Leann. As soon as we was about to turn around, that's when my dad came out with the gun and he shot Will right there. I'm over here and Leann's right behind him. That's when he shot Will right there.
Q. And how long would you say your dad was in the house?
A. Fifteen minutes. Five to fifteen minutes. I don't recall.
Q. Okay. And did Will try to go inside the house after your dad?
A. No, ma'am.
Q. And did you hear your dad say anything when he came out of the house?
A. No, ma'am.
Q. And what -- and what did Will do when he got shot?
A. When he got shot, my brother turned around and looked at my daddy and told him daddy, you shot me, and that's when he hit the ground.

Q. Okay. Now did he hit the ground right there where he got shot or did he go someplace else?
A. He was standing right there when he got shot, but then he moved further up. I want to say about -- from where he got shot at I want to say five foot up, and that's when he hit the ground.
Q. And what did you do?
A. I moved away from him and I got right there beside the mailbox and I was already on the phone with the police when I was moving.
Q. And did you see where your daddy went after this?
A. No, ma'am.
Q. And so you called for help?
A. Yes, ma'am.
(State's Exhibit Number 10 was marked for identification.)
BY MS. PATTERSON:
Q. Haley, I'm gonna show you what's been marked as State's Exhibit Number 10 and ask you if you can identify this. Do you know what that is?
A. Yes, ma'am.
Q. And what is it?
A. A 9-1-1 recording.
Q. And who's on that 9-1-1 recording?
A. I am.

Q. And did you have an opportunity to listen to it?
A. Yes, ma'am.
Q. Are those your initials?
A. Yes, ma'am.
Q. And did it sound like the recording that you made on May 10, 2016?
A. Yes, ma'am.
Q. Did it sound like it's been changed?
A. (Shakes head.)
MS. PATTERSON: Your Honor, at this time we move State's Exhibit 10 into evidence.
MS. ZMROCZEK: Without objection.
THE COURT: Did she -- did you answer the last question about it being changed?
THE WITNESS: No.
THE COURT: You said no?
THE WITNESS: (Nods head.)
BY MS. PATTERSON:
Q. Did it sound the same, like the recording you made?
A. Yes, ma'am.
Q. Did it sound like it's been changed?
A. No, ma'am.
THE COURT: All right. It's in evidence without objection.
MS. PATTERSON: Thank you, Your Honor.

(State's Exhibit Number 10, a 9-1-1 call, was admitted into evidence.)

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. PATTERSON: Your Honor, permission to publish the call.

THE COURT: Yes, ma'am.

(Whereupon, State's Exhibit 10, a 9-1-1 call, was played for the Court and jury.)

BY MS. PATTERSON:

Q. Haley, that's the call you made after your brother was shot?

A. Yes, ma'am.

Q. And I think on the recording you said that your daddy was in the house. Do you remember that now?

A. I said he was somewhere, I don't know where he was, but he was somewhere.

Q. And the police came, and I know you were upset, but you do eventually talk to law enforcement about what happened?

A. Yes, ma'am.

THE COURT: Hold on a second. Hold on. Take the thing down so I can see the audience.

MS. ZMROCZEK: I'm sorry. I don't know where to put it.

THE COURT: Put it in the corner if we're not using it, please.

Thank you.

MS. PATTERSON: I beg the Court's indulgence, Your Honor.

THE COURT: That's fine.

MS. PATTERSON: Haley, answer any questions Ms. Zmroczek may have for you.

THE COURT: Cross?

MS. ZMROCZEK: Thank you.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Haley, you love your brother?

A. Yes, ma'am.

Q. You love your daddy?

A. Yes, ma'am.

Q. That was a traumatic day, right?

A. (Nods head.)

Q. Will and your daddy, they always had each other's back, didn't they?

A. Yes, ma'am.

Q. Sometimes they got into fights?

A. Yes, ma'am.

Q. And Will most of the time didn't have a temper, did he?

A. No, ma'am.
Q. But sometimes he did?
A. Rarely.
Q. I'm sorry?
A. In between.
Q. In between. And sometimes when he -- when he drank a little bit, that didn't help, right?
A. (Shakes head.)
Q. And --
THE COURT: Wait a minute. I didn't hear her answer. What was your answer?
THE WITNESS: No.
THE COURT: Thank you.
BY MS. ZMROCZEK:
Q. And when -- when you -- you were trying to stop Will from getting into an argument, right?
A. Yes, ma'am.
Q. And sometimes that's all it took was -- was you or your momma or somebody stepping in to calm him down, right?
A. Yes, ma'am.
Q. And, in fact, that day I think you said you were tussling with him so much his shirt came off, right?
A. He took it his shirt off when I was tussling with him.
Q. He took his shirt off. Was he trying to get away

from you?
A. He was, but when I took his shirt off, I still was holding onto his arm.
Q. So you still had him?
A. Yes, ma'am.
Q. Okay. And that's when you were able to get the -- the metal pipe away from him?
A. Yes, ma'am.
Q. Okay. And -- and there was nobody holding back your dad, right?
A. No, ma'am.
Q. Okay. Did you-all sometimes collect aluminum cans to make extra money?
A. Yes, ma'am.
Q. Is that what that big pile is that we saw?
A. Yes, ma'am.
Q. Okay. You said you were afraid of Chopper, the dog?
A. Uh-huh. I don't go near that dog.
Q. He's a big dog, right?
A. I do not go near him.
Q. And he was very protective of your dad?
A. That's the only person he protected was him.
Q. Was your dad?
A. Yes, ma'am.
Q. And -- and I'm certainly not gonna make you go through

all of this again, okay, I just wanted to make sure I understood what you said. You said after Will was shot, he turned around to look at his dad?

A. Yes, ma'am.

Q. Who was in -- either on the first or second step of the porch?

A. I don't know where my dad was, but whenever he turned around he looked at him and that's when he said dad, you shot me.

Q. Okay. But your dad was at least in the house area?

A. Yes, ma'am.

Q. Okay.

MS. ZMROCZEK: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. ZMROCZEK:

Q. And I just -- the stick that you were talking about, was it more like a board? Did you see it at all that day, the one that Rodney took?

A. Who is Rodney?

Q. Or -- sorry. Vernon, not Rodney. Vernon.

A. The two by four?

Q. Yes.

A. I seen the stick, but I don't know what he did with the stick.

Q. But when you say "stick", you mean two by four, right?

A. Yes, ma'am.
Q. Did you-all have a -- did your daddy and Will do a lot of construction?
A. My dad did construction, but Will he -- my dad asked Will to help him and he sometimes helped him.
Q. So he was trying to help -- trying to teach him that trade?
A. Yes, ma'am.
Q. Did you-all have a lot of materials around the house?
A. Yes, ma'am.
Q. And so when we say "stick", you actually mean a two by four, right?
A. Yes, ma'am.
Q. Okay. And I was just making sure. And that's what Vernon had to take out of his hand?
A. Yes, ma'am.
Q. And that's what your momma tried to take, but she couldn't?
A. Yes, ma'am.
Q. And she was trying to get that from -- from Will so he didn't hurt anybody with it, right?
A. Yes, ma'am.
MS. ZMROCZEK: Thank you.
Thank you, Your Honor.
THE COURT: Redirect?

MS. PATTERSON: No further questions, Your Honor.

THE COURT: Thank you, ma'am. You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. PINCELLI: The State calls Savanah Smith.

(Whereupon, Savanah Smith was duly sworn by the Clerk of Court.)

THE CLERK: Please be seated in the witness stand. Once you're seated, please state your name; spelling your last for the record.

THE WITNESS: Savanah Smith, S-M-I-T-H.

SAVANAH SMITH,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PINCELLI:

Q. Good afternoon, Savanah. Do you know where the Glenn Village neighborhood is?

A. Yes, I do.

Q. And where is that?

A. It's a Gaston address in Lexington, South Carolina.

Q. Gaston and Lexington. How do you know where that is?

A. I lived there with my aunt at 201 Oak Glenn.

Q. Would you be able to identify your aunt's house if I showed you an overhead picture of that neighborhood?

A. Yes, sir, I would.

Q. And, Savanah, I think there's a laser pointer up there with you. It looks like that pen. That's it right here. I'm gonna have Sergeant Miller hold this and you -- can you figure out to use it?

A. I can't. I can't.

MR. PINCELLI: Your Honor, can I have permission for the witness to step down?

THE COURT: Sure.

MR. PINCELLI: Savanah, if you'll keep your voice up so everybody can hear you.

BY MR. PINCELLI:

Q. Can you point out for the jury where your aunt lived?

A. Right here where the white Jeep is in the yard.

THE COURT: You're in between the jury and the photograph. You have to move to the side so they can --

MR. PINCELLI: I think that's a little better. Because all these people we're trying to show them what was going on.

BY MR. PINCELLI:

Q. So you can stand there and point to it. Just make sure they can see what you're pointing at.

A. It was right across from Will's house on the other side of the road.

Q. All right. So right there on the opposite end of the cul de sac?

A. Yes, sir, where the white vehicle is in the drive.
Q. Okay. And if you'll stand there, I'll ask you a couple more question. You say Will, who is Will? How do you know him?
A. Will Foster. I know his brother, Bradley Foster.
Q. Okay. And where did you know them to live?
A. They lived --
Q. Can you point it out on that map?
A. That was where they stayed and then there was a house right there and that was Leann's house, then there was another house, and my child's father's house was right there.
Q. Okay. All right. You can take a seat. Thank you.
A. (Witness complies.)
Q. So you knew the area pretty well. Your child's father had a house there and your aunt had a house there. Did you stay over there?
A. A lot, yes.
Q. And in which house did you stay?
A. 201 Oak Glenn.
Q. And back in May of 2016, what house were you staying in?
A. 201 Oak Glenn.
Q. And that was the house you said you aunt lived in right across from the cul de sac?

A. Yes, sir.
Q. And you know why we're here today, what this case is about?
A. Yes, sir, I do.
Q. So do you recall the shooting on May 10, 2016, in that neighborhood?
A. Yes, sir, I do.
Q. What -- what did you -- how did you become involved with everything that happened?
A. I heard a bunch of yelling going on that day, that afternoon. A few houses had done -- some stuff had done happened in the neighborhood, so I looked out the window.
Q. And you say you looked out the window, where were you?
A. I was at -- in my mom's window and if you look at my mom's window, Will house was right across the street. You could visibly see everything.
Q. Okay. Did your mom also live with your aunt?
A. Yes.
Q. Okay. So you're in your aunt's house and this is what you indicated earlier was your aunt's house?
A. Uh-huh.
Q. And you're looking out a window there and you said it looked across the street?
A. And that's Will's house, yes.
Q. So you're looking --

A. Right across the street is Will's house and out the window you could see the next door neighbor to Will's house and Leann's carport, but not her whole house.
Q. Okay. And you said -- I think you indicated this house right across the street, what has a sign that says [redacted] Oak Glenn, you said this is Will's house?
A. Uh-huh, and there was --
Q. And I'm moving my finger down here. There's a house right to the right of it?
A. Yes, sir.
Q. And the house to the right of that --
A. Is Leann's.
Q. -- that's Leann's house?
A. Yes, sir.
Q. Okay. Keep going.
A. I heard a bunch of arguing and yelling, so I was looking out the window. There was a bunch of people standing like kind of closer towards Will's house, but in the cul de sac where Leann's house was. I had seen some people running up towards Will's house, a bunch of yelling. I told my aunt, I was like Aunt Crystal, something's going on outside. I stayed in the window. I watched his mom tussling with Will outside a little bit.
Q. And you say -- who's mom?
A. Will's mom.

Q. Okay.
A. She's tussling outside with Will a little bit because it was obviously a heated argument going on.
Q. Uh-huh.
A. I mean, seconds later I seen Vernon take the board from Will, he dropped it where it was -- where it landed, and I seen the dad run inside the house.
Q. And just based on the yards now that we kind of have an idea where you are in the window and Leann's house, where was that board?
A. There's a light pole that was in Will's yard.
Q. Okay. And you said Vernon took that board and he dropped it?
A. Vernon took the board out of his hand. The way it looked to me, Will was walking away. Will had nothing in his hand. His dad went in the house all of -- I won't even give it three minutes and I heard the gunshot. Will made a few steps and he hit the ground. I waited until police had got there and I went and held his sister because she was frantic. I got her back over to Latar Blanding's house where she stood and I brought ice water and wet rags. She was in and out of it, so was the mom, and that's -- that's what happened.
Q. Okay. And I'm gonna back you up just a little bit. You talked about the board getting -- being put down and

then you talked about -- I think did you -- I'm sorry, did you say Will's father going inside the house?

A. Yes.

Q. And you talked about how long?

A. I'd say three minutes.

Q. Several minutes?

A. I'd say several minutes.

Q. Okay. What, if anything, do you remember Will's father doing before he goes inside? What was -- did you see him -- you talked about people being all around and people running.

A. He was just yelling and -- him and Will was just yelling, like hollering. Everybody was yelling from across the street. I don't know if they were saying stop or what they were saying, but it was just a bunch of yelling, it was loud. But it was normal in that neighborhood anyway, so.

Q. Okay. So they're just yelling in the yard and you can see that?

A. Yes, sir.

Q. And then after that, what do you recall?

A. I heard the gunshot and Will made it a few steps and he hit the ground.

Q. And did you see the gunshot?

A. I seen -- well, yeah, once I made it over there to

his sister, I seen the gunshot, but I never once seen the dad.

Q. Right. But you didn't see -- are you telling me that you didn't see the gun fired? You saw everything --

A. I saw everything -- I seen him fall, but I didn't see the gunfire because from my house you can't see in Will's carport. You can't see where their door has steps to the porch of the door. You can't see that from my house.

Q. Okay.

A. You can only see like the first like little bit.

Q. Okay.

A. But he -- I mean, I put two and two together; that he had to be standing at the door when he pulled the trigger.

Q. And did you see Will walk toward that direction beforehand?

A. Towards his dad?

Q. Toward -- toward that carport and you said then you saw his dad go inside for a couple of minutes.

A. When his dad went inside, Will was -- he was turning to walk away. He was -- he was leaving. And it was him and -- I can't recall, but it was -- Vernon was still over there and I think his sister was there, Leann was there. So Will was leaving.

Q. And you said you waited a while and police showed up. Do you remember law enforcement showing up?

A. I remember law enforcement showing up, yeah. A bunch of them.
Q. Did you speak with law enforcement?
A. Yes, I did.
Q. Did you give any statements to them?
A. Yes, I did.
Q. And you told them pretty much what you're telling us?
A. Yes, sir.
MR. PINCELLI: I beg the Court's indulgence.
THE COURT: Yes, sir.
MR. PINCELLI: Thank you very much, Savanah. Please answer any questions from the defense attorney.
THE COURT: Cross? Hold on a minute.
Cross-examination?
MS. ZMROCZEK: Yes, sir.

CROSS-EXAMINATION

BY MS. ZMROCZEK:
Q. Good afternoon, Ms. Smith. You said that yelling was normal in that neighborhood?
A. Yes, it was.
Q. Were you aware if it was more yelling when Will was drinking?
A. I'm not saying -- I'm not gonna say it was yelling from Will. The neighborhood, it was a bad neighborhood. After Will got shot, I actually -- we sold our house and

moved. But, I mean, it was a bunch of gang-related activity in that neighborhood. Like my child's father's house got shot up, Leann's house got shot up. Like it was -- it was always a bunch of commotion within that little block. So I can't say every time that I have met Will he had been drinking and he was never disrespectful to me nor in a violently manner. What he did behind closed doors or when I wasn't around, I cannot say.

Q. And you said that you saw his momma --

A. His momma was trying to get him to stop, to calm down. Yes, she was.

Q. Okay. And you never saw anybody having to calm down Heirbrane, did you?

A. He was nowhere to be seen.

Q. Okay. So when you say Vernon took the two by four out of his hand --

A. Yes, ma'am.

Q. Him, Will?

A. Yes, ma'am.

Q. You didn't see where Heirbrane was?

A. He was already in the house.

Q. Okay. So he was already in the house?

A. Yes, ma'am. He had ran in the house because if I can recall he was wearing a gray T-shirt.

Q. And, in fact, when you gave that statement to the

police, you gave it that very same day, right?
A. Yes, ma'am.
Q. And you -- you told him that -- excuse me. You told them that the young man had a board in his hand at his father?
A. No, he was not at his father. His father was there with him, yes, but his father went inside and when his father come back out the door, Will had no board in his hand. Vernon had done took it.
Q. Right. I'm gonna show you your statement and see if that refreshes your recollection.
MS. ZMROCZEK: Your Honor, may I approach?
THE COURT: Sure.
BY MS. ZMROCZEK:
Q. Do you recognize that statement?
A. Yes. When him and his father were together, Will had the board and Vernon took it.
Q. And what -- exactly what did you write down in your handwriting regarding that statement?
A. The young man had a board in his hand at his father.
Q. Okay. Then he went inside and Vernon took it?
A. Vernon had done took it before -- if I can recall, I mean, it's been two, three years ago, Vernon had done got the board out of his hand before the dad ever ran inside.
Q. Okay. And just a minute go you said that he was

already inside when Vernon took the board.
A. No, he ran inside -- no, he ran inside past Will and them.
Q. Okay.
A. They were standing at the corner like where the power -- there's a power pole in their yard. That's where they were standing.
Q. Okay.
A. That's where the board was. That's where Vernon dropped the board.
Q. Okay. But Heirbrane then --
A. And then the dad ran inside the house.
Q. Okay.
A. And about three minutes later that's when the gunshot went off.
Q. Okay.
A. It could have been more, it could have been less. I mean, that's a tragic situation and I've done been through it nine years ago, so. I mean, it was more tragic for me, too, so.
Q. And it was something that was just happening in realtime?
A. Uh-huh. Happening, yeah.
MS. ZMROCZEK: I beg the Court's indulgence.
THE COURT: Yes, ma'am.

MS. ZMROCZEK: No further questions, Your Honor.

THE COURT: Redirect?

MR. PINCELLI: Yes, sir. Thank you.

REDIRECT EXAMINATION

BY MR. PINCELLI:

Q. Savanah, I'm gonna show you a picture. Hopefully, it will help everybody understand where things are. Do you recognize what this is?

A. Yeah, I do.

Q. And I'm sorry to have to make you re-live that. Can you --

A. It's Will.

Q. Can you explain the location for everybody?

MS. ZMROCZEK: Your Honor, I believe it's outside the scope of redirect.

MR. PINCELLI: Your Honor, this is gonna show where the telephone pole is and --

THE WITNESS: The telephone pole is right there.

THE COURT: Wait a second. Let them talk to me and then I'll rule, okay?

THE WITNESS: (Nods head.)

THE COURT: All right.

MR. PINCELLI: This is a picture that's gonna explain where the telephone phone is where she just indicated people are moving past and it also has a picture of a

board right there.

THE COURT: What's your position?

MS. ZMROCZEK: Just, Your Honor, that's something they certainly could have asked on -- on direct. It just seems outside of the scope of recross -- or redirect.

THE COURT: Overruled.

BY MR. PINCELLI:

Q. If you can just continue to explain what's in that picture, just the location. Is this the telephone pole you mentioned earlier?

A. That's the telephone pole, yes, sir.

Q. Is that a fair and accurate depiction of what you saw that day, May 10th of 2016?

A. Yes, sir.

Q. Does it look like anything's been altered or edited that changed that photo?

A. No, sir.

Q. Thank you.

MR. PINCELLI: Make that -- we need that marked and then --

THE COURT: It's in evidence or just --

MR. PINCELLI: I need to mark it, Your Honor. I'd like to move it into evidence.

(State's Exhibit Number 11 was marked for identification.)

MR. PINCELLI: That will be State's 11, Your Honor.

MS. ZMROCZEK: No objection.

THE COURT: Subject to the previous objection about not being responsive?

MS. ZMROCZEK: We withdraw that, Your Honor.

THE COURT: Okay. Mark it in evidence without objection.

(State's Exhibit Number 11, a photograph, was admitted into evidence.)

BY MR. PINCELLI:

Q. All right, Savanah. I'm gonna put this picture up here. Is this --

THE COURT: Turn the lights down.

Q. There we go. Can you use that laser pointer and point out that pole you were talking about?

A. The light pole? Is that what you're saying?

Q. Yes, ma'am.

A. (Witness complies.)

Q. And you said -- is that where Vernon was?

THE COURT: Hold on a second.

MR. PINCELLI: Is that a little better, Your Honor? We can try another one.

THE COURT: That's about as good as it will get.

BY MR. PINCELLI:

Q. Savanah, can you tell me what was happening around

that pole? You indicated that people were going back and forth and that Vernon took a board. Where was everybody in relation to that board?

A. I can't recall if Vernon was on the other side of -- I recall Vernon being on the other side of pole. On this side, not that side.

Q. Okay. And that's when Vernon took the board away?

A. Yes, he did.

Q. Okay. Can you tell -- it's pretty dark and we can't do much more about that. Can you see a board at the bottom of that picture?

A. Yeah, there's a board right -- about right there.

Q. And you're indicating right at the very bottom of that photo that marked State's 11?

A. Yeah, and when the police got there, the board was still there.

Q. Okay. And at that time, is that when you saw Will's dad go inside, when Will and Vernon are standing there?

A. I can't recall.

Q. Okay. Do you recall where Will was when his dad went inside?

A. Maybe like right there.

Q. Okay. He's over there. And you said he ran earlier?

A. Yeah.

Q. Was anybody chasing him?

A. No.
Q. Okay.
MR. PINCELLI: All right. Thank you, Savanah.
THE COURT: Is that it?
MR. PINCELLI: That's it, Your Honor. No further questions.
THE COURT: Recross?
MS. ZMROCZEK: Nothing further, Your Honor.
THE COURT: Thank you. You may step down.
(Witness excused.)
THE COURT: Call your next witness.
MS. PATTERSON: Your Honor, we call agent Daniel Schirra.
(Whereupon, Daniel Schirra was duly sworn by the Clerk of Court.)
THE CLERK: Thank you. Please be seated in the witness stand. Once you are seated, please state your name; spelling your last name for the record.
THE WITNESS: My name is Daniel Schirra, S-C-H-I-R-R-A.

DANIEL SCHIRRA,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PATTERSON:
Q. And, Agent Schirra, where are you employed?

A. I work for the United States Courts as a probation officer.
Q. And how long have you been employed at the United States Courts?
A. I've been there for about eighteen months now.
Q. And where were you previously employed?
A. At the Lexington County Sheriff's Department.
Q. And how long were you employed at the Lexington County Sheriff's Department?
A. I'd say about three and a half to four years.
Q. And what was your position at the Lexington County Sheriff's Department?
A. I was a major crimes investigator.
Q. And prior to being a major crimes investigator, what was your position?
A. I was a patrol deputy signed to the south region.
Q. And what area is the south region in?
A. It's -- it's kind of what it sounds like. It's the -- geographically the south end of the county. Lexington County Patrol Division is divided into three divisions. We have a west region, a north region, and a south region. The south region runs as I always -- starts at 176 and Interstate 20, it runs up 20, kind of cuts under Red Bank, continues up 302 kind of under the airport and then comes back down 26 to the Horses Neck. Everything south of that

we would patrol.

Q. And on May 10th of 2016, did you respond to [redacted] Oak Glenn Road?

A. I did. Yes, ma'am.

Q. And why did you respond to that location?

A. I actually happened to be in the area already. I was performing a property check in the Glen Village neighborhood. As it's already been mentioned, it was an area that we frequented. As I was performing a property check, dispatch notified us via radio of a shooting incident that happened to be less than a -- about a block away from my current position where I was performing the property check.

Q. And about how long did it take you to get to that scene?

A. It was within one minute. I recall telling dispatch that I was on-scene as soon as she was done feeding the information to responding units.

Q. And since you responded so quickly, what was your main focus when you got to the scene?

A. I treated the incident as kind of an active shooter. Because I was there within one minute, I observed a very chaotic scene. My primary focus was finding the shooter, the subject who had -- who was armed. I had people yelling at me telling me that he was in the house, so that's where

my focus went.

Q. And why was your focus on the shooter instead of the victim at this point?

A. Again, when I arrived on-scene I positioned my vehicle right in front of the residence, I got out. It was very chaotic. There was a crowd kind of gathered on the outskirts. I noticed two people over the victim, another male, and they were yelling that he had shot him, a lot of utterances of being shot, and that he was in the house, he has a shotgun. A lot of this kind of information, a lot of details were kind of flooded at me. I did my best to relay that to other incoming units. I was by myself, so my primary focus was to secure the scene, get it safe so I could get the victim help. If there's a bad guy with a gun still there, I can't get help to the victim on the ground.

MS. ZMROCZEK: Your Honor, may we approach?

THE COURT: Yes.

(Proceedings held at the bench; not reported.)

THE COURT: Ladies and gentlemen of the jury, please step into the jury room. Don't discuss the case. While you're back there, we're probably gonna take a break, so it will be about ten, fifteen minutes.

(Whereupon, the jury retires to the jury room at 3:42 PM.)

THE COURT: Yes, ma'am.

MS. ZMROCZEK: Your Honor, at this time I would note my objection. I'm objecting to the characterization and the term of -- the use of "bad guy". I would ask for a mistrial. Although, Your Honor, at this point I know that it was kind of quick and said, but what I would ask as a curative instruction if Your Honor's obviously not inclined to grant the mistrial is to ask that that be stricken from the record and that the jury is not to consider that and then instruct the witness not to characterize someone as a bad guy.

THE COURT: Does the State wish to be heard?

MS. PATTERSON: Your Honor, at this point I think Agent Schirra was just trying to gather information. He did not identify specifically who the person was at this point, Your Honor. He's just saying there's a shooter and just generalizing in saying he's a bad guy.

THE COURT: My understanding of the witness's testimony was more generic. He wasn't talking about a particular person, he was just referring to a bad guy with a gun, not being able to secure the scene and get help until that person is located. It doesn't warrant a mistrial in my view, but avoid saying that again, please.

THE WITNESS: Yes, Your Honor.

THE COURT: Do you want me to give an instruction to

the jury?

MS. ZMROCZEK: I would just ask Your Honor that -- that those words be stricken from the record, that they're not to consider that testimony. Because obviously all the testimony up and to this point is Mr. Foster had the gun, everybody knows that he had the gun, and so to characterize the person he's looking for with the gun as the bad guy but to then say that he's not implying that Mr. Foster is a bad guy, I think is a -- is bit of a stretch on the State's part, but -- but so we would just ask that that comment be stricken from the record and the jury just told to disregard.

THE COURT: If you want me to tell the jury to disregard the bad guy comment, I'll do it. It's gonna call attention to it, but I'll do it.

MS. ZMROCZEK: Your Honor, it's certainly not our intention to highlight it. I think that as long as the witness has been instructed not to use that term, then that will be fine.

THE COURT: The witness has been instructed.

All right. We haven't had a break, Mr. Schirra, so we're gonna take a break.

THE WITNESS: Yes, Your Honor.

THE COURT: During the break you're not permitted to discuss your testimony with anyone.

THE WITNESS: Yes, sir.
THE COURT: Ten minutes, folks. We're at ease.
(Recess taken at 3:45 PM.)
(Back on the record at 3:56 PM.)
BAILIFF: All rise.
THE COURT: Thank you. Be seated.
Is the State ready for the jury?
MS. PATERSON: Yes, sir. We're missing the clerk, but, yes, sir.
THE DEPUTY: We'll catch her up.
THE COURT: Is the defense ready?
MS. ZMROCZEK: We're ready.
THE COURT: Bring in the jury.
(Whereupon, the jury return to the courtroom at 3:58 PM.)
THE COURT: All right. You may continue.
MS. PATTERSON: Thank you, Your Honor.
BY MS. PATTERSON:
Q. Agent Schirra, and why was your focus on the shooter and not on the victim at this point?
A. It was scene security. I couldn't assist the victim or get assistance to the victim without first assuring that the scene was secure, there was not an active threat to anyone in the area.
Q. And what did you do in order to -- to secure the scene

at that point?

A. As I mentioned, immediately on-scene I was getting fed a lot of information from multiple different people that were there, specifically that there was an active -- someone armed with a gun in the house, so I positioned myself as I am trained and covered behind my engine block of my vehicle, which was positioned directly in front of the house, and I used my PA system affixed to my vehicle to attempt to order or convince whoever the armed subject was to come out of the house unarmed. So I made multiple commands to the effect of, you know, come out of the house unarmed, put the weapon down, come on out.

Q. And is the PA system, is that attached to your patrol car?

A. It is. It's the equivalent of using the same thing you'd hear from a siren when you hear a siren of a police vehicle going by you, that's what's projecting our voice. It's the same system.

Q. So is it pretty loud?

A. It can be very loud, yes, ma'am.

Q. And you were repeating these commands over the PA system?

A. I was, yes, ma'am.

Q. And did anyone ever come out of the house that you saw?

A. No, ma'am.
Q. And did the crowd at the scene continue to be emotional at this point?
A. Extremely, yes, ma'am. There was -- I would describe as hysterical some of the individuals that were around the victim.
Q. And at this point, how long had you been at the scene -- on-scene?
A. Perhaps minutes, two to three minutes, if that, before someone, I don't know who, told me --
MS. ZMROCZEK: Objection, Your Honor. Hearsay.
MS. PATTERSON: Your Honor, I would say this an excited utterance. He's been on the scene less than minute, everybody is still extremely emotional under the stress of the event.
THE COURT: I don't know who said it, so I've got no way of knowing if it falls under the exception or not. You have to lay better foundation than that.
BY MS. PATTERSON:
Q. Was -- was everybody in the crowd that you were in contact with, were they -- describe their demeanor.
A. There was two females on -- on the ground with the victim screaming out multiple different utterances, which I think I've already mentioned. There was another male that I knew that -- or I just kind of had my eye on that

was standing kind of behind the victim. Being there and not knowing where this shooter is, I know I was getting information that he was in the house, everyone was still kind of a potential threat, I don't know what's going on, so I was trying to pay attention to everybody. I was getting information and people were telling me things from outside of my view. Some -- another witness mentioned that -- this neighborhood was a very active neighborhood and there was a lot of people typically out and about and so I was getting a lot of information from other people that I couldn't identify. I just know that I was hearing information from others.

Q. Okay. And do you know in particular who was -- who was shouting out the information about the shooter's whereabouts?

A. May I refer to my incident report?

Q. Yes, sir.

A. It doesn't -- I don't specify who told me the information that I think we're speaking about.

Q. Okay. So you don't know who, but during the course of your investigation, did you receive information about the shooter?

A. I became aware that he had run out the back door --

Q. Okay.

A. -- or ran out behind the house.

Q. And what did you do with that information?
A. I began to -- there was a side door ajar. The residence has been described, there's -- from the front of the house there's an attached awning or open garage type situation. The door on the right side was ajar and I had noticed this immediately upon arrival, so I began to make a large -- again, kind of in some of the training that we go through, attempt to cut the door, clear the door, make sure there's no one in there, no threats that I can get -- that could get to us, and so I did that. I proceeded to make a large loop, clear the door, then clear the backyard.

Just as I'm about to do this, I receive information over the radio -- I'm sorry, I need to go back. I did radio the information, the information that I had received, that someone -- that he had run from the back. I was very aware of this area. I patrolled it. I knew that Dixiana Road ran parallel to this area, so I informed radio dispatch and other incoming units that I believe he was running towards Dixiana Road -- or I received information he was.

As I kind of make that big attempt to clear that area for a gunman or a subject or a threat, I received information from another deputy that he had located Mr. Foster, Heirbrane Foster, on Dixiana Drive.
Q. Thank you. And just give me a second, please.

I'm gonna show you what's been marked as State's Exhibit Number 7, and ask you to take a look at this. Do you recognize what's in that photograph?

A. Yes, ma'am. This is that awning I was talking about on the right side of the residence and it also depicts the door that was ajar when I arrived on-scene, which I later discovered that leads to the kitchen.

Q. Okay. And does that fairly and accurately represent that scene on May 10, 2016, at [redacted] Oak Glenn Drive?

A. To the best of my recollection, yes, ma'am.

Q. Does it look like it's been changed or altered in any way?

A. It does not. No, ma'am.

MS. PATTERSON: Your Honor, at this time we move State's Exhibit Number 7 into evidence.

MS. ZMROCZEK: Without objection, Your Honor.

THE COURT: Mark 7 in evidence, please, ma'am.

(State's Exhibit Number 7, a photograph, was admitted into evidence.)

BY MS. PATTERSON:

Q. In looking at that picture, Agent Schirra, can you kind of describe to the jury what area you were trying to secure?

A. Yes, ma'am. So I would have been almost --

Q. I'm sorry. There's a pointer up there.

A. Oh.
Q. Yes.
A. Okay. I was in the road. This -- this house sits perpendicular to the roadway as a house normally sits. I approached like a -- like a large C shape to come around to get -- to look into that kitchen door to see if there was anybody there and to try to catch that back. As I'm kind of probably in this area is when I received information that -- it's Deputy Watford who notifies me via radio and other units that he had Mr. Foster detained on Dixiana Drive.
Q. Okay. And was that door open?
A. It was. Yes, ma'am.
Q. And, again, where had you positioned your patrol car?
A. This is, if I recall, part of like the driveway, so the driveway's gonna lead out to the roadway. My vehicle is positioned perpendicular to the house right at or near the driveway of the residence along the road, along the -- my vehicle was parked along the curb.
Q. Now this picture may help you a little better.
(State's Exhibit Number 12 was marked for identification.)
BY MS. PATTERSON:
Q. I'll show you what's been marked as State's Exhibit

Number 12 and ask you to take a look at it. What does that picture show?

A. This is a picture situated behind this area facing back toward the road. You can see some patrol vehicles and crime scene vehicles with Lexington County Sheriff's Department. Also the victim's body where I -- where it was where I arrived is covered with a drape.

Q. And does that picture fairly and accurately represent the scene on May 10, 2016?

A. Yes, ma'am, to the best of my recollection.

Q. Does it look like it's been changed or altered in any way?

A. No, it does not.

MS. PATTERSON: Your Honor, at this time we move State's Exhibit Number 12 into evidence.

MS. ZMROCZEK: No objection.

THE COURT: Mark 12 in evidence, please.

(State's Exhibit Number 12, a photograph, was admitted into evidence.

BY MS. PATTERSON:

Q. And so that door was open and where did you position your vehicle?

A. Right where that vehicle is, so I would have been situated -- immediately upon arrival, I was situated behind the engine block of the vehicle making those commends and

kind of questioning the crowd to try to gain information of where this potential shooter was at.

Q. Okay. And so after you got confirmation from Deputy Watford that the suspect had been detained, what was your involvement next?

A. I then immediately notified Lexington County dispatch that the scene appeared secure and to bring in EMS and fire services to tend to the victim. I'd also went to the victim and saw that he was unconscious, not breathing. I'm not medically trained, but I did my best to see if he had a pulse, which he did not appear to have one, and I notified Lexington County communications, our dispatch, that information to provide to our incoming units and to the EMS and fire services.

Q. Okay. And did any other officers arrive at the scene to assist you?

A. The very next deputy to arrive was -- Deputy McFalls was my next backup unit that arrived on-scene.

Q. Okay. And what was -- what did you do next?

A. As soon as Deputy McFalls arrived, our next goal was to secure the crime scene. We did have a large crowd as I mentioned and I wanted to get the crime scene tape up. Deputy McFalls began to kind of help push some of the crowd back as I began to set up the crime scene tape and started to identifying witnesses and potential people who might

have had some information.
Q. Okay. And after you helped secure the scene, what did you do next, if anything?
A. Maintained scene security as investigators and additional resources arrived on-scene. Our watch commander, Lieutenant Frier, arrived on-scene and directed myself and, if I can recall his name, Deputy Burnett, he directed us to conduct a protective sweep of the residence in an effort to secure the home, which is to ensure that there's no other persons in the home or around the scene that could contaminate or destroy evidence, so I did perform that sweep with Deputy Burnett of the home.
Q. And how did you-all enter into the home?
A. We -- myself and Deputy Burnett entered through that ajar door.
Q. And when you went inside the home, did you see anything in particular that was of interest to this case?
A. Yes, ma'am. Deputy Burnett, as we entered, he pointed out and said "watch" and he pointed out a pistol grip shotgun with an optic site that was sitting on like a blanket kind of right there in the doorway, on the other side of the doorway of this -- this is a kitchen area where I entered in. There was a refrigerator, I think, right in this -- once you get in there and there was a shotgun on the floor.

(State's Exhibit Number 13 was marked for identification.)

Q. I'll show you what's been marked as State's Exhibit Number 13 and ask you to take a look at it. Do you recognize what's in that photograph?

A. Yes, ma'am. It's a picture of the kitchen. You can actually see the door on the other side of that wall and there's a shotgun that I described on like a sheet, a flowered sheet, blanket, next to the refrigerator.

Q. And is that the way it appeared when you and Deputy Burnett went into the residence at [redacted] Oak Glenn Drive?

A. Correct. Yes, ma'am.

Q. Does it look like it's been changed or altered in any way?

A. No, it does not.

MS. PATTERSON: At this time we move State's Exhibit 13 into evidence.

MS. ZMROCZEK: 14?

MS. PATTERSON: 13.

MS. ZMROCZEK: No objection, Your Honor.

THE COURT: Mark 13 into evidence, please.

(State's Exhibit Number 13, a photograph, was admitted into evidence.)

BY MS. PATTERSON:

Q. And can you show the jury the door that you entered

into the kitchen?
A. Yes, ma'am. Like I was mentioning, so we've seen the outside of the residence, that awning area. This is the open ajar door. You can see this is the other side of that door that's ajar. As soon as we entered the door, Deputy Burnett pointed out and said "watch" and pointed down to this weapon here. We cleared this area. This is the kitchen. There's a back door right here. It's kind of dark in this photograph under that light, but you can see, I think, maybe the handle to the back door there. There's a refrigerator. That's the rest of that residence on that side and we continued this way to clear the rest of the residence.
Q. And did you -- did you touch or do anything with that gun?
A. No, ma'am. Neither one of us did.
Q. And did you -- did you notice anything else in particular inside the kitchen?
A. Referring back to my notes, one thing about this particular picture is that door is shut. When myself and Deputy Burnett originally did the sweep of the house, the back door to the residence was ajar as well. I had not noticed that yet. I didn't notice that until we actually entered the residence.
Q. And who shut the door?

A. I believe I noted that Deputy Burnett shut it to ensure scene security, make sure that, you know, no one could come in from the backyard that we might not see to contaminate the scene.

Q. What, if anything, else did you do regarding this case after that?

A. Immediately thereafter, I returned to maintain a scene security-type role. Thereafter, I was asked to go assist Detective -- then Detective Miller down at Dixiana Drive. I believe it's -- I don't know if I cited the address. It was the 100 block of Dixiana Drive where they had Mr. Heirbrane Foster detained. He just needed an extra unit to assist him. I believe he needed to make a phone call, so I relocated to that area. I sat in the driver's seat of his unmarked patrol vehicle with Mr. Foster while Mr. Miller made a phone call. Mr. Miller --

Q. And --

A. I'm sorry.

Q. I'm sorry. And where was that Dixiana address in relation to the Oak Glenn Road address? And Deputy Miller's gonna hold that.

A. So we've already seen my patrol vehicle that was positioned right here. I drove -- this kind of loops back round, came here, and met Mr. -- or Detective Miller here at [redacted] Dixiana Drive. If you were to make a direct line

from house to house, you could see that it's a pretty quick -- a stone's throw, I guess you would say. This is the backyard. There is a fence right here that runs along the backyard to the incident location and I met Mr. -- or Detective Miller, I apologize, here at [redacted] Dixiana Drive.

Q. Okay. Thank you.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. PATTERSON: No further questions at this time. Agent Schirra, please answer any questions defense has.

MS. ZMROCZEK: May it please the Court?

THE COURT: Cross? Yes.

MS. ZMROCZEK: Thank you.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Agent Schirra, you've been referring to your report this entire time, right?

A. I have. Yes, ma'am.

Q. But you -- but the jury hasn't heard your complete report yet, have they?

A. No, ma'am.

Q. Okay. There's some more stuff in there, right?

A. Yes, ma'am.

Q. Some stuff that -- that was told to you by Heirbrane Foster?

A. I did note some things, yes, ma'am. As I referenced, I did sit in the vehicle while Mr. -- or Detective Miller made a phone call and he made some utterances that I noted.

Q. And not only did you note them --

MS. PATTERSON: Your Honor, may we approach, please?

THE COURT: Sure.

(Proceedings held at the bench; not reported.)

THE COURT: All right, ladies and gentlemen. I need you to step in the jury room. Don't discuss the case. Leave your notes in the courtroom.

(Whereupon, the jury retires to the jury room at 4:18 PM.)

THE COURT: There was a question about whether we needed to do a Jackson versus Denno hearing and so I need to know -- since this is being elicited by the defense, I need to know if these were any questions or any responses based on custodial questioning and the defense attorney indicated that the client admits he was already Mirandized at that point. Did this -- did this witness ask questions of your client?

MS. ZMROCZEK: No. In fact, Your Honor, he said -- without prompt he uttered -- "he" being Mr. Foster -- uttered have you ever had to shoot someone, you see that I had, I pray to God you never have to. I hope he -- he misspells his name -- but he says Heirbrane uttered then

I hope Will is okay and asked if I had been to the original location, which I responded I had not to avoid any inquiry into the victim's status. He then goes -- the report then next says Heirbrane then uttered he told me I had -- if I had no other choice, I had no other choice, I ran and ran and ran. Heirbrane then began to causally talk about prior encounters with me at his residence, then started to say okay, I'm done talking.

Your Honor, we would argue that it falls under two -- two, I guess, hearsay exceptions.

THE COURT: They haven't raised hearsay.

MS. ZMROCZEK: Right.

THE COURT: The question is whether this was the product of any invest -- interrogation. I'm sorry, I couldn't find the word. If -- clearly he was in custody, that situation is established, but if he's just sitting there and this witness has not asked or no one else has asked him questions or the functional equivalent of questions, then we don't need Miranda.

MS. ZMROCZEK: I didn't think we needed a hearing, but that's why --

THE COURT: Right. I think the solicitor is just trying to be safe rather than sorry.

MS. PATTERSON: Yes, sir, Your Honor. Because Your Honor asked that we do the Denno even though we were gonna

stipulate --

THE COURT: Well, mainly -- mainly because he got on the stand, the Defendant, and said that he wasn't in his right mind when he made the statement.

MS. PATTERSON: Yes, sir.

THE COURT: Then he got on the stand when we had the Denno hearing and said he didn't really mean that, he just meant he was emotional, and so I made the finding on it.

MS. PATTERSON: And --

THE COURT: So do you-all want to ask him questions about whether there was any questioning and how it occurred and all that sort of thing while the jury is out?

MS. PATTERSON: And, Your Honor, although Agent Schirra didn't ask him any questions, at this point he had stopped his -- he had stopped talking to Detective Miller and this was after Miller had gave him his Miranda.

THE COURT: Well, if you want to lay the context for it, that's fine, and I'll be happy to rule. Do you want to ask him questions about the situation in which these statements were given?

MS. PATTERSON: Yes, sir, I will.

THE COURT: Okay.

MS. ZMROCZEK: And, Your Honor, I moved the podium over here because when I'm standing there, I am standing literally over them just because this courtroom is small,

and I just felt more comfortable moving it over here.

THE COURT: Stand wherever you'd like.

MS. ZMROCZEK: Thank you.

EXAMINATION (In-Camera)

BY MS. PATTERSON:

Q. And, Agent Schirra, when you went to the Dixiana address location to assist Deputy Miller, did you know whether or not Mr. Foster had been placed under arrest at that point?

A. Yeah, I knew that he was not under arrest at that point.

Q. Okay. Did you know if Detective Miller had Mirandized him?

A. I was not advised. I -- specifically I do recall Detective Miller gave me strict instructions to not question him, don't ask him any questions; if he says anything, just take note of it.

Q. Okay. And did you -- did you question him?

A. I did not.

Q. And the statements he made to you, did you prompt him in any way?

A. I did not.

MS. PATTERSON: That's all I have, Your Honor.

THE COURT: Any questions of the witness on this?

MS. ZMROCZEK: Nothing, Your Honor.

THE COURT: Do you have any evidence on this?

MS. ZMROCZEK: I mean, Your Honor, I believe that I went through the evidence before about what was --

THE COURT: I mean, do you want to offer any witnesses?

MS. ZMROCZEK: No, Your Honor.

THE COURT: Okay. Did you need to put anything else on the record?

MS. ZMROCZEK: No, Your Honor.

THE COURT: Based on what's been presented, the Court finds the State has made the requisite degree of proof and has established at least by clear and convincing evidence that at the time that these alleged statements were given, the Defendant, while in custody, was not being interrogated, nor was the functional equivalent of any custodial interrogation being conducted. These were spontaneous statements that do not require Miranda; though as I previously ruled about -- well, I'm not sure -- you-all didn't go into that, so I'm not sure. Forget that last part of the sentence. But in any event, Miranda was not required at this point. These were spontaneous statements made not in response to any custodial questioning.

Bring the jury back in.

(Whereupon, the jury return to the courtroom at

4:25 PM.)

THE COURT: All right. You may continue.

MS. ZMROCZEK: Thank you, Your Honor.

CONTINUED CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Agent Schirra, before that small break we were talking about the rest of your report, right?

A. Yes, ma'am.

Q. And you stated that when you relocated to Detective Miller's location on Dixiana Drive, which you said was a stone's throw from where -- it's a straight shot from backyard to backyard, right?

A. If you were to take a straight line from house to house.

Q. Right. And you were familiar with that area. You worked patrol of the south region?

A. Correct. Yes, ma'am.

Q. Okay. And so in your report you have some statements and they're in quotations. What does that mean?

A. I would say I was trying to paraphrase or quote what Mr. Foster had said to me.

Q. And that's Heirbrane Foster here, right?

A. Yes, ma'am.

Q. And you weren't questioning him, right?

A. I was not. I actually made an effort not to question

him and to intervene in Detective Miller's investigation.
Q. Right. But as you're sitting there with him right after this happened, within a few hours, because you were there within a minute, right?
A. Correct. Yes, ma'am.
Q. And then you cleared the scene and found the evidence and then after all of that was done you relocated to Detective Miller's vehicle?
A. Yes, ma'am.
Q. Okay. So it was fairly close in time to when this happened?
A. I couldn't recall how long of a duration it took me to -- a lot had happened. I don't know the proximity of time between me leaving the incident location and going to Detective Miller's location.
Q. Okay. And so -- and Mr. Foster asked you have you ever had to shoot one, you see that I had, I said I -- you see that I said had, right?
A. That's correct. Yes, ma'am.
Q. And you actually responded to his question?
A. I did. I told him that I had not had to shoot anybody.
Q. Okay. And in response, what -- he said I pray to God you never have to, right?
A. Yes, ma'am. That's what's in my report.

Q. Okay. And then -- and then what did he say next to you or just out loud while you were sitting there?
A. Something to the effect of I hope Will is okay, referring to his son.
Q. Referring to his son?
A. Yeah.
Q. Okay. And you didn't give a response to that, right?
A. I did not respond to that utterance, no, ma'am.
Q. Okay. The next thing -- what did he say next to you?
A. He started to ask me about like what was going on at the incident location, asked me details about what had been going on and if I had been there. And, again, not to -- to try not to start up any conversation and I told him I had not been there to keep him calm.
Q. Okay. And then you -- you indicate that he had uttered something else to you?
A. My report reflects that I wrote that he told me, referring to Mr. Foster, told me that -- this is kind of a weird way to say it, in quotes I put he told me if I had no other choice, I had no other choice, I ran and ran and ran.
Q. Okay.
A. And he told me is in quotes, so Mr. Foster is the one that said he told me.
Q. Okay. So Mr. Foster told you?

A. Yes, that --
Q. That's what you meant to put, you just put the quotations in the wrong place?
A. No, no, no. He -- no, no, no. That's my point.
Q. Okay.
A. He said that.
Q. Oh, he said that "he", and you don't know to whom the "he" was referring?
A. Correct. Yes, ma'am.
Q. Okay. That I had no other choice, I ran and ran and ran?
A. Yes.
Q. All right. You talked about -- you talked about being a deputy in the south region.
A. Yes, ma'am.
Q. And were you in a patrol car?
A. I was in a patrol -- yes. I mean, it was a marked patrol vehicle.
Q. A marked patrol vehicle?
A. It was a Chevrolet Tahoe.
Q. With a dash camera?
A. No, ma'am.
Q. You didn't have a dash cam?
A. No, ma'am.
Q. So you couldn't record any of your events?

A. Right. Yes, ma'am. I did not have a dash camera.
Q. Okay. Were all vehicles not equipped with dash cameras at that time?
A. They were not. No, ma'am.
Q. Okay. And -- because typically if you had a dash cam, when you turn the sirens on or anything that would start recording, right?
A. Actually I never even had experience in having a dash cam, so I wouldn't be able to tell you how they worked.
Q. Okay. They -- but you get there and you talked a lot about your training. Where did you receive that training?
A. I received training at the Criminal Justice Academy here in South Carolina off Broad River Road here in Columbia back in 2012. I also received biannual training at the Lexington County Sheriff's Department. We call it block training. It's rigorous recertifications of certain things.
Q. Especially when you carry weapons?
A. Correct. Yes, ma'am.
Q. And your interactions with the public?
A. Yes, ma'am.
Q. And then you said also active threats, correct?
A. Yes, ma'am.
Q. There are many things that could be considered an active threat; isn't that right?

A. Certainly.
Q. Not just a gun?
A. Correct. Yes, ma'am.
Q. Somebody wielding a pipe could be an active threat?
A. Yes, ma'am.
Q. Somebody wielding a two by four could be an active threat?
A. Depending on the proximity to me, yes, ma'am.
Q. Okay. Somebody within the proximity of any rake or garden tool could eventually -- or essentially be turned into a weapon; is that right?
A. Depending on my interpretation of the demeanor, yes, ma'am.
Q. Okay. If there's a knife in a kitchen, that could be turned into a weapon?
A. Again, in context, yes.
Q. Okay. Right. In context. So there are many things that could be considered threats, not just guns?
A. Certainly. Yes, ma'am.
Q. And depending on the build of a person and their strength, someone could be considered in and of themselves an active threat?
A. We do take size disparity in consideration for force if that's what you're asking.
Q. Right. Yes. And also in dealing with people, are

you trained to deal with people when they are intoxicated or on substances?

A. Yes, ma'am. We have had training.

Q. Okay. And you've had training on that because when people are intoxicated --

MS. PATTERSON: Objection, Your Honor. He hasn't testified about being -- nothing about being in contact with an intoxicated person involved in this case.

MS. ZMROCZEK: And that's where I am getting to.

THE COURT: What is your question?

MS. ZMROCZEK: Well, I was going to say you're trained to notice certain things about a person's behavior and then ask if he saw that behavior in Mr. Heirbrane Foster.

THE COURT: Ask your question.

BY MS. ZMROCZEK:

Q. You're trained to notice those types of behaviors, correct?

A. Yes, ma'am, to a certain extent. I wouldn't say that I was by any means certified or anything like that.

Q. Right.

A. It's -- I would call it maybe to the effect of casual training just for our safety purposes to recognize threats based off of drug use and alcohol abuse.

Q. Okay. And did you notice any drug or alcohol abuse

and did you note any of it in your report?
A. I did not.
Q. With Mr. Foster?
A. Not -- I did not note it in my report and I don't recall it.
Q. And you -- you talked about how when you went inside that shotgun was right there at the door, correct?
A. Yes, ma'am.
Q. Not covered up? You didn't alter this in any way?
A. No, ma'am. Not at all.
Q. Because the reason that -- that you do that is so that we can see what the scene essentially looked like as you arrived?
A. Correct. If there's no reason to move or touch a firearm, we're gonna leave it be.
Q. Because if something's moved, then that could change how it's viewed later on, right? If a piece of evidence is moved, then -- then it's not the way it was when it happened?
A. That's correct, yeah.
Q. So that's why you put up crime scene tape, right?
A. Yes.
Q. Because you want to keep people from moving different things?
A. To preserve the scene.

Q. Preserve the scene?
A. Yes, ma'am.
Q. But you stated that there were a lot of people milling around?
A. On the outside of the crime scene. We -- we did do a good job in securing the scene.
Q. Sure, once you got there, right?
A. Yes, ma'am.
Q. But prior to that you don't know who put what two by four where?
A. Well, I was pointed out and it is referenced in my report an individual did point out that board that you spoke of, and I don't know if you --
Q. But -- and that's where they said that they put it, right?
A. Yes, ma'am. An individual told me that he had set -- set a board along the edge of the roadway --
Q. Okay.
A. -- that they had taken from the victim.
Q. Right. Taken it from the victim and moved it to the roadway. And actually you had worked that previous evening in the south region, hadn't you?
A. Yes, ma'am.
Q. You had been to that exact address that previous evening, hadn't you?

A. Yes, ma'am.
Q. Okay. And do you recall what that was in regards to?
MS. PATTERSON: Objection, Your Honor. We need to approach.
THE COURT: Yes.
(Proceedings held at the bench; not reported.)
THE COURT: Step in the jury room, please, ladies and gentlemen. Don't discuss the case. Leave your notes.
(Whereupon, the jury retires to the jury room at 4:36 PM.)
THE COURT: Ask him what you want to ask him outside the presence of the jury.
MS. ZMROCZEK: Thank you.

EXAMINATION (In-Camera)

BY MS. ZMROCZEK:
Q. You had been out there the night before?
A. I was. Yes, ma'am.
Q. And you had actually interacted with Will the night before?
A. He -- I wouldn't say interact. He didn't really want to interact with me.
Q. I'm sorry?
A. He didn't want to interact with me. I didn't have a conversation with him. I attempted to. He wouldn't speak with me. I had a South Carolina probation and parole

officer in my car. I was actually working a crime suppression detail, we pulled in probation to assist us. She asked if we could stop by that house.

Q. And what was his demeanor?

A. He was very nice to Ms. Doyle, the probation officer, very cordial. It was actually night and day between the way he treated me and the way he treat her.

Q. Okay.

A. She was -- it seemed like they had a good conversation, a productive contact is what I would say when I was a probation officer.

Q. With her. And then when -- but his demeanor with you?

A. Just cold. He wouldn't -- he wouldn't speak with me. I wouldn't say a bad demeanor, he just wouldn't speak with me.

Q. Okay.

MS. ZMROCZEK: And, Your Honor, that's the extent of the questioning.

THE COURT: What's your objection?

MS. PATTERSON: Your Honor, I think she's just trying to get out the fact that this victim was on probation. It has nothing to do with this offense, Your Honor. It doesn't show a propensity to violence or anything or his anger issues, just the fact that he was on probation. She just wants to get out the fact that

he was on probation to make his character look bad.

THE COURT: Anything else?

MS. ZMROCZEK: No, Your Honor. I mean, certainly it's not -- we're not trying to get character evidence in. He -- he had an interaction with -- with Will the evening before and he was standoffish and wouldn't speak to him. Your Honor, that's all we're trying to get, his demeanor.

THE COURT: That doesn't establish anything. The prejudicial effect substantially outweighs any probative value. The objection's sustained.

MS. PATTERSON: Thank you.

MS. ZMROCZEK: We'll move on. Thank you.

THE COURT: For some reason people are calling and leaving voice messages for me, so I need to find out what's going on.

MS. ZMROCZEK: Okay.

MS. PATTERSON: Thank you.

THE COURT: We'll take a short break. It won't be long hopefully. Don't discuss your testimony. We're at ease for just a few minutes.

(Recess taken at 4:39 PM.)

(Back on the record at 4:41 PM.)

BAILIFF: All rise.

THE COURT: Thank you. Be seated, please.

Are you ready for the jury, Ms. --

MS. ZMROCZEK: We're ready, Your Honor.

THE COURT: Are you ready, Solicitor?

MS. PATTERSON: Oh, yes, sir, Your Honor. I apologize.

THE COURT: No, you didn't do anything. I didn't ask you yet.

MS. PATTERSON: I didn't think so.

THE COURT: I was trying to remember Ms. Zmroczek's name. For some reason I couldn't remember it.

All right. Bring the jury in.

(Whereupon, the jury return to the courtroom at 4:42 PM.)

THE COURT: The objection is sustained. Pose your next question, please.

MS. ZMROCZEK: Thank you.

(Telephonic interruption.)

MS. ZMROCZEK: Sorry for that interruption. I don't know what's going on.

THE COURT: That's fine.

CONTINUED CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. I'm gonna show you State's Exhibit 7 and you indicated that this was the carport area?

A. Yes, ma'am.

Q. Which your car was perpendicular, right?
A. Yes, ma'am.
Q. Okay. And you noted that there were some spots of -- did you notice what this was on the carport?
A. Yes, ma'am.
Q. What was that?
A. I noted that I observed blood on the driveway near the kitchen side door which led a trail to where the victim was laying in the yard, which is out this way.
Q. So over -- over this way where my finger is?
A. Yes, ma'am.
Q. Okay. So but it started here?
A. That's blood.
Q. Yeah, that's blood, right?
A. Where the trail of blood leaves.
Q. And then the trail of blood leads to where Will was laying?
A. Yes, ma'am.
Q. Okay. And you had to go up some steps to get into the house?
A. Yes, ma'am.
Q. And you had to step off a little bit off of the edge of the carport?
A. I don't recall how much of a ledge it would be, but --
Q. I'll put up State's 12 to see if that helps refresh

your recollection.
A. It looks like there was a little ledge there, yes, ma'am.
Q. Okay. And you were able to also advise Heirbrane of what Will's medical condition was eventually?
A. I did not, no, ma'am.
Q. Okay. Were you there when Detective Miller advised him?
A. I was.
Q. Okay. And were you able to witness his demeanor at that time?
A. Yes, ma'am.
Q. What was Heirbrane's demeanor when he learned that Will was deceased?
A. I described him as becoming emotional. He became pass -- we call it passively resistant, which means he stopped following our commands.
Q. And he was emotional?
A. I -- I said emotional. I don't go into too much more detail. From my recollection I just remember him being very like solemn, just -- not listening, just kind of slouched, hung over. I actually have excited. I put that in my report.
MS. ZMROCZEK: Thank you.
THE COURT: Redirect?

MS. PATTERSON: Just briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. PATTERSON:

Q. Agent Schirra, in your experience as a deputy and an investigator, have you had the occasion for a suspect to tell you their version of what happened?

A. Many times. Yes, ma'am.

Q. Okay. And when you went over and you talked to Mr. Foster, he was able to speak to you clearly, correct?

A. His words were clear, yes, ma'am.

Q. Okay. And he told you -- as defense counsel pointed out, he told you that he had to shoot his son?

A. Correct, and he then pointed out -- you see that I said had.

Q. Okay. He didn't say anything about it being an accident to you?

A. He did not. No, ma'am.

Q. And he said he had no other choice, correct?

A. Yes, ma'am.

Q. And had it been some time passed since the shooting had occurred that you had contact with Mr. Foster?

A. Yes. I would say Detective Miller mentioned -- I'm sorry. I would say that it was maybe an hour.

Q. Okay. And then he -- going back to the things he told you, he said I ran and I ran and I ran, correct?

A. Yes, ma'am.
Q. And at this point you had information he had actually ran from his house to his neighbor's house, correct?
A. After conversing with the other units, that's what I came to learn, that that's where they had found him following the -- following the altercation they found him at that location that I met Detective Miller at.
Q. Okay. And this board that was pointed out to you during your investigation, did you give that information to anybody else?
A. Yes, ma'am. I -- I remember when -- a lot of information, a lot of people were talking to me, and that specific thing was pointed out to me by an individual named Vernon. I think it's Vernon Blanding, if I'm -- just to make sure. I'm sorry. If I can refer to my notes. Yeah, Vernon Blanding. As soon as I spoke, he pointed this information out and told me some other information about what he had observed. I kind of herded him to another deputy to begin a witness statement or taking notes. Again, as I mentioned, my primary purpose was to uphold scene security, so I passed him off to another deputy to take notes or to get him to write up a written statement.
Q. And did you see where this board was located?
A. I did. It was like parallel to the roadway.
Q. I'm gonna show you what's been marked as State's

Exhibit Number 8, and ask you to take a look at this. Do you recognize what's in that photograph?

A. Yes, ma'am. This is the board that Mr. Blanding pointed out to me when he approached me. It's along the roadway. It's a little bit further down that I remember, so it's actually -- it looks like from transversing this to this picture over here, it's gonna be further down to the left close -- closer to a corner cul de sac. There's a photograph of a [redacted] mailbox as well, which is the next door neighbor's residence.

Q. And does that picture accurately reflect the board that was pointed out to you on May 10, 2016?

A. Yes, ma'am.

Q. Does it look like it's been changed or altered in any way?

A. No, it does not.

MS. PATTERSON: Your Honor, at this time we move State's Exhibit Number 8 into evidence.

MS. ZMROCZEK: Without objection.

THE COURT: Mark 8 into evidence, please.

(State's Exhibit Number 8, a photograph, was admitted into evidence.)

BY MS. PATTERSON:

Q. Can you point out to the jury where that board was located that was --

A. Right here. And you've got the evidence actually, so it was marked by our crime scene unit. And as I mentioned before, this is the mailbox for [redacted] and this is a cul de sac. I believe if I was looking at the map, this is gonna be the house to the right of the incident location if you're looking at it from the roadway.

Q. Okay. And so that board wasn't even pointed out in the [redacted] Oak Glenn Road yard?

A. No, ma'am. It was closer to [redacted].

Q. Thank you.

MS. PATTERSON: Your Honor, that's all I have for Agent Schirra.

THE COURT: Recross?

MS. ZMROCZEK: Just very briefly.

RECROSS EXAMINATION

BY MS. ZMROCZEK:

Q. She asked you about the running and running and running in context with he ran to Dixiana Drive, right?

A. I don't know what the context was.

Q. You have no idea what the context was?

A. No, ma'am.

Q. So it could just as well have been he was running away from Will?

A. I don't know what the context was.

MS. PATTERSON: Objection. Speculation.

BY MS. ZMROCZEK:

Q. You don't know what the context was?

THE COURT: He's answered.

MS. ZMROCZEK: Okay.

BY MS. ZMROCZEK:

Q. And -- and the two by four that was pointed out to you, you said was further away than you even thought from where you saw the blood on the carport, right?

A. I'm sorry?

Q. The two by four in State's 8 --

A. Yes, ma'am.

Q. -- is not close to the carport. How close to the carport is that?

A. Not close at all.

Q. Not close at all. But the blood on the carport indicates that someone was shot or that someone bled on this carport, right?

A. I wouldn't be able to answer that question.

Q. Okay. How far is that blood in State's 7 approximately from the door?

A. So this grouping of like a blood pool or I don't -- splatter perhaps. I don't know what you call it.

Q. Right.

A. I'm not trained in crime scene or interpretation of blood --

Q. Sure.
A. -- but I would say that's perhaps eight feet, maybe less.
Q. Maybe less?
A. I'd say about eight feet. Eight, ten feet.
Q. Okay.
MS. ZMROCZEK: No further questions, Your Honor.
THE COURT: Thank you, sir. You may step down.
(Witness excused.)
THE COURT: All right. How many more witnesses do you have here today?
MS. PATTERSON: I have two.
THE COURT: How long do you think they will take?
MS. PATTERSON: We should be finished in about thirty minutes, Your Honor.
THE COURT: Call your witness.
MR. PINCELLI: The State calls Deputy Burnett.
THE COURT: Come around, please.
(Whereupon, Chris Burnett was duly sworn by the Clerk of Court.)
THE CLERK: Please be seated in the witness stand. Once you are seated, state your name; spelling your last name for the record.
THE WITNESS: Deputy Chris Burnett. Last name is B-U-R-N-E-T-T.

CHRIS BURNETT,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PINCELLI:

Q. Thank you, Deputy Burnett. And where do you currently work?

A. West division patrol.

Q. And what department is that with?

A. Lexington County Sheriff's Department.

Q. And how long have you worked with Lexington County Sheriff's Department?

A. Since February of 2015. February of 2015.

Q. Did you have law enforcement experience before that?

A. Yes, sir. I've been in approximately ten years now with law enforcement.

Q. In May of 2016, I guess that would come after February of 2015, but were you working with Lexington County Sheriff's Department at that time?

A. Yes, sir. I was assigned to the south region patrol unit.

Q. What would your title be?

A. Patrol deputy.

Q. Okay. What are some of the job duties of a patrol deputy?

A. Answer calls for service, traffic enforcement, as

well as investigate criminal activity and various things like that, property checks.

Q. Does that generally put you one of the first people on-scene?

A. Yes.

Q. How did you become involved in this case?

A. I was actually down the street handling another call, I heard that come on the radio and actually drove over to assist if I could.

Q. And do you recall kind of the timeframe when you heard it come over the radio how long it took you to get there just roughly?

A. Maybe twenty minutes, I think. Maybe twenty, thirty minutes.

Q. Who did you see on-scene when you got there?

A. I believe it was Sergeant Govan is who I met with.

Q. And what was the scene like? Can you describe the location?

A. A bunch of deputies were there, EMS was there as well. I just came over there and asked, you know, Govan what can I do, what needed to be done.

Q. What was determined that you needed to help do at that time?

A. The residence hadn't been cleared yet basically. I had to do a protective sweep of the house.

Q. Did anybody assist you in sweeping the house?
A. Yes, sir. Deputy Schirra did.
Q. And we heard a second going from Deputy Schirra, but, again, what's generally the purpose of sweeping a residence?
A. Basically we're looking for any other person that's inside the house that would destroy evidence or something like that, any other, you know, people hurt or injured or anything like that.
Q. Okay. Deputy Burnett, I'm gonna show you what's marked as State's Exhibit 7. Do you recognize that?
A. Yes, sir.
Q. And what's that?
A. That's the carport of the residence and that's the door that we entered into the house.
Q. To perform the sweep, that's the door you entered into?
A. Yes.
Q. Is there anything of interest you found when you were doing that sweep?
A. As soon as we came in the door, I noticed that there was a black shotgun laying in the -- I think it was the kitchen floor.
Q. And did you notice anything about that shotgun that was unusual?

A. It was partially covered by a white sheet just laying there in the floor.
Q. This is State's 13 I'm showing you. Is that a picture of that shotgun?
A. Yes.
Q. And what -- can you explain a little bit what it's on or what your -- is that the partially covering sheet?
A. Yeah. It was like a comforter or something like that, yes, sir.
Q. What, if anything, else did you encounter during the sweep of that residence?
A. The rear door of the residence was actually wide open. As I came in, I noticed that.
Q. How about the door that you entered in through in that carport area?
A. That was open as well, too.
Q. Did you do anything to those doors?
A. The rear door actually I closed it and locked it. That way nobody would come in through the back door.
Q. So that was part of the purpose of sweeping the house and securing the location?
A. Yes, sir.
Q. How about the gun? Did you do anything with that?
A. No.
Q. You didn't touch it or anything?

A. No, sir. I left it there.
Q. Did you notify anybody about what you found inside?
A. Yes, sir. I passed it on. I believe Lieutenant Laintz was there and also the CSI. I think Sprinkle. I informed CSI about the back door and where I found the gun. I let them know.
Q. And what was important about passing along information like that?
A. Well, that way when they do their photographs or anything like that they know that I messed with the back door and that I closed it and that they can note that it was actually open when I was in there.
Q. And, again, what was the purpose of shutting the back door?
A. To preserve the crime scene so nobody would come in from the back and mess with anything inside.
Q. After -- after you secured the crime scene and you passed along that pertinent information, what was your duty on-scene after that?
A. Just to stand by for any assistance needed. I think I went and grabbed some water and things like that and came back.
MR. PINCELLI: All right. Thank you, Deputy. I don't have any further questions for you. Please answer anything the defense has.

MR. SCHWARTZ: No questions, Your Honor.
THE COURT: Thank you, sir. You may step down.
(Witness excused.)
THE COURT: Call your next witness.
MS. PATTERSON: The State calls Tiera Robinson.
THE COURT: Come around, please.
(Whereupon, Tiera Robinson was duly sworn the Clerk of Court.)
THE CLERK: Thank you. Please be seated in the witness stand. Once you are seated, please state your name; spelling your last name for the record.
THE WITNESS: Tiera Robinson, R-O-B-I-N-S-O-N.
THE COURT: Spell your first name.
THE WITNESS: T-I-E-R-A.
THE COURT: Thank you.

TIERA ROBINSON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PATTERSON:

Q. Ms. Robinson, where are you employed?
A. Lexington County EMS.
Q. And can you adjust the microphone so we can hear you?
A. Lexington County EMS.
Q. Thank you. And how long have you been employed with Lexington County EMS?

A. Since 2014.
Q. And what's your job title?
A. Paramedic crew chief.
Q. And can you explain to the jury -- and how long have you been a paramedic?
A. Since 2013.
Q. And can you explain to the jury what type of training goes into becoming a paramedic?
A. It's about a year-long course that involves clinicals in the hospital and an ambulance setting. It's also rigorous testing of American Heart Association courses and -- and then a national registry exam, which is also looked over by the State, and then you're recertified by the State.
Q. And do you have to do so many hours on the road before you become a paramedic?
A. Right. There's 500 hours of clinical time to do before you can test for the national registry.
Q. And did you complete the test for the national registry?
A. Yes.
Q. And what are some of your duties as a paramedic?
A. Working for Lexington County as a paramedic, we respond to 9-1-1 calls that come in through dispatch and care for the patients on the other end of those calls,

transport them when necessary.
Q. Okay. And were you on duty on May 10, 2016?
A. I was.
Q. Were you dispatched to [redacted] Oak Glenn Road in Gaston?
A. I was.
Q. And what time did you receive that dispatch?
A. I don't have my notes in front of me, so.
Q. Would your notes help you to refresh your memory?
A. Yes, ma'am.
MS. PATTERSON: I beg the Court's indulgence. I want to give her a copy.
THE COURT: Yes, ma'am.
MS. PATTERSON: (Handing.)
THE WITNESS: Thank you.
BY MS. PATTERSON:
Q. Ms. Robinson, take a moment to look over your report. And what time were you dispatched to that location?
A. According to the notes, we were dispatched at 4:56 on the 10th.
Q. And what type of call did you respond to?
A. A shooting slash stabbing call that was clarified as a shooting later in the notes.
Q. And what is an advanced life support call?
A. Advanced life support is what's dispatched by the 9-1-1 system when someone's life is in danger or threatened

where they would need advanced intervention such as defibrillation, advanced drugs, reasserting their airway or stopping hemorrhage, strokes. Pretty much all of your critical life support type things.

Q. And based on you having that information, did you give any instructions while you were en route to that location?

A. From my narrative it says that I spoke to the fire department that was on-scene. They spoke to us on an ops channel, which is common, and told us that they had a patient that was -- pulse is apneic. Because I'm not there and I didn't see the patient yet, I told them to start breathing for that patient and perform chest compressions.

Q. Okay. And what time did you arrive on-scene?

A. At 5:09.

Q. And what was the first thing you did when you arrived on-scene?

A. We parked very close to where the patient was and we -- I came out of the passenger door, grabbed the monitor, my partner grabbed the bag, and we went directly to the patient within seconds of getting on-scene.

Q. And what did you notice about the patient when you got to the patient?

A. As the fire department had said, he was not breathing

and he had no pulse. There was a large mass of blood and tissue next to him. The fire department noted finding him on his right side, but, of course, he had to be on his back in order to receive chest compressions, so there was a large mass from his body next to him.

Q. And did you assess the patient's condition?

A. I did. I followed Lexington County EMS's protocol for establishing DOA and determined that the person was dead upon our arrival and ceased resuscitation efforts.

Q. And based on your experience and training, was it -- was it obvious to you what caused his death?

A. It was obvious to me that his condition was not compatible with life and the cause of death was the loss of blood and tissue, but I couldn't say what had caused the injury.

Q. But what did you notice about his physical assessment?

A. I noted a three-inch diameter wound to his chest and lots of blood loss and tissue loss from his chest.

Q. And what was your next decision? And did you try to attempt any treatment on the patient?

A. We did attach a -- we attached the monitor that I was carrying and it showed asystole and according to our protocol a person in asystole in a traumatic arrest is not viable for attempting resuscitation.

Q. And did you cease treatment at this point?

A. Yes.
Q. And what did you do next?
A. We notified dispatch and asked them to notify the coroner.
Q. And what did you want to notify the coroner about?
A. We notify dispatch to tell the coroner that we have a deceased patient.
Q. And were you able to gather any patient information?
A. I was.
Q. And who did you note the patient to be?
A. I think I was told he was Heirbrane Foster.
Q. Did you note an age of the patient?
A. I think so. Twenty-four.
Q. And why did you notify the coroner?
A. It's our practice to notify the coroner when we have a deceased person.
(State's Exhibit Number 14 was marked for identification.)
BY MS. PATTERSON:
Q. I'll show you what's been marked as State's Exhibit 14, and ask you to take a look at this photograph. Does what's depicted in that photograph look familiar to you?
A. I did not see his wounds this clearly because there was a lot of blood and our equipment on top of him, so I

did not see it as this.
Q. Okay. Let me find another picture.
(State's Exhibit Number 15 was marked for identification.)
BY MS. PATTERSON:
Q. I'll show you what's been marked as State's Exhibit 15, and ask you to take a look at that picture. Does that image look familiar to you?
A. Yes.
Q. Okay. And what's in that image?
A. About a three-inch diameter hole and the leads from my cardiac monitor.
Q. Okay. And is that the way the patient appeared when you went out to the scene on [redacted] Oak Glenn on May 10, 2016?
A. Yes.
Q. Does it look like it's been changed?
A. No.
Q. Because that's your equipment in the picture?
A. Yes.
Q. Okay.
MS. PATTERSON: Your Honor, at this time we move State's Exhibit 15 into evidence.
MR. SCHWARTZ: No objection.
THE COURT: All right. Mark 15 in evidence, please.
(State's Exhibit Number 15, a photograph, was admitted

into evidence.)

BY MS. PATTERSON:

Q. And, Ms. Robinson, you say you responded based on a shooting call?

A. Correct.

Q. And is this picture consistent with someone being shot based on your experience?

A. Yes.

Q. And when you got to the scene, you said you applied these -- these chest compressions. Is that -- is that fair to say? What are those?

A. No, those are the leads from my cardiac monitor. Chest compressions are done by hand. CPR.

Q. And the cardiac monitor, what does that measure or show?

A. It shows the electrical activity in the heart.

Q. And did this patient have any activity in the heart?

A. No.

Q. And did that help you make your determination that the patient was dead on arrival?

A. Yes.

MS. PATTERSON: I beg the Court's indulgence.

BY MS. PATTERSON:

Q. And based on your training and experience, was the -- you said there was a large amount of blood on the ground?

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A. Correct.
Q. As well as I think you said tissue?
A. Correct.
Q. And based on your training and experience, do you think it came from that injury?
A. It appeared to have come from his body, yes.
MS. PATTERSON: Thank you, Ms. Robinson. Please answer any questions of the defense attorney.
MR. SCHWARTZ: No questions, Your Honor.
THE COURT: Thank you. You may step down.
(Witness excused.)
THE COURT: Ladies and gentlemen of the jury, we're gonna break for today. I need you here tomorrow at 9:30 in the jury room. Come straight to the jury room, please. Remember all of the admonitions I gave you about not discussing the case, avoiding media coverage, don't let anybody talk to you about the case, don't talk to anybody about the case. And if you have some true emergency that arises, please let me know by calling the clerk's office.
Follow the bailiff, please. Thank you.
(Whereupon, the jury is excused for the day at 5:13 PM.)
THE COURT: All right. Ladies and gentlemen, I give this instruction in every case. The jury goes back this way, but they're gonna funnel right back into the common

area that you-all use, so they're gonna be using the same elevators, the same parking spaces, all those things. The safest thing to do is to wait a few minutes to give them a chance to clear out, but you can't assume that they're gone. So when you leave here, make sure you don't have contact with a juror, make sure you're not talking about the case or anybody in it that might be overheard by a juror. Just use your common sense and be careful.

Court's in recess until 9:30 in the morning.

MR. SCHWARTZ: Judge, just briefly.

THE COURT: Yes.

MR. SCHWARTZ: And I'm not saying the State's doing this intentionally, but they've got evidence that's not being admitted and the notebooks slide open and we've got jurors who are looking at pictures that have not been admitted into evidence, and I would ask that they just be mindful of that.

MR. PINCELLI: Your Honor, we'd be happy to be mindful. This is a very small courtroom and obviously it's not intentional.

THE COURT: Just close the notebook up.

MR. PINCELLI: We'd be happy to, Your Honor.

MR. SCHWARTZ: And then, Your Honor, just for tomorrow and for the trial, we'd like kind of an idea of who they're gonna call time-wise so we can get prepared

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for that and keep the trial moving and have our witnesses ready if need be for tomorrow.

MS. PATTERSON: And I'm not sure yet, Your Honor. We go back after we break for the day and we reconvene and decide which direction to go in, so I really don't know who I'm gonna call up next, Your Honor.

THE COURT: Do you think it will take the whole day?

MS. PATTERSON: It shouldn't take the whole day.

MR. SCHWARTZ: Then, Your Honor, we'd like to know who -- how many witnesses, who they're gonna call so we can get a timeframe so we can get our witnesses here, you know, so we're not standing around and, you know, waiting.

MS. PATTERSON: I don't know who we're calling.

MR. SCHWARTZ: They don't know who they're calling and they're still going and they should know --

MS. ZMROCZEK: Your Honor, and we're not asking for --

THE COURT: I'm not the solicitor. I mean, I can tell them that if they have an idea they should share it with you folks so that we don't have a lot of downtime. I would appreciate it. I told you-all it was my anniversary tomorrow night and I'm not gonna be happy if I sit around here for two hours waiting on witnesses for an hour. So you-all be professional like you are and work it out. I don't need to be a babysitter.

MS. ZMROCZEK: Thank you.

THE COURT: Court's in recess until 9:30 in the morning.

(Whereupon, the proceedings were concluded for May 21, 2019, at 5:16 PM.)

(The following proceedings were held May 22, 2019, beginning at 9:27 AM.)

BAILIFF: All rise. Court's now in session. The Honorable William P. Keesley presiding.

THE COURT: Thank you. Have a seat.

Are there issues that need to be addressed?

MS. ZMROCZEK: I think they're -- I know that I just wanted to go ahead and discuss the three rap sheets that were provided last night just so that we can clarify the prior records of any witnesses that they're gonna call.

MR. PINCELLI: And, Your Honor, additionally the State would like a motion in limine about the admissibility of some drug evidence found on the scene at the incident location.

THE COURT: All right. So -- so what is it? What's the issue?

MR. PINCELLI: Your Honor, there was bag of what was crack cocaine found on the victim's body in his pocket. We just don't think that it's relevant to the case in chief with the murder that occurred, Your Honor. State v. Lyles speaks to that point when the drugs were not related in any

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way, there's no testimony that will be elicited to say that that crack cocaine had to do with either the argument or the murder itself, it wouldn't be relevant to the murder and, thus, too prejudicial and not probative. Your Honor, for that reason we would ask that that evidence be excluded and no mention of it made.

MS. ZMROCZEK: Your Honor, I'll hand up what's been marked as Defendant's 15.

MS. PATTERSON: Can I see it?

MR. PINCELLI: And, Your Honor, that was State v. Lyles. That's 379 SC 328, a 2008 Court of Appeals case.

MS. ZMROCZEK: So it's my understanding, Your Honor, that they're gonna put up the -- one of the CSI people or the evidence collector or whoever and, Your Honor, we believe that that evidence is admissible, and for several reasons. One, they collected obviously all relevant evidence to. We're talking about the -- looking at the first aggressor under 402(a), Your Honor, and certainly -- there's a couple of different ways that we find that this crack cocaine is relevant. One, it was in his pocket on his person. He had illegal drugs in his system, Your Honor. He --

THE COURT: What illegal drugs?

MS. ZMROCZEK: He had Xanax in his system and he didn't have a prescription.

THE COURT: Did he have cocaine?

MS. ZMROCZEK: There was no cocaine in his system, Your Honor; however -- so we understand that obviously those two aren't connected, but is -- what are connected, and only when you look at relevant evidence, we talk about drugs is a violent crime.

THE COURT: Possession of methamphetamine -- crack cocaine is a violent crime?

MS. ZMROCZEK: The distribution of.

MR. PINCELLI: I don't believe distribution is.

MS. ZMROCZEK: The weight was distribution weight.

MR. PINCELLI: Your Honor, I believe the violent crime status occurs for trafficking, which would be over 10 grams. I don't believe this is over 10 grams.

THE COURT: Go ahead.

MS. ZMROCZEK: Okay. Thank you, Your Honor.

In addition to that, Your Honor, it's relevant to persons who -- its relevance also comes in under the connection between the guns and the -- between the drugs and gun possession, Your Honor. It's indicated that the State's position is that they have no idea where the gun was. The -- even the -- even though this testimony hasn't come out from the Defendant, but it does come out in the video, Your Honor. In fact, I think they cross-examined Watford in pre-trial on it saying that he was gonna use

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Will's gun to shoot him, and so there's some connection to establish that that gun was Will's, he had that because he was engaged in this type of activity, and then leave it at that, Your Honor. That's -- that was where we're going with that picture.

THE COURT: It's not relevant.

MR. PINCELLI: Thank you, Your Honor.

MS. ZMROCZEK: Thank you.

THE COURT: Based on what you-all told me, there's no relevance between the possession of crack cocaine and this incident. There's no drugs in his system, there's no evidence that I heard indicating that the drugs had -- drugs in his pocket, crack cocaine, had anything to do with this matter. Now obviously that's an in limine ruling, so that can change if there's other evidence presented.

MS. ZMROCZEK: Certainly.

THE COURT: So what is the rap sheet issue?

MS. ZMROCZEK: So, Your Honor, even though I had been asking for it, I received all the rap sheets last night and obviously did not have them at my disposal during the pre-trial, but if you recall during the pre-trial when I was questioning Leann Cotton specifically, Your Honor, because I didn't have her rap sheet, I asked her what her record was because she had a -- she has a pending drug charge in this county, and the relevance of that, Your

Honor, goes to the bias issue of what she wrote in her statement or when she first gave her statement to the solicitor's office, but more importantly -- excuse me, Your Honor, someone is getting me sick -- in her -- on her rap sheet that was provided it says that she had -- she has convictions for petit larceny --

THE COURT: When?

MS. ZMROCZEK: I'm sorry?

THE COURT: When?

MS. ZMROCZEK: In 2010.

THE COURT: Okay.

MS. ZMROCZEK: And, Your Honor, we would assert that -- and I think even if it were outside -- or petit larceny being -- only carrying thirty days, Your Honor, that is one of the crimes of --

THE COURT: Dishonesty or a false statement?

MS. ZMROCZEK: Yes.

THE COURT: All right.

MS. ZMROCZEK: And it appears that she has an additional petit theft second degree in Florida also from 2010. And, Your Honor, there are two things that concern me about this and that I plan to bring out in cross-examination, so before they object and so we can argue it now, is that on a previous hearing under oath I asked her what her prior record was and she said

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specifically she had that pending drug charge and DUS's and she had nothing else.

So obviously we're not going into the DUS's or DUI. We don't think that that's appropriate under 609 and like the -- all of her driving issues we do not believe are appropriate nor do we plan to ask her about it, but we do intend to not only ask her about the larceny, but the fact that she under oath did not disclose that prior. That would be the first issue.

And then depending on if they're gonna call either of these other two witnesses, I don't know if we need to waste time or -- I know we're gonna call one if we can find them.

MS. PATTERSON: And, Your Honor, we'll -- I can address that on my direct examination with Ms. Cotton. We do plan to call Troy Flood, Your Honor, if she wants to go over his record.

THE COURT: What's the position about Ms. Cotton and her record?

MS. PATTERSON: Your Honor, she does have the petit larceny from ten years ago out of Florida. She tells me she thought she went through some type of pre-trial -- pre-trial intervention in Florida and that's why she didn't mention them the other day, so I can get her to explain that. It does show a misdemeanor. It doesn't

really show a disposition. It just gives a date and says same as above, so it doesn't really say if she went through a pre-trial intervention. It doesn't -- certainly doesn't say anything about a fine or jail time, so I think, Your Honor, she may be in her rights to assume that maybe it wasn't on her record because she went through some pre-trial intervention because it's certainly -- well, I apologize. One of them I do see a disposition of confinement two days, but the other ones I do not, and that is from a petit larceny second from, as I said, 2010.

THE COURT: She has convictions for petit larceny in 2010 and a petit theft second degree in 2010; is that right?

MS. PATTERSON: They're all petit thefts, Your Honor.

THE COURT: But is what I just said right?

MS. PATTERSON: Yes. Yes, sir, Your Honor.

MS. ZMROCZEK: That's correct.

THE COURT: And the ruling is that she may ask about those if she takes the stand.

MS. PATTERSON: Yes, sir.

MS. ZMROCZEK: And, Your Honor, they do intend, they said, to call Troy Flood and it appears that -- it looks like that he has convictions for strong arm robbery and burglary second degree in 2012. He has a lot of charges, Your Honor, that don't have dispositions. For example,

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he has -- well, he has pending one -- he has a pending possession with intent to distribute.

THE COURT: In what county?

MS. ZMROCZEK: These are all Richland County, Your Honor. Possession of a weapon during the commission of a violent crime, so obviously -- and trafficking cocaine first degree and possession of MDMA first degree.

THE COURT: What is it you want to be able to do?

MS. ZMROCZEK: Well, we're just trying to settle what they believe is appropriate for impeachment.

MS. PATTERSON: Your Honor, we will concede that the common law strong arm robbery and burglary second is impeachable. However, Your Honor, we would reject the claim that she be allowed to mention his pending charges in Richland. Those are drug offenses that have nothing to do with dishonesty, he hasn't been convicted of those, and we ask Your Honor to exclude those from being mentioned.

MS. ZMROCZEK: And we're -- we understand that, Your Honor. I do need to find out what the disposition of the gun charges were because he has, specifically, possession of a sawed-off shotgun, which obviously is going to come into relevance in this case because this is what they consider a sawed-off shotgun, and so I'll, I guess, move to --

THE COURT: I don't know if it's relevant or not.

MS. PATTERSON: Your Honor, I would say it is irrelevant and that is a different weapon than is what was used in this incident, a different type of --

MS. ZMROCZEK: Right. I just need to know what the disposition was, Your Honor, so I'm gonna try to find that out because there's no disposition on the sheet that they gave me.

THE COURT: All right. So what about Leann Cotton's pending drug charge?

MS. PATTERSON: Your Honor, I'll mention that. I'll mention that in my direct that she has a pending six-month charge with our office.

THE COURT: Anything else before the jury comes in?

MS. PATTERSON: Nothing from the State.

MS. ZMROCZEK: No.

THE COURT: Bring the jury in, please.

(Whereupon, the jury enters the courtroom at 9:42 AM.)

THE COURT: Members of the jury, we're going to continue now with the State's case.

Call your next witness.

MS. PATTERSON: Thank you, Your Honor.

The State calls Leann Cotton.

THE COURT: Come around, please.

(Whereupon, Leann Cotton was duly sworn by the Clerk of Court.)

THE CLERK: Please be seated. Once you're seated, state your full name; spelling your last for the record.

THE WITNESS: Leann Cotton, C-O-T-T-O-N.

LEANN COTTON,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PATTERSON:

Q. And, Ms. Cotton, how are you doing today?

A. I'm fine.

Q. Good. Ms. Cotton, do you know Will Foster?

A. Yes, ma'am, I do.

Q. And how do you know Will?

A. He is my ex-boyfriend.

Q. And what's Will's full name?

A. Heirbrane Will Foster.

Q. How long did you-all date?

A. Two years on and off.

Q. And did you-all share any children together?

A. Yes, ma'am.

Q. And how many?

A. One.

Q. And it's a boy or girl?

A. Girl.

Q. And how old is your girl?

A. Three.

Q. Now before we get into the case, Ms. Cotton, isn't it true you have a pending charge in my office?
A. Yes, ma'am.
Q. And is that a possession of controlled substance?
A. Yes, ma'am.
Q. And do you have another solicitor handling that case?
A. Yes, ma'am.
Q. Do you have an attorney that's representing you on that case?
A. Yes, ma'am. Jason Turnblad.
Q. And, Ms. Cotton, is it true that you had a record in Florida?
A. Yes, ma'am.
Q. And what was on your record in Florida?
A. Two petit theft charges.
Q. And when was that?
A. When it happened was in 2009 -- 2008 and 2009.
Q. And when did you go to court; do you remember?
A. 2010.
Q. And how old would you have been then?
A. Eighteen and nineteen.
Q. And, Ms. Cotton, do you know the Defendant, Heirbrane Foster?
A. Yes, ma'am, I do.
Q. And how did you meet Mr. Foster?

A. He was my neighbor and afterward I met his son. He's my ex's father.
Q. And when he was your neighbor, where did you live?
A. 203 Oak Glenn Road, Gaston.
Q. And how many doors away was that from the Defendant's house?
A. It was one house between us.
Q. And do you remember when Will got shot?
A. Yes, ma'am.
Q. And let's talk about what was going on earlier that day. What was going on that morning?
A. We woke up planning on having a cookout in the yard. Just putting some meat on the grill for like everybody in the neighborhood to come over.
Q. And whose grill were you gonna use?
A. Heirbrane's.
Q. Did you ask permission to use his grill?
A. Yes, ma'am.
Q. And had a lot of people -- were a lot of people at your house at this point of time of the day?
A. At that time it was about ten people outside out and around.
Q. And did you have everything you needed for the cookout at this time?
A. No, ma'am.

Q. So what did you do?
A. I got a ride from someone out there to go to the store to get meat and charcoal.
Q. Did Will go with you to the store?
A. No, ma'am.
Q. About how long were you gone to the store?
A. About twenty minutes.
Q. And when you got back from the store, where did you go?
A. I came home. When I pulled up, there were people -- girls -- there was a car full of girls in my yard, so me and Will got into an argument about them because I didn't understand why they were there or who they were, but I went directly into the house to put the meat and stuff down, so me and him had a few words.
Q. And where were you-all at when you-all had a few words?
A. Underneath the carport outside.
Q. And how did Will react during this argument?
A. He was upset because I shut the argument down. Well, his -- his version of the explanation, I didn't want to hear it, he got upset and he -- he kicked the grill over.
Q. And what happened once he kicked the grill over?
A. Heirbrane was standing in his -- his doorway of his carport and he seen him kick the grill, so he started

cussing him out because it was his grill that he kicked over.

Q. And what happened next?

A. Will got upset that he wouldn't stop talking to him. When he asked him to shut up, Heirbrane continued to talk, so Will walked over there and they both were yelling and screaming.

Q. And you say Heirbrane over to where?

A. No, Will walked over in Heirbrane's yard.

Q. Okay. And did you see what happened when Will walked over there?

A. No, they always used to get in arguments, so at the time I just kind of weren't paying them attention yelling because that was something that happened just about every other day.

Q. And at any -- and at this time about how many people were outside?

A. There were probably about fifteen people who were constantly pulling up there. It was a busy area.

Q. Do you remember what time of day this was at this point?

A. I'm not sure what time, but it was -- it was pretty early. Not like 10:00. Maybe eleven or twelve or something like that.

Q. And did you ever leave your yard?

A. Yes.
Q. And where did you go?
A. I was in the person in the middle of us yard at first, the house that's in between us. I was standing in front of their yard to try to see if I can -- I was telling Will basically just leave it alone, stop arguing with him, but when he kept arguing I just left it alone. At that point they were walking and yelling, both of them, and they made it to that person in the middle of us yard and my son was standing there as well in between them while they were arguing, so I started yelling at both of them telling them to go back in their own yard, get away, because I didn't want my son in the midst of that. There were children outside as well, my kids and other kids also from the neighborhood.
Q. And at any point did either one of them have anything in their hands?
A. Not at that point, but once they were standing by the back of Heirbrane's carport, Heirbrane had something in his hand and Will picked up something as well. I believe what Heirbrane had in his hand was the stick end of the shovel.
Q. And what happened with these objects that they had in their hands?
A. Vernon Blanding ended up snatching the stick out of Will's hand. Cathy, which is Will's mother, she tried to

grab the stick, but Will didn't let her grab it, she's a small person, but Vernon and another guy from the neighborhood who seen them yelling as well, he walked over and snatched it out of Will's hand, and Boozey threw down what he had in his --

MS. ZMROCZEK: Your Honor, may we approach?

THE COURT: Yes.

(Proceedings held at the bench; not reported.)

THE COURT: Don't use any nicknames to refer to anyone, please.

You may continue, Solicitor.

MS. PATTERSON: Okay. Thank you, Your Honor.

BY MS. PATTERSON:

Q. And so you mean Heirbrane -- Heirbrane Foster, Will's dad, what did he do?

A. He threw down the stick that he had once Vernon snatched the stick out -- out of Will's hand.

Q. And then what happened to -- what did they do after that happened? Wait a minute. Did you see where Vernon put the stick?

A. No. Once he snatched it, he didn't immediately throw it down though, but he kind of walked out of my sight. I wasn't paying attention to him. I was still watching those two.

Q. And so -- and where were you-all again? I'm sorry, at

this point, where were you-all?
A. At the back of Heirbrane's carport.
Q. And so where did you and Will go next? Did you see where Will went next?
A. They were still arguing. After neither one of them had anything in their hands, they were still arguing amongst each other, just yelling and cursing and screaming and -- and being stupid, but once Heirbrane walked off, grabbed Cathy, which is, again -- Ms. Cathy is Will's mother, Heirbrane's ex-wife, he grabbed her around her shoulder and walked with her. Will stopped walking. Heirbrane went into the house and Ms. Cathy walked down the street in the front of their house and Will was just standing there talking to me and Haley, his sister. We started laughing and talking. We were talking for a few minutes.
Q. Okay. Let me stop you right there. You said Heirbrane went up to Ms. Cathy, his ex-wife?
A. Yeah.
Q. Where did they go?
A. They were just walking in the opposite direction of us and -- including Will. They just were walking off, his arm was around her shoulder, and then she went down the street. He said something and she went down the street and he went into the house.

Q. Okay. And where were you and Will at at this point?
A. On the side of their house off of the carport in the dirt.
Q. Was anybody else standing there with you-all?
A. Haley.
Q. Okay. And what were you-all three doing?
A. Just talking and saying how that was just unnecessary and we started to laugh about it because it wasn't that serious and we were saying we were getting ready to walk back to my house so we could go ahead and finish out what we planned, which was having a cookout.
Q. And so you saw Heirbrane go back in the house?
A. Yes, ma'am.
Q. Which door did he enter in the house?
A. The side door underneath the carport.
Q. And how -- did he ever come back out?
A. Yes. He was in there for about five minutes I'd say. Like I said, we thought the situation had defused and it was over with and he was inside the house by his self and Will was out there laughing and talking with us and literally as we were turning to walk off, Heirbrane came out to the door and he said didn't I tell you about fucking with me. And Will didn't even get to turn around to react to him fully. He turned, but he wasn't fully turned, and he shot him, and that was it. Like he -- he shot him as

soon as he turned around. He didn't even get to say anything back to him.

Q. Now did you hear him rack the gun or anything?

A. No, I didn't.

Q. Okay. But what did you hear him say?

A. Didn't I tell you about fucking with me.

Q. And did you see where Will got shot?

A. In his chest.

Q. And what did Will do after he got shot?

A. He tried to take a couple of steps. Once he realized he was hit, he kept moving. He took maybe two or three steps and fell on the ground.

Q. And what did you -- at this time when Will got shot, did he have anything in his hands?

A. No.

Q. Did you see Will try to go inside the house?

A. No.

Q. And what did you do after Will fell to the ground?

A. I sat there with him until he took his last breath and then I closed his eyes. And I had to be sitting there for about a good thirty minutes because it took about that long for the ambulance to even get there, the police hadn't even pulled up, but once the response team got there I just walked into my house. When it happened, my children were outside. They seen everything that happened.

Q. And what did you -- what did you do for your children?
A. As soon as he was shot, I screamed to my sister to get them inside and once the paramedics got there to get his body out, I went inside to comfort my children because, of course, they were hysteric.
Q. And what's your sister's name?
A. Ronita Cotton.
Q. Where's Ronita now?
A. In Southern California.
Q. Do you remember if Heirbrane was working on Ronita's car?
A. He was supposed to be working on her car, but he wasn't working on it. He hadn't even got the chance.
Q. And where was that car located?
A. In the front of my house.
Q. Just to clarify a couple of things, Ms. Cotton.
(State's Exhibit Number 16 through 18 were marked for identification.)
BY MS. PATTERSON:
Q. And, Ms. Cotton, after Will kicked over the grill, what happened to it?
A. I stood it back up because, like I said, I was still planning to do my cookout.
Q. Let me show you what's been marked as State's Exhibit 16, 17 and 18, and ask you to take a look at those.

A. Uh-huh.
Q. Do you recognize what's in those photographs?
A. Yes, ma'am.
Q. And let's start with Photograph 16. Do you recognize what's in that photograph?
A. Yes, ma'am.
Q. And what do you recognize that to be?
A. The grill that was kicked over and a -- and an empty bag of charcoal.
Q. And does that look like the way the grill looked like on May 10, 2016?
A. Yes, ma'am, once I stood it back up.
Q. Does it look like it's been changed or altered in any way?
A. No.
MS. PATTERSON: Your Honor, at this time we move State's Exhibit 16 in evidence.
MS. ZMROCZEK: Without objection, Your Honor.
THE COURT: Mark 16 in evidence, please.
(State's Exhibit Number 16, a photograph, was admitted into evidence.)
BY MS. PATTERSON:
Q. And the picture marked 17, do you recognize what's in that photograph?
A. Yes, ma'am.

Q. And what's in the photograph?
A. The table that was under my carport and lighter fluid.
Q. And is that the way it looked at your house on May 10, 2016?
A. Yes, ma'am.
Q. Does it look like it's been changed or altered in any way?
A. No, ma'am.
MS. PATTERSON: Your Honor, at this time we move State's 17 into evidence.
MS. ZMROCZEK: Without objection.
THE COURT: Mark 17 in evidence, please.
(State's Exhibit Number 17, a photograph, was admitted into evidence.)
BY MS. PATTERSON:
Q. And photograph marked 18, do you recognize what's in that picture?
A. Yes, ma'am.
Q. And what does that show?
A. Will's blood on the ground.
Q. And does that fairly and accurately represent what you saw on May 10, 2016?
A. Yes, ma'am.
Q. Does it look like it's been changed or altered in any way?

A. No, ma'am.

MS. PATTERSON: Your Honor, we move State's Exhibit 18 into evidence.

MS. ZMROCZEK: Without objection, Your Honor.

THE COURT: Mark 18 in evidence, please.

(State's Exhibit Number 18, a photograph, was admitted into evidence.)

BY MS. PATTERSON:

Q. In State's 16, you said this was the grill that you-all borrowed from the Defendant, Heirbrane Foster?

A. Yes, ma'am.

Q. And this was -- picture was after -- can you tell us about this picture?

A. Yes, ma'am. Actually, I wish they had taken a picture a little bit over this way. You would have seen the old burnt coals on the ground from when the grill was kicked over. There were old coals sitting on the ground right there. But that's the grill. When he kicked it, it just fell backwards and the coals fell out and I just stood it back up.

Q. And that's -- after it was kicked, that's when Heirbrane Foster started yelling?

A. Yeah. Well, while they were sitting there yelling, I just stood it back up.

Q. And Number 17, that's just -- where is that table and

chairs? Where's that located?
A. Underneath my carport.
Q. Because what -- were you gonna use this in your cookout?
A. Yes, ma'am. I usually just like set the pan on the table and any seasonings or whatever, I set it right there.
Q. And what's on the table?
A. Lighter fluid and a pack of cigarettes.
Q. And Photograph 18?
A. That's Will's blood on the ground.
Q. And where were you-all standing?
A. Will was standing right there and that trail is the couple steps he tried to take. I was standing right here to the side and Haley was right here on this side.
Q. And you said during this -- during the time that the two were arguing, they were walking back and forth?
A. Yes, ma'am.
MS. PATTERSON: Your Honor, permission for the witness to step down, please.
THE COURT: You can step down, but keep your voice up and try not to block the jury.
(Whereupon, the witness steps down from the witness stand.)
BY MS. PATTERSON:
Q. Ms. Cotton, just take a moment. If the 20 -- if the

[redacted] Oak Glenn Road house is where Heirbrane lived, where would your house have been located?

A. Right here.

Q. And where were the two when they were arguing? Can you point out in that picture?

A. Initially Will was right here and Heirbrane was right here on his side yelling across the whole entire yard. Once Will walked over here, which is when I was picking up the grill, they were just standing. This is their carport, although it looks like a piece of the house. They were just standing outside yelling and screaming around the side, kind of toward the back of their carport. They just were walking and yelling. They were about right here when I told them to go back in their yard because my son was outside playing around and he ended up standing in between the two of them and they walked back over to their yard.

Q. Okay. Thank you. Have a seat.

A. (Witness complies.)

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. PATTERSON:

Q. Were you there when the police showed up?

A. Yes, ma'am.

Q. And did they show up before the -- before the ambulance?

A. If they -- I don't recall. If they did, they didn't come near his body. The first person to come near his body was the paramedic besides us who were standing right there with him. When it happened, I just was focussed on him and looking at him on the ground and I didn't step back until the paramedics came to mess with his body and I just walked in the house.

Q. And I think you said that Heirbrane was supposed to work on your sister's car?

A. Yes, ma'am.

Q. Had he already began making preparations to work on the car?

A. The night before he set it up on -- what is it called -- put it up in the air with like wood planks and stuff. It was up and that morning she rode with me as well to the store. When I went to go grab some meat, she was grabbing some fluid or something, some type of fluid that she needed for her car.

Q. Did you ever see him go in your yard to begin working on her car on this day that Will was shot?

A. He walked into the yard by the car, but he didn't go to work on it. He didn't attempt to fix anything. He didn't -- he wasn't working on the car. He walked in the yard while they were arguing back and forth and walked right back out of the yard.

Q. So you never saw him get under the car?
A. No.
Q. Did you ever see Will hit his dad?
A. No.
Q. Did you ever see -- were they even swinging at each other, either one?
A. No.
Q. Did Will hit any part of the house?
A. No, not that I seen. I didn't see any swinging at all. They just were yelling. It was a verbal disagreement.
Q. And did you ask your sister Ronita to do something?
A. Call 9-1-1.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. PATTERSON: Thank you, Ms. Cotton. Please answer any questions the defense attorney may have.

THE WITNESS: Yes, ma'am.

MS. ZMROCZEK: May it please the Court, Your Honor?

THE COURT: Yes, ma'am.

(Defendant's Exhibit Numbers 3 through 19 were marked for identification.)

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Ms. Cotton, there's been some discussion about the

stick, okay?
A. Uh-huh.
Q. I want to try and clear that up. It was actually not a stick, it was a two by four, correct?
A. I don't recall it being that two by four. Those were all over his yard. Mr. Foster -- Heirbrane did like side jobs like working on houses and buildings and stuff, so it was sticks -- those two by four's were his yard, but I don't recall that being what he had, but I'm not sure.
Q. Okay. Well, you were standing right there with him, right?
A. When he got shot, I was and he didn't have anything in his hand at all.
Q. Okay. So let me ask the question again.
A. Okay.
Q. When he had the stick in his hand, you were standing right there with him?
A. Yes, ma'am.
Q. Okay. And you actually got it out of -- or you saw Vernon get it out of his hand?
A. Yeah, Vernon was the one that snatched it.
Q. Can you describe the stick?
A. No, I don't recall it, but I don't remember it being like that.

Q. Okay. So you can't describe it?
A. No.
Q. Okay. And Vernon you said took it out of his hand?
A. Yes.
Q. And that's when Will said to Vernon I ain't gonna stop, right?
A. I don't recall hearing that.
Q. You don't recall hearing that?
A. No, I didn't hear that.
Q. And where was Troy?
A. Troy, at one point he was underneath the carport. I don't know where he was at the beginning.
Q. Okay. Where was he when this happened?
A. I'm not sure. I was looking at them two yelling and screaming. I wasn't really paying attention to where everybody else was standing.
Q. Well, you said that Mr. Foster went into the house for five minutes I think you said?
A. Yes, that was after the argument ended.
Q. Okay. Where was Troy then?
A. I don't know. I was talking to Will and Haley.
Q. Okay. So he wasn't talking to you and Haley and Will?
A. He probably was standing right there under the carport, but I was sitting there talking to Will. I was

focussed on telling Will let's go back to our house, let's have a good time.

Q. Okay.

A. I wasn't paying attention -- there were a lot of people outside that day. Everybody was all over. I can't tell you exactly where everyone was standing or what they were doing at every moment.

Q. Okay. So let me help -- since it was all day in timeline-wise, help me with this timeline, okay? What time did you go to the store?

A. I'm not sure. I just know it was when I got up.

Q. Okay. So what time did you get up?

A. I'm not sure.

Q. Okay.

A. I don't know. I wasn't working or I didn't have anything scheduled or planned, so I wasn't on a timeline. It's whenever I woke up that day is when I got up to go to the store.

Q. Okay. But you have no idea what time that was?

A. No.

Q. All right. Was --

A. I can't even tell you what time it was that he got shot. I don't know.

Q. Okay. Do you recall testifying under oath in a previous hearing?

A. Here?
Q. Yes.
A. Yes.
Q. And do you recall saying that it was in the morning?
A. Yes, but I meant when I woke up. I'm not sure what time, but whenever I wake up is the morning to me.
Q. Okay. And so when in this timeline did you take the metal pipe out of Will's hand?
A. I didn't take anything out of his hand.
Q. So when you were in -- you were never in the backyard by the dog or on the side of the carport of [redacted] Oak Glenn never taking --
A. I was there. I didn't take anything from him. I tried to get both of them to stop yelling, but I didn't touch anybody. I didn't physically get into the middle of them because -- although I wanted them to shut up, it -- I still wasn't taking it serious. This is something that they did all the time, yelling, screaming at each other, and then a few minutes later they looking at each other or there's just nothing going on, so it was something that happened all the time. I wasn't taking it seriously where I felt the need to jump in the middle to try and stop this, stop that. That was them.
Q. Okay. So were you -- so were you there when Haley tried to take the pipe out of his hand?

A. I didn't see her try to. I seen Cathy, Will's mom, attempt to grab it and he snatched it back. I didn't see Haley attempt to grab it, but I seen Haley grabbing on him.

Q. Okay. So this happens May 10th of 2016?

A. Yes.

Q. And the first statement you give is after you were arrested for your drug charge. You come to the Solicitor's office and give a statement?

A. That was when it happened, but that's not how it happened.

Q. Okay. So tell me how it happened.

A. That was when they -- he was going to trial last year -- well, he was supposed to be going for this same trial and that's when they reached out for my statement. His previous attorney had already sent out someone to speak to me and I spoke with that investigator from his previous attorney still in 2016, maybe a couple of months after Will died, but the solicitor's office hadn't reached out to me, but that's when they reached out to me because it was supposed to go to trial last year.

Q. Okay. And when did the police reach out to you to talk to you?

A. The police didn't reach out to me, the investigators did.

Q. Okay. So -- and let me be real clear. And those investigators didn't work for Lexington County?
A. The -- the initial one, no.
Q. Okay.
A. It was for, I guess, Heirbrane's lawyer.
Q. Right. So no Lexington County investigators ever came to you to talk to you?
A. No.
Q. That's what it was. Okay. Thank you.
Now help me understand where -- so you said Vernon took this stick out of his hand?
A. Yes.
Q. And did he drop it right there?
A. I'm not sure.
Q. Okay.
A. As soon as he snatched it from him, I just was focussed on Will. Heirbrane stepped off -- excuse me, not Heirbrane, Vernon stepped off to the side.
Q. Okay. I'm gonna show you what's been marked for ID as Defendant's 3 and 5 and ask you if you recognize that -- these two?
A. Yes, ma'am.
Q. Do they fairly and accurately represent what this looked like on May 10, 2016?
A. Yes, ma'am.

MS. ZMROCZEK: Your Honor, at this time we would move Defendant's 3 and 5 into evidence.

MS. PATTERSON: Without objection.

THE COURT: Mark 3 and 5 into evidence, please.

(Defendant's Exhibit Number 3 and 5, photographs, were admitted into evidence.)

BY MS. ZMROCZEK:

Q. Okay. I'm putting Defendant's 3 up here and so tell the jury what they're looking at. I'm standing in the way. Tell the jury what they're looking at.

A. My older sister's minivan that was broke down in the front of my house.

Q. Okay. And Defendant's 5?

A. That's how he put it up in the air. He had it sitting up.

Q. And "he", that would be Heirbrane?

A. Yes, ma'am. Heirbrane.

Q. Okay. And he put the car up and he used a jack to do that, right?

A. Yes, ma'am.

Q. Okay. And you're saying that this didn't occur -- this occurred the night before?

A. Yes. Her van had broke down -- had been sitting in my yard actually for like two or three days and the second day that it was there she had spoke with Heirbrane about

-- I told her that he also, you know, tinkered with cars as well and for her to talk to him about him fixing it. So he had looked and told her what was wrong and what she needed and the following morning we got up together and went and got it.

Q. Okay. So she didn't come to your house, she was already there?

A. We -- she lived in the neighborhood as well.

Q. Okay.

A. She lived right down the street.

Q. Okay. I'm gonna show you what's been marked as -- for ID as Defendant's 11 and ask you if you recognize that picture?

A. Yes, ma'am.

Q. And does that fairly and accurately represent the way it was on May 10, 2016?

A. Yes, ma'am.

MS. ZMROCZEK: Your Honor, at this time we'd move Defendant's 11 in.

MS. PATTERSON: Without objection.

THE COURT: Mark 11 into evidence.

MS. ZMROCZEK: Thank you.

(Defendant's Exhibit Number 11, a photograph, was admitted into evidence.)

BY MS. ZMROCZEK:

Q. Okay. So here's a top picture of that table.
A. Yes, ma'am.
Q. And that's in your carport?
A. Yes.
Q. And there's some lighter fluid on there?
A. Yes.
Q. Some cigarettes?
A. Yes, and some cards.
Q. Okay. And some cards. So who was over there playing cards?
A. Those cards actually just stayed outside. They always were sitting on that porch. Nobody had actually started playing cards yet that morning.
Q. Okay. And -- and some of them were on the ground, too?
A. Yeah.
Q. They just stayed on the ground?
A. They just sit outside. Usually when -- whoever has them last leave them in a stack, but they may have gotten blown over or something.
Q. Okay. And so you and Will get into a fight when you come back from the grocery store?
A. Yes.
Q. And that's because he was talking to some girls?
A. No, there was a group of girls in a car in my yard,

but he said Heirbrane pulled them over there, I'm not sure exactly what happened, and I just didn't even want to hear it. I just wanted them to get out of my yard.

Q. Okay. So you and Will got into an argument?

A. Yes.

Q. And that's when you say Will kicked over the grill?

A. When I shut him up and told him I didn't want to hear it, yes, ma'am.

Q. Okay. And -- and so that's when you're saying that Heirbrane came from his carport to your carport?

A. No. I said Heirbrane was standing outside. He was already there standing under his carport while we were sitting there arguing. Once Will kicked over the grill is when he chimed into the argument and they started arguing.

Q. So Heirbrane was in your car -- in your garage -- in your carport?

A. No, he was standing underneath his carport watching us underneath our carport --

Q. Okay.

A. -- and he just chimed into the argument. He was yelling across the person in between us yard about his grill.

Q. And you would agree that's about a hundred feet from his carport to your carport?

A. I don't even say it's that much. The -- we're in like a cul de sac. The person in between us don't really have much of a front yard. It's not that far from my carport to his carport. Their front yard is small and then their backyard was bigger.

Q. Okay. So how -- how far would you guess that is? As close as I am to you?

A. A little bit further.

Q. Okay. When you say a little bit, the second row, first row?

A. Maybe where that lady is in that black jacket.

Q. So third row?

A. Yeah.

Q. Okay. So they started arguing about the grill and then that's when Heirbrane came over or did Will go over to Heirbrane's?

A. Will walked over there.

Q. Okay. So Will approached Heirbrane?

A. Yes, he walked over there.

Q. Okay. And when did you get over there?

A. I waited a little bit. I sat there to see where the argument was going because it didn't sound like much of anything to be arguing about. Like I said, I picked up the grill and then I walked over there. I took my time walking over there just looking at them yelling in each

other's face. Nobody was swinging at each other. Although they were both yelling, it didn't seem like anything that would amount to anything.

Q. Okay. And so Will you said and Heirbrane fought occasionally?

A. They argued all the time.

Q. Okay. And Will liked to drink?

A. Yes, he did.

Q. Okay. And he drank Bud Light?

A. Yes.

Q. And he drank gin?

A. Yes.

Q. By the fifth?

A. Sure.

Q. In a bottle?

A. Yeah.

Q. And he had been drinking that day?

A. Not to my knowledge.

Q. Okay. So you had -- when you woke up and went to the store and when you came back is when all this went down, you hadn't seen him drink all day?

A. No.

Q. Okay. Did you ever see Nellie Foster out there?

A. Yeah, she's the one who picked up and dropped off Heirbrane Foster.

Q. Okay. So that helps a little bit with the timeline. Did you see her pick him up?
A. Yes.
Q. All right. So you were awake when she picked him up?
A. Yes.
Q. And did you go to the store right then?
A. No.
Q. Okay. How far after that did you go?
A. I didn't go to the store until he came back from wherever Nellie went because when we initially wanted to just go get the grill, Ms. Cathy wanted us to make sure that it was okay with Heirbrane before we took it out of their yard, so we waited until he got back, asked him for the grill, got the grill and then I went to the store.
Q. In fact, Will had called and asked for permission prior, hadn't he?
A. Yes, but Cathy wanted us to wait until he got home.
Q. Okay. So -- so then you didn't go to the store right when you got up?
A. No, but I was still in the bed.
Q. Okay. And you saw Nellie pick him, Heirbrane, up and you saw Nellie drop Heirbrane off?
A. Yes, ma'am. I smoke cigarettes, so I'm frequently on my porch.
Q. Okay. I want to ask you about -- you knew Will pretty

well?
A. Yes.
Q. Okay. And you knew that -- that he got more angry when he drank?
A. No, he actually was goofy when he drank.
Q. Okay. You knew he did not have a prescription for Xanax?
A. Yes.
Q. Do you know where he got that Xanax?
A. No.
Q. Okay. You were asked in that previous hearing under oath about your -- your criminal record.
A. Yes, ma'am.
Q. But you didn't mention the petit larceny before?
A. Yes, ma'am.
Q. Okay. But so now, now that we have the record, you admit that those happened when you said you were younger?
A. I was younger and I also went through pre-trial intervention which was supposed to take it off of my record, so to my knowledge it wouldn't have been on my record and you asked me what was on my record.
Q. Okay. So you don't recall getting time served for those?
A. No, ma'am. I had to do community service and it was something like probation where I was paying like a

supervision fee every month for like six months and I thought it was off of my record.

Q. Okay. Sometimes you can be mistaken when things happen a while back, right?

A. Ten years -- ten plus years, yes, ma'am.

Q. Okay. You -- I want to -- so Heirbrane gets back from the store, the fight occurs with the grill, he walks over there, Heirbrane goes inside and you-all are under Heirbrane's carport; is that correct?

A. Standing off the side of his carport.

Q. Okay. I'm gonna show you what's Defendant's -- been marked as ID Defendant's Exhibit 10. Do you recognize that?

A. Yes, ma'am. That's the side of his house under his carport.

Q. Does it fairly and accurately represent what it looked like on May 10th --

A. Yes, ma'am.

Q. -- 2016?

A. Yes, ma'am.

Q. All right. I'm gonna hand you this marker. I'm gonna ask you to put a "W" for where Will was standing.

A. (Witness complies.)

Q. I'm gonna ask you to put an "H" where Haley was standing.

A. (Witness complies.)
Q. And I'm gonna ask you to put an "L" for where you were standing.
A. (Witness complies.)
Q. Okay. And does that fairly and accurately represent where you-all were while you were laughing about this silly argument?
A. Yes, ma'am.
Q. Okay.
MS. ZMROCZEK: Your Honor, at this time we'd move Defendant's 10 into evidence.
THE COURT: Show it to counsel.
MS. PATTERSON: No objection.
THE COURT: Mark Number 10 into evidence, please, ma'am.
(Defendant's Exhibit Number 10, a photograph, was admitted into evidence.)
BY MS. ZMROCZEK:
Q. Okay. And just so the jury can see, I want to make sure, it's kind of big marker, this is the "W" --
A. Yes.
Q. -- where Will was standing? This is the "H" where Haley was standing?
A. Yes.
Q. The "L" is for you where you were standing?

A. Yes.
Q. So you were facing -- was Will facing you?
A. Yes.
Q. Okay. So -- and you're facing the house?
A. Yes.
Q. And you say that Heirbrane came out. Did he come down the steps?
A. No, he was standing in the doorway.
Q. Standing in the doorway. So up these two steps?
A. Yes.
Q. And you would agree you have to step off this curb here?
A. Yes.
Q. All right. And Will was -- can you -- and, Your Honor, I'd ask her to step down and demonstrate.
A. (Witness complies.)
Q. If this is the door, and this for the record being the edge of where the court reporter is sitting, okay -- and I know that obviously distance -- just because we're short on time, but show me where -- how Will was talking to you in relation to the door.
A. If that was the door, Will's back was to the door, and if we can use these two, basically this was Haley and this was me. I was a little further this way, but we were facing each other laughing and talking while Heirbrane was

inside the house with the door closed.
Q. Okay. And just stay right there for me. So -- and just so the record is more clear, Your Honor, we're at the witness stand and you're using the two bailiffs to indicate Haley and yourself, correct?
A. Yes.
Q. Okay. And so I'm gonna come up here on the witness stand. So I'm inside the house, okay?
A. Yes. Well, if you're in the house, he was completely back this way.
Q. Okay.
A. His back was to the house.
Q. All right. And then show me -- you said he hadn't turned all the way around?
A. He barely got a chance to turn around. He was facing us laughing getting ready to walk off. He literally took a step when Heirbrane came around -- I mean, came out the door yelling something and he turned around probably about to argue with him again, and he got shot, he was hit, and when he got hit, he tried to take a couple of steps off and his body dropped to the ground.
Q. Okay. So he did turn all the way around?
A. Yeah. Yeah, he was still kind of on the pivot.
Q. Okay. So he was still kind of on a pivot. And you said probably about to argue again, right?

A. Yeah.
Q. Okay. I'm gonna show you what's been marked for ID as Defendant's Exhibit 8 and ask do you recognize that picture?
A. Yes, ma'am. That's Will's body on the ground covered up.
Q. Okay. Does it fairly and accurately represent the way that that looked on May 10, 2016?
A. That's not where he fell. That's when they moved him when they got there trying to do resuscitation and stuff like that. On that picture, he's laying on his back. When he fell, he was on his side, but most of his face was in the dirt on the ground. But when they got there, they moved him.
Q. Okay. And it encompasses part of your neighbor's yard, correct?
A. Yes.
Q. Can you see on here where Vernon took -- where Vernon was standing when he took the stick out of Will's hand?
A. I believe they were standing a little more over here when Vernon came and snatched it out, but I'm not sure.
Q. Okay. And I want to -- I'm gonna have you mark a "V" for where you believe they were standing.
A. (Witness complies.)
MS. ZMROCZEK: Your Honor, at this time we'd move

Defendant's 8 into evidence.

MS. PATTERSON: Without objection.

THE COURT: Mark Number 8 into evidence, please, ma'am.

(Defendant's Exhibit Number 8, a photograph, was admitted into evidence.)

BY MS. ZMROCZEK:

Q. And just so the jury can see, you put a "V" right here, correct?

A. Yes, ma'am.

Q. Excellent.

Okay. That was Will's gun?

A. No, Will didn't have a gun.

Q. Okay. And I just want to make sure that I'm clear with your testimony. You never saw the metal pipe as we're describing it? I think there's a picture of it. You never saw that in Will's hand?

A. No.

Q. And you never wrestled it out of Will's hand?

A. No.

Q. Okay. And you never saw Haley take anything out of his hand?

A. No. She pulled his shirt off because she was trying to hold him and he kind of slid out of it.

Q. Okay. Why was she trying to hold him?

A. Because he --

MS. PATTERSON: Objection. Speculation.

MS. ZMROCZEK: If you know.

THE COURT: How would she know?

BY MS. ZMROCZEK:

Q. Okay. Were you there when -- while they were tussling?

A. I seen her. I hadn't walked up completely on them, but they were arguing.

Q. Okay. So you don't know why they were arguing?

A. No. Well, Haley wasn't arguing. She just was holding his shirt while he was yelling.

Q. Okay. So is physical violence or physical contact something that that family engaged in?

A. Yelling at each other, they did. Protecting each other, they did, but -- physical violence as far as between Will and Heirbrane, yes.

Q. Okay. So -- but between Haley and Will, you don't know why she pulled his shirt off?

A. No. They never fought. If anything, she was protecting her brother. They were really close and always protecting each other.

Q. Okay. I'm gonna show you State's Exhibit 6. Do you recognize that?

A. Yes, that's Heirbrane's backyard --

Q. Okay. That's --
A. -- and carport.
Q. So the backyard and the carport. And do you recognize this item here?
A. I know what it is, but --
Q. You didn't see anybody holding it that day?
A. No. That looks like a leveler.
Q. Okay. But you didn't see anybody holding it?
A. No.
Q. Okay. When did Will have the stick at his father?
A. What do you mean at him?
Q. Like swinging it at him at him.
A. He never swung it.
Q. Okay.
A. Just -- he just had it in his hand. They both were just holding stuff in their hand yelling at each other. Nobody was swinging, nobody was pushing each other. It wasn't any -- like I said, it was a verbal disagreement and they just were really loud and cursing and holding sticks and then once Vernon took the stick, Boozey dropped his stick and then it was just yelling, and that was it.
Q. Okay. And so -- and you said they were arguing. Well, here let me give you what's been marked for ID as Defendant's 16. They were arguing under Heirbrane's carport?

A. No, they were at the back of his carport. The last picture you just showed on like that concrete. That's right at the back.
Q. Okay. So I'll put it back up. State's 6. So where were they arguing?
A. Like right here on the concrete, just standing there arguing and yelling, and at one point Heirbrane was in this corner over here where this other stuff is.
Q. Okay. And so that's -- you're saying that that is where Vernon took this stick from Will?
A. No, that's where they were just standing there holding it. That's when Ms. Cathy tried to take it from Will, but he just snatched it out of her hand.
Q. Okay. And then they walked over to where you put the "V" and that's where he snatched it?
A. Yes.
Q. Okay. So then where was Heirbrane when he dropped his stick?
A. Over there in that corner.
Q. Okay.
MS. PATTERSON: I'm sorry, I didn't see where she pointed to. He was where?
THE WITNESS: Over here out to the side somewhere.
MS. PATTERSON: Thank you.
BY MS. ZMROCZEK:

Q. And then right after that is when this incident happened?
A. That's when he put his arms around Cathy and walked off and Cathy walked down the street and he walked into the house.
Q. Okay. Now Cathy you said had tried to take that out of Will's hand as well?
A. Uh-huh.
Q. Is that a yes?
A. Yes, ma'am.
Q. Okay. And that is something that the family did a lot, was try to control Will?
A. No.
MS. PATTERSON: Objection, Your Honor.
THE COURT: Hold on. Do you have an objection?
MS. PATTERSON: Yes. She's getting into specific instances.
MS. ZMROCZEK: I'll rephrase the question so it's more clear, Your Honor.
THE COURT: Okay.
BY MS. ZMROCZEK:
Q. Why that day was Cathy trying to take the stick out of Will's hand?
MS. PATTERSON: Calls for speculation.
BY MS. ZMROCZEK:

Q. If you know.
A. It was more likely for her to calm Will down than Heirbrane.
THE COURT: Hold on. Hold on a second. You're asking her what somebody else was thinking?
MS. ZMROCZEK: No, Your Honor. I'll move on. Let me ask the question this way.
THE COURT: Sustained. Go ahead.
BY MS. ZMROCZEK:
Q. When you saw -- you saw Will and Cathy?
A. Yes.
Q. You saw that with your own eyes?
A. Yes.
Q. And you saw her trying to take a stick out of his hand?
A. Yes, she grabbed it.
Q. Okay. When Will would get -- would Will ever raise his voice?
A. To his father, yes.
Q. Only to his father?
A. Yes.
Q. Okay.
MS. ZMROCZEK: I beg the Court's indulgence.
THE COURT: Yes, ma'am.
MS. ZMROCZEK: Nothing further, Your Honor.

THE COURT: Redirect?

MS. PATTERSON: Yes, Your Honor. Just briefly.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. PATTERSON:

Q. Leann, after Will got shot, how were you feeling?

MS. ZMROCZEK: I'm sorry, I didn't hear the question.

BY MS. PATTERSON:

Q. After Will got shot, how were you feeling?

MS. ZMROCZEK: Objection, Your Honor. Relevance.

THE COURT: Overruled.

THE WITNESS: Can I answer?

THE COURT: You may answer.

THE WITNESS: Empty, confused, lost.

BY MS. PATTERSON:

Q. Did you feel like talking to anybody that day?

A. No. I didn't even want to talk to my own kids, but I didn't have a choice but to deal with my kids and their pain.

Q. Did you feel like talking to law enforcement that day?

A. No.

Q. And so what was your main focus after it happened?

A. My children, trying to explain to my children what was -- what they had just seen and trying to calm them

down and comfort them as much as possible because they loved him so much.

MS. PATTERSON: Thank you, Leeann.

THE COURT: Recross?

RECROSS EXAMINATION

BY MS. ZMROCZEK:

Q. So until June 2018 you didn't feel like talking with anyone from the prosecution or the police?

A. I was more than willing to talk to them. Even when the -- his side sent someone out, I let him know, you know, I'll talk to them, but I didn't have anything to help his case and I just was waiting. They just hadn't reached out to me until then.

Q. Okay. And that was right -- and that was how many months after you were arrested?

A. I'm not sure because I don't even remember my exact arrest date.

MS. ZMROCZEK: Thank you. Nothing further, Your Honor.

THE COURT: Thank you, ma'am. You may step down.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Ladies and gentlemen of the jury, we'll take a ten minute break. Leave your notes in the courtroom. Don't discuss the case. Thank you.

(Whereupon, the jury retires to the jury room at 10:36 AM.)

THE COURT: Court's in recess for ten minutes.

(Recess taken at 10:36 AM.)

(Back on the record at 10:52 AM.)

BAILIFF: All rise.

THE COURT: Thank you. Be seated, please.

Is the State ready for the jury?

MS. PATTERSON: Yes, sir, Your Honor.

THE COURT: Defense?

MS. ZMROCZEK: Yes, Your Honor.

THE COURT: Bring the jurors.

(Whereupon, the jury return to the courtroom at 10:54 AM.)

THE COURT: Call your next witness, please.

MS. PATTERSON: The State calls Troy Flood.

THE COURT: Come around, please.

(Whereupon, Troy Flood was duly sworn by the Clerk of Court.)

THE CLERK: Please be seated in the witness stand. Once you are seated, state your full name; spelling your last for the record.

THE WITNESS: Troy Flood, F-L-O-O-D.

TROY FLOOD,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PATTERSON:

Q. And, Mr. Flood, let's just go ahead and get it out there. From 2012 you had a strong arm robbery and a burglary second conviction?

A. Yes, ma'am.

Q. And how old were you when you had those convictions?

A. I'd just -- I'd just turned eighteen.

Q. And are you working now, Mr. Flood?

A. Yes, ma'am.

Q. And how long have you been on your job?

A. For about a year and six months.

Q. And do you know Will Foster?

A. Yes, ma'am.

Q. How long had you known Will Foster?

A. More than eight years.

Q. And did you know the Defendant, Heirbrane Foster?

A. Yes, ma'am.

Q. And how long had you known him?

A. I want to say about five, five years.

Q. Were you there when Will got shot?

A. Yes, ma'am.

Q. Before we talk about the details of that, tell us where you were that day and what was going on earlier.

A. We was planning a cookout.

Q. And who is "we"?
A. Me, Leann, Will, and other people, you know, in the neighborhood.
Q. Now did you live in this neighborhood?
A. No, ma'am.
Q. But your friends lived there?
A. Yes, ma'am.
Q. And where was the cookout gonna be?
A. At Leann's house.
Q. And do you remember Leann leaving to go anywhere?
A. Yes, ma'am.
Q. And do you know where she went?
A. She said she was going to the store.
Q. And what were you and Will doing while she was gone?
A. I want to say at the moment I probably was walking from this house to that house, you know.
Q. Did you know a lot of people in that neighborhood?
A. Yes, ma'am. I also grew -- I grew up in that neighborhood also.
Q. And so do you remember when Leann got back from the store?
A. Yes, ma'am.
Q. And what happened when she got back from the store?
A. We all helped her grab the things out the car.
Q. And where did you-all take them?

A. Inside the house. Her house.
Q. Do you remember anything going on between Leann and Will?
A. No, ma'am. By then I probably had walked off to another -- to somebody else's yard.
Q. Did you ever see Will kick over the grill?
A. No, ma'am.
Q. And so where were you when you first noticed that something was going on between Will and his father?
A. I want to say I was in Vernon's yard. His aunty -- I mean, his niece's yard.
Q. And where did Vernon live in relation to Leann?
A. Say it one more time.
Q. And where did Vernon -- what was -- where did he live in relation to Leann's house?
A. Basically like across the street.
Q. Okay.
MS. PATTERSON: Your Honor, permission for the witness to step down just to show us where he may have been when --
THE COURT: Yes, ma'am. Keep your voice up.
(Whereupon, the witness steps down from the witness stand.)
BY MS. PATTERSON:
Q. And you can use my pen. If this was [redacted] Oak Glenn

where Heirbrane Foster lived and this was Leann's house, where did -- kind of turn to the side so the jury can see you, Mr. Flood.

A. I want to say it was this house right here.

THE COURT: Speak up.

THE WITNESS: It's this house right here where Mr. Vernon had lived.

BY MS. PATTERSON:

Q. So it's kind of diagonal to [redacted] Oak Glenn?

A. Yes, ma'am.

Q. Thank you. You can have a seat.

A. (Witness complies.)

Q. And what did you see going on?

A. At the moment I heard yelling, then that's when I looked up. Well, looked towards that direction.

Q. And do you know who was yelling?

A. Once I caught the voices, I noticed that it was Mr. Heirbrane and his son, Will.

Q. And could you hear what they were saying?

A. No, ma'am.

Q. Did you notice if they had anything in their hands?

A. Not right there at the moment they didn't.

Q. Okay. At any point did you see them with anything in their hands?

A. Yes.

Q. And what did you see?
A. I seen one had a stick and one had a two by four.
Q. And who had a stick?
A. I couldn't remember to be honest.
Q. And do -- so you don't remember who had the two by four either?
A. No, ma'am. Because I was still -- I was still in Vernon's yard then. Eventually I ended up walking -- walking across that way.
Q. Okay. And when you left Vernon's house, which yard did you walk into?
A. I want to say the middle of the yard that we walks across from Leann's house to Mr. Foster's house. I want to say I was in that yard or probably like in the middle or over by the edge of the yard.
Q. Okay. And so that would be the house in between Heirbrane Foster and Leann?
A. Yes, ma'am.
Q. Okay. And so did Vernon go over there with you or did you see?
A. I can't -- I can't remember, you know. It was -- things out there was happening so quick.
Q. Okay. And how far were these two standing when they were arguing?
A. Well, after somebody got in their way, I want to say

probably like to where she's sitting at to where you're at.

Q. Okay. So they were a ways away from each other?

A. Yes.

Q. Did you ever see either one of them raise the objects they had in their hands?

A. No, ma'am.

Q. Did you ever see them hit each other?

A. No, ma'am.

Q. And at any point did they -- did the objects -- did they drop or someone take -- took away the objects from their hands?

A. I believe somebody took it from both of them.

Q. And did you see what this person may have done with these -- with the -- whatever they had in their hands?

A. No, ma'am. No, ma'am.

Q. And did you see Will when he was shot?

A. Yes, ma'am.

Q. And where was he standing?

A. Like by the carport by the pole in Mr. Heirbrane's yard.

Q. Okay. And did you see where Mr. Heirbrane went before he shot Will?

A. Yes, ma'am.

Q. And where did he go?

A. Inside the house.
Q. Do you know how long he was in there?
A. About three to five minutes.
Q. And did you see if Will tried to follow him inside the house?
A. He didn't.
Q. Do you know if Will had anything in his hand when he got shot?
A. He didn't.
Q. I'm gonna show you what's been entered as State's Exhibit Number 4. There's a pointer up there. You can just kind of point to the jury. Where did you see Will when he -- where was Will at when he got shot?
A. Like up in here.
THE COURT: What did you say?
THE WITNESS: He was like -- he was like up in here.
BY MS. PATTERSON:
Q. And where would you have been at this time?
A. I want to say about here.
Q. So you were standing close to Will?
A. Yes, ma'am.
Q. And when Will got shot, do you know how he -- what did he do next?
A. To be honest, like he was about to say something like -- like -- like, dad, like, did you really, like, shoot me,

like, but no words weren't coming out and he, like, turned to his side, took a couple of steps, I want to say about right up in here, and then he fell.

Q. Okay. So by the time Mr. Heirbrane went in the house, you had walked over to their yard?

A. Yes.

Q. And about how long had you been standing there in that yard before he came out the door?

A. About -- I'd say really the whole time when he -- ever since Will was like right up in there. Then I was -- I was there the whole time ever since Boozey, excuse me, Mr. Heirbrane was in the house. I was like right there making sure, you know, nothing else had escalated off.

Q. And where were -- what was you-all about to do once he went in the house? Were you and Will about to do anything?

A. To be honest, we was about to go back over there and start drinking.

Q. About to go back over where and start drinking?

A. To Leann -- to Leann's house. We had a case of beer and we had a bottle of Seagram's gin.

Q. You-all had this with your other cookout food?

A. Yes.

Q. And so did you -- and you didn't make it back to Leann's house?

A. No, ma'am.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

BY MS. PATTERSON:

Q. When you and Leann and Will was standing there, what were you-all doing before Will got shot?

A. Basically talking.

Q. Okay. You-all were just talking?

A. Yes, ma'am.

Q. And what was your impression of the argument between Will and his daddy?

MS. ZMROCZEK: Objection, Your Honor.

THE COURT: What's your question?

MS. PATTERSON: What was his impression.

THE COURT: What was the what?

MS. PATTERSON: What was his impression about the argument between Will and daddy at that point.

THE COURT: I don't know what he's -- what you're asking. What was his impression?

BY MS. PATTERSON:

Q. What did you think about the argument -- the status of the argument at that point?

A. Nothing, you know, because they used to argue all the time, you know.

MS. PATTERSON: I beg the Court's indulgence.

THE COURT: Yes, ma'am.

MS. PATTERSON: Thank you, Mr. Flood. Please answer any questions the defense may have.

CROSS-EXAMINATION

BY MS. ZMROCZEK:

Q. Mr. Flood, you said that you were over standing by the pole to make sure that the argument between Will and Heirbrane didn't escalate?

A. Yeah. To make sure it had died down, yes.

Q. Because when Will drinks he gets aggressive?

A. No. No, ma'am.

Q. Okay. You've known Will for eight years?

A. Just about, yes.

Q. Okay. And it's your testimony that he was not aggressive when he drinks -- when he drank? Excuse me.

A. Yes, ma'am.

Q. And he had been drinking that day?

A. We hadn't started yet.

Q. You had not started yet?

A. Yes, ma'am.

Q. Okay. So you were with him all day?

A. No, not all day.

Q. Okay. What time did you get there?

A. To be honest, I have no idea.

Q. Okay. Can you -- how -- let's try to guess how long

-- or not guess, but let's put it in a timeframe. How long before this incident did you get there?
A. I don't know.
Q. Okay. When you got there, where did you go first?
A. I want to say over by Leann's house.
Q. I'm sorry?
A. By Leann's house.
Q. Okay. And what did you do at Leann's house?
A. We was debating about what we was gonna do that day. That's when we started to say we were gonna cook on the grill.
Q. Okay. Do you remember -- so was the grill already there?
A. No.
Q. Okay. So were you around when the grill got to Leann's?
A. I believe so. I believe so.
Q. Okay. Who -- was there a fight at any time under Leann's carport?
A. I don't remember.
Q. Okay. Do you remember Mr. Foster working on Ronita Coleman's vehicle?
A. I don't remember.
Q. Okay. You were over at Vernon's house for some time you said?

A. Yes, ma'am.
Q. And Vernon's house is kind of around the cul de sac like you pointed out, right?
A. Yes, ma'am.
Q. Okay. And was Vernon there?
A. I believe so.
Q. Okay.
A. I want to say he was in the house. I don't think he was standing outside with me at the time.
Q. Okay. Did Vernon -- did you ever see Vernon come outside?
A. Yes.
Q. Okay. When was that?
A. Probably a couple of minutes after I was there.
Q. Okay. Did you ever see Vernon take a two by four out of Will's hand?
A. I don't remember who took what out of whose hands.
Q. Okay. Did you see it?
A. Did I see what?
Q. Anybody take anything out of anybody's hands.
A. I just said I didn't.
Q. Okay. You said that Will and Heirbrane were fighting, right?
A. No, I didn't.
Q. Okay. Tell me why, again, you were at the corner of

the carport at Mr. Heirbrane's house.
A. Repeat that one more time.
Q. Why were you at the corner at his house?
A. I wasn't at the corner.
Q. Okay. How long were you talking to Will prior to the shot going off?
A. About, what, three to five minutes.
Q. Okay. I'm gonna show you what's been marked for ID as Defendant's 9 and ask if you recognize that?
A. Yes, ma'am.
Q. You do?
A. (Nods head.)
Q. Does that fairly and accurately represent the way it looked on May 10, 2016?
A. Yes, ma'am.
Q. Okay. I'm gonna hand you a marker and I want you to write a "T" for where you were standing.
A. (Witness complies.)
Q. A "W" for where Will was standing.
A. (Witness complies.)
Q. And who else was out there with you?
A. I couldn't remember to be honest with you.
Q. Okay. Was Leann there?
A. I can't remember.
Q. Okay. Was Haley there?

A. I can't remember.
Q. Okay. So -- but you do only remember him and Will?
A. Because I was talking to him.
Q. Okay. And it was just you and him talking?
A. I was talking to him.
Q. Okay. You were talking to him?
A. Yes.
Q. Okay.
MS. ZMROCZEK: Your Honor, at this time we would move Defendant's 9 in.
MS. PATTERSON: Without objection.
THE COURT: Mark 9 in evidence, please.
(Defendant's Exhibit Number 9, a photograph, was admitted into evidence.)
BY MS. ZMROCZEK:
Q. Okay. So you have a "W" here for Will?
A. Yes.
Q. A "T" here for Troy?
A. Yes.
Q. And you-all were just standing there for about three to five minutes?
A. Yes.
Q. And you don't -- because you were talking to him, you don't remember anybody else being there?
A. No, ma'am.

Q. Okay. If I show that you that picture again, can you -- is that where they were fighting with whatever they had in their hands? And I'll put back Defendant's 9. Were they fighting in -- in this area?
A. To be honest, I don't know.
Q. Okay. But you do know that Will hadn't started drinking yet?
A. As far as my knowledge.
Q. I'm sorry?
A. As far as my knowledge.
Q. Okay. And -- but you do know that when he drank he drank Bud Light?
A. Yes, ma'am.
Q. And you said a fifth, right? You-all drank gin?
A. I didn't say a fifth.
Q. Okay. Did you-all drink gin?
A. Yes, we do drink gin.
Q. Okay. Had you planned on drinking gin that day?
A. We had a bottle there, but we didn't get a chance to drink it.
Q. Okay. You didn't get a chance to drink it?
A. No, ma'am.
Q. All right. And you remember talking with the police that day?
A. Somewhat.

Q. Okay. Is it easier -- would you agree with me that you did speak to them that day though?
A. Yes, I did.
Q. Okay. And -- and they had somebody write a statement for you?
A. Yes, because my nerves was up. I didn't -- yeah.
Q. Right. Right. So they -- so they wrote it for you?
A. Yes.
Q. But you remember that, right?
A. Some of it.
Q. Okay. Did you -- do you remember telling them that Will had a piece of wood in his hand and his father had a shovel?
A. I guess that's what I wrote.
Q. Okay. And if you wrote it that day --
A. I'm saying that happened two years ago. I can't remember word for word or exactly, like, what I said.
Q. Right. But you would agree that that's why it was written down -- it was written down on May 10th of 2016?
A. Repeat that.
MS. PATTERSON: Your Honor, she can show him his statement.
MS. ZMROCZEK: Sure.
BY MS. ZMROCZEK:
Q. Does that refresh your recollection?

A. I'm saying it's in black and white.
Q. I'm sorry?
A. It's in black and white.
Q. So it refreshes your recollection?
A. That's what I wrote.
Q. Okay. So you wrote that they were arguing in the front yard, right?
A. Yes. You're reading it.
Q. Okay. So you -- but you just don't remember where in the front yard they were arguing?
A. No, ma'am.
Q. Okay. And that they were about six feet apart?
A. That's what it says.
Q. Okay. Were they?
A. I don't remember.
Q. Okay. But when you --
A. I'm saying that's -- that's what I wrote, but I'm saying I just can't remember, like, exactly from detail to detail.
Q. Right.
A. Like I said, it was three years ago.
Q. Okay. But --
A. If that's what it says on the paper, that's what's on the paper.
Q. When you wrote this in 2016, did you remember it